

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

Board Meeting Minutes of 5/18/2015

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, General Counsel
Mitch Toryanski, Legal Counsel
Debbie Toncray, Technical Records Specialist I

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

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

APPROVAL OF MINUTES

Dr. Davis made a motion to approve the minutes of 2/2/2015, 2/23/2015, and 3/4/2015. It was seconded by Dr. Sorensen. Motion carried.

LEGISLATIVE REPORT

Ms. Cory gave the legislative report. She said that the change to Rule 300 was passed and became effective 3/11/2015. The other legislation that affected the Board this year was HB149 regarding the distribution of contact lenses. This bill passed in the House but was not heard in the Senate. Ms. Cory explained the process this bill went through in the Legislature. Dr. Grill thanked the Bureau staff for their work regarding HB149, along with those at the Governor's Office. Ms. Cory said that the other bills that had an impact on this Board were HB116

and HB117, and Mr. Ellsworth provided a review of these bills. HB116 amended and clarified the existing law in order that the boards served by the Bureau may assess attorney fees incurred in investigations and prosecutions when a licensee is found to be in violation. HB117 clarified renewal and reinstatement, and that it is the Board which has the authority to examine these applicants.

FINANCIAL REPORT

Ms. Hall gave the financial report, which indicated that the Board had a cash balance of \$105,799.79 as of 4/30/2015.

DISCIPLINE

Ms. Uranga presented a Stipulation and Consent Order in case OPT-2015-1. Dr. Sorensen made a motion to approve the Consent Order, to allow the Board Chair to sign on behalf of the Board, and to approve the supervisor of probation in this case. It was seconded by Dr. Ellenbecker. Motion carried.

INVESTIGATIVE REPORT

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

FOR BOARD DETERMINATION

Dr. Davis made a motion to approve the Bureau's recommendation and authorize closure in case I-OPT-2015-1. It was seconded by Dr. Ellenbecker. Motion carried.

PRESENTATIONS BY MR. TORYANSKI, NEW LEGAL COUNSEL

Mr. Ellsworth introduced Mr. Toryanski as the Bureau's newest legal counsel who will be working with all the Boards on telehealth laws and rules, Board training, and other issues.

Mr. Toryanski reviewed the Supreme Court decision regarding the North Carolina State Board of Dental Examiners, which has the potential to affect boards throughout the United States.

Mr. Toryanski also briefly reviewed the changes in Idaho Code § 67-2614 in relation to the laws and rules of the Board. This statute will change the reinstatement fee of a license to \$35. Mr. Toryanski asked the Board if it would like to keep its reinstatement fee of \$150 or join with other Boards the Bureau serves which have agreed to the Bureau statute which allows the rule to be changed when the law

changes. Dr. Davis made a motion to have Mr. Toryanski provide language regarding the reduction of the reinstatement fee from \$150 to \$35 in accordance with the new law in Idaho Code § 67-2614. It was seconded by Dr. Sorensen. Motion carried.

Mr. Toryanski reviewed HB189 regarding telehealth, which was passed in the Legislature this year. Dr. Grill suggested the Board form a committee to draft rules regarding telehealth with assistance from Mr. Toryanski. He said the Telehealth Council will not be promulgating any rules this year for telehealth. Ms. Cory said that other boards who will be promulgating rules this year have already been working on telehealth rules for at least three years. Dr. Grill then suggested the Board keep this on the agenda for the coming year. Dr. Johnson agreed to continue to be the contact for the Board regarding telehealth issues.

OLD BUSINESS

TO DO LIST

BOARD CERTIFICATION

The Board requested that Ms. Toncray contact the Association of Regulatory Boards of Optometry (ARBO) and see if board certification can be placed on the agenda. This will stay on the To Do List.

OE TRACKER

Dr. Ellenbecker is working with a contact at ARBO regarding this item.

NOTIFICATION TO LICENSEES: RULE CHANGE TO CALENDAR YEAR CONTINUING EDUCATION

The Board discussed the rule change and a draft letter to licensees notifying them of the change. The board discussed the possibility of putting examples for clarification in the letter. The Board agreed to redraft the letter so it addresses carryover of continuing education from 2016. Dr. Grill and Dr. Davis will work on the letter and consult with Dr. Andregg from the Association. They will present a second draft at the next Board meeting. The Board agreed that in addition to the letter, there would need to be information on the website regarding the rule change.

SINGLE TIER LICENSE

Dr. Sorensen suggested that Dr. Ellenbecker and Dr. Johnson discuss single tier licensure with other attendees at the ARBO meeting, particularly those from Oklahoma. The Board discussed the effects this would have on the current licensees. The Board requested that Ms. Toncray bring the number of ODs and ODPs to the next meeting.

NEW BUSINESS

2017 OPTOMETRY BUDGET REVIEW

The Board discussed the annual budget request form. The Board did not make any changes to the budget.

POTENTIAL LAW AND RULE CHANGES

Dr. Grill said that the Idaho Optometric Physicians (IOP) will be looking at ways to strengthen current laws and rules for optometry to deal with issues regarding patient health/safety, i.e. contact lens distribution, online refractions and tele-health issues.

Dr. Andregg, Executive Director of the IOP, stated there are other threats to patient health/safety based on the patient's lack of understanding of what constitutes a thorough, comprehensive eye exam, i.e. other medical providers offering and successfully billing for what they call a 'complete eye exam' rather than a 'screening.' He said that one of the solutions to this problem is having a definition in the statute that states what constitutes a thorough eye exam, as other states have in their optometry practice acts. Dr. Andregg stated that the IOP has a committee that is reaching out to ophthalmologists to see if these practices are also a concern to them.

Ms. Cory reminded the Board and Dr. Andregg that if the IOP or any other organization drafts bills for the Legislature regarding optometry or any other profession that they should provide a copy to the Board.

REPORTING VIOLATIONS ON WEBSITE

Dr. Grill suggested making the website more user-friendly for doctors, since it's currently more about the patients being able to file complaints against optometrists. The Board discussed possibly having a forum on the website where consumers and optometrists would be able to lodge complaints regarding issues such as contact lens distribution.

It was discussed that the Board regulates its licensees and that consumer complaints lodged against companies such as 1-800-contacts be submitted to the Office of the Attorney General, Consumer Protection Division. Dr. Johnson stated that she had recently viewed the 1-800-contacts website and it's very aggressive in its statements regarding prescriptions being good for one year from the date it's written, and that the one-year prescription is merely a suggestion. Dr. Johnson said that the Board and all optometrists need to be aware of this policy of 1-800-contacts that was possibly developed several years ago when the Federal Trade Commission (FTC) got involved with contact lens issues. Dr. Johnson also brought up the question of the date of the prescription. For example, if a patient chooses to use a different type of lens six months after the prescription has been issued and the optometrist writes the 'revised' prescription, the patient could possibly use that for the next year.

Dr. Andregg stated these types of complaints need to go to a regulatory body that can address the issue; consumers and optometrists need to be educated regarding this complaint process. He said the IOP is planning to change its website to allow for these types of complaints. Dr. Davis suggested they include the contact information for the various types of complaints.

Dr. Ellenbecker made a motion to authorize Ms. Peel to re-direct past, present and future complaints about such companies as 1-800-contacts to the proper agency, i.e. the Office of the Attorney General, Consumer Protection Division. It was seconded by Dr. Johnson. Motion passed.

Dr. Grill also presented to the Board a possibility of having a two-year licensure period for optometrists, as some other states have. The Board discussed this and agreed it would stay with the one-year licensure period.

CORRESPONDENCE

ACCREDITATION COUNCIL ON OPTOMETRIC EDUCATION (ACOE) ANNUAL MEETING REPORT

The Board reviewed the report; no action was taken.

CALL FOR COMMENTS ON PROPOSED REVISION TO ACOE'S RESIDENCY PROGRAMMATIC CHANGE POLICY

There were no comments from the Board regarding this policy change of ACOE.

COUNCIL ON OPTOMETRIC PRACTITIONER EDUCATION (COPE) CALL FOR COMMENT: ACCREDITATION PROCESS

There were no comments from the Board regarding this policy change of COPE for its accreditation process.

Dr. Andregg stated that there was other information distributed to the IOP (he is a COPE Administrator). He requested that the Board not make any changes to its approval process of continuing education courses to be mandated to agree with COPE's accreditation process. The accreditation process will be discussed at the annual ARBO meeting.

NATIONAL BOARD OF EXAMINERS IN OPTOMETRY (NBE) CONTINUED PROFESSIONAL DEVELOPMENT IN OPTOMETRY EXAM

The Board reviewed the information; no action was taken. Dr. Grill requested that Dr. Ellenbecker and Dr. Johnson provide a report of what they learn about this at the ARBO meeting at the next Board meeting on August 3, 2015.

PRESCRIBER SUBCOMMITTEE MULTI-BOARD STATEMENT OF UNDERSTANDING (MBSOU)

Dr. Johnson provided a review of how the MBSOU was finalized. The MBSOU is a very brief statement that describes what everyone who prescribes or has something to do with enforcement of the laws surrounding prescription drugs has agreed to follow. She said that Senator Schmidt will have an official signing ceremony with the press involved sometime this summer (possibly in July) and that the Board representatives will be invited.

Dr. Davis made a motion to approve Dr. Grill to sign the MBSOU. It was seconded by Dr. Sorensen. Motion carried.

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. Ellenbecker. The vote was: Dr. Grill, aye; Dr. Davis, aye; Dr. Ellenbecker, aye; Dr. Sorensen, aye; and Dr. Johnson, aye. Motion carried.

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

APPLICATIONS

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

ODP-100332 John Bartlett
ODP-100333 Sylvia Bartlett-Switala

It was seconded by Dr. Davis. Motion carried.

NEXT MEETING was scheduled for August 3, 2015 at 9:30AM.

ADJOURNMENT

Dr. Davis made a motion to adjourn the meeting at 12:40PM. It was seconded by Dr. Sorensen. 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