



## OREGON BOARD OF OPTOMETRY

November 6, 2015 Board Meeting

### PUBLIC SESSION MINUTES

**Board Members Present:** Jeffrey Pelson, OD, President  
Molly Cardenal, OD, Vice President  
Jessica Lynch, OD  
Douglas Walker, OD  
Catherine Webber, Public Member

**Board Staff:** Shelley Sneed, Executive Director  
Cathy Boudreau, Executive Assistant  
Debbie Hendricks, Acctg./Licensing Specialist

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

**Others in Attendance:** Janet Baker, Executive Director of Oregon Optometric Physicians Association (OOPA); Brandon Reed, OD; Nada Lingel, OD

**CALL TO ORDER:** Dr. Pelson called the meeting to order at 9:03 a.m., in the first floor conference room at 1500 Liberty Street SE, Salem, Oregon, 97302. The Public Session was adjourned at 9:04 a.m. to Executive Session for the purpose of discussing investigations and consultation with legal counsel.

*During Executive Session the Board considered consumer and Board-initiated complaints and investigations as authorized by ORS 192.660(2)(f) and (k), and consulted with legal counsel as authorized by ORS 192.660(2)(h). No official Board action was taken in Executive Session; all Board actions are made in Public Session.*

The Public Session was reconvened at 11:05 a.m.

Ms. Webber stated that she was unable to stay for the entire meeting and would like to discuss the proposed rule change regarding Public Records release. She asked whether the proposed rule will include reimbursement to the Board for the cost of AAG review and OBO staff review of records. AAG Lindley said that the costs are covered under the proposed rule. Ms. Webber also asked whether the proposed rule will allow the Board to stipulate that records must be reviewed

in the presence of an OBO staff person. AAG Lindley said that this is inferred in the rule language, but that additional language could be added to clarify.

Ms. Webber made a motion that two items be added to the Public Agenda, and that these two items be discussed out of agenda order, since she must leave the meeting soon. The items are discussion of Board member training, and discussion of the investigation process. The motion was seconded by Dr. Cardenal. The motion carried unanimously by oral vote.

**Items for Discussion:**

- **Board Member Training:** Board members are interested in having some additional training for their positions. AAG Lindley offered to prepare a presentation on Ethics and Public Law that is geared to board members. She noted that the Ethics Commission can also present this training and that other agencies have found it to be valuable. The Board expressed a desire for AAG Lindley to prepare a presentation for a future meeting. Ms. Sneed suggested that some training be provided at the next meeting, but that a more thorough training be presented in a year since two new members are expected to join the Board during 2016. She recommended that public records be addressed at the February 6, 2016 meeting and that contested case process, with public meeting law and the role of board members be addressed in 2017. The Board had no objection to this plan.
- **Investigation Process:** In light of a recommendation in the peer review report of 2011, Ms. Sneed asked whether the Board wants to use a confidentiality agreement when an agent is used in investigations. AAG Lindley stated that Department of Justice requirements for investigators are becoming unreasonable. Dr. Cardenal stated that she does not see a need for the Board to contract with an investigator. Ms. Webber would like a statistical analysis of the Board's past need for an investigator, and a projection of future needs and expenses. She requested that Ms. Sneed prepare that information for the Board.

Ms. Sneed noted that she has prepared a draft 2015-2017 budget modification for the Board's review that would include an allocation for investigative services, and asked whether the Board would like for her to start looking for potential investigators. Dr. Pelson stated that the research recommended by Ms. Webber is what the Board needs at this time.

Ms. Sneed will prepare a draft budget document, a draft procedure for investigator use, and a draft contract for the February 6, 2016 meeting. Dr. Walker asked what the trigger would be to call on an investigator. Ms. Sneed would rely on advice from the Board's Assistant Attorney General.

Ms. Webber exited the meeting at 11:27 a.m. The Board adjourned for lunch at 11:27 a.m.

The Public Session was reconvened at 12:45 p.m.

**MINUTES:** The Board reviewed the minutes of the July 24, 2015 Sessions. There was no discussion and the Board made no changes or additions to the minutes. Dr. Walker made a motion that the Board approve the minutes as presented. Dr. Lynch 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 Inactive Status** –
  - Wenjun Huang, OD
  - Timothy Ortiz, OD
  - Joseph Dababneh, OD
  - James P. Smith, OD
  - Brian Chow, OD
  - Boram Chung, OD
  - Brett Freese, OD
- **Reinstatement to Inactive-Military Status** –
  - Robert Franks, OD
- **Reactivate Inactive to Active Status** –
  - Frances Smith, OD
  - Boram Chung, OD
  - Brian Chow, OD
- **Reactivate Inactive-Military to Active-Military** –
  - Peter Im, OD

**Candidates for Examination and Licensure** - The optometrists listed in Exhibit A met all the requirements for licensure and were approved by the Executive Director since the last Board meeting.

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

## **ACTIONS ON EXECUTIVE SESSION:**

**14-07-02 – Hoyt, Kimberly/OBO:** The Board will close this case and continue monitoring compliance with the Consent Order of November 26, 2014.

**This case will be closed.**

**15-06-01:** This case will be closed with letters to the doctors in the case.

**This case will be closed.**

**15-07-01:** The Board will perform a follow-up investigation of the allegations in this case and report at the next meeting.

**This case will remain open.**

**15-07-02:** The Board directed Ms. Sneed to send letters to both the complainant and the doctor in this case. There is no evidence of optometric error or violation of Oregon Revised Statutes or Administrative Rules that are administered by the Board.

**This case will be closed.**

**15-08-01:** The Board directed Ms. Sneed to send a letter to the doctor telling him that, assuming that he is not intending to practice beyond his scope, the word “any” should be removed from his advertising as this does not accurately reflect his scope of practice.

**This case will be closed.**

**15-08-02:** Dr. Walker made a motion that the Board issue a Notice of Proposed Discipline, imposing a \$2,000 charge per violation for two violations, pursuant to ORS 676.110(1)(a)(b),, and ORS 683.140(i),(f), for a total of \$4,000. Dr. Cardenal seconded the motion. The motion carried by oral vote. Ms. Webber was not present, and the remaining members voted aye.

**This case will remain open.**

**15-09-01:** The Board will send a letter to the doctor explaining that the Board reviewed this case and reminding him that patient record custody is his obligation.

**This case will be closed.**

**15-10-01:** The Board directed Ms. Sneed to send a letter to the doctor to obtain additional information for their investigation.

**This case will remain open.**

**15-10-02:** There is no evidence of optometric error or violation of Oregon Revised Statutes or Administrative Rules in this case.

**This case will be closed.**

**15-10-03:** The Board will perform a follow-up investigation of the allegations in this case and report at the next meeting.

**This case will remain open.**

**15-10-04:** The Board will perform a follow-up investigation of the allegations in this case and report at the next meeting.

**This case will remain open.**

Dr. Cardenal made a motion that the Board ratify the actions taken in the Executive Session. Dr. Lynch seconded the motion. The motion carried. Ms. Webber was not present, and the remaining members voted aye.

#### **CORRESPONDENCE:**

- Douglas Smith, OD – Southern Oregon Lions Sight and Hearing Center is requesting written prescriptions so that they can “best match” donated glasses. Dr. Smith is asking if this practice is permitted.

Dr. Lynch believes this sounds like practicing without a license, and stated that “best fit” is not a valid criteria for dispensing eye wear. Dr. Walker wondered if this is a regional service. Dr. Pelson does not think so. He is under the impression that Oregon Lions Club is doing screenings and dispensing “best fit” glasses in other areas. A doctor may be overseeing, in some cases, before glasses are dispensed. Dr. Pelson believes that they are trying to do a good thing, but may be causing more trouble than helping. Dr. Cardenal asked whether other states have run into this issue. AAG Lindley suggested getting more information. Ms. Sneed

will contact the Lions Club and get more information.

### **PRESIDENT'S REPORT:**

- Recommendations regarding approval of state administered practical examinations for applicants for licensure by endorsement.

Dr. Pelson reviewed the exams for the doctors who have applied for licensure by examination endorsement. He found that the exams that were administered in the other states of licensure were comparable to the Oregon exams in the same year. He made a motion that the Board endorse these examinations to be accepted in lieu of a passing score on the NBEO Part III examination in the license applications for:

- Ronald P. Delano, OD
- Nathan K. Eichhorst, OD

Dr. Lynch seconded the motion. The motion carried by unanimous oral vote. Ms. Webber was not present.

### **EXECUTIVE DIRECTOR'S REPORT:**

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

- **Exhibit B - Accounting/Budget:** 2015-17 R&E Budget Report and Balance Sheet – Ms. Sneed reported that, overall, the Board's finances are in a better position than last year. She has proposed changes to the current budget that the Board will review later in the meeting. New compensated absence liability has been added to the budget information.
- **Exhibit C - Board Activity Report:** The Board reviewed the report for the current period. Ms. Sneed pointed out that the number of licensees is hovering at the same number. Dr. Lynch has reviewed a large number of continuing education courses.
- **Office Update:** Ms. Sneed reports that a quarterly newsletter will soon be going out and she would like updates from the Board members. Dr. Lynch expressed a desire to resolve the problems with the Board's fax reception. Ms. Sneed will insure that staff reboot the modem weekly.

Ms. Sneed gave the Board an overview of her activities since the last meeting:

- She was appointed to the common credentialing advisory group at the Oregon Health Authority. It was a position that Nancy DeSouza filled when she was the Board's Executive Director, so Ms. Sneed was a natural fit on the committee to represent the smaller health licensing agencies. The group is tasked with creating a common database that will be used by health insurance companies and others needing to verify credentials for health practitioners.
- The biennial LEDS records checks of all licensees were run by the Oregon Board of Nursing and all hits or concerns were followed up on. There was one new arrest that hadn't been reported, due to the timing of the licensee renewal. The licensee renewed and disclosed the event and the issue was resolved.
- In order to work on a proposal for conducting national background checks, Ms. Sneed met with the Executive Director of the Chiropractic Examiners Board about their process. There has also been some legislative changes affecting finger

- print retention and reuse to streamline background checks when individuals need them for employment, volunteering or other activities.
- Ms. Sneed met with each Board member during this time period. She appreciated the opportunity to have some one-on-one time with each Board member, and getting to know them.
  - Ms. Sneed implemented online payment for license renewal with the October 1, 2015 renewal cycle. She began testing with other fees (verification, multiple practice license fees, etc.) prior to the renewal implementation.
  - Ms. Sneed hosted the bi-monthly SIBA directors meeting with Oregon Travel Experience. It was a small group, so the meeting focused on the new online database project.
  - Office staff met with representatives from the Oregon Health Authority about the requirements for the legislatively mandated Healthcare Workforce Reporting program. Senate Bill 230 from the 2015 session added a number of health boards to this program. One of those is the Oregon Board of Optometry. The legislation obliges participating boards to require their licensees to complete an online survey about their employment, specialized services, ethnicity, languages spoken and education and training. The group agreed that OBO would implement the program in June 2016 due to our change to the new database. That allows us to get the new system implemented before adding this new requirement. There will also be a fee involved for the program. The current fee is \$2.50 but that is being reviewed and will be adjusted, most likely lowered, after the financial review.
  - On-site work began on October 5, 2015 for the Board's 2013-15 biennial financial review. Ms. Sneed will provide the Board with a draft of the report and the Board's response for the February 6, 2016 meeting.
  - Ms. Sneed contracted with the Department of Consumer and Business Services to use one of their web site designers to create the Board's new site. Once the site is designed, the web designer will train OBO staff to update and maintain the system long term.

Ms. Webber rejoined the meeting at 1:10 p.m.

#### **BOARD MEMBER REPORTS:**

**Continuing Optometric Education:** The continuing education offerings approved since the last meeting were presented to the Board in Exhibit D. Dr. Lynch made a motion that the Board ratify approval of these courses. Dr. Cardenal seconded the motion. There was no discussion. The motion carried unanimously by oral vote.

**Budget:** There was no budget committee report made at this time.

**Legislative:** Dr. Walker distributed a list of bills that were introduced during the last legislative session that had potential to affect the profession of optometry. Of these, three bills passed. The Board has proposed changes to the administrative rules in OAR 852-020 to implement the changes in optometric scope of practice.

**Administrative Rules:** The Board has proposed rules for adoption later in the meeting.

**Personnel:** There was no personnel committee report made at this time. Ms. Sneed pointed out that the Executive Director's performance evaluation is due. She will give the Board a form to use for that evaluation. Dr. Pelson will consult with her on the issue of the evaluation.

**Items for Consideration/Discussion:**

- **OBO 2011 Peer Review report review and status report** – This review was performed and the report written in 2011. Ms. Sneed would like to follow up on the work that was begun. She has submitted documents for the Board's review and action to bring the Board into line with several of the recommendations, particularly regarding delegation of authority to the Executive Director and Board investigations.

Dr. Lynch asked if the emailed documents to the Board could be better labeled so that they are easier to identify when viewing on the members' tablets. Staff will try using a different outline form for the agenda and using the same identifiers in the names of the files.

- **OBO consideration of legalization of marijuana use for O.D.'s** – Ms. Sneed reported that some of the health care directors had inquiries about this topic. She would like to address this issue in the newsletter that will go out next week. Dr. Cardenal would like to remind optometrists not to practice while impaired. Evidence of impairment while practicing would subject the doctor to discipline by the Board. Ms. Sneed will include a statement to that effect in the newsletter and on the Board's website.
- **National Background checks** – This topic was introduced by a licensee request. Ms. Sneed reported that legislation related to background checks was passed in the last session. Fingerprinting and background checks are performed by Oregon State Police (OSP) and agencies pay to acquire the information on an individual basis. Oregon Health Authority and DAS Human Resources are currently in the process of rulemaking to implement this legislation, and an option might be provided that would make the background check results available to other agencies. AAG Lindley said that some agencies require all new applicants to obtain a thorough background check, and some require the same at renewal. Dr. Cardenal proposed that the Board require expanded background checks for new license applicants, and in cases of an investigation, or other cause. The application fee should be increased to cover the cost to acquire the information from OSP.

Ms. Webber made a motion that, beginning 4/1/2016, the Board require national background checks, including finger printing, for all new applicants and to require the same checks for any other investigation activities where appropriate, and to commence rulemaking for the required fee increase. Dr. Lynch seconded the motion. The motion carried unanimously by oral vote.

- **CE attestation and audit, and miscellaneous rule changes** – Ms. Sneed reported that these proposed changes to reporting of continuing optometric education are building on the work previously submitted by Nancy DeSouza. The primary issue is attestation of completion of COE rather than 100% verification of original documents. Dr. Lynch proposed that a doctor be required to send original documents during an audit. Ms. Webber asked whether the Board will be at risk if a doctor has a practice problem when

their CE wasn't audited. AAG Lindley said that completing and verifying COE is not a guarantee of good practice.

Ms. Sneed asked whether the Board is in favor of moving forward with attestation of COE. Board agrees that attestation of COE is what they want to do. They also agree that they expect there will be doctors who fail. Ms. Sneed asked if the Board would give her approval to work with AAG Lindley to develop a draft rule for February. The Board requests that she submit recommendations at the February meeting.

- **Website Discipline posting** – Currently on the Board's website, disciplinary actions have been posted from 2000 and later, but some actions from earlier dates have also been posted. Ms. Sneed would like to have a consistent policy about what information is available. AAG Lindley noted that the legislature is going to push for more transparency. The Board would like to publish 15 years of information on the website. Additional information is available by request to the Board office.
- **2015-17 Proposed budget modifications** – Ms. Sneed pointed out that the budget modifications don't need to be adopted until after the first of the bienium. She wants the Board to get a better picture of the finances before changes are made. The DAS computer fees have tripled lately, and Ms. Sneed is considering options to discontinue DAS support for desktops, and purchase systems. This would be considered further down the road in the database project. Dr. Lynch asked if other Board's use DAS for these services. Ms. Sneed said that there had been a movement toward contracting with DAS, but then the costs skyrocketed. She will prepare a draft budget modification for the May 2016 meeting.
- **Board position applicants** – There are currently eight optometrists who have applied for Board appointment, from all over the state. Ms. Sneed noted that Oregon Optometric Physicians Association has voiced no objections to any of the applicants. The Governor's office would like to have feedback from the Board by mid-December. Ms. Sneed asked if any of the Board members want to be included in the conversations with the applicants. Dr. Pelson proposed that Ms. Sneed talk to the candidates and then report back to him. Ms. Webber said that she would make herself available if necessary.
- **Leadership Oregon** – Ms. Sneed would like to attend the statewide training program. The cost is \$2,750 of which her tribe will pay \$500. She asked the Board to approve the expense of the remaining portion of the program. The consensus of the Board is that the expenditure is a valid use of funds.

#### **ITEMS FOR BOARD ACTION:**

- Approval of Rule Changes filed 9/15/15 and published in the Bulletin October 1<sup>st</sup>
  - OAR 852-005-0015 – Fees, board Member Compensation, Public Records Request
  - OAR 852-010-0080 – Public Records Requests
  - OAR 852-020-0035 – Hydrocodone-Combination Drugs

Robert Mans, OD commented on the proposed changes to OAR 005-0015 with regard to Board member compensation, stating that the Board has previously referenced the written

Board reimbursement policy in administrative rule rather than using dollar amounts in the OAR, to avoid having to amend rules when changes are made to compensation rates. Ms. Sneed stated she believes ORS 683.250(4) requires the Board to put the compensation in rule if they don't use the DAS compensation rate

Ms. Webber continued the discussion from earlier in the meeting about adding to language in OAR 852-005, regarding public records requests. Based on the advice of AAG Lindley, she is satisfied with section 2, and in section 7 she would like to be explicit that inspection must be in the presence of a Board staff member. She wants to add the words: "Board staff must be present" to the proposed rule.

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

- **Delegation of Authority to the Executive Director** – Ms. Sneed has composed the submitted document from an example that was shared at a recent Healthcare Director's meeting. She believes that it will be helpful to the Board and staff to have the single document in place rather than the existing resolutions.

Ms. Webber made a motion to adopt the new delegation of authority document, replacing the previous documents and resolutions. Dr. Walker seconded the motion. The motion carried unanimously by oral vote.

- **Bes Technologies database project approval** – Ms. Sneed gave the Board an update of the database project. She still has concerns about the DAS fees. The monthly fee for the database is currently proposed to be \$2,500 for the DAS services to support the project—those costs will be shared with all of the new participating agencies.. She has a question about the Board's portion of that fee. DAS has agreed to add fees incrementally as boards come online. A \$1,500 per month fee is paid to the vender and a one time fee for the document management module is \$15,000 divided by five Boards. The ongoing fee payable to DAS is still undecided. The participating boards are going to ask DAS to absorb the \$2,500 monthly fee for the first biennium. Dr. Walker asked what the options are to this database, and what the term of the contract is. Ms. Sneed said the option is to keep what we currently have and that there is no contract term. She noted that the Oregon Health Licensing Authority is very happy with the system.

AAG Lindley asked if one of the boards drops out, are the others liable for the monthly fees. Ms. Sneed doesn't know the answer to that question. She would like the Board to give her negotiating authority and to give final approval authority to herself and Dr. Pelson if the details are ironed out. The Board would prefer to have a conference call to give final approval after she gets more information. Ms. Sneed would like the Board to approve the \$1,500 per month expense and the Board's portion of the \$15,000 for the document management module. She is concerned about the DAS portion. She feels that having the Board's approval of the project will give her a stronger place of negotiation for the \$500. She is worried about the next biennium that the fees will skyrocket as they have recently.

Dr. Lynch made a motion that the Board approve contracting with Bes Technologies contingent on finding an affordable, appropriate, functional and reliable data storage host and storage system, and with AAG and the Board's review of the final contract. Dr. Cardenal seconded the motion. The motion carried unanimously by oral vote.

Ms. Sneed will submit the contract to the AAG and Dr. Pelson. Dr. Lynch would be in favor of using a storage resource other than DAS.

- **Financial policies** – The previous Board reimbursement policy had been to get three bids for any purchase over \$100. In addition, the Board hasn't had a written collections policy. Ms. Sneed would like to exercise consistent and judicious purchasing. She is proposing a new purchasing policy that wouldn't apply to travel or postage. The new policy includes the process of collections. The Board would like to raise the ceiling to \$1000 before bids are required.

Dr. Walker made a motion that the Board adopt the proposed financial policy. The motion was seconded by Ms. Webber. The motion carried unanimously by oral vote.

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

**OTHER BUSINESS:**

**Future Meetings:**

- Friday February 12, 2016
- Friday May 6, 2016
- Friday August 19, 2016
- Friday November 18, 2016

**ADJOURNMENT:** There was no further business to come before the Board, and President Pelson adjourned the meeting at 3:14 p.m.

Minutes prepared by:

Approved by:

Catherine M. Boudreau  
Executive Assistant

Shelley Sneed  
Executive Director