

West Virginia Board of Optometry
Board Meeting, July 9, 2016

Minutes

Present: Mason White, O.D., Board President; Steven Odekirk, O.D., Secretary-Treasurer and WVAOP Liaison; James Campbell, O.D., Rules and Legislative Chairman; Matthew Berardi, O.D., Complaint Chairman Staff; Kate Campbell, Esq., Board Counsel; Pamela Carper, Executive Director Guests: Kenneth Cole, O.D.; Andrew Cassis, O.D.; Ashley Carroll, O.D.; Michael Buchanan, O.D.

Establish Quorum

With four of seven members present, Dr. White declared a quorum present.

Executive Session

Dr. Odekirk made a motion to go into Executive Session to conduct license interview evaluations. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Dr. Campbell made a motion to come out of Executive Session. Dr. White seconded the motion. The vote to support the motion was unanimous.

New Licensees

Dr. Campbell made a motion to license Dr. Michael Buchanan, Dr. Ashley Carroll, Dr. Andrew Cassis and Dr. Kenneth Cole. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Minutes

Dr. Campbell made a motion to approve the minutes of the May 19, 2016, Board meeting. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Dr. Campbell made a motion to strike paragraph three of the June 23, 2016, minutes and to approve the minutes as amended. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Financial and P card Reports

Ms. Carper reported that the Board underspent its FY 2016 budget by \$3,028.09. The Board had gross revenue of \$145,400, and a cash balance of \$248,911.41 as of June 30, 2016. The travel line item continues to be a challenge. Dr. Ratcliff had asked if we could increase the total of the budget since the Board has the money to cover an increase. The current OASIS budget system locks the total amount of the budget for non-appropriated accounts just as with appropriated accounts. You must decrease a line item to increase another. Ms. Carper reported that she had consulted with the board's OASIS liaison. She was not aware of a way to do that. Ms. Carper said she would contact the Budget Office to see if there was a way to increase the total of the budget. She noted that the FY 16 travel line item included the hotel bills for the 2015 ARBO Annual Meeting trip and the hotel for the 2016 ARBO annual meeting since the 2016 hotel insisted on a deposit of the full amount of the rooms when they were booked. The travel line item should improve for FY17. Dr. Odekirk made a motion to approve the financial report. Dr. Campbell seconded the motion. The vote to support the motion was unanimous.

Ms. Carper presented the P card report of transactions for the months of May and June. The Board members had no questions. Dr. Campbell made a motion to approve the P card report for the months of May and June. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Executive Session and Complaint Report

Dr. Odekirk made a motion that the Board go into executive session to discuss complaints. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Dr. Odekirk made a motion that the Board comes out of Executive Session. Dr. Campbell seconded the motion. The vote to support the motion was unanimous.

Three complaints are outstanding. The licensees have some time before their responses are due. Dr. Odekirk made a motion to accept the Complaint Report. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Special Volunteer Licenses

Ms. Carper presented the new special volunteer license certificate and a roster of the licenses issued for the Pathways to Health free event in Beckley. Six licenses were granted.

Lacrimal Nasal Stimulator and Mobile Optometry Units

The Board considered a request from Dr. Rebecca St. Jean, President of the WV Association of Optometric Physicians (WVAOP), regarding three subjects. 1. Will the Nasal Lacrimal Stimulation Device for tear production be within the scope of optometry in West Virginia once the device is approved? The Board discussed the device. Dr. Berardi made a motion to inform the WVAOP that the Nasal Lacrimal Stimulation Device is within the scope of practice for optometry in West Virginia and that it could be prescribed and dispensed after the FDA approves the use of the device. Dr. Campbell seconded the motion. The vote to support the motion was unanimous.

2. Dr. St. Jean asked if www.simplecontacts.com, which uses an application on a smartphone or tablet to provide an “eye exam” and to prescribe contact lenses was legal in West Virginia. W. Va. Code 30-8A, The Eye Care Consumer Protection Act, makes prescribing contact lenses based on a phone or tablet application a criminal offense punishable by a fine of not less than \$1,000 or more than \$5,000.

§30-8A states that a contact lens prescription must be a written or electronic order by a licensee who has conducted an examination and evaluation of a patient along with other conditions for the prescription to be valid. An “examination and evaluation” is defined as an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device for the purpose of writing a valid prescription.

§30-8A-3 states that a person may not employ objective or subjective physical means to determine the accommodative or refractive condition; the range power of vision or muscular equilibrium of the human eye or prescribe spectacles or contact lenses based on that determination unless that activity is performed by a licensee or performed by a person under direct supervision of a licensee. Direct supervision means supervision that occurs when a licensee is present in the building. Licensee is defined as a person licensed under the provisions of the Optometry Act, W. Va. Code §30-8.

3. Eye Med is a vision plan. Recently EyeMed created “mobile labs” (or pop-up clinics) which claim to bring an “eye exam” to the customer. Certain conditions must be met for the practice of optometry. Only a licensee of the WV Board of Optometry through the provisions of W. Va. Code, §30-8-1, et. seq. can provide optometric services in West Virginia. W. Va. Code, §30-8-1, Unlawful Acts, also states that a business entity may not practice optometry except through a licensee. W. Va. Code §30-8-1(d) requires a licensee may not practice in a location that does not have a partition from floor to ceiling with a separate entrance separating the sale of eyeglasses, frames or any other merchandise are sold. Legislative rule, W. Va. Code of Rules, §14-1-7.5 states that a license renewal card must be displayed in each licensee’s practice location. The WV Board of Optometry is to be notified of any branch office and its address. If any of these conditions are violated, the practice would be illegal.

Dr. Campbell made a motion to send a letter to the WVAOP stating that the Simple Contacts business model as presented would be in violation of current practice laws including, W. VA. Code, §30-8-1, et. seq. and W. Va. Code, §30-8a. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Dr. Berardi made a motion that the EyeMed business model as presented would be in violation of W. Va. Code, §30-8-1, et. seq. and W. Va. Code of Rules, §14-1-7.5. Dr. Campbell seconded the motion. The vote to support the motion was unanimous.

New Injection Certification Training

The Board has authorized an injection certification course by the Southern College of Optometry. The WVAOP is sponsoring an injection certification course presented by the Southern College of Optometry from August 26 through August 27 at Lakeview Resort in Morgantown. The Board discussed the importance of those who are eligible to attend the training. Those who are eligible to take the course for certification are those with an oral prescriptive authority designation of –OD or those new licensees who have graduated from an accredited optometry school since April 2011 with a designation of –IOD1. The training has been too expensive to offer frequently, and may not be offered again soon.

Legislative Concerns and Projects

The Board had been given the version of revised W.Va. Code of Rules, §14-10 discussed in the spring so they could review it and suggest any changes in the rule. After the Board had reviewed the rule, Dr. Berardi made a motion that rule §14-10 as presented to the Board be approved as the rule to be submitted to the Secretary of State for a comment period. Dr. Odekirk seconded the motion. The vote to support the motion was unanimous.

ARBO Report

The Board discussed the useful presentations and issues raised in the field of governing Optometry presented at the Association of Regulatory Board of Optometry (ARBO) Annual Meeting in June. The members who attended felt the meeting was very productive.

For the Common Good and Election of Officers

Dr. Odekirk made a motion that the current officers remain the same. Dr. Berardi seconded the motion. The vote to support the motion was unanimous. Dr. White will remain as President, Dr. Odekirk as Secretary-Treasurer and WVAOP Liaison, Dr. Campbell as Rules and Legislative Chairman, Dr. Berardi as Complaint Chairman, and Dr. Ratcliff as Education Chairman.

Next Meeting and Adjournment

The next meeting is tentatively scheduled for Thursday, November 10 at 6:00 p.m.
With no further business before the Board, Dr. Campbell made a motion to adjourn. Dr. Berardi seconded the motion. The vote to support the motion was unanimous.

Respectfully submitted,

Steven Odekirk

Steven Odekirk, O.D.
Secretary-Treasurer