

OREGON BOARD OF OPTOMETRY

Update
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Mitzi M. Naucler, Vice-President, Public Member Candace D. Hamel, OD

From the President

Joan Ploem Miller, OD

The mission of the Oregon Board of Optometry is to protect the people of the State of Oregon from the dangers of unqualified and improper practice of optometry in accordance with Oregon law. This is

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accomplished through setting standards for the examination of candidates for licensure and certification, licensure, continuing optometric education and enforcement of the laws and rules governing the practice of optometry. Members of the Board are appointed by the Governor to three year terms.

The Board is assisted in carrying out their duties by administrator, David Plunkett, and administrative assistants Kathleen Hanson and Catherine Boudreau. The Board's legal counsel is Paul Sundermier, assistant attorney general from the Department of Justice. Meetings are generally at the Board's office in Salem. Every meeting has a Public Session which may be attended by optometrists and other interested parties.

The Board deals with many consumer complaints. When a complaint is received, the Board investigates, attempts to resolve the complaint, and may issue disciplinary action. In 1997 the Board dealt with 67 complaint cases, and 105 consumer inquiries which did not require Board action.

A flow chart of the complaint process can be found at our website.

(www.obo.state.or.us)

While the board seeks to protect the consumer, since the majority of the Board members practice optometry on a daily basis, we are able to carefully look at the patient's concerns, the doctor's records, request additional information as needed and render a fair and equitable judgment. Thorough, legible, and properly dated chart notes can make this process relatively easy. Sparse, illegible notes and generally poor documentation can make it difficult to find evidence supporting the doctor's position.

We carefully insure that doctors receive due process in all matters before the Board. We strive to be consistent in the assessment of fines. Our legal costs often exceed the fines levied. We encourage careful review of this newsletter and our Law and Administrative Rules to avoid disciplinary action by the Board.

This issue is the first Board newsletter that specifically lists the names of optometrists who have been sanctioned. This information is public record. Copies of Final Orders on any disciplinary case may

be requested from the Board's office.

Licensees must register their practice location(s), notify the Board in writing of any address change and send in the registration fees in accordance with OAR 852-50-005(1)(2)(3) and OAR 852-50-016(1)(2). Continuing education documentation must be reported to the Board's office in accordance with OAR 852-70-035(1)(2)(3)(4)(5)(6)

L Continuing Education 7

A friendly reminder . . . continuing education is due in the board office by **June 30, 1998**. This does not mean "postmarked by" or a few days late, but **received** in the Board's office. Doctors not complying with this requirement are fined. If you want your original COE certificates of attendance returned to you, enclose a self-addressed stamped envelope.

Some things to remember about the COE requirements in Oregon:

1. Courses must be Board approved. You can contact the office of the Board to see if a course has been reviewed and is on the approved list.

2. If you are TPA certified, 10 of your 30 hours must apply to the treatment and management of ocular disease.

3. Practice Management and Jurisprudence courses are **never**

approved for COE.

4. If you have completed your 30 hours, don't wait for the June deadline...send your report and attendance certificates in now.

Beginning in June, 1996, 10 hours of COE taken during the month of June may be carried over to the next biennium. These courses may only count during one COE period.

The Board staff will be happy to answer any questions you have about COE.

Board News

The Board said farewell to two longstanding members recently. Past-president Eric Knutson, OD, served on the Board from October 1, 1989 through September 30, 1996. Past-president Ann Easley, OD, served on the Board from March 1, 1990 through September 30, 1997. Thanks to them both for their dedication and service to the State of Oregon and the optometric profession.

The Board also welcomed two new members, John Reslock, OD on October 12, 1996 and Candace Hamel, OD on October 1, 1997. Their expertise and commitment have already made a valuable contribution to the Board.

The current Board members are Joan Ploem Miller, OD, President, Mitzi Naucler, Vice-President and

public member, Douglas G. Smith, OD, John P. Reslock, OD and Candace D. Hamel, OD.

Change of Address

The Board of Optometry has a new address. Effective May 1, 1998, the Board may be reached at 3218 Pringle Rd., SE, Ste. 270, Salem, OR 97302-6306. The office remains in the Morrow Crane building and moves to the second floor. The phone, fax, E-mail and website information does not change.

Board on the Internet

In June of 1997, the Board published it's webpage on the Internet. You can access current information about licensure requirements, continuing education requirements, Board news, and keep up with legislative and administrative rule changes. You may contact Board members through their information page. We have provided links to the International Association of Boards of Optometry, Cope, the American Optometric Association, the Oregon Optometric Association and the State of Oregon webpage. We have recently linked to the NBEO site. If you are surfing the web, look us up at: **www.obo.state.or.us** Suggestions for improving our page are welcome. You may send your

ideas to the Board office via E-mail to:

david.plunkett@state.or.us or to obo@state.or.us.

Investigation Activities

During calendar year 1996 the Board resolved and closed 86 complaint cases. Of these, 52 cases involved disciplinary action. The great majority, or 82%, of the discipline related to late reporting of continuing education. Licensees were sanctioned for the following violations:

- < On 9/27/96 the Board issued 42 Final Orders, Reprimand and Imposition of \$250 Civil Penalty for late reporting of continuing education.
- < Francis Meagher, OD - On 3/11/96 the Board issued a Final Order, Revocation of License, and Imposition of Civil Penalties, \$10,000 for practicing optometry without a license, \$1000 for misrepresenting proof of continuing education, \$250 for late submission of continuing education.
- < William M Ludlum, OD - On 3/19/96 the Board issued a Final Order,

Reprimand, and Imposition of Civil Penalty, \$1000 and 1 year monitored probation for failure to document results of appropriate optometric procedures.

- < Colin J Kageyama, OD - On 6/7/96 the Board issued a Final Order, Reprimand, and Imposition of Civil Penalty, \$1000 and 1 year monitored probation for failure to document results of appropriate optometric procedures.

During calendar year 1997 the Board resolved and closed 38 complaint cases. Of these, 29 cases involved disciplinary action. Licensees were sanctioned for the following violations:

- < On 2/28/97 the Board issued 24 Final Orders, Reprimand and Imposition of \$250 Civil Penalty for late reporting of continuing education.
- < Walter Weber, OD - On 2/8/97 the Board issued a Final Order, Revocation of License, Refusal to renew license for gross ignorance or inefficiency in the profession; falling below the accepted standard of optometric care.
- < John M B Rumpakis, OD - On 8/1/97 the Board issued a Final Order, Six months

Suspension of License, Restriction of License, and Imposition of Civil Penalties.

On 9/8/1997, Dr. Rumpakis filed a Petition for Judicial Review in the Court of Appeals of the State of Oregon.

Due to widespread interest and apparent misinformation surfacing in this case, the Board is summarizing this Final Order below.

FINAL ORDER

John M B Rumpakis, OD
(redacted)

The Oregon Board of Optometry received complaints from two patients in September, 1996. After conducting an investigation the Board issued a Notice of Emergency License Suspension and Notice of Intent to Discipline, Revocation of License and Imposition of Civil Penalties on November 4, 1996. The Board then entered into a Stipulated Agreement whereby the licensee could continue to practice optometry on the condition that he would discontinue lymph node palpation, that he would be accompanied by a third-party witness during all optometric examinations, that the third-party witness would take notes during the examinations and that the notes taken by the third-party witness would be preserved. The Board then conducted a formal interview

with licensee who was accompanied by his attorney on December 6, 1996.

A hearing was held on June 6 and 7, 1997. Licensee was present and represented by his attorney and the State was represented by its attorney. All of the evidence was received and the witnesses testified during the two days of the hearing. The Board conducted deliberations on June 20, July 15 and July 30, 1997.

ULTIMATE FINDINGS OF FACT

During the period March 28, 1995 through October 23, 1996, the licensee, while working as an optometrist licensed in the State of Oregon, did palpate the axillary and inguinal lymph nodes of four female patients by placing his hands under their clothing and three female patients either over or under their clothing. During the same period the licensee did palpate the axillary lymph nodes of two additional female patients. Palpation of lymph nodes below the clavicle is not within the scope of practice of optometry in the State of Oregon. Licensee obtained the permission to palpate from these patients by assuring them that the examination was within the scope of the practice of optometry and that he would conduct the examination in the proper fashion. Licensee was not honest with his patients concerning the scope of practice nor about the proper way in which to conduct the examination. Licensee touched intimate parts of seven female patients without appropriate medical

indications, employed improper examination techniques, and failed to adequately chart the medical indications and findings. Licensee had a sexual purpose when he engaged in these examinations. Licensee did not respect the privacy and sensibilities of his patients by providing proper draping and chaperoning. One patient was required to hold her dress up above her abdomen during one of her lymph node examinations. Licensee palpated inguinal lymph nodes only on female patients.

OPINION

Several expert witnesses testified on the issue of scope of practice of optometry in the State of Oregon and while we found the witnesses to be credible there was no testimony that established that the palpation of axillary and inguinal lymph nodes was within the scope of practice of optometry in Oregon at any time prior to and including the time of any of the palpations alleged in the Amended Notice of Proposed Revocation of License. The licensee testified that he was almost certain that he was the only optometrist palpating lymph nodes below the clavicle within the State of Oregon. The Board finds no basis and received no evidence on which to conclude that the palpation of lymph nodes below the clavicle was within the scope of practice of optometry in the state of Oregon at any period of time indicated in the charges. There was considerable evidence taken both in exhibits that were

received and by testimony of three patients, A, B, and E, that licensee engaged in a pattern of palpation of lymph nodes below the clavicle, that palpation of patients' inguinal nodes was restricted to women and that these examinations were embarrassing and troubling to the patients. The Board found the three patients who testified to be credible and that the licensee's testimony in defense of his behavior to be incredible. Not any of the medical doctors or optometrists that testified supported licensee's assertion that the examination technique used on these patients was correct, appropriate or medically indicated.

It is found by a preponderance of the evidence presented that licensee was engaged in practices outside the scope of the practice of optometry; that the acts constituted sexual violation of Patients A, B, and E; that the examination of Patients A, B and E constituted acts of sexual impropriety; that in obtaining the consent of patients to the examination of lymph nodes below the clavicle licensee misrepresented the purpose of the examination, the scope of the practice of optometry, and licensee's professional training in the appropriate examination technique; and that the pattern of conduct demonstrates the moral turpitude of licensee. The Board finds that the elements of moral turpitude are found in the violations of the rules against sexual violation and sexual impropriety, and, therefore, does not assess an

independent penalty for violation of the rule against moral turpitude. The Board finds that any one violation of the rules against sexual violation or sexual impropriety as found in this case would support the sanctions imposed on the licensee.

ORDER

IT IS ORDERED that licensee's license to practice optometry in the State of Oregon be suspended for 180 days effective 30 days from the date of this order; that he shall pay \$12,000.00 in civil penalties; and that he shall always have an assistant present in the examining room whenever he is examining a patient.

< On 9/12/97 the Board issued a Notice of Intent to Revoke License and to Impose Civil Penalties after receiving additional complaints from three other female patients. A hearing was scheduled for 1/23/1998.

On 12/31/1997 Dr. Rumpakis surrendered his license, canceling his request for a hearing.

< With the surrender of Dr. Rumpakis's license, the Board no longer had jurisdiction to pursue the investigation or impose sanctions in the matter noticed on 9/12/97, therefore, on 1/23/1998 the

Board issued a Final Order accepting the surrender of Dr. Rumpakis's license. If Licensee ever reapplies for a license to practice Optometry in the State of Oregon, the Board will consider, as part of its decision to grant a license, this Final Order and its Final Order of 8/1/1997 and the pleadings and documents provided by the Board to Licensee in discovery concerning the Notice of Intent to Revoke dated 9/12/1997, as well as any interim conduct of licensee.

< On 2/27/1998 the Oregon Court of Appeals issued an Order of Dismissal and Appellate Judgement which dismissed the appeal previously requested by Dr. Rumpakis on 9/8/97, based upon Dr. Rumpakis petition to the Court for dismissal.

All Final Orders, Stipulated Orders, and Consent Agreements are public record. Copies may be obtained by request from the Board's office.

Legislative Update

The legislative session of 1997 effected some far reaching changes for the Board. The first, enacted by SB 546, established the Board of Optometry as a semi-

independent agency. For the next four years, as part of a pilot program, the Board of Optometry, along with four other licensing boards, will operate with fewer state controls.

What this means is that many of the administrative functions of the Board may be performed outside the bureaucratic confines of regular state government procedures. For example, under the new law the Board members, after notification to licensees and holding a public hearing, may adopt the operating budget and set fees for licensees. In addition, the licensees will vote on a list of nominees for Board member positions. The election results will be sent to the Governor for consideration for appointment to the Board. The Board's staff will perform tasks that formerly had to be contracted out to other state agencies, causing the Board expense through inefficiencies and delays.

The purpose of the pilot program is to assess the practicality and cost efficiency of changing other professional and occupational licensing boards in Oregon to semi-independent status. This pilot program will automatically "sunset" on June 30, 2001, and will continue only if the pilot program is successful and a new law is enacted.

The legislature also passed SB 235, establishing new criteria for the disclosure of disciplinary information. Under SB 235, several

health-related licensing boards including the Board of Optometry, may not disclose information regarding complaints which do not result in the issuance of a Final Order, Stipulated Order, or Consent Agreement. An Emergency Suspension Order will be disclosed. A notice of intent to impose disciplinary action may be disclosed if issued by the majority vote of the Board. A notice of intent to deny licensure after investigation becomes public information if issued by majority vote of the Board. With few exceptions, information gathered in the investigation of a complaint against a licensee or applicant remains confidential. It should be noted that the policy of the Board has always been one of maintaining confidentiality with regard to information obtained during the investigation of complaints, or applicants.

Licensees should be aware that when the Board receives a complaint against an optometrist it can no longer reveal the identity of the complainant or even the nature of the complaint.

SB 78 expanded the rule making authority of the Board to include establishment of license terms. In the past the Board has been required by statute to use an annual calendar year license term.

SB 79 expanded the rule making authority of the Board to include continuing education requirements.

This includes determining the number of hours and the continuing education term.

Administrative Rule Changes

The Board is developing proposed administrative rules which will change due dates for license renewal as well as for reporting continuing education. The goal is to simplify the license renewal and continuing education reporting processes for licensees by combining them. There will be only one time each year to mail your renewal and continuing education certifications to the Board. The birth month of each licensee will be used to determine the date for renewing and reporting. If you haven't yet furnished the Board with your birth date, please do so, or the Board will assign you a renewal month.

A new administrative rule will establish procedures for the election and appointment of future board members. Legislation which granted the Board semi-independence also changed the procedure for board appointments. In the future, candidates for appointment will be elected by the optometric community.

Division 80 of the Administrative rules will be changed to remove unnecessary language regarding the use of therapeutic pharmaceutical agents.

Please review copies of the proposed changes which are enclosed with this newsletter. A hearing will be held on June 5, 1998. That will be the last date for comment on the proposed changes.

1996 Board Activities Report

JANUARY 1996 through DECEMBER 1996

LICENSING ACTIVITIES:	
ACTIVE LICENSEES	575
ACTIVE TPA	492
ACTIVE DPA (ONLY)	68
ACTIVE NO TPA/DPA	15
INACTIVE/MILITARY LICENSEES	804
INACTIVE/MILITARY TPA	284
INACTIVE/MILITARY DPA (ONLY)	422
INACTIVE/MILITARY NO TPA/DPA	98
TOTAL LICENSEES	1379
OTHER ACTIVITIES:	
APPLICATIONS FOR LICENSE RECEIVED	55
NEW LICENSES ISSUED	61
REACTIVATIONS/REINSTATEMENTS OF LICENSE	17
TPA CERTIFICATIONS	39
ACTIVE LICENSEES	26
INACTIVE LICENSEES/MILITARY	13
LICENSE VERIFICATIONS COMPLETED	1432
CE COURSES APPROVED/ENTERED	268
LICENSEE BIENNIAL CE APPROVED	518
BOARD MEETING DAYS	6
COMPLAINTS:	
INFORMAL COMPLAINTS HANDLED BY STAFF	100
NEW FORMAL COMPLAINTS RECEIVED BY STAFF	100
FORMAL COMPLAINTS REVIEWED BY BOARD	184
NEW COMPLAINTS REVIEWED BY BOARD	106
COMPLAINTS RESOLVED AND CLOSED BY BOARD	86
DISCIPLINARY ACTION	52

NO DISCIPLINARY ACTION

1997 Board Activities Report

JANUARY 1997 through DECEMBER 1997

LICENSING ACTIVITIES:	
ACTIVE LICENSEES	589
ACTIVE TPA	524
ACTIVE DPA (ONLY)	54
ACTIVE NO TPA/DPA	11
INACTIVE/MILITARY LICENSEES	785
INACTIVE/MILITARY TPA	298
INACTIVE/MILITARY DPA (ONLY)	394
INACTIVE/MILITARY NO TPA/DPA	93
TOTAL LICENSEES	1374
OTHER ACTIVITIES:	
APPLICATIONS FOR LICENSE RECEIVED	52
NEW LICENSES ISSUED	53
REACTIVATIONS/REINSTATEMENTS OF LICENSE	19
TPA CERTIFICATIONS	20
ACTIVE LICENSEES	11
INACTIVE LICENSEES/MILITARY	9
LICENSE VERIFICATIONS COMPLETED	948
CE COURSES APPROVED/ENTERED	199
LICENSEE BIENNIAL CE APPROVED	111
BOARD MEETING DAYS	12
COMPLAINTS:	
INFORMAL COMPLAINTS HANDLED BY STAFF	105
NEW FORMAL COMPLAINTS RECEIVED BY STAFF	17
FORMAL COMPLAINTS REVIEWED BY BOARD	67
NEW COMPLAINTS REVIEWED BY BOARD	12
COMPLAINTS RESOLVED AND CLOSED BY BOARD	38
DISCIPLINARY ACTION	29

NO DISCIPLINARY ACTION

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