

President's Message: Rules Change with the Times

by Robert Mans, OD

Over the past year, you have seen amended rules from your Oregon Board of Optometry and new laws from the Oregon Legislature. The Board and its staff is charged with protecting the people of Oregon from the dangers of the improper and unlicensed practice of optometry. State and federal laws govern the scope of practice. It is up to the Board to interpret that into standards of practice that will support our mission of public safety and health.

We often teach CE courses on Oregon Optometric Rules and Laws at Oregon Optometric Physicians Association (OOPA) conferences. While we share a lot of information, we also get excellent questions and suggestions from the ODs in attendance.

Questions we received last year led to changes in the way optometrists are allowed to store their patient records, and how records are to be transferred in the event of the untimely death of an optometric physician.

That is one of the most gratifying aspects of serving on the Board: The opportunity to make improvements that respond to the changing practice of optometry, new technologies, and ways to streamline the regulatory process. We've got more in the works, including online renewals.

Please feel free to contact the Board's offices any time, and know that we welcome your questions, ideas and suggestions seriously, and will discuss them at upcoming Board meetings. You may be the change agent for our next rule or policy updates. We want to hear from you! ■

USPS Changes

Postal regulations have changed, and postage is determined not only by weight, but also by the dimensions and thickness of the envelope mailed. For example, a #10 envelope that is stuffed thicker than will go through the sorting machine requires more postage than that indicated only by weight.

The Board cannot accept "Postage Due" mail, which will be returned to the sender. Please ensure you have used the correct postage to get your renewal to the Board on time and avoid a late fee. ■

Welcome to the Board: Molly Cardenal, OD

The Board's newest member is Molly Cardenal, OD. She is a 2004 graduate of the University of Houston College of Optometry and completed a residency in Primary Care and Ocular Disease at the Portland VA Medical Center in 2005.

Over the next four years, she practiced with Northwest Permanente, seeing a wide variety of patients for general optometry, pediatric optometry and contact lens care, as well as ocular disease and surgical co-management with the department of ophthalmology.

Dr. Cardenal is a staff optometrist at the Portland VA Medical Center where she is the student program coordinator and is also actively involved with the clinical education of optometry and internal medicine residents.

In 2010, she became a Fellow of the American Academy of Optometry. Dr. Cardenal serves as the Board's Budget Chair.

An avid cyclist and long-distance runner, Dr. Cardenal enjoys spending her recreational time golfing, traveling and camping with husband David and their greyhound, Kiba. ■

Executive Director's Message:

2013 Legislation and Optometry

As President Mans wrote in his update, there have been a number of law changes that affect optometrists. You can read the full text of these measures at www.oregonlegislature.gov and look under “Bills & Laws” for the particular bill number.

HB 2037 **Professional Licensing of** **Military Spouses/Partners**

When members of the military are transferred to other states, the employment of their spouses/domestic partners is often interrupted – particularly if that spouse is in a licensed profession. The delays and added expenses of repeated licensure from state-to-state can inhibit military spouses’ ability to work in their chosen fields. To reduce unemployment in this population, HB 2037 allows health licensing boards such as the Oregon Board of Optometry to issue temporary licenses under specific circumstances for otherwise qualified applicants for Oregon licensure. In general, the Board issues a license the same day an application is complete. This bill allows the Board to issue a temporary certificate of licensure to optometrists who await verification of previous licensure from other states (which can take weeks to receive in some cases), as long as they have met all other licensing requirements.

HB 2195 **Reporting Impaired Drivers**

Optometrists already are mandatory reporters of severe cognitive or functional impairments that may affect a patient’s ability to safely operate a motor vehicle. HB 2195 extends legal immunity to designated physicians and health care providers making reports through the voluntary reporting program, which was established to report patients that do not yet meet the mandatory reporting threshold of severe and uncontrollable issues, but for whom the doctor has sufficient concerns about the ability of the patient to safely drive.

Drivers reported through the program are required to report to a DMV field office for evaluation and can have their license suspended if they fail to pass a driving or vision test. Approximately 73 percent of reports (of all types) result in immediate license suspension; only 11 percent of drivers whose licenses are suspended under the medical reporting program later regain their driving privileges.

HB 2205 **Mandatory Reporting of Senior Abuse**

This bill adds optometrists and other professionals to the list of those who must report elder abuse to the Oregon Department of Human Services or to local law enforcement. Mandatory reporters must do so not only when working in their professional capacity but also at any time in their personal lives that they observe suspected abuse. Oregon law defines an elderly person as any person 65 years of age or older and defines elder abuse as:

- physical injury caused by other than accident;
- neglect leading to harm;
- abandonment;
- willful infliction of physical pain or injury;
- unwanted sexual contact or the inability to consent to sexual contact; or
- financial exploitation.

HB 2611 **Cultural Competency CE** **for Health Care Professionals**

Beginning January 2015, the Oregon Health Authority must develop a list of approved continuing education cultural competency (CCCE) courses. The courses must teach attitudes, knowledge and skills that enable a health care professional to care effectively for patients from diverse cultures, groups and communities, including but not limited to applying linguistic skills to communicate effectively with patients from diverse cultures, groups and communities; using cultural information to establish therapeutic relation-

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ships; and eliciting, understanding and applying cultural and ethnic data in the process of clinical care.

By January 1, 2017, the OBO may adopt rules allowing or requiring CCCE courses to be taken in addition to or instead of existing CE requirements. The Board must document participation in cultural competency continuing education by licensees, may require documentation of course completion, and must report biennially to the Oregon Health Authority on the participation documented.

In 2012, the Board of Optometry participated in a CCCE workgroup, and anticipated this law change. In its rule revisions effective January 2013, the Board made provisions in OAR 852-070-0020 (3) to allow CCCE. When the Oregon Health Authority issues a list of acceptable courses, the Board will implement the new authority. Current proposals include either allowing or requiring one hour of CCCE every other year, in years opposite the required optometric ethics/Oregon law CE credit.

HB 3000 **Young Student Vision Health**

This bill amends ORS 326.580 and 683.030. It requires that beginning with the 2014-15 school year, education providers must ensure that each student who is seven years of age or younger who is beginning an educational program for the first time submits certification within 120 days that the student received a vision screening or an eye examination and any further examinations or necessary treatments of the eye or assistance of the powers or range of vision of the eye.

A parent or guardian may exempt the student from this requirement if they provide a statement that the student already met the requirement or that the screening or examination is contrary to the religious beliefs of the student or the parent or guardian of the student.

Screenings may be conducted by licensed optometric physicians or ophthalmologists, or by health care practitioners, employees of an education provider, or other persons authorized in State Board of Education rules to provide vision screening to students.

SB 288 **Changes DMV Vision Testing**

Since 2004, Oregon law allows persons with limited vision conditions who use a bioptic telescopic lens and who meet other established criteria to be eligible for restricted driving privileges in Oregon. The individual must have a visual acuity (with best lens correction) no better than 20/80 and no worse than 20/200, no diagnosis or prognosis that could result in deterioration below 20/200 acuity, a visual field of at least 120 degrees horizontally and 80 degrees vertically, and ability to be aided by a bioptic telescopic lens when operating a motor vehicle.

Driving privileges under the program are limited to daylight hours, unless a vision specialist indicates on a report submitted to the Driver and Motor Vehicle Services Division (DMV) that the vision impairment does not prohibit safe operation at night. Licensure requires vision exam, fitting with a bioptic telescopic lens, enrollment in a rehabilitation training program, passing the written knowledge test, and passing the DMV drive test.

One additional requirement for the limited vision condition program is that the driver must provide new certification from a licensed vision specialist every two years, and must also retake and pass a DMV-provided drive test every two years. Senate Bill 288 deletes the requirement that the driver retake the drive test every two years if their vision specialist provides DMV with documentation that their vision still falls within the range allowed for the program.

SB 470 **Prescription Drug Monitoring Program Changes**

The Oregon Prescription Drug Monitoring Program (PDMP) collects information on all Schedules II, III and IV controlled substances dispensed to Oregon residents. Oregon-licensed healthcare providers and pharmacists can register to access this information to help ensure that patients are not abusing prescription drugs. Each active licensee pays \$25 a year that is remitted to the Oregon Health Authority to pay for this system.

(Continued on page 16)

Rule Changes Affect All Optometrists

Nearly all of OBO’s Administrative Rules were updated, streamlined, or otherwise amended in some way in 2013. This was the first comprehensive review in decades for plain language, clarity, consistency and grammar, as well as keeping up with law and technology changes:

Division 1:

Updated and new definitions to reflect changes in standards of practice and terms.

Division 5:

0005: Revised 2011-13 Biennium budget to reflect limitation increase for under-funded payroll expenses and Board decision to upgrade computer systems and software within available fund reserves.

0015: Clarifies Board member compensation to reflect policy decisions of Board.

0030: Removes “temporary” status of adoption of State of Oregon contracting policies.

0040: Repealed, as required by 2011 HB 2381, which brought OBO staff under DAS HR Policies and Procedures on January 1, 2012.

Division 10:

0005: Clarifies that Board may delegate duties to Executive Director. Removes conflict with public meetings law.

0015: Clarifies current requirements for application for examination and licensure.

0020: Increases passing score on Oregon optometric law and administrative rules examination from 75 to 80.

0022: Clarifies current requirements for application for endorsement examination and licensure.

0023: Increases passing score on Oregon optometric law and administrative rules examination from 75 to 80.

0030: Clarifies responsibility for advertising not in compliance with Oregon law.

0051: Makes clear that patient records may be kept in an accessible electronic format. Adds provision for patient record transfer in the event of the death of an

optometric physician. Clarifies that patient records and prescriptions cannot be withheld for lack of payment.

0080: Eliminates fees for additional practice location license and portable multiple practice location license. Adds optional purchase of copy of portable multiple practice location license for \$25. Restores language for sliding fee scale for multiple failures to comply with rules.

Division 20:

0029: Clarifies required and optional prescription information; allows use of electronic signature. Makes optional the inclusion of number of contact lens refills and FTC requirements for setting a limit.

0031: Clarifies federal and state requirements that patients do not need to request their prescriptions. Clarifies that direct communication includes mail.

0035: Expands definition of immediate family to include domestic partners, stepchildren and in-laws.

0045: Deletes obsolete provision for compliance prior to January 1, 2012.

0060: Clarifies responsibility for the delegation of the duties of an optometrist to employees and defines direct supervision of those employees.

0070: Deletes obsolete provision for compliance prior to January 1, 2009.

Division 50:

0001: Removes obsolete provisions and definitions for optometric physicians’ licenses.

0005: Removes requirement to purchase additional practice location license or portable multiple practice location license for those optometric physicians practicing elsewhere than primary practice location. Provides free portable multiple practice location license to all active licensees. Clarifies licensing and posting requirements for practice locations. Adds new provision for optional purchase of additional copy of portable multiple location license for \$25. Clarifies that photocopies of licenses are prohibited.

0006: Clarifies that complete license renewals must be received or postmarked by due date. Adds lan-

guage regarding Prescription Drug Monitoring Program fund. Puts seven-year limit on look-backs for failure to timely renew license.

0012: Clarifies that complete license renewals must be received or postmarked by due date. Clarifies that suspension notices for inactive licensees will be sent by first-class mail. Requires reactivation requests to be made on a Board-supplied form and with required proof of meeting requirements for pharmaceutical agents. Reiterates requirement for criminal background check.

0013: Clarifies licensing rights and responsibilities of licensees serving in and separating from active military service.

0014: Requires reinstatement requests to be made on a Board-supplied form. Reiterates requirement for criminal background check.

0016: Removes requirement that active licensees hold additional practice location license for work elsewhere than primary practice location. Details requirements for reporting places of practice. Increases timeline for doing so from “immediately” to “within 14 days.” Allows multiple means of reporting, adding e-mail and electronic signatures.

0021: Clarifies optometric physician’s rights and responsibilities in volunteer service.

0022: Enables 2012 law provisions in ORS 676.340 and 676.345 for new liability limitations for volunteers. Establishes registration program and process.

0025: Removes provision that Board will provide an individual with their own criminal offender records, as this is prohibited by Oregon State Police and the Law Enforcement Data System.

Division 60:

0025: Adds practicing optometry in a location not reported to the Board to the list of causes for disciplinary action.

0027: Adds to the list of unprofessional conduct to include: advertising professional methods or superiority; claiming “board certification” without defining by what board; failing to train employee and supervise work delegated by optometric physician; prescribing scheduled drugs improperly; interfering with

the Board’s enforcement activities; deception in application or renewal; altering or falsifying patient or business records to avoid discipline; asking for sexual history except when medically necessary; failing to follow federal and state requirements for prescription release to patient; failure to retain patient records or provide them to the Board on request; failure to report own or other licensee’s prohibited or unprofessional conduct, arrests or convictions required by law.

0065: Changes required answers to charges as part of notices to parties in contested cases to comport with changes in AG’s Model Rules of Procedure.

0070: Changes requirements for hearing requests and answers to comport with changes in Attorney General’s Model Rules of Procedure.

Division 70

0010: Clarifies that licensees may carry forward excess continuing education hours from the prior year upon written request to the Board. Adds new provision granting one hour of CE credit per year for attendance at an official meeting of the Board.

0040: Removes obsolete provision for separate \$20 CE fee; costs are included in overall renewal fee.

0050: Removes obsolete provision; the Board no longer provides CE directly to licensees.

0055: Clarifies responsibilities of CE sponsors to proctor attendance and provide original source documentation to attendees.

0060: Renumber to 0054 and move above 0055. Reflects changes in categories of CE approved by the Council on Optometric Practitioner Education.

Division 80

0030: Clarifies that level of certification regarding pharmaceutical agents is printed on license. Encourages use of Oregon Prescription Drug Monitoring Program, for which licensees already pay during renewal.

0040: Clarifies process for certification to use pharmaceutical agents. Removes requirement that CPR certification renewal include a hands-on component. Removes obsolete provision for licensees prior to April 1, 2006. ■

Dilation in Diabetic Eye Exams:

Required for a Comprehensive Examination

Diabetes is a growing cause of serious eye problems in Oregon. According to the Oregon Health Authority, the incidence of diabetes is expected to continue steep upward growth. As an optometric physician, you are responsible for learning your patients' medical histories, and using that information to guide your examinations.

Recently, the Board had several investigations into doctors who, upon review of their records, were not properly documenting dilation and refraction of patients, particularly of those with histories of diabetes. Upon questioning, several of the doctors said that they were dilating, but hadn't properly charted it.

It is the opinion of the Board that a proper comprehensive eye examination of diabetic patients requires

a clear look at the back of the eye. If you are not doing a comprehensive examination or if the diabetic patient refuses dilation you should document it in the patient's record, and explain to the patient the risks of a lesser examination. Also document any referrals to other medical professionals.

The Board is aware of new technologies, such as Optos, which allow wide-angle views of the retina without dilation. This is an acceptable method to review the retina only if the image is clear. In cases where a patient has refused dilation, retinal imaging is considered comprehensive care only if clear images are obtained.

In any case, documentation in the patient record is mandatory. ■

Delegation to Techs

The optometric physician carries the sole responsibility for the patient's care. Delegation of duties does not discharge an optometric physician's responsibility for the accuracy and completeness of the work delegated. **An OD may only delegate those tasks that are not prohibited to well-trained technicians who are employed by and under the direct supervision of an optometric physician or medical doctor actively practicing at that location.**

Direct supervision – as used in ORS 683.030 – means the employee's activities are overseen and approved by an optometric physician or medical doctor practicing at that location and with an appropriate intervention protocol in place. An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, or final determination of any prescription or treatment plans. An optometric physician also may not delegate final tonometry for a patient who has glaucoma.

Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician. ■

80% Score to Pass Exam

The Board voted to increase the score needed to pass the OBO's online laws and rules examination from 75 percent to 80 percent.

Administered by NBEO, the exam is open-book and covers important administrative rules governing Oregon optometry.

Licensees also may take the exam online to fill their biennial Optometric Ethics/Law CE Requirement. The cost is \$25 through NBEO. ■

Electronic Signatures

Written notification from a licensee to the Board must be signed, and now may be made by mail, fax or scanned e-mail attachment.

Standard e-mail notification from the licensee's professional or personal e-mail also will be accepted with an electronic signature that is composed of the licensee's full legal name and optometry license number, followed by the last four digits of the licensee's Social Security number. ■

Independent Contractor or an Employee?

The Oregon Bureau of Labor and Industries (BOLI) is focused on making sure employers understand which employees may be classified as independent contractors and which may not. Many employers misclassify employees as independent contractors when they don't meet that definition. That mistake can be costly.

BOLI applies tests to determine whether someone is truly independent of the employer, or is an actual employee. In essence, they look to determine whether the worker is free from direction and control, and/or whether the worker is truly independent of the business to which services are being provided.

According to BOLI, there are several potentially expensive costs to misclassifying and employee as an independent contractor, including assessment of back taxes, penalties and interest. Employees not properly paid may also seek back wages, penalty wages and interest.

Generally, the courts and regulatory agencies consider workers to be employees unless they fully meet the definition of an independent contractor. It doesn't matter if you have a contract and income is reported on a Form 1099.

The status depends on consideration of the facts of the entire relationship, not just the title. A contract, even if it correctly captures the intent of the parties involved, will not protect you if the facts don't show that the worker in question satisfied the legal criteria required of an independent contractor.

Questions in the tests include:

- The degree of control exercised by the alleged employer, such as who sets the hours of work and who is responsible for quality control? Is the worker free from direction and control and is the worker economically independent of the business to which services are being provided?
- The extent of the relative investments of the worker and alleged employer. For example, who owns the equipment?
- The degree to which the worker's opportunity for profit and loss is determined by the alleged employer.
- The skill and initiative required in performing the job.
- The permanency of the relationship.

The IRS weighs in as follows:

“People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case.

“The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax. If you are an independent contractor, you are self-employed.

“You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

“If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor.”

Conclusion: It is your responsibility to be clear about your own legal status and that of those with whom you contract or that you employ.

While BOLI cannot provide legal advice, they do offer free technical assistance. For more information, go to: www.oregon.gov/BOLI. ■



We get calls...

Q. Can an optometrist prescribe vehicle window tinting for a patient that would otherwise be illegal under Oregon law?

A. Yes. ORS 815.220 “Obstruction of vehicle windows” allows darker window tinting material to be applied to the side and rear windows of a vehicle registered in the name of a person (or the person’s legal guardian) if the person has an affidavit signed by a validly licensed physician or optometrist stating that the person has a physical condition requiring window tinting that produces a lower light transmittance than otherwise allowed under the law.

If you sign such an affidavit for one of your patients, he or she is required to keep it in the vehicle and show it to law enforcement upon request. Remember, if you have reason to believe that a patient may no longer be able to safely operate a motor vehicle, you are a mandatory reporter to DMV. For more information, go to www.oregon.gov/ODOT/DMV/pages/faqs/mandatory_reporting.aspx.

Q. A patient wants me to prescribe brighter-than-average headlights to make it easier to see when driving at night. Is this allowed?

A. Likely not. Oregon law dictates headlight brightness, and there is no exemption in the law for optometric purposes. Unlike window tinting, brighter headlights could reduce the safety of other drivers in oncoming traffic, creating a driving hazard. Again, if a patient cannot safely drive using allowed vehicle equipment, you must report him or her to DMV.

Q. My patient didn’t ask for a copy of his prescription. Now he’s complaining to the Board that I didn’t give it to him. Did I do anything wrong?

A. Yes. Federal law and Oregon rules require that you immediately give your patient a copy of his prescription at the time when you would dispense spectacles or contact lenses without further examination. You are required to do this whether or not the patient asks for a copy. If the patient refuses to take the physical copy of the prescription you are trying to hand to him, you should note in your rec-

ords that the prescription was offered and refused. And, if the patient later changes his or her mind, you must provide a copy of the prescription at no further charge, even if there is an outstanding balance on the account.

Q. As an optometrist, may I provide free vision screenings for children and adults without being held to the standard of providing comprehensive eye examinations?

A. Yes. ODs are allowed by several statutes to provide such volunteer screenings. Just be certain that you explain to the patient or guardian that this is not an eye examination. If you note something for referral, be clear that that any qualified ophthalmologist or optometrist can do the follow up. It is also a good idea to keep records of when you do screenings, and for what organization(s).

Oregon law and optometric rules also allow active status licensees to register with the Board at no additional charge to qualify for the provisions of ORS 676.340, which provides registrants with specific exemptions from liability for the provision of optometric services to defined charitable organizations without compensation under the terms of the law. *See the Liability Limitation Program article on the next page for details.*

Q. Why are billing records important in Board investigations?

A. The more information before the Board, the better able it is to make a full and fair analysis. The Board is seeing cases where a doctor has billed for procedures that are not properly documented in the patient record. In the eyes of the Board, if it wasn’t documented in the patient record, it wasn’t done.

Remember, if the Board disciplines a doctor for poor recordkeeping, that is a public record, and opens the door for audits by Medicare, Medicaid and private insurers. If that happened, would your billing records be supported by your patient records? ■



Optometry Board Member Recruitment

The OBO expects to have two vacancies in the next year: One for a public member (who cannot be an optometrist or be related to one) that will begin in April 2014, and one for an optometrist that will begin January 1, 2015. Volunteer members of Oregon’s health-related licensing boards are appointed by the Governor and confirmed by the Senate. Those selected to serve on the Oregon Board of Optometry are appointed to three-year terms. Generally, appointees are limited to two terms.

The Board was established by the Oregon Legislature in 1905. It is composed of four doctors of optometry licensed to practice in Oregon and one public member representing consumers. It regulates the practice of optometry in Oregon to ensure the health and safety of its citizens through setting standards for the examination of candidates, licensure, certification standards, continuing optometric education, and enforcement of the laws and rules governing optometry.

The Board is active in ensuring that Oregon’s laws and administrative rules reflect the current and highest standard of care practice standards. Among the primary duties of the Board is the resolution of complaints against optometrists (including discipline against those found to have violated laws and administrative rules); development and approval of Board budgets, policies and practices; and oversight of the Board’s executive director. OBO’s semi-independent agency budget is supported by licensing fees and any civil penalties levied for violations of optometric laws and rules, and receives no General Fund taxpayer dollars.

The Board is scheduled to meet quarterly in Salem, with occasional additional meetings in person or by telephone as needed. Regular meetings are usually held on Fridays and scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

If you would like more information about serving on the Oregon Board of Optometry, please call the Executive Director at (503) 399-0662, ext. 23. For more information on applying for these and other board’s vacancies, go to www.oregon.gov/gov/pages/boards.aspx. ■

Liability Limitation Program Now Open to Optometrists

Oregon law allows certain healthcare professionals to register with their licensing boards to provide health care services without compensation and not be held liable for any injury, death or other loss arising out of the provision of those services, unless such effects result from the gross negligence of the practitioner.

As of January 1, 2013, Oregon doctors of optometry are eligible to participate in the State’s Liability Limitation Program, which encourages actively licensed doctors to volunteer their time through non-profit corporations without requiring liability insurance.

This is a particular benefit to those actively licensed optometrists who are no longer in practice, but who want to continue to provide charitable care.

The details of the program are outlined in statute and administrative rule. In essence, you register at no charge with the Board each year for this program. You provide volunteer optometric services through a non-profit, and have each patient sign a waiver. Unless you are found to have committed gross negligence, you are exempted from liability for any adverse outcomes for which a patient might file suit.

Under this program, you still must notify the Board of where you will be practicing. For more information, go to [www.oregonobo.org / OBO_Statutes_Rules_01012013.pdf](http://www.oregonobo.org/OBO_Statutes_Rules_01012013.pdf). ■

Working in Irregular Locations

The Board recognizes that some doctors of optometry work with portable equipment in mobile facilities that aren't fixed "practice locations." To ensure that the rules are clear, the Board added definitions:

- "Base of operations" is the practice location from which the optometric physician utilizes a mobile facility or a portable unit.
- "Mobile facility" is a vehicle that is equipped to render optometric services where an optometric physician examines or treats patients inside the vehicle.
- "Portable unit" means optometric equipment the optometric physician transports to a fixed location (e.g., nursing home, assisted living facility, private residence) to render services to the patient.

You must notify the Board in writing of each place of practice before engaging in practice at that location, and ensure that you display your Portable Multiple Location license. If you are practicing in a mobile

facility or with portable unit, you must report your Base of Operations and specific locations of such practice to the Board in compliance with this rule. For example, this applies if you have a practice that takes you regularly into nursing homes to examine or treat patients. You must report to the Board where your base is, and then the specific locations where you will be practicing.

Failure to report a practice location to the Board will cost you (\$50 for the first failure to report, \$100 for the second failure, and \$200 for the third failure) and potential discipline. This does not apply to one-time house calls, emergency calls to hospitals, and other ad-hoc locations where there are not scheduled appointments, and which are not a part of your own or anyone else's regular practice.

If you have a question about reporting practice locations, please call the Board's office. We're happy to help you find the answer! ■

Late Renewals Take More Work

Recently, we received a question from a licensee as to why the Board charges fees for late renewals. Late renewals increase the workload for the Board's staff; late fees help cover the increased costs and also encourage timely renewals in the future. Late fees are on a sliding scale: Within the last seven years, your first late renewal fee will be \$50, the second is \$75, and the third (or more) is \$100.

Courtesy renewal reminders are sent to your address of record about six weeks before they are due. If a complete renewal application isn't received within a few days after the due date, Board staff generate a "late letter" that must be sent by certified mail notifying the licensee that the license will lapse in 30 days. The licensee's file is flagged, and the license can't be sent until the renewal is received. Staff often get calls from the late licensee with questions and explana-

tions (which they are happy to answer), but this also takes time. Once the complete renewal application and late fee is received, they generally are able to get the renewed license out in the mail that same day.

To be timely, your license renewal must be received or postmarked to the Board by the first day of your birth month. However, there are two excellent reasons to renew sooner: Cathy Boudreau and Debbie Hendricks. These two Board staff review each renewal for completeness. If there is a problem, they will contact you and work to resolve it with you by phone, fax, e-mail or US mail.

By getting your renewal in early, you can ensure that all your materials are received and approved before your renewal date, and avoid any late fee. ■

Patient Records Upon the Death of an Optometrist

Optometry rules require that patient records be held by a person licensed in Oregon. Sadly, the Board learned that existing administrative rules did not effectively provide for the smooth transfer of patient records upon the untimely death of an optometrist in private practice.

When this happened in 2012, the existing rules read that transfer of patient records must be reported to the Board in writing “immediately,” and no later than “the effective date of the change in practice location, closure of the practice location or retirement.”

The situation for the family was that the practice was no longer owned by a licensed optometrist as required by law and rule, and they legally could not “own” the patient records of the practice.

Because doctors of optometry must be independent, neither the family nor the staff could hire an optometrist to operate the practice. Fortunately, the doctor had entered into a professional relationship with colleagues who stepped in and volunteered their time to keep the practice open until this important asset could be sold by the family.

The Board instructed its staff to do all it could to help the family and colleagues to work through this difficult time.

The case led the Board to evaluate its record transfer rules, and adopted the following new rule that was effective January 2013:

“Upon the death or disability of an optometric physician, the administrator, executor, personal representative, guardian, conservator or receiver of the former optometrist must notify the Board in writing of the management arrangement for the custody and transfer of patient records.

“This individual must ensure the security of and access to patient records by the patient or other authorized party, and must report arrangements for permanent custody of patient records to the Board in writing within 90 days.

“Transfer of patient records to another Oregon-licensed optometric physician must occur within one year of the death of the optometric physician.”

While doctors of optometry should carefully plan for the succession of their practice in the case of sudden death or disability, administrative rules now allow adequate time for the custody and transfer of patient records. ■

“Immediate Family” Defined

The rules were clarified regarding who is “immediate family” for prescribing, using, dispensing or administering Schedule III-V controlled substances. An optometric physician may only do so to an immediate family member in emergency situations. “Immediate family” is defined in rule as a spouse, domestic partner, child, stepchild, sibling, parent, in-law or other individual for whom an optometric physician’s personal or emotional involvement may render the doctor unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

Further, it is unprofessional conduct for an optometric physician to use, prescribe, dispense or administer controlled substances in Schedules III-V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual. ■

Sleep Apnea and the Eyes

By Molly S Cardenal, OD, FAAO

Many ocular and systemic conditions can be caused by or exacerbated by sleep disruption disorders. Obstructive sleep apnea (OSA) is one of the more common and may go undiagnosed or untreated for many years.

It is important for optometrists to recognize when to alert patients or their primary care physicians of suspicion for OSA, as it can often result in improved outcomes for our patients if identified and appropriately treated. It is also important to identify individuals with OSA due to the strong association with potential life threatening conditions such as diabetes, hypertension, coronary artery disease, myocardial infarction, stroke, congestive heart failure, and increased intracranial pressure.

An estimated 15-20 percent of adults are at risk for OSA. The condition exists when the upper airway size is either reduced or is highly compliant, causing it to collapse. Excess soft tissue or fat surrounding the airway is a common reason for reduced size, thereby restricting breathing. Reduced muscle tone during sleep may also cause the airway to become too compliant and collapse. This may be aggravated by use of sedatives or alcohol prior to sleep.

Studies have identified males age 40-70 as being at higher risk for developing OSA. Known risk factors include obesity and craniofacial/upper airway abnormalities. When considering whether a patient may be at risk for OSA, it is helpful to observe and ask about obesity, large neck girth, loud snoring, restlessness during sleep, interrupted breathing or gasping arous-

als during sleep, excessive daytime drowsiness, and impaired cognitive function.

You should consider a possible underlying diagnosis of OSA in the following eye conditions:

- Normotensive glaucoma – particularly if progressing despite good IOP control
- Anterior ischemic optic neuropathy
- Accelerated progression of diabetic retinopathy
- Papilledema
- Floppy eyelid syndrome with associated dry eye symptoms (up to 95 percent of patients with this syndrome may also have sleep apnea)

Optometrists are often in a position to help identify important underlying systemic health issues in our patients. It is important to consider OSA as a potential underlying etiology for several ocular diseases and assist the patient in obtaining appropriate evaluation and treatment for OSA.

In many cases, lifestyle changes may eliminate the condition altogether. For patients already being treated for OSA with a Continuous Positive Airway Pressure machine (CPAP), it is important to carefully evaluate the ocular surface for evidence of dryness or CPAP-related red eye.

Poorly fitting CPAP masks can allow air to leak and cause ocular surface dryness. Ocular lubrication may be minimally helpful in these situations. Several mask designs are available and if properly fitted will minimize ocular irritation and redness. ■

“Unprofessional Conduct” and “Board Certification”

Oregon law requires the Board to develop rules governing what is considered “unprofessional conduct” for optometrists. The list is broad, giving the Board latitude to discipline doctors who do not uphold the standards of practice of the profession. Among other restrictions, doctors of optometry must not defraud or misrepresent themselves or their services, mislead patients about services and treatments, or advertise methods of professional superiority.

In response to recent inquiries, the Board clarified in rule that advertising “professional superiority” includes using the term “board certified” without defining which board has provided the certification. The rule includes the following note: “As a licensing and regulatory agency, the Oregon Board of Optometry does not ‘board certify’ optometric physicians.” ■

Social Media/Optometry Deals Restricted

The Board recently received a complaint that alleged an optometric physician had given a sub-standard examination to a patient because the individual had purchased discounted services using a social media coupon. While the Board found that the patient had received a thorough and complete examination and there was no optometric error, it did point out the need to understand how these coupons work in relation to Oregon’s laws and rules governing optometry.



Oregon Administrative Rule (OAR) 852-010-0035 prohibits any agreements, understandings and contracts entered into by optometrists involved with referrals that can be construed as fee-splitting of any kind.

Fee splitting is prohibited because it can create a conflict of interest and influence referrals by providing financial incentives. Such fee splitting can also be in the form of giving a bill reduction or gift certificate to someone who refers patients to you. It is “fee splitting” because it is an agreement – written or not – to compensate someone for the referral.

An optometrist who signs a contract that agrees to pay the advertising company a percentage of the value of each deal sold is essentially fee splitting and violating the rules and laws of Oregon.

In short, contracts generally meet the requirements of the rules if all fees paid by the patient are passed through directly to you as the practitioner and you then pay an advertising fee directly to the social media outlet (such as Groupon or Living Social). ■

Free Portable Multiple to All Active-Status Licensees

At its November 22, 2013 meeting, the Board adopted new rules eliminating secondary practice location licenses and providing a portable multiple location license to all Active licensees at no additional charge. This change eliminates the \$45 annual fee for additional practice location licenses and the \$90 annual fee for portable multiple practice location licenses.

Your original primary practice location license and your portable multiple location license will be included in all renewals effective January 1, 2014. As before, post your original license in your primary practice location. You may carry your Portable Multiple Location License to an unlimited number of additional reported practice locations. Additional copies of your portable multiple location license are available for \$25 each from the Board, and may be ordered at any time in writing or using the form below. If you wish to receive a Portable Multiple Location License in 2014 before your next renewal, you may order one from the Board for the \$25 processing fee.

Licenses will be printed only with your primary practice location address. Additional practice location licenses printed with addresses different from your primary practice location are no longer available. ■

Reporting Suspected Misconduct of Healthcare Professionals with “No Undue Delay”

It can be confusing. You see another health care provider doing something you suspect is wrong. Or a patient tells you about another practitioner’s actions that you have reasonable cause may be unprofessional conduct. You may be serving on a peer review panel, and learn of something potentially amiss with a coworker.

You don’t want to cause problems. After all, you may be wrong. What do you do?

Oregon law requires that you report it to the appropriate licensing board “without undue delay.”

ORS 683.340 - Duty to report prohibited conduct. “Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, an optometrist who has reasonable cause to believe that a licensee of another board has engaged in prohibited conduct as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS 676.150.”

“Prohibited conduct” means conduct by a licensee that constitutes a criminal act against a patient or client; or constitutes a criminal act that creates a risk of harm to a patient or client. “Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee’s profession or conduct that endangers the health, safety or welfare of a patient or client.

A related section of the optometry law (ORS 676.150 (3)) requires you to report any healthcare licensee (including yourself) who is convicted of a misdemeanor or felony or who is arrested for a felony crime to that licensee’s board.

In short, Oregon law requires that all covered health care professionals – including optometrists – must report their own and other licensees’ prohibited conduct, convictions, and felony arrests. Failure to do so is considered unprofessional conduct, subject to discipline. What does that mean for you as a licensee?

“Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee’s profession or conduct that endangers the health, safety or welfare of a patient or client.

The range of healthcare professionals covered is broad, and includes medical doctors, nurses, pharmacists and dentists.

If you observe another professional covered under the law who is putting a patient at risk, who has done a patient harm, or who is engaging in prohibited conduct, the law is clear that you must report that individual to the appropriate licensing board.

You must do so “without undue delay, but in no event later than 10 working days after learning of the conduct.” Failure to do so may result in unprofessional conduct charges against the licensee who fails to report.

The laws and rule contain no exceptions for licensees serving on quality assurance or peer review panels. Internal investigations that identify suspected professional misconduct or unprofessional conduct must still result in reporting to the appropriate licensing board. The responsibility is equal for each individual on the panel.

Under the law, your report is confidential and your name will not be disclosed. A licensee who reports in good faith is immune from civil liability for making the report. If you have questions, please contact the Board’s executive director. ■



Recordkeeping, Storage and Transfer

There are doctors of optometry practicing who still remember when an optometrist could keep patient records on an index card. Those days are long gone, and patient recordkeeping has become more complex, with requirements for levels of detail of patient care and treatment provided, insurance coding and numerous forms and patient releases.

The Board doesn't get involved in the medium you use to keep your records. Paper or electronic are both fine, as long as the records are complete and accessible. However, electronic recordkeeping is becoming the norm for many optometric practices.

The Board discussed the changes in recordkeeping over the course of the last year, and decided that the changing pace of technology wasn't reflected in the administrative rules governing optometry. President Robert Mans was asked at a conference last May whether storing electronic patient records in "the cloud" was allowed by rule if the cloud storage in question was accessible from Oregon, but the actual server was out of state. Research and legal advice said it wasn't allowed under existing rules. This led the Board to look at the need for and intent of the rule, and determined was the following:

- Optometrists must keep accurate records for all patients for at least seven years.
- Records must be accessible upon request by patients and their designees.
- Records must be under the subpoena authority of the Board.
- Optometrists cannot retain their records if they move out of state or go to unlicensed status in Oregon. If so, they must transfer their records to an Oregon-licensed doctor of optometry practicing within the state.
- Electronic records may be stored in a "cloud" outside Oregon, but must be accessible by the doctor in Oregon. This local access to records to ensure the Board has subpoena authority over protect the health and safety of patients.

In January 2013, the Board changed the rules to allow electronic record storage to be housed in servers outside of Oregon, as long as those records are accessible by an Oregon-licensed doctor of optometry. Public safety is protected, and optometrists are free to use emerging this new technology in their practices.

Changed Timelines on Records Releases

Changing technologies led the Board to reduce the required timeframe for providing copies of records or detailed summaries of records to patients or to persons designated by patients upon the appropriate written and signed request of the patient.

Requested records must now be sent within 14 business days of the request.

Reminder: You must release copies of patient prescriptions and records at no additional charge. However, you may charge a reasonable amount for photocopies and postage, so long as you apply the charges consistently. You may not withhold release of patient records or additional copies of prescriptions for lack of payment for prior services or goods. ■

Dr. Garris Completes Second Board Term

The Oregon Board of Optometry expressed heartfelt thanks for service to Donald Garris, OD, at his final meeting in August 2013, as he completed his second three-year term as a member of the Board. Dr. Garris served as the Board's budget chairperson.

If you are interested in serving on the Board, please see "Optometry Board Member Recruitment" on page 9.

Prescription Requirements

Many questions come from optometrists who are unsure of the requirements for writing prescriptions, particularly when they are filling in for other doctors. In response, the Board clarified rule language in keeping with federal and state laws.

All prescriptions must include the examining optometrist's name, license number, practice location address, telephone number and facsimile (fax) number, and a handwritten or electronic signature.

If using another doctor's printed or electronic prescription form, the prescribing doctor must legibly print his or her own name and license number on the prescription form before signing and giving to the patient.

For all contact lens prescriptions, doctors must include a reasonable and clinically-prudent expiration date. While not required, if the optometrist chooses to specify a maximum number of contact lens refills, the contact lens prescription becomes invalid upon the patient's ordering of the maximum number of refills, unless extended by the optometrist.

The quantity of lenses or refills specified in the prescription must be sufficient to last through the prescription's expiration date. If a lesser quantity of lenses or refills is specified in the prescription, the prescriber must have a legitimate medical reason for doing so, and the Federal Trade Commission requirements on writing a prescription for less than one year must be met. ■

Simplified CPR Renewal

Active status licensees must keep their BLS Healthcare Provider or equivalent CPR certifications current. This is an important requirement in protecting the safety and health of patients.

The Board recently determined that on-line renewal training is sufficient to meet that requirement.

As of January 1, 2013, Oregon optometrists renewing their CPR certifications no longer need to take a hands-on class.

While licensees are not prevented from taking an in-person class, they may now renew their CPR cards with a fully online BLS Healthcare Provider-level course. ■

2013 Legislative Changes *(Continued from page 3)*

SB 483

Confidential Mediation of Adverse Patient Outcomes

As of July 1, 2014, medical providers and patients will be allowed to confidentially discuss serious medical errors and offer a settlement while potentially avoiding the costs and duress of a legal proceeding. The mediation process and governing rules are being developed by the Oregon Patient Safety Commission.

SB 604

Common Credentialing Database

The 2013 Oregon Legislature directed the Oregon Health Authority to establish a program and database to provide credentialing organizations access to information needed to credential or re-credential all health care practitioners in Oregon.

This is intended to streamline cumbersome processes and reduce redundant verification of information. How this system will work to collect and verify data obtained from licensing boards, providers and other entities and individuals (and at what cost) will be determined by rules being developed by the Oregon Health Authority in consultation with a "Common Credentialing Workgroup," of which the OBO's executive director is a member. If you have thoughts on streamlining the credentialing process, please contact her by phone or e-mail. ■

Oregon's Prescription Drug Monitoring Program

You're paying for access, are you using it for your patients?

Each licensed doctor of optometry in Oregon pays a mandatory fee of \$25 at each renewal for the Oregon Prescription Drug Monitoring Program (PDMP). The Board collects this fee and remits it to the Oregon Health Authority to run the program.

PDMP is a web-based data system that contains information on controlled prescription medications dispensed by Oregon-licensed retail pharmacies. Pharmacies must submit data for all Schedule II– IV controlled substances dispensed. These medications place patients at risk for overdose, side effects, increased effect when combined with alcohol or other drugs, risk for physical dependence, and risk for developing patterns of drug abuse. The PDMP provides

practitioners and pharmacists a means to identify and address these problems.

Once you have registered with PDMP you can log-on and request a report of the controlled substance medications dispensed to your patients. Prescription records include information on the dispenser, prescriber and name and quantity of drug.

Law changes by the 2013 Legislature also extends access to authorized members of your staff. PDMP has outreach specialists available to promote use of the system. They are available by phone and also are willing to speak to groups. Reach them by e-mail to pdmp.health@state.or.us or call 971-673-0741. ■

Scheduled Drug Changes Likely:

Feds Propose Hydrocodone as Schedule II

In a move to tighten controls on how doctors prescribe narcotic painkillers, the Food and Drug Administration (FDA) has proposed to move hydrocodone-containing painkillers (such as Vicodin) from Schedule III to Schedule II under the federal Controlled Substances Act. The proposed change is reported to be in response to wide abuse of drugs containing hydrocodone, and mirrors the tighter regulation of more powerful painkillers, such as Oxycodone. Controlled substances are divided into five “schedules” related to their medical use and potential for abuse.

According to Oregon Board of Pharmacy Director Gary Schnabel, if hydrocodone is moved to Schedule II, optometrists may no longer be allowed to prescribe hydrocodone-containing products. Those who are allowed to continue prescribing will see limits on the number of refills a patient can get without a follow-up visit to the doctor. Doctors also would be required to issue a paper prescription for the patient to take to the pharmacy rather than calling or faxing in the prescription.

When a change is made to the federal schedule of controlled substances, it, by reference, also becomes a part of the State schedule. This move technically does not change the optometrists' authority, but depending on the final adopted DEA rule adopted, it may remove hydrocodone from Oregon's non-topical formulary for optometrists.

We will notify you of any changes to the formulary and keep you posted regarding the Board's options as the DEA's rule is finalized ■

OBO'S Longest-Living Licensee Turns 100

Born October 28, 1913 in Alberta, Raymond Alexander came to Oregon during the Great Depression seeking an education in a profession. He first looked at dental school at North Pacific College in Portland. When he learned he would have to wait nearly a year to enter the next dentistry class, Alexander remembers that he thought: “What the heck... optometry looks good,” and entered the College of Optometry instead of the dental program. The college, started in 1921, was among the first in the nation to offer optometry degrees. Before that, most people entered the profession through apprenticeship programs.

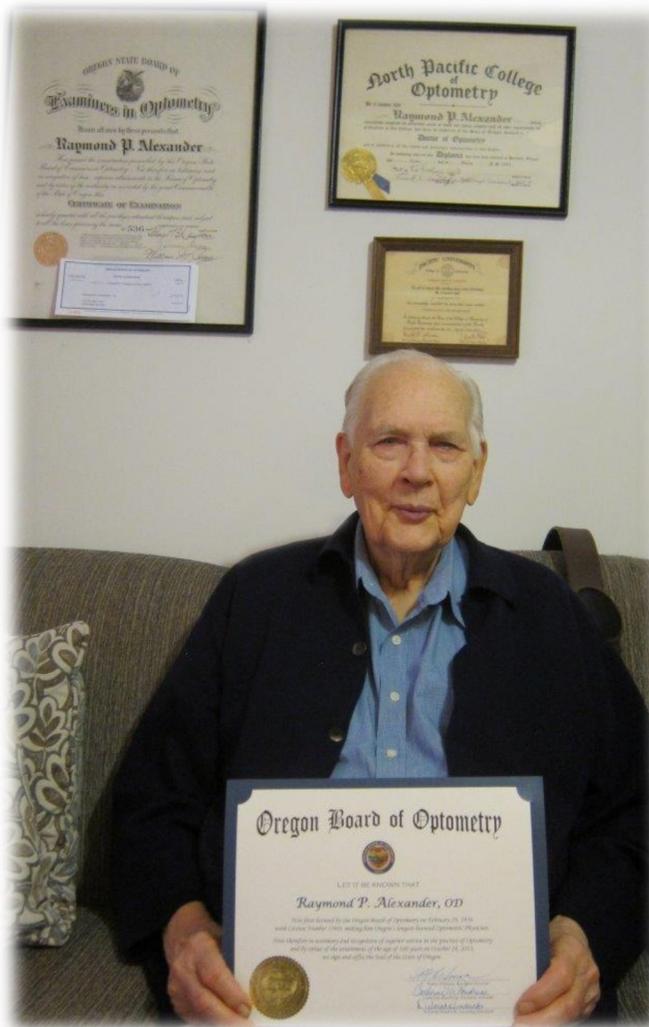
On June 1, 1935, Dr. Alexander had no money, but a new degree. He soon passed the Board examinations and became licensed on February 29, 1936. From that day on, he says: “I was never out of work... not even for one day.”

He recounts: “Optometry today is almost a completely different profession than when I started... There were no tonometers, you didn't check eye pressures. Pretty much, you were only refracting for glasses.”

Eventually, Dr. Alexander went into practice with another Dr. Alexander, his younger brother, Albert. Together, the two built Reynolds Optical into a thriving Portland practice, and learned new technologies as they were introduced.

“When diagnostic drugs came out, it was important to learn how to use them properly, so I went back to

Pacific in 1976, more than 40 years after graduating,” he says. (His alma mater had incorporated into Pacific University in 1945.) “It was complex, and hard learning all of the diagnostic drug information. I taped all of the lectures so I could review them each week.”



Dr. Alexander recounts his favorite period of optometry as when soft contact lenses first came onto the market in the early 1970s. “Bausch & Lomb chose Portland for the introduction of soft lenses to the public, and I was one of the first people to be fitted with them. Unlike the old hard lenses, these were absolutely comfortable. It was wonderful fitting patients with the new contacts. They were so happy with how well they could see!”

After selling their practice, Dr. Alexander worked part-time before fully retiring in 2001. He still maintains his inactive license, making him Oregon's longest-living licensee at age 100, having been licensed for nearly 78 years. He and his wife, Ann, have been married 60 years and still live in their original northeast

Portland home.

What is Dr. Alexander's advice to new optometrists today? “Have some business experience... and don't rely too much on the new technologies. Learn how to make glasses without an auto refractor. You can't always trust them!” ■

A Brief Timeline of Optometry

- Circa 1000 AD – Eyeglasses invented and used in China.
- 1286 – Approximate date of development of spectacles in northern Italy by an unknown artisan.
- 1604 – Johannes Kepler describes the function of the retina and demonstrates that concave lenses correct myopia and convex lenses correct hyperopia.
- 1623 – The first know book on optometric principles, *The Use of Eyeglasses*, is published in Spain.
- 1784 – Benjamin Franklin invents a split bifocal lens for spectacles.
- 1801 – Thomas Young first measures astigmatism and maps the normal visual field.
- 1851 – Hermann von Helmholtz invents the ophthalmoscope and is first to see the interior of the living eye.
- 1862 – Mermann Snellen devises test types and eye chart to measure visual acuity.
- 1873 – Retinoscope introduced.
- 1901 – Minnesota passes the first state law recognizing and regulating the practice of optometry.
- 1915 – US Supreme Court rules that optometry is a separate calling from medicine and cannot be regulated as a “minor branch” of medicine.
- 1923 – Pennsylvania College of Optometry awards the first Oculus Doctor (OD) degree. This begins the end of the apprenticeship system of licensure.
- 1971 – FDA approves Bausch & Lomb soft contact lens.
- 1978 – Prescription release rule is implemented by the FTC.

(Excerpted from various web sources)

OBO Disciplinary Actions

From January 1, 2012 through December 31, 2013, the Board reviewed a total of 41 complaint cases. In that period of time, the Board resolved and closed 35 cases, of which two resulted in discipline, as follows:

Jeremy Graziano, OD (#11-02-04): February 23, 2012 Final Order. Sanction in violation of: OAR 852-010-0051(3) failed to retain records or transfer care of patient records; OAR 852-010-0051(4) failed to provide patient with records; OAR 852-050-0018(1) failed to notify the Board in writing of change in address; OAR 852-060-0027(11) failed to respond in writing to request for information from the Board; OAR 852-060-0027(20) failed to transfer care of patient records; ORS 683.140(1)(c) engaged in unprofessional conduct or gross ignorance or inefficiency in the profession; ORS 683.140(1)(p) engaged in violations of ORS 683.010 to 683.340 governing unprofessional conduct. Respondent’s license revoked. Directed to turn over all patient records within 30 days to a licensed optometrist in Oregon and provide written verification to the Board. Ordered to pay Contested Case Hearing costs of \$11,999.09 to the Board within 30 days.

Resolution: Patient records transferred; hearing costs not paid. Submitted to the Oregon Department of Revenue for collection and liens placed on respondent’s real property in Oregon.

John Rush, OD (#11-09-02): June 15, 2012 Stipulated Final Order. Sanction in violation of ORS 683.140(1)(c), OAR 852-10-0051(1), and OAR 852-60-0027(19). The licensee agreed to informally dispose of this matter pursuant to ORS 183.415(2). The licensee completed a Board-approved continuing education course on recordkeeping; be mentored to remedy recordkeeping deficiencies; pass the Oregon Laws and Administrative Rules Examination; submit a plan to bring future patient files up the standard of care as required by Oregon laws and rules; and obey all federal and state laws and rules governing the practice of Optometry in Oregon.

Resolution: Successfully completed all requirements of the Board. ■

Oregon Board of Optometry



The mission of the Oregon Board of Optometry is to protect the people of the state of Oregon from the dangers of unqualified and improper practice of optometry.

www.oregon.gov/obo

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