

# Open Minutes

## Missouri State Board of Optometry

July 19, 2003  
St. Louis Marriott West  
660 Maryville Centre Drive  
St. Louis, Missouri

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Karen B. Rosen, President, at approximately 8:00 a.m. on Saturday, July 19, 2003, at the St. Louis Marriott West, 660 Maryville Centre Drive, St. Louis, Missouri.

### **BOARD MEMBERS PRESENT:**

Dr. Karen B. Rosen, President  
Dr. Cathy L. Frier, Vice President  
Dr. W. Carter Glass, Secretary  
Dr. Terry M. Swinger, Member  
Dr. Danny D. Nestleroad, Member  
Ms. Vickie E. Young, Public Member

### **STAFF MEMBERS PRESENT:**

Sharlene Rimiller, Executive Director  
Vickie Coffman, Executive I

### **LEGAL COUNSEL PRESENT:**

Mr. Dan McPherson, Assistant Attorney General  
Mr. Edward 'Chip' Walsh, Private Legal Counsel

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 THE AGENDA**

There being no additions or corrections to the agenda, the agenda was approved as printed.

### **APPROVAL OF MINUTES**

Dr. Glass asked for a correction to the September 11, 2000 Law Committee minutes. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that the minutes of the September 11, 2000 Law Committee meeting be approved as amended and that the January 28, 2003 Conference Call, February 13, 2003 Board meeting, and the February 13, 2003 and May 30, 2003 Law Committee minutes be approved as written. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Swinger, and Ms. Young. Motion carried 5 to 0.

## EXECUTIVE DIRECTOR REPORT

### Financial Statement

Mrs. Rimiller presented the Board with the following financial statement for FY-03 as of May 31, 2003.

<b><u>Beginning Fund Balance</u></b>				\$217,297.23
Revenue (7/1/02 to 5/31/03)				<u>\$252,830.20</u>
Fund Balance Sub Total				\$470,127.43
<b>Appropriations to Board:</b>				
Personal Service	\$39,251.60			
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$81,855.60		\$81,855.60	
<b>Appropriation Expenditures:</b>				
Personal Service	\$31,686.37			
Expense & Equipment	<u>\$38,989.53</u>			
Total Appropriation Expenditures	\$72,675.90	\$72,675.90	<u>\$72,675.90</u>	
<b>Fund Transfers: (Projected for Year)</b>				
Rent & Utilities	\$2,324.55			
General Revenue	\$13,250.00			
Fringe Benefits for Board Staff	\$13,384.80			
Hancock	\$102.00			
DED/MIS	\$2,262.59			
Refunds	\$700.00			
Professional Registration	\$16,381.09			
O.A. Cost Allocation	\$1,322.01			
FY-2002 Transfers paid in FY-2003	<u>\$6,097.03</u>			
Total Transfers	\$55,824.07	<u>\$55,824.07</u>		
<b><u>Total Fund Expenditures</u></b>		<b>\$128,499.97</b>	-	\$128,499.97
Estimated Revenue (6/1/03 – 6/30/03)			+	\$4,409.80
<b><u>Fund Balance Sub Total</u></b>			=	<b>\$346,037.26</b>

<b>Unexpended Appropriations:</b>				
Personal Service	\$5,565.23			
Expense & Equipment	<u>\$3,614.47</u>			
Total Unexpended Appropriations	\$9,179.70		<b>\$9,179.70</b>	\$9,179.70
<b><u>Fund Balance Projected as of 6/30/03</u></b>				<b>\$336,857.56</b>

Mrs. Rimiller reported that June's financials are not in yet but she estimates that the final revenue figure for FY-03 will come in very close to that projected. The fund balance is higher this year because of the two-year renewal fees deposited in FY-03 and there was also a significant increase in licensee count. The lapse figure is estimated at \$399,573.00 and if spending and revenue figures come in at approximately the amount estimated in the five-year projections, there should not be a concern at this time regarding any lapse of the Board's funds to General Revenue. Mrs. Rimiller said that she would continue to monitor the fund balance closely.

### **CE Courses Approved**

Mrs. Rimiller presented the Board with a listing of the continuing education courses that were approved since the Board's last meeting. A motion was made by Dr. Frier and seconded by Dr. Nestleroad that the continuing education programs contained on the list be approved. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Swinger, and Ms. Young. Motion carried 5 to 0.

### **House Bill No. 600**

Mrs. Rimiller informed the Board of the passage of House Bill No. 600. Effective July 1, 2003, anyone renewing a license within the Division of Professional Registration is required to have paid all state income taxes, and also is required to have filed all necessary state income tax returns for the preceding three years. If a licensee fails to pay state taxes or fails to file tax returns, their license is subject to immediate revocation. There was some discussion about concerns related to a licensee's due process under this new law. The Board asked that Mrs. Rimiller try and get information out about the new law in a newsletter before the Missouri Optometric Association (MOA) convention in October. A suggestion was also made to include another article in the newsletter about the continuing education requirements

### **BOARD TRAVEL**

The Board reviewed the agenda material for the annual CLEAR conference that will be held in Toronto on September 11-13, 2003. Board members were asked about their availability to attend this year's CLEAR conference. No one could attend. Mrs. Rimiller was asked to try and get the information on next year's conference out to the Board members as early as possible so the Board can be represented. It was noted that next year's conference will be in Missouri.

## **OPTOMETRY LAW COMMITTEE REPORT**

The Board reviewed the Law Committee's report dated June 9, 2003 from Dr. H.L. Poynter regarding proposed statute changes. A change was suggested to Section 336.220 – Pharmaceutical Use. In subsection 2, the word "only" was inserted before the word "diagnostic" in the first sentence. Dr. Rosen asked how the Board would like to pursue the changes from this point forward. It was reported that the MOA does not plan to include these changes in their legislative agenda until at least 2005. Mrs. Rimiller provided information on how the process works if the Board decides to pursue the legislation. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that the Board approve the Law Committee's entire legislative proposal with the change made to Section 336.220 and send it forward through the Department's approval process for the 2004 legislative session with the understanding that if approved, the Board will re-visit the issue before moving it forward through the actual legislative process. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Ms. Young, and Dr. Rosen. Those voting no: Dr. Swinger. Motion carried 5 to 1.

The Board reviewed the Law Committee's report dated June 9, 2003 from Dr. H.L. Poynter regarding proposed rule changes. Mrs. Rimiller reported that the rule changes could be pursued at any time. During the discussion of the proposed changes to 210-2.080 and 210-2.081, Dr. Nestleroad suggested deleting the word "examination" before the word "requirement" under the purpose section of 210-2.081. Mrs. Rimiller said that she did not see any reason why both rules could not be combined since the Board is eliminating the examination requirements from 210-2.081. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that the Board approve the Law Committee's proposed rule changes as written with the exception of the pharmaceutical rules and that another draft of the pharmaceutical rule(s) be presented to the Board for final approval on a mail ballot. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Swinger, and Ms. Young. Motion carried 5 to 0.

## **CONTACT LENS DISPENSING**

The Board reviewed the correspondence received from Dr. Tim Milburn of Medina, Ohio, asking for the Board's support of the 'National Contact Lens Enforcement Petition'. This is a grass roots campaign to ask the FDA to enforce the current contact lens laws already on the books. Mrs. Rimiller reported that she has not received any information from the Food and Drug Administration for a long time regarding the Board's request for help in this matter. Dr. Rosen noted that she has not received any response to her letters that were written to Attorney General Jay Nixon. A motion was made by Dr. Nestleroad and seconded by Dr. Frier that the Board not go on record as endorsing this campaign. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Swinger, and Ms. Young. Motion carried 5 to 0.

## **ARBO ANNUAL MEETING REPORT**

Dr. Glass provided the Board with a report of the annual meeting of the Association of Regulatory Boards of Optometry (ARBO) that was held in June in San Diego. He said that the NBEO session was very informative. The NBEO is moving toward computer based testing for 2006. They are also re-writing Part I and sections of Part II. ARBO is working on a model renewal application form for use by all states. There was more

discussion on fingerprinting for background checks. There was some criticism with Missouri eliminating that requirement. The attorneys talked about the proper writing of Consent Orders and provided guidance to states. There are also discussions continuing about a possible merger between ARBO and the NBEO. States were encouraged to use ARBO as a resource. There was some question as to whether ARBO maintains a disciplinary database. Mrs. Rimiller will inquire further. Mrs. Rimiller reported that the Division will soon have Internet renewal capabilities and it is not known at this time if the renewal application will have to be standardized to some degree.

### **CARE TO A MINOR PATIENT**

Dr. Rosen mentioned that she wanted the Board to be aware of a request she made of the office staff to try and gather some information from other states regarding laws and/or regulations about when a medical provider can treat a minor patient without a parent or guardian present. Mrs. Rimiller reported that her inquiries did not produce very good results. The State of Maryland responded that there is a HIPAA regulation that requires a parent/legal guardian to sign a HIPAA compliant consent form prior to the minor patient being examined. Dr. Rosen said that she provided this for the Board's information and action on this item is not necessary.

### **MEETING SCHEDULE**

It was noted that the next meeting is scheduled on October 4, 2003 in Kansas City at the Hyatt Regency Hotel. This meeting will be held in conjunction with the annual meeting of the Missouri Optometric Association. The following meeting was set for February 12, 2004, at the Hyatt Regency Hotel immediately preceding the Heart of America.

### **RENEWAL OF LEGAL SERVICES CONTRACT**

The Board reviewed the offer received from Bradford & Walsh, P.C. for renewal of their contract for legal services for FY-04. There are no changes from last year's contract. A motion was made by Dr. Swinger and seconded by Dr. Frier that the Board renew the contract on Bradford & Walsh, P.C. for FY-04. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Swinger, and Ms. Young. Motion carried 5 to 0.

### **ELECTION OF OFFICERS**

Dr. Rosen called for nominations for the office of Secretary. A nomination was made by Dr. Swinger and seconded by Ms. Young for Dr. Danny Nestleroad to serve as Secretary. There being no further nominations, Dr. Nestleroad was elected as Secretary of the Board by acclamation.

Dr. Rosen called for nominations for the office of Vice President. A nomination was made by Dr. Rosen and seconded by Ms. Young for Dr. Carter Glass to serve as Vice President. There being no further nominations, Dr. Glass was elected as Vice President of the Board by acclamation.

Dr. Rosen called for nominations for the office of President. A nomination was made by Dr. Swinger and seconded by Dr. Rosen for Dr. Cathy Frier to serve as President.

There being no further nominations, Dr. Frier was elected as President of the Board by acclamation.

**CLOSED SESSION**

Motion was made by Dr. Frier and seconded by Dr. Glass to move into closed session pursuant to section 610.021 (1) and (14) RSMo, for the purpose of discussing complaints, investigative reports, applicants for licensure, general legal actions, causes of action or litigation and any confidential or privileged communications between the Board and its attorney. Those voting yes: Dr. Frier, Dr. Glass, Dr. Swinger, Dr. Nestleroad, and Ms. Young. Motion carried 5 to 0.

**SEE CLEARLY METHOD**

The Board returned to open session to discuss the See Clearly Method, a program of eye exercises from Vision Improvement Technologies. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that an article be written to inform licensees that the Board has looked into the program and basically found it to be vision therapy and no apparent violation of the optometry statutes and/or regulations. Those voting yes: Dr. Frier, Dr. Glass, Dr. Swinger, Dr. Nestleroad, and Ms. Young. Motion carried 5 to 0. Mrs. Rimiller will put something together for the news article and send it to Dr. Nestleroad for review and approval.

**ADJOURNMENT**

There being no further business to be brought before the Board at this time, a motion was made by Dr. Swinger and seconded by Dr. Frier that this meeting adjourn. Those voting yes: Dr. Frier, Dr. Glass, Dr. Swinger, Dr. Nestleroad, and Ms. Young. Motion carried 5 to 0. The meeting adjourned at approximately 12:00 p.m.

**Respectfully submitted,**

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**Sharlene Rimiller, Executive Director**

**Approved by the Board on: \_\_\_\_\_**