

Minutes
Idaho State Board of Optometry
February 9, 2001

The meeting of the Idaho State Board of Optometry was called to order by Dr. Kenneth King, Friday, February 9, 2001 at 1:05 p.m. at the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, 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: Thomas E. Limbaugh, Bureau Chief
 Budd Hetrick, Jr., Deputy Bureau Chief
 Roger Hales, Administrative Attorney

John Kersey, Chief Investigator
Dee Ann Randall, Administrative Secretary

HB 165

The Board discussed HB165. With the exception of notifying the Board before action is taken against a licensee, instead of after, this is the same as HB718 presented by the Board of Pharmacy last year. The Optometry Board opposes this bill.

Moved by Dr. Dean, seconded by Dr. Taylor and carried that the Board direct Mr. Limbaugh to notify the Governor's office that the Board is not in favor of the passage of HB165 as written. The Board is not aware of the reasoning behind the proposed changes in the bill and they do not feel the boards should be left out of the process of withdrawal of a controlled substance license.

Minutes

Moved by Dr. Taylor, seconded by Dr. Walker and carried that the minutes of the November 9, 2000 board meeting be amended by changing the wording under "denial of license based on moral character", to read "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, or of a violation of ethical rules of the profession". The July 14, 2000 board meeting, Roger Hales was asked and replied to the question what denial of a license based on moral character meant. This part of the minutes was amended in the November 9, 2000 board meeting by Mr. Hales, and is being further amended in the February 9, 2001 board meeting by Mr. Hales.

Financial Report

Mr. Limbaugh spoke with Larry Benton, Executive Director of the Idaho Optometric Association regarding the bill to be submitted for \$10,000 for continuing education courses. Mr. Benton stated that the program will be sent to the Board for their review, and then the bill will be submitted to the Board.

Mr. Limbaugh reviewed the financial reports with the Board. The current balance in the special account is \$75,410 and the current balance in the Optometry Bureau account is -\$3,756. Discussion was held on charging some of the board direct expenses to be paid out of the special account upon board approval.

Moved by Dr. Taylor, seconded by Dr. Walker and carried that the Board pay the following direct expenses from the special account: board travel, administrative rules, membership dues, and any other expenses approved by the Board.

Mr. Limbaugh informed the Board that their proposed rule changes have been approved in the Health and Welfare Committees of both the House and Senate. The rules have not yet been presented on the floor of either chamber.

Complaint Report

John Kersey, Chief Investigator, reported that one (1) complaint has been received thus far for this year, and is currently under investigation.

Four (4) complaints were received in the year 2000. Of those, one (1) remains under investigation.

Two (2) complaints were closed at the last board meeting.

Since the last board meeting, one (1) complaint was closed after legal review.

Moved by Dr. Walker, seconded by Dr. Vester and carried that the complaint report be approved.

Board/Bureau Contract

Mr. Hetrick distributed copies of the contract that is for the current fiscal year, which started July 2000. The changes in the contract from last year were discussed. Dr. King had given an attorney in Idaho Falls the contract to review and as of this date has not met with the attorney to discuss the contract. Dr. King will contact the attorney Monday, February 12, 2001 and try to finalize the contract.

Mr. Hetrick informed the Board that licensed optometrists are 90% compliant with the IDACARE reporting process.

Proposed Rule

The proposed rule regarding control of optometric practice by unlicensed persons, which was presented to the Board by Dr. Nave and Dr. Merrill at the November 9, 2000 board meeting, was discussed. Dr. King informed the Board that the Idaho Optometric Association does not want to be involved in this proposed rule change at this time. The Board stated that they have no interest in pursuing this rule change.

Cole National Contract

Dr. Milo Hatch had previously requested Board review of the Cole National contract to insure there was no conflict with the Idaho Optometry Laws and Rules. Dr. King asked for input from Roger Hales. Mr. Hales will review the contract and send the board members a short synopsis of the contract. Mr. Hales cautioned the Board on getting involved in reviewing individual contracts for legality and advised the Board that individual optometrists should be hiring their own legal counsel. Should the Board want to review some individual contracts to see if they are in conflict with the laws and rules, Mr. Hales can do so at the Board's direction. Mr. Hales is legal counsel for the Board, but not for individual optometrists.

List of Scope of Practice for Idaho Optometrists

Discussion was held regarding updating the list of procedure codes approved by the Board at their November 9, 2000 board meeting.

Moved by Dr. Dean, seconded by Dr. Vester and carried, based upon the Board's review of the optometry act, which includes the specific treatment of the eye and eyelid, and after due consideration of those procedures currently taught by accredited colleges of optometry in the US, the Board finds that the scope of practice of optometry includes, but is not limited to, the specific procedures listed in the Board's scope-of-practice letter. The Board will review and amend the letter that was previously distributed to third party payors, and have Roger Hales help draft any changes that are to be included in the letter. The letter will then be used to clarify to third party payors, and to optometrists in the field, what the Board feels is within the scope of optometry. Courses noted on the list by Northeastern State University College of Optometry, and those courses on the list received from Pacific University College of Optometry will also be reviewed. Attached is the final scope-of-practice letter.

Mr. Hales will prepare the letter and forward by email a copy to each board member for their review.

Health Care Group

The Health Care Group requested an opinion from the Board on whether an optometrist and an ophthalmologist can both be part of a professional corporation, and shareholders in the same professional corporation.

Mr. Hales noted the apparent ambiguity in the law and rules. Section 54-1510(2), Idaho Code, appears to allow an optometrist to practice in conjunction with an ophthalmologist. There is, however, a specific ethical rule that appears to prohibit such a practice.

Mr. Hales explained that a licensed optometrist may not practice under an assumed name, or for anyone else. A licensed optometrist can, however, practice with other optometrists who are all shareholders of a professional corporation. This also seems to apply to a licensed optometrist's practice as a partner or shareholder with a medical doctor.

Mr. Hales reviewed the Professional Corporation Act, noting that professional practice must be set up as a Professional Corporation. That act limits those who are allowed to be shareholders in a Professional Corporation.

It was noted that Rule 325.04.a. concerning unprofessional conduct appears to restrict an optometrist to practice in a professional corporation with other optometrists, not necessarily with other types of medical professionals.

Mr. Hales noted that the issue is a matter for the Board to address if there is a concern about such practice. Dr. King expressed a concern with the conflict between the law and rule. Mr. Hales will prepare language for a change in the rule.

Moved by Dr. Walker, seconded by Dr. Taylor and carried that the Board has reviewed the laws and rules and find there is no prohibition against an optometrist and an ophthalmologist practicing as a professional corporation. Dr. King will reply to the Health Care Group regarding the Board's opinion on the matter.

ARBO Meeting

Discussion was held concerning the ARBO meeting to be held in Boston, Massachusetts June 24-26, 2001. It was decided that either Dr. Dean or Dr. Vester will attend this meeting.

Time and Place

The time and place for the next meeting will be May 25, 2001, beginning at 8:30 a.m. at the Bureau office.

Meeting adjourned at 4:30 p.m.

Dr. Kenneth W. King, Jr. Chairman

Dr. Dick Vester, Member

Dr. James Dean, Member

Dr. Scott Taylor, Member

Dr. Gary Walker, Member

Thomas E. Limbaugh, Chief
Bureau of Occupational Licenses

Approved May 25, 2001
Signed July 27, 2001