



OREGON BOARD OF OPTOMETRY

November 7, 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: Janet Baker, Executive Director of the Oregon Optometric Physicians Association (OOPA); Lindsey Clunes, OD

CALL TO ORDER: Dr. Mans called the meeting to order at 9:03 a.m., in the first floor conference room at 1500 Liberty Street SE, Salem, Oregon, 97302. The Public Session was adjourned at 9:04 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 1:15 p.m.

MINUTES: The Board reviewed the minutes of the August 1, 2014 Public Session. There was no discussion and the Board made no changes or additions to the minutes. Dr. Pelson made a

motion that the Board approve the minutes as presented. Ms. Webber 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** – Orbal Anwari, OD
- **Reinstatement to Active Status** – Dione Schubach, OD
- **Reinstatement to Inactive Status** – James Kintner, 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. Cardinal 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:

13-09-02 - Biggar/Khoshnaw

13-09-03 - Biggar/Shapoval, V

13-09-04 - Biggar/Shapoval, O: The Board issued a Notice of Intent to Discipline, Reprimand and Imposition of Civil Penalty of \$1,500 for combined violations in the three cases: 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 within 14 business days of the request; 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. No request for a hearing was made by the licensee and a Final Order was issued on September 5, 2014. The civil penalty has been paid by the doctor and, upon his request, a letter was sent to the licensee confirming that the terms of discipline had been fully met.

These cases will be closed.

14-05-01: The Board will issue a letter of concern in this case. The letter will inform the doctor that the Board does not find the allegations about another optometrist to be credible, nor does the evidence support the allegations. In addition, the Board has concerns that the doctor in this case is over-testing and overbilling patients, and managing some conditions in a manner that may instill undue fear in patients. The Board has concerns that this doctor is not appropriately consulting with or referring glaucoma patients to ophthalmologists as required. The Board will warn the doctor against future unprofessional conduct, and will document the findings in this case to be available in investigating any future complaints about this doctor.

This case will be closed.

14-07-01: The Board reviewed the records received from the doctor in this case. They find that there is no optometric error or violation of statutes or administrative rules. Letters will be sent to the doctor and complainant.

This case will be closed.

14-07-02 – Hoyt, Kimberly/OBO: On August 15, 2014, the Board issued an Interim Order in this case, suspending the doctor's license until the Board's requirements are met. The requirements include submission by the doctor to a substance use disorder evaluation by a Board-approved evaluator and abstention by the doctor from use of alcohol, controlled drugs or mind-altering substances unless prescribed by a licensed practitioner for a bona fide medical condition, and upon prior notice to the Board. Licensee agreed not to practice until the Board has accepted the recommendations of the evaluation in writing, and the evaluator confirms the doctor is competent to return to practice. Licensee agreed that any violations of the order may result in further disciplinary action.

The Board received a report that the doctor was arrested for DUII and tested a blood alcohol level of .25 while under the conditions of the Interim Order.

Dr. Lynch made the following motion: "Licensee must sign a consent order agreeing to substance abuse treatment and supervision acceptable to the Board and agree not to practice optometry before demonstrating six consecutive months of proven sobriety to the Board. If licensee does not sign this order within 14 days, the Board votes to revoke the license." Ms. Webber seconded the motion. The vote passed unanimously by roll call vote with no abstentions.

This case will remain open.

14-08-01: The Board reviewed patient records in this case of a licensee who is no longer licensed to practice in Oregon. They concluded that there are deficiencies in some of the records that are not in keeping with current standard of care. However, the doctor had already resigned his license and stated an intention to never return to practice, so public safety and health is not at risk. The Board will send a letter to the doctor explaining that the investigation would be reopened if the doctor ever changes that decision and applies for reinstatement.

This case will be closed.

14-08-02: The doctor in this case is deceased and another licensee has assumed custody of the patient records. No additional action is required.

This case will be closed.

14-09-01: The Board finds that the allegations in this case were not substantiated. There is no violation of Oregon Revised Statutes or Oregon Administrative rules.

This case will be closed.

14-09-02: The Board issued a letter in this case requiring that the retail establishment discontinue the sale of contact lenses without first obtaining a current prescription. The establishment has discontinued the sale of lenses. No additional action is necessary

This case will be closed.

14-09-03:

14-09-04: The Board will obtain additional information in these investigations.

These cases will remain open.

14-09-05: The Board reviewed the investigation request, but no patient records have been received. This case is not yet ready for Board review.

This case will remain open.

14-10-01: This case is not yet ready for Board review. Additional information will be obtained.

This case will remain open.

14-10-02: This case is not yet ready for Board review. Additional information will be obtained.

This case will remain open.

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

CORRESPONDENCE:

- Tad Buckingham, OD, regarding Schedule II drug prescribing: There is no move by this Board to reopen the statute that regulates the use of scheduled drugs by optometrists. Ms. DeSouza has shared her concerns with the Oregon Optometric Physicians Association about opening the optometry statute unless the relating clause of the legislation is tightly restricted to only the prescribing of hydrocodone-combination drugs.

PRESIDENT'S REPORT:

- Application for licensure by endorsement of another state-administered clinical examination – Siena, OD - Dr. Mans reviewed the application of this doctor and the supporting documents. He reported to the Board that there is insufficient information available for the Board to perform a comparison of the examination that the applicant passed in the state of Arizona with Part III of the NBEO examination, which is the exam that was required for licensure in Oregon in the same year. Dr. Siena may satisfy the examination requirement for licensure by completing Part III of the NBEO exam.

EXECUTIVE DIRECTOR'S REPORT:

Ms. DeSouza submitted the following reports and updates to the Board:

- **Exhibit B - Accounting/Budget:** 2013-15 R&E Budget Report and Balance Sheet – Ms. DeSouza submitted the current financial report and approved budget for the current biennium to the Board. She reported that the Board is significantly (26.9%) below budget.
- **Exhibit C - Board Activity Report:** The Board reviewed the report for the current period. Ms. DeSouza noted that the Board's numbers are consistently stable. Dr. Mans asked whether the number of people in the profession is increasing. Ms. DeSouza said that Oregon's numbers are not changing much. Dr. Cardenal remarked that the number of new applicants to optometry schools has increased, and that new schools of optometry have recently been opened.
- **Affirmative Action Report** – As a semi-independent agency, the Board has not previously completed this report required of traditional state agencies. However, at a recent SIBA meeting, the Governor's Affirmative Action Director said that semi-independents were not excluded from the requirement. OBO and others were given the option to file a short report for the 2015-17 biennium, and will be required to complete the full report the following biennium. Because the OBO is such a small agency and has no control over who applies for licensure, the report will likely be of limited use compared with large agencies, but still must be done.
- **Database and Online Renewals** – The Board's Access database is adequate for current needs, but will not accommodate online renewals and other electronic data transfers. Ms. DeSouza has been investigating options to develop or otherwise adopt a more robust database that would allow the Board to make desired technology changes. However, there is no good option readily available. Several licensing boards have ageing systems that need replacement. She believes it would be short-sighted to seek an independent database solution for the OBO, both in high up-front costs and risks.

With encouragement, DAS has begun conversations at the policy level on developing a shared solution that could be customized for individual agencies at a reasonable cost and with long-term sustainability and support. DAS hopes to begin meetings for discussing possibilities in early 2015.

Ms. DeSouza said that for now, the Board has no clear choices to implement online renewals. NIC is the contractor for the Oregon.gov websites and is backlogged more than a year. However, the Board can move forward with accepting continuing education by attestation which could be completed by mail until an electronic solution is available. Credit card payments may begin in July 1, 2015, with card processing costs built into the budget for the 2015-17 biennium. Other considerations include the data provision requirements of the common credentialing system for health licensing boards.

- **Digitizing Board Records** – The SIBA group met with representatives from the Archives Division and a contractor that has developed an online document storage and retrieval system that is expected to be readily available and cost effective soon. The bulk of the Board's records are on paper, which is a risk in the event of a catastrophe. The

hope is to begin that project in the next six months. The proposed budget includes funding for scanning and staff time. The paper files can eventually be destroyed when the Board is sure of the security of the digitized files. Ms. Webber stated that the Board must first declare that the digitized files are the official record, and then the paper files no longer need to be retained.

- **OOPA** – Ms. DeSouza recently met with OOPA’s new executive director, Janet to discuss the different roles of OBO and OOPA, and how they can work together to protect public safety and health, while OOPA advances the goals of the profession. Another meeting is scheduled with Ms. Baker, OOPA’s Advocacy Director Nicole Rush, and OOPA’s lobbyist, Bill Cross to discuss issues that may come up in the 2015 legislative session.
- **Pharmacy Dispensing** – The Board of Pharmacy is moving forward to exempt pharmaceuticals in original packaging from additional dispensing requirements, as long as current labeling rules are followed. Otherwise, when repackaging products, a dispensing license will be required. If an exemption is granted in statute for some healthcare providers, optometrists should also be included in the exemption.
- **Healthcare Provider Reporting** – The OBO collects voluntarily race and ethnicity data from licensees, but is not required to report that information to any other agency. State law requires the boards of Medicine, Nursing, Dentistry and Pharmacy to report that information to the Oregon Health Authority. OHA has a 2015 legislative concept to expand the participation to all health-related licensing boards. The data would be collected in during online license renewals through a link where a licensee must complete a questionnaire before the renewals is completed. There are reports from participating boards that the online system does not always work well. There also is a \$5 charge per licensee that the boards must collect and remit to OHA to pay for the system. As of this time, boards without online renewals would be exempted until their technology advanced.
- **Succession Planning** – Ms. DeSouza reported that, in light of expected staffing changes next biennium, succession planning becomes more important. All the Board’s major processes have been recorded, and more details will be captured in policies and procedures to ensure smooth transitions and continuity.
- **Recruitment for Board vacancy** – Dr. Mans agreed to continue with the Board past the end of his term until a new member is confirmed, likely in February. OOPA was asked to compile their list of recommended nominees. Ms. DeSouza will vet the list of those who have completed Executive Interest Forms and submit comments to the Governor’s Office for their consideration.

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: 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: Dr. Mans expressed the Board's great satisfaction with the staff's performance and reported that evaluations for this year have been completed with favorable reviews. He expressed his hope that the employment of the current staff members would continue long into the future.

ITEMS FOR BOARD ACTION:

Administrative rule changes, effective January 1, 2015 – Ms. DeSouza reported that no written public comment has been received to date, but expected such from OOPA regarding the change removing the requirement for live continuing optometric education (COE) hours for license renewal. Ms. DeSouza prepared and submitted a report of the hours of online continuing education that are permitted by other health-related licensing boards in Oregon, and other optometry licensing boards in the United States. She advised the Board that they may proceed with the vote today, and if comments received by 11/21/2014 lead any of them to revisit their decision, a special telephonic meeting could be called prior to the effective date of the rule changes.

Ms. DeSouza asked the Board to clarify their intent behind the administrative rule requiring an Oregon optometry law or ethics course be completed every other year. She explained that the option to carry forward COE hours from one license year to the next has inadvertently allowed some optometrists to complete the law or ethics requirement only once every three years. She proposed that the Board change the wording of the rule to require actual completion of the optometry law or optometric ethics hour every other year instead of allowing this hour to be carried forward for extra year. Ms. Webber made a motion to change the proposed rule to clarify that an hour related to either Oregon optometry law or optometric ethics by completed every other year. Dr. Pelson seconded the motion. The motion carried unanimously by oral vote.

Ms. DeSouza pointed out that the current administrative rule allows additional COE credit to a presenter of a course in a classroom setting, but technically does not allow the same credit to an author of an online COE course. She suggested that the Board adopt language in the proposed rule changes that will allow an author of an online course to get the same extra credit that a live presenter gets. Dr. Cardenal made a motion to change the proposed rule changes to allow an author of an online COE course to be granted the same additional credit that is granted to a presenter of a live course. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

Ms. DeSouza discussed the final proposed revisions to the adopted 2013-15 biennium budget. The Board reviewed the changes and had no objections or additional comment. Dr. Lynch made a motion that the Board include the budget revisions as presented. Dr. Cardenal seconded the motion. The motion carried unanimously by oral vote.

Dr. Pelson made a motion that the Board adopt the proposed changes to OAR 852 as amended. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

Items for Consideration/Discussion:

- Discussion of allergy patch testing by ODs: A question was submitted to the Board asking whether the use of an allergy patch for patient diagnosis is within the scope of practice of optometry. Ms. DeSouza discussed the issue with Ken Eakland, OD at Pacific University College of Optometry, and submitted correspondence from Dr. Eakland and others at PUCO. She reported that the Oregon Pharmacy Board doesn't regulate the use of these patches. She asked the Board if they had sufficient information to determine whether use of these tests is within the scope of optometry. Dr. Mans pointed out that representatives from PUCO believe there is clinical value to optometrists. Loren Yudcovitch, OD, from PUCO, commented that this would be a great tool for allergy testing by optometrists and that the results would help in the interdisciplinary care of patients. The Board discussed questions about whether the use of the patch test is valid when a doctor may not directly treat allergies. After discussion, the Board determined that the use of the patch may be used to diagnose or treat an ocular allergy. If a patient is presenting with allergic symptoms of the eye, it may be appropriate for an optometrist to use a patch test. It is not for appropriate for an optometrist to use the test for treatment of general allergies.
- One Board member reports getting a great deal of unwanted email in the personal account address listed in the Board's website, and requested that the public address be the Board-assigned G-Mail address. The other members were offered the same option, and each asked to remove their personal email addresses and the Board addresses to be used.
- The current printed optometry license lists the dollar amount of the fee paid by the licensee. Staff will be ordering license stock soon and questioned whether listing the fee paid was still necessary. The consensus of the Board is that this item may be removed from the license.
- Ms. DeSouza reminded the Board that officers will be elected at the first meeting in 2015. She asked that nominations be sent to her in advance of that meeting, although they also may be offered from the floor.

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

OTHER BUSINESS:

Future Meetings: The Board scheduled meetings for January 9, April 17, July 24 and October 23, 2015.

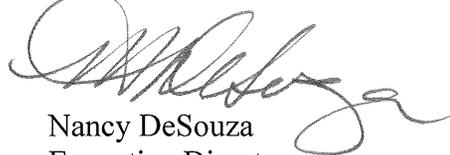
ADJOURNMENT: There was no further business to come before the Board, and President Mans adjourned the meeting at 2:27 p.m.

Minutes prepared by:



Catherine M. Boudreau
Executive Assistant

Approved by:



Nancy DeSouza
Executive Director