



OREGON BOARD OF OPTOMETRY

August 1, 2014 Board Meeting

PUBLIC SESSION MINUTES

- Board Members Present:** Robert Mans, OD, President
Jeffrey Pelson, OD, Vice President
Jessica Lynch, OD
Molly Cardenal, OD
Catherine Webber, Public Member
- 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:** Richard Letherer, OD; Candace Hamel, OD, Oregon Optometric Physicians Association (OOPA) Liaison

CALL TO ORDER: Dr. Mans called the meeting to order at 9:02 a.m., in the first floor conference room at 1500 Liberty Street SE, Salem, Oregon, 97302. The Public Session was adjourned at 9:03 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 12:56 p.m.

MINUTES: The Board reviewed the minutes of the May 9, 2014 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Dr. Cardenal made a motion that the Board approve the minutes as presented. Dr. Lynch 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** – Anna Anderson, OD, Lee Cornforth, OD, Lisa Hornick, OD, Matthew Pearce, OD, Nicole Pearce, OD, ~~Levin~~ Sickel, OD
- **Reinstatement to Active Status** – Joyce Newton, OD
- **Reinstatement to Inactive Status** ~~Levin~~risti Rhodes, 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 regarding licensure made since the last Board meeting. Dr. Cardinal seconded the motion. The motion carried unanimously by oral vote.

ACTIONS ON EXECUTIVE SESSION:

13-09-02

13-09-03

13-09-04: These cases were initially closed at the meeting on February 21, 2014. At the request of the complainants, and having received additional pertinent information, the Board reopened the cases.

Dr. Pelson made a motion that the Board issue to David Biggar, OD, a Notice of Intent to Discipline which includes a formal reprimand and imposition of a civil penalty of \$1,500 for violations of OAR 852-010-0051(5) Records; OAR 852-060-0025(2)(d) Unprofessional conduct, for failure to timely release requested patient records to three complainants; ORS 683.140(c), unprofessional conduct in the profession; OAR 851-060-0025(2)(d), unprofessional conduct; and OAR 852-060-0027(17) for conduct contrary to recognized standards of ethics of the optometric profession for violating patient confidentiality. The motion was seconded by Ms. Webber. The motion carried unanimously by oral roll-call vote, with no abstentions. These cases will remain open.

13-09-06: The Board is satisfied that the doctor has met their conditions in this case. No additional action will be taken. A letter will be sent to the doctor acknowledging the doctor's completion of the Board's requirements and thanking him for his cooperation. This case will be closed.

14-05-01: A letter will be sent to the doctor requesting additional records in this case. This case will remain open.

14-06-01: The Board will send a letter of concern to the doctor regarding habitual lateness in

license renewal. This case will be closed.

14-06-02: A letter of concern will be sent to remind the doctor in this case about the rules concerning the proper use of another doctor's prescription pad. This case will be closed

14-07-01: The Board does not find any optometric error in this case, but will not make a final determination until billing records have been reviewed. This case remains open.

14-07-02: Dr. Pelson made a motion that the Board issue an Interim Order to ~~Dr.~~ Kimberley Hoyt, OD, requiring the doctor to submit to a substance use disorder evaluation by a Board-approved provider to be initiated within 30 days of the order, and to provide the results of the evaluation to the Board. The licensee may not practice optometry until the evaluation is accepted by the Board and the evaluator confirms competency to return to practice. If the doctor fails to agree to the conditions of the Interim Order, the Board will immediately suspend the doctor's license. Dr. Cardenal seconded the motion. The motion carried unanimously by an oral roll-call vote, with no abstentions. This case will remain open.

14-07-03: A letter of concern will be sent to the doctor requiring him to change the "board certified" language on his webpage to meet the rule requirements that the licensee also state by which board the doctor is certified. This case will be closed.

14-08-01: The Board will request that the doctor attend the meeting on November 7, 2014, to discuss the outcome of the records review and issues in this case. 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 by oral vote.

CORRESPONDENCE: National Board of Examiners in Optometry (NBEO) has written to update the Board on the development of a new examination designed to assess continued professional development in optometry. Dr. Pelson is of the understanding is that the test is tailored to the optional NBEO board certification requirements and will be provided once a year. The Board does not believe that the examination will meet any current Board requirements either for licensure or for continuing education. It does not appear to meet criteria that the Board would use for a remedial action that may be imposed in an investigation.

PRESIDENT'S REPORT: President Mans spoke to the Board about Valley Contax, a specialty contact lens company in Eugene. Doctors send patients to this company for contact lens recommendations. A question arose because some doctors have expressed a wish to use the company not only for advice, but also for fittings. Valley Contax owners were concerned that performing fittings could be construed as practicing optometry and proposed to contract with an optometrist to do lens fitting evaluations. President Mans explained the restrictions on non-health care practitioners from hiring optometrists, and that they may contract with an independent optometrist to do the fittings and construct an exam lane to do so.

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 current budget statement reflects that the Board is \$4,943 under budget with revenues exceeding expenses. There will be significant changes proposed in the budget adjustments for the remainder of the biennium to reflect Board policy decisions and changing costs.
- **Exhibit C - Board Activity Report:** The Board reviewed the report for the current period.
- **Updates:**
 - Common Credentialing Advisory Committee:** Important issues have not yet been worked out in the implementation of SB 604, including timetables and funding. There has been a commitment that costs will not be passed through the licensing boards. Adopted administrative rules offer deferment of implementation for boards in two-year increments. Representatives of hospital associations say they want health licensing boards to scan and upload transcripts, board scores and other licensing criteria to the database instead of accepting the boards' primary source verification as being sufficient proof. Ms. DeSouza and Kathleen Haley, Executive Director of the Oregon Medical Board, feel that providing this information would be redundant as licensing boards already have procured those documents as a condition of licensure, as required by statute.

Government Ethics Commission: The Commission, DOJ and the Secretary of State are having discussions to help define what qualifies or constitutes someone to be considered a member of the media eligible to attend executive sessions of public meetings. If a media representative from an established publication or service discloses confidential information from an executive session, the agency has potential recourse through the employer. However, there are questions about other types of media, such as bloggers without standard media credentials. The current law does not have teeth to protect confidentiality. Agencies at all levels are looking at the topic. A legislative concept is expected to address the issues.

Reporting Discipline by Boards: In a decision by the Oregon Board of Dentistry, they will no longer publish the details of their disciplinary actions in their newsletters. Ms. DeSouza discussed her concerns that this would not further public safety and health by making the information more difficult to find. Guest Dr. Hamel expressed that she believes the OBO is fair and complete in disclosing disciplinary information. She said that OOPA is concerned that the Dental Board's decision will cause problems for other health-regulatory regulatory boards. AAG Lindley said that she feels OBO is transparent in their disclosure of their actions, and makes information readily available to the public.

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

Budget: The budget report was deferred to the later discussion under Board Actions.

Legislative: No additional report or discussion.

Administrative Rules: The administrative rules report was deferred to the later discussion under Board Actions.

Personnel Committee: No additional report or discussion.

Consideration/Discussion:

- With the campaign season in full swing, Ms. DeSouza reminded the Board of the restrictions in ORS 260.432 on political campaigning by public officials. The Governor's office issued a reminder that board members are public officials prohibited from political campaigning in their official capacities.
- Consideration of dates for 2015 meetings: Ms. DeSouza asked the Board to let her know their availability for upcoming meetings:
 - Potential date: January 16, 2015 - the Board must approve 2015-17 Biennial Budget prior to February 1, 2015 submission to Legislature,
 - Dates in the months of May, August, and November.

ITEMS FOR BOARD ACTION: Ms. DeSouza submitted draft administrative rule changes, including proposed budget revisions for FY 2014-15. President mans noted an error in the proposed budget changes that Ms. DeSouza will correct. Ms. DeSouza reviewed the draft changes with the Board line-by-line, explaining the reasons for the proposed changes to content including:

- OAR 852-005-0005 – The Board's budget will be adjusted for changes in the revenue and expenses during the current biennium.
- OAR 852-010-0005(5) – Statute requires the election of officers. This rule will clarify when an election occurs.
- OAR 852-010-002X – Establishes the Board's policy for granting expedited licensure to the spouse/domestic partner of an active-duty military person who has been transferred to Oregon.
- OAR 852-010-0030(c) – The Board will not make any changes to the language of this rule regarding advertising.
- OAR 852-010-0051(5) – Changes the number of days allowed to release copies of patient records from 14 business days to 14 calendar days. The Board will change the language regarding acceptable manner of requests for release.
- OAR 852-010-0080 – Changes and corrections will be made to this rule to make the overall language consistent with the other rules. Language is provided in anticipation of online renewals in the near future. No fee will be included for failure to provide a phone number of record.
- OAR 852-020-0019(d) – Adds a provision for a stamped signature on a prescription.
- OAR 852-020-0031(3) and (5) – Clarifies the requirements for releasing a prescription.
- OAR 852-020-0035 – Language will be changed for consistency.
- OAR 852-020-0060 – Removes the requirement that a technician be directly employed by an optometrist; adds language prohibiting an optometrist from entering into a contract that requires delegation to a person not under the direct supervision of the optometrist or that prohibits the doctor from removing the person from patient contact at any time. Clarifies that direct supervision requires the physical presence of an optometrist or

- medical doctor.
- OAR 852-050-0001 – The Board will require telephone numbers of record if it can allow licensees to shield it from disclosure if it is not a business number.
- OAR 852-050-0005 – When online renewal are in effect, changes the requirement from “documentation” to “attestation.”
- OAR 852-050-0012 – Clarifies the process for changing from active to inactive status. Clarifies the imposition of the fee for reactivation of a license.
- OAR 852-050-0018 – The Board will require telephone numbers of record if it can allow licensees to shield it from disclosure if it is not a business number.
- OAR 852-050-0025 – Clarifies the Board’s requirements for providing background check information. Replaces the requirement for an employer recommendation with a provision for other information the Board deems relevant or necessary.
- OAR 852-060-0025 – Clarifies the timeline for reporting adverse actions to the Board, as required in statute.
- OAR 852-060-0027 – Clarifies that technicians must be directly supervised. Adds to the definition of unprofessional conduct to include:
 1. Harassment of complainant, regardless of case closure status.
 2. Omission of records or information.
 3. Making a false statement to the Board or its agent.
 4. Entering into confidentiality agreements that prevent the Board from obtaining information in an investigation,
 5. Behavior or actions that violate patient confidentiality.
- OAR 852-070-0010 – Adds an introduction on the purpose of CE from statute. Authorizes one hour credit per year for completion of an approved course in cultural competency. Removes the requirement that some CE hours be completed in a live environment.
- OAR 852-070-0035 – Provides language for CE reporting requirements after online renewals begin.

Dr. Lynch made a motion that the Board approve the policy decisions behind the draft rule changes prior to scheduling a public hearing and finalization of the rules. Ms. Webber seconded the motion. The motion carried unanimously by oral vote.

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

OTHER BUSINESS:

- Ms. DeSouza asked AAG Lindley whether optometrists may employ an ophthalmologist. AAG Lindley advised that they may.
- Ms. DeSouza asked AAG Lindley whether an optometrist may own an ophthalmologist’s records. AAG Lindley deferred to the Oregon Medical Board for the answer to this question.
- Ms. DeSouza asked Candace Hamel, OD, for her opinion of the reliability of using OE Tracker for reporting attendance at continuing optometric education (COE). Dr. Hamel reported that, in Oregon Optometric Physicians Association’s experience, OE Tracker has had difficulty in controlling compliance with COE rules and accuracy in reporting attendance. She does not believe that OE Tracker is a reliable source for reporting attendance at COE.

Future Meetings: November 7.

ADJOURNMENT: There was no further business to come before the Board, and President Mans adjourned the meeting at 3:58 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:


Nancy DeSouza
Executive Director