

**BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS  
MINUTES OF MEETING**

The Board for Hearing Aid Specialists and Opticians met on Wednesday, July 12, 2017, at the Offices of the Department of Professional and Occupational Regulation, Perimeter Center, Board Room 3, 2<sup>nd</sup> Floor, 9960 Mayland Drive, Richmond, Virginia 23233. The following members were present for the meeting:

Judith M. Canty  
Pamela S. Chavis, MD  
Edward L. DeGennaro  
Mark Grohler  
Laura Lee Kleiner  
Debra Ogilvie, AuD  
Arva B. Priola  
June H. S. Rogers  
Bruce R. Wagner

The following members were not present:

Melissa Gill  
Eric B. Hecker, PhD  
L. Frederick Lassen, MD  
Teresa D. Leeper  
Bonnie Mayhew

DPOR staff present for all or part of the meeting included:

Jay W. DeBoer, Director  
Demetrios J. Melis, Executive Director  
Tamika Rodriguez, Licensing Operations Administrator  
Cathy Clark, Administrative Assistant

A representative from the Office of the Attorney General was present for the meeting.

Elizabeth B. Peay, Assistant Attorney General

Ms. Canty determined that there was a quorum present, and called the meeting to order at 9:02 a.m. **Call to Order**

Ms. Canty introduced new Citizen Board member Laura Lee Kleiner. **Introduction of New Board Member**

Upon a motion by Ms. Rogers and seconded by Mr. DeGennaro, the Board moved to adopt the Agenda. **Approval of Agenda**

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Mr. Grohler, Ms. Kleiner, Ms. Priola, Ms. Rogers, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

Dr. Ogilvie was not present, did not participate in the discussion, and did not vote on this matter.

Upon a motion by Ms. Rogers and seconded by Mr. DeGennaro, the Board voted to approve the minutes of the April 5, 2017 Ad Hoc Committee on Optician Apprenticeships Meeting and the April 12, 2017 Board for Hearing Aid Specialists and Opticians Meeting.

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Mr. Grohler, Ms. Kleiner, Ms. Priola, Ms. Rogers, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

Dr. Ogilvie was not present, did not participate in the discussion, and did not vote on this matter.

Dr. Ogilvie arrived at the meeting at 9:08 a.m.

No communications were received by the Board.

Ms. Canty asked for public comments.

Ms. Michelle Nelms, Executive Director of the Opticians Association of Virginia addressed the Board regarding the Request for Proposals (RFP) under consideration for the Optician written and practical examinations. Ms. Nelms provided suggested criteria for the RFP and recommended that a number of licensed Opticians participate on the RFP committee. The Board took Ms. Nelms' remarks under advisement for the discussion that would take place later on the Agenda.

Dr. Ogilvie and Mr. Grohler recused themselves from the meeting.

In the matter of **File Number 2017-00327, Kenneth Howard Rossen**, the Board reviewed the record which consisted of the Report of

**Approval of Minutes:  
April 5, 2017 Ad Hoc  
Committee on  
Optician  
Apprenticeships  
Meeting AND April  
12, 2017 Board for  
Hearing Aid  
Specialists and  
Opticians Meeting**

**Dr. Ogilvie Arrived  
at the Meeting**

**Communications**

**Public Comment**

**Dr. Ogilvie and Mr.  
Grohler Recused**

**Case**

**File Number 2017-  
00327, Kenneth**

Findings, transcript, exhibits, and the Summary of the Informal Fact-Finding Conference. Kenneth Howard Rossen did not appear at the meeting in person, by counsel or by any other qualified representative; however, the Board was provided with an emailed letter from Mr. Rossen, which the members reviewed prior to motions and discussion.

**Howard Rossen**

Concerning Counts 1 and 2, upon a motion by Mr. Wagner and seconded by Ms. Kleiner, the Board adopted the Report of Findings which contains the facts regarding the regulatory and/or statutory issues in this matter, and found substantial evidence that Kenneth Howard Rossen violated the following sections of its Regulations:

Count 1: 18 VAC 80-20-200  
Count 2: 18 VAC 80-20-270.1.h

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, Ms. Rogers, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

As Board representatives in this case, Mr. Grohler and Dr. Ogilvie were not present, did not participate in the discussion, and did not vote on this matter.

Mr. Wagner informed the Board that he recalled having provided technical assistance to the Board's investigative staff. Mr. Wagner recused himself.

**Mr. Wagner Recused**

Upon Mr. Wagner's recusal, the Board agreed without objection to reconsider the case.

Concerning Count 1, upon a motion by Ms. Rogers and seconded by Ms. Kleiner, the Board adopted the Report of Findings which contains the facts regarding the regulatory and/or statutory issues in this matter, and found substantial evidence that Kenneth Howard Rossen violated the following section of its Regulations:

Count 1: 18 VAC 80-20-200

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, and Ms. Rogers. There were no negative votes. The motion passed unanimously.

As Board representatives in this case, Mr. Grohler, Dr. Ogilvie, and Mr. Wagner were not present, did not participate in the discussion, and did not vote on this matter.

Concerning Count 2, upon a motion by Ms. Rogers and seconded by Mr. DeGennaro, the Board adopted the Report of Findings which contains the facts regarding the regulatory and/or statutory issues in this matter, and found substantial evidence that Kenneth Howard Rossen violated the following section of its Regulations:

Count 2: 18 VAC 80-20-270.1.h

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, and Ms. Rogers. There were no negative votes. The motion passed unanimously.

As Board representatives in this case, Mr. Grohler, Dr. Ogilvie, and Mr. Wagner were not present, did not participate in the discussion, and did not vote on this matter.

Concerning Count 1, upon a motion by Ms. Rogers and seconded by Ms. Kleiner, the Board voted to accept the sanction contained in the Recommendation and to impose the following monetary penalty:

Count 1: 18 VAC 80-20-200	\$ 100.00
	-----
TOTAL (MONETARY PENALTIES)	\$ 100.00

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, and Ms. Rogers. There were no negative votes. The motion passed unanimously.

As Board representatives in this case, Mr. Grohler, Dr. Ogilvie, and Mr. Wagner were not present, did not participate in the discussion, and did not vote on this matter.

Concerning Count 2, upon a motion by Mr. DeGennaro and seconded by Dr. Chavis, the Board voted to accept the sanction contained in the Recommendation and to impose the following monetary penalty:

Count 1: 18 VAC 80-20-270.1.h	\$ 2,500.00
	-----
TOTAL (MONETARY PENALTIES)	\$ 2,500.00

The member voting 'yes' was Dr. Chavis. The members voting 'no' were Ms. Canty, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, and Ms. Rogers. The motion failed.

As Board representatives in this case, Mr. Grohler, Dr. Ogilvie, and Mr. Wagner were not present, did not participate in the discussion, and did not vote on this matter.

Concerning Count 2, upon a motion by Mr. DeGennaro and seconded by Dr. Chavis, the Board voted to reject the sanction contained in the Recommendation and to impose the following monetary penalty:

Count 1: 18 VAC 80-20-270.1.h	\$ 1,500.00
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TOTAL (MONETARY PENALTIES)	\$ 1,500.00

The members voting 'yes' were Ms. Canty, Mr. DeGennaro, Ms. Kleiner, Ms. Priola, and Ms. Rogers. The member voting 'no' was Ms. Chavis. The motion passed by a majority.

As Board representatives in this case, Mr. Grohler, Dr. Ogilvie, and Mr. Wagner were not present, did not participate in the discussion, and did not vote on this matter.

Mr. Grohler, Dr. Ogilvie, and Mr. Wagner returned to the meeting.

Mr. Melis reviewed Hearing Aid Specialists and Opticians licensing statistics with the Board. (See Addendum 1)

**Statistics**

Mr. Melis also reviewed the Hearing Aid Specialists and Opticians examination statistics with the Board for all exams administered between February 1 and June 16, 2017. (See Addendums 2 and 3)

**Old Business**

**Regulations**

Mr. Melis reported to the Board that the fee adjustment for Opticians is currently in executive branch review, after which there will be one final public comment period.

**OPT Fee Adjustment**

Mr. Melis advised the Board that the final action of the Committee will be to work out arrangements for a video to address the surfacing component of the related instruction. Mr. DeGennaro indicated he is in contact with a laboratory that is producing a video which will likely meet the Board's needs. Mr. DeGennaro will report back to staff when more information on the video's progress and availability.

**Ad Hoc Committee  
on Optician  
Apprenticeships  
Report**

As requested by the Board, staff presented a draft letter which will be

**Letter to Hearing**

mailed to all Virginia licensed hearing aid specialists.  
**(See Addendum 4)**

**Aid Specialists  
Regarding FDA  
Guidance on Medical  
Evaluations**

**Other Business**

Mr. Melis stated it was necessary for the Board to request the Department issue a Request for Proposal (RFP) for the Board's written Optician examination since the contract with the current examination provider was expired. He further stated the Board may wish to consider also including the practical in the RFP. Mr. Melis explained the procurement process generally and advised the Board of the importance of adhering to the Department staff's guidance as it related to the procurement process. The Board agreed to convene a committee to discuss the examination needs. Mr. Melis indicated that he would inquire with the Procurement Division regarding the constituting of the RFP committee.

**Optician Written and  
Practical Exam  
Request for Proposal**

Following the discussion, upon a motion by Mr. DeGennaro and seconded by Ms. Rogers, the Board voted to submit a Request for Proposals for both a written and a practical Optician examination.

The members voting 'yes' were Ms. Canty, Dr. Chavis, Mr. DeGennaro, Mr. Grohler, Ms. Kleiner, Ms. Priola, Dr. Ogilvie, Ms. Rogers, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

Mr. Melis stated this piece of federal legislation continues to advance. A discussion ensued about potential impacts to Virginia.

**Report: Over-the-  
Counter Hearing Aid  
Act of 2017 (H.R.  
1652)**

There being no other business to be brought before the Board, Ms. Canty adjourned the meeting at 10:18 a.m.

**Adjourn**

  
\_\_\_\_\_  
Judith Canty, Chair

  
\_\_\_\_\_  
Jay W. DeBoer, Secretary

## Hearing Aid Specialists and Opticians BOARD STATISTICS

### Licenses & Temporary Permits Issued – 4-1-2017 through 6-30-2017

Hearing Aid Specialists by Exam	1
Hearing Aid Specialists by Reciprocity	0
Hearing Aid Specialists Temporary Permits	19
Optician by Exam	9
Optician by Reciprocity	0
CLE by Exam	2
CLE by Reciprocity	0
Optician License App Criminal History Review (Pass Matrix)	0

### Regulant Population as of 6-1-2017

Hearing Aid Specialist Temp Permits	58
Hearing Aid Specialists	676
Opticians	1,889

### Complaints – 4-1-2017 through 6-30-2017

New Complaints Received – Hearing Aid Specialists	0
New Complaints Received – Opticians	1
Complaints Pending – Hearing Aid Specialists	0
Complaints Pending – Opticians	0
Complaints Closed – Hearing Aid Specialists	0
Complaints Closed – Opticians	1

**HEARING AID SPECIALISTS**

GENERAL EXAM STATISTICS REPORT - PRACTICAL

EXAM DATE	TOTAL EXAMS TAKEN		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
02/01/2017	23	10	43.47%	70.00%	10	07	70.00%	13	03	23.07%	23

CONTENT DESCRIPTION

CONTENT DESCRIPTION	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED
AUDIOMETRIC	21	09	42.85%
MAINTENANCE AND REPAIR	19	17	89.47%
SPEECH TESTING	20	14	70.00%
EARMOLD IMPRESSIONS	22	16	72.72%

**HEARING AID SPECIALISTS**

GENERAL EXAM STATISTICS REPORT - WRITTEN

EXAM DATE	TOTAL EXAMS TAKEN		PERCENT PASSED	
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	PERCENT PASSED
03/01/2017	22	16	72.72%	
03/01/2017	31	10	32.25%	

CONTENT DESCRIPTION

RULES & REGULATIONS  
HAS THEORY



**HEARING AID SPECIALISTS**

GENERAL EXAM STATISTICS REPORT - PRACTICAL

EXAM DATE	TOTAL EXAMS TAKEN		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
06/12/2017	34	24	70.58%	24	19	79.16%	10	05	50.00%	34	

CONTENT DESCRIPTION	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED
AUDIOMETRIC	26	16	61.53%
MAINTENANCE AND REPAIR	28	24	85.71%
SPEECH TESTING	22	16	72.72%
EARMOLD IMPRESSIONS	24	24	92.30%

**HEARING AID SPECIALISTS**

GENERAL EXAM STATISTICS REPORT - WRITTEN

EXAM DATE	CONTENT DESCRIPTION	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED
07/12/2017	RULES & REGULATIONS			
07/12/2017	HAS THEORY			

**OPTICIANS**

**GENERAL EXAM STATISTICS REPORT - WRITTEN**

EXAM DATE	TOTAL		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
Feb. 2017	13	13	100.00%								13

**GENERAL EXAM STATISTICS REPORT - PRACTICAL**

EXAM DATE	TOTAL		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
March 17, 2017	14	11	78.57%		09	07	77.77%	05	04	80.00%	14

**CONTENT DESCRIPTION**

ADJUSTING AND BENCH EDGING	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED
SPECTACLE ANALYSIS PAIR I	14	09	64.28%
SPECTACLE ANALYSIS PAIR II	14	10	71.42%
WRITTEN	14	12	85.71%
SPECTACLE ANALYSIS PAIR III	02	02	100.00%
LENS IDENTIFICATIONS	14	09	64.28%
SCHOOL	14	13	92.85%
APPRENTICESHIP	02	01	50.00%
FINISHING LAYOUT	12	10	83.33%
	14	07	50.00%

**\*\* Above Overall Written Stats\*\***

**Breakdown**

**Board Approved      ABO Approved**

Took	02	Took	11
Pass	02	Pass	11

**OPTICIANS**

**GENERAL EXAM STATISTICS REPORT – WRITTEN – CBT**

EXAM DATE	TOTAL		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
May 2017	02	02	100.00%								02

**GENERAL EXAM STATISTICS REPORT – PRACTICAL**

EXAM DATE	TOTAL		PERCENT PASSED		FIRST TIME			RE-EXAM			TOTAL EXAMINEES SCHEDULED
	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	EXAMS TAKEN	EXAMS PASSED	PERCENT PASSED	
June 16, 2017	08	08	100.00%		04	04	100.00%	04	04	100.00%	08

**CONTENT DESCRIPTION**

ADJUSTING AND BENCH EDGING	EXAMS TAKEN	08	EXAMS PASSED	05	PERCENT PASSED	62.50%
SPECTACLE ANALYSIS PAIR I	EXAMS TAKEN	08	EXAMS PASSED	05	PERCENT PASSED	62.50%
SPECTACLE ANALYSIS PAIR II	EXAMS TAKEN	08	EXAMS PASSED	04	PERCENT PASSED	50.00%
WRITTEN	EXAMS TAKEN	02	EXAMS PASSED	02	PERCENT PASSED	100.00%
SPECTACLE ANALYSIS PAIR III	EXAMS TAKEN	08	EXAMS PASSED	01	PERCENT PASSED	12.50%
LENS IDENTIFICATIONS	EXAMS TAKEN	14	EXAMS PASSED	13	PERCENT PASSED	92.85%
SCHOOL	EXAMS TAKEN	04	EXAMS PASSED	04	PERCENT PASSED	100.00%
APPRENTICESHIP	EXAMS TAKEN	04	EXAMS PASSED	04	PERCENT PASSED	100.00%
FINISHING LAYOUT	EXAMS TAKEN	08	EXAMS PASSED	06	PERCENT PASSED	75.00%

**\*\* Above Overall Written Stats\*\***

**Breakdown**

Board Approved      ABO Approved

Took 02              Took 18  
Pass 02              Pass 18



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

July 21, 2017

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

## Board Guidance

Dear Hearing Aid Specialist:

The Virginia Board for Hearing Aid Specialists and Opticians has issued guidance to hearing aid specialist licensees regarding the December 12, 2016 Food and Drug Administration's (FDA) guidance on "Conditions for Sale for Air-Conduction Hearing Aids." The FDA provided guidance indicating that they were no longer enforcing certain conditions for sales applicable to hearing aids, particularly certain requirements for medical evaluation and recordkeeping. It has come to the Board's attention that some licensees may have interpreted this guidance from the FDA to mean that they no longer need to obtain medical evaluations for aid conduction hearing aids for adults.

Board Regulation 18 VAC 80-20-240 requires licensees and temporary permit holders to recommend the client obtain "a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid." Should the client decline this recommendation, then a signed medical waiver should be obtained. **The FDA guidance does not have any effect on the Board's regulation, and your Virginia regulatory requirement for a medical evaluation or signed medical waiver remains in place.**

A copy of the Board's regulation 18 VAC 80-20-240 "Physician Statement Regarding Adult Client's Medical Evaluation of Hearing Loss" has been included in this letter. You can review all the Board's regulations at <http://www.dpor.virginia.gov/Boards/HAS-Opticians/>. You may contact the Board office by telephone at (804) 367-8590, or by email at [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov), with any questions that you may have pertaining to the information provided in this memo.

**18VAC80-20-240. Physician Statement Regarding Adult Client's Medical Evaluation of Hearing Loss.**

A. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid.

B. Should the client decline the recommendation, a statement of such declination shall be obtained from the client over his signature. Medical waivers that are a part of purchase agreements shall be in a separate section, which shall be signed by the client indicating his understanding of the medical waiver. A separate, additional client signature space shall be provided in all purchase agreements for the client to sign acknowledging his understanding of the purchase terms and conditions established by 18VAC80-20-200.

1. Fully informed adult patients (18 years of age or older) may waive the medical evaluation.
2. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

C. The information provided in subsection A of this section must be made a part of the client's record kept by the hearing aid specialist.

Statutory Authority

§ 54.1-201 of the Code of Virginia.

Historical Notes

Derived from VR375-01-02 § 5.8, eff. December 4, 1989; amended, Volume 07, Issue 11, eff. March 27, 1991; Volume 08, Issue 06, eff. January 15, 1992; Volume 11, Issue 22, eff. August 23, 1995; Volume 19, Issue 24, eff. October 1, 2003.