

OREGON BOARD OF OPTOMETRY

PUBLIC SESSION MINUTES

August 26, 2011

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

Board Members Absent: None

Board Staff: Cathy Boudreau, Administrative Assistant

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others In Attendance: Twyla Lawson, DAS Senior Recruitment Consultant; Tracy Oman, Executive Director, Oregon Optometric Physicians Association; Jeff L. Stephens, Wal-Mart optician; Mark Hough, Wal-Mart Vision District Manager; Nancy Sellers, Executive Director Candidate

CALL TO ORDER -

Dr. Mans called the meeting to order at 8:40 a.m. in the Mezzanine Level Conference room at 1900 Hines Street SE, Salem, OR, 97302.

Candidate for Executive Director Vacancy: Twyla Lawson, DAS Senior Recruitment Consultant, introduced Nancy Sellers as a candidate for the Executive Director vacancy. Ms. Sellers has most recently been employed at the Oregon Health Licensing Agency, and comes at the recommendation of Michael Jordan, Director of DAS and Chief Operating Officer of State Agencies. Ms. Sellers was interviewed by the Board at length, and was invited to return for the Board's afternoon Public Session.

The Public Session was adjourned at 9:35 a.m. to Executive Session for the purpose of discussing complaints. During Executive Session the Board will consider consumer and Board-initiated complaints and investigations as authorized by ORS 192.660(2)(f)(k); and consult with legal counsel as authorized by ORS 192.660(2)(h). No official Board action will be taken in Executive Session; all Board actions will be made in Public Session. The Public Session was reconvened at 12:55 p.m.

Review of ORS 683.510-683.530 - Regarding the filling of prescriptions written by physicians not licensed in Oregon: Dr. Mans proceeded to the discussion of the interpretation of this statute in order to accommodate Jeff Stephens and Mark Hough. Mr. Hough informed the Board that the legal department for Wal-Mart has interpreted ORS 683.510-683.530 to mean that opticians are limited to filling prescriptions written only by physicians licensed in this state. He and Mr. Stephens would like the Board to give their interpretation. Dr. Mans responded that a prescription that is valid and written by a physician who is licensed in any state may be filled. AAG Lindley stated that the intent of the law

is more broad than Wal-Mart has interpreted. ORS 683.520 addresses only fabrication of lenses, but ORS 683.510 includes more than fabrication. Dr. Mans asked for the address of the Director of Regulatory Affairs for Wal-Mart so a letter could be sent explaining the Board's interpretation of the statute.

Candidate for Executive Director Vacancy: The Board continued their interview of the candidate for the Executive Director vacancy, Ms. Sellers. Ms. Lawson joined the meeting by speaker phone. The Board inquired about Ms. Sellers' references and whom Ms. Lawson had contacted in that regard. Ms. Lawson replied that she had vetted Ms. Sellers prior to her assumption of the position for the Oregon State Board of Parole and contacted at least eight individuals at that time. Prior to the interview for this current position, Ms. Sellers has been recommended by Max Williams, Director of the Department of Corrections, Steven Powers, Governor's Deputy Legal Counsel, Aaron Felton, Chairperson, Oregon Board of Parole, Kendall Clawson, Governor's Executive Appointments, Michael Jordan, DAS Chief Operating Officer, and Kris Kautz, DAS Deputy Director.

Ms. Thrush stated that she was impressed with what she has heard today and not inclined to go through the recruiting process. She made a motion to offer the Executive Director position to Ms. Sellers. Dr. Garris seconded the motion. There was no additional discussion. The motion carried unanimously by oral vote.

Dr. Mans directed the Board to the discussion of salary. He said that Ms. Lawson had provided Ms. Sellers' prior classification and compensation information, which guides future salary offers within state government. Dr. Mans explained that the Executive Director's position won't be officially classified until January 1, 2012, following the implementation of HB 2381. However, the initial recommendation by DAS is a Principal Executive Manager (PEM) D. Within that range, Ms. Sellers would qualify for step 8 or step 9 based on her salary history. Dr. Mans reminded the Board that they should be cognizant of what it pays the Executive Director in relation to other agencies and levels of responsibility. He said that a PEMD was in the realm of what DAS would find acceptable. Ms. Sellers explained she believed a PEMD classification was appropriate, given the size of the agency, the number of licensees, and small staff. There followed a discussion of insurance coverage options, possible "red circling" of salary if a position is eventually classified lower, and statewide policies that may govern the Board's personnel after January 1.

Dr. Lynch made a motion to approve the salary of \$7,343. Ms. Thrush seconded the motion. The Board discussed some issues of PEBB coverage which are mandated by current Board personnel policy. In addition, Dr. Mans noted that the Executive Director position is not eligible for overtime, and stated that the Board's personnel policy will be changed to disallow "comp-time" for the Executive Director. There was no further discussion. The motion carried unanimously by oral vote.

Ms. Sellers stated that she formally accepts the position of Executive Director, and looks forward to working with the Board. Her official start date will be Monday, August 29, 2011.

MINUTES - The Board reviewed the minutes from the Public Session of May 6, 2011, June 6, 2011, and August 12, 2011. There were no changes or amendments to these minutes. Dr. Pelson made a motion to approve the minutes as written. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote. The Board reviewed the minutes of the June 6, 2011 Administrative Rule

Hearing. Dr. Pelson made a motion that the Board approve the minutes as written. The motion was seconded by Dr. Lynch. The motion carried unanimously by oral vote.

RATIFICATION -

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

Reinstatement of license to Inactive status: Ruth Ann Lipson, OD
Reinstatement of license to Inactive-Military status: Megan Clausen, OD
Reinstatement of license to Active status: Lyndon, Graves, OD
Reactivation of license to Active status: Bradley Lightfoot, 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. Pelson made a motion that the Board approve these actions by the Executive Director regarding licensure, which were made since the last Board meeting. Dr. Garris seconded the motion. The motion carried unanimously by oral vote.

ACTION ON EXECUTIVE SESSION -

10-05-01- Letters will be sent to the complainant and to the doctor informing them that, with regard to the original complaint, the Board finds no optometric error or violation of Revised Statutes and Administrative Rules. The letter to the doctor will advise him to make his records more legible, citing OAR 852-010-0051(1). The Board will remind him that legible records are required for the sake of transfer of patient care, and for Board review. This case will remain open.

10-07-02

10-11-01

10-12-03

11-02-02

11-06-01 -

A Final Default Order revoking the license of Richard W. Roth, OD was prepared by AAG Lindley in these cases and signed by the Board Chair, Robert Mans, OD, on August 19, 2011. The Order has been served. These cases will be closed.

10-12-01 - The Board determined at the last meeting that there was no optometric error or violation of Revised Statute or Administrative Rules in this case. Letters were written to the complainant and the doctor. There has been no further communication from either party. This case will be closed.

10-12-02 - A Notice of Proposed Disciplinary Action was issued on February 23, 2011 in this case. The discipline proposed was Revocation of License and assessment of cost of proceedings. The licensee's request for hearing was received at the office of the Board on March 11, 2011. The case was referred to the Office of Administrative Hearings on July 11, 2011 by AAG Lindley. On August 10,

2011, AAG Lindley filed a Motion for Summary Determination. A pre-hearing conference is scheduled for Monday, August 29, 2011. This case will remain open.

11-02-01 - Letters will be sent to the doctor and the optician in this case. The letters will advise that any changes to prescriptions must be made by a licensed optometrist in the state of Oregon, citing ORS 683.180(7) regarding the practice of optometry without a license. The doctor must formulate an office policy to prevent any violation of this statute. A copy of the policy must be sent to Board for the next meeting. The parties will be advised about OAR 852-020-0045 regarding Business Entity Organization, which will be enforced beginning January, 2012. This case will remain open.

11-02-03 - The investigation in this case will continue. A letter will be sent to the doctor requesting additional documents pertaining to the complainant. In addition, the Board will ask for records of five more patients for review at the next meeting. This case remains open.

11-03-01 - The complainant in this case alleged medical malpractice on the part of an optometric physician. The complainant was incorrectly directed to the Oregon Negligence/Malpractice Claim form on the Board's website. The complainant completed and sent the form to the office of the Board and was immediately redirected to the Board's "Request for Investigation" form. The complainant did not reply. A followup letter was written on August 15, 2011. No additional information has been received. This case will be closed.

11-04-01 - After reviewing the records in this case, letters were sent to the physicians and the complainant in this case. The Board did not find any optometric error or violation of Oregon Revised Statutes or Administrative Rules. The patient care has met or exceeded the standard of care. No response has been received from any of the parties. This case will be closed.

11-04-02 - The complainant in this case was dissatisfied with the care received from an optometric physician. "Request for Investigation" forms were mailed to the complainant on April 20, 2011. No response was received. A second letter was mailed on August 15, 2011. No additional information has been received. This case will be closed.

11-06-02 - Patient records have been received from the doctor and reviewed by the Board in this case. Letters will be sent to both the doctor and the patient explaining that, while the Board finds no optometric error or violation of Oregon Revised Statute and Administrative Rules, they feel that communication needs to improve, and that the Board does not give guidance in fee disputes of this sort. This case will remain open.

11-06-02 - The Board instructed Ms. Boudreau to continue to attempt to contact the complainant in this case. The investigation will continue. This case will remain open.

11-07-01 - An optometrist has asked the Board to review the practice standards of a licensee. Letters will be written to the parties requesting copies of patient records. This case will remain open.

11-07-02 - The complainant was concerned about the care received from an optometric physician. The complainant has not returned the complaint forms. A follow up letter was sent on August 15, 2011. No additional information has been received. This case will be closed.

11-08-01 - The Board will continue the investigation in this case. This case will remain open.

04-06-07 - This case is closed and the doctor's practice is being monitored. The Board will invite the doctor to the Executive Session on November 4, 2011 for an interview.

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

CORRESPONDENCE -

Approval of Len Hua, OD as Council on Optometric Practitioner Education (COPE) reviewer - The Board has no objections to Len Hua, OD being included on the panel of physicians who review continuing education courses for COPE.

Douglas Smith, OD - This physician would like clarification regarding which license certificates are required for multiple practice locations. After discussion, the Board has determined that, if the doctor does not wish to have a license certificate for every location in which he or she practices, a multiple-location certificate is required and should be carried to any additional locations after the first, or primary, location. The lack of an exam lane does not define whether a location fits the definition of a practice location. ORS 683.010(3) defines the practice of optometry. If a screening does not fit the definition of optometry, then no license is required.

Kevin Dean, OD - This licensee has a question regarding the validity of electronic signatures on prescriptions. The Board concluded that electronic signatures are not prohibited.

Carla Clark-Stoeger - This optician is requesting the Board's position on filling contact lens prescriptions within a week prior to an expiration date. The Board concludes that if the prescription is valid, and not expired, it can be filled. If there is no limit to the number of boxes that may be dispensed, the patient can buy as many as desired.

Paul E. Koch, OD - This physician has a question about his qualification for licensure in Oregon. He has not completed any of the sections of the National Board of Examiners in Optometry (NBEO) tests. AAG Lindley advised that the Board has authority to endorse the State of Ohio licensing exams if they believe that the examinations are comparable to NBEO Parts I, II and III.

PRESIDENT'S REPORT -

Dr. Mans reported that, even prior to the recent audit of the Board's finances and procedures, he has been taking steps toward having a second signature authorized on the Fidelity Investment Accounts. He proposed a resolution that will add Dr. Garris as an authorized signer on the accounts. Dr. Pelson made a motion to adopt the resolution as presented. Dr. Lynch seconded the motion. There was no additional discussion. The motion carried unanimously by oral vote.

Dr. Mans suggested that the discussion regarding the audit report, which was provided by Wicklund & Lew, LLC, be postponed until the next regular meeting since Ms. Valerie Wicklund was not available to attend this meeting. She will be invited to attend the next meeting, which is scheduled for November 4, 2011. The Board agreed to postpone the discussion.

Dr. Mans presented a resolution to the Board to add the new Executive Director as an authorized signer on the Board's U.S. Bank accounts. Dr. Lych made a motion to adopt the resolution as presented. Dr. Garris seconded the motion. The motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT -

Accounting/Budgeting: As the Executive Director position has been vacant since August 5, 2011, there is no Accounting/Budgeting report at this time.

Board Activities Report: The Board reviewed the cumulative report for the 2009 - 2011 Biennium. The Board also reviewed the report for current fiscal year ending June 30, 2011.

COMMITTEE REPORTS -

Continuing Optometric Education: Dr. Lynch recommended that the Board ratify the continuing optometric education courses approved since the last Board meeting, including designation of acceptable TMOD offerings. Dr. Pelson seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

Pacific University College of Optometry has submitted the Advanced Ocular Therapeutics Online Course for consideration. Dr. Lynch has reviewed the course and she recommended to the Board that they approve the PUCO online 23-hour course as comparable to the previously approved live course. Dr. Garris seconded the motion. Dr. Mans asked how the exam portion will be proctored? Ms. Boudreau will ask the staff at PUCO for their examination protocol. There was no additional discussion. The motion passed unanimously by oral vote.

Dr. Lynch made a motion that the Board adopt a change to policy requiring surgical clinics to renew their COE approval periodically. This will allow the Board to review the monitoring procedures and surgical observation criteria of the clinics. She recommends a three-year period between reviews. The motion was seconded by Dr. Pelson. There was no additional discussion. The motion carried unanimously by oral vote.

Budget Committee: There was no report from the Budget committee at this time.

Legislative Committee: There was no report from the Legislative Committee at this time.

Administrative Rules Committee: The Board discussed proposed changes that were presented by the former Executive Director:

- **OAR 852-001-0002 – Definitions** – Dr. Mans suggested that a glossary of terms might be published on the Board's website so that adjustments can be made to the list without requiring a hearing. He would like to review the definitions and revisit the list. AAG Lindley reported

that the Board of Massage Therapists, the Board of Dentistry and the Board of Chiropractic Examiners have their definitions in rule. The Board will table the proposed changes to this rule at this time.

- **OAR 852-010-0051 – Records** – The Board is not in favor of the changes as proposed. No action will be taken at this time.
- **OAR 852-010-0080 - Schedule of Fees** – The proposed changes are related to changes proposed to OAR 852-050-0016 - Notice of Place of Practice. No action will be taken at this time.
- **OAR 852-050-0006 - Annual Renewal of Active License** – The Board is not in favor of the changes as proposed. No action will be taken at this time.
- **OAR 852-050-0016 - Notice of Place of Practice** – The proposed changes remove the graduated fees for failure to notify the Board of practice locations. If the Board decides to change this rule, a hearing is not required.

No changes to OAR 852 will be proposed at this time.

Personnel Committee: Dr. Pelson made a motion to change the Board Personnel Policy to delete language concerning “comp- time” for the Executive Director. Dr. Lynch seconded the motion. There was no additional discussion. The motion carried unanimously by oral vote.

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

OTHER: There was no other business before the Board. The next meeting of the Board is scheduled for November 4, 2011.

ADJOURNMENT - There was no further business to come before the Board and President Mans adjourned the meeting at 3:42 p.m.

Prepared by:



Catherine M. Boudreau
Administrative Assistant

Approved by:



Nancy Sellers
Executive Director