

OREGON BOARD OF OPTOMETRY

PUBLIC SESSION MINUTES

March 13, 2009

Present - Michelle Monkman, O.D., President
Wesley Vorpahl, O.D., Vice President
Donald Garris, O.D.
Robert Mans, O.D.
Karen Knauerhase, Public Member

Lori Lindley, Assistant Attorney General
David Plunkett, Executive Director
Cathy Boudreau, Administrative Assistant

CALL TO ORDER -

Dr. Monkman called the meeting to order at 9:01 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. The Public Session reconvened at 12:32 p.m.

Mr. Wayne Schumacher, from the Oregon Optometric Physicians Association was in attendance.

MINUTES - The Board reviewed the December 10, 2008 Public Session minutes. Dr. Mans made a motion to accept the minutes as presented. Dr. Garris seconded the motion. The minutes of the meeting were unanimously approved as distributed.

RATIFICATION -

Reactivation and Reinstatements:

Reactivation of license to Active status from Inactive: Tami Lang, O.D.
Reactivation of license to Inactive status from Inactive-Military: Cheryl Patzer, O.D.
Reinstatement of license to Active status: Kelly P. Mai-Le, O.D.
Reinstatement of license to Active status: Jeremy Graziano, O.D.

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. Monkman read the list of candidates into the record.

Dr. Garris made a motion that the Board approve the actions of the Executive Director. Ms. Knauerhase seconded the motion. The motion carried unanimously.

ACTION ON EXECUTIVE SESSION

06-08-02 - The Board will send a letter to the attorney in this case informing him that the Board is preparing letters of proposed disciplinary action for all the doctors at the retail facilities involved in this investigation which will include reprimands and civil penalties of \$1,000 per day until the contract and practices of the doctors are consistent with the Board's requirements. This case will remain open.

07-10-01 - The contested case hearing with the Office of Administrative Hearings is set in this case for April 28, 2009. This case will remain open.

07-10-03 - A Stipulated Final Order was agreed to by Marie Pearson, O.D. in this case and was executed on December 17, 2008. The Final Order included a reprimand and a \$1,000 reimbursement of disciplinary costs. The payment of \$1,000 was received from Dr. Pearson on March 2, 2009. This case will be closed.

07-10-05 - A Stipulated Final Order including a reprimand was agreed to and executed on December 22, 2008 with Lena Barghouti-Afranji, O.D. This case will be closed.

07-10-07 - The contested case hearing with the Office of Administrative Hearings is set in this case for June 3, 2009. This case will remain open.

08-03-01 - The contested case hearing with the Office of Administrative Hearings is set in this case for April 28, 2009. This case will remain open.

08-09-03 - A letter was sent to the complainant regarding the Board's determination in this case. The Board did not find any violations of the Oregon Revised Statutes or Oregon Administrative Rules. No further response has been received. This case will be closed.

08-11-02 - A letter was sent to the complainant regarding the Board's determination in this case. The Board did not find any violations of the Oregon Revised Statutes or Oregon Administrative Rules. No further response has been received. This case will be closed.

08-12-01 - The Board's investigation will continue and the case will remain open.

08-12-02 - Two attempts have been made to obtain details from the complainant in this case. Since no details have been furnished, this case will be closed.

09-01-01 - The Board will subpoena the doctor's appointment book for November, 2008 through February, 2009. Dr. Garris made a motion that the Board issue a Notice of Proposed Disciplinary Action, Reprimand and Civil Penalty, \$20,000. Ms. Knauerhase seconded the motion. The motion carried unanimously. This case will remain open.

09-02-01 - The investigation will continue and the case will remain open. A letter will be sent to the doctor to obtain additional information.

09-02-02 - Letters will be written to the doctor and the owner of the retail establishment in this case. This case will remain open.

09-02-03 -

09-02-04 -

09-02-05 -

09-02-06 - Additional investigation will be conducted in these cases to determine whether the violations have been corrected. These cases will remain open.

Dr. Vorpahl made a motion that the Board approve all of the actions, as referenced in the above cases, taken in Executive Session. Dr. Mans seconded the motion. The motion carried unanimously.

CORRESPONDENCE -

The Board has received several communications from Drs. Curtis and Jacquelyn Delplanche and Linda Knutson, O.D. regarding their professional relationship. The Board cannot give the doctors legal advice. They noted that patient files should not have been mixed if Dr. Knutson was working as an independent contractor. The consensus of the Board and their interpretation of the current administrative rules is that the records belong to the last physician who treated a patient as the doctor of record. They will advise the doctors to review HIPPA regulations before making copies of patient records for the transfer of patient information. The Board will be considering changes to the administrative rules to clarify this issue.

The Board reviewed a letter from Charles McBride, O.D. concerning his new practice model. The Board does not have any problem with the practice concept as they understand it but will advise the doctor to be very proactive in letting patients know that only eyeglasses are available.

The Board addressed the FDA approval of Latisse for eyelash treatment and the question of whether the use of the drug for this purpose is within the scope of optometric physicians in Oregon? The drug is already approved on the optometry formulary. As long as the physician monitors the patient for other eye health issues, the use under question is within the scope of optometric practice. Dr. Mans made a motion to consider the use of Latisse for eyelash treatment to be within the scope of practice for optometry. Dr. Vorpahl seconded the motion. The motion carried unanimously.

PRESIDENT'S REPORT -

There was no report submitted.

EXECUTIVE DIRECTOR'S REPORT -

Accounting/Budgeting: Mr. Plunkett reviewed the Revenue and Expense Budget Report covering the period of from July 1, 2007 through January 31, 2009. He pointed out that the budgeted Revenues were for this biennium were \$480,838, whereas the actual revenues for the current report are \$489,179, realizing an excess of \$8,341. Payroll and related expenses are \$8,646 under budget. Office expenses are \$8,367 under the budgeted amount. He reminded the Board that some of the expense previously budgeted under postage has since been charged under intra-agency charges due to a change in the accounting process in the State Publishing and Distribution agency. The Board's expense total is currently \$16,048 under budget, leaving the overall budget \$24,389 to the good.

Mr. Plunkett reviewed and discussed the Balance sheet with the Board. The Board's current assets include \$53,570 in cash accounts, \$170,000 in Certificates of Deposit and \$3,232 in the investment account. Liabilities total \$18,247 which include payroll expenses totaling \$3,289 and accrued PTO of \$18,255.

The current Board Activities Report for the fiscal year through February 2009 reflects a total number of 703 active status licensees. Mr. Plunkett pointed out that of these, 51 still have the "T" therapeutic certification. The Board has received 18 new formal complaints in this reporting period and has resolved 14 investigations. Of these, two have resulted in disciplinary actions.

Other: Mr. Plunkett has received an email from Curtis Ono, OD president elect of Optometric Physicians of Washington regarding the Joint Board Certification Project Team (JBCPT). Dr. Ono inquired what the Board is doing regarding education of licensees in Oregon about the project and wondered if ARBO has been soliciting opinions from individual boards. Mr. Plunkett provided the Board with documents regarding the project. He asked Mr. Schumaker his opinion about the NBEO being the group to do certification if such a practice came about. Mr. Schumaker expressed that the biggest concern for the optometric associations' executive directors is that the "rank and file" will see this as just another hurdle, not a specialty certification. They believe that, just as occurred in the dentistry profession, this certification idea will probably not "fly" with doctors.

COMMITTEE REPORTS -

Continuing Optometric Education: Dr. Garris moved that the Board ratify the continuing optometric education courses approved since the last Board meeting, including designation of acceptable TMOD offerings. Dr. Vorpahl seconded the motion. The motion carried unanimously.

Budget Committee: Mr. Plunkett gave an overview of the schedule for approving the Board's budget for the coming biennium. He reviewed the proposed budget document and explained the line items for the benefit of board members who have not previously been through the budget process. He pointed out the changes from the previous two bienniums. There is no increase proposed in fees to licensees and no increase in employee salaries. After the Board thoroughly reviewed the proposed budget, Dr. Garris made a motion that the Board accept the budget as the proposed budget for the 2009 - 2011 biennium. Ms. Knauerhase seconded the motion. The motion carried unanimously.

Legislative Committee: Dr. Vorpahl gave a detailed report about the many bills that the Board is watching this session. A list was prepared for the Board of those bills which have relevance to the OBO. Mr. Wayne Schumaker was present for the discussion. He and Bill Cross, the lobbyist for Oregon Optometric Physicians Association have met with almost all the members of the health committee and they feel that there is insufficient support for HB 2057 which proposes to terminate the semi-independence status of the OBO.

Administrative Rules Committee: Dr. Mans reported that there are two proposed changes which will be up for public hearing at the June 5, 2009 meeting. The change to OAR 852-005 proposes the Board's 2009-2011 budget, and OAR 852-070 with proposed changes for continuing optometric education. Licensees will be notified of the proposed changes and of the public hearing on these administrative rule revisions.

Personnel Committee: Mr. Plunkett requested that the Board review his decision not to implement COLA increases for calendar year 2008, which were to be effective January 1, 2009. In addition he asked they review the decision not to include performance pay money and COLA money in the 2009-2011 biennium proposed budget. In light of the current economic conditions in Oregon and recommendations by the Governor for other state employees, performance pay will not be awarded to OBO employees in 2009 and 2010. He reminded the Board that the COLA is tied to the Portland/Salem Metro area CPI and are automatic effective January 1st of each year. Therefore, the Board will need to decide whether to implement the next COLA in January 2010 (Based upon budget and economic conditions at that time). Dr. Vorpahl made a motion to approve the Executive Director's decisions and recommendations as presented. Ms. Knauerhase seconded the motion. The motion carried unanimously.

Mr. Plunkett provided the Board with current copies of the OBO employee position descriptions. He suggested that they keep them with their Board records.

UNFINISHED BUSINESS: Consideration of changes to ethics/Oregon law and rule course requirement (OAR 852-70- 010(1)(b)) will be continued to a future meeting.

OTHER: Mr. Schumaker mentioned that there is a new contact lens that was developed by Johnson & Johnson which contains a drug and they are moving to have the device approved as a drug. He believes that because no optometrists may currently sell drugs and no pharmacists will want to dispense contact lenses, this may require a scope change for optometrists. He said that legislation may be presented in the future which will expand the scope of practice to allow the use, prescription or sales of these lenses.

Mr. Plunkett mentioned that Brian Deck, O.D. has applied to be a COPE reviewer with ARBO. The Board has no objections to his application and will inform ARBO.

The next Board meeting has been previously scheduled for June 5th.

ADJOURNMENT -

There was no further business to come before the Board and President Monkman adjourned the meeting at 3:08 p.m.

Prepared by,

Reviewed by:

Catherine M. Boudreau
Administrative Assistant

David W. Plunkett
Executive Director