

# OREGON BOARD OF OPTOMETRY

## PUBLIC SESSION MINUTES

*October 2, 2009*

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

David Plunkett, Executive Director  
Cathy Boudreau, Administrative Assistant

### **CALL TO ORDER -**

Dr. Monkman called the meeting to order at 8:40 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 12:05 p.m.

Karen Knauerhase, Public Member, was not in attendance due to an accident in which she was injured. Wayne Schumaker, Executive Director of the Oregon Optometric Physicians Association, and Tina Batori, of Bishop Communications were in attendance.

**MINUTES** - The Board reviewed the June 5, 2009 Public Session minutes. Dr. Mans made a motion to accept the minutes as presented. Dr. Vorpahl 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: Fred Fisch, O.D.  
Reactivation of license to Active status from Inactive: Jeffrey Harris, O.D.  
Reactivation of license to Active status from Inactive: Richard Robinson, O.D.  
Reactivation of license to Active status from Inactive: Stephen Matthews, O.D.  
Reactivation of license to Active status from Inactive: Paul Olsovsky, O.D.  
Reactivation of license to Active status from Inactive: Tera Palmblad, O.D.  
Reinstatement of license to Inactive Status: Richard Anderson, O.D.  
Reinstatement of license to Inactive Status: Jeffrey Harris, O.D.  
Reinstatement of license to Inactive Status: Richard Robinson, O.D.  
Reinstatement of license to Active Status: Patricia Kozak, O.D.  
Reinstatement of license to Active Status: Charles Dale, 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. Vorpahl made a motion that the Board approve the actions of the Executive Director. Dr. Mans seconded the motion. The motion carried unanimously.

### **ACTION ON EXECUTIVE SESSION**

**06-08-02** - The Board will continue their investigation in this case. This case will remain open.

**08-12-01** - The Board will continue their investigation in this case. This case will remain open.

**09-04-02** - A letter was written 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.

**09-05-01** - A letter was written to the complainant and the physician regarding the Board's determination in this case. The Board found no optometric error or violation of Revised Statutes or Administrative Rules. No further response has been received. This case will be closed.

**09-07-01** - Two letters were written to the complainant in this case requesting details of his complaint. He has not responded to our letters. The Board will attempt to contact the complainant and determine the identity of the doctor. They are willing to address the complaint as they don't believe that the allegation is an appropriate behavior for a licensee. This case will remain open.

**09-08-01** - The Board reviewed the documents received from the patient in this case. The doctor's response will be forwarded to the Board when it is received. The case will be reviewed at the next meeting. This case will remain open.

**09-08-02** - A letter will be sent to the complainant and to the doctor explaining that the optometric physicians in this case appear to have performed their examinations in keeping with the current standard of optometric care. The Board will recommend that the doctors distribute some explanatory literature in the future to advise patients of what things to look for in situations such as this, and to suggest to patients that a referral to a retinal specialist could be of benefit. While this course of action may not have affected any difference in the outcome of this particular circumstance, the information provided in some of the brochures are valuable to patient education. This case will remain open.

**09-09-01** - The complainant in this case has alleged that the complete records for the minor patient have been withheld with the premise that the test results are "work product". The Board feels that these results are clearly to be released to the patient as a part of the entire record. A letter to that effect will be sent to the doctor and copy to patient. This case will remain open.

**Lindsay Clunes, OD:** A letter was written to Dr. Clunes on September 3rd concerning the Board's request for his plan on how he could accomplish the intent of his Stipulated Order since he has not been seeing the required number of patients. In the meantime, Dr. Clunes has unintentionally allowed his optometry license to lapse. He did not have a completed renewal application because he failed to take

a law or ethics course. The Board's decision is to reinstate Dr. Clunes' license temporarily to allow the Board to review patient records and to invite Dr. Clunes to attend the meeting in December to discuss his continued licensure. Dr. Mans moved to reinstate the limited licensure of Lindsay Clunes, OD, subject to the terms of the Stipulated Order dated October 31, 2008. Dr. Garris seconded the motion. The motion carried unanimously.

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 received communication from John Smith, O.D. regarding carryover of COE excess hours. He has noted that hours completed in the month that a licensee's renewal is due may not be carried over beyond the following renewal, suggesting that all COE should be valid for two renewal periods. The Board will reply to Dr. Smith and explain that they appreciate his perspective and that they have reviewed the administrative rules. The Board is not required to validate all COE for two renewal periods, nor was that the intention of the current Administrative Rules. The Board has decided to take no action since, to date, this issue has not resulted in licensees finding it difficult to complete their COE in a timely manner.

Carolyn Clark, O.D. has inquired of the Board regarding retinal photos and electronic medical records. She has asked whether digital retinal photos are considered part of the patient record when transferring custody to another physician. The Board noted that these photos may be downloaded to a disk which can be easily transferred with other records. They are part of the medical record and should be transferred as well.

Brooks Alldredge, O.D. has inquired of the Board regarding approval of the New Jersey Oral Pharmaceuticals Credentialing Course which was sponsored by the Pennsylvania College of Optometry. He believes that the course may be comparable to the 23-hour didactic course currently approved by the Board for certification to use, administer and prescribe the non-topical formulary. The Board reviewed the course and Dr. Monkman's opinion is that the courses are comparable. The rest of the Board concurs. They will approve the course as comparable to the required 23-hour advanced therapeutic course for AT certification. Dr. Garris made a motion to approve the New Jersey Oral Pharmaceuticals Credentialing Course, sponsored by the Pennsylvania College of Optometry as satisfying Oregon's 23-hour advanced therapeutic course requirements for AT certification. Dr. Vorpahl seconded the motion. The motion carried unanimously.

The Board reviewed communication from the American Optometric Society (AOS) regarding the American Optometric Association's (AOA) position and actions toward Board Certification. In addition to this communication, the Board considered an email distributed by Mr. Schumaker from Dr. Brooks, OD of the AOA which discusses the issues of concern raised by the Association of Regulatory Boards of Optometry (ARBO) regarding board certification for optometrists. ARBO did not sign the letter of exclusivity because they believe that Board Certification has the potential for usurping state licensing authority. Dr. Vorpahl feels that the stated mission of Board Certification is taking authority for those responsibilities that are, in fact, state licensing board responsibilities. Mr. Plunkett stated his opinion that competency and continued competency are the purview of the Board. The previous advice which the Board received from the State Attorney General's office is that their authority cannot be

delegated to another entity. In the case of COPE, the Board will accept COPE review, but the Board still reviews COPE and their processes. The Board will continue to monitor the progress of Board Certification and take appropriate measures as needed.

### **PRESIDENT'S REPORT -**

There was no report submitted at this time.

### **EXECUTIVE DIRECTOR'S REPORT -**

**Accounting/Budgeting:** Mr. Plunkett discussed the BTD budget report and Balance Sheet covering the period of July 1, 2007 through June 30, 2009. He pointed out that the first report received by the Board prior to the meeting was not adjusted for audit. He explained that the Board's budget and anticipated revenue are not based upon accruals. When the budget period closes, and the preparation is made for audit, it is necessary to pull out the unpaid licensee renewals for months beyond the period from accounts receivable and adjust unpaid employee PTO on the balance sheet to reflect actual values. The Auditors make this necessary because they are "taking a picture in time" in which they want these changes in funds reflected as though they had actually occurred. This is important because it affects the "bottom line" on this adjusted report, making it appear that the Board has gone over budget. When considering the Revenue over/under Expense column on the unadjusted report, the figure is \$24,651 to the good. There was a budgeted deficit for the biennium of \$9,959, which results overall in a \$34,610 budget surplus for the biennium. However, on the adjusted report, the figure in the Revenue over/under Expense Column is a deficit of \$3852 which is still \$6,107 less than the budgeted deficit of \$9,959. In either case, the Board ended the biennium under the approved budget. He also pointed out that the Board had higher legal expenses (\$27,099) than had been budgeted (\$20,000).

Mr. Plunkett is preparing for the semi-annual audit which is particular to Semi-Independent boards. The cost will be higher than was budgeted. The firm performing the audit is Moss-Adams, LLP which has contracted with the Secretary of State/Audits Division. Mr. Plunkett has requested that the Audits Division contact individual Board members regarding their opinion of the need for a change of directors audit following his retirement. Mr. Plunkett said that he requested that , if the Audits Division wished to perform a change of directors audit, it be done in combination with the regular financial audit.

**Board Activities Report:** The Board reviewed the cumulative report for the Fiscal Year ending June 2009 as well as the cumulative report for the current fiscal year to date through August 2009. Mr. Plunkett compared the number of licenses from year to year. He noted that the number of inactive status licensees goes down each year by about 25 per year and he predicts this trend to continue. This reduction will negatively affect the Board's revenue.

Mr. Plunkett pointed out that there were 31 formal complaints, closed by the Board, and 41 new licenses were issued. He replied to Dr. Mans' question regarding Civil Penalties imposed by the Board, that all have been paid except for those assessed to Johnathan Rogers, Hub Optix and Jeremy Graziano, OD.

The contract with Stephen Kafoury for Legislative lobbying services provided to the SIBA group will be renewed for the next biennium. A copy of the cover page has been distributed to the Board. The contact person for working with Mr. Kafoury in the next biennium will be Jim Heider with the Physical

Therapists Board.

Mr. Plunkett reported that the NBEO will no longer be administering a written exam for the states' law examination. They are developing an on-line alternative. The new process will offer a candidate 24/7 access to take the exam. The Board had intended to be able to provide the exam online through our website. Because we aren't ready to accomplish this ourselves, this will be a good option for licensing candidates and other optometric physicians needed to take the Law and Administrative Rules Exam.

## **COMMITTEE REPORTS -**

**Continuing Optometric Education:** Dr. Monkman recommended that the Board ratify the continuing optometric education courses approved since the last Board meeting, including designation of acceptable TMOD offerings. Dr. Mans moved that the Board accept the actions of the committee chair in approving the COE offerings. Dr. Garris seconded the motion. The motion carried unanimously.

**Budget Committee:** The Audits Division has contracted with Moss-Adams, LLP to perform the required financial audits of the semi-independent agencies, including the OBO. The audit field work for the OBO is scheduled to be completed by October and the final audit report by December.

**Legislative Committee:** A special session of the legislature has been called and is scheduled to begin in early February, 2010. Dr. Vorpahl discussed the subject of board consolidation and the possibility of the legislature addressing this topic during the special session. Claudia Black, Healthcare Policy Advisor to the Governor, has asked Scott Harra, Director of Department of Administrative Services, to talk to the next health boards' Executive Directors about the Governor's position on consolidation at their next meeting. He has previously spoken at the meeting of the heads of Small Agencies and said the issue would not be addressed in the special session. Mr. Plunkett will not be able to attend the upcoming meeting.

Mr. Shumaker stated that OOPA will continue to introduce legislation regarding children's eye health care.

**Administrative Rules Committee:** A public hearing is scheduled for consideration of the following administrative rule revisions: Divisions 005, 010, 020, and 050 at 1:30 PM on December 4, 2009. Dr. Mans discussed the proposed changes, one of which establishes the compensation for Board Members in rule. The Board currently has the authority to set compensation, but because of recent legislation, the policy must be in rule. In Division 005, the compensation amount suggested by Mr. Plunkett is proposed to increase to \$100. The Board feels that the amount is reasonable.

The proposed changes to Division 010, and 050 address the electronic prescription monitoring program which the Board is required to implement. The Legislature implemented the law effective immediately. \$25 will be assessed to each Active Status licensee. In theory, the system will be available 24/7 to all prescribers in Oregon.

OAR 852-020 addresses therapeutic contact lenses and explains the conditions for dispensing of controlled substances, in addition to clarifying existing language as a housekeeping issue.

The Board reviewed the text of the proposed rules as presented and will move forward with the hearing on December 4, 2009.

**Personnel Committee:** Mr. Plunkett reported that the recruitment for the Executive Director position was open for two weeks and there were eight applicants, with as many as two or three that the committee will want to interview. He was a little disappointed with the response. He suggested that those on the committee get together to consider the applications in the next couple of weeks.

Kathy Hanson will be retiring effective 11/30/2009. Mr. Plunkett is undecided as to his retirement date, but it is possible that he will retire at the same time. Dr. Vorpahl moved that the Board continue to employ Mr. Plunkett and Ms. Hanson as temporary employees at the same rate of pay to include their health insurance benefits, to continue at the Board's discretion to aid in the transition to new staff. Dr. Garris seconded the motion. The motion carried unanimously.

**UNFINISHED BUSINESS:**

**OTHER:**

President Monkman adjourned the meeting to Executive Session at 1:49 p.m. to complete the review of complaint cases. The meeting was reconvened at 3:05 p.m.

The next Board meeting is scheduled for December 4, 2009.

**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