

## **AGENDA**

### **CONNECTICUT BOARD OF EXAMINERS FOR OPTOMETRISTS**

**Wednesday, February 9, 2022  
9:00 AM**

**Department of Public Health  
410 Capitol Avenue, Hartford, Connecticut**

#### **CALL TO ORDER**

**I. MINUTES**

Review and approval of the minutes from December 8, 2021.

**II. NEW BUSINESS**

**Memorandum of Decision**

Ross Zeldes, OD – Petition No. 2021-220

#### **ADJOURN**

**This meeting will be held by remotely**

**Board of Examiners for Optometrists via Microsoft Teams**

Join on your computer or mobile app

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 860-840-2075](#) - Phone Conference ID: 797 649 115#

*The following minutes are draft minutes which are subject to revision and which have not yet been adopted by the Board.*

A meeting of the **Connecticut Board of Examiners for Optometrists** was held on **December 8, 2021** via "Microsoft TEAMS"

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BOARD MEMBERS PRESENT: Matthew Blondin, OD, Chairman  
Susan Barrett  
Carol Goldberg, Esq.  
Lawrence Lefland, OD  
Joseph Pavano, III, OD

BOARD MEMBERS ABSENT: Regina A. Strand, OD  
Lawrence M. Sweeney

ALSO PRESENT: Alfreda Gaither, Esq., Hearing Officer, Public Health Hearing Office  
Jeffrey Kardys, Board Liaison

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The meeting commenced at 9:00 a.m. All participants were present via Microsoft TEAMS.

**I. MINUTES**

The minutes from the March 17, 2021 and September 22, 2021, meetings were unanimously approved on a motion by Ms. Goldberg, seconded by Ms. Barrett.

**II. Meeting Dates for 2021**

The following are the meeting dates scheduled for 2022.

February 9, 2022

April 13, 2022

September 14, 2022

November 16, 2022

All meetings will be scheduled for 9:00 a.m.

**III. Adjourn**

As there was no further business, the meeting was adjourned at 9:07 a.m.

Respectfully Submitted,  
Matthew Blondin, OD, Chairman  
Connecticut Board of Examiners for Optometrists

**STATE OF CONNECTICUT  
CONNECTICUT BOARD OF EXAMINERS FOR OPTOMETRISTS**

Ross Zeldes, O.D.  
License No. 002162

Petition No. 2021-220

**MEMORANDUM OF DECISION**

***Procedural Background***

On April 13, 2021, the Department of Public Health (“Department”) filed a Motion for Summary Suspension (“Motion”) and a Statement of Charges (“Charges”) with the Connecticut Board of Examiners for Optometrists (“Board”). Board (“Bd.”) Exhibit (“Ex.”) 1, 2. The Charges allege Ross Zeldes (“Respondent”) violated certain provisions of Chapter 380 of the Connecticut General Statutes (“Conn. Gen. Stat.” or “Statutes”) which would subject Respondent’s license to practice as an optometrist to disciplinary action pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-133.

Based on the allegations in the Charges and the affidavits and reports attached to the Motion, the Board found that Respondent’s continued practice as an optometrist presented a clear and immediate danger to public health and safety and ordered, on April 28, 2021, pursuant to Conn. Gen. Stat. §§ 4-182(c) and 19a-17(c), that Respondent’s optometrist license number 002162 be summarily suspended pending a final determination by the Board of the allegations contained in the Charges (“Order”). Bd. Ex. 3.

On that same date, the Department emailed the Summary Suspension Order, Charges, and Notice of Hearing (“Notice”) to Respondent’s email address of record with the Department<sup>1</sup> at rosszeldes@gmail.com. Bd. Ex. 4.

On May 7, 2021, the Board held the hearing. Transcript (“Tr.”) 5/7/2021, p. 1. Neither Respondent nor any legal counsel for the Respondent appeared at the hearing. Bd. Ex. 5.

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<sup>1</sup> On May 27, 2020, in accordance with the Governors Executive Order No. 7B, Executive Order No. 7K or Executive Order No. 7M, Conn. Agencies Regs. § 19a-9-18 was modified to permit delivery of notices of hearing to be sent solely by email and to deem such notice to be effective and sufficient if sent to the party’s last known email address of record on file with the Department.

Twenty minutes after the scheduled start time of the hearing, the hearing liaison texted the Respondent to notify him that the hearing started. Bd. Ex. 5. Twenty-one minutes later the Respondent replied to the hearing liaison via text, “I see no reason to attend....” and did not appear at the hearing. Bd. Ex. 5; Tr. 5/7/2021, p. Attorney Diana Wilan represented the Department and orally moved to deem the allegations admitted since the Respondent had not filed an Answer to the Charges. Tr. 5/7/2021, p. 11. The Board granted the motion. Tr. 5/7/2021, p. 11.

Following the close of the record, the Board conducted fact finding.

The Board conducted the hearing in accordance with Chapter 54 of the Statutes and Conn. Agencies Regs. §§19a-9-1, *et seq.* The Board members received copies of the entire record. All Board members attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

## II

### *Allegations*

1. In paragraphs 1 and 5 of the Charges, the Department alleges that Respondent of Stafford Springs, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut license optometrist license number 002162.

#### ***Count One***

2. In paragraph 2 of the Charges, the Department alleges that on or about March 19, 2021, Respondent abused cocaine.
3. In paragraph 3 of the Charges, the Department alleges that Respondent’s abuse of cocaine does, and/or may, affect his practice as an optometrist.
4. In paragraph 4 of the Charges, the Department alleges that the above-described facts constitute violations of Conn. Gen. Stat. §§ 20-133, including, but not limited to 20-133(8).

#### ***Count Two***

6. In paragraph 6 of the Charges, the Department alleges that on or about March 11, 2014, the Respondent signed an affidavit in Petition No. 2013-63, which voluntarily surrendered his optometry license.

7. In paragraph 7 of the Charges, the Department alleges that on or about June 28, 2017, the Board ordered a Reinstatement Consent Order in Petition Number 2016-339 that placed Respondent's optometry license on probation for four years. The probation resulted from Respondent's admitted use of cocaine, inappropriate prescribing of controlled substances, prescribing beyond the scope of optometry, and failure to maintain adequate medical records.
8. In paragraph 8 of the Charges, the Department alleges that the Reinstatement Consent Order in paragraph 3b(1) required Respondent to submit to random observed urine screens for drug and alcohol for the entire probationary period.
9. In paragraph 9 of the Charges, the Department alleges that on or about March 19, 2021, Respondent tested positive for benzoylecgonine, a metabolite of cocaine.
10. In paragraph 10 of the Charges, the Department alleges that Respondent's conduct described above violates the terms of probation set forth in the Reinstatement Consent Order, and subjects Respondent's optometry license to revocation or other disciplinary action authorized by Conn. Gen. Stat. §§ 19a-17 and 20-133.

### III

#### *Findings of Fact*

1. On April 13, 2021, the Department filed a Motion for Summary Suspension and Statement of Charges with the Board. Bd. Ex. 1, 2.
2. On April 28, 2021, the Motion for Summary Suspension, Charges, and Notice were sent to Respondent's email address at rosszeldes@gmail.com, which is Respondent's email address of record on file with the Department. Bd. Ex. 4; Tr. 5/7/2021, pp. 4-5.
3. The hearing was held on May 7, 2021. Respondent failed to appear at the hearing and was not represented by an attorney. Tr. 5/7/2021, p. 4. Respondent did not request a continuance.
4. On May 7, 2021, the hearing liaison contacted the Respondent to remind him of the hearing twenty minutes into the scheduled start and the Respondent replied, "I see no reason to attend..." and did not attempt to appear at the hearing. Bd. Ex. 5; Tr. 5/7/2021, pp. 6-8.
5. The Motion for Summary Suspension, Charges, and Notice mailed to the Respondent's email address were sent to respondent's email address. Tr. 5/7/2021, p. 5.
6. The Department provided Respondent with reasonable and adequate written notice of the hearing and the allegations contained in the Charges. Id.
7. On or about March 19, 2021, Respondent abused cocaine. Dept. Ex. 1, pp. 1-4, Dept. Ex. 3, p. 1; Tr. 5/7/2021, pp. 19, 26.

8. Respondent's abuse of cocaine does, and/or may, affect his practice as an optometrist. Tr. 5/7/2021, pp. 48-50.
9. The factual allegations contained in paragraphs 1 through 9 of the Charges are deemed admitted and true. Tr. 5/7/2021, p. 11.

#### IV

##### *Discussion and Conclusions of Law*

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727, 739-740 (2013). The Department met its burden of proof for all the allegations contained in the Charges.

Conn. Gen. Stat. § 19a-10 provides, in pertinent part, "The boards and commission listed in subsection (b) of section 19a-14 may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with chapter 54 and the regulations established by the Commissioner of Public Health."

Conn. Gen. Stat. § 20-133 provides, in pertinent part, that, "The board may take any action of the actions set forth in section 19a-17 <sup>2</sup> upon after notice, for any of the following reasons: . . . (2) illegal or incompetent or negligent conduct in the business of optometry; . . . (8) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; . . ."

Since Respondent did not file an Answer to the Charges, the allegations are deemed admitted and true. *See*, Conn. Agencies Regs. § 19a-9-20. Furthermore, Respondent did not attend the hearing to contest the allegations. Bd. Ex. 5.

The record establishes that on or about March 19, 2021, Respondent abused cocaine. On or about March 19, 2021, Respondent tested positive for cocaine. Dept. Ex. 1, pp. 1-4; Dept. Ex. 2, tab C, pp. 1-2. In an email to Olive Tronchin, a Department employee, Respondent explained his positive test for cocaine as accidental and due to second-hand smoke inhalation while on a 12-step mission tasked to convince a person to stop abusing drugs. Dept. Ex. 2, tab G, p. 1.

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<sup>2</sup> Conn. Gen. Stat. § 19a-17 provides in pertinent part, that (a) "[e]ach board. . . may take any of the following actions, . . . based on . . . finding the existence of good cause: (1) revoke a practitioner's license or permit; (2) suspend a practitioner's license or permit; . . . (5) place a practitioner . . . on probationary status. . ."

The Board finds this statement not credible. The Department's witness, Dr. Fredrick Browne, testified regarding the plausibility that Respondent's positive test for cocaine was due to second-hand smoke inhalation and not his actual ingestion of cocaine. Dr. Browne, who is an expert in pathology and clinical addiction medicine, among other specialty and subspecialty fields (Dept. Ex. 4) testified that his review of Respondent's lab results in conjunction with a study on the passive inhalation of cocaine concludes, that the Respondent's explanation of a positive drug test due to secondhand smoke inhalation is unsubstantiated. Tr. 5/7/2021, pp. 22-26; Dept. Ex. 5, pp. 2-14. Thus, the Department established by a preponderance of the evidence that Respondent abused cocaine on or about March 19, 2021. The Department met its burden of proof with respect to the allegations contained in paragraph 2 of the Charges.

The record further establishes by a preponderance of the evidence that Respondent's use of cocaine affects his practice as an optometrist. The evidence offered during the Respondent's May 7, 2021, hearing demonstrated Respondent's returning to work as an optometrist without certain restrictions and monitoring is not in the interest of the public health and safety. Tr. 5/7/2021, pp. 48-50. The preponderance of the evidence establishes that Respondent's use of cocaine does and/or may affect his practice as an optometrist. Therefore, the Department met its burden of proof with respect to the allegations contained in paragraph 3 of the Charges.

All the above-described misconduct violates Conn. Gen. Stat. § 20-133(2) and (8).

Thus, the Board concludes that Respondent's above-described conduct, as deemed to be admitted and true, constitutes grounds for disciplinary action pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-133(2) and (8). In addition, the Board finds that Respondent can not practice optometry with reasonable skill and safety.

### ***Order***

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, with respect to Ross Zeldes's license number 002162, as follows:

1. Respondent's license shall be suspended for a period of six (6) months.
2. Concurrently, Respondent's license shall be on probation for a period of two-and-one-half (2.5) years under the following terms and conditions. If any of the conditions of probation are not met, Respondent's optometrist license may be subject to disciplinary action pursuant to Conn. Gen. Stat. § 19a-17.

- A. During the period of probation, the Department shall pre-approve Respondent's employment and/or change of employment within the optometrist profession.
- B. Respondent shall not be self-employed as an optometrist during the probationary period.
- C. Respondent shall not administer, count, or have access to controlled substances, or have responsibility for such activities in the course of optometry duties during the entire probationary period of working as an optometrist.
- D. Respondent shall provide his employer at any facility at which he is employed, contracted or with which he is affiliated at each place where Respondent practices as an optometrist throughout the probationary period, which a copy of this Order within fifteen (15) days of its effective date, or within fifteen (15) days of commencement of employment at a new facility. Respondent agrees to provide reports from such employer monthly, stating whether Respondent is practicing with reasonable skill and safety and in an alcohol and substance-free state. A report indicating that Respondent is not practicing with reasonable skill and safety and in an alcohol and substance-free state shall be deemed to be a violation of this Order.
- E. During the entire period of probation, Respondent shall only practice optometry in an office and practice setting that physically includes other licensed optometrists, opticians, or physicians on-site while Respondent is practicing at said office and practice setting.
- F. The employer reports cited in Paragraph D above shall include documentation of Respondent's ability to practice optometry safely and competently. Employer reports shall be submitted directly to the Department at the address cited in Paragraph M below.
- G. Should Respondent's employment as an optometrist be involuntarily terminated or suspended, Respondent and his employer shall notify the Department within 72 hours of such termination or suspension.
- H. If Respondent pursues further training in any subject area that is regulated by the Department, Respondent shall provide a copy of this Memorandum of Decision to the educational institution or, if not an institution, to Respondent's instructor. Such institution or instructor shall notify the Department in writing as to receipt of a copy of this Decision within 15 days of receipt. Said notification shall be submitted directly to the Department at the address cited in Paragraph M below.
- I. Respondent shall participate in regularly scheduled therapy as his own expense with a licensed therapist pre-approved by the Department ("therapist").



- (1) Respondent shall provide a copy of this Order to his therapist.
  - (2) Respondent's therapist shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Order within fifteen (15) days of the effective date of this Order.
  - (3) If the therapist determines that therapy is no longer necessary, that a reduction in frequency of therapy sessions is warranted, or that Respondent should be transferred to another therapist, the therapist shall advise the Department, and the Department shall pre-approve said termination of therapy, reduction in frequency of therapy sessions, and/or Respondent's transfer to another therapist.
  - (4) The therapist shall submit reports monthly for the entire probationary period. Such reports shall address, but not necessarily be limited to, Respondent's ability to practice optometry, in an alcohol and substance free state, safely and competently. Said reports shall continue until the therapist determines that therapy is no longer necessary, or the period of probation has terminated.
  - (5) The therapist shall immediately notify the Department in writing if the therapist believes Respondent's continued practice poses a danger to the public, or if Respondent discontinues therapy and/or terminates his or her services.
- J. During the entire probationary period, Respondent shall attend "anonymous" or support group meetings eight to ten times per month and shall provide monthly reports to the Department concerning his record of attendance.
- K. Observed random urine screens
- (1) During the entire two-and-one-half (2.5) year probation, Respondent shall refrain from the ingestion of alcohol in any form and the ingestion, inhalation, injection, or other use of any controlled substance and/or legend drug unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications. Respondent shall inform said licensed health care professional of Respondent's substance abuse history. In the event a medical condition arises requiring treatment utilizing controlled substance, legend drugs, or alcohol in any form, Respondent shall notify the Department and, upon request, provide such written documentation of the treatment as is deemed necessary by the Department.
  - (2) During the entire probationary period, Respondent, at his own expense, shall submit to weekly random observed urine screens for alcohol, controlled substances, and legend drugs at a testing facility approved by

the Department. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.

- (3) All screens shall be negative for the presence of drugs and alcohol. Respondent agrees that an EtG test report of EtG at a level of 1000ng/mL or higher shall be deemed to constitute a positive screen for the presence of alcohol under this Order.
  - (4) Laboratory reports of random alcohol and drug screens shall be submitted directly to the Department by the testing laboratory. All such screens shall be negative for alcohol, controlled substances, and legend drugs, except for medications prescribed by Respondent's physician. If Respondent has a positive urine screen, the facility shall immediately notify the Department. All positive random drug and alcohol screens shall be confirmed by gas chromatograph/mass spectrometer testing.
  - (5) If Respondent fails to submit a urine sample when requested by his monitor, such missed screen shall be deemed a positive screen.
  - (6) Respondent shall notify each of his health care professionals of all medications prescribed for him by any and all other health care professionals.
  - (7) Respondent is hereby advised that the ingestion of poppy seeds, mouthwash and over the counter cough or cold medicines or remedies has from time to time, been raised as a defense to a positive screen result for morphine, opiates, and/or alcohol. For that reason, Respondent agrees to refrain from ingesting poppy seeds in any food substances, mouthwash, and over the counter cough or cold medicines or remedies during the term of this Order. In the event Respondent has a positive screen for morphine, opiates and/or alcohol, Respondent agrees that the ingestion of poppy seeds and/or mouthwash and/or over the counter cough or cold medicines or remedies shall not constitute a defense to such a screen.
- L. Respondent shall inform the Department in writing three (3) days prior to any change of address.

- M. All communications, payments if required, correspondence, and reports are to be addressed to:

Practitioner Compliance and Monitoring Unit  
Department of Public Health  
410 Capitol Avenue, MS #12HSR  
P. O. Box 340308  
Hartford CT 06134-0308

3. Any deviation from the terms of probation, without prior written approval by the Board, shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. Any finding that Respondent has violated this Order will subject Respondent to sanctions under Conn. Gen. Stat. § 19a-17(a) and (c), including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to Respondent's address of record (most current address reported to the Practitioner Licensing and Investigations Section of the Healthcare Quality and Safety Branch of the Department).
4. This Memorandum of Decision has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.

This Order is effective on the date it is signed by the Board.

The Board hereby informs Respondent, Ross Zeldes, and the Department of this decision.

Dated at Goshen, Connecticut this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Connecticut Board of Examiners for Optometrists

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Matthew Blondin, O.D., Chairperson