

Open Minutes

Missouri State Board of Optometry

February 15, 2001 9:00 a.m.
Hyatt Regency Crown Center Hotel
2345 McGee Street
Kansas City, Missouri

The meeting of the Missouri State Board of Optometry was called to order by Dr. Harold L. Poynter, III, O.D., President, at approximately 9:00 a.m. on Thursday, February 15, 2001, at the Hyatt Regency Crown Center Hotel, 2345 McGee Street, Kansas City, Missouri.

Board Members Present:

Dr. Harold L. Poynter, III, President
Dr. Max T. Aldrich, Vice President
Dr. Karen B. Rosen, Secretary
Dr. Cathy L. Frier, Member
Dr. Larry D. Snider, Member
Ms. Vickie E. Young, Public Member

Legal Counsel Present:

Daryl Hylton, Assistant Attorney General
Elena Vega, Assistant Attorney General
Glenn E. Bradford, Legal Counsel

Staff Members Present:

Sharlene Rimiller, Executive Director
Sue Wilson, Executive I

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

Approval of Agenda

Ms. Rimiller requested clarification of a question. Dr. Poynter suggested adding this to item #14 under Other Agenda Items. Motion was made by Dr. Aldrich and seconded by Dr. Rosen to approve the open agenda as amended. Motion carried unanimously.

Approval of Minutes

Dr. Snider requested clarification of the October 7, 2000, open minutes on page five under the discussion of the life of a prescription for contact lens and eye glasses. Motion was made by Dr. Aldrich and seconded by Dr. Snider to add the following

sentence to the end of this paragraph, "The expiration date is up to the discretion of the optometrist." Motion carried unanimously.

Motion was made by Dr. Snider and seconded by Dr. Rosen to approve the minutes as amended. Motion carried unanimously.

Executive Director Report

Financial Statement – Ms. Rimiller presented the following financial statement to the Board.

**State Board of Optometry
FY-01 Financial Statement As of December 31, 2000**

Beginning Fund Balance				\$157,009.06
Revenue (7/1/00 to 12/31/00)				<u>\$137,631.00</u>
Fund Balance Sub Total				\$294,640.06
Appropriations to Board:				
Personal Service				
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$42,604.00		\$42,604.00	
Appropriation Expenditures:				
Personal Service				
Expense & Equipment	<u>\$13,722.23</u>			
Total Appropriation Expenditures	\$13,722.23	\$13,722.23	<u>\$13,722.23</u>	
Fund Transfers: (Projected for Year)				
Rent & Utilities	\$1,409.29			
General Revenue	\$5,156.31			
Optical Imaging	\$1,131.51			
Hancock	\$1,726.00			
DED/MIS	\$7,455.82			
Refunds	\$666.09			
Professional Registration	\$52,293.33			
FY-2000 Transfers paid in FY-2001	<u>\$1,545.95</u>			
Total Transfers	\$71,384.30	<u>\$71,384.30</u>		
Total Fund Expenditures		\$85,106.53	-	\$85,106.53
Estimated Revenue (1/1/01 - 6/30/01)			+	\$1,394.00
Fund Balance Sub Total			=	\$210,927.53
Unexpended Appropriations:				
Personal Service				
Expense & Equipment	<u>\$28,881.77</u>			
Total Unexpended Appropriations	\$28,881.77		\$28,881.77	\$28,881.77
Fund Balance Projected as of 6/30/01				\$182,045.76

In the future Ms. Rimiller wants to separate out the Board's personal service appropriation and its expense and equipment appropriation. She noted that a couple of years ago the Optometry personal services appropriation was included with the Division's Administration personal services and she wants to pull that figure out to see how much money is available to the Optometry Board. She also noted that the Board's personal services costs are made from a transfer from the Board fund to the Professional Registration Fund. She said that the Division may charge the Board a little more for rent and utilities due to the larger suite they are housed in currently. Ms. Rimiller reviewed the additional fund transfers as outlined in the financial statement. She stated that the Board would be hearing more information about the proposed cost allocation plan at the President's meeting tomorrow. Ms. Rimiller stated that she has been a part of the cost allocation team of the Division which has been working for the past eight months to determine the most equitable way for boards to share Division costs. Ms. Rimiller shared her concern that if the costs of larger boards are reduced that the costs of the smaller boards will be increased. She noted that the Division's Administrative staff are now doing allocated time sheets to document how much time they spend working for various boards, with the exception of Marilyn Williams, Kristi Wilson and Becky Dunn. Ms. Rimiller also directed the Board's attention to the additional breakdown of actual costs as well as the five-year projected fund balance report. She stated that at this time the Optometry fund was healthy and she had no concerns about the current budget; however, she wanted the Board to be aware of possible future concerns.

Complaint Form – Ms. Rimiller provided a copy of the revised complaint form developed by the Central Investigative Unit to the Board since this form is different from the complaint form previously used by the Optometry Board. Ms. Rimiller briefly reviewed the investigative process used by the Central Investigative Unit in handling complaints. Dr. Snider requested that if the Central Investigative Unit is going to handle the Board's complaints that they address the licensees as doctors. He stated there was a complaint in closed session where the licensee was addressed as mister. It was the general consensus of the Board to continue using the Central Investigative Unit for complaint processing. Motion was made by Dr. Snider and seconded by Dr. Frier to approve the complaint form used by the Central Investigative Unit. Motion carried unanimously.

Continuing Education Audit – Ms. Rimiller noted that based on the Board's previous discussions it was their desire to conduct a random audit this year since last year was the first year licensees were not required to submit continuing education documentation. She reported that a letter had been sent on January 16, 2001 to those licensees randomly selected by the computer requesting a response by April 16, 2001. For those licensees who did not obtain their continuing education hours, Ms. Rimiller asked the Board how they wanted to proceed. Dr. Rosen commented that this came up at a St. Louis Optometric Society meeting and doctors were saying that they would not take continuing education and wait to see if they were audited. If they were audited, they would take the continuing education and pay a fine, if required. Their feeling was that nothing would happen to them because there was "no teeth" behind the law. Dr. Rosen

asked about the options the Board had for licensees who did not get their continuing education hours since they have already received their license upon renewal. Mr. Hylton noted that if someone indicated on the renewal form that they had obtained the continuing education hours and upon audit they had not, this would be grounds for discipline at which time the Board could determine the quantum of discipline to be imposed. The Board requested that the next newsletter contain an article outlining the results of the continuing education audit and the Board's actions taken against those licensees who violated the statute by not obtaining their continuing education hours.

Renewal Update – Ms. Rimiller reviewed the Renewal Status Report prepared by Ms. Wilson. She noted that currently there are 1,028 active optometrists who renewed their license. A total of 17 licensees have not renewed and Ms. Rimiller stated that she sent a certified letter to those who had not renewed.

RAM Expedition – Ms. Rimiller reviewed the material on the agenda concerning RAM (Remote Area Medical) Health Expedition. This is a nonprofit organization that comes into an area to provide free eye, dental and health care services. The concern is that they use doctors who come in from out of state who are not licensed in Missouri. They are asking the Optometry Board to include a provision in its statute to allow optometrists to come in from out of state to provide gratuitous services. Ms. Rimiller noted that the Missouri Dental Board currently has a provision in its statute to allow for similar services in summer camps and they are in the process of trying to get this statute amended to allow for these types of services throughout the year and not limit it to summer camps. Dr. Snider suggested that Ms. Rimiller talk to Zoe Lyle, Executive Director of the Missouri Optometric Association, to see if they would be willing to add optometrists to the dental bill legislation. Motion was made by Dr. Rosen and seconded by Dr. Snider that the Board consider legislation to allow for gratuitous optometric services. Motion carried unanimously. Ms. Rimiller said she would provide the Board members with a copy of the Dental Board's proposed legislative language.

CE Courses Approved – Ms. Rimiller reviewed the Board's current policy on approving continuing education courses and commended them on changing their policy to expedite these requests. She referred the Board to the listing of continuing education programs tentatively approved by the Executive Director and asked for the Board's final approval. The Board members noted that any continuing education courses offered by the nine societies affiliated with the MOA must be approved by the Board, unless they are sponsored by the University of Missouri St. Louis School of Optometry, or any other Board-approved sponsor. The Board suggested that Ms. Rimiller contact the Missouri Optometric Association and speak with Ms. Lyle to see if she could get something out to the societies reminding them of the need to get their continuing education courses prior approved by the Board. The Board also suggested that each Board newsletter contain an article noting that continuing education courses must be approved and it is the licensee's responsibility to make sure courses are approved prior to taking them. It was noted that continuing education courses obtained via the internet or home study courses are acceptable provided they are from a Board-approved sponsor.

Division Roundtable Meeting Report

Dr. Poynter referenced the memorandum from Marilyn Williams, Division Director, requesting the Board's recommendation to cancel the February 6, 2001, Division Organization Roundtable meeting. With the recent formation of the Cost Allocation Team and Presidents' Roundtable, Ms. Williams questioned the feasibility of continuing the Division Organization Roundtable. There was no objection by Board members to terminating the Division Organization Roundtable.

Legislative Report

Ms. Rimiller provided the Board with a report on the 2001 Legislation Session. She briefly reviewed the following proposed legislation and the bill's current status that, if passed, could have an impact on the Board: HB 192 – enacts penalties on professional licensees who fail to repay their student loans; HB 209 – changes certain provisions of the controlled substances law; HB 237 – requires a roll call on votes to close meetings, penalizes negligent violations of the sunshine law and increases penalties for violations of the sunshine law; HB 270 – requires roll-call votes for all substantive issues at all public meetings; HB 276 – amends the law concerning the taking, recording and use of fingerprints for criminal records kept by the State Highway Patrol; HB 486 – creates mandatory vision exams for first grade, kindergarten and Head Start students, provides lists of sources for such exams and funds exams for certain students; SB 19 – revises the standard of proof and other aspects of the Sunshine Law; SB 122 – limits state agency contracts for legal services and SB 336 – requires vision exams for enrolling kindergarten and first grade students. Copies of the above legislation was also provided to the Board members for their review.

Closed Session

Motion was made by Dr. Rosen and seconded by Dr. Aldrich to move into closed session pursuant to section 610.021 (1), (3), (5), (7), (13) and (14) and section 620.010.14 (7), RSMo. Motion carried unanimously.

Legislative Report Continued

Ms. Rimiller also reported on the following legislation that she thought might be of interest to the Board: HB 693 – relating to AHC procedural matters; HB 722 – relating to health care professionals and chelation therapy; SB 265 – relating to AHC procedural matters; SB 375 – revision to Sunshine law; and SB 398 – revises procedures for gubernatorial appointments. Ms. Rimiller stated she would send copies of these bills to the Board in her next report.

Dr. Poynter noted that the Department does not want Board members to lobby, support, nonsupport or testify in committee hearings unless it is approved in advance by the Department. Ms. Rimiller noted that this directive goes beyond the Division and Ms.

Williams is currently trying to get clarification from the Department. Ms. Rimiller noted that this directive probably comes from the Governor's office who does not want the Governor's appointees going before the legislature on issues that might be contrary to their public policy. Ms. Rimiller stated it was made clear to Board offices that if this directive was violated there would be repercussions to the Boards.

Concerning legislative issues, Dr. Poynter updated the Board on the laser surgery legislation and the meeting a week ago with the Board of Healing Arts. The changes did not address the use of lasers on eyes. Dr. Poynter did note that the exclusion sentence was reinserted that says nothing shall prevent persons licensed as dentists, podiatrists, optometrists, veterinarians and so forth. Dr. Poynter felt that getting optometrists back into the language was probably the best method of ensuring that within two – five years in the future this did not apply to optometry if optometry should seek the use of lasers in the future. Ms. Rimiller stated that members of the Dental Board also had questions about the proposed language and recommended a change in the language to say the use of lasers had to be within the scope of practice consistent with the dentist's education and training. The Optometry Board members did not see any problem with this suggested amendment. Motion was made by Dr. Snider and seconded by Dr. Rosen that the Board not oppose either wording of the laser bill. Motion carried unanimously. Motion was made by Dr. Snider and seconded by Dr. Aldrich to monitor the legislation closely and authorize a board member, on behalf of the Board, to oppose any controversial changes that might occur in the process. Motion carried unanimously.

Concerning the mandatory eye examination bill, a motion was made by Dr. Rosen and seconded by Dr. Snider to authorize a member of the Board to testify in support of the legislation on behalf of the Board, if so needed. Motion carried unanimously.

Dr. Poynter briefly reviewed the proposed co-management legislation that has not yet been filed. Motion was made by Dr. Snider and seconded by Dr. Frier to authorize a member of the Board, on behalf of the Board, to oppose this legislation if it is introduced this year. Motion carried unanimously.

Upcoming Meetings

Association of Regulatory Boards of Optometry (ARBO) – Dr. Aldrich agreed to attend this meeting on June 24 – 26, 2001, in Boston and represent the Board.

Ms. Rimiller also mentioned there was an ARBO Southwest Regional Meeting on March 17, 2001. No one expressed an interest in attending this meeting.

Committee Reports

Optometry Law Committee – Dr. Snider reported that Mr. Hylton has prepared a draft definition for optometry. Due to the change in Assistant Attorney Generals, the process has been slowed down. Currently the committee is working on redefining the practice of optometry in the statute and will continue to proceed in this direction.

Ophthalmologic Technologist – The Board reviewed the correspondence forwarded to the Board by the Missouri Optometric Association (MOA) concerning UMKC's BLA Degree with a concentration in Ophthalmic Technology. Dr. Rosen stated that the Board has no jurisdiction to regulate what a University teaches; however, the Board could take a proactive stance to determine what technologists coming out of school could do in accordance with the Optometry statutes. Dr. Rosen stated that the MOA and UMSL School of Optometry are aware of this and were supportive. Dr. Snider suggested that when the Optometry statute is rewritten, it include language regarding the practice of technologists as to what they can or cannot do. The Board asked central office to obtain additional information regarding the certifying exam administered by the Joint Commission on Allied Health Personnel in Ophthalmology (JCAHPO). The Board has some concerns that other schools may have been teaching this program all along and now UMKC has a program. The Board agreed to hold this information, obtain the additional information concerning the certifying exam and continue to monitor this. The Board asked that this item be included on the next agenda to review the information obtained by Central Office.

America's Best Contacts & Eyeglasses, Inc.

Mr. Harvey Tettlebaum, Attorney at Law, representing America's Best Contacts & Eyeglasses, Inc. and his associate Mr. Paul Halpern, General Counsel for America's Best Contacts & Eyeglasses, Inc., appeared before the Board at approximately 12:00 noon. Mr. Halpern stated that America's Best does business in twenty-three states, including Missouri of which there are three locations. He noted that Missouri was the only state where the company does business as America's Contacts & Eyeglasses, Inc. He noted that the history of this predates his involvement with the company. The company was founded over twenty years ago and was family owned and operated. Mr. Halpern was with a group of professionals who acquired the company from the founding family in 1997. He noted that sometime before that the family had opened the locations in Missouri and after some dialogue with the Board and its predecessors and representatives, they commenced to do business as America's Contacts & Eyeglasses, Inc. This was based on the Board's concern about the name America's Best asserting a superior claim that violated a statute or regulation. He stated at that time the name America's Best Contacts & Eyeglasses was not a registered trademark although it had been in use for some time and America's Contacts & Eyeglasses is also not a registered trademark. The company registered to do business under a business name of America's in this state and has been careful throughout the business that television and newspaper advertising, forms in the stores, business cards, posters on the walls and everything else all say America's Contacts & Eyeglasses. Over the last number of

years there were occasions in which there were inquiries about forms or signs that carried the company's name and logo and requests to change that.

In 1997, not long after the company was acquired, the Patent and Trademark Office issued a registration for the mark America's Best Contacts & Eyeglasses. Mr. Halpern stated that since that time they have been monitoring the very high costs associated with operating under a separate brand name in one state and concluded the cost is much higher than using a brand that is recognized and successful in many other states in the country. He also stated that during the last few years they became aware of provisions of the Lanham Act, the federal trademark law, and cases interpreting that Act concerning state regulation of trademarks that in their view allowed them to use a registered trademark notwithstanding local regulation. The company made the decision this year that they were going to make the change and had originally planned that for the beginning of the year and sent correspondence to the Board to let them know of the change. Mr. Halpern stated that he didn't want to be in a confrontation position since they do business in this state and work with a large number of optometrists under the Board's jurisdiction. Additionally, the Board's relationship is very important to the company and those licensees. Mr. Halpern felt it would be helpful to personally appear before the Board to answer any questions.

The Board spoke to Mr. Halpern about its concern of self-laudatory statements. Dr. Snider asked Mr. Halpern if the company recognized the difference between using the word "Best" in the trademark name as opposed to self-laudatory advertising with statements such as the best eye care available, the best doctor, etc. Mr. Halpern responded by saying they absolutely understood. He said the trademark name is a mark and a name that represents the company and its business, but is not a claim. He stated it indicated the goods and services advertised were coming from the company and the right to use that mark to designate them as a source of the services and goods is one that they now have a property right in under their trademark registration throughout the country. He stated he definitely drew a distinction between the two. Dr. Poynter clarified with Mr. Halpern that from what he was understanding the only thing that was being done was the insertion of the word "Best" with no claims to superior treatment and material. Mr. Halpern stated that was absolutely correct. There being no further questions, the appearance ended at 12:12 p.m.

Recess

The Board recessed for lunch from 12:12 – 1:12 p.m.

Optometric Physician – Dr. Aldrich directed the Board's attention to the information in the agenda concerning Optometric Physicians and asked Ms. Rimiller to provide an overview. Ms. Rimiller gave a brief history of previous discussions and actions, which began in 1991. At one point, the Board attempted to promulgate a rule to recognize the term optometric physicians. Ms. Rimiller stated that when the rule was filed, the Ophthalmologists went before JCAR saying the Board did not have statutory authority to

promulgate a rule. The rule was withdrawn in light of the controversy. Ms. Rimiller stated that upon Dr. Snider's request, she contacted the MOA and Ms. Lyle confirmed that for several years the MOA has come out with a resolution in support of using the term Optometric Physician. Ms. Lyle stated that this year there is no resolution but she felt confident that the MOA would support the Board in pursuing this. Ms. Lyle thought perhaps the MOA would pursue a statute change as long as they were going forward with other changes in the statute.

The Board discussed the use of the word "physician" and the impact this term might have in being able to promulgate a rule or statute. Dr. Rosen felt strongly that only TPA certified optometrists should be Optometric Physicians. Motion was made by Dr. Snider to look into a rule using the term Optometric Physician. The motion died for a lack of a second. Dr. Rosen requested something more substantiative from the MOA concerning their interest in pursuing the use of this term. It was the consensus of the Board to not pursue a rule or statute for an Optometric Physician title at this time. Dr. Aldrich requested that a letter be sent to Dr. Gosnell regarding the Board's position at this time and he would help Ms. Rimiller draft such letter.

Rxs for Occupational Therapists

Dr. Frier noted that an e-mail had been received from Gary Williams, College of Vision Development of New York . New York is considering some legislation enabling O.D.'s to prescribe for O.T's – Occupational Therapists. He was inquiring about the legal ability of optometrists to do this in other states. The Board noted that currently O.T.'s can only work under a physician's order. The Board agreed to take no action concerning this issue but to monitor it and bring it back to the Board if additional information is available.

PC Name Approval

AdvancedEyecare, O.D., P.C.

The Board reviewed the request for a change of a corporate name by Dr. Lawrence Reed and Dr. Richard Wilson since the name they proposed did not contain either of their names. Motion was made by Dr. Aldrich and seconded by Dr. Rosen to approve the proposed name of *AdvancedEyecare, O.D., P.C.* Motion carried unanimously.

Future Meeting Schedule

July, 2001 - The Board agreed to hold its next meeting on July 14 at the Lake of the Ozarks, preferably at the Country Club Hotel.

October, 2001 – The October meeting will be held at the Lake of the Ozarks, Lodge of the Four Seasons, in conjunction with the MOA convention.

Other Agenda Items

Prescription Clarification – Ms. Rimiller stated that a pharmacist had contacted the office and requested clarification as to whether an optometrist could prescribe a Z Pack antibiotic for an upper respiratory infection. The Board stated that a Z Pack could only be prescribed by an optometrist if it pertained to the eye but not for an upper respiratory infection.

Degree Designation on Optometry Licenses – Ms. Rimiller reported that central office had been working with the MIS staff overseeing the new licensure system and the degree designation of O.D. has been added to the licensure screens and will now be printed on all of the licenses.

Closed Session

Motion was made by Dr. Aldrich and seconded by Dr. Rosen to move into closed session pursuant to section 610.021 (1), (3), (5), (7), (13) and (14) and section 620.010.14 (7), RSMo. Motion carried unanimously.

America's Best Contacts & Eyeglasses, Inc.

Upon reviewing the information provided by America's Best Contacts & Eyeglasses, Inc., motion was made by Ms. Young and seconded by Dr. Rosen that the Missouri State Board of Optometry not object to the use of the trademark name America's Best Contacts & Eyeglasses, Inc. Those voting yes: Dr. Snider, Dr. Rosen, Ms. Young and Dr. Frier. Those voting no: Dr. Aldrich. Motion carried.

Adjournment

Motion was made by Dr. Aldrich and seconded by Dr. Rosen to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 3:30 p.m. The next meeting of the Board will be held on July 14, 2001, at Lake of the Ozarks.

Respectfully submitted,
Sue Wilson, Executive I

Approved by the Board on:

Sharlene Rimiller, Executive Director