

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

Conference Call Minutes of 3/18/2015

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: Kristyn Kirschenman, Governor's Office;
Randy Andregg, Executive Director,
Idaho Optometric Physicians;
Jeff Buel, Johnson & Johnson;
Colby Cameron, Sullivan & Reberger;
Kris Ellis and Tony Smith,
Euigerin, Fisher & Ellis

The meeting was called to order at 8:00 AM MDT by Robert B. Grill, O.D.

LEGISLATIVE REPORT

Ms. Cory gave the legislative report. She said that HB116 and HB117 were presented in the Senate Commerce and Human Resources Committee and both bills came out of committee with a unanimous vote.

NEW BUSINESS

HB149 REVIEW

Dr. Davis made a motion to amend the agenda to reflect that the bill being reviewed is HB149 and not HB194. It was seconded by Dr. Ellenbecker. Motion passed.

It was previously decided that Dr. Grill would meet with the bill's sponsor, Representative Kelley Packer, and discuss the Board's concerns about HB149. Others who were at the meeting: Ms. Haas, lobbyist for 1-800-contacts; Kristyn Kirschenman from the Governor's Office; Ms. Cory; and Mr. Ellsworth. Dr. Grill discussed the points in a letter he would like to send to Senator Patti Anne Lodge, Chair of the Senate Judiciary & Rules Committee. The issue that was not included in his letter is the Board's concerns which were already submitted to the Attorney General's office about how much the Board could count on the support and financial protection in any complaint or action against the Board through this statute. There was a case in the past that was referred to the Attorney General's office but was ultimately returned by the Attorney General to the Board so it could handle it. This is a great concern considering the limited budget of the Board and the upfront costs and work involved in handling such cases. The result of the meeting was that Representative Kelley Packer stated that it would not be possible to make changes in HB149. She offered some support to define this in the rules, but it was unclear how this would be accomplished. Dr. Grill, Ms. Cory and Mr. Ellsworth had a meeting with the Governor's Office after this, and it was decided to have Dr. Grill draft a letter to Senator Patti Anne Lodge, Chairman of the Idaho Senate Judiciary & Rule Committee. This is the letter under review today so the Board can look at the direction they should take.

The Board reviewed the letter drafted by Dr. Grill. Dr. Sorensen said he thought the Board was going in the right direction since this bill is being over-lobbied and the Board's voice was not being heard. Dr. Ellenbecker agreed that there are faults in HB149 which need to be pointed out to the legislators. He said the Board's voice needs to be heard considering the misinformation being provided to the legislators at this time.

Both Dr. Ellenbecker and Dr. Grill restated that the Board's greatest concern is the health and safety of the patients. Dr. Grill said there have been complaints from contact lens wearers over the past few years, at least one annually about contact lenses (i.e. cosmetic lenses purchased from other avenues such as novelty shops). If the Board allows any loosening of the regulation regarding distribution of contact lenses, then there will be many more issues regarding contact lenses.

Dr. Davis wanted to be sure the letter didn't underestimate this point of public safety. He said if a doctor writes a prescription for a certain type of lens and a manufacturer or distributor is allowed to change it, then it is definitely a public safety concern.

Dr. Johnson stated this would very likely open an avenue for patients to obtain contact lenses from other distributors than their optometrists. Dr. Johnson conducted some online research of her own to see how easy it is to obtain contact lenses online (from Korea) without providing any prescription information. She was within a few key strokes of obtaining contact lenses that were not the same as her prescription. The strategy of the unilateral pricing policy (UPP) does not keep foreign vendors from offering contact lenses online to the general

public. She said the Board needs a more defined strategy of protecting the public going forward.

Dr. Grill asked Mr. Buel to address the Board on the increased risk to patients and concerns regarding section 2(c) of HB149. Mr. Buel stated that this makes it unlawful for manufacturers to try to control the channels of distribution (i.e. a convenience store could sell contact lenses). This provides less control over who has access to the medical device of contact lenses.

Dr. Johnson agreed with Mr. Buel's statement that no one can keep any vendor from getting contact lenses into the stock of their store, which is clearly one more threat to the public through the distribution of contact lenses. She said this is a point we must be able to address with the legislators since they do not deal with these issues on a daily basis.

Dr. Davis asked if the passing of HB149 would allow a vendor to distribute a different brand of contact lens than what has been prescribed to the patient. Dr. Grill said he spoke with the sponsor and the lobbyist from 1-800-Contacts. They said HB149 deals more with removing any restrictions or limits to the distribution of contact lenses. It was presented by the sponsor and the lobbyist from 1-800-Contacts that HB149 will not change anything in the distribution of contact lenses. It's just something that needs to be there and will not change the distribution of contact lenses; manufacturers still have every right to be able to distribute contact lenses to anyone in the way they desire. Dr. Grill let the sponsor know the Board would probably seek legal counsel of its own regarding HB149 and its interpretation since there is so much of HB149 that is unclear. There are also changes in the beginning of HB149 where 'referrals by optical firms' is lined out and is changed to 'certain acts' prohibited. Dr. Grill said this changes the entire meaning of the statute, including that an optometrist or ophthalmologist cannot do anything to promote their own practices, if this bill is read carefully. He said there are too many unknowns in how this could be interpreted and what the impacts would be.

Mr. Ellsworth stated that this bill would not prohibit a prescriber/provider from specifying the type or brand of contact lens prescribed to the patient.

Dr. Grill stated that if the distribution channels are opened up, then the opportunity for abuse increases exponentially. He said if there are fewer restrictions that would increase the likelihood of lenses being substituted and prescriptions not being addressed or required.

Ms. Cory stated that there were two technical corrections she wanted to point out in Dr. Grill's letter. One was the code section cited in the fourth paragraph and the other was a protocol issue in the address.

Dr. Grill stated that the Board saw no evidence of understanding by other parties that the general public would be harmed if this bill was passed; not even the

Statement of Purpose for HB149 covers the possible harm to the general public that would come if this bill passes.

Dr. Sorensen agreed, and suggested that since the Board does not have a lobbyist it could contact the Idaho Optometry Association and have them engage their lobbyist to make sure the legislature is aware of these issues with the bill.

Ms. Cory reminded the Board that it is part of the executive branch and therefore the Board does not lobby or take positions on bills. The Board, as a state entity, works through the executive branch and the Governor's Office regarding its concerns on bills. An association can lobby since they are a private entity.

Dr. Grill expressed his thanks on being able to be heard by the other parties involved in this process.

Dr. Johnson made a motion to approve the letter drafted by Dr. Grill with the two technical changes and for Dr. Grill to sign the letter and have Ms. Cory deliver it. It was seconded by Dr. Ellenbecker. Motion carried.

TELEHEALTH UPDATE

Dr. Johnson provided an update to HB189 (previously HB98), the telehealth bill. She said the biggest change was the definition of provider, which also addressed the Board's concerns regarding online refractions. She said HB189 has closed the 'loophole' for the possibility for those who are not licensed to provide online refractions.

Ms. Cory recommended that the summary Dr. Johnson provided regarding the most recent Telehealth Council conference call be distributed to the Board after today's meeting.

Ms. Cory thanked Dr. Johnson for her active participation on HB189 which has now passed and is on its way to the Governor's Office. Ms. Cory introduced Mr. Toryanski as the newest attorney with the Bureau. He will be the new contact for telehealth issues and the possible development of rules for telehealth.

Dr. Grill thanked everyone involved for their work on these issues.

Ms. Cory let the Board know that the Bureau will watch for hearings regarding HB149 and provide the timing of hearings to the Board. Dr. Grill asked when the bill would be heard and about being at the hearing. Ms. Cory stated she will let the Board know when a hearing is scheduled and on a protocol for presenting at the hearings on behalf of the Board.

Dr. Davis made a motion to authorize one or more Board members to be present at the hearings of HB149 to represent its concerns. It was seconded by Dr. Ellenbecker. Motion passed.

ADJOURNMENT

Dr. Davis made a motion to adjourn the meeting at 8:47 AM MDT. It was seconded by Dr. Ellenbecker. Motion carried.

Robert B. Grill, O.D., Chair

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Tana Cory, Bureau Chief