

OREGON BOARD OF OPTOMETRY

UPDATE
VOL.3 No.2
DECEMBER, 2001

Joan P. Miller, O.D., President
Scott M. Walters, O.D.

Candace D. Hamel, O.D., Vice President
John P. Reslock, O.D.

From the President

Joan Ploem Miller, OD

I've spent more than a decade reviewing complaints from patients regarding the care they receive from optometric physicians. During that time I have been impressed with the process that investigates every allegation, dutifully upholds applicable law and administrative rules, and strives to protect the public while respecting the

profession of optometry. While

Contents

From the President	1
Important Administrative Rule Changes	3
Diabetic Dilation	3
Therapeutic Reminder	3
Legislation	3
License Renewal Procedure	4
Inactive License - Is There An Advantage?	4
Investigation Activities	5
Report of Board Activities	6

experience tells us that optometric physicians generally use their training to benefit their patients, it is natural that some situations need careful examination. At one end of the spectrum are occasional serious allegations that lead to disciplinary actions such as suspension or revocation. Because most optometric physicians are well-trained and use their expertise appropriately to provide conscientious care for their patients, we have very few of these serious disciplinary actions. At the other end, we occasionally receive a complaint that appears to be frivolous, one with little or no merit. Recently we reviewed a complaint that the doctor used a bright light that the patient found uncomfortable. Perhaps the doctor could have explained more or could have shown more empathy, but the patient appeared to have had unreasonable expectations of the eye exam. In such situations we attempt to provide education regarding the standard of care and the benefits of the tests optometrists do.

Most complaints, after thorough investigation, result in a conclusion that there was no optometric error and no violation of law and administrative rules. Often they appear to be the result

of a breakdown in communications between doctor and patient. These include fee disputes or other misunderstandings that do not represent violations of law. They are the result of patient dissatisfaction and often illustrate less than ideal communication between doctor and patient. A typical example is of a patient who had an expectation that has not been met. That expectation may or may not have been reasonable. Frequently, the way the dissatisfaction was dealt with has led to greater problems to the point of impasse. The complaint reaches the Board of Optometry because the patient genuinely feels they were wronged. When the Board urges the doctor and patient to come to common ground, these problems are generally resolved. Some of these problems should have been resolved without the intervention of a licensing board.

When we investigate and conclude there was no optometric error we inform the patient of our conclusion. Hopefully, the doctors involved learn from complaint situations to enhance the experience patients have in their offices in order to avoid misunderstandings. A patient complaint is often an opportunity to rise to a higher

level of service. Resolving complaints in a manner in which all parties feel that the result is fair can be very satisfying. It is easy to take complaints personally, especially when you truly feel that you have done everything possible. In addition, employees can sometimes characterize a situation with a bias that may or may not be accurate. It is easy to jump to conclusions, make a decision and then refuse to budge. You may even be entirely right. I would like to challenge Oregon optometric physicians to seriously try to see problems from the patient's perspective. Recently a friend rocked my world when she said, "Do you want to be right, or do you want to be happy?" It is important to gather information, try to separate emotionally from the situation, attempt to determine what the patient wants and see what can be done so the patient AND the doctor are happy.

As optometric physicians, we are also business people who must remain competitive to survive in today's society. Sometimes we are presented with ethical dilemmas. For example, a sales representative may offer an attractive financial or gift incentive to do something that is good for his or her company but may not be what is best for our patients. It is imperative in these situations that we do what is in the best interest of our patients. In the long run, that is what will be best for each of us as individual doctors and for the profession of optometry as a whole. While the past decade has shown me that most optometric physicians strive

to practice lawfully AND ethically, occasionally it appears that some doctors may make decisions that are more "self-serving". Selling or promoting products not directly related to eye care to a captive patient audience, accepting financial or other incentives to fit one brand of spectacle or contact lens over what might be best for a patient, promoting a product, service, or making a professional referral that has a hidden benefit to the doctor and/or staff members are just some examples of actions that an ethical doctor avoids. It is encouraging that we deal with few such allegations. Looking at all our business dealings objectively and ethically can only benefit us as individuals as well as the profession of optometry and our patients.

I'll close my column with a reprinting of the Code of Ethics of the American Optometric Association. While the Board has no connection with the AOA and membership in this professional organization is not relevant to investigations, we endorse the ideals this document espouses. This ideal is not codified in law, but it should be considered a primer for success. If we follow these ideals and truly take care of our patients, they, in turn, will care for us. As I read these words adopted in 1944, I realize that the doctors whose licenses we have suspended or revoked broke one or more of its tenets. What was important then, is just as important now in 2001.

CODE OF ETHICS 1944

It Shall Be the Ideal, the Resolve, and the Duty of the Members of The American Optometric Association:

TO KEEP the visual welfare of the patient uppermost at all times;

TO ENHANCE continuously their educational and technical proficiency to the end that their patients shall receive the benefits of all acknowledged improvements in visual care;

TO SEE THAT no person shall lack for visual care, regardless of his financial status;

TO ADVISE the patient whenever consultation with an optometric colleague or reference for other professional care seems advisable;

TO HOLD in professional confidence all information concerning a patient and to use such data only for the benefit of the patient;

TO CONDUCT themselves as exemplary citizens;

TO MAINTAIN their offices and their practices in keeping with professional standards;

TO PROMOTE and maintain cordial and unselfish relationships with members of their own profession and of other professions for the exchange of information to the advantage of mankind in every possible way, in collaboration with this association, better care of the visual needs of mankind.

Important Administrative Rule Changes

The Board has recently adopted administrative rules which should be noted by licensees.

In light of the expanding scope of practice and current standard of care in Oregon, the Board has developed rules under Division 20 to establish educational and professional standards. Effective with the 2003 license renewal, beginning January 1, 2003, all active status licensees in Oregon must have demonstrated qualification and have obtained certification to use diagnostic pharmaceutical agents as a condition of license renewal. An application must be made to the Board in accordance with OAR Division 80 for DPA certification prior to using diagnostic pharmaceutical agents.

Effective with year 2005 license renewal, beginning with January 1, 2005, all active status licensees in Oregon must have demonstrated qualification and have obtained certification to use therapeutic pharmaceutical agents as a condition for license renewal. An application must be made to the Board in accordance with OAR Division 80 for TPA certification prior to using therapeutic pharmaceutical agents.

The Board has clarified the requirements for licensure by endorsement in Division 10. A doctor of optometry licensed in another state may qualify for

licensure in Oregon based on the examination taken at the original time of licensure. The candidate must have passed Parts, I, II, III, and the TMOD of the NBEO exam or it's equivalent as determined by the Board. The candidate must pass the Oregon Law and Administrative Rules exam, and prove attendance at continuing education. The candidate must provide confirmation from all the states, provinces or other licensing authorities regarding violation of laws, rules, and standards of ethics in those states. In addition, all candidates for licensure by endorsement are screened through the National Practitioner Data Bank, Healthcare Integrity and Protection Data Bank as well as the ARBO's National Optometric Data Bank for adverse actions against the licensee by any licensing authority. The candidate must have been practicing continually for two years prior to applying to the Oregon Board and must pay the application fees.

Diabetic Dilation

The Oregon Board of Optometry reminds all optometrists that dilated eye exams are the recognized standard of care for the diabetic patient. Good patient care would also include the reporting of the examination to the diabetic patient's primary care physician and/or endocrinologist.

Dilated eye examination for all diabetic patients is the fourth

highest health care priority in the state of Oregon. Diabetes is ranked as a major health concern in Oregon and across the United States.

Therapeutic Reminder

Licensed Optometric Physicians in Oregon who are TPA certified must continue to consult with an ophthalmologist or other doctor of medicine or doctor of osteopathy prior to instituting treatment with anti-glaucoma medication. Please review ORS 683.270(4) and refer any questions to the office of the Board.

Legislation

The 2001 Legislative session resulted in the passage of SB 45 which paved the way for qualified licensed optometrists in the state of Oregon to prescribe non-topical pharmaceutical agents. The passage of the bill does not, in itself, allow optometric physicians to prescribe anything other than topical pharmaceutical agents until a nontopical formulary and administrative rules are adopted. SB 45, which becomes effective January 1, 2002, provides for a nontopical formulary council consisting of three optometrists, three medical doctors, and one pharmacist. The council will develop a formulary for proposal to the Board of Optometry. The Board may adopt this formulary, at their discretion. After a formulary is adopted by Administrative Rule, the Board will, also by Administrative Rule,

set criteria for the use of the formulary, which may include certification in addition to the current TPA certification. Licensed Oregon optometrists will be notified of the criteria at the time that it becomes available. TPA certified optometrists may continue to prescribe from the current formulary until that time.

The Board also saw the passage of SB 404 which continues the jurisdiction of the Board in investigative activities or disciplinary proceedings against licensees in the event of lapse, suspension, revocation, or voluntary surrender of a license.

SB 408 revised and clarified the requirements for licensure by endorsement. Administrative rules have been adopted which will be effective January 1, 2002.

License Renewal Procedure

The Board has received some questions regarding the license renewal procedures and the rationale for these procedures. Beginning with the 2000 renewal period, reporting continuing optometric education became a condition of license renewal. Since that time, *all license renewals are due on the first day of the birth month* of the licensee. The required COE, then, must be completed no later than the day before the first day of the licensee's birth month. The license does not actually expire until the last day of the birth month in order to allow the Board's staff sufficient time to

verify COE and address any other considerations of the license renewal before the license becomes suspended. If the license renewal packet is not postmarked by the first day of the birth month, a late fee will be assessed. The Board may assess a late fee of \$50 for the first occurrence, \$100 for the second occurrence, and \$200 for subsequent violations. If the license renewal packet is not received by the first day of the month, a letter is automatically sent to the licensee notifying the doctor that the renewal is due and that a late fee will be assessed. The letter also gives notice of the date on which the license will automatically lapse if the renewal is not completed.

If the licensee has not completed the continuing optometric education prior to the due date, the license renewal is not considered timely. In addition to the late fee, the Board may assess a civil penalty for failure to complete continuing optometric education in a timely manner. The Board continues to require original attendance certificates to be submitted. This is to preclude the alteration of attendance documents. If you would like the original documents returned to you, please make your request in writing, and they will be returned to you after review. If you wish to use credit for excess hours accumulated in the previous renewal period, please note that on your COE reporting form. Any questions about the renewal process may be directed to the staff at the Board's office.

Inactive License Is There An Advantage?

Oregon is one of a very few states which allows licensees to maintain an inactive license when not practicing in Oregon. The inactive licensee pays a reduced license renewal fee, and is not responsible to report attendance at continuing optometric education. If an inactive licensee returns to practice in Oregon, it is a fairly simple procedure to reactivate the license. The licensee must pay the difference between the inactive and active fees for the year requesting reactivation, certify attendance at the required number of COE hours for the previous reporting period, verify the status of any optometry licenses ever held in other states or jurisdictions, and in some cases, pass the Oregon Law and Administrative Rules examination. If the license has been inactive for less than one year, there is a reactivation fee.

When a licensee chooses to allow their license to lapse after leaving the state, the procedure for reinstatement is more costly. The renewal fees for the lapsed years must be made current, including a late fee for the year the license lapsed. There is also a reinstatement fee of \$100. If the license has been lapsed for several years, this amount can seem imposing. There is also no guarantee that the licensee will qualify under the current license requirements for reinstatement, if

there have been considerable changes to the standard of care, and education requirements. If the license has been lapsed for more than two years, the licensee will be required to pass the Oregon Law and Administrative Rules exam. In any case, the licensee will be required to verify the status of any optometry licenses ever held in other states or jurisdictions.

Investigation Activities

During the first three quarters of 2001, the Board resolved and closed 11 complaint cases. Of these, 3 resulted in discipline. Licensees were sanctioned for the following violations:

- < Vista Eyewear Network, LLC - On 2/2/01 the Board issued a Final Order by Default, Imposition of Civil Penalties: \$1,000.00 for practicing optometry in the State of Oregon without having at the time of so doing a valid unrevoked license as an optometrist.
- < Ronald Guiley, OD - On 6/6/01 the Board issued a Final Order by Default; Reprimand and Imposition of Civil Penalties: \$250.00 for advertising optometric services of treatment or advice in which untruthful, improbable, misleading, deceiving or

impossible statements are made.

- < John Henderson, OD - On 9/28/01 the Board Issued a Stipulated Final Order, Reprimand and Imposition of Civil Penalties: \$5,000 for unprofessional conduct, performing examinations which fall below the standard of care, failure to notify the Board of changes of practice location, and failure to maintain patient records. Continuing practice under restricted license.

REPORT OF BOARD ACTIVITIES

JANUARY 2001 through NOVEMBER 2001

LICENSING ACTIVITIES:	
ACTIVE LICENSEES	622
ACTIVE TPA	587
ACTIVE DPA (ONLY)	29
ACTIVE NO TPA/DPA	6
INACTIVE/MILITARY LICENSEES	601
INACTIVE/MILITARY TPA	292
INACTIVE/MILITARY DPA (ONLY)	255
INACTIVE/MILITARY NO TPA/DPA	54
TOTAL LICENSEES	1223
OTHER ACTIVITIES:	
APPLICATIONS FOR LICENSE RECEIVED	41
NEW LICENSES ISSUED	43
REACTIVATIONS/REINSTATEMENTS OF LICENSE	17
TPA CERTIFICATIONS	3
ACTIVE LICENSEES	2
INACTIVE LICENSEES/MILITARY	1
LICENSE VERIFICATIONS COMPLETED	152
CE COURSES APPROVED/ENTERED	127
BOARD MEETING DAYS	5
COMPLAINTS:	
INFORMAL COMPLAINTS HANDLED BY STAFF	67
NEW FORMAL COMPLAINTS RECEIVED BY STAFF	36
FORMAL COMPLAINTS REVIEWED BY BOARD	114
NEW COMPLAINTS REVIEWED BY BOARD	35
COMPLAINTS RESOLVED AND CLOSED BY BOARD	35
DISCIPLINARY ACTION	3
NO DISCIPLINARY ACTION	32