

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

**Conference Call Minutes of 3/4/2015**

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

**BOARD MEMBERS ABSENT:** Robert Sorensen, O.D.

**BUREAU STAFF:** Tana Cory, Bureau Chief  
Dawn Hall, Administrative Support Manager  
Maurie Ellsworth, Legal Counsel

**OTHERS PRESENT:** Kristyn Kirschenman, Governor's Office;  
Randy Andregg, Executive Director,  
Idaho Optometric Physicians;  
Jeff Buel, Johnson & Johnson;  
Colby Cameron, Sullivan & Reberger;  
Kris Ellis, Advisor,  
Idaho Optometric Physicians

The meeting was called to order at 4:03 PM MST by Robert B. Grill, O.D.

**LEGISLATIVE REPORT**

Ms. Cory gave the legislative report. She said that the telehealth bill, HB189, has been printed and passed in the House. There is a conference call tomorrow with designated members working on telehealth, and Dr. Johnson will be participating in that call.

**FINANCIAL REPORT**

The Board chose to not review the financial report due to time constraints.

## **OLD BUSINESS**

To Do List – The Board reviewed the to do list and no action was taken.

## **NEW BUSINESS**

### **HB149**

Ms. Cory provided a timeline for HB149 and reviewed the Board's previous actions regarding the bill which was passed by the House on March 3, 2015. Ms. Cory reviewed the letter addressed to Representative Kelley Packer from the Office of the Attorney General regarding HB149. It was the finding of the Office of the Attorney General that there would not be any increased costs to the Board of Optometry if HB149 becomes law.

Dr. Grill reminded those present that the Board unanimously opposed HB149 at their February 23, 2015 meeting. He also stated that the Board had been advised by Ms. Cory at that time to allow Ms. Cory to address the Board's concerns with the Governor's Office. The Board's concerns were:

- 1) HB149 does not belong in Idaho Code § 54-1525 as it is restrictive and is not related to the practice of Optometry.
- 2) Contrary to the statement of purpose of HB149, this bill will clearly have a fiscal impact on the Board of Optometry, the Bureau of Occupational Licenses and the Idaho Attorney General's office. The opinion from the Attorney General's office states any costs would be borne by their office, but these costs could be excessive. The statement of purpose also does not list any information about the distribution of lenses which is trying to be inserted into the law.
- 3) Section 2(c) of HB149 allows for the complete removal of restrictions for the dispensation of contact lenses (i.e. novelty shops selling contact lenses at Halloween). This opens the door for the availability to anyone in the public sector to dispense contact lenses. This has been a great concern of the FDA since many people have experienced ocular issues after wearing these types of lenses  
(<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm275069.htm>).

Dr. Grill said it was important to have further discussion regarding HB149 due to the possible effects it could have on public health and safety. The Board agreed.

Dr. Johnson reiterated that contact lens distribution particularly at Halloween carries a consumer health issue which affects the youth.

Dr. Grill asked Mr. Ellsworth what types of legal actions might occur and what the process would be with those actions if the language remains in the Board of

Optometry's code section. The Attorney General's statement addresses the prosecution of legal actions, but we need to think about what the cost would be and what would be involved in fielding any public or practitioner complaints and the ensuing investigations.

Mr. Ellsworth said that HB149 would not change the law with respect to a public entity selling Halloween contacts.

Dr. Grill reiterated that this opens more avenues for contact lens distribution to the general public. The main issue or purpose of HB149 in section (2) (a) and (b) addresses the prevention of price setting. Dr. Grill gave an example of an out-of-state vendor filing a complaint regarding price setting and stated his concerns about the time and costs (administrative, investigative, etc. prior to involving the Attorney General) that could be involved with answering such a complaint.

Mr. Ellsworth reiterated that HB149 refers prosecution or seeking injunctive action to the Attorney General or the prosecuting attorney. The Attorney General's letter addresses such costs but not the investigative costs.

Ms. Cory said that other boards served by the Bureau receive complaints similar to the possible complaints being discussed (i.e. Contractors Board). The Bureau refers such complaints to the Consumer Protection Division to prosecute. Ms. Cory also reviewed the legislative process in which the Bureau and the Board participate.

Dr. Grill said HB149 needs to be moved out of the Board of Optometry's practice law to another section to clarify responsibility for all costs. He said the sponsor of HB149 needs to understand why this bill is detrimental to the general public.

Dr. Andregg said that the Association represents the providers and doctors, while the Board stands as an advocate for the citizens of Idaho. He has similar concerns to those of the Board regarding HB149, particularly the loosening of the regulation on how and by whom contact lenses are dispensed. He agreed with Dr. Grill about the possibility of moving HB149 out of Idaho Code § 54-1525.

Mr. Buel with Johnson & Johnson addressed the Board. Johnson & Johnson is opposed to HB149. There is a large concern about the threat of litigation. The American Optometrist Association also opposes this type of legislation because there would be less oversight in the dispensing of contact lenses in accordance with HB149.

Dr. Johnson moved to authorize Dr. Grill to speak on behalf of the Board's concerns to the bill sponsor, Representative Kelley Packer, to let her know that the Board is officially opposed to HB149 as it stands regarding the impact on the issues of fiscal responsibility and public safety. Dr. Davis seconded. Motion carried.

Ms. Cory clarified that as part of the executive branch the Boards we serve do not take official positions on bills, but rather work with the Governor's Office on concerns and direction.

The Board agreed to have Ms. Kirschenman take the Board's concerns to the Governor.

Ms. Cory will work with Dr. Grill to meet with the sponsor of HB149 next week.

**ADJOURNMENT**

Dr. Ellenbecker made a motion to adjourn the meeting at 4:43 PM. It was seconded by Dr. Davis. Motion carried.

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Robert B. Grill, O.D., Chair

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James Davis, O.D.

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Wayne D Ellenbecker, O.D.

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Tana Cory, Bureau Chief