

OREGON BOARD OF OPTOMETRY

Public Session Meeting Minutes
November 5, 2010

Board Members Present: Robert Mans, OD, President
Donald Garris, OD, Vice-President
Jessica Lynch, OD
Jeffrey Pelson, OD
Karen Knauerhase, Public Member

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

Board Legal Counsel: Lori Lindley, Assistant Attorney General

1:05 Adjourn back to Public Session, recess for 30 minutes.

1:45 Public Session Reconvened

Guests:

- 1) Tracy Oman, Executive Director of the Oregon Optometric Physicians Association
- 2) Charles McBride, OD
- 3) Claudia Black, Sr. Health Policy Advisor to Governor Kulongoski
- 4) Cindy Forest, Human Resources Services Division,
Department of Administrative Services

Agenda Stands

Minutes

The minutes from the last Board Meeting have been delayed, and will be presented for approval at the next meeting.

Ratification

Ms. Knauerhase made a motion to ratify new licensees Bradley Bywater, Carl Czirr, Randy Norris, and Michael Majerczyk. Motion seconded by Dr. Garris. The motion carried unanimously.

Action on Executive Session

10-02-01 A Final Order on Default was issued on July 12, 2010, and this case was closed at the June 25, 2010, meeting. However, the Respondent requested that the Board set aside the sanctions as described. At the September 10 meeting, the Board discussed the letter and determined that there was no change in the evidence gathered that would cause them to reverse their decision. On November 2, 2010, a letter was sent stating that the Board stood by their previous action. The Board determined that this case should remain closed.

10-05-01 On November 2, a letter was sent to the Respondent requesting the entire patient record, and cited OAR 852-20-031 as the authority for him to release the contact lens prescription to his patient. The Board determined that this case should remain open until the next meeting and conduct a records review at that time.

10-07-02 On November 3, letters were sent to the Respondent and Complainant advising them of the Board's determination of no violation of patient care, along with a reminder that OAR 852-10-051 requires the appropriate maintenance and retention of patient files. The Board determined that this case should be closed.

10-09-01 The Respondent has attained a medical degree; however, he is not licensed to practice medicine in Oregon, and therefore cannot use the title of MD in connection with his eye care practice, per ORS 676.110(1)(b)(A), as it was amended during the 2009 Legislative Session. On November 4, a letter was sent to Respondent advising him of this statute, and requiring that he remove the designation "MD" from any of his advertisements and written documents pertaining to his optometry practice. The Board determined that this case should remain open for a response.

10-09-02 Complainant alleged fraudulent billing due to confusion and misunderstanding involving 2 insurance providers. The Board felt that the patient should be responsible for her coverage. Letters will be sent to both parties; the case remains open for replies.

10-10-01 This case involves a retailer selling cosmetic contact lenses. The case remains open for further investigation. This store is a repeat offender.

Ms. Knauerhase made a motion on case 10-10-1 that, pending investigative results, a Notice of Intent to Discipline should be sent, imposing a \$10,000 penalty. Motion seconded by Dr. Garris. The motion carried unanimously.

10-10-02 This case involved what the Board determined to be overly restrictive language on the prescription form. Letters to be sent to both parties explaining the Board's findings. The case remains open for responses.

10-11-01 Complainant has waited for months for his contact lens order to be filled by the Respondent. A letter was written to Respondent on November 4, requesting that records for this patient be sent to the Board for review at the next meeting.

08-12-01 This case will no longer be monitored.

04-06-07 This case remains open for monitoring.

Correspondence

The Board received a letter from Dr. Button regarding possession of records. This involves questions about independent contractor issues that have been coming up frequently. The doctor will be notified with a letter stating if she's taking possession of the records, they have to remain in her physical custody.

The Board considered an e-mail asking if there is a specific equipment list required to practice in Oregon; there is no list, however, there must be sufficient equipment available to conduct a full eye exam and to provide an acceptable standard of care.

Executive Directors Report

1) Ms. Paige is planning to have minutes from both the September and November meetings transcribed. Ms. Knauerhase made a motion for Ms. Paige to provide both a copy of original minutes and a corrected copy from September 10, 2010 meeting. Dr. Garris seconded. The motion carried unanimously.

2) A Balance Sheet and a "Biennium-to-Date" Revenue & Expense report were presented. Ms. Knauerhase made a motion to accept the reports. Motion seconded by Dr. Pelson. Motion carried unanimously.

3) Ms. Paige sent a brief "Transition Memo" to the Governor's office. Many of the small agencies (regular as well as semi-independent) were not required to do this, but thought it was a good idea to inform the new Governor about our agencies.

4) A draft of a revised Personnel Policies Manual was presented for review. Ms. Paige proposed changes that would bring the OBO closer to the HR policies, position classifications, and salary ranges which are followed by the other two semi-independent health agencies. She is concerned that the current situation will lead to problems for the OBO during the upcoming legislative session. The Board will consider the policy and discuss it at the next meeting.

5) Ms. Paige did some research on the topic of the disposition of patient records following the sudden death of a doctor. Due to the unexpected demise of Dr. Nivala, many patients were requesting their prescriptions and/or their records, and the Board's rules do not give any specific guidance in this situation. The OBO's most recently filed rule [OAR 852-20-045] addresses the disposition of ownership interest upon the death of the owner, but not the immediate custody of the practice's records. Dr. Nivala worked for Binyon's, which determined patients can receive copies of their records, but that the doctor's estate owns them. Statutes and rules regarding transfer of ownership of records in situations like this needs to be reviewed and possibly revised.

6) Ms. Paige showed the Board copies of the "Change of Director Audit" reports that the Secretary of State would routinely conduct whenever an Executive Director left the agency. As this is no longer a service provided by the Secretary of State's office, she presented the Board with her observations of processes at the Oregon Board of Optometry that might be improved. The Board will consider her ideas.

Continuing Education Committee Report

Dr. Lynch recommended ratification of continuing optometric education courses approved since the last Board meeting. Ms. Knauerhase made a motion to accept the courses. The motion was seconded by Dr. Pelson, and carried unanimously.

Budget Committee Report

Per the policy voted on at the September meeting, Ms. Paige sent an email to Dr. Mans and Dr. Garris in mid-October with a request (and a quote) to purchase more filing cabinets for the Board offices. Ms. Knauerhase made a motion to purchase new filing cabinets and try to have the majority of the cabinets keyed the same as the office's current cabinets. The motion was seconded by Dr. Garris and carried unanimously.

Legislative Committee Report

There was no report at this time. The OBO itself has not put forward any legislative concepts for this session, but will still need to track bills that might be sponsored by other parties.

Correspondence

Dr. Mans reviewed and recommended submitted CE does not qualify for ATI certification under current requirements. Ms. Knauerhase made a motion to accept the finding. The motion was seconded by Dr. Pelson and carried unanimously.

Rules Committee

Minutes from the Rules Hearing held on September 10, 2010 were approved, with the notation that Ms. Boudreau would delete the four sentences between "Board Counsel" and "Call to Order." Ms. Knauerhase made the motion to approve, and Dr. Garris seconded the motion.

Ms. Paige recommends the formation of a rules advisory committee to assist the Board in drafting administrative rule changes this year. The advantages of engaging another group of volunteers other than the Board to deliberate provisions of rules will lead to more buy-in from interested parties. Public hearings with the Committee will allow more voices to be heard. In addition, persons who are ineligible to serve on the Board itself can be Rules Advisory Committee members. Finally, amendments to the rule midway through the filing process can be implemented, but only if the agency has used an Advisory Committee.

Personnel Committee

There was no report from this committee.

The next Board meeting is scheduled for January 7, 2011

The meeting **Adjourned at 3:45 p.m.**

Prepared by:

A handwritten signature in blue ink that reads "Kelly Paige". The signature is written in a cursive, flowing style.

Kelly Paige, Executive Director [from notes taken by herself and Debbie Hendricks, Administrative Assistant.]