



OREGON BOARD OF OPTOMETRY

February 21, 2014 Board Meeting

PUBLIC SESSION MINUTES

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

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

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others in Attendance: Gary Wheeler, OD, and Treasure Wheeler, OD, Medford, Oregon
Candace Hamel, OD, Oregon Optometric Physicians Association (OOPA)

CALL TO ORDER: Dr. Mans called the meeting to order at 9:15 a.m., in the first floor conference room at 1500 Liberty Street SE, Salem, Oregon, 97302. The Public Session was adjourned at 9:17 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), ORS 192.660(i) – review and evaluate the employment-related performance of the executive director, 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 1:05 p.m.

MINUTES: The Board reviewed the minutes of November 22, 2013 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Dr. Lynch made a motion that the Board approve the minutes as presented. Dr. Cardenal seconded the motion. The motion carried unanimously by oral vote.

Ms. DeSouza reported to the Board that the minutes of the December 21, 2012 Public Session erroneously recorded the projected cost of the approved technology upgrade. The Board reviewed the corrected minutes of that meeting. Ms. Thrush made a motion that the minutes be approved as corrected. Dr. Pelson seconded the motion. The motion carried unanimously by oral vote.

The Minutes of the August 9, 2013 Public Session have been corrected to reflect that the meeting was held by conference call in the Liberty Street office location. Dr. Pelson made a motion that the minutes be approved as corrected. Ms. Thrush seconded the motion. The motion carried unanimously by oral vote.

RATIFICATIONS:

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

- **Reactivation to Active Status** – Scott Karita, OD
Reinstatement to Inactive Status – Leonard Schmeltzer, OD; Jonathan Mather, OD; Michael Majerczyk, 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. Mans read the names of these doctors for the record.

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

ACTIONS ON EXECUTIVE SESSION:

13-09-02

13-09-03

13-09-04: Dr. Lynch recused herself from voting in these cases because her business partner has a personal relationship with the doctor being investigated. After additional review of the records, the Board found no evidence of optometric error or violation of Oregon Revised Statutes or Administrative Rules. A letter will be sent to the complainant explaining this finding, and that fees can vary from one doctor to another. A letter will be sent to the doctor explaining the result of the investigation and recommending that future communication with patients be more thorough and that tests be more carefully administered. These cases will be closed.

13-09-06: A letter will be sent to the doctor requiring specific continuing education in an area of concern to be completed and reported within six months of the letter. This case will remain open.

13-10-02: A letter will be sent to the doctor requesting additional records, and will interview the doctor at the May 9, 2014. This case will remain open.

13-11-01: The Board reviewed the doctor's records in this case, and concluded that there has

been no optometric error or violation of Oregon Revised Statutes or Administrative Rules. A letter will be sent to the complainant explaining that the results of the review, and that the Board has no authority to require the doctor to refund fees. A letter will be sent to the doctor explaining the result of the review and recommending that in the future the doctor ensure that his patient records fully support his billing records. This case will be closed.

14-01-01

14-01-02: The Board reviewed the evidence in this case and concluded that the doctors have complied with the Board's requirements regarding advertising. They have corrected their signage, printed materials and website in a timely manner. No further action is required. These cases will be closed.

14-01-03: The Board reviewed the evidence in this case. Dr. Cardenal made a motion that the Board issued a Notice of Proposed Disciplinary Action, Letter of Reprimand to the doctor, citing ORS 683.140, and OAR 852-060-0027(13) regarding unprofessional conduct with regard to failing to respond to the Board's request for information, and OAR 852-050-0005 and 852-050-0016 regarding reporting requirements to the Board. Dr. Pelson seconded the motion. The motion carried unanimously by oral vote, with no abstentions. The Board will assess the administrative fees normally associated with the failure to report practice locations and obtain required additional practice location licenses. This case will remain open.

14-01-04: The Board will subpoena the employment records for the technician in this case and review them at the next meeting. This case will remain open.

Dr. Pelson made a motion that the Board ratify the actions taken in the Executive Session. Ms. Thrush seconded the motion. The motion carried unanimously by oral vote.

CORRESPONDENCE:

Kim Clark, OD – The Board discussed his inquiry regarding authority for optometrists to prescribe medical marijuana. Optometrists in Oregon are not authorized to prescribe or sign cards for medical marijuana use. Oregon Revised Statutes limit the authorization for medical marijuana cards to attending physicians who are licensed under ORS 677. In addition, optometrists are prohibited from prescribing Schedule I drugs, which includes marijuana. If an optometrist believes a patient might benefit from the use of medical marijuana, the patient should be referred to an ophthalmologist or another attending physician.

PRESIDENT'S REPORT:

- **Anthony Bullum, OD** – Applicant for licensure by endorsement of his clinical examination. Dr. Mans reviewed the clinical examination that was passed by Dr. Bullum in California in 1986. He recommends the Board approve the clinical examination as comparable to the examination administered and required in Oregon in the same year. Dr. Mans made a motion that the Board approve and accept the results of Dr. Bullum's California clinical examination in lieu of a passing score on Part III of the National Board of Examiners in Optometry (NBEO) examination. Ms. Thrush seconded the motion. The motion carried unanimously by oral vote.

- Dr. Mans reported that the Board will soon need a new public member, since Ms. Thrush's term of service will be expiring in April. Dr. Mans expressed his and the Board's sincere appreciation for Ms. Thrush's expertise and service to the Board during her term, and his hope that she would be able to attend the May meeting.

EXECUTIVE DIRECTOR'S REPORT:

Ms. DeSouza submitted the following reports to the Board:

- **Exhibit B - Accounting/Budget:** 2013-15 R&E Budget Report and Balance Sheet – The budget for the current biennium will need to be adjusted to actual revenues and expenses. There has been a reduction to projected income with the elimination of the additional license and multiple-location license fees. Expenses are reduced since moving to the new office space.
- **Exhibit C - Board Activity Report:** The Board reviewed the report for the current period.
- **Updates**
Biennial Financial Review: Valerie Wicklund, CPA, completed the financial review of the Board and submitted a draft report with four findings. One bank reconciliation was not dated when signed by the Board member. Ms. Wicklund recommended the business purpose of each credit card expenditure be noted on receipts. She found an error in the minutes of the Public Session of December 12, 2012, which was corrected and approved today. She recommended that the Board develop an investment policy and long-range strategy for handling the Board's financial reserves.

Board Member Recruitment: A candidate for the public member position has been approved by the Governor's Office and will be moved for confirmation by the Senate in May. Ms. DeSouza will work with the Governor's Office on a successor to Dr. Mans, whose second term ends in December. OOPA will be asked to provide a list of potential candidates.

Common Credentialing Advisory Committee: Continued work to implement 2013 SB 604, by January 1, 2016. There is no funding mechanism and a vendor hasn't been chosen. The DAS CIO must approve the information technology proposal before an RFP may be issued by the Oregon Health Authority. It is hoped that the staging of the boards into the system will begin with the Medical, Nursing and Dental Boards, since they license a majority of practitioners and have robust databases that contain many of the data points needed for credentialing. The concern is that smaller boards, including the OBO, not be required to begin collecting and entering new information into their databases if that information is not needed for licensure.

Website redesign and online license renewals: With the goal of online renewals by January 2015, Ms. DeSouza will consult with directors of other boards that have already adopted online license renewals. The Board must decide how to implement changes in continuing education reporting including how those reports will be audited for online renewals, and what actions the Board will take with those who incorrectly/falsely attest. The OBO is the only health-related board in Oregon that requires submission of original completion certificates for CE. Changes to administrative rules will be required. Changes will also include database updates, and determinations of how to handle the costs of processing renewals and credit

card payments. Longer-range plans are to digitize paper records and develop an online application process. Staff workloads will change over time.

Budget revision planning: OBO will need a rulemaking hearing in coming months to rebalance the OBO budget and to make minor rule updates in light of reduced revenues from fee elimination for additional and multiple practice location licenses, reduced rent, no unemployment payments expected, changing technology needs and costs, credit card processing fees, and potential staff hour increases in preparation for online renewals.

HB 4057: The Board will be required to make a report to the Legislature on expediting the licensure process for the spouses or partners of active duty military personnel. OBO may allow temporary, conditional licensure while waiting for verification of out-of-state licenses. This will require a rule change.

SB 1561: A 2013 Department of Justice opinion interpreted existing pharmacy laws to require health care practitioners who provide medications to patients to be licensed as “pharmacy dispensing outlets.” This led to draft rulemaking by the Board of Pharmacy that received many objections from healthcare professionals’ organizations. The bill exempted some practitioners from the law and proposed new rules, and was to be amended to include optometrists. The Senate Health Care Committee accepted a commitment from the Board of Pharmacy to develop a workgroup in the interim to address concerns, and the Legislature will reconsider the issue in 2015. Ms. DeSouza will participate in the workgroup.

SB 1519: This bill is expected to pass, and will vacate disciplinary fines for dentists who failed to properly spore test their sterilizing equipment in the past. The disciplinary action itself will not be expunged.

HB 4070: The Board of Dentistry will lead a workgroup during the interim to make recommendations to the 2015 Legislature regarding licensees’ ability to petition their regulatory boards for the removal of certain prior disciplinary histories from various sources upon request. Ms. DeSouza will participate.

ADA interpreters: In responding to a question from an optometrist, Ms. DeSouza consulted with federal authorities who advised that a doctor is required to provide a qualified sign language interpreter when requested in advance by the patient or representative, regardless of cost. A doctor may negotiate for alternate means of communication, such as texting on an iPad or computer, but it is the patient’s choice. A doctor denying such a request faces potential ADA discrimination suits and penalties.

A&D treatment reporting: In response to a question from a doctor’s attorney, a licensee is not required to self-report substance abuse treatment to the Board. Only if the Board is investigating a complaint and asks, or if the licensee has received a misdemeanor conviction or felony conviction or arrest, is the doctor required to report. The Board would not want to discourage anyone from seeking treatment for substance abuse out of fear of reporting.

Filling a contact lens prescription written outside the US: Ms. DeSouza is waiting for an answer from Federal Trade Commission on this question received from two different sources whether contact lens prescriptions from outside the US may be filled in Oregon.

Speaking engagements: Ms. DeSouza will present a law course at the Oregon Optometric Physicians Association's Third Party Conference on February 28, 2014 in Eugene. She has invited the staff to accompany her to the conference. She also will speak on March 11 to the PUCO third-year students on preparing for licensure.

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. Pelson seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

Budget: Ms. DeSouza will meet with Dr. Cardenal following the meeting today to review the Board's bank statements in her role as Budget chair.

Legislative: No additional report or discussion.

Administrative Rules: No additional report or discussion.

Personnel Committee: No additional report or discussion.

Consideration/Discussion:

- Issuing new licenses prior to a reported practice location - The consensus of the Board is that a license should be printed with the address of record for that new licensee, even if the doctor does not yet have a primary practice location. This will enable them to immediately practice using their portable multiple location licenses upon reporting the locations to the Board.

ITEMS FOR BOARD ACTION:

- Approval to receive and respond to Wicklund Financial Review: Dr. Cardenal made a motion that the Board receive and authorize Ms. DeSouza to respond to the final financial review submitted by Valerie Wicklund, CPA. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

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

OTHER BUSINESS:

Dr. Mans invited comments from the visitors at the meeting. Treasure Wheeler, OD stated that she thinks the Board is doing a wonderful job. She thanked the public member, Ms. Thrush for serving, saying that she is much appreciated.

Candace Hamel, OD observed that the Board has everything under control and that Ms. DeSouza will be presenting the law course at the OOPA conference. Dr. Hamel is looking forward to the Board's implementation of online renewals.

Future Meetings: May 9, August 8, and November 7.

ADJOURNMENT: There was no further business to come before the Board, and President Mans adjourned the meeting at 2:25 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:



Nancy DeSouza
Executive Director