



## OREGON BOARD OF OPTOMETRY

August 27, 2021 Board Meeting

### PUBLIC SESSION MINUTES

**Board Members Present:** Lauren Hunt, OD, President  
Ami Halvorson, OD, Vice-President  
Derek Louie, OD  
Patrick Ayres, OD  
Laurie Goolsby, Public Member

**Board Staff:** Shelley Sneed, Executive Director  
Melissa Auman, Administrative Coordinator

**Board Legal Counsel:** Lori Lindley, Assistant Attorney General

**Others in Attendance:** Alyson Harper, OD Tam Nguyen, OD Donald Asay, OD  
Jennifer Crown, OD Melissa Frost, OD

**CALL TO ORDER:** Dr. Hunt called the meeting to order at 9:03 a.m. The meeting was held via MS Teams due to COVID-19. The Public Session was adjourned at 9:06 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 12:36 p.m.

**PUBLIC COMMENT PERIOD:** The Public Comment period was opened to discuss the \$10 fee increase for the Prescription Monitoring Drug Program administered through Oregon Health Authority. HB 2078 increased the fee from \$25 to \$35. This is a passthrough fee which OBO collects with each active license renewal and passes to OHA. Any fee increase requires a rule hearing. Ms. Sneed gave some background on the bill and explained that the program is used to combat opioid addiction. All active licensees that have a DEA number and that prescribe

Schedule 1 or 11 hydrocodone combination drugs are required to report in the PDMP system and can check if your patient is getting any of those prescriptions somewhere else. Dr. Louie asked if you have to pay even if you don't prescribe. Ms. Sneed said the statute requires OD's pay the fee even if they are not prescribing currently because they could in the future. She had sent an email about the program and the increase and received a couple of comments. Ms Sneed asked for any other comments. None were heard. Dr. Hunt closed the rule hearing.

**MINUTES:** The Board reviewed the minutes of the May 7, 2021 Public Session. Dr. Hunt made a comment that the adjournment at the end of the minutes named Dr. Cardenal as Board President and not herself making the adjournment. The May 7, 2021 will be corrected. Dr. Halvorson made a motion that the Board approve the minutes following the correction. Dr. Ayres 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:

- **Reinstatement to Active Status** – Alise Chin
- **Reactivate Inactive to Active Status** –
  - Jenna Koskey, OD
  - Lydia Stender, OD
  - Rebecca Chung, OD

**Candidates for Examination and Licensure** - The 29 optometrists listed in Open Regulate Governance Board Meeting 8/27/2021 Agenda item 302 met all the requirements for licensure and were approved by the Executive Director since the last Board meeting.

Dr. Ayres made a motion that the Board ratify these actions by the Executive Director regarding licensure made since the last Board meeting. Dr. Louie seconded the motion. The motion carried unanimously by oral vote.

### **ACTIONS ON EXECUTIVE SESSION:**

#### **Existing Complaints:**

**C2019-1111** - Ms. Goolsby made a motion to issue an amended proposal with \$750 fine and half the costs. Dr. Louie seconded the motion. The motion carried unanimously by oral vote.

**C2019-1134** – Dr. Hunt requested a motion for a stipulated order for the licensee to remain in inactive status until the ProBe course is unconditionally passed. Dr. Ayres made the motion. Dr. Louie seconded the motion. The motion passed unanimously by oral vote.

**C2021-1217** – This case is closed with no optometric error and a letter of concern.

**C2021-1218** - This case is closed with no optometric error and a letter of concern.

**C2021-1201** – This case will remain open.

### **Monitored Cases:**

**C2019-1162** - This case will remain monitored.

**C2021-1194** – This case will remain monitored.

### **New Complaints:**

**C2021-1207** – This case will be closed with no optometric error.

**C2021-1208** – This case was administratively closed.

**C2021-1209** - This case will be closed with no optometric error.

**C2021-1221** - This case will be closed with no optometric error.

**C2021-1222** - This case was administratively closed.

**C2021-1223** - This case will be closed with no optometric error.

**C2021-1224** - This case will be closed with no optometric error.

**C2021-1225** - This case will be closed with no optometric error.

**C2021-1226** – Dr. Halvorson made a motion to close this case and ratify the stipulated order. Dr. Ayres seconded the motion. The motion passed unanimously by oral vote.

**C2021-1227** – This case will remain open.

### **EXECUTIVE DIRECTOR’S REPORT:**

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

- **Accounting/Budget**
  - The Board packet included a memo and financial reports in the Open Regulate Governance 8/27/2021 Board Meeting that detailed the Board’s financial position at the end of June 30, 2021. The 19-21 biennium P & L financial statements and balance sheets are not the final numbers but overall the board did better than expected compared to budget. Our cash position is \$26,000 less than last year. The overall net loss for the biennium is \$39,000. That is \$14,000 better than had been budgeted. Our income is \$10,00 under budget. Active license numbers are up a bit but we have been losing inactive licenses probably due to Covid. Ms. Sneed also stated that ALJ and AGG costs were higher than budgeted due to several hearings held in the biennium. Dr. Hunt made a motion to approve the financial report. Dr. Halvorson seconded the motion. The motion passed unanimously by oral vote.

- **Board Activities Report**
  - Twenty-nine new licenses were issued since the last Board meeting along with one reinstatement and three reactivations. There were several lapsed licenses since the last meeting. Dr. Halvorson has reviewed 50 hours of CE for approval.
- **Office Updates**
  - OBO staff has been busy working on licensee record scanning. Ms. Auman has been off on medical leave for two months and has returned to work on 8/16/2021. Ms. Sneed hired a temporary staff member during her leave to do some of the scanning project. Ms. Sneed has drafted a contract with Moss Adams for the financial review for 2021/2022. She will do a review and then complete the schedule of agreed upon procedures document and sign the contract.

## **BOARD MEMBER REPORTS:**

**Continuing Optometric Education:** The continuing education offerings approved since the last meeting were presented to the Board. Dr. Halvorson reviewed 50 hours of continuing education. Dr. Hunt had previously made a motion that the Board ratify approval of these courses. Dr. Halvorson seconded the motion. The motion carried unanimously by oral vote.

**Budget:** No discussion.

**Legislative:** Dr. Ayres spoke about bills possibly being looked at in the upcoming legislative short session in February 2022. The bills will address vaccination abilities of OD's and scope of care topics.

**Administrative Rules:** Dr. Hunt will give her rules report later in the meeting.

**Personnel:** No discussion.

## **ITEMS FOR CONSIDERATION/DISCUSSION:**

- **Strategic Plan Review** – No new information.
- **KP request about clinical and surgical observation** - Dr. Halvorson did some research to clarify the question regarding observation. She confirmed that credit will only be granted if the observation in the licensee's primary practice or in any practice location affiliated with the licensee is scheduled distinct from the licensee's usual clinic and administrative work. In other words, no getting paid for doing the observation she said. Ms. Sneed asked how she would verify reported observation hours were not part of a licensee's regular duties when she was doing an audit. Dr. Ayres responded that he doesn't see surgical observation as part of any OD's regular duties as OD's don't assist with surgeries. Dr. Louie said to check, if a licensee is reporting observation hours where they work, that the surgical center is also open to other optometrists. Ms. Sneed said the Board rules say that observation is intended to be open to others. Dr. Hunt asked for any further discussion, none was heard. Dr. Hunt made a motion to file the observation rules. Dr. Halvorson seconded the motion. The motion carried unanimously with oral vote.

- **Administrative Rule filings –**
  - **Remove 30-day approval limitation** – Dr. Hunt reminded the Board members that the topic of adding a 12 month approval window to CE courses had been discussed at the last meeting. When the original rules were written, the 12-month time period was not included. Ms. Sneed said she will file the rules as written, then on the same day, she will file temporary rules to add the 12-month limitation, then do the final rules with the 12 months added at the next meeting.
  - **Increase active renewal fee \$10 due to HB 2074 (PDMP)** – Dr. Hunt made a motion to file permanent rules regarding HB 2074 to increase active renewal fees by \$10 effective 1/1/2022. Dr. Louie seconded the motion. The motion carried unanimously by oral vote.
  - **Draft proposed rules to clarify gross ignorance and inefficiency** – Dr. Hunt researched all the other 50 states’ rules and wording and found only one state that used the wording “gross ignorance and inefficiency”. AAG Lindley also looked into the language, especially after the Board had a contested case, and she feels the language of the statute is old and has no legislative intent. She thought it would be helpful to add in “unprofessional conduct” along with “gross ignorance and inefficiency”. She thinks that would give the Board more maneuverability in their notice writing and more pleading options with a judge at hearings. She also suggested some association in consult with the Board to try to update the statutory language as to the standard of care. Dr. Louie commented on point 4 “exceeding the scope of practice”; he asked if this could this fall under gross malpractice. Dr. Hunt said that schools are now starting to teach new things and asked if the Board wants to limit under “gross malpractice” certain aspects in scope of practice that are changing. She said she will talk with Ms. Sneed regarding scope of practice and see if that is something they want to keep in the rule. Dr. Louie suggested adding “timeliness” to section 22(c). AAG Lindley said to look at section 25 as it talks about being late in response to the Board. Dr. Hunt will look the ruling over again. Ms. Sneed will file and publish by October 1, 2021 and the Board can take final action at the October 29, 2021 meeting. OOPA will get a copy of the filed rules once Ms. Sneed files them.
  - **Draft pain management rules** – Ms. Sneed updated the Board members that this topic related to legislation that changed for optometrists but had been in place for other health professionals around having to take a pain management course. The statute says every three years. Ms. Sneed and other health directors met to look at implementing this requirement every 24 months to coincide with law and cultural competency requirements. Dr. Hunt made a motion to file permanent rules regarding the Pain Management course. Dr. Ayres seconded the motion. The motion carried unanimously by oral vote.
  - **Temporary fee increase rules due to OSP cost increase** – Oregon State Police has increased their fees for background checks from \$45 to \$55, an increase of \$10. This increase is passed onto new licensees and licensees who are reactivating or reinstating after being lapsed or inactive two-years or longer. Dr. Hunt made a motion to file rules. Dr. Louie seconded the motion. The motion passed unanimously by oral vote.

- **ARBO 2021 annual meeting notes** – informational only
- **NBEO Reflects on a Challenging Year publication** – informational only
- **Paracentrisis question from AOA discussion follow up** – Dr. Halvorson asked Ms. Sneed if she had researched other states that allow this procedure in an emergency situation. Ms. Sneed had not but she will send an email to ARBO to inquire. AAG Lindley said the Board responsibility is to see if this falls within the scope of practice. She suggested the Board may need to look at what is being taught in optometry schools and what other optometrists in the area are doing. Ms. Sneed said she could reach out to Pacific University. Dr. Hunt would like Ms. Sneed to ask California optometry schools as well as Pacific because many California graduates apply to Oregon. Dr. Louie asked if the Board needs to respond with an answer. AAG Lindley said yes, the Board does need to respond but does not have to give a definite answer. Dr. Hunt suggests checking with other optometry schools as to what they are teaching and querying ARBO to add substance to our answer. Dr. Ayres doesn't want to see the door closed on OD's doing the procedure. Dr. Halvorson said Oklahoma rules state this procedure can be done only in an emergency. Ms. Sneed will have more information at the next meeting.
- **HB 2078 Pain Management** – copy of the specific bill.
- **Indoor mask mandate and health care required staff vaccine or testing requirement** – Ms. Sneed has sent out several emails regarding rules and exemption forms and links to additional resources for licensees.
- **Discussion of new vaccination requirements for health care facilities and enforcement** – Dr. Hunt asked if OSHA is the first line of enforcement regarding complaints. Ms. Sneed said her understanding is that OSHA and OHA will be doing the initial enforcement. She has been discussing with AAG Lindley that if we get a referral from either agency, what action will the Board need to take. She hopes it can be handled informally, much like the mask mandate complaints have been handled.

#### **NEW BUSINESS:**

- **Elms/McLaughlin Tepezza drug prescribing question** – Dr. Halvorson shared information she had found regarding the drug Tepezza. She originally supported the drug since the drug is an anti-inflammatory and OD's can prescribe anti-inflammatories according to our statutes, but after viewing the video, she agreed that it is a new classification of drug/biologic that is not addressed in our statutes. She did agree that further collaboration is needed and that there could be more serious side effects that optometrists are not trained to manage. Dr. Ayres felt it is within optometry's scope of practice and collaboration with ophthalmology is not necessary to use the drug. Dr. Hunt feels the prescribing of the drug and ability to deal with disease process is not a question. The question is if this is an anti-inflammatory and moving from there or does this need to be a biologic. She doesn't see there being a potential for abuse in regard to public health. Ms. Goolsby researched the drug and found it is an infusion drug. She questioned if an OD could do an IV. Dr. Halvorson replied that the OD would prescribe the drug and then send the patient to an infusion center. Ms. Goolsby said then the OD would need to collaborate with another healthcare professional. Dr. Louie was not certain if insurance would cover the cost. Ms. Goolsby agreed that they most likely would not approve nor allow optometrists to prescribe the drug and so the OD would need to collaborate with another healthcare provider who could bill out the drug and procedure. AAG Lindley asked the Board members if they thought their malpractice insurance companies would

cover them if co-managing with another healthcare provider and something went wrong. Dr. Hunt thinks it would be hard to defend. In summation, Dr. Hunt feels it is an anti-inflammatory and would vote it is within optometric scope of practice. Ms. Sneed reiterated that the Board agrees it is within optometric scope of practice but wanted to confirm the Board was recommending co-management with another medical provider. Dr. Ayres said that co-management was inherently necessary due to the nature of the therapy of this drug. He feels the main question asked was if co-management with an ophthalmologist was necessary and his opinion is it is not necessary. He thinks the rest of the interpretation should remain vague. Ms. Sneed will write an answer and have Drs. Hunt and Halvorson review it.

- **Board training on Public Meeting/Records law and proposed notice requirements –** AAG Lindley created a PowerPoint for Board members that covered Public Meetings law. In 1973, Oregon updated and passed laws for open government and public meetings. OBO is a governmental regulatory body and does require public meeting requirements be met. A quorum or majority of members is required to deliberate and make decisions on any matters. A “meeting” is when a governing body of two or more convenes with a quorum to make a decision or deliberate toward a decision on any matter. The meeting can be working lunches, general information gathering or using electronic media. Meetings must be accessible to the public and ADA accessible. Public meetings require public notice be given usually 48 hours in advance. The governmental body is required to keep minutes or record the meeting and must show who is present, motions and resolutions, the results of votes, the substance of the discussion, reference to any documents that were discussed and who the designated taker of minutes is. Minutes should be made available to the public in a reasonable time period. Use of personal devices for communicating about Board business could possibly be used as public record and the device could have a hold put on it for litigation. Executive session is closed to the public. It is still a public meeting but the public cannot attend and the meeting is closed. Legislators and the media can attend an executive session but cannot record the session. No final action can be taken in executive session. Proposed notices of discipline need to have adequate notice and inform the licensee the basis or the theory upon which they are being disciplined. The Board must cite the specific ORS, the subsection of the ORS, the specific OAR and the specific subsections of the OAR in order there to be an appropriate notice. Notices can be amended. AAG Lindley told the Board members they need to review information objectively, declare any conflicts of interest and have it noted in the minutes and recuse from a case if they cannot be objective. She strongly suggested they do not talk to licensees if they had to recuse or to a licensee who is being disciplined. Board members job is to protect the public, not the profession. Lastly, she urged them to understand and respect the limits of the Board’s authority.
- Upcoming change in Board member – Dr. Hunt announced she will be leaving the state for a new work position come September 10. Ms. Sneed is working on installing a new Board member. Dr. Hunt will stay on as a member until the new Board member has been installed. Ms. Sneed thanked Dr. Hunt for her contribution to the Board and for her leadership.

**FUTURE MEETINGS:**

- Friday February 4, 2022
- Friday May 6, 2022
- Friday August 26, 2022
- Friday November 18, 2022

**ADJOURNMENT:** There was no further business to come before the Board, and President Hunt adjourned the meeting at 2:37 p.m.

Minutes prepared by:

Approved by:

Melissa Auman  
Administrative Coordinator

Shelley Sneed  
Executive Director