



OREGON BOARD OF OPTOMETRY

February 12, 2016 Board Meeting

PUBLIC SESSION MINUTES

Board Members Present: Jeffrey Pelson, OD, President
Molly Cardenal, OD, Vice President
Jessica Lynch, OD
Douglas Walker, OD
Catherine Webber, Public Member

Board Staff: Shelley Sneed, Executive Director
Cathy Boudreau, Executive Assistant
Debbie Hendricks, Acctg./Licensing Specialist

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others in Attendance: Joel Tuttle, OD; Gary and Treasure Wheeler, OD; Candace Hamel, OD, Oregon Optometric Physicians Association (OOPA); Donald Asay, OD; Janet Baker, Oregon Optometric Physicians Association (OOPA); Lauren Hunt, OD

CALL TO ORDER: Dr. Pelson called the meeting to order at 9:06 a.m., in the first floor conference room at 1500 Liberty Street SE, Salem, Oregon, 97302. The Public Session was adjourned at 9:07 a.m. to Executive Session for the purpose of discussing investigations and consultation with legal counsel.

During Executive Session the Board considered consumer and Board-initiated complaints and investigations as authorized by ORS 192.660(2)(f) and (k), and consulted with legal counsel as authorized by ORS 192.660(2)(h). No official Board action was taken in Executive Session; all Board actions are made in Public Session.

The Public Session was reconvened at 12:00 p.m.

MINUTES: The Board reviewed the minutes of the November 6, 2015 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Dr. Walker made a motion that the Board approve the minutes as presented. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

Public Records Training: AAG Lori Lindley provided a slide presentation to the Board and members of the public. She explained the requirements regarding the release of public records and the Board's responsibilities. The Board thanked AAG Lindley for this pertinent training.

RATIFICATIONS:

Reactivation and Reinstatements – The following actions were approved by the Executive Director or the Board President since the last meeting of the Board:

- **Reinstatement to Inactive Status** –
 - Glenn S. Parnes, OD
 - Darin L. Paulson, OD
- **Reactivate Inactive to Active Status** –
 - Richard T. Claiborne, OD
 - Joel M. Dizon, OD

Candidates for Examination and Licensure - The optometrists listed in Exhibit A met all the requirements for licensure and were approved by the Executive Director since the last Board meeting.

Dr. Lynch made a motion that the Board ratify these actions by the Executive Director regarding licensure made since the last Board meeting. Dr. Cardenal seconded the motion. The motion carried unanimously by oral vote.

ACTIONS ON EXECUTIVE SESSION:

15-07-01 – A letter will be sent to the store owner in this case regarding the sale of decorative contact lenses without a prescription, and the consequences of filling a prescription inappropriately.

This case will be closed.

15-08-02 - Olsovsky/OBO: On November 2, 2015 the Board issued a Notice of Proposed Discipline, imposing a \$2,000 charge per violation for two violations, pursuant to ORS 676.110(1)(a)(b), and ORS 683.140(i),(f), for a total of \$4,000. The doctor in this case has signed a Stipulated Final Order in which \$2,000 of the proposed civil penalty has been suspended. Dr. Walker made a motion that the Board ratify the Stipulated Final Order in this case, and the release of information to the Multnomah County District Attorney. Dr. Cardenal seconded the motion. The motion carried unanimously by roll call vote.

This case will be closed.

15-10-01 - There is no evidence of optometric error or violation of Oregon Revised Statutes or Administrative Rules in this case. Letters will be sent to the complainant and doctor.

This case will be closed.

15-10-03 – A letter will be sent to the store owner in this case regarding the sale of decorative contact lenses without a prescription, and the consequences of filling a prescription inappropriately. Staff will follow up to verify that inappropriate sales have discontinued.

This case will be closed.

15-10-04 - A letter will be sent to the store owner in this case regarding the sale of decorative contact lenses without a prescription, and the consequences of filling a prescription inappropriately.

This case will be closed.

15-12-01 - There is no evidence of optometric error or violation of Oregon Revised Statutes or Administrative Rules in this case.

This case will be closed.

16-01-01 - The Board is satisfied with the corrected advertising in this case. A letter will be sent to the doctor.

This case will be closed.

16-02-01 – The investigation in this case will continue.

This case will remain open.

16-02-02 - The investigation in this case will continue.

This case will remain open.

16-02-03 - The investigation in this case will continue.

This case will remain open.

Ms. Webber made a motion that the Board ratify the actions taken in the Executive Session. Dr. Lynch seconded the motion. The motion carried unanimously.

CORRESPONDENCE:

- No new correspondence was received.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Sneed submitted the following reports and updates to the Board:

- **Exhibit B - Accounting/Budget:** 2015-17 R&E Budget Report and Balance Sheet –Ms. Sneed submitted a balance sheet, a profit and loss statement and budget comparison to the Board.. She explained that expenses are currently a little higher than last year due to increases in DAS Technology

fees, costs for the new database, and the portion of financial review expenses that has been paid. There will be a new fee added for credit card processing. Candace Hamel, OD, of OOPA, asked if any legislative sources are trying to tap the Board's net worth? Ms. Webber asked whether Legislative Ways and Means have access to Board funds. Ms. Sneed informed them that neither is the case.

AAG Lindley asked what cost will be for the database. Ms. Sneed said that costs will be up to another \$4,000 for implementation plus monthly DAS fees. Dr. Cardenal made a motion that the Board accept the Executive Directory's financial report. Ms. Webber seconded the motion. The motion carried unanimously.

- **Exhibit C - Board Activity Report:** Ms. Sneed pointed out that licensure is down a little from last year and noted that the Board is entering a new license season.
- **Office Update:**
 - Ms. Sneed noted that the Architect Examiners Board approves their newsletter before it is distributed. She asked whether the Board would like to do this also. Dr. Cardenal suggested that a Board member review the newsletter before it is distributed. She volunteered to perform the review.
 - Ms. Sneed highlighted recent developments regarding licensure and the database. The Board is currently using a QuickBooks service for credit card processing. That service was initiated for the sake of expediency, but is not a good long-term option. Ms. Sneed is investigating another option through Cayan which will offer better costs to the Board in the future.

Ms. Sneed reported that DAS has been requested to waive fees and cap costs, but there hasn't been any response on the cap issue. She said that three requests have been made to DAS to provide data storage for the database project. Bes-Technologies offered to add on the document storage module at no cost. This will save each of the five boards about \$3,000 in the project implementation. Several of the other participating boards are in system crisis, so OBO is not the first agency in the queue for the database. Candace Hamel, OD expressed OOPA's concern that the OBO will always be able to provide health analytics to government officials as they go forward with the database. Ms. Sneed explained that in June of 2017, the Board will begin to participate in the Oregon Health Authority (OHA) system. Licensees will be required to provide information to OHA as a condition of license renewal. She said that other boards have expressed concerns about how that data will be collected, by whom and to what end. The new OBO database should enable the Board to create reports easier than they are currently. Dr. Hamel said that the Medical Analytics Board provides information to the Governor about healthcare providers and their terminology related to the profession of optometry has begun to limit the potential of optometrists to participate in some of the options.

Questions have been raised about how to access the new system if OBO terminates DAS technology services. On Monday 2/15/16, a web based option will be tested. Training for OBO staff will begin 2/18/16.

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- There was a rule hearing scheduled on January 29, 2016 regarding proposed changes to OAR 852-010 and 852-070. Ms. Sneed reported that no comments were received at hearing, and that no one from the Public was in attendance
 - Last week, Ms. Sneed attended the meeting of Lane Optometric Society with Janet Baker from OOPA.

BOARD MEMBER REPORTS:

Continuing Optometric Education: The continuing education offerings approved since the last meeting were presented to the Board in Exhibit D. Dr. Lynch made a motion that the Board ratify approval of these courses. Dr. Walker seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

Budget: There was no budget committee report made at this time. Ms. Sneed said that a mid-biennium adjustment will be submitted for the next meeting.

Legislative: Dr. Walker reported on the status of several bills that affect the profession of optometry. SB 1576 was being monitored by OOPA regarding contact lens sales. The bill is dead, and would have extended contacts prescriptions to 5 years. OOPA expects it to be revived next year.

AAG Lindley reported that a bill is being considered that will change all Administrative Hearings to Judicial Processes. If it becomes law, it would present a problem for boards. In addition, there is a bill affecting rulemaking that would make it harder to implement temporary rules. Another bill will waive attorney/client privilege in rulemaking.

Administrative Rules: The Board has proposed rules for adoption later in the meeting. Ms. Webber made a motion to approve the minutes of the Administrative Rules Hearing that was held on January 28, 2016. Dr. Lynch seconded the motion. The motion carried by unanimous oral vote.

Personnel: Dr. Pelson reported on the performance review of the executive director. Dr. Pelson believes that Ms. Sneed has done very well in the short time she has been with the Board. He thanked her for getting up to speed quickly. He shared the evaluation document with the Board.

PRESIDENT'S REPORT:

- Recommendations regarding approval of state administered practical examinations for applicants for licensure by exam endorsement:

Dr. Pelson reviewed the examinations passed by Nancy Opara, OD for licensure in the state of Texas in 1984. He found that the exams that were administered in Texas were comparable to the examinations required in Oregon in the same year. Dr. Pelson made a motion that the Board endorse these examinations to be accepted in lieu of a passing score on the examinations required in Oregon. Dr. Lynch seconded the motion. The motion carried by unanimous oral vote.

- Election of Board Officers – Dr. Pelson asked for nominations for the office of President and Vice-President for the coming year. He nominated Dr. Cardinal for the office of President. Ms. Webber seconded the nomination. There were no other nominations. Dr. Cardinal was elected to the position of President by unanimous oral vote.

Dr. Cardinal nominated Dr. Lynch for the office of Vice-President. Dr. Pelson seconded the nomination. There were no other nominations. Dr. Lynch was elected to the position of Vice-President by unanimous oral vote. The Board asked Dr. Pelson to continue as President for the remainder of the meeting.

ITEMS FOR CONSIDERATION/DISCUSSION:

- Conference call access to Board meetings for licensees - Dr. Walker asked whether licensees could obtain the hour of CE credit by conference call rather than attending a Board meeting in person. Dr. Cardenal likes the idea. Ms. Boudreau wondered whether attendance could be monitored when someone attends by conference call. As a solution, Joel Tuttle, OD suggested that a group video conference call could be organized by using a service like Skype. Ms. Sneed said that the Massage Therapists Board has a process that they use. Dr. Pelson suggested that a limited number of people be included since the sounds that are generated when someone enters and leaves the call would be distracting to Board business. Dr. Cardenal agreed that access could be on a first-come, first-served basis. Ms. Webber would like to try the option out for the next meeting. The Board directed the Executive Director to gather information on the technology options and cost for the next Board meetings. The consensus of the Board is in agreement with that proposal.

Ms. Webber left the meeting at 1:21 p.m.

- Use of contract investigators - Ms. Sneed did some research about past Board investigations and projected what future needs might be for contracting with private investigators. She estimated possible costs that could be budgeted for. She gave the Board a list of investigators that the Landscape Contractors Board uses and a sample contract. Dr. Cardenal would prefer to use a professional rather than staff or other individuals since the Board probably won't need investigative services more than five times a year. Dr. Cardenal surmised that the expertise required would be determined by investigation. Dr. Walker agreed. There might be investigations that require optometric expertise. Dr. Pelson suggested that former Board members could be utilized. Ms. Sneed suggested that the Board might want to use retired optometrists to avoid the appearance of unfair competition. Dr. Walker asked what decision Ms. Sneed is seeking. Dr. Cardenal said that the Board's goal is to have a policy in place to satisfy an audit or peer review.

Dr. Pelson made a motion that the Board use contract investigators as deemed appropriate by the Executive Director, in consultation with the Board President. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

- 2017 Legislative Session agency submissions – Ms. Sneed reported to the Board that agency bill requests for the 2017 legislative session are due 4/15/16. She asked whether the Board wants to change the statute that limits university staff from serving on the

Board. The previous reason for the current law was that a conflict of interest could exist for school of optometry staff to be determining qualifications of a candidate for licensure due to the Board overseeing and implementing the exam. AAG Lindley advised caution about opening the statute for change, as unintended consequences could result. She suggested that the language might be changed to only disqualify people who are on the board of directors. The Board discussed other possible language options. Ms. Sneed suggested that, since the Board has no other legislative business, that this change might not be worth the effort. Dr. Lynch is in agreement. The Board consensus is to table the issue for this session.

- New Board member training – Ms. Sneed reported that training is now required for new Board members. The training is provided by DAS. Participants are required to take two online courses and one live course for training. The statute requires completion within the first 6 months after appointment. She asked whether the Board is willing to pick up the expense of this training for new members—stipend and travel costs. Dr. Cardenal said that the Board pays for attendance at a meeting. Dr. Cardenal believes that it is a good investment. AAG Lindley believes that it is really important. The consensus of the Board is that the expenses will be paid by the Board. Ms. Sneed said that she will make arrangements if any of the current Board members want to take the courses online.

ITEMS FOR BOARD ACTION:

- **Adopt proposed changes to OAR 852-010; 852-050; 852-070** - the proposed changes standardize late penalties, add CE audit penalties, allow fees for background checks, allow online renewals, and allow fingerprinting. The Board held a hearing regarding these changes on January 28, 2016. There were no public attendees and no comments were received.

AAG Lindley advised that the language of the changes include “OAR”. Ms. Sneed made note of the change. Dr. Cardenal made a motion that the Board adopt the proposed rules as amended with the language changes as advised by AAG Lindley. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

- **Approve records retention schedule changes:** Ms. Sneed has submitted changes to the Board’s retention schedule to extend the number of years that licensee and complaint records are retained in the cases of Board discipline. Dr. Lynch made a motion that the recommended changes be made as submitted. Dr Walker seconded the motion. The motion carried unanimously by oral vote.
- **Review financial review report and approve management response:** Ms. Sneed submitted the report of the recent financial review and a draft of her response for Board review. Dr. Walker made a motion to approve the draft response as submitted. Dr. Cardenal seconded the motion. The motion carried unanimously by oral vote.
- **Review and approve amendments to the financial policies:** Ms. Sneed has submitted revisions to the Board’s financial policies to incorporate the recommendations from the recent financial review. Dr. Cardenal made a motion that the Board adopt the amendments to the financial policies as recommended. Dr. Lynch seconded the motion.

The motion carried unanimously by oral vote.

UNFINISHED BUSINESS: There was no unfinished business before the Board.

OTHER BUSINESS:

- **Committee appointments:** President Molly Cardenal, OD made appointments to the Board committees for the coming year.
 - Administrative Rules: Catherine Webber, Public member
 - Legislative: Douglas Walker, OD
 - Continuing Education: Jessica Lynch, OD, Vice-President
 - Personnel: Molly Cardenal, OD, President
 - Budget: Jeff Pelson, OD
- Dr. Hamel asked whether the Board has a social media policy. Ms. Sneed replied that there is none at this time. AAG Lindley noted that she has given advice to the Dental Board regarding social media and cautions that should be considered because of Public Record law. She will share this advice with OBO if the Dental Board doesn't object. Dr. Hamel said that her question was prompted by recommendations by the Oregon Medical Board (OMB) to their licensees regarding activities on social media; the information is on the OMB's website. The OMB addressed, in part, doctor's email activity with patients. Dr. Hamel thought the OMB publication was very well thought out and she is of the opinion that optometrists could benefit by similar guidelines. Ms. Sneed will look into the publication by OMB.
- Dr. Cardenal presented a plaque to Dr. Pelson who is approaching the end of his final term with the Board. She thanked him for his dedication and service to the Board.

Future Meetings:

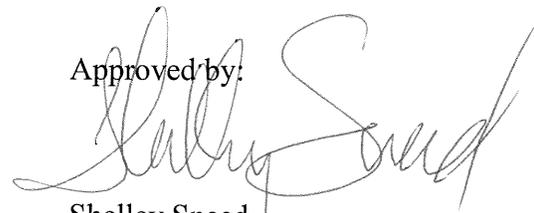
- Friday May 6, 2016
- Friday August 19, 2016
- Friday November 18, 2016

ADJOURNMENT: There was no further business to come before the Board, and President Pelson adjourned the meeting at 2:08 p.m.

Minutes prepared by:


Catherine M. Boudreau
Executive Assistant

Approved by:


Shelley Sneed
Executive Director