

OREGON BOARD OF OPTOMETRY

PUBLIC SESSION MINUTES

December 4, 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 9:05 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 meeting was reconvened at 1:40 p.m. for an Administrative Rules Hearing. The meeting was adjourned to Executive Session at 1:48 p.m. to continue reviewing complaint cases. The meeting was reconvened at 3:35 p.m.

Tina Batori, of Bishop Communications was in attendance.

MINUTES - The Board reviewed the October 2, 2009 and the November 13, 2009 Public Session minutes. Ms. Knauerhase 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 -

Reinstatement of license to Active Status: Kelly Mai-Le, 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. Ms. Knauerhase made a motion that the Board approve the actions of the Executive Director. Dr. Garris 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 including a review of patient records at the next Board meeting. This case will remain open.

09-07-01 - The Board will allow time for the doctor to respond to their previously written communication. This case will remain open.

09-07-02 - The Board will respond to the doctor's inquiry in this case by letter. The investigation in this case will continue. This case will remain open.

09-08-01 - The Board will send letters to both the complainant and the doctor noting that, while they find no optometric error or violation of Oregon Revised Statutes or Administrative Rules, improved communication is advised to avoid similar circumstances in the future. This case will remain open.

09-08-02 - No optometric error or violation of Oregon Revised Statutes or Administrative Rules was found in this case. Letters were written to the complainant and the doctors involved. No additional information has been received. This case will be closed.

09-09-01 - The doctor in this case has resolved the complaint with regard to the release of patient records. This case will be closed.

09-10-01 - A letter was written in this case advising as to the law regarding the sale of contact lens without a prescription and calling for the immediately discontinuance of these practices. No reply has been received. The Board has verified that the lenses are no longer available for sale. This case will be closed.

09-10-02 - The Board finds that there is no optometric error or violation of Oregon Revised Statutes or Administrative Rules in this case. A letter will be sent to the complainant stating that the length of time since the contact lens prescription was issued is eighteen months rather than six months. This case will remain open.

09-10-03 - Dr. Vorpahl made a motion that the Board issue a Notice of Intent to Discipline, including a Civil Penalty of \$10,000, for the sale of contact lens without a prescription. Ms. Knauerhase seconded the motion. The motion carried unanimously. This case will remain open.

09-10-04 - The FDA office of Criminal Investigations is currently investigating this matter. This case will remain open.

09-11-01 - A letter was written in this case advising as to the law regarding the sale of contact lens without a prescription and calling for the immediately discontinuance of these practices. No reply has been received. The Board has verified that the lenses are no longer available for sale. This case will be closed.

08-05-01 - This case has been closed and is currently being monitored. The doctor in this case has been disciplined by the Washington Board of Optometry and is currently practicing there under a restricted license and on probation. The Board will send a letter to the doctor expressing their concern that he

failed to report the disciplinary action in Washington when he applied to renew his Oregon license. He indicated on his license renewal application form that he has had no convictions, disciplinary actions or sanctions. He will be reminded that a violation of Oregon Revised Statute or Administrative Rules could result in disciplinary action in Oregon.

09-12-01 - This case had been closed under the number 09-01-01 and has been reopened at this meeting with a new number. On June 5, 2009 the Board issued a Final Order by Default which included a Civil Penalty of \$7,500.00. The Order indicated that the full amount was due six months from the date of the Order. The six month period was ended on December 2, 2009 and no payments have been made. Ms. Knauerhase made a motion that the Board send the doctor a letter instructing him to make a payment of \$1500.00 by December 14, 2009, and \$1000.00 per month on the 14th day of each month thereafter until the balance is paid. If payment is not made, a Notice of Intent to Discipline, Suspension of License, will be issued for failure to follow a Board order. Dr. Garris seconded the motion. The motion carried unanimously.

04-06-07 – This case has been closed and is being monitored by the Board while the physician is practicing under a Stipulated Agreement which includes a probationary period. Dr. Mans made a motion that the physician's license be continued for six months with no restrictions other than the current Stipulated Agreement which is still in affect. Patient records will be monitored and reviewed by the Board at each of the next meetings during the six month period. Ms. Knauerhase seconded the motion. The motion carried unanimously.

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

CORRESPONDENCE -

The Board received communication from William Dunn, O.D. regarding clarification of prescribing of Tamiflu as a prophylactic measure to avoid possible ocular pathology. The consensus of the Board is that this drug is not within the scope of practice for optometrists. A letter will be sent to the doctor stating that if there's no ocular pathology, there is no justification for prescribing any pharmaceutical agent by an optometrist. Any ocular pathology which is present would be treated with something other than Tamiflu. This agent would be prescribed by the patient's primary care physician.

A communication has been received from Theresa McAdoo, O.D. regarding prescribing Patanase (Alcon nasal spray product) for ocular allergies. The consensus of the Board is that the use of Patanase is within the scope of practice for the treatment of ocular allergy. The pharmaceutical agent is already on the formulary. The nasal delivery system does not change the scope for optometry.

Dana Ziskrout, OD has requested that the Board review the course which she has completed in Texas around 1999 or 2000 to determine whether it will meet the requirements for AT certification in Oregon. The consensus of the Board is that this course is not comparable to the course required for AT. Her course content relates solely to glaucoma rather than a broader scope of pharmaceutical certification. The doctor will be notified.

Rick Lundgren, OD has requested that the Board grant him AT certification based on his completion of a 100-hour TPA course and his TMOD examination results from 1996. It was the consensus of the Board not to grant AT certification based on these criteria. The doctor will be notified.

PRESIDENT'S REPORT -

There was no report submitted at this time.

EXECUTIVE DIRECTOR'S REPORT -

Accounting/Budgeting: Mr. Plunkett reviewed the BTB budget report and Balance Sheet covering the period of July 1, 2007 through October 31, 2009. There was a total revenue of \$116,593.55 against a budgeted amount of \$107,935.67. The Board is \$8,657.88 over budget in this regard. Total expenses were \$102,539.79 against a budgeted amount of \$107,935.70. The Board is \$5,395.92 under budget in this regard. The result is a total of \$14,053.79 to the good. Mr. Plunkett referred to the Balance Sheet where he pointed out that the balance of the investment accounts has increased because he moved funds from the Money Market account into certificates of deposit in the investment account. He also pointed out that, under the Liabilities line item, the Accrued PTO figure will change on the next report due to the retirement of Kathy Hansen and Mr. Plunkett. The Long Term Liabilities will be reduced by that amount while the Current Expense item will increase accordingly. The Board had no questions about the report as presented.

Board Activities Report: Mr. Plunkett noted that the number of Active status licensees have remained the same for four months and the number of Inactive status licensees are declining which is of some concern. Mr. Plunkett reported that the Active numbers usually gradually increase each year and he speculated that the current economy may have something to do with the leveling off. He predicted that the Inactive Status number will continue to diminish. There are still two Active status doctors remaining who have not become AT certified. They must either apply for a change in their therapeutic status or retire before the year end.

Mr. Plunkett stated that he will prepare the biennial report to the Governor and Legislative assembly for the 2009 year end. The report is due January 1, 2010. The Legislative Fiscal Office makes changes each year to the report requirements. The goal appears to be to make all the Semi-Independent boards' reports be as similar as possible to the other licensing boards.

COMMITTEE REPORTS -

Continuing Optometric Education: Dr. Monkman made a motion that the Board ratify the continuing optometric education courses approved since the last Board meeting, including designation of acceptable TMOD offerings. Ms. Knauerhase seconded the motion. The motion carried unanimously.

Budget Committee: The Audits Division 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 was completed in October. The final audit report is due to be issued in December. The audit report must be included in the report to the Governor and Legislative Assembly.

Mr. Plunkett indicated that he had requested that the Audits Division of the Secretary of State's office contact each of the Board members about their concern for a change of directors audit. None of the Board members had been contacted. The current group of Auditors has gone into details that have never before been addressed and the cost is double that of past audits. The SIBA group is considering contracting with a firm separate from the Audits division because the cost per board has grown to over \$10,000. It has always been important to Mr. Plunkett that the Semi-Independent boards undergo a little more scrutiny than has been required of other boards. But the cost of the current audit has given the SIBA group incentive to consider a legislatively-approved financial review for the next biennium rather than the financial audit. Although, the SIBA group will try to make a decision as a whole in this regard, the Board will have the option to decline that move if they want to.

Legislative Committee: A special session of the legislature has been called and is scheduled to begin in early February, 2010. Interim Legislative Committees have been meeting.

The lobbyist for the SIBA group, Stephen Kafoury, is monitoring the progress of a legislative concept which has been introduced by Senate President Peter Courtney which affects certain housekeeping provisions of boards. In addition, he has met with lobbyists from other health boards and related professional associations. Representatives of the group have met with the governor's office to inquire about proposed consolidation of health boards.

Administrative Rules Committee: The Board considered revisions to OAR 852: divisions 005, 010, 050, and 70. A public hearing was scheduled for 1:30 PM on December 4, 2009 on the proposed administrative rule changes. The hearing convened at 1:41 p.m. and adjourned at 1:47 p.m.

Dr. Mans made a motion that the Board adopt the changes as proposed to OAR 852-005-0015; 852-010-0080; 852-020-0035; and 852-050-0006. Ms. Knauerhase seconded the motion. The motion carried unanimously.

Personnel Committee: The Board continued the process for filling the Executive Director's position. The Board interviewed a candidate for the position earlier today. Ms. Knauerhase made a motion to offer the Executive Director position to Carol Wire, giving Mr. Plunkett authority to negotiate a salary in conjunction with the Board President. The Board wants the new Executive Director to start December 16, 2009. Dr. Garris seconded the motion. The motion carried unanimously.

Noting that performance pay raises were not given to employees on July 1, 2009, Ms. Knauerhase made a motion to give a \$500 year-end bonus to Cathy Boudreau and a cost of living increase effective 1/1/2010 based on the Consumer Price Index for 2009 in accordance with the Board's personnel policy manual. Dr. Mans seconded the motion. The motion carried unanimously.

Ms. Knauerhase thanked Ms. Hanson and Mr. Plunkett for their years of dedicated service to the Board. Ms. Hanson and Mr. Plunkett thanked the Board for many enjoyable years of employment working with the Board. If the candidate for Executive Director accepts the position and is agreeable, Mr. Plunkett will begin to look for a replacement for Ms. Hanson as soon as possible. The Board requested that Mr. Plunkett remain on the Board staff at his current pay rate through the next Board meeting to aid in the transition. Mr. Plunkett agreed to the Board's request.

UNFINISHED BUSINESS:

There was no unfinished business.

OTHER:

The next Board meeting is scheduled for February 5, 2010. Additional meetings were scheduled through the next six months on April 9, 2010 and June 11, 2010.

ADJOURNMENT -

There was no further business to come before the Board and President Monkman adjourned the meeting at 4:20 p.m.

Prepared by,



Catherine M. Boudreau
Administrative Assistant

Reviewed by:



David W. Plunkett
Executive Director