



OREGON BOARD OF OPTOMETRY

November 4, 2011 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
Cathy Boudreau, Administrative Assistant
Debbie Hendricks, Administrative Assistant

Board Legal Counsel: Lori Lindley, Assistant Attorney General

Others in Attendance: Sandra Bishop, representing Luxotica; Charles McBride, OD,
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.

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 1:30 p.m.

MINUTES: The Board reviewed the minutes of the August 26, 2011, 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. Lynch 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 license to Active status: Lyndon Graves, OD
Reactivation of license to Active status: Amanda Balsalobre, 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 the new candidates into the record.

Dr. Lynch made a motion that the Board approve these actions by the Executive Director regarding licensure, which were made since the last Board meeting. Ms. Thrush seconded the motion. The motion carried unanimously by oral vote.

ACTIONS ON EXECUTIVE SESSION:

10-05-01: The Board reviewed the response from the doctor in this case and believes that he is taking the Board's comments seriously. The Board did not find any violation of Oregon Revised Statute or Oregon Administrative Rules. This case will be closed.

10-12-02:

11-02-04: A Notice of Proposed Disciplinary Action was issued to Jeremy Graziano, OD on February 23, 2011, in these cases. 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 hearing will be November 10, 2011, in the Board's office. These cases will remain open.

11-02-01: It is the opinion of the Board that an optician altered a prescription in a patient record. The Board considers making any changes to a prescription to be the practice of optometry. The doctor at the practice has submitted changes to his procedures to ensure the infraction does not occur again. The Board decided not to pursue disciplinary actions at this time. The Board will close this case.

11-02-03: Letters will be sent to both the complainant and the doctor in this case, explaining that the Board does not find any optometric error, or violation of Oregon Revised Statutes or Oregon Administrative Rules. They believe that the pharmaceutical agent was appropriately prescribed, and that the doctor has a record of what the patient signed. A copy of the signed form will be sent to the patient, advising her to be aware in the future of what she is signing. The doctor will be advised to ensure in the future that patients are fully informed about, and in full agreement with, any recurring charges before signing, particularly if a patient's eyes have been dilated. This case will remain open.

11-06-02: A letter will be sent to the complainant explaining that, after extensive review and lengthy discussion, the Board does not find any error or violations of Oregon Law and Rules. The Board understands the patient's concerns; however, there is nothing in law or rules that prevent an optometric physician from discontinuing patient care. The patient should contact the appropriate office regarding her concerns about Medicare Fraud, for which she has already been given contact information. This case will be closed.

11-06-02: The Board will send a letter to the doctor in this case, citing OAR 852-060-0027(15)(c). Board requested that AAG Lindley run a query on Oregon Justice Information Network (OJIN) on this doctor. This case will remain open.

11-07-01: The Board will request unredacted copies of the records from the complainant in this case. Dr. Lynch will compile a list of patient records with apparent violations for AAG Lindley. A letter will be sent to the doctor under investigation, requesting patient records from the past six months, including five records of patients diagnosed with diabetes, five records of patients diagnosed with glaucoma, and five other records. This case will remain open.

11-08-01: The Board is satisfied that the case is resolved. This case will be closed.

11-09-01: The complainant in this case did not wish to continue with the request for investigation. The Board is satisfied that the case is resolved. This case will be closed.

11-09-02: A letter will be sent to the doctor under investigation in this case regarding the thoroughness of the patient records. A letter will be sent to the complainants regarding their office policy of documentation of patient records releases. This case will remain open.

11-09-03: A letter will be sent to the doctor under investigation in this case regarding the thoroughness of the patient records. A letter will be sent to the complainants regarding their office policy of documentation of patient records releases. This case will remain open.

11-09-04: The Oregon Board of Optometry has no jurisdiction in this case. This case will be closed.

11-09-05: After investigation, the Board is satisfied that the case is resolved. There is no violation of Oregon Revised Statute or Administrative Rules. This case will be closed.

11-09-06: The business in this case has complied with the Board's instructions. The Board is satisfied that the case is resolved. This case will be closed.

11-10-01: The Board will subpoena patient records for review in this case. This case will remain open.

11-10-02: This case was not ready for consideration. This case will remain open.

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

CORRESPONDENCE :

Jana Mounts, OD – Transfer of Electronic Patient Records: This doctor has used a proprietary Electronic Medical Records (EMR) program to maintain her patient records. This program is not often used by optometrists and the data cannot be transferred electronically in a readily usable format. Dr. Mounts is closing her current office and moving to another state, and she intends to take the EMR with her for her next practice. She is asking for the Board's determination about her responsibility when the records must not leave the custody of a doctor licensed and practicing in Oregon. The Board

acknowledged that the records may not leave the state, and to be transferred to another physician, the records must be converted to a readily usable format.

Laura Cirilli – Services under CPT 95930 within scope of optometry practice: The Board determined that procedures performed under CPT code 95930 are within the scope of optometry practice. They suggested that Carol Timpone, OD at Pacific University College of Optometry would be a good resource for guidance. Tracy Oman, Executive Director, Oregon Optometric Physicians Association referred the Board to an article on coding for high technology tools that was published in the August 2011 issue of “Review of Optometry.”

PRESIDENT’S REPORT:

Dr. Mans submitted the names of two doctors who have applied for licensure by endorsement. He reviewed the applications and examinations each physician completed in their current states of licensure. Dr. Mans compared these examinations to those required in the state of Oregon in the years that these doctors were originally licensed. He reported to the Board that the examinations were comparable to those required in Oregon.

Dr. Mans made a motion that the Board approve the examinations completed by Paul Koch, OD, and accept them in lieu of the Oregon examination. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

Dr. Mans made a motion that the Board approve the examinations completed by John A. Wiener, OD, and accept them in lieu of the Oregon examination. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

EXECUTIVE DIRECTOR’S REPORT:

Ms. Sellers submitted the following reports to the Board:

- **Exhibit B - Accounting/Budget:** 2009-2011 R&E Report, FY 2011-2012 YTD Balance Sheet. Ms. Sellers reported that the Board had a budget surplus of 8.63 percent at the end of the biennium which is transferred to the Board’s reserves. She created a new quarterly report where the revenues and expenses will reflect the current quarter’s percentage of budget used. In the current budget period, the Board is on track, with revenues over expenses of 13.47 percent of budget. The Balance Sheet dated October 27, 2011, reflects a total of \$279,930.62.
- **Exhibit C - Board Activities Report:** Ms. Sellers reviewed the statistics for the close of the biennium and the months following. There are currently 1,232 optometric physicians licensed by the Board.
- **SB 563, regarding previously licensed providers volunteering in declared emergencies:** Ms. Sellers has been participating as a member of a rulemaking advisory committee regarding SB 563. In case of a disaster, previously licensed doctors may be called upon to assist the public. These physicians must have been licensed in good standing within the prior 10 years and are subject to criminal background checks. Ms. Sellers reported that all healthcare practitioners will be permitted to practice as governed by an on-site medical director, and only

to the level that their license previously allowed. The Board will be involved in determining criteria and standards to govern formerly licensed optometrists.

- **HB 2381 Implementation:** State of Oregon Personnel Policies become effective January 1, 2012. The 2011 bill requires the Board of Optometry, Board of Massage Therapists and the Physical Therapists Licensing Board to come under Oregon Department of Administrative Services personnel policies at a yet undetermined level.

Ms. Sellers has an appointment with DAS next week to work on job classifications for the Board's staff. She recommends that the position held by Ms. Boudreau be classified as an Executive Assistant, and the one held by Ms. Hendricks be classified as an Accountant Technician 3. These position descriptions seem to accurately reflect the current duties for these positions.

There are other issues to be resolved that are specific to OBO, such as the conversion of Paid Time Off (PTO) to vacation and sick leave, the implementation of required furlough days, and holiday leave. Ms. Sellers said that she has reviewed recordings of the hearings on HB 2381 and found inconsistencies in the expressed intent of the bill. She requested clarification from DAS Director and COO Michael Jordan and from Representative Mitch Greenlick, who sponsored the bill. She will keep the Board informed as information becomes available. She noted that there are additional agencies seeking semi-independence and Mr. Jordan is looking seriously at issues that will ultimately affect all semi-independent agencies. The issues that are being discussed do not involve any of the budget or financial independence previously granted to semi-independent boards, but do affect personnel policies and practices.

- **LEDS Update:** Ms. Sellers has investigated the procedures that will be required of the Board staff for performing LEDS inquiries. State Police has developed a process of inquiry that will be reasonably free from auditing requirements for these limited licensing inquiries. The system will allow inquiry into a limited range of records within LEDS, giving access to only criminal history. The external cost to the Board will be \$67 per year. The computer used for the inquiries must be secured. Once proficient, the inquiry process is expected to take approximately 10 minutes a day. Ms. Sellers anticipates that she should have the program up and running by the next meeting. She will be certified and perform the inquiries. If the pilot program works well, the duty may be handed off to other staff as they are certified.
- **OBO Newsletter:** It has been several years since a newsletter has been sent by the Board. Ms. Sellers asked what presence the Board members would like to have in the newsletter. She offered to compose articles on the Board's behalf. She invited the Board to suggest topics. She expects to have a newsletter letter prepared by December. This issue will be sent by mail, requesting e-mail addresses, with the goal of sending the publication by e-mail in the future.
- **Enterprise Risk Management Evaluation/Information Security Survey:** Ms. Sellers reported that the prior Executive Director appeared to have completed the survey in a way that was a poor reflection of the Board's actual information management processes and procedures. At Ms. Sellers' request, she and Ms. Boudreau met with Cinnamon Albin of DAS Enterprise Risk Management. As a result of her interview, Ms. Albin now is of the opinion that the Board is protecting information very well, overall. An area which remains a concern is the electronic transfer of information from the office to the Board members. She suggested more-secure methods of transferring information, including using password-protected thumb

drives, or a password-protected website. AAG Lindley stated that two other boards that she counsels use USB drives that are password-protected. One board purchased Netbooks for their members, on which the documents are pre-loaded. The Medical Board has a portal on their website that their members access by password.

Ms. Sellers reported that DAS recommends iPads as an option because of the strong encryption system with automatic security updates, and the relatively low cost. She noted that any changes made should not only benefit the Board now, but also in the future. Another change that she intends to research is streaming the Board's meetings on the OBO website.

- **Guest opinion responses:** Using "Flash News," at DAS, a guest opinion was distributed statewide under Dr. Mans' signature about cosmetic contact lenses, reinforcing that it is illegal to sell them without a prescription. The Oregon Optometric Physicians Association also published an article on this subject. Ms. Sellers did follow-up interviews with radio stations KEX and KFLS, which aired stories on the topic. Ms. Sellers asked the Board to submit ideas for future guest opinions to her.
- **Jeremy Graziano, OD hearing on November 10, 2011:** ALJ Lindley reported that she is preparing Ms. Boudreau for the hearing that will be held at the OBO office. The hearing will be recorded and the Board will have access to the recording. The length of the hearing will depend on the number of witnesses called by each side. AAG Lindley is not aware of any witnesses to be called by Dr. Graziano. She plans to call two or three witnesses. A proposed order will be prepared by the Administrative Law Judge approximately 30-45 days following the hearing.
- **Oregon Boards and Commissions Handbook and online training:** Ms. Sellers distributed the Governor's Boards and Commissions Handbook to the Board members and encouraged them to take the Governor's Office online training. She recommended that the Board review this information to keep abreast of any changes. In keeping with the recent audit report recommendations, Ms. Sellers and AAG Lindley will present some training at the February meeting on Public Records Law and Public Meetings Law. AAG Lindley offered to provide Contested Case Hearing training as well, which the Board felt would be beneficial.
- Ms. Sellers reported that Richard Roth, OD, has not filed an appeal to the Board's action of revocation of his license. The cases that resulted in the revocation have already been closed. No further action is required.
- Ms. Sellers reported she has completed sorting and compiling all of OBO's DOJ advice and opinion files. She has organized files containing legal advice chronologically since 1925, and at some point will enter topics into a searchable Access database. The availability of this information will benefit both the Board's staff and the Assistant Attorney General, since research previously performed will not have to be duplicated.

BOARD MEMBER REPORTS:

Continuing Optometric Education: The continuing education offerings that have been approved since the last meeting were presented to the Board in Exhibit D. Dr. Lynch made a motion that the

Board ratify the approval of these courses. Ms. Thrush seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

Budget Committee: There were no changes to the budget from the Budget Committee chairperson, Dr. Garris. Dr. Mans asked Ms. Sellers whether adjustments to the Board's current budget will be necessary to cover the costs that accompanied the changes in personnel with regard to the Executive Director position. Ms. Sellers said the Board is currently operating within the parameters of the adopted budget, and will keep them informed as the biennium progresses.

Legislative Committee: Dr. Pelson reported that the next session of the Legislature will begin in February 2012. There is no legislation to report at this time.

Administrative Rules Committee: Ms. Thrush recommended that the Board that move forward with developing an Administrative Rules Advisory Committee. Ms. Sellers will coordinate with Ms. Thrush to recruit qualified individuals to participate on the committee after the first of the year.

Personnel Committee: Dr. Mans thanked the staff for the timely disbursement of information for this meeting.

ITEMS FOR BOARD ACTION:

The following items were presented to the Board for action:

Public records retention policy: The Board considered amendments submitted by Ms. Sellers to the current retention policy. These amendments will change the Board's retention policy to ensure full compliance with the Secretary of State's Archives Division requirements. Dr. Garris made a motion that the Board adopt the amendments in the draft retention schedule dated October 27, 2011. Dr. Lynch seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

Audit report by Wicklund and Lew: Ms. Sellers reviewed the report with the Board and made recommendations for their response:

- Finding #9 will be removed – CPA Valerie Wicklund agreed that this recommendation is not currently necessary or practical in light of the Board's current practice of auditing 100% of CE reports by licensees, and the importance of that to the mission of protecting the public safety and health. CPA Wicklund will issue a new report.
- Finding #3: Ms. Sellers presented a resolution for the Board to consider that will add the executive director as an authorized signer on the investment account. She recommends that a policy be adopted by the Board that will require a vote by the Board prior to any transactions.
- Finding #14: The Board considered who will review the executive director's bank reconciliations and by what means. Dr. Garris will review the reconciliations. They will be submitted to him by e-mail.

Dr. Pelson made a motion to receive the audit report from Wicklund and Lew. Ms. Thrush seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.

Personnel Policies Manual updates:

- Ms. Sellers recommended that the Board adopt a change to limit accrual of Paid Time Off (PTO) from 60 days to 480 hours; “days” is subjective to the number of hours an employee is scheduled each workday, which may change. “Hours” is an objective measure. Dr. Garris made a motion that the Board adopt the change as proposed to the Board’s Personnel Policy. Dr. Pelson seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.
- Ms. Sellers recommended that the Board adopt a change to the OBO Personnel Policy to allow accrued catastrophic sick leave time to be transferred to another state agency as sick leave upon termination of employment with the OBO, in keeping with Oregon statutes and statewide personnel policies. Ms. Thrush made a motion that the Board adopt the change as proposed to the Board’s personnel Policy. Dr. Pelson seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.

Rulemaking status: Ms. Sellers asked whether the Board wishes to resume work on draft rule OAR 852-020-0040, regarding relationships between licensed optometrists and commercial optical establishments. The Board is interested in re-opening this rule.

Potential legislative concepts: Ms. Sellers discussed potential legislative concepts for the 2013 Legislative Session:

- Authority to appoint an executor for abandoned optometry records. The Board does want to proceed with a legislative concept related to this issue.
- Revision of ORS 683.510-530 to clarify dispensing privileges for opticians in Oregon. The Board does want to proceed with a legislative concept related to this issue.

Staff compensation: Ms. Sellers distributed a proposal to grant staff a cost of living increase matching that given to other unrepresented State employees of 1.5 percent beginning December 1, 2012. She also recommended that the Board increase the base salary for Ms. Hendricks by 7 percent to bring her salary into line with her responsibilities. She also recommended that the Board award \$500 one-time bonuses to Ms. Hendricks and Ms. Boudreau for outstanding service based on a review of their performance during the exceedingly difficult circumstances over the past year. Dr. Pelson made a motion that the Board adopt all the recommendations with regard to staff compensation as proposed. Dr. Lynch seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.

Fidelity account access: Ms. Sellers submitted a resolution to add the executive director as an authorized signatory on this account. Adoption of this resolution will require two signatures for future transactions. Ms. Thrush made a motion that the Board adopt the resolution as presented. Dr. Pelson seconded the motion. There was no further discussion. The motion carried unanimously by oral vote.

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

OTHER: The Board established meeting dates for the coming year. The meetings are scheduled for February 3, 2012; May 11, 2012; August 10, 2012; and November 2, 2012.

ADJOURNMENT: There was no further business to come before the Board and President Mans adjourned the meeting at 3:20 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:



Nancy D. Sellers
Executive Director