

Minutes
Idaho State Board of Optometry
November 9, 2000

The meeting of the Idaho State Board of Optometry was called to order by Dr. Kenneth King, Thursday, November 9, 2000 at 1:00 p.m. at the Camas Room, Sun Valley Lodge, Sun Valley, Idaho.

Board Members Present: Dr. Kenneth W. King, Jr., Chairman
 Dr. Dick Vester, Member
 Dr. James Dean, Member
 Dr. Scott Taylor, Member
 Dr. Gary Walker, Member

Also Present: John Kersey, Chief Investigator
 Jerry Nave, Optometrist

Minutes

Moved by Dr. Dean, seconded by Dr. Taylor and carried that the minutes of the October 3, 2000 conference call be approved.

Moved by Dr. Dean seconded by Dr. Walker and carried that the minutes of the July 14, 2000 board meeting be amended by adding the wording "Moral character is generally defined as the absence of a conviction of a felony or a misdemeanor involving moral turpitude, or of conduct involving dishonesty of a violation of ethical rules of the profession" under "denial of license."

Moved by Dr. Vester, seconded by Dr. Taylor that the minutes as amended be approved.

Financial Report

The Board reviewed the financial report regarding the bureau account and the special account. Moved by Dr. Taylor, seconded by Dr. Vester and carried that the Board approve the financial reports.

Mr. Limbaugh informed the Board, via teleconference call, that the \$50,000 request for litigation was submitted with the budget for the special account. Mr. Limbaugh advised that the Governor's office approved \$30,000, and this amount is in the proposed budget to go before the legislature.

Proposed Legislation/Rule

Jerry Nave, optometrist, presented proposed legislation to the Board regarding control of optometric practice by unlicensed persons. Most of the information was accumulated from the laws in Florida and Texas. The proposals are attempts to clarify independent contractor and employee requirements. The purpose of the proposed legislation is to

insure that optometrists are not being controlled by someone who is not a licensed practitioner.

Administrative Attorney Roger Hales, via teleconference call, asked Dr. Nave who would be submitting the proposed legislation. Dr. Nave said the proposal is a Board issue and they should decide on its merit and whether to go forward with adoption or not. Dr. Nave noted the proposed legislation is also an issue for the Idaho Optometric Association. Mr. Hales expressed concern regarding the proposal and the fine line between protection of the public and protection of the profession. There is an issue in this regard in both the proposed law and rule changes. Also the Board cannot present a proposed rule to the legislature during the upcoming session, as time has passed for submission of proposed rule changes.

Dr. King said the board has to make sure that their interest is for the protection of the public, not the profession.

Mr. Hales stated that 54-1509(8), Idaho Code, allows the board “to make, prescribe and promulgate rules prescribing a code of ethics and standards of professional conduct in practice for the purpose of regulating and governing the practice of optometry by licensed optometrists with the state of Idaho and to change and modify its rules or prescribe new rules in order to improve the practice of optometry for the benefit of the people of the state of Idaho”. This language probably would form the basis for the adoption of rules along these lines. It is not guaranteed, but there appears to be enough language there to probably justify a rule. Mr. Hales stated that he is not sure the board can go the extra step by rule, and provide either the board or members of the public with such a remedy. Mr. Hales noted that such changes would probably require a law change.

Dr. King stated that Dr. Nave will be making a presentation to the Association regarding this issue, after which time it will be discussed further. If IOA does not choose to pursue legislation in this session, then the board could consider submitting a temporary rule at the appropriate time. Such a rule would then be considered by the 2002 legislative session.

Mr. Hales said Dr. Nave can pursue legislation this year, either through the Association or an individual legislator.

Texas Law

The Board requested Mr. Hales assistance in determining whether Texas law is equivalent to Idaho law for licensure by endorsement. It was the decision of the Board that the Texas law is equivalent to Idaho law for licensure by endorsement.

List of Scope of Practice for Idaho Optometrists

Mr. Hales and the board discussed Section 54-1501(3,4,5,6), Idaho Code, regarding the scope of practice for optometrists. This list could be adopted as an informal policy that the board has reviewed and believes is consistent with the practice of optometry.

Dr. Dean stated that the list was read into the record to demonstrate legislative intent. The list includes several procedures that have been defined in the industry as surgery, specifically because of their "60000 designation." It appears that the Board can add to this list, and until such time that someone decides to challenge it, the Board can use this list. When and if a particular procedure is challenged, the Board would be forced to defend their decision in this matter. At that time, the Board would have to decide whether to remove the procedure from the list, or face being taken to court over the matter. Mr. Hales stated that Dr. Dean's interpretation was correct. This list could be adopted by board motion.

Election of Officers

Moved by Dr. Vester, seconded by Dr. Dean and carried that Dr. King remains Chair of the Board.

Moved by Dr. Taylor, seconded by Dr. Walker and carried that Dr. Vester be elected Secretary of the Board.

HB718

HB718 is the Pharmacy Bill submitted last year that was not successful. This bill would have allowed the Board of Pharmacy to withdraw a controlled substance license from a practitioner if they felt that he or she was in violation of Pharmacy laws. The Board of Pharmacy would simply notify the licensing board that they were withdrawing the substance license and the licensing board would not have to concur or take any action.

Dr. King talked to Representative Tom Loertscher regarding the bill and nothing has been done regarding this bill.

Dr. King advised that Larry Benton will keep the Board informed on any possible legislation regarding this issue.

Executive Session

Moved by Dr. Dean, seconded by Dr. Walker and carried that the Board go into executive session for the purpose to discuss possible disciplinary action.

Moved by Dr. Vester, seconded by Dr. Taylor and carried that the Board come out of executive session.

Moved by Dr. Dean, seconded by Dr. Walker the Board accepts the Deputy Attorney General's recommendation for the following three (3) cases:

OPT-P3-01-99-001
OPT-L2A-04-00-001
OPT-L2A-04-002

Meeting Dates

The Board established the following dates for 2001 board meetings:

February 9, 2001 – 1:00p.m. – Boise

May 18, 2001 – 8:30 a.m. – Boise

July 27, 2001 – 8:30 a.m. – Boise

November 1, 2001 – 1:00 p.m. – Boise

Meeting Adjourned at 4:45 p.m.