

BOARD MEETING MINUTES

April 28, 2023

CALL TO ORDER.

Dr. Gutierrez called the November meeting of the Texas Optometry Board (TOB) to order at 8:01 a.m. He announced a time-certain of 8:30 a.m. for public comment.

ROLL CALL. A roll call vote was taken and quorum was present for the meeting.

Mario Gutierrez, O.D. Chair
Ronald L. Hopping, O.D. Vice Chair
Judy Chambers, Secretary/Treasurer
Carey A. Patrick, O.D., Member
John Todd Cornett, O.D. Member
Bill Thompson, O.D. Member
Meghan Schutte, O.D. Member
Ty Sheehan, Public Member
Rene Pena, Public Member
Janice McCoy, Executive Director
Vincent Pina, Executive Assistant
Jerry Bergman, Assistant Attorney General

MINUTES. The Board reviewed the January 19, 2023 meeting minutes. A motion was made by Mr. Sheehan to accept the minutes as drafted and seconded by Dr. Patrick. The motion passed unanimously (FOR – 9/OPPOSED – 0/ABSTAIN – 0).

BOARD CHAIR REPORT. Dr. Gutierrez presented the Board Chair Report. Dr. Gutierrez reported on plans to modernize licensing process to make it more intuitive with better consumer service. He reminded board members their Ethics Commission Report was due.

GENERAL MATTERS. The Board discussed and considered the Agenda item under General Matters as follows:

Optometry School Liaison Reports: Dr. Schutte provided as update as the liaison for the Rosenberg School of Optometry (RSO). She reported that RSO had no updates since the January meeting. Dr. Cornett provided an update as the liaison for the University of Houston College of Optometry (UHCO). He reported UHCO had asked why licensee emails were not offered as part of the Board's mailing list.

PUBLIC COMMENT. The Public Comment period opened at 8:30 a.m. No public comment was received.

EXECUTIVE DIRECTOR'S REPORT. Ms. McCoy presented the Executive Director's Report. She reported that at the end of Quarter 2 of FY23, the Board had 51 percent of its budget remaining with 50 percent of the year remaining and at this time there were no financial concerns to report and the Board is in good financial standing. She reported the agency filed its FY23 Quarter One Performance Measures on April 3, 2023. She reported on measures that were out of range, but all out of range measures were better than expected.

She reported that as of April 19, 2023 there were 5,062 Total Licensees (4,718 active; 338 inactive; 6 retired) of which 3,922 were OGS (3,823 active; 97 inactive, 2 retired) and 188 were military.

She reported on the status of the Texas Legislature and updated the Board on Appropriations Bill which increases the agency's base budget over current for funding for the 5% pay raise for employees and increased enforcement activities.

LEGAL REPORT. Mrs. McCoy reported on the status of cases at the State Office of Administrative Hearings (SOAH), specifically the draft decision related to SOAH Docket No. 514-22-1982 which was in the exception phase. She mentioned two other cases (related to three complaints) should be released within the next two months. The Board probably will issue a final order on these cases at its next meeting. Mrs. McCoy stated the OAG opinion committee issued an opinion for the request made by the Board in May 2022. The OAG declined to issue an opinion as the matter was and is pending before SOAH.

COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Cornett, Chair of the Administrative/Licensing Committee, provided the report in the form of a motion. The Committee reviewed two applications for licensure without examination (LWOE) and one application for an optometric glaucoma certification (OGS). The Committee determined the two LWOE applicants met the requirements of the statute and could apply for licensure. The Committee determined the applicant did meet the OGS requirements and could apply for the certification.

The Committee reviewed a licensee who requested a medical exemption from taking continuing education courses in-person. The Committee determined that licensee could take all 32 hours on-line, but eight hours needed to be synchronous (webinar) format.

He reported that 48 applicants took the jurisprudence exam with a 100% pass rate. He noted in FY23 Quarter 2, 50 licenses had been issued and 1487 licenses had been renewed. He reported one licensees had passed away: Charles Roy Sturtevant.

Mr. Sheehan seconded the motion. The motion passed unanimously (FOR-9/AGAINST 0/ABSTAIN-0).

COMMITTEE ON PEER ASSISTANCE.

Mrs. Chambers reported that the Board has 5 optometrists (four volunteer enrollments and one Board ordered) in the Professional Recovery Network (PRN) program.

CONTINUING EDUCATION COMMITTEE. Dr. Patrick, Chair of the Continuing Education Committee, provided the report in the form of a motion. Dr. Patrick reported that several courses had been submitted for approval. Dr. Patrick reported the Committee reviewed 11 courses, all diagnostic/therapeutic and approved 10 of the courses. One of the courses was denied based on course content.

Dr. Schutte seconded the motion. The motion passed unanimously (FOR-9/AGAINST 0/ABSTAIN-0).

INVESTIGATION-ENFORCEMENT COMMITTEE. Dr. Thompson moved to go into Executive Session to discuss confidential investigation information and consult with legal counsel as authorized by Section 551.071 of the Government Code related to Case No. 2022-00064, 2023-00010, 2023-00011, 2022-00078, and 2023-00008. The motion was seconded by Mrs. Chambers. The motion passed unanimously (FOR-9/AGAINST-0/ABSTAIN-0).

At 8:33 a.m., the Board went into Executive Session to discuss confidential investigation information and consult with legal counsel concerning legal matters involving Case No. 2022-00064, 2023-00010, 2023-00011, 2022-00078, and 2023-00008. The Board returned to Open Session at 8:58 a.m. Dr. Gutierrez reported the Board did not take any action during the Executive Session.

Dr. Gutierrez requested Ms. McCoy summarize the recommendations of the Investigation-Enforcement Committee for Case No. 2022-00064, 2023-00010, and 2023-00011. Ms. McCoy reported the following:

In Case No. 2022-00064, 2023-00010, and 2023-00011, the Investigation-Enforcement Committee recommends the respondent's license be suspended for a period of 18 months (six months for each of the three cases). The suspension shall be probated after three consecutive months (one month for each case) and successful completion of the Texas Jurisprudence exam. The respondent pay an administrative monetary fine in the amount of \$7,000.00 (\$2,500 for Case No. 2022-00064, \$2,000 for Case No. 2023-00010, and \$2,500 for Case No. 2023-00011). The Respondent submit a total of 10 patient charts for new Texas patient eye exams for which spectacle or contact lens prescriptions (five cases each for Case No. 2022-00064 and Case No. 2023-00011) to the Board for a standard of care review. The Respondent shall submit two patient charts per month for a period of five months. The Respondent shall abide by the Laws of the State of Texas, the Texas Optometry Act, the rules and regulations of the Board, and any reporting requirements imposed to ensure compliance with this ASO.

Dr. Thompson moved to accept the recommendations of the Investigation-Enforcement Committee related to Case No. 2022-00064, 2023-00010, and 2023-00011. The motion was seconded by Mr. Sheehan. The motion passed unanimously. Dr. Hopping, Dr. Schutte, Dr. Cornett, and Mrs. Chambers abstained from the vote (FOR-5/AGAINST-0/ABSTAIN-4).

Dr. Gutierrez requested Ms. McCoy summarize the recommendations of the Investigation-Enforcement Committee for Case No. 2022-00078. Ms. McCoy reported the following:

In Case No. 2022-00078, the Investigation-Enforcement Committee recommends the Respondent pay an administrative monetary fine in the amount of \$1,000.00. The Respondent shall take and submit proof of successful completion of 8 hours of continuing education related to the posterior segment of the eye. The hours obtained may not be used as continuing education credit. The Respondent shall shadow an ophthalmologist who is a retinal/posterior specialist for a total of 8 hours. The hours obtained may not be used as continuing education credit. The Respondent shall comply with the terms of this Agreed Order within three months of it being fully executed. The Respondent shall abide by the Laws of the State of Texas, the Texas Optometry Act, the rules and regulations of the Board, and any reporting requirements imposed to ensure compliance with this ASO.

Dr. Patrick moved to accept the recommendations of the Investigation-Enforcement Committee related to Case No. 2022-00078. The motion was seconded by Mr. Pena. The motion passed unanimously. Dr. Gutierrez, Dr. Hopping and Mrs. Chambers abstained from the vote (FOR-6/AGAINST-0/ABSTAIN-3).

Dr. Gutierrez requested Ms. McCoy summarize the recommendations of the Investigation-Enforcement Committee for Case No. 2023-00008. Ms. McCoy reported the following:

In Case No. 2023-00008, the Investigation-Enforcement Committee recommends the Respondent pay an administrative monetary fine in the amount of \$1,000.00. The Respondent shall take and pass the Texas Optometry Board's jurisprudence exam. The Respondent's license is suspended for a period of three months from the date of the fully executed Agreed Order, however, the suspension shall be probated once the above two disciplinary actions are fulfilled. The Respondent shall abide by the Laws of the State of Texas, the Texas Optometry Act, the rules and regulations of the Board, and any reporting requirements imposed to ensure compliance with this ASO.

Dr. Thompson moved to accept the recommendations of the Investigation-Enforcement Committee related to Case No. 2023-00008. The motion was seconded by Dr. Patrick. The motion passed unanimously. Dr. Hopping, Dr. Schutte, and Mrs. Chambers abstained from the vote (FOR-6/AGAINST-0/ABSTAIN-3).

Ms. McCoy provided a summary of investigative activity to the Board regarding complaints and investigations for FY 23 Q2: Total Number of Cases closed: 13 / Average Days to Close in Quarter: 58 / Total Number of Inspections Conducted: 0 / Penalties Assessed: 1 (by Board). For the first month of FY 23 Q3: Total Number of Cases Closed: 6 / Average Days to Close in Quarter: 43 / Total Number of Inspections Conducted: about 30 as Investigator began inspections on April 17, 2023 / Penalties Assessed: 0

She reported there were 20 cases currently open: 5 at SOAH, 2 awaiting informal conferences, 8 pending, and five acted on by the Board during the meeting. There were no administrative penalties to approve and no glaucoma complaints received.

She reported that she may adjust the inspection process to occur throughout the year instead of just during Q3 so that the investigator can hopefully inspect in more locations throughout Texas.

RULES COMMITTEE. Dr. Hopping, Rules Committee Chair, moved that the Board adopt the following rules which will become final 20 days after being filed with the Secretary of State:

22 TAC Chapter 280.1, 280.2, 280.3, 280.5, 280.6, 280.8, 280.9, and 280. Dr. Cornett seconded the motion. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

Dr. Hopping, moved the Board propose the following for publication in the Texas Register with preamble and for submission to the Governor's Office for approval:

Proposal: Amendments to 22 TAC Chapter 271.2, 271.3, 271.5, 273.6, 273.7, 273.8, 273.12, and 273.14 related to licensing issues. Dr. Patrick seconded the motion. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

Dr. Hopping, moved the Board propose the following for publication in the Texas Register with preamble and for submission to the Governor’s Office for approval:

Proposal: Amendments to 22 TAC Chapter 279.1 and 279.3. Dr. Patrick seconded the motion.

After discussion, Mr. Sheehan moved to amend both 279.1 (a)(1) and 279.3 (a)(2) to read “Examine in-person” instead of “Personally examine.” Mr. Pena seconded. The motion passed (FOR-5/OPPOSE-4/ABSTAIN-0).

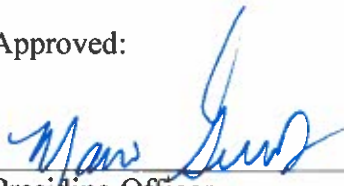
Dr. Hopping moved to proposed 22 TAC 279.1 and 279.3 as amended for publication in the Texas Register with preamble and for submission to the Governor’s Office for approval. Mrs. Chambers seconded. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

QUARTERLY BOARD MEMBER TRAINING. Ms. McCoy provided a quarterly board member training on the State Office of Administrative Hearings.

ANNOUNCEMENTS. Dr. Gutierrez announced the creation of a Technology Workgroup consisting of Dr. Schutte, Dr. Cornett, and Dr. Patrick. He announced the next Board meeting would be August 3-4, 2023 in hybrid format. Dr. Patrick announced ARBO was hosting a webinar on May 16 about changes to the NBEO Part III and that with the passing of Ken Lawenda, O.D., nominations for the ARBO Board will be extended. Mr. Sheehan announced this would be his last Board meeting and thanked the other members for their kindness to him over the past six years.


ADJOURNMENT. Dr. Cornett moved that the meeting be adjourned and Mr. Sheehan seconded the motion. The motion passed unanimously. The meeting was adjourned at 10:31 a.m. (FOR-9/AGAINST 0/ABSTAIN-0).

Approved:



Presiding Officer
8/4/23

Date



Executive Director
8-4-23

Date