

OREGON BOARD OF OPTOMETRY

PUBLIC SESSION MINUTES

May 6, 2011

Board Members Present: Robert Mans, O.D., President
Donald Garris, O.D.
Jeffrey Pelson, O.D.
Jessica Lynch, O.D.
Rose Thrush, J.D., Public Member

Board Members Absent: None

Board Staff: Kelly Paige, Executive Director
Cathy Boudreau, Administrative Assistant
Debbie Hendricks, Administrative Assistant

Board Legal Counsel: Lori Lindley, Asst. Atty. Gen.

CALL TO ORDER -

Dr. Mans called the meeting to order at 9:05 a.m. in the Mezzanine Level Conference room at 1900 Hines Street SE, Salem, OR., 97302. The Public Session was adjourned immediately to Executive Session for the purpose of discussing complaints. During Executive Session the Board will consider consumer and Board-initiated complaints and investigations as authorized by ORS 192.660(2)(f)(k); and consult with legal counsel as authorized by ORS 192.660(2)(h). No official Board action will be taken in Executive Session; all Board actions will be made in Public Session.

The Public Session was reconvened at 1:10 p.m.

Interested parties in attendance were Tracy Oman, Executive Director of Oregon Optometric Physicians Association, Douglas Walker, OD, President of Oregon Optometric Physicians Association, James Hale, OD, President-Elect of Oregon Optometric Physicians Association, and Charles McBride, OD.

Ms. Lindley exited the meeting at 3:18 p.m.

MINUTES - The Board reviewed the minutes from the Public Session of February 4, 2011. There was no discussion. Dr. Pelson made a motion that the Board approve the minutes as distributed. The motion was seconded by Dr. Lynch. The motion carried unanimously by oral vote.

The Board reviewed the minutes from the Public Session of April 4, 2011. Dr. Mans asked whether there were any changes or discussion regarding these minutes. Hearing none, Dr. Mans asked Ms. Paige, with regard to the rulemaking for implementing LEDS as a condition of licensure, whether she had followed up with the State Police, as Ms. Lindley had suggested at the previous meeting, to obtain approval of the proposed rule. Ms. Paige indicated that she has submitted the rule to the LEDS auditor

and the security manager. They have approved the rule.

Dr. Mans stated that he would like to make some amendments to the minutes as they have been presented. On page three under the discussion of proposed changes to OAR 852-050-0006, in paragraph two which begins with the words “Dr. Lynch”, Dr. Mans would like to delete the words [would like to delete the “disciplinary fee” and the “continuing education fee” terms and amounts in lieu of a single “license fee” (the language Ms. Paige had proposed)] and substitute the following: “is in favor of consolidating the fee to a total of”. He would like to eliminate the next sentence which is in brackets. Ms. Paige noted that the sentence provides a background for the fees in the past, and may clarify why the reason for the rule change. Dr. Lynch said that she favors Dr. Mans proposed language and suggested that the sentence beginning with “Ms. Boudreau” remain without the brackets.

In the next paragraph, under the discussion of proposed changes to the Inactive renewal fee under OAR 852-050-0012, beginning with the second sentence, Dr. Mans suggested deleting the words “willing to decrease license renewal fees” and substituting the words “in favor of a decreased license renewal fee”. He would like to delete the entire next sentence. In the following sentence which begins with the words “After discussion”, Dr. Mans would like to delete the words, “as suggested”.

In the next paragraph, under the discussion of proposed changes to 852-020-0080, Dr. Mans would like to delete the second sentence which begins with the words “In light of” since there will be no reduction in renewal fees.

On page four, under the heading “Budget Committee”, Dr. Mans would like to change the first paragraph to read “The Board reviewed proposed budgets submitted by Ms. Paige and Dr. Mans.” He would like to eliminate the brackets and the contents of the brackets.

In the following paragraph, following the first sentence, Ms. Paige would like for Exhibit E to remain in the record. Dr. Mans pointed out that the third sentence should begin with the words “Dr. Mans” instead of “Ms. Paige”, the word “Ms. Paige” should be inserted following the word “and”, and the words “the proposed” should be substituted for “Dr. Mans”.

In the next paragraph, which the first paragraph on this page to be marked by a bullet point, in the second sentence, Dr. Mans would like to delete the words “and Dr. Garris”. He stated that he and Dr. Garris had no discussion about the figures for the current salaries. Dr. Mans clarified that the Board intends that any merit increases in the next biennium will be considered based on the passage of HB2381 and possible mandates from the Governor’s office.

In the next paragraph, which is the second paragraph on this page to be marked with a bullet point, Dr. Mans would like the italics on the word “biennium” to be removed.

In the next paragraph, which is the third paragraph on this page to be marked with a bullet point, Dr. Mans would like to replace the word “realistic” with the word “reduced”. Ms. Paige stated that leaving the income line item in the budget for jurisprudence examinations will leave a 100% variance since she feels that there will be no one taking the examination at the Board’s office now that the examination is available online. She doesn’t want a place holder line for that income item, but would prefer to assign any income which may come in from that source to “Other Income”. Dr. Mans suggested that this may be a topic for the hearing on the budget. Ms. Paige agreed.

Dr. Mans would like for the next paragraph, which is the third paragraph on this page to be marked by a bullet point, to be deleted and the following language to be substituted: "The PERS/Board amount was adjusted based on the new PERS rates provided by Ms. Paige."

Dr. Mans encouraged the other Board members to contribute to the discussion. Dr. Lynch, Dr. Pelson and Dr. Garris expressed their support of Dr. Mans' suggestions.

In the next paragraph, which is the fourth paragraph on this page to be marked by a bullet point, Dr. Mans would like to delete the third sentence which begins with the words "This would be a good thing".

On page five, in the first paragraph, which is the first paragraph on this page to be marked by a bullet point, the word "made" should be inserted after the word "changes". The words "other two" should be deleted and the words "Jurisprudence and PERS/Board" substituted.

The last two paragraphs on page five should be deleted. These paragraphs are not marked by bullet points. And begin with the words "Dr. Mans" and "Ms. Paige", respectively.

On page six, the bullet points should be removed, and the second paragraph should be deleted. The "List of Exhibits" should be deleted, and "Attachment A - OBO 2011-2013 Biennium Budget" should be substituted.

Dr. Lynch made a motion to approve the minutes as amended. Dr. Garris seconded the motion. The vote was as follows: Dr. Garris, aye, Dr. Lynch, aye, Dr. Pelson, aye, Dr. Mans, aye. Ms. Thrush abstained. The minutes were approved as amended by oral vote.

RATIFICATION -

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

No actions were presented to the Board.

Candidates for Examination and Licensure -

The optometrists listed in Exhibit A met all the requirements for licensure and were approved by the Executive Director since the last Board meeting. Dr. Mans read the names of the new candidates into the record. Dr. Pelson made a motion that the Board approve these actions of the Executive Director since the last Board meeting. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

ACTION ON EXECUTIVE SESSION -

10-05-01 - A letter will be sent to the doctor requesting records of five patients who have been diagnosed with retinopathy and/or macular degeneration, for review at the next regular meeting scheduled for August 12, 2011. The records should demonstrate how the doctor reached his determinations or diagnosis. The letter will also request that a second copy of the record be submitted,

which is typed or legibly printed. This case will remain open.

10-07-02

10-11-01

10-12-03 - The Board will send a letter to the doctor requesting eight additional records for patients treated since July 2010. These records should be for contact lens patients, diabetic patients, or patients with other medical conditions which require treatment or referral, such as diabetic retinopathy or macular degeneration. The records should include the business and dispensing records, including the dates on which products were ordered, paid for and dispensed. Board staff is asked to scan and send copies of the patient records to Board members when they are received. The letter will also request that the doctor attend the meeting of the Board on August 12, 2011 for an interview. These cases will remain open.

10-10-01 - The Board received a report that the staff at the retail store in this investigation is telling customers, by phone, that they have no contact lens product in stock. The Board will revisit the case if there is future evidence that contact lenses are being sold without a prescription. This case will be closed.

10-10-02 - A letter will be sent to the doctor stating that his changes to his prescription are within the guidelines of current administrative rules, but that the Board feels that it is in the best interest of the patient to be more flexible. The doctor may write the prescription as he is proposing, but the Board doesn't affirm the practice. This case will be closed.

10-11-02 - Letters were sent to the complainant and the doctor in this case. No additional communication has been received from them. The Board found no optometric error or violation of Oregon Revised Statutes or Administrative Rules. This case will be closed.

10-12-01 - The Board reviewed the patient's record which was provided by the doctor in this case. A letter will be sent to the patient explaining that the Board found no record that doctor detected cancer during the examination. It is possible that the doctor may have made a reference to cataract development, which would have substantiated the recommendation of sunglasses. The Board found no optometric error or violation of Oregon Revised Statutes or Administrative Rules. This case will remain open.

10-12-02 - There is no new information in this case. A Notice of Intent to Discipline was issued on February 12, 2011 to this doctor under case number 11-02-04. The doctor has requested a hearing. Ms. Lindley is drafting a Motion for Summary Determination in that case. This case will remain open.

11-02-01 - The Board will continue the investigation in this case. This case will remain open.

11-02-02 - The Board reviewed this patient's record which was provided by the doctor. The doctor will be invited to interview with the Board at the August 2011 meeting. A letter will be sent to the patient informing her that the investigation is ongoing. This case will remain open.

11-02-03 - The Board reviewed this patient's record which was provided by the doctor. The Board will send a letter to the doctor requesting additional information in this case and additional patient records. This case remains open.

11-02-04 - A Notice of Intent to Discipline was issued in this case to Jeremy Graziano, OD on February 12, 2011. The doctor has requested a hearing. Ms. Lindley is drafting a Motion for Summary Determination in response. This case will remain open.

11-04-01 - The Board reviewed the patient's records which were provided by the doctors involved in this case. A letter will be sent to the doctors indicating that the Board finds no optometric error or violation of Oregon Revised Statutes or Administrative Rules. A letter will be sent to the patient indicating that the Board finds no optometric error or violation of Oregon Revised Statutes or Administrative Rules and explaining that the prescription changes are due to changes in overall health and appear to be reasonable. This case will remain open.

04-06-07 - This case is closed and the doctor is being monitored. The Board reviewed patient records which were provided by the doctor. The Board will invite the doctor to the meeting on August 12, 2011 for an interview.

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

CORRESPONDENCE -

Ben Coutant, OD - A reply has been sent to Dr. Coutant in answer to his inquiry about the over-filling of optometric prescriptions. The Board had no further comment.

Mary Fazelian, OD - The Board reviewed email between Ms. Paige and Dr. Fazelian regarding Luminous contact lenses. Ms. Paige has received several lenses from the company which she submitted to the Board. The Board had no further comment

Thomas Leech, OD - The Board was presented with the email correspondence between Dr. Leech and Ms. Paige regarding the use of the term "Board Certified".

Charles McBride, OD - Dr. McBride has written a letter to the Board regarding the use of the term "board certified" by optometrists. The doctor was present at this meeting and made a presentation to the Board, and the members of the public in attendance. It is Dr. McBride's opinion that anyone who uses the language, "board certified", to describe themselves, is in violation of the current statute ORS 683.140. He believes that this language suggests superiority of one physician over others. A number of licensees are advertising that they are specialists in one area of practice, or another. Dr. McBride feels that the certification programs which are presently available for optometrists are not true "Board Certification" programs such as is recognized in the medical field. He stated that, in optometry, the entire scope of practice is geared toward a limited function- the care and treatment of the eye.

Ms Lindley stated that optometry doesn't have the specialties that other professions have. She also said that the use of the word "specialist" does not have the same legal meaning as the word "superiority".

Dr. McBride asked the Board what they think the point of using the term "Board Certified" is, when an optometrist uses the term. Dr. Mans replied that he feels that the term advertises the completion of education and training beyond the requirements for licensure. Dr. McBride believes that the Board should take a position to prevent optometrists from advertising any board certification. Dr. McBride asked the Board to consider the issue carefully.

Ms. Paige stated that she does not believe the Board of Optometry can certify anyone. It is her feeling that the Board has authority only to license optometrists. Dr. Pelson stated that the board certification issue is here to stay and that the Board has to deal with the issue.

Association of Regulatory Boards of Optometry (ARBO) Annual Report - Arbo has asked about the Board's position on board certification. Dr. Pelson restated that board certification is a familiar idea. He stated that he doesn't think that the Board should let doctor's use the term "Oregon Board certified". Dr. Lynch and Ms. Thrush agreed. Ms. Thrush suggested that there be a statement on the Board's website clarifying that doctors should not claim to be "Oregon Board Certified". Ms. Paige would like to list all the entities which provide board certification. Ms. Thrush and Ms. Lindley stated that listing the organizations on the Board's web site is not a good idea. Dr. Pelson believes that the Board should remain neutral on the national issue of board certification, but state that an optometrist cannot use the term "Oregon Board Certified". The consensus of the Board is that board certification will not become a requirement for licensure.

With regard to the correspondence from ARBO, Dr. Lynch would like to take some time to think about the questions and send some suggested language. Dr. Garris and Dr. Pelson agree. The Board's brief response to the questions asked will be: 1. The Board is considering the topic of Board Certification and has a neutral position at this time. 2. The Board does think that continued competence of optometrists is part of the Board's mission. 3. The Board does think that the current system for maintenance of licensure (CE) is adequate in reassuring the public an OD is maintaining competence.

PRESIDENT'S REPORT - Dr. Mans reported that the Board's Certificate of Deposit with Fidelity Investments has matured, and the funds are currently in a money market account. He asked whether the Board wants to reinvest these funds. The consensus of the Board is that the funds should be reinvested with Fidelity.

COMMITTEE REPORTS -

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

Pacific University College of Optometry has submitted an Advanced Ocular Therapeutics On-line Course for consideration. Dr Lynch has not an opportunity to review this course. Tracy Oman from Oregon Optometric Physicians Association stated that OOPA is thinking of having an instructor at the presentation to offer guidance and answer questions for participants. Dr. Lynch will review the information submitted.

Budget Committee: Ms. Paige requested that Dr. Mans revisit the Budget document which was approved at the April 4, 2011 meeting. She would like to separate the allocation for Professional Development from the allocation for Technology. She has been unable to format the document to make the change. Dr. Mans will look at the template and make the adjustment.

Ms. Paige presented a contract with Wicklund & Lew, CPA's, LLC, which she has arranged in order for them to perform a financial review of 2009-2011 Biennium as required by ORS 182.464. Dr. Mans

and Dr. Lynch made inquiries to clarify details of the contract. Ms. Thrush made a motion to approve the contract. Dr. Garris seconded the motion. Dr. Mans instructed Ms. Paige to discuss these sorts of contracts with the Board in the future, prior to making commitments. Ms. Oman from OOPA asked whether this process is for a financial review and not for an audit. Dr. Mans affirmed that the process is now no longer an audit, but a financial review, as established by the ORS 182.464. There was no additional discussion. The motion carried by a unanimous vote.

Ms. Paige submitted a Financial and Internal Controls Policy manual, with revisions from the draft which were suggested at February 4, 2011 meeting. She will add a section pertaining to contracts for the next meeting.

Legislative Committee: Ms. Paige gave the Board an update on the status of House Bill 2381. Ms. Lindley explained the affect of various other bills, should the be signed into law.

Lori Lindley exited the meeting at 3:18 p.m.

Administrative Rules Committee:

The Board discussed the proposed amendments to the rules which were recommended at the April 8, 2011 meeting, including possible adjustments to the proposed budget. It was agreed that it will be appropriate to make any changes as a result of the hearing which is scheduled for June 3, 2011. The proposed changes to definitions listed in OAR 852-001-0002 will be tabled for the time being. A proposed rule change will be filed again at a later date when time allows for developing the definitions.

Dr. Mans assigned Ms. Rose Thrush to serve as the Administrative Rules Committee chair person.

Personnel Committee: Ms. Paige reported to the Board that she has been in communication with PEBB regarding reimbursement for Debbie Hendricks for opting out of health care benefits. The Board is not required to reimburse her for past months, but may do so if they choose to. Her salary will include the “opt-out” reimbursement in the future. Ms. Thrush made a motion to reimburse Debbie for the previous months. Dr. Pelson seconded the motion. There was no discussion. The motion carried unanimously.

Dr. Mans assigned himself to serve as the Personnel Committee chair person.

EXECUTIVE DIRECTOR’S REPORT -

Accounting/Budgeting: Ms. Paige reviewed the Revenue and Expense Budget Report for the current biennium covering July 1, 2009 through March 31, 2010 and a current Balance Sheet. She also discussed the Board checking and savings account balances. Dr. Mans asked why the net income line in her report reflects 3,110,458.8% of budget. Ms. Paige doesn’t know why that line is the report.

Dr. Walker asked whether the Board has an independent audit performed of QuickBooks. Ms. Paige replied that the Board is audited every two years. A new audit is beginning next week. She suggested that the auditor could take a look at QuickBooks and lend her some help. Ms. Boudreau said that it would probably not be appropriate for the auditor to assist with QuickBooks, since they are supposed to perform a neutral assessment, but suggested that Ms. Paige might want to consult with an accountant to help with the reports.

Board Activities Report: The report for the current fiscal year beginning July 1, 2010 through the end of March, 2011. Ms. Paige reviewed the report for the Board.

Facilities & Equipment Report: Ms. Paige reported that there have been difficulties with the plumbing and the elevator in the building. The elevator is still not working properly, but the building owners are working on the situation.

Peer Review Report Final: The final report was presented at Health Professional Regulatory Board Executive Directors meeting on March 28, 2011.

Semi-Independence for other Health Professional Regulatory Boards - The Governor's new liaison to the HPRB group, Sean Kolmer, has given the green light to moving forward in the 2012 session. Ms. Paige explained her involvement in the new project to help other agencies become semi-independent. Dr. Mans and Dr. Pelson each expressed that they do not want Ms. Paige's involvement with this group to take away from her responsibilities at the Board of Optometry.

Michael Jordan – Ms. Paige stated that Michael Jordan is the new Chief Operating Officer for DAS. He also oversees the heads of small agencies.

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

OTHER: There was no other business before the Board. The next meetings of the Board are scheduled for June 3, 2011, August 12, 2011 and November 4, 2011.

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

Prepared by:



Catherine M. Boudreau
Administrative Assistant

Approved by:



Robert Mans, OD
Board Chair