

Open Minutes

Missouri State Board of Optometry

October 4, 2003
Hyatt Regency Crown Center Hotel
2345 McGee Street
Kansas City, Missouri

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Cathy Frier, President, at approximately 9:00 a.m. on Saturday, October 4, 2003, at the Hyatt Regency Crown Center Hotel, 2345 McGee Street, Kansas City, Missouri.

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

Dr. Terry M. Swinger, Member

STAFF MEMBERS PRESENT:

Sharlene Rimiller, Executive Director
Vickie Coffman, Executive I

LEGAL COUNSEL PRESENT:

Mr. Glenn Bradford, 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

A motion was made by Dr. Glass and seconded by Dr. Rosen that the agenda be approved with the addition of a discussion item regarding the Board's position on injectables, a discussion item regarding the Board's injunctive authority, and review of the draft newsletter. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen, and Ms. Young. Motion carried 5 to 0.

APPROVAL OF MINUTES

A motion was made by Dr. Glass and seconded by Dr. Rosen that the minutes of the July 19, 2003 meeting be approved as written. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen, and Ms. Young. Motion carried 5 to 0.

EXECUTIVE DIRECTOR REPORT

Financial Statement

Mrs. Rimiller presented the Board with the following financial statement for fiscal year end 2003.

Beginning Fund Balance				\$217,297.23
Revenue (7/1/02 to 6/30/03)				\$259,298.20
Fund Balance Sub Total				\$476,595.43
Appropriations to Board:				
Personal Service	\$46,446.00			
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$89,050.00			
Appropriation Expenditures:				
Personal Service	\$36,877.15			
Expense & Equipment	<u>\$39,892.30</u>			
Total Appropriation Expenditures	\$76,769.45	\$76,769.45		
Fund Transfers: (Actual for Year)				
Rent & Utilities	\$2,320.61			
General Revenue	\$12,849.21			
Hancock	\$102.00			
Fringe Benefits for FTE	\$11,351.60			
DED/MIS	\$1,989.13			
Refunds	\$440.00			
Professional Registration	\$14,038.21			
O.A. Cost Allocation	\$1,246.00			
FY-2002 Transfers paid in FY-2003	<u>\$6,097.03</u>			
Total Transfers	\$50,433.79	<u>\$50,433.79</u>		
Total Fund Expenditures		\$127,203.24		\$127,203.24
Ending Fund Balance				\$349,392.19

Mrs. Rimiller highlighted the notes to the financial statement. The unusually high amount of revenue is because the majority of the Board's fees are generated by renewal and FY-03 is the first year of the new two-year renewal cycle. Overall expenditures increased in FY-03 by \$5,098.86, due partly as a result of higher litigation costs. Expenditures in FY-03 totaled \$127,203.24. Mrs. Rimiller noted that if this trend continues, the Board might need to seek an increase in its E & E appropriation. She also reminded the Board that the fund balance will need to carry the Board through FY-04 because very little in the form of additional revenues will be generated in the off renewal years. This should not be a concern because the Board's fund balance is healthy. Mrs. Rimiller also reported that there is a new OA cost allocation to be transferred from the Board's fund. A copy of Kristi Wilson's July 30, 2003 memo was provided to the Board as an explanation.

Legislative Update

Mrs. Rimiller informed the Board that she met with Department/Division legislative personnel to review the Board's proposed legislation for 2004. With the exception of the Board's advertising proposal, no other legislation was approved for the Board to pursue in '04. The Division/Department does not feel this is the appropriate time to move forward with scope of practice legislation, even though there are no apparent substantive changes. Mrs. Rimiller noted that the Division/Department believes there should be some type of certification or licensure requirement for the optometric assistant proposal and more justification is needed for the proposed changes to the licensure by reciprocity/endorsement proposal. Mrs. Rimiller informed the Board that the Division/Department personnel believe that most of the proposed changes are necessary and that the Board should try again next year. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that the Board withdraw its entire legislative package for 2004, including the advertising proposal. Those voting yes: Dr. Frier, Dr. Rosen, Dr. Glass, Dr. Nestleroad, and Ms. Young. Motion carried 5 to 0.

Rulemaking Status Report

Mrs. Rimiller reported that the rule changes recommended by the Law Committee and approved by the Board at its July meeting was submitted to the Division for processing, with the exception of the changes proposed to Board Rules 210-2.080 and 210-2.081. The Division will not move the rules forward at this time, citing the need to first get the legislation passed before working on the rule changes and the fact that there is not sufficient justification for the proposed changes at this time.

CE Courses Approved

Mrs. Rimiller presented the Board with the list of continuing education courses that were approved since the date of its July meeting. A motion was made by Dr. Rosen and seconded by Dr. Glass that the Board ratify the secretary's approval of the continuing education courses. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen and Ms. Young. Motion carried 5 to 0.

PHARMACEUTICAL RULES – PROPOSED CHANGES

Mrs. Rimiller presented the Board with a draft proposed amendment to 210-2.080 – Certification to Use Pharmaceutical Agents – and a draft proposed rescission to 210-2.081 – Examinations of Optometrists for Certification to Use Pharmaceutical Agents. Mrs. Rimiller explained that with the elimination of the TMOD examination next year and given the fact that most, if not all, optometrists that are currently not certified to use pharmaceutical agents will likely never seek certification, the rule is no longer needed. It was noted that at the July meeting the Board felt both rules could be combined and as a result, Mrs. Rimiller stated that she took sections (1) and (2) in 210-2.081 that do not specifically relate to examination requirements for certification and included them in the 210-2.080. While working on the rule, Mrs. Rimiller said that she questioned the new section (3). The requirements for certification in the rule appear to exceed what is required in the statute. Mrs. Rimiller questioned the Board on whether an applicant who has never been certified should be required to have a total of 220 hours of pharmaceutical education and training, the same as all optometrists who were licensed when the DPA, TPA and glaucoma laws were being enacted. The statute only requires a 100-hour course of instruction in general and ocular pharmacology supervised by a board-certified ophthalmologist. It was noted that the 96-hour DPA requirement must have been deleted when the TPA or glaucoma changes were made in the statute. A motion was made by Dr. Glass and seconded by Dr. Nestleroad that the Board approve the draft proposed amendment to 210-2.080 and the draft proposed rescission on 210-2.081 with the deletion of the 96-hour requirement in general and ocular pharmacology and the deletion of the 24-hour training requirement in the treatment of glaucoma in the proposed amendment. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen and Ms. Young. Motion carried 5 to 0.

CONTINUING EDUCATION

Mrs. Rimiller reported that she recently spoke to Zoe Lyle, Executive Director of the Missouri Optometric Association, about continuing education requirements for the new biennial renewal. Ms. Lyle asked if it is possible to carry over any excess continuing education hours from one year to the next as long as they are earned in the same renewal cycle. It was the consensus of the Board that since the statutes say “each year” when addressing continuing education requirements, optometrists will not be allowed to carry over any excess continuing education hours from one year to the next.

USE OF INJECTABLES BY OPTOMETRISTS

Dr. Rosen informed the Board that the Dean of UMSL School of Optometry would like to begin offering courses to teach injectables. According to the Dean, other schools of optometry are teaching the courses and for the college to stay up-to-date with the other schools, they need to start offering the course. The Board expressed concern about the schools and other providers teaching injectables before the practice act is amended and before it is legal for optometrists to do injectables in Missouri. However, it was the consensus of the Board that they do not have jurisdiction over what is taught in the schools and that perhaps the school needs to contact their accrediting body for guidance on how to proceed in this matter. Dr. Rosen was asked that when she gets back to Dr. Davis regarding this matter that she have him address his question to the Board in writing. If his only question is whether the school can teach injectables as part

of their undergraduate curriculum or as post-graduate continuing education and there will be no administering to patients, Mrs. Rimiller and Mr. Bradford can work together to formulate an appropriate response.

INJUNCTIVE AUTHORITY

Dr. Glass informed the Board that during the MOA business meeting at this year's convention, the question of the Board's injunctive authority was raised with regard to the unlawful dispensing of contact lenses. Mrs. Rimiller explained that the Board's injunctive authority is used for unlicensed practice activities or when the Board has evidence that an optometrist presents a serious danger to the public. In these cases, the Board must convince a court of general jurisdiction and the court issues the injunction. The Board considered the question of why its injunctive authority has not been used in the past to stop the unlawful dispensing of contact lenses. Mrs. Rimiller noted that if the scope of optometric practice includes the dispensing of contact lenses, then injunctive action might be appropriate. It was noted that the Board currently refers complaints regarding the unlawful dispensing of contact lenses to the Food and Drug Administration since contact lenses are medical devices and by federal law cannot be dispensed without a valid prescription. A motion was made by Dr. Rosen and seconded by Dr. Glass that future complaints against retailers involving the unlawful dispensing of contact lenses come to the Board first for consideration and the Board can decide on a case-by-case basis if one of these complaints should be a test case for injunctive action. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen and Ms. Young. Motion carried 5 to 0.

NEWSLETTER

Mrs. Rimiller distributed a copy of a draft newsletter for the Board's review and approval. It was noted that the President's letter needs some modification based on the Board's decision to look at contact lens dispensing complaints on an individual basis. Otherwise, Mrs. Rimiller asked the Board members to notify her if there are any other corrections.

CLOSED SESSION

Motion was made by Dr. Glass and seconded by Dr. Rosen 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. Nestleroad, Dr. Rosen and Ms. Young. Motion carried 5 to 0.

ADJOURNMENT

There being no further business to be brought before the Board at this time, a motion was made by Dr. Glass and seconded by Dr. Nestleroad that this meeting adjourn. Those voting yes: Dr. Frier, Dr. Glass, Dr. Nestleroad, Dr. Rosen and Ms. Young. Motion carried 5 to 0. The meeting adjourned at approximately 12:30 p.m.

Respectfully submitted,

Vickie Coffman, Executive I

Sharlene Rimiller, Executive Director

Approved by the Board on: _____