



Oregon Health Licensing Agency
Environmental Health Registration Board



9 am, Monday, November 5, 2010
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Mike Kucinski, Chair
Jeffrey Hampton, Vice-Chair
Paul Cieslak
Jeff Freund
Caroline Gross-Regan
David Bussen

STAFF PRESENT

Randy Everitt, Director
Sylvie McMillan, Business Services Manager
David Sparks, Regulatory Operations Manager
Kraig Bohot, Public Information Officer
Samie Patnode, Policy Analyst
Nancy Sellers, Senior Policy Analyst
Cerynthia Murphy, Qualification Analyst
Sinnamon Harris, Board Specialist

MEMBERS ABSENT:

None

GUESTS PRESENT:

None

*This meeting was live audio streamed within the Oregon Health Licensing Agency.

Call to Order

Michael Kucinski, Chair, called the meeting of the Environmental Health Registration Board to order at 10 am on Friday, November 5, 2010, at 700 Summer Street NE, Suite 320, Salem, Oregon.

1. Approval of Agenda

MOTION:

Paul Cieslak made a motion with a second by Jeffrey Hampton to approve the agenda. Motion passed unanimously.

2. Approval of Minutes

MOTION:

Paul Cieslak made a motion with a second by Jeff Freund to approve the minutes for June 14, 2010. Motion passed unanimously.

3. Reports

• Directors Report

Randy Everitt, Director, stated OHLA hosted a “Chair Summit” on September 1, 2010. One designated representative from each OHLA board or council was in attendance with the exception of a representative from the Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists. The summit was held to provide information regarding the role of the chairs and vice-chairs as it relates to professions regulated by OHLA, the distinction between regulatory and association mission/functions, the OHLA budget, and new investigative protocols. Everitt presented a power point that outlined the new investigative protocols established by OHLA. This model is applicable to all professions under the agency model. The following key points were highlighted regarding the new investigative protocols:

- Provides multiple gateways in which to end each investigation within a reasonable amount of time;
- Provides checks and balances to ensure that OHLA, the licensee and the complainant are protected; and
- Allows for the agency to contract with Subject Matter Experts to assist with investigations.

Sylvie McMillan, Business Services Manager, explained the process for subject matter expert approval and how the subject matter expert may be called upon to testify in court.

Everitt also talked about the collaborative effort between agencies to find OHLA’s niche in regards to the broad scope of practice for environmental health specialists. He stated the statute is broadly written and difficult to interpret. Everitt has made initial contact with the directors of the Department of Human Service (DHS) and Department of Environmental Quality (DEQ) to discuss the DEQ exemption under ORS 700.025 and possible registration for other state professionals, such as inspectors of dietary facilities in nursing homes, generally performed by DHS employees. Everitt noted the agency will report ongoing discussions to the EHRB Legislative and Rules Committee meetings in January, 2011.

• Outreach and Communication

Kraig Bohot, Public Information Officer, presented the current issue of the electronic publication “Central Issues.” Multiple topics will be highlighted in the publication related to statutory exemptions, the role of waste water specialists, and the relevancy of 21st-century environmental health regulation. Bohot asked the board members to review and provide him with input and suggestions before the November 12, 2010, publication deadline.

• Statistical Report

McMillan presented an overview of statistics related to the board. Statistics included were licensing statistics, active license trends, complaints, proposed and final orders, age diversity in practitioners, gender of licensees, and website traffic.

• 2009-2011 Budget

McMillan presented the statement of cash flow for the 7/01/09-9/30/10 period and the projected cash flow statement through 6/30/2011. She noted the change in allocation that went into effect on October 1, 2010. McMillan explained how the OHLA investigators keep track of the hours they spend upon each board’s business (with vacation days and sick leaves factored in). The allocation was 2.20% and has been adjusted down to 1.93%. Kucinski inquired about the 1.78% figure noted in a letter to Environmental Health Specialists. McMillan pointed out it was clearly stated that 1.78% figure was

only an estimate. McMillian presented the board with a chart that explained the indirect cost allocation and where the Environmental Health Registration Board fits in with other boards under the agency's umbrella (please refer to chart "Indirect Cost Allocation" in board meeting materials). Indirect costs are those costs resulting from expenditures for the Director's Office, Business Services, and Licensing Division. McMillian also explained the complexity rate. For example, gathering and reviewing all the application information differs in complexity from board to board. Cost allocations cannot be rationalized only using the volume rate, McMillian explained.

Kucinski suggested a time study on other agency functions also. Everitt responded that to have staff detail for every minute someone works on applications, etc., would be too cumbersome for the agency to track; but he explained that the agency is constantly working to hold costs down and find less expensive ways to run the agency. McMillian stated there also are many unseen costs also, that would not show up on a daily basis. Dr. Cieslak remarked that he does not wish the agency to try and do a more precise time study. He believes the agency is making an honest attempt to control costs. Dr. Cieslak recommended a proposal to the Legislature of a pro-rate by number of OHLA registrants across all boards may be an avenue to pursue.

- **Regulatory Operations Division Report**

David Sparks, Regulatory Operations Manager, reported on enforcement activity from June 2, 2010 through October 22, 2010. Since the last board meeting on June 14, 2010, there have been no complaints filed with the agency.

- **Decision Making and Referral**

Samie Patnode, Policy Analyst, stated at the summit that she presented a new procedure which is being implemented across all OHLA professions. The procedure creates a protocol for the agency to follow when inquiries are received from interested parties regarding scope of practice or practice procedures related to specific agency program. The protocol will allow the board or council the opportunity to review the inquiry and decide on the subsequent action. When reviewing an inquiry the board or council may:

- Determine an answer to the inquiry if the answer is explicitly clear in statute or administrative rule;
- Refer the inquiry to the Scope of Practice, Standards & Procedures Committee for review;
- Refer the inquiry to the Assistant Attorney General (AAG); or
- Decline to address the inquiry.

Patnode noted that if the AAG is involved then there would be a direct cost associated with the advice. She stated a pre-determined limit could be designated for AAG costs. Patnode provided example inquiries the agency had received and an example letter to be sent to interested parties in response to an inquiry.

Patnode also stated that all responses to these inquiries are considered public records and may be published by the agency

- **2011 Legislation –LC 524-OHLA**

Patnode provided a brief overview of proposed 2011 legislation. She noted that currently the agency oversees 11 distinct programs, each having its own statutory requirements for licensure, renewal, licensure status, licensure posting requirements and terminology. The new provisions, if approved,

would standardize authorization status for all agency programs and define authorization, applying it uniformly throughout agency statutes. The new provisions, if approved, would also consolidate all active, inactive, and expired renewals into agency statutory authority. This would allow the agency to carry out each program renewal process uniformly. It would also consolidate program fee provisions into agency statutes and allows the agency to charge for dormant renewals and educational classes or training.

Currently the Environmental Health Registration Board does not have an exemption for persons interested in internship in the environmental health or waste water fields. In order to perform these duties a person must be a trainee and be in a training program. The amendment will allow students enrolled in an educational institution to intern as an environmental health or waste water specialist without being a trainee under guidelines set forth by rule. Patnode noted the concept will give the flexibility for the board to lay out the rules and that the EHRB Legislative and Rules Committee can decide the parameters surrounding internship.

- **OHLA Permanent Administrative Rules – Affidavit of Licensure**

Patnode provided a summary of changes made to OHLA administrative rules. The rule defines the different types of affidavit of licensure, which is a document or other approved means of verifying an authorization to practice including status, history, and information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The agency has identified two purposes for affidavits of licensure which includes “incoming” and “outgoing.” “Incoming” is the circumstance in which OHLA receives an affidavit of licensure from another regulatory authority stating that an individual holds an authorization. “Outgoing” is the circumstance in which OHLA sends an affidavit stating that an individual holds an authorization. Patnode explained the rule is necessary to begin to eliminate a potential avenue of licensing fraud in Oregon and other states by requiring protocols when receiving and sending affidavits of licensure. She noted the rule has been implemented for all agency programs.

- **Education/Examination Committee Reports – 10/5 and 10/19**

Cerynthia Murphy, Qualification Analyst, summarized the Education/Examination Committee reports of October 5, and October 19, 2010. She explained the discussion centering on whether there was a need for the waste water specialist program because an environmental health specialist can perform the duties of a waste water specialist. Murphy pointed out historical points made in the report by Subject Matter Experts Steve Wert and Brian Rabe. Clearly there was a need when the waste water program was created as the environmental health specialist examination did not adequately cover soil. The committee, at Murphy’s suggestion, decided to narrow the resources from primary and secondary to only primary sources. Murphy noted there would be quite a few more committee meetings required to complete sourcing the examination as the examination had not been reviewed since 1996.

4. Items for Board Action

- Administrative Rule Schedule- Rules advisory committee meeting schedule: Friday, January 7, and Friday, January 21, 2011.

Patnode presented an issue statement outlining revisions to ORS Chapter 338 Division 5 through 30 that the board may wish to consider at the Legislation and Rules Committee level along with information regarding temporary rulemaking for an annual renewal cycle. The following list was provided to the board members:

- 1) Clarify Department of Environmental Quality (DEQ) New Onsite Residential Septic System Evaluation (previous position statement);
- 2) Clarify DEQ Standards for Time for Transfer Evaluations for ATT Systems (previous position statement);
- 3) DEQ Required Registration for Specific Classification Types (field inspectors);
- 4) Required Registration for Other Professionals – (nursing home inspectors);
- 5) Clarify the Scope of Practice for an Environmental Health and Waste Water Specialist;
- 6) National Environmental Health Registration (NEHA) Credentialing 3 Tiers;
- 7) General maintenance to ensure consistency with agency and other program rules;
 - OHLA name change
 - Renewal Requirements
 - Registration Posting Requirements

MOTION:

Dr. Cieslak made a motion with a second by Jeffrey Hampton to approve the proposed Administrative Rule Schedule for 2011 and Temporary Rule Filing for March 1, 2011, regarding annual renewal to the agency with a change from the **Friday, January 21 date to Thursday, January 20, 2011**. The motion passed unanimously.

- 2011 Chair/Vice-Chair

Nominations were held for chair and vice-chair. Mike Kucinski was nominated by Dr. Cieslak for Chair. There were no other chair nominations.

Jeffrey Hampton was nominated by Dr. Cieslak for Vice-Chair. There were no other vice-chair nominations.

MOTION:

The board voted unanimously for Mike Kucinski for 2011 Chair.
 The board voted unanimously for Jeffrey Hampton for 2011 Vice-Chair.

- 2011 Committees

2011 Committees	
Practice and Procedures	Dr. Cieslak, Caroline Gross-Regan, Jeff Freund Alternate: David Bussen
Enforcement	Caroline Gross-Regan, Jeffrey Hampton, David Bussen
Education/Examination	David Bussen, Jeff Freund, Mike Kucinski
Legislation/Rules	Mike Kucinski, Jeffrey Hampton, Dr. Cieslak Alternate: Caroline Gross-Regan
Customer Connection	Jeff Freund

MOTION:

Dr. Cieslak made a motion with a second by Caroline Gross-Regan to approve the committee as listed above. The motion passed unanimously.

- 2011 Board Meeting Dates

MOTION:

Jeffrey Hampton made a motion with a second by Jeff Freund to approve the following board meeting dates: February 4, 2011, May 6, 2011, August 19, 2011, and November 4, 2011. The motion passed unanimously. The meeting times remain at 10 am.

5. Public Comment/Other Board Business

- Discussion on Oral Interviews

A board member had raised the question at a past board meeting regarding the oral examinations that the board used to conduct as part of the registration process for environmental health specialist. Murphy read a memorandum to the board members regarding the history of oral examinations that were part of the qualification process pursuant to ORS 700.050. Points of the memorandum and reference dates:

- On April 25, 2003, the board discussed eliminating the oral examinations noting it held no significant value in determining the applicant's knowledge.
- The agency surveyed interested parties requesting feedback regarding elimination of the oral examination. These interested parties included: Council of Local Environmental Health Supervisors, Conference of Local Health Officials, Department of Human Services Health Services, Department of Agriculture and the Department of Environmental Quality.
- On November 21, 2003, the agency reported the results of the survey to the board which indicated an equal ratio in support and elimination of the oral examination.
- The board determined the oral examination was not a demonstration or sound measurement of an applicants experience, training or education.
- Temporary rules were filed with the Secretary of States Office on March 1, 2004, with permanent rules effective on July 1, 2004. Notice was sent to all interested parties during the rulemaking process regarding the elimination of the oral examination.

Murphy also included excerpts from the April 25, 2003, and November 21, 2003 minutes highlighting the discussions surrounding the elimination of the oral interviews.

When Murphy concluded her presentation, Freund commented on his reasons for wanting to reinstate the oral interviews. Freund stated he could get a better feel with a face-to-face interview and added that at his office they had hired two environmental specialists over the phone and neither of those employees worked out. Bussen rebutted that he felt that it is an employer's responsibility to make sure the employee fits and that this is not something the licensing board should have an interest in. Bussen said, he had an oral interview back in 1973 and he felt it was not worthwhile. Kucinski offered that no one had ever been turned away from registration based on the oral interview. Dr. Cieslak stated the oral interview was three simple questions and confirmed that no one had ever not passed the oral interview. He further stated that the board felt the applicant's qualifications were best judged by the written examination. Freund conceded that it may be a wasted step if you could not keep anyone out of registering and the oral interviews were just a formality.

Kucinski posed the question about the possibility of having applicants include a letter of reference. Murphy stated that other boards have had that requirement and the agency has found those letters to be of little value.

- Discussion on Exemptions

Bussen brought up the subject of the standards of registered environmental health specialists and what constitutes a “duty” or “responsibility” of the specialist. Bussen is interested in helping the agency understand the realm of the environmental health specialist and what those duties are and are not. Bussen also talked about the exemptions of being registered and thought that they should be more clearly spelled out. Bussen felt that because the areas are not clearly defined, the agency may have difficulty with enforcement.

Everitt stated the EHRB Legislation and Rules committee could help define the scope of practice for registered environmental health specialists and clarify the issues. The agency could have its assistant attorney general review the committee’s recommendations to see if they are within the scope of the rule or if a recommendation would require a statutory change. The committee would then present the recommendations to the full board. Everitt stated the committee is a good place to start to resolve some of these issues.

The board reviewed the issue statement provided by Patnode again and agreed that the issues under discussion were on the list already for the Legislation and Rules Committee to start discussing on January 7, 2011.

- Discussion on Internships

Bussen brought up the subject of interns and the necessity of setting standards for intern students who are working towards credits by working at county or state facilities. Bussen felt a committee should assist in writing those standards. He suggested the Education and Examination Committee. Dr. Cieslak stated he was not sure that a third category, intern, should be added to registered and trainee. He said that everyone has interns, and he is not sure the board is well served to define what those interns have to be. Bussen stated the reason he brought it up was that some of the interns were operating at the county level as registered environmental health specialists. Dr. Cieslak stated that is illegal. Kucinski mentioned the legislative concept. Hampton stated that if the concept goes through it would allow students enrolled in an educational institution to intern as an environmental health or waste water specialist without being a trainee under guidelines set forth by rule (Legislative Concept 524). Hampton stated what he understood the legislative concept to do was to create an internship in statute where one does not exist today. McMillan stated the legislative concept had already been submitted and that, if passed, the EHRB Legislation and Rules Committee would need to work on rules surrounding the internship and determine what duties an intern may or may not perform.

- Discussion on Applicants

Bussen asked about the board’s involvement with the application process. Could the board have a committee that helps review an applicant’s application’s? McMillan stated the board could set criteria through, for example, the Education and Examination Committee, but has no authority to approve applications. Caroline Gross-Reagan asked if there was someone an applicant could see to help determine what documents were required rather than submit items piecemeal to the agency. McMillan answered that if the applicant had straightforward verifiable education, etc., the application process was

relatively easy. But if the applicant had, for example, military service experience, it was more difficult to put together all the necessary documentation of training. There are certain forms that the agency requires from the military that state “equivalent to,” much like college transcripts. The applicant would still be required to take the examination.

Freund asked McMillan if the agency literally looks at the classes and determines if they line up with the requirements. McMillan stated, yes. For example, if the requirement is 10 hours of soil science then the classes taken on the transcript must have 10 hours of soil science to meet the application requirements. Sometimes the reviewer will contact the school to verify the content of a class. That process explains why sometimes it may take the agency a while to process an application especially if the education is piecemeal.

Everitt stated the agency will do everything it can to qualify someone even though it may be very time consuming.

- **Live Broadcast of Board Meetings**

Everitt stated at the beginning of 2011 the agency intends to have all of the board meetings live broadcast on the Internet so people at home can hear the meetings. The agency is working on having enough bandwidth, microphones, etc. It is not the agency’s intent to broadcast committee meetings.

6. Administrative Rulemaking Training

Due to the length of time involved Patnode and the board members mutually decided to hold the administrative rulemaking training at the first Legislation and Rules Committee meeting instead of today at the full board meeting.

7. Executive Session-Place Holder

The board did not enter into executive session.

The meeting adjourned at approximately 2:53 pm.

Prepared by: Sinnamon Harris, Board Specialist