

OREGON BOARD OF OPTOMETRY

PUBLIC SESSION MINUTES

January 7, 2005

Present - John P. Reslock, O.D., President
Candace D. Hamel, O.D., Vice President
Scott M. Walters, O.D.
Michelle M. Monkman, O.D.
John M. Doneth, CFP, Public Member

David W. Plunkett, Executive Director
Cathy M. Boudreau, Administrative Assistant

CALL TO ORDER -

Dr. Reslock called the meeting to order at 9:10 a.m. in the second floor conference room at 3218 Pringle Rd. SE, Salem, OR., 97302. The Board immediately adjourned to Executive Session for the purpose of discussing complaint cases. The Public Session was reconvened at 12:51 p.m.

MINUTES - The Board reviewed the Public Session minutes of September 20, 2004. The minutes were approved as presented.

RATIFICATION -

Reactivation and Reinstatements:

- Reactivation of license from Inactive to Active: Laura Prisbe, O.D.
- Reactivation of license from Inactive to Active: Ben Coutant, O.D.
- Reactivation of license from Inactive to Active: James Kintner, O.D.
- Reinstatement of license to Inactive status: Michael Glanzer, 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. The names of the candidates were read into the meeting record.

Dr. Walters moved to ratify the actions of the Executive Director. Dr. Hamel seconded the motion. The motion carried unanimously.

ACTION ON EXECUTIVE SESSION

04-06-05

04-06-06 - A letter will be sent to the physicians indicating the following deficiencies: illegible notations, lack of initials by physicians, notations which appear to have been made after the fact with no evidence of supportive testing. In this case, records do not support the diagnostic conclusion. The complainant will receive a letter indicating that the Board has made a thorough review of her complaint and the

records from all the physicians. With regard to the care provided by the physicians named in these cases, the fact that there is no notation of the diagnostic conclusion in the record prior to 4/1/2004 does not preclude the pre-existence of the condition. These cases will remain open.

04-07-01

04-07-02

04-07-03

04-07-04 - A response has been received from the physicians in this case. No additional action is required. This case will be closed.

04-09-01 - The complainant has not responded in this case. This case will be closed.

04-09-02 - 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.

04-09-03 - The doctor will be fined \$1,150.00 for multiple failures to notify the Board of his practice locations. A letter to the doctor will make note of the maximum that could have been fined for failure to notify the board of dispensation of records, and explain that the next violation could result in a disciplinary action including a civil penalty. This case will remain open

04-09-04 - Dr. Hamel moved that the Board issue a Final Order by Default in this case: Reprimand and Civil Penalty of \$2000, citing unprofessional conduct, failure to respond to Board's requests for information, failure to report changes of address and failure to notify the Board of the change of custody of patient records in his practice locations. Dr. Monkman seconded the motion. The motion carried unanimously. The staff will mail it to his last official address of record as well as any other known addresses. This case will remain open.

04-10-01 - 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.

04-10-02 - The Board will send a letter to the patient indicating that after a careful review of the records, the Board doesn't find any optometric error or violation of the Oregon Revised Statutes or Administrative Rules. This case will remain open.

04-10-03 - 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.

04-10-04 - A letter will be sent to the patient explaining that the care in this case was appropriate, in fact exemplary, and that the Board finds no optometric error or violation of Revised Statutes and Administrative Rules. This case will remain open.

04-11-01 - A letter will be sent to the doctor regarding his use of the terminology "Board Certified" in his advertising. If he wants to use this language, he must specify "Oregon Board of Optometry certified". He will be referred to the Board's last newsletter of December, 2004. This case will remain open.

04-12-01 - Dr. Monkman moved that the Board issue a Notice of Intent to Discipline: Reprimand and \$10,000 Civil Penalty in this case for practicing optometry without a license. Dr. Walters seconded the

motion. The motion carried unanimously. The Board will contact the Walmart Vision Centers and inform them that the doctor is practicing without a license. The notice will be personally served to him. This case will remain open.

04-12-03 - The Board will write a letter to the physician addressing his public behavior and advising him of proper prescription procedures. A letter will also be sent to the complainant with regard to the pharmaceutical agent in question. This case will remain open.

03-01-02 - The Board will request ten patient records from the doctor in this monitored closed case, two of which should be from diabetic patients.

Dr. Hamel moved that the Board approve all the above-referenced actions recommended from Executive Session. Dr. Walters seconded the motion. The motion carried unanimously.

CORRESPONDENCE -

The Board reviewed a letter from Mary Ann Button, O.D. regarding charting requirements. The Board is not as concerned with the form as with quality of the entries on the form. Dr Hamel will reply to the letter.

The Board considered a letter from Andy Leisinger, Chairman of the Oregon Landscape Architect Board. Mr. Leisinger attended the Board meeting to inform them of the Landscape Contractor Board's need for financing and to ask for the Board of Optometry's assistance by way of a short term loan. Mr. Leisinger reviewed the history of his board's current situation which came to their attention as a result of a report by the JLAC. When the financial situation came to light, the administrator resigned. The board is now undergoing an audit by the Oregon Audits Division. The board is in need of funding immediately to retire a payroll tax, which is currently due, as well as some other administrative costs. The requested loan amount is \$10,000. The funds would be repaid by the end of June, 2005. The Board and Mr. Plunkett posed some questions to Mr. Leisinger regarding the status of his board, their financial obligations, and anticipated revenue. He noted that his board is willing and expects to pay interest on the loan. John Doneth disclosed that he and Mr. Leisinger have a separate business relationship which has no bearing on the business of either board. Dr. Monkman moved that the OBO make a loan to the Landscape Architects Board in the amount of \$10,000 at the rate of 3% simple interest to be repaid by the end of June, 2005. Dr. Hamel seconded the motion. The motion carried unanimously.

PRESIDENT'S REPORT -

Dr. Reslock reported that a speaker at a meeting which was attended by one of his staff said that they should not be doing diabetic screening. The Board discussed their position regarding staff doing diabetic screening and agreed that if staff is adequately trained, there is no problem.

EXECUTIVE DIRECTOR'S REPORT -

Accounting/Budgeting:

Mr. Plunkett reviewed the current financial reports covering the period from July 1, 2003 through October 31, 2004 with the Board. He reported that the overall revenue is \$8,567.79 over budget. Expenses are \$16,894.05 under budget. The Board's budget is currently \$25,461.84 to the good. Mr.

Plunkett noted that the Board's expenditures for attorney fees are under budget. Dr. Reslock asked how the attorney expenses for those boards who have had contested case hearings compare to OBO's expenses. Mr. Plunkett explained that hearing expenses for a simple contested case will cost a board somewhere around \$4,000.00 to \$5,000.00. In addition, there are often additional expenses paid by the boards to their Assistant Attorneys' General to rewrite the orders following the hearings. OBO has been fortunate to have avoided contested case hearings thus far. In reviewing the balance sheet, Mr. Plunkett reported that the Board's bank account balances are currently approximately \$181,000.

Board Activities Report: Mr. Plunkett noted that as of the end of 2004, there are 3 fewer active status licensees than at the beginning of the year. Overall, the number of licensees are down 14 from the beginning of the year. The Board issued 47 new licenses, 2 of which were endorsement licenses, which is less than last year. At this time, 308 of 648 active licensees are AT certified. Effective this year, no doctors who are only DPA certified will be renewed. There are 9 licensees who may be affected by that rule.

Mr. Plunkett discussed the statistics regarding complaints and disciplinary actions. The Board investigated 31 complaint cases, 4 of which resulted in discipline. The Board decided that the line item for "Letter of Advice" under Disciplinary Action should be removed since these letters are not considered a disciplinary action any longer.

Report to the Governor and Legislative Assembly: The Report to the Governor and Legislative Assembly is due on Tuesday, January 11, 2005. One of the changes that the JLAC recommended affects the reporting requirements of the SIBA boards. A legislative concept, LC1268, has been written to address these recommendations. In addition, LC1187 would change the auditing requirements of semi-independent agencies. The process would be changed from an "audit" to a "review". Mr. Plunkett has been reluctant to go along with the review process because he believes that the extra accountability provided by the audit is in the Board's best interest politically. He is satisfied that the reports will go to the JLAC committee so that there will be opportunity for a thorough review. The proposed bill will require that the committee review the reports. The Board will still have the option of initiating an audit if it desires the extra accountability.

Board Facilities: Mr. Plunkett reported on the status of the new Board office. He has been investigating moving the Board's office to the MAPS building on Hines Street in Salem. He mentioned that at this time the other boards in the Morrow building are not willing to move to the MAPS building for various reasons. Mr. Plunkett would like to move anyway since the savings to the Board will be considerable. The developers who have been negotiating with the Board are still willing to work with us even if the other boards don't come along. MAPS will continue their banking operation in the building. The office space which will be available for lease is comparable to the current space occupied by the Board. In addition to space for the staff, there is conference room space, and lines are already installed for phone and internet. As of July 1, 2005, the Board will be paying \$1,992.67 for the current lease with Morrow for 1244 sq. ft., which is roughly \$1.50 per sq. ft. In addition, all the board's are paying for space which became vacant when the Massage Therapists Board left the building. The space in the MAPS building will cost approximately \$1.35 per sq. ft. which comes to \$1,679.40 a month. There will be approximately \$313.20 savings each month or approximately \$7,500.00 savings next biennium.

Dr. Reslock would like to lease with an option to buy at the MAPS building. Mr. Plunkett reminded him that the Board does not currently have that authority. Legislation will be introduced during the current session which would allow the Board to finance a building. Mr. Plunkett said that his hope is that the

bill will quickly move through the legislature. Dr. Reslock polled the Board regarding a move to the Maps building. The Board is in favor of moving the Board's office to the MAPS building before the current lease expires on June 30, 2005. Mr. Plunkett will negotiate a lease arrangement and submit it to Dr. Reslock and John Doneth for review.

LFO Study: Mr. Plunkett reported to the Board regarding the results of the study, including the proposed changes to reporting requirements by semi-independent boards, and changes to audit requirements. The Board discussed the proposed legislation and ramifications to the Board of these changes.

COMMITTEE REPORTS -

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

Budget Committee: The Board reviewed the biennium budget schedule as proposed by Mr. Plunkett. They set a date for the hearing on the proposed budget on June 24, 2005.

The Board discussed proposed changes to the Purchasing Policies and Procedures document. The proposed document reflects, basically, what the Board currently does. Mr. Plunkett noted a clerical error on the first page which should read \$250 or less. Section 2.5 will be changed to read "purchasing or leasing" at the Board's request.

John Doneth moved that the Board adopt the Purchasing Policies and Procedures document effective January, 2005 as corrected. Dr. Monkman seconded the motion. The motion carried unanimously.

Legislative Committee:

The Board discussed 2005-2007 Legislative Concepts - LC 442, which has been assigned bill number HB 2099 and LC 63.

Mr Plunkett noted that when LC 442 was being prepared, the Legislative Council's office asked whether the Board wanted to consider revisions to language in ORS 683.140 (10) regarding advertising. The Board does not readily see any reason not to remove the language, but they have requested Mr. Plunkett to ask Ms. Lindley if she foresees any reason to retain the language.

JLAC Legislative Concepts which affect the Board are LC 1268 & LC 1187. Mr Plunkett will notify the Board when bill numbers are assigned to these concepts.

Dr. Hamel noted that the Board has received a letter from Oregon Optometric Physicians Association supporting LC 63 and expressing their willingness to be added as a requesting entity. The Board expressed their thanks to OOPA.

Administrative Rules Committee:

Dr. Walters moved that the Board adopt proposed administrative rules revisions to OAR 852-005-0010 regarding the Boards purchasing policy and procedures. Dr. Hamel seconded the motion. The motion carried unanimously.

The Board discussed proposed changes to the administrative rules. OAR 852-020-0025 addresses the prescription of controlled substances, particularly self-prescribing, and is an attempt to prevent abuse of controlled substances. These changes will require a hearing. OAR 852-010-0015, 0020, 0023 and OAR 852-070-0030 establishes COE requirements for applicants and licensees who have not recently graduated. OAR 852-010-0027 increases causes for discipline for unprofessional conduct. Dr. Walters pointed out corrections to the numbering in these rules. OAR 852-050-0015, 0018 establishes consideration for professional services to a charitable nonprofit. This rule change will require a hearing. The Board will change the term "vision care" to "eye care". OAR 852-080-0040 affects changes regarding CPR certification via internet courses. The initial AT certification requires a live CPR course. Subsequent CPR certification can be done online. These changes will require a hearing.

Dr. Walters moved that the Board go forward with administrative rule changes as amended. Dr. Hamel seconded the motion. The motion carried unanimously.

Personnel Committee: There was no report from the Personnel Committee.

Unfinished Business: The Board discussed the content of a proposed ethics course which will be presented by OOPA. John Doneth would like to have the Board's requirements regarding records maintenance emphasized. Dr. Hamel would like OOPA to address an unwillingness by licensees to know and adhere to the law. She would like an emphasis on being personally responsible and on the obligation to conduct oneself publically in a professional manner. Behaviors such as calling and hanging up on the staff of the Board office and public displays of loss of self control are unprofessional conduct.

ADJOURNMENT -

There was no further business to come before the Board. President Reslock adjourned the meeting at 2:10 p.m.

Prepared by,

Reviewed by:

Catherine M. Boudreau
Administrative Assistant

David W. Plunkett
Executive Director