



Oregon Health Licensing Agency
Board of Licensed Dietitians



1 pm, Thursday, November 10, 2011
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Maureen McCarthy, Chair
Paula Koeller
Jill Calamar
Harold Burden
Diane Stadler

STAFF PRESENT

Randy Everitt, Director
Sylvie McMillan, Fiscal Services and Licensing Manager
Amanda Perkins, Board Specialist
Sinnamon Harris, Board Specialist

MEMBERS ABSENT:

None

GUESTS PRESENT:

None

Call to Order

Maureen McCarthy, Chair, called the meeting of the Board of Licensed Dietitians to order at 1 pm, Thursday, November 10, 2011, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called.

1. Approval of Agenda

MOTION:

Diane Stadler made a motion with a second by Paula Koeller to approve the agenda. Motion passed unanimously.

2. Approval of Minutes

MOTION:

Jill Calamar made a motion with a second by Diane Stadler to approve the minutes for July 21, 2011, as amended. Motion passed unanimously.

MOTION:

Diane Stadler made a motion with a second by Jill Calamar to approve the minutes for September 22, 2011. Motion passed unanimously.

3. Reports

◆ **Directors Report**

Randy Everitt, Director, stated that the agency has developed a strategic plan that prioritizes administrative rulemaking for the next 18 months. He noted the plan is flexible and subject to change depending upon the agency's ability to address staffing issues. Everitt pointed out the agency has been undergoing major changes to the makeup of its boards and councils.

Everitt stated those new professions, those with a temporary rule already in place, or those that are experiencing a significant risk to public safety, are top priority to undergo rulemaking in this strategic plan. Those that fall within these categories are assigned a Level 1 priority. The agency will address emergency issues as they arise. Level 2 priority boards will begin rulemaking in January of 2012, and Level 3 priority boards will begin rulemaking in July 2012.

Because the Board of Dietitians is new to the agency an immediate rule review will take place. A temporary rule was put into place on October 1, 2011, to address the statute change from a two-year license to a one-year license.

Legislative Concepts

Randy Everitt, Director, explained that a legislative concept is a formal idea that the agency vets with its boards or councils to determine if a statute (or law) needs to be revised. It is a lengthy process and Everitt further explained that the Legislative Concepts need to be submitted by early April of 2012 for the 2013 Legislation Session. McMillan stated there are some "housekeeping" issues such as the one-year license should expire the last day of the month. Everitt asked the board if there were any concept ideas that members were considering and McCarthy responded she would like to talk about the board composition but would talk about it later under "Other Board Business".

Chair Summit

Everitt announced a Chair Summit will take place on January 20, 2012, for all the Boards and Councils for a business meeting. The purpose of the meeting is for the boards/councils to let the agency know how it can improve on its services and for the agency to let the boards/councils know where the business of regulation is headed. For example, Everitt stated, at the last Chair Summit the agency introduced the 28-point Investigatory Protocols. One of the concerns at the last meeting was customer service and as a result the agency increased staff in the front lobby service area and added a position who answers the phone. This meeting will also explore the political part of Oregon Health Licensing Agency as a state entity and how it relates to each profession.

◆ **Statistical and Budget Report**

Sylvie McMillan, Fiscal Services and Licensing Manager, presented the statistics that included licensing, examination and regulatory statistics, authorization volume, complaints, and website traffic. McMillan also introduced a chart which outlined the "Small Board Gold, Silver, and Bronze Plans." These plans were developed by fiscal to allocate the shared (indirect) service rates for each board or council under Oregon Health Licensing Agency. The chart shows which board is using what functions of the agency and the costs are based on those services the boards are actually using. Full-Time Equivalent (FTE)

Allocation represents all the agency's employee positions. Shared cost categories are divided into three agency divisions: Administrative Services, Fiscal Services/Licensing, and Regulatory Operations. Each board was placed into a Gold, Silver, or Bronze Plan based on the services used while Cosmetology has its own separate plan. The board will pay a percentage of each of the shared costs, such as, management, rules and legislation, qualifications and licensing, etc. McMillan noted the Silver and Bronze Plans does not include inspections as the agency only performs inspections on those boards with facility licenses. The Investigators keep a detailed log of which board they work on and those hours/ payroll costs are divided out at the end of the month for each board/council. The Board of Dietitians falls under the "Bronze" Plan.

McMillan said there are currently no online renewals possible because of the new roll-out plan to convert everyone to one-year licensure and not have all licensees renewing at the same time. Renewal notices that were sent out were specific to each group. A letter had been sent to each licensee explaining the roll-out program and why it was necessary. McMillan mentioned after the roll-out plan and the revised administrative rules become effective on March 1, 2012, the agency will be able to re-evaluate the licensing fees. The agency's goal is to have approximately three months of revenue in reserve for each board/council.

McMillan explained the process for the board to hire a subject matter expert if the need arose. Subject matter experts are hired on contract. Generally they assist the Regulatory Division with cases. They are paid an hourly wage plus travel expenses. The opening is posted on ORPIN for two weeks and the board sets the criteria for the subject matter expert. For example, the subject matter expert must be a licensed dietitian in good standing, etc.

◆ **Regulatory Operations Division Report**

McMillan presented the regulatory report for David Sparks, Regulatory Operations Division Manager. McMillan stated for the 2009-2011 Biennium between July 2009 and June 2011, the Board of Licensed Dietitians was not under the umbrella of the Oregon Health Licensing Agency. Between July 1, 2011, and November 7, 2011, no complaints were received by the agency.

Investigative Protocol

Everitt presented a PowerPoint that outlined the new investigative protocol established by OHLA. This model is applicable to all professions regulated by OHLA. Key points regarding the new investigative protocol:

- 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.
- Allows for the agency to contract with subject matter experts to assist with investigations.

◆ **Policy, Legislation & Administrative Rules**

OHLA Permanent Administrative Rules

McMillan discussed OAR 331-010-005 regarding allowing authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status. The rule defines and clarifies what constitutes an appearance before the agency during investigations of alleged violations of statutes or rules under the authority of OHLA. The rule also defines and clarifies the terms incompetence and negligence used in ORS 676.612 in regulation to the boards or councils under OHLA.

Overview of the Legislative Process

McMillan presented a memorandum outlining an overview of the legislative process and the role of the board member in this process:

Hierarchy of Law Governing State Agencies

- US and Oregon Constitutions
- Oregon Revised Statutes
 - *Oregon Laws*
 - *Budget Notes*
- Governor's Executive Orders/Agency Directives
- Oregon Administrative Rules
- Agency Policies
- Agency Practices

OHLA works closely with the Governor's Office, Department of Administrative Services, partner agencies, stakeholder groups and the Legislature to ensure that all bills, potential amendments and budgets that may impact the agency and its stakeholders are fully vetted and understood.

McMillan made it clear to the board that as OHLA board members they can be a great asset in the legislative process. Board members often play a dual role: both as agents of the state in their official capacity with OHLA, and as private citizens working in their individual professions. If a legislator, staffer or other agent of the Legislature contacts a board member directly regarding policies and legislation of the agency, please clarify with him or her that you are speaking as an individual, and not as a representative of the regulatory/advisory board of which you are a member.

Persons acting as agents of the executive branch of government – including agency management, employees and appointed board and council members – are not allowed to advocate for or against legislation, budgets or other legislative initiatives without the express permission of the Governor's Office.

McMillan reminded board members that if legislators or staffers are looking for an *official response*, please direct them to her or Samie Patnode, Policy Analyst, and they will follow up promptly and keep the board informed.

Process for Responding to Practice & Procedure Questions

McMillan presented the procedure which was 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.

McMillan 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. McMillan provided example inquiries the agency had received and an example letter to be sent to interested parties in response to an inquiry.

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

Legislation and Rules Committee Update

McMillan reviewed the Legislation and Rules Committee Report from the October 20, 2011, meeting. {The report is on the Board of Licensed Dietitians web site where it may be read in its entirety and therefore not reproduce here in the minutes.}

4. Items for Board Action

◆ Approve Proposed Administrative Rules

The board reviewed the administrative rules, division by division, for consistency, standardization and professional practice. They adjusted the language wherever necessary. Maureen McCarthy thanked Jill Calamar and Paula Koeller for all their input and commitment to the Legislation and Rules Committee. McMillan stated the next step would be the posting of the proposed administrative rules on the web site and the public comment period would be open from December 1 through December 28, 2011.

Motion:

Paula Koeller made a motion with a second by Diane Stadler to approve the proposed administrative rules regarding OAR Chapter 834 Division 020, 030, 050 and 060. The motion passed unanimously.

◆ Approve 2012 Meeting Dates

The board discussed moving the board meeting dates from Thursdays at 1:30 pm to Fridays with an earlier starting time of 9 am.

Motion:

Diane Stadler made a motion with a second by Harold Burden to approve Fridays as the new meeting day, and the dates March 16, July 20, and November 9, 2012. The new start time for the board meetings will be 9 am. The motion passed unanimously.

5. Public Comment

No public comment was received.

6. Executive Session-Place Holder

The board did not enter into executive session.

7. Other Board Business/Board Interest

Board Member Composition

After board further discussion it was decided not to pursue any changes to the number of board members. It was noted that the governor's office was close to another board appointment to help fill the two open positions.

Dietitians vs Nutritionist Clarification Discussion

The discussion concerned having a definition or explanation handy when questions come up about the difference between Dietitians and Nutritionist. The board recognized “The Scope of Dietetics Practice Framework Sub-Committee of the *Quality Management Committee*’s (updated version 9/2011) as providing such framework. It was noted that any statute definition for the Board of Licensed Dietitians would prevail.

It was noted that the American Dietetic Association has changed its name to Academy of Nutrition & Dietetics effective January 1, 2012.

ODA Request for Licensed Dietitian Description

McCarthy presented a statement intended for the Oregon Dietitian Association’s (ODA) web page that she had been asked to provide regarding, “What is an LD?”

CLEAR Meeting Personal Observation by Maureen McCarthy

McCarthy reported her personal summary of her experiences at the ADA Pre-conference Workshop at the CLEAR meeting held in Pittsburgh, PA, as a board interest item. The conference was held on September 6-7, 2011. McCarthy made it clear that she had attended as an association member and not in her capacity as Board of Licensed Dietitians Chair.

The meeting adjourned at approximately 5:21 pm.

Prepared by: Sinnamon Harris, Board Specialist