



OREGON BOARD OF OPTOMETRY

January 25, 2013 Board Meeting

PUBLIC SESSION

MINUTES

Board Members Present: Robert Mans, OD, President
Jeffrey Pelson, OD, Vice President
Jessica Lynch, OD
Rose Thrush, JD
Donald Garris, OD

Board Members Absent: None

Board Staff: Nancy DeSouza, Executive Director
Debbie Hendricks, Accounting/Licensing Specialist

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others in Attendance: None

CALL TO ORDER: Dr. Mans called the meeting to order at 9:01 a.m., at 1900 Hines Street, SE, Suite 290, Salem, Oregon. The Public Session was adjourned at 9:05 a.m. to Executive Session for the purpose of discussing complaints 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)(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 11:15 a.m.

The Board immediately convened a hearing of the proposed budget for the 2013-2015 biennium. Ms. DeSouza noted that licensees had been notified of today's budget hearing by mail, as required. The Board received copies of the proposed budget and the document was posted on the

Board's website. The approved proposed budget must be reported to the Legislature by February 1, 2013, and adopted by administrative rule by June 30, 2013.

Dr. Mans noted that the budget reflects a deficit position for the next two years, primarily due to increases in employee costs. No increases are proposed to licensing fees. The Board is functioning at a fiscally responsible level with regard to operating expenses, and recognizes that personnel costs are determined by PERS and PEBB. Dr. Mans noted that if expenses continue to rise above revenue in future biennia, the Board will need to consider options to preserve reserves at an appropriate level, which was discussed to be approximately six months of operating expenses.

Ms. DeSouza explained that the Governor's Recommended Budget includes step increases for eligible employees and a discontinuation of furlough days, but no COLA increases. When a budget is approved by the Legislature following negotiations with labor unions, the Department of Administrative Services will determine what is included in the final package of personnel costs. The Board's total personnel expense should be within their proposed budget, but the allocations may be different than projected today. She noted that PERS expenses increased significantly during the economic downturn to offset reduced PERS investment revenues, which is necessary to keep the system solvent. When the economy rebounds, PERS costs likely will be reduced in the future. Ms. DeSouza noted the possibility that the previous executive director may be eligible to file an unemployment insurance claim in the next biennium, and has budgeted that potential cost to be taken from reserves only if a claim is filed.

There are other variables that may affect the budget such as future office lease expenses. The Board is looking to move to a more cost effective space. Ms. DeSouza said that the Board may be able to view a potential new space at the next meeting.

Ms. DeSouza discussed plans to move toward online licensing and that the expenses of that project are not included in this proposed budget, as there is insufficient information on which to project costs. Following another licensing Board's spending of \$250,000 for an online licensing and reporting system that turned out to be unworkable, she recommends that the Board move forward very carefully and thoughtfully in that regard. Lacking the level of expertise in information technology to conduct an independent analysis of the OBO's needs, Ms. DeSouza said she will continue work with other licensing agencies to learn from their experiences, and will draw from them and other resources before making any recommendations to the Board or filing any request for proposal for an online system.

Dr. Garris asked whether the COLA increases for employees may be revisited if furlough days are not discontinued. Ms. DeSouza explained that employee compensation decisions are made by DAS now that the Board has come under their purview. Whatever is authorized by DAS and the Governor will be implemented by the Board, also. The Board will be notified of the final employee expense break-down when it is available.

Dr. Garris made a motion that the Board approve the proposed budget for the 2013-2015 biennium as presented. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

The budget hearing portion of the meeting was closed at 11:30 a.m.

MINUTES: The Board reviewed the minutes of the November 2, 2012 and December 21, 2012 Public Sessions. There was no discussion and the Board made no changes or additions to the minutes. Dr. Pelson made a motion that the Board approve the minutes as presented. Ms. Thrush seconded the motion. The motion carried unanimously by oral vote.

The Board recessed at 11:35 a.m. for lunch. The meeting reconvened at 12:10 p.m.

RATIFICATIONS:

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

- Inactive to Active Status: Anthony Bergstrom, OD
Trajan Soares, 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.

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

ACTIONS ON EXECUTIVE SESSION:

12-09-01: The Board will request that the doctor appear at the next meeting for an interview so the Board may obtain additional information and address questions and concerns about the standard of care and patient records. This case will remain open.

12-09-02: The Board will request that the doctor appear at the next meeting for an interview so the Board may obtain additional information and address questions and concerns about the standard of care and patient records. This case will remain open.

12-10-01: The Board sent a letter of concern instructing the doctor to submit a copy of the doctor's written prescription release policy to Board. The Board is satisfied with the doctor's response and requires no additional action in this case. This case will be closed.

12-11-01: A letter was sent to the doctor to inquire about policies regarding record retention and how records will be maintained in Oregon. The doctor was asked to explain the treatment protocol expected of employees, and what equipment is provided to them for use in the examinations of their patients. The doctor submitted a revised contract and a reply to the Board's inquiry. The Board is satisfied with the changes made to the contract and that the doctor has

addressed all of their concerns. The Board will not take any additional action. This case will be closed.

12-11-02: A letter will be sent to the doctor, accepting the surrender of his license and requiring him to agree in writing not to relicense in this or any other state. The letter will note the Board's concerns about his standard of care, and advise him that this investigation will be reopened in the event he ever reapplies to practice optometry. This case will remain open.

Monitored Cases:

11-09-02: This case was closed at the meeting on August 10, 2012. A stipulated agreement has been signed with John Rush, OD, and details of compliance are being implemented and monitored by the Board. The Board will continue to monitor the doctor's records for the remainder of the year established in the stipulated agreement. They will request records from Dr. Rush for Board review at the next meeting.

Ms. Thrush made a motion that the Board approve the actions from the Executive Session. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

CORRESPONDENCE:

Kevin Reidel, OD wrote to the Board asking whether it is within the scope of his license to write a letter for a patient recommending that he use headlights that are brighter than is currently legal. The patient has a prosthetic eye and feels that he would benefit from brighter headlights. The letter presumably would be presented to a law enforcement official or a judge. Ms. DeSouza researched the statutes that permit optometrists and other physicians to prescribe darker-than-usual windows on their patients' vehicles for medical reasons. These darker windows present no danger to other drivers. There are no corresponding laws permitting a doctor to prescribe a brighter-than-usual headlight. Since brighter headlights might pose a danger to oncoming drivers, it may be more in keeping with scope of practice for a doctor to recommend that the patient not drive at night, rather than use headlights that pose a risk for other drivers. And, if the patient cannot see well enough to drive in the dark with standard headlights, the doctor has a responsibility to report this to the ODOT Division of Motor Vehicles. Dr. Pelson noted that Oregon optometrists are mandatory reporters. He suggested that a letter be sent to Dr. Reidel that cites the Oregon Revised Statute number from the DMV form that specifies the sight requirements for drivers. The consensus of the Board is that a letter be written to the doctor referring him to the statute.

On December 31, 2012, Ms. DeSouza wrote to the owners of the building that houses the Board's office, informing them of concerns about the building condition and the rising costs under the current lease. She invited them to discuss and resolve the concerns, or to consider the letter to be the Board's notice of intent to vacate the office with this letter as the six-months' notice required in the lease. There was no response from the owners. Less expensive and more suitable office space is being sought.

PRESIDENT'S REPORT:

Dr. Mans reported on a candidate for licensure by endorsement of a clinical examination. Steven Walker, OD, submitted an application and his 1992 examination results from Texas. Dr. Mans reviewed and compared the exam information from Texas to the clinical examination required in Oregon from the same year. Dr. Mans finds the examinations are comparable and he recommends that the Board approve the examination as comparable. Dr. Garris seconded the motion. The motion carried unanimously by oral vote.

EXECUTIVE DIRECTOR'S REPORT:

Ms. DeSouza submitted the following reports to the Board:

- **Exhibit B - Accounting/Budget:** FY 2011-13 BTD R&E Report, FY 2011-12 YTD Balance Sheet. Ms. DeSouza submitted the current balance sheet and budget report to the Board for their review. She pointed out on the budget report that the Board is within budget for expenses in this biennium. The Board has approximately eleven months of operating expenses in reserve, and that over time should be reduced to a balance of about six months' expenses. Other semi-independent boards are also working at reducing their reserves so that the balances will be more in keeping with the Legislature's stated expectations for Other Fund agencies.
- **Exhibit C - Board Activities Report:** Ms. DeSouza submitted the most recent Board Activity report to the Board, including the changes in numbers of licensees and complaints.
- **Updates:** Ms. DeSouza submitted a report from LINUS, the legislative bill tracking system. This system allows her to track bills that have potential impact on the Board. She noted a group of bills introduced by the military department that would streamline the licensing process for spouses of military personnel who are transferred to Oregon. There may be a requirement that the Board issue an interim license in these circumstances; however, because there are very few active military personnel who are transferred to Oregon, there may be little impact to our processes.

HB 2074 would move the Oregon Health Licensing Agency into the Oregon Health Authority.

SB 8 is related to prescription drugs, and is broad enough serve as a vehicle if a DOJ opinion on dispensers of drugs leads to a need to clarify statute. There will be more information on this at the next Board meeting.

Ms DeSouza offered to provide any members of the Board who wish to track bills access to the LINUS system to independently follow the progress of legislation at their convenience. Otherwise, she will continue to keep the Board informed by e-mail.

- **Board Office Space** – Ms. DeSouza noted that the Board staff is discussing the

relocation of their office. She said that she will continue to keep the Board informed about developments in the search for new space. The most promising space at this time is in a building leased by Oregon Travel Experience on Liberty Road in Salem. There may be an opportunity to sublet space at a cost that is less than the Board is currently paying. The space is situated in a good area, has meeting space, and the potential for sharing some services.

- **Board Member Appointments** – Ms. DeSouza is working with Kendall Clawson and Judge Kemp in the Governor’s Office, who are screening applicants for the vacant Board position held by Dr. Garris, whose second term expired in September 2012. Dr. Garris agreed to serve until his successor is confirmed. Dr. Pelson’s first term expires at the end of February 2013 and Dr. Lynch’s first term expires at the end of September 2013. The Governor has reappointed both Drs. Pelson and Lynch; their reappointments are pending Senate confirmation.

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. Mans seconded the motion. There was no discussion. The motion carried unanimously by voice vote.

Budget: No additional report or discussion.

Legislative: No additional report or discussion.

Administrative Rules: Ms. DeSouza reported that the rule changes adopted at the last meeting have been filed with the Secretary of State and are in effect as of January 1, 2013. She is working on a newsletter that will explain the changes to licensees, and will send draft articles to the Board for approval under their bylines.

Dr. Mans noted that Ms. DeSouza will speak at a third-party meeting in April. The meeting will be an open forum where she will address the Board’s role and rules in planning for a catastrophic event such as the death of a physician. In May, Dr. Mans and Ms. DeSouza will make a law and administrative rules presentation at the Oregon Optometric Physicians Association meeting, where they will address recent changes to the administrative rules.

Personnel Committee: No additional report or discussion.

ITEMS FOR BOARD ACTION:

There were no additional items for Board Action.

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

OTHER:

- Regular meetings of the Board are scheduled for May 10, 2013, August 9, 2013, and November 22, 2013.

ADJOURNMENT: There was no further business to come before the Board, and President Mans adjourned the meeting at 12:42 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:



Nancy DeSouza
Executive Director