



OREGON BOARD OF OPTOMETRY

August 10, 2012 Board Meeting

PUBLIC SESSION MINUTES

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

Board Members Absent: None

Board Staff: Nancy Sellers, Executive Director
Catherine Boudreau, Executive Assistant
Debbie Hendricks, Accounting/Licensing Specialist

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others in Attendance: Tracy Oman, Executive Director, Oregon Optometric Physicians Association

CALL TO ORDER: Dr. Mans called the meeting to order at 9:00 a.m., at 1900 Hines Street, SE, Suite 290, Salem, Oregon. The Public Session was adjourned at 9:01 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 1:00 p.m. Tracy Oman was in attendance.

MINUTES: The Board reviewed the minutes of the May 11, 2012 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Ms. Thrush made a motion that the Board approve the minutes as presented. Dr. Pelson seconded the motion. The motion carried unanimously.

The Board reviewed the minutes of the June 13, 2012 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Ms. Thrush made a motion that the Board approve the minutes as presented. Dr. Pelson seconded the motion. The motion carried unanimously.

RATIFICATIONS:

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

Reinstatement of lapsed license to Inactive status: Michael Ohlson, 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. Garris made a motion that the Board ratify these actions by the Executive Director regarding licensure made since the last Board meeting. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

ACTIONS ON EXECUTIVE SESSION:

11-07-01: The doctor in this case has converted his license from active to inactive status, with the agreement that he never again practice optometry in this or any other state. This case will be closed with the provision that it will be reopened should the doctor ever attempt to return to practice.

11-09-02: A stipulated agreement has been signed with John Rush, OD, and details of compliance are being implemented. This case will be closed. The Board will monitor successful completion of the requirements of the stipulated agreement.

11-12-01: A letter was written to the complainant and to the doctor. The Board found no optometric error, but recognized that the complainant was given misinformation. The doctor has been instructed to take steps to improve future communication with patients. There has been no additional communication from the complainant or from the doctor. This case will be closed.

12-03-01: The Board has no jurisdiction over this matter as presented by the complainant; this case will be closed.

12-05-01:

12-05-02: A letter will be sent to the complainant explaining that the contact lens parameters of her old prescription and her new prescription were not the same, as claimed. The Board finds that the complainant received thorough patient care and did not find any optometric error. The many examinations and appointments that the complainant attended were to provide the best possible contact lens fit. Any concerns about billing or insurance should be directed to OHSU and the insurance provider. These cases will remain open.

12-05-03:

12-05-04: A letter will be sent to the complainants explaining that the Board finds that the length of the examination room is appropriate and within the standard requirements. The two prescriptions that the patient received are very similar, indicating that the first prescription was appropriate. The Board does not find any optometric error or violation of Oregon Revised Statutes and Administrative Rules. These cases will remain open.

Dr. Pelson made a motion that the Board ratify these actions from the Executive Session. Ms. Thrush seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.

CORRESPONDENCE:

The Board noted correspondence from Douglas Smith, OD, in which he pointed out continuing education classes that are providing refraction training to optometric technicians. The Board acknowledged that technicians may take any training that they wish.

PRESIDENT'S REPORT:

Dr. Mans reported on a candidate for licensure by endorsement of a clinical examination. William K. Theodore, OD submitted an application and his examination results have been reviewed by Dr. Mans, and compared to the clinical examination required in Oregon from the same year. Dr. Mans finds that the examinations are comparable and he recommends that the Board approve the examination as comparable. Dr. Pelson made a motion to approve the examination. Dr. Garris seconded the motion. The motion carried unanimously by oral vote.

Dr. Mans reported that the Board reviewed the performance of the Executive Director, Nancy Sellers. The performance review is favorable and the Board is very happy to have Ms. Sellers on the staff.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Sellers 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. Sellers reviewed the Balance Sheet with current assets of \$282,142.31. She pointed out line item "1200 - Licensee Accounts Receivable" in the amount of \$48 that she is unable to account for, as there is no known outstanding balance

owed to the Board in this amount. She will continue efforts to rectify this discrepancy in the accounts.

On the Fiscal Year End report, Ms. Sellers compared the currently approved budget to the actual expenses and income of the Board for 2011-12, and will make recommendations about adjustments to the budget for the remainder of the biennium during the Budget Committee report.

Dr. Mans asked about the process for collecting and disbursing the Electronic Prescription Monitoring Program funds that are now included in the license fees for Active Status licensees. Ms. Sellers said that, as required by the governing statute and rules, the Board retains 10 percent of the funds collected to cover its costs, and disburses the remainder of the funds to the program. There have been few complaints from licensees about the additional fee and the process is running smoothly.

- **Exhibit C - Board Activities Report:** Ms. Sellers submitted the current Activities Report. The number of licensees is slightly increased. The number of Active licensees has increased overall in the past decade.
- **Proposed Administrative Rule Changes –** Ms. Sellers submitted a list of proposed rule changes. The changes are suggested for various reasons, including:
 - Substantive changes–
 1. The Board discussed proposed changes to rules that affect records maintenance when a doctor leaves Oregon and when a practitioner is deceased.
 2. A proposed rule change will reduce the number of days within which a doctor must release patient records when properly requested.
 3. The Board may consider whether to adjust the fee for late renewal of an Active status license.
 4. The information that is required on a prescription that is written by an optometrist may be adjusted and made more specific.
 5. The Board will discuss whether to grant continuing optometric education credit to members who serve on the Board, as is the practice with other health licensing agencies.
 - Budget-related changes – Ms. Thrush suggested that the Board discontinue publishing the budget in rule. This change would not eliminate the requirements for a hearing, or notification of licensees of a hearing, prior to adopting, or making any changes to, a budget. No changes will be made to the administrative rules at this time, but this proposal will be discussed prior to adopting the budget for the 2013-15 Biennium.
 - Housekeeping changes –
 1. Language will be changed in several rules to make them consistent, to correct grammar, and to update facts that have changed.
 2. A change must be made to remove language that says the Board can release the results of a LEDS check to the subject, as that is prohibited by LEDS.

3. There are changes necessary, as advised by AAG Lindley, regarding Notices to Parties in Contested cases.
 4. Language will be removed regarding the Board's notification to licensees of continuing education that is offered by the Board.
- **Cultural competence continuing education** – Ms. Sellers is on a statewide committee chartered by the Oregon Health Authority at the behest of the Legislature to address cultural competence continuing education for healthcare providers. She will be completing a survey for the committee about the current continuing optometric education requirements for licensees. Ms. Sellers said that it is likely that boards will be asked to require, or at least to accept, at least one hour of continuing education in this area from licensees. Drs. Lynch and Pelson believe that courses should be pertinent to the practice of optometry in order to receive credit. The consensus of the Board is that this is an acceptable approach.
 - **Other Updates** – Ms. Sellers received a call from a former licensee who requested that a newsletter that describes disciplinary action taken against him be removed from the Board's website. According to the doctor, when he searches on Google for his name, this newsletter is prominent, and he believed that the Board had taken measures to draw the information to the public's attention. Ms. Sellers explained that the Board has not coded its website in any way to highlight this doctor's disciplinary action over any other, that the search results were based solely on the search engine's algorithms, and that his discipline was not meta-tagged to the document. She explained to the doctor that the disciplinary action is a matter of public record, that the Board publishes the same information for all licensees who are disciplined, and that it could not selectively remove public documents from the website.

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. Sellers presented a report reflecting the approved budget for the current biennium, and the actual income and expenses for the fiscal year ending June 30, 2012, with draft proposed changes to the budget for the remainder of the biennium. She pointed out that income from licensing fees for the recently completed fiscal year are currently \$3,494 below budget, and income from miscellaneous fees and other fees combined is approximately \$1,500 below budget. This is, in part, due to low interest rates and essentially zero income from the Board's investments.

Ms. Sellers proposed changes to the Budget for the remainder of the biennium based on actual receipts for the past fiscal year. These include:

- Reduce overall income by \$7,600, including the reduction of expected return on

investments.

- Increase payroll-related expenses by \$23,096 through the end of the biennium to ensure sufficient funds for this category. 2011-12 was \$22,579 over budget, primarily because of the severance payout to the previous executive director and subsequent unemployment compensation payments.
- “3267- PERS/Board” was erroneously allocated funds in the current adopted budget. That account would pay benefits to Board members if they were eligible. Combine allocations for 3267 into “3265 - PERS/Employee,” and increase by \$960 to reflect projected increases in PERS costs.
- Reduce “In-State Travel: 6028 - Conference Meals and Lodging” and increase “In-State Travel – Misc” to reflect the actual amounts paid out last fiscal year, for an overall increase of \$150. Eliminate “6050 - Out-of-State Travel.”
- Reduce “Printing and Reproduction” by \$1,000. Postage meter lease costs recently doubled, accounting for an increase in “6140 – Equipment Rentals” of \$600; staff is seeking lower-cost postage meter options.
- Increase “6220/6250 - Professional Development” by \$2,000 to allow for additional staff training, notably in QuickBooks and website development.
- Reduce “6498 – Inter-Agency Charges” by \$4,500; contested case charges are now booked to “6435 – Professional Services.”
- Increase “6612 – Facilities Rent” by \$3,764 to cover a 2 percent rent increase and a 35 percent increase in Common Area Maintenance fees.
- Technology upgrades: Increase “6960 – Expendable Property (\$250-5000)” by an estimated \$11,685 for purchases previously discussed by the Board, including:
 - Individual iPads for Board members’ use instead of their own laptops, as recommended by DAS Enterprise Risk Management to avoid problems that could arise from Board members having confidential information on their personal computers. The current cost for an iPad-2 with Wi-Fi is \$399, and one with Wi-Fi and 3G access is \$529. There are varying costs for 3G access. Dr. Pelson stated that he would prefer not to spend money for the 3G option on iPads, and save the money for better technology. Dr. Mans suggested that one or two devices with 3G could be purchased for use by Board members without Wi-Fi access. Everyone agreed that a data plan would not be paid for unless necessary for individual members.
 - An encrypted server, new computers with dual monitors for office staff, and an additional printer for producing licenses. The obsolete computer systems would be disposed of through State Surplus. Drs. Pelson, Lynch, and Garris stated that they are in favor of spending more for higher capacity to avoid having to upgrade again the near future.
 - Upgrade QuickBooks, Microsoft Office software, and purchase Windows 7.

Ms. Sellers concluded that if the proposed changes are approved, the Board will draw an estimated \$37,932 from reserves, which will help bring the Board’s surplus closer to the six-month reserve amount advisable for Other Funds agencies. Changes to the budget for the remainder of the biennium requires an administrative rule hearing, which is anticipated to be held at the Board’s November meeting.

Legislative: No additional report.

Administrative Rules: Ms. Thrush and Ms. Sellers will coordinate to schedule advisory committee meetings and public hearings for proposed Administrative Rules changes. The consensus of the Board is that work should continue on changes to the rules as proposed, and that a hearing should be scheduled for the November meeting as necessary.

Personnel Committee: No additional report.

ITEMS FOR BOARD ACTION:

- **OBO travel and reimbursement policy** – Ms. Sellers submitted a proposed travel and reimbursement policy to the Board. Language was based on that of the Massage Therapist Licensing Board, which had been approved by DAS. The proposed OBO policy also includes the State travel policy for travel expenses and meal reimbursement. The Board’s current rule and practice allows per diem payments to Board members of \$100 per eight-hour day for performing official duties; however, “official duties” is not defined. Ms. Sellers presented a table showing what other surveyed state boards and commissions provide for per diem and what they defined as “official duties,” if any. She proposed that Board members receive the full per diem for in-person attendance at scheduled meetings and asked the Board to determine whether the \$100 amount is sufficient. No other agency that Ms. Sellers reviewed pays per diem rates for travel or meeting preparation time. She also asked the Board to determine timeliness of requests, and whether reimbursements and per diems should be made for requests submitted after a biennium is completed.

Dr. Mans said he believes that the per diem of \$100 for an in-person meeting sufficient. He also said he feels if a Board member performs duties not being performed regularly by other members, such as continuing education review performed or the leading of a case investigation for a special hearing, he or she should be compensated at the hourly per diem rate. The Board determined that compensation for review of continuing education should be calculated at a rate of 10 percent of the number of CE hours reviewed. Official Duties also would include a Board member taking the lead in an investigation and receive an hourly per-diem for case preparation time. Participation in Board meetings by telephone would be at an hourly per-diem rate, as would required testimony, appearances in court, approved subcommittee meeting participation, and approved in-person meetings with Board staff. Reimbursement for hours other than for Board meetings require approval by either the Board president or the Executive Director. With regard to timely submission of reimbursement requests, Ms. Sellers asked to complete reimbursements for a fiscal year by the end of the following quarter. The staff will prepare expense reimbursement request forms for the members to sign when they attend future meetings. Ms. Thrush made a motion to adopt the proposed travel and reimbursement policy with the changes as discussed. Dr. Pelson seconded the motion. The motion carried unanimously by oral vote.

Other Business:

- **CPR Certification:** Dr. Pelson asked the Board to consider accepting online courses for CPR renewal for licensees. The consensus of the Board is that the hands-on skills test is not necessary after initial CPR certification. Ms. Thrush said that in her experience, a hands-on initial training is sufficient. The Board instructed Ms. Sellers to add this topic to the list of proposed administrative rule changes.

- **Hospital Practice Locations:** The Board discussed whether occasional work by an optometrist in a hospital setting requires reporting of a practice location and a license. The consensus of the Board is that if a person is practicing at and billing from a hospital (instead of on an ad-hoc basis), an additional practice location license or reported additional location on a multiple license is required. This question will be discussed at greater length at the next meeting.

- **Contact Lens Refills:** The Board discussed whether filling the maximum number of refills on a contact lens prescription invalidates the prescription, even if it hasn't reached the expiration date. The consensus of the Board is that a prescription is expired if the maximum number of refills has been dispensed. The language in the administrative rule regarding contact lens prescriptions will be changed to make the inclusion of the maximum number of refills permissive rather than mandatory on a prescription. This item was added to the list of proposed administrative rule changes.

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

OTHER: The Board's next meeting date for the year is November 2, 2012. Dr. Lynch reported that she will not be available to attend that meeting in person, but may be able to participate by phone if a quorum is needed.

ADJOURNMENT: There was no further business to come before the Board, and President Mans adjourned the meeting at 3:12 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:



Nancy D. Sellers
Executive Director