

KANSAS BOARD OF EXAMINERS IN OPTOMETRY
Minutes of the 16 April 2018 Meeting

- I. 1:00 PM called to order by Ron Hansen, OD, President. Members of the Board present were Drs. Gerard Lozada, Craig Newland, Rebecca Sparks and public member Gary Slimmer. Also in attendance were Randy Forbes, Board Counsel, Jan Murray, Executive Officer and Todd Fleischer, KOA representative.
- II. The Agenda was approved by consensus.
- III. Review and Approval of the minutes from the last meeting:
 - A. Dr Newland motioned and Mr Slimmer seconded a motion to approve the minutes from the January 10, 2018 and February 21, 2018 meetings. Motion carried 5-0
- IV. Election of Board Officers
 - A. Dr Newland moved and Dr Sparks seconded a motion to maintain the current slate of Board officers:

President: Dr. Ron Hansen
Vice-President: Dr. Gerard Lozada
Secretary/Treasurer: Dr. Rebecca Sparks Dougherty
Member at Large: Dr. Craig Newland
Public Member: Gary Slimmer.

Motion carried 5-0.
- V. The Board held a hearing on the application for reinstatement for Michael Gordon, OD, Case no. 2017-3.
 - A. Dr Lozada motioned and Dr Newland seconded a motion to continue the suspension until Dr Gordon meets the requirement of the 2017 final order of contacting patients of his at the time he closed his optometry practice, advising them how to obtain the original or copies of their optometric medical records. The Board suggested that he place an advertisement in the Public Notice section of the Wichita Eagle newspaper, advising his former patients that Dr Megan Baldwin has possession of their optometric medical records, and include in the notice Dr Baldwin's office address and phone number. Motion passed 4-0 with Dr Sparks abstaining.
- VI. *Report of the President*
 - A. Dr Lozada motioned and Dr Sparks seconded a motion to adopt a policy on optometric practice in Federal Qualified Health Centers. The motion carried 5-0. The policy is attached at the end of these minutes.
 - B. Dr Hansen discussed giving Board advice outside of meetings.

VII. *Report of the Vice President*

- A. Dr Lozada motioned to go into executive session to return to open session at 3:34 pm, the justification being to engage in discussions protected by attorney-client privilege and the topic being potential administrative hearings concerning KSA 65-1504 and KSA 65-4967 violations. The motion was seconded by Dr Newland. The motion passed.

The Board adjourned into executive session at 3:14 pm

The Board reconvened at 3:34

- B. Dr Lozada motioned to go into executive session to return to open session at 3:35 pm, the justification being to engage in discussions protected by attorney-client privilege and the topic being potential administrative hearings concerning KSA 65-1504 and KSA 65-4967 violations. The motion was seconded by Dr Newland. The motion passed.

The Board adjourned into executive session at 3:35 pm

The Board reconvened at 3:45 pm

VIII. *Report of the Secretary-Treasurer*

- A. Dr Sparks motioned and Mr Slimmer seconded to accept all COPE approved CE from 01/11/2018-04/16/2018. Motion carried 5-0.

IX. *Report of the Member-At Large*

- A. Dr Newland gave a report on regulations in other states regarding content of spectacle prescriptions, and adopting similar ones. No action was taken.

X. *Report of the Public Member*

- A. No Report

XI. *Report of the Legal Counsel*

- A. Dr. Lozada moved to go into executive session to return to open session at 4:30 pm, the justification being to engage in discussions protected by the attorney-client privilege and the topic being potential litigation. The motion was seconded by Dr. Newland. The motion passed.

The Board adjourned into Executive Session at 4:00 pm

The Board reconvened at 4:30 pm

- B. Dr. Lozada moved to go into executive session to return to open session at 4:45 pm, the justification being to engage in discussions protected by the attorney-client privilege and the topic being potential litigation. The motion was seconded by Dr. Newland. The motion passed.

The Board adjourned into Executive Session at 4:31 pm

The Board reconvened at 4:45 pm

- C. Dr. Lozada moved to go into executive session to return to open session at 5:00 pm, the justification being to engage in discussions protected by the attorney-client privilege and the topic being potential litigation. The motion was seconded by Dr. Newland. The motion passed.

The Board adjourned into Executive Session at 4:46 pm

The Board reconvened at 5:00pm

- D. Dr. Lozada moved to go into executive session to return to open session at 5:15 pm, the justification being to engage in discussions protected by the attorney-client privilege and the topic being potential litigation. The motion was seconded by Dr. Newland. The motion passed.

The Board adjourned into Executive Session at 5:01 pm

The Board reconvened at 5:15 pm

XII. *Report of the Executive Officer*

A. Reciprocity:

1. Dr Newland moved and Mr Slimmer seconded a motion to approve the reciprocity of Andria Demosthenous, OD. Motion carried 5-0.
2. Dr Hansen moved and Dr Lozada seconded a motion to approve the reciprocity of Carrie Turley, OD. Motion carried 5-0.

B. Trade Names:

1. Dr Sparks moved and Mr Slimmer seconded a motion to approve the trade name *Millennial Eye Care*, 7700 E Kellogg Dr, Wichita, KS for Hailey Williams OD. Motion carried 5-0.
2. Mr Slimmer moved and Dr Newland seconded a motion to approve the trade name of *Visionary Eye Care Optometry*, 6100 Bradmoor St, Mission, KS; 10800 East 21st North, Wichita, KS; 2727 North Maize Rd, Wichita, KS for Ryan Hiesterman, OD. Motion carried 5-0.

- C. The Board answered questions Ms Murray posed about the upcoming June 8-9 exam.

- D. Ms Murray discussed the performance measures for the Performance Based Budgeting.

- E. Ms Murray discussed the In-State Travel Reimbursement Policy.
- F. The Board declined to act upon a request received by Ms. Murray for a simplified wording for optometry offices located within corporate businesses: K.A.R. 65-10-1 and K.A.R. 65-10-2.
- G. Ms Murray gave an update on the online application progress that KS.gov has made.

XIII. *Comments From the Public*

- A. Mr Fleischer gave a legislature update to the Board.

XIV. *Next Meetings*

- A. Board Meeting / Annual Exam June 8 & 9, 2018, Kansas State House, 300 SW 10th Ave, Topeka, KS and Lawrence Family Vision Clinic, 3109 W 6th St, Lawrence, KS.
- B. ARBO June 17-19, 2018, Denver CO. Drs Hansen, Lozada, and Sparks and Ms Murray will be attending
- C. October 17, 2018 1:00 pm, Law Offices of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Place, Suite 201. Topeka, KS

KANSAS BOARD OF EXAMINERS IN OPTOMETRY

**POLICY REGARDING KANSAS OPTOMETRISTS WORKING IN A FEDERALLY
QUALIFIED HEALTH CENTER (“FQHC”)**

Adopted: April 16, 2018

It is the policy of the Board that the Kansas Optometry law does not prevent a Kansas licensed optometrist from working in a FQHC. The analysis leading to adoption of this policy is attached hereto.

Generally, a Federally Qualified Health Center (“FQHC”) is a non-profit center that meets the requirements for federal funding under 42 U.S.C. § 1396d (1) of the Public Health Service Act and has been designated as an FQHC by the federal government.

K.S.A. 65-1524 provides that non-professional corporations and non-professional limited liability companies cannot practice optometry. Notwithstanding K.S.A. 1522(c) provides that a Kansas Optometrist may practice in a medical facility, medical care facility or a governmental institution or agency.

The Optometry Act defines “medical facility” by referencing the definition found at K.S.A. 65-411 and defines “medical care facility” by referencing the definition found at K.S.A. 65-425.

K.S.A. 65-411(c) provides:

“(c) ‘Medical Facility’ includes public health centers, psychiatric hospitals, health maintenance organizations as defined in K.S.A. 40-3202 and amendments thereto; medical care facilities as defined in K.S.A. 65-425 and amendments thereto; adult care homes, which term shall be limited to nursing facilities and intermediate personal care homes as these terms are defined in K.S.A. 39-923 and amendments thereto; kidney disease treatment centers, including centers not located in a medical care facility; and other facilities as may be designated by the secretary of health, education and welfare for the provision of health care.”

K.S.A. 65-425(h) provides:

“(h) ‘Medical care facility’ means a hospital, ambulatory surgical center or recuperation center, but shall not include a hospice which is certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provides services only to hospice patients.

In *St. Francis Regional Medical Center, Inc. v. Weiss*, 254 Kan. 728, 869 P.2d 606 (1994) the Kansas Supreme Court examined whether a general corporation (the hospital) could employ a physician. In the earlier case of *Early Detection Center, Inc. v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991), the Supreme Court had held that a non-professional for profit corporation could not employ a physician. In holding that St. Francis could employ a physician, the Court reasoned:

“We agree that *Early Detection Center* should not be extended beyond its facts and is distinguishable from the present case. Here, the corporation employing the physician is a hospital licensed by the State of Kansas as a medical care facility and a health care provider. This difference is crucial to our determination and it distinguishes a hospital from a ‘diagnostic clinic’, which was involved in *Early Detection Center*.

In light of the above, we conclude that neither Kansas case law nor statutory law prohibits a licensed hospital from contracting for the services of a physician. Such contracts are not contrary to the interest of public health, safety, and welfare and, therefore, are legally enforceable. We find no valid reason to distinguish between profit and nonprofit hospitals in this regard.”

St. Francis v. Weis, 254 Kan. at 746.

The policy considerations which led the Supreme Court to conclude that the State’s public policy would not be violated by a hospital employing a physician would seem to lead to the conclusion that an Optometrist should be permitted to work for an FQHC. The Kansas legislature has specifically provided that an FQHC can employ a Kansas licensed dentist. Although there is no similar provision in the Kansas Optometry Law, there is no rational basis to conclude that protection of the public requires Optometrists not to be employed by an FQHC when a dentist can be so employed.

It is not clear that the legislature specifically intended the definitions of “medical facility” or “medical care facility”, as used in the Optometry Law, to include an FQHC, but there certainly appears to be no compelling reason to conclude that the Optometry Law prevents an Optometrist from working in an FQHC.