

IDAHO BOARD OF OPTOMETRY
Bureau of Occupational Licenses
700 West State Street, P.O. Box 83720
Boise, ID 83720-0063

Board Meeting Minutes of 2/23/2015

BOARD MEMBERS PRESENT: Robert B. Grill, O.D. - Chair
James Davis, O.D.
Wayne D Ellenbecker, O.D.
Robert Sorensen, O.D.
Joy Eld Johnson, O.D.

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Lori Peel, Investigative Unit Manager
Maurie Ellsworth, Legal Counsel

OTHERS PRESENT: Randy Andregg, Executive Director,
Idaho Optometric Physicians
Kris Ellis, Advisor,
Idaho Optometric Physicians

The meeting was called to order at 9:30 AM MST by Robert B. Grill, O.D.

APPROVAL OF MINUTES

Dr. Davis made a motion to approve the minutes of 12-22-2014. It was seconded by Dr. Ellenbecker. Motion carried.

LEGISLATIVE REPORT

Ms. Cory gave the legislative report. She discussed HB116 which will amend and clarify the existing law in order that the Bureau and the boards it serves may assess attorney fees incurred in investigations and prosecutions. Ms. Cory reminded the Board that the House Business Committee would hold a hearing today on HB116; Dr. Grill will attend this hearing.

Mr. Ellsworth discussed HB117 which clarifies renewal, reinstatement and re-application of licensure and that it is the Board who has the authority to examine these applicants.

Ms. Cory informed the Board that the rule regarding continuing education passed and the effective date will be January 1, 2017. This will provide time to notify licensees.

FINANCIAL REPORT

Ms. Hall gave the financial report, which indicated that the Board had a cash balance of \$104,671.00 as of February 23, 2015.

DISCIPLINE

Ms. Peel presented a memorandum regarding case number OPT-2015-2. After discussion, the Board gave recommendations for appropriate discipline.

Ms. Peel presented a Stipulation and Consent Order in case OPT-2015-2. Dr. Ellenbecker made a motion to approve the Consent Order and allow Dr. Grill as the Board Chair to sign on behalf of the Board. It was seconded by Dr. Davis. Motion carried.

INVESTIGATIVE REPORT

Ms. Peel gave the investigative report, which is linked above.

OLD BUSINESS

To Do List – The Board reviewed the to do list. Dr. Ellenbecker is continuing to work with the Association of Regulatory Boards of Optometry (ARBO) to make the Optometry Education Tracker (OE Tracker) more compatible for licensees to use in tracking their continuing education courses.

NEW BUSINESS

HB75 and HB149

Ms. Ellis discussed HB75 (sales tax on glasses/contact lenses) with the Board. She said it has passed the House and is now in the Senate. There was not a significant amount of opposition when this bill came before the House. Ms. Ellis said HB75 should not have any effect on the Board, but it would make things easier for providers.

Ms. Ellis reviewed HB149 which amends the existing law to prohibit certain acts by manufacturers and distributors of contact lenses (sponsored by 1-800-Contacts, located in Utah). Ms. Ellis discussed the statement of purpose and the

effects this would have on optometrists and the prescription of certain brands of contact lenses to patients due to the fit of the lenses. This is mainly addressed in section (2)(c) of HB149: "To restrict options available to consumers by discriminating in the distribution of contact lenses based on either the channel of trade or on whether the retailer is associated with a person or entity authorized by law to prescribe contact lenses." There are 17 states that have similar bills before them. Representative Packer is carrying this bill. Ms. Ellis noted that a similar bill has been defeated in Mississippi and could also be defeated in Washington. The Idaho Optometric Physicians (IOP) will be opposing HB149 in light of the branding and patient care issues. The manufacturers will be focused on pricing, where IOP is concerned about patient safety (i.e. providing a prescription that is in the patient's best interest). Ms. Ellis said the general public might look at 1-800-Contacts as a way to get less expensive contact lenses, even if they do not exactly match their prescription, which could be harmful to them.

Ms. Ellis stated that one of the issues with HB149 is that it is currently proposed as an amendment to Idaho Code § 54-1525 (laws for practice of Optometry) instead of in the Attorney General's Consumer Protection Act. This raises the possibility that the Board of Optometry would have to monitor and enforce this law.

Mr. Ellsworth said he has spoken with the Attorney General's Office and they are not taking an official position on the bill. Idaho Code § 54-1513 states: "It shall be the duty of the prosecuting attorney of each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of Idaho to prosecute any actions brought under the provisions of section 54-1524, Idaho Code, if requested by the state board of optometry." The qualifier on this is: "if requested by the state board of optometry." Mr. Ellsworth said it would be up to the Board whether it wanted to pursue criminal or injunctive action. The injunction procedure under Idaho Code § 54-1524 provides that the, "board or any resident citizen may maintain an action in equity in the name of the state of Idaho to enjoin perpetually any person, firm, company, corporation or partnership from persisting in the doing of any acts constituting a violation of this chapter." Mr. Ellsworth said the use of the word "may" in this section speaks to discretionary action of the board, so there is no mandate for the Board to pursue an injunction.

Dr. Grill asked the Board if it would like to take a position on HB149. As the Chair, Dr. Grill could meet with the Governor's Office and provide the Board's position. Dr. Grill would also work with Ms. Cory so she can represent the Board and address its concerns with both the Governor's Office and the Legislature.

Dr. Andregg encouraged the Board to strongly oppose HB149 in order to advocate for patient safety. He stated that the Idaho Medical Association will not take any position on HB149.

The Board discussed its concerns with the bill.

Dr. Sorenson made a motion to allow Dr. Grill and Ms. Cory to follow up with the liaison in the Governor's Office to communicate the concerns the Board has about HB149. It was seconded by Dr. Johnson. Motion carried.

TELEHEALTH UPDATE

Ms. Cory reviewed HB98 (telehealth access act) with the Board, as she has been working with the Telehealth Council and one of the subcommittees regarding telehealth. Ms. Cory noted the recent revisions on HB98, particularly the final section regarding boards promulgating rules regarding this issue. The Board agreed this bill has been written fairly responsibly.

Ms. Ellis noted that this legislation has been sent to the amending order so it will look different than what the Board is reviewing today. One of those amendments will be a clearer definition of provider and being licensed under Title 54.

Dr. Grill extended his thanks to Ms. Cory, Dr. Johnson and IOP for their time and commitment to this issue. Dr. Sorenson expressed his concerns regarding the separation of refraction/ocular health exam and the need to promulgate rules for this in telehealth. Dr. Grill agreed this is a great concern. Ms. Cory will send the amended bill to Dr. Grill and Dr. Johnson, and let them decide whether a conference call will need to be held. Mr. Ellsworth directed the Board to look at Idaho Code § 54-1509(15) which addresses the Board's general rule making authority.

LETTER OF CLARIFICATION REGARDING PROPOSED RULE

It was agreed at the last meeting that it would be helpful to communicate with licensees to clarify the reason for the changes regarding continuing education. Dr. Grill presented a draft of a letter which Ms. Cory and Mr. Ellsworth will revise. Ms. Cory discussed a similar change that the Board of Architecture made recently and how it provided correspondence to its licensees. This also included a statement on the renewal form. Ms. Cory and Ms. Hall will look at previous actions taken by the Board of Architecture and review them with Dr. Grill and the Board. The Board could still review the licensees' continuing education on a case-by-case basis after this rule is in place.

Dr. Grill will work with Ms. Cory and Ms. Hall on the correspondence that would need to be distributed from the Board regarding this new rule.

REVIEW OF PRESCRIBING PERFORMANCE SUBCOMMITTEE

Ms. Cory gave the Board some background regarding the purpose of this subcommittee. Senator Dan Schmidt is chairing the subcommittee. He would like to bring together professions such as patient advocates, law enforcement, care providers, and regulatory agencies to have them work together to improve prescribing practices around high-abuse drugs such as opioids.

Dr. Johnson indicated the purpose for the Board's involvement with this subcommittee is because of the potential that the general public could approach optometrists for prescriptions for controlled substances. Senator Schmidt's goal with this subcommittee is to have a policy in place among the participating boards that have prescribing practices. This subcommittee requested any feedback to be provided by March 13, 2015. Dr. Grill will try to attend the large group meeting either in person or via teleconference (March 20, 2015, at 11 AM at the J.R. Williams East Conference Room, 650 W. State).

POLICY STATEMENT REGARDING ONLINE REFRACTIONS (OHIO, TELEMEDICINE)

Dr. Sorensen reviewed the policy statement from Ohio and its impact on online refractive screening. He said telemedicine is not going to be an easy or the best way to provide glasses/contacts to patients. Dr. Sorensen requested that the attendees of the Association of Regulatory Boards of Optometry (ARBO) meeting this summer get in touch with the Ohio board members who made this policy statement to get the reason(s) behind the statement, the distribution of the statement, and how it would defend their law (speakers at the general meeting could review this).

Mr. Ellsworth stated that in Idaho it would not be possible to punish optometrists/providers through this policy statement. It's merely a statement that may lead to some law or rule.

Dr. Johnson stated that Idaho is using the term "telehealth" in place of the term "telemedicine" which brings an expanded scope for practices.

Ms. Cory stated that Ohio seems to be a leader in the arena of telemedicine/telehealth. The Telehealth Council may continue to work with practitioners/providers to provide consistency regarding laws and rules for telehealth. If the telehealth bill passes, the Board may consider promulgating rules.

ARBO MEETING

This meeting will be held from June 21-23, 2015, in Seattle, WA. Drs. Johnson and Ellenbecker agreed to go to this year's ARBO meeting. Dr. Davis made a

motion to have Dr. Ellenbecker and Dr. Johnson attend this year's ARBO meeting. It was seconded by Dr. Sorenson. Motion carried.

Dr. Grill made a motion to have Ms. Toncray attend the ARBO meeting. It was seconded by Dr. Ellenbecker. Motion carried.

ARBO/NBEO: CONTINUING COMPETENCE/CONTINUED PROFESSIONAL DEVELOPMENT

Dr. Grill reminded the Board this issue was on the To Do List. The Board discussed the professional development/continuing education being helpful to doctors to improve their performance to help protect the public. The Board agreed the Council on Optometric Practitioner Education (COPE) created by ARBO will be a useful tool for optometrists to document appropriate continuing education.

AMERICAN OPTOMETRIC ASSOCIATION: ACCREDITATION COUNCIL ON OPTOMETRIC EDUCATION

The Board reviewed this correspondence. No action was taken.

EXECUTIVE SESSION

Dr. Davis made a motion that the Board go into executive session under Idaho Code § 67-2345(1)(d) to consider records that are exempt from disclosure under the Idaho Public Records Law. The purpose of the Executive Session was to consider license application materials. It was seconded by Dr. Ellsworth. The vote was: Dr. Grill, aye; Dr. Davis, aye; Dr. Ellenbecker, aye; Dr. Sorensen, aye; and Dr. Johnson, aye. Motion carried.

Dr. Ellenbecker made a motion to come out of executive session. It was seconded by Dr. Davis. The vote was: Dr. Grill, aye; Dr. Davis, aye; Dr. Ellenbecker, aye; Dr. Sorensen, aye; and Dr. Johnson, aye. Motion carried.

APPLICATIONS

Dr. Ellenbecker made a motion to approve the following for licensure:

- ODP-100325 Neal Boyd Guymon
- ODP-100329 Anthony Ryan Lopez
- ODP-100328 Stephen Jeffrey Farris (upon receipt of official transcripts)
- ODP-100327 Osama Khoury (upon receipt of CPR certification)
- ODP-100330 Andrew Boyd Mick (upon receipt of licensure verification)

Dr. Johnson seconded. Motion passed.

Dr. Sorensen made a motion to approve the following waiver of CEs in accordance with Rule 300.04, pending receipt of CPR certification:

ODP-473 Paul D. Whitesides

It was seconded by Dr. Davis. Motion carried.

CE COURSES

All continuing education courses are to be forwarded to Dr. Sorenson in the future for his review and approval. He approved the following:

RETINA SPECIALISTS OF IDAHO, PLLC
RETINA EMERGENCIES

RESTORE VISION CENTERS
CLINICAL AND SURGICAL OBSERVATION

INTERNATIONAL VISION EXPO
INTERNATIONAL VISION EXPO & CONFERENCE EAST 2015

NEXT MEETING was scheduled for May 18, 2015 at 9:30AM MST.

ADJOURNMENT

Dr. Davis made a motion to adjourn the meeting at 11:35 AM. It was seconded by Dr. Ellenbecker. Motion carried.

Robert B. Grill, O.D., Chair

James Davis, O.D.

Wayne D Ellenbecker, O.D.

Robert Sorensen, O.D.

Joy Eld Johnson, O.D.

Tana Cory, Bureau Chief