

BOARD MEETING MINUTES

August 4, 2023

CALL TO ORDER.

Dr. Gutierrez called the August meeting of the Texas Optometry Board (TOB) to order at 11:30a.m. He announced a time-certain of 11:45 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
Carey A. Patrick, O.D., Member
John Todd Cornett, O.D. Member
Bill Thompson, O.D. Member
Meghan Schutte, O.D. Member
Rene Pena, Public Member
Janice McCoy, Executive Director
Dennis McKinney, Assistant Attorney General

Judy Chambers, Secretary, and Ty Sheehan, Public Member, were absent.

MINUTES. The Board reviewed the April 28, 2023 meeting minutes. A motion was made by Dr. Hopping to accept the minutes as drafted and seconded by Mr. Pena. The motion passed unanimously (FOR – 7/OPPOSED – 0/ABSTAIN – 0).

BOARD CHAIR REPORT. Dr. Gutierrez presented the Board Chair Report. Dr. Gutierrez reported the Board was in a good place, but there was always room to improve trying to make our processes intuitive as possible and enhance customer service. He reported he instructed Executive Director to explore creating how-to videos on YouTube. He stated the Board would not take action on amendments to 22 TAC 279.1 and 279.3.

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 specific issues, but they would have full class in Fall and there is standing invitation for TOB to meet at the RSO campus. Dr. Cornett provided an update as the liaison for the University of Houston College of Optometry (UHCO). He reported Dean Twa was busy with the start of the Fall semester and he was not able to connect.

ARBO Annual Meeting: Dr. Hopping provided an update on the ARBO annual meeting he attended on behalf of the Board in June.

Technology Workgroup: Janice McCoy, Executive Director, reported the Technology Workgroup met via Zoom on Tuesday August 1, 2023. Two stakeholders presented videos regarding technology being used for telehealth exams.

PUBLIC COMMENT. The Public Comment period opened at 11:45 a.m. Dr. Kristen Burkholder of Access Eyecare Services had signed up to comment, but stated she had no comments since the Board was postponing action on 22 TAC 279.1 and 279.3.

EXECUTIVE DIRECTOR'S REPORT. Ms. McCoy presented the Executive Director's Report. She reported that at the end of Quarter 3 of FY23, the Board had 33 percent of its budget remaining with 25 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 Three Performance Measures on June 29, 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 5,157 Total Licensees (4,812 active; 338 inactive; 7 retired) of which 3,961 were OGS (3,863 active; 96 inactive, 2 retired) and 114 were military. She reported on the status of the post-payment audit of FY22 payments that occurred in June. While no report had been issued, she reported the report may have some negative feedback related to payments and she would be working on updating policies and procedures to be in compliance with Comptroller rules.

She reported that the Board would need to approve a Travel Policy for Board members at the November meeting and mentioned a draft policy was provided to Board members in their packet. She reported that on Wednesday July 19, 2023, pursuant to Texas Government Code 2001.029, the agency held a public hearing on the amendments to 22 TAC 279.1 and 279.3. Four people testified – three opposed and one in support.

LEGAL REPORT.

The Chair asked for a motion to go into Executive Session regarding SOAH Docket No. 514-22-1982. At 12:02pm Dr. Hopping so moved and was seconded by Dr. Patrick. The Chair announced the Board would go into Executive Session to discuss and consult with legal counsel regarding legal matters concerning SOAH Docket No. 514-22-1982 as authorized by Texas Government Code 551.071. At 12:38pm, the Chair announced "the Board is now in Executive Session. The Board did not take any action during Executive Session."

Dr. Hopping moved to adopt a Board order accepting the Proposal for Decision for SOAH Docket No. 514-22-1982 as drafted by the Administrative Law Judge. Dr. Thompson seconded. The motion passed unanimously (FOR – 7/OPPOSED – 0/ABSTAIN – 0).

COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Cornett, Chair of the Administrative/Licensing Committee, provided the report noting the Committee took no action.

He reported that 151 applicants took the jurisprudence exam with a 100% pass rate. He noted in FY23 Quarter 3, 18 licenses had been issued and 11 licenses had been renewed. He reported one licensee had passed away: Steven Kaye.

COMMITTEE ON PEER ASSISTANCE.

Dr. Schutte 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 15 courses, all diagnostic/therapeutic and approved all of the courses.

Dr. Schutte seconded the motion. The motion passed unanimously (FOR-7/AGAINST 0/ABSTAIN-0).

INVESTIGATION-ENFORCEMENT COMMITTEE. Dr. Patrick 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. 2022-00092 and 2022-00093. The motion was seconded by Dr. Hopping. The motion passed unanimously (FOR-7/AGAINST-0/ABSTAIN-0).

At 12:47 p.m., the Board went into Executive Session to discuss confidential investigation information and consult with legal counsel concerning legal matters involving Case No. 2022-00092 and 2022-00093. The Board returned to Open Session at 1:20 p.m. Dr. Gutierrez reported the Board did not take any action during the Executive Session.

Dr. Gutierrez reported Ty Sheehan joined the meeting while the Board was in open session.

Dr. Gutierrez requested Ms. McCoy summarize the recommendations of the Investigation-Enforcement Committee for Case No. 2022-00092 and 2022-00093. Ms. McCoy reported the following:

In Case No. 2022-00092 and 2022-00093, the Investigation-Enforcement Committee recommends the respondent pay an administrative monetary fine in the amount of \$8,000.00 (\$4,000 per case) within 30 days. The Respondent shall abide by the Laws of the State of Texas, the Texas Optometry Act, the rules and regulations of the Board to ensure compliance with this ASO.

Dr. Thompson moved to accept the recommendations of the Investigation-Enforcement Committee related to Case No. 2022-00092 and 2022-00093. The motion was seconded by Mr. Pena. The motion passed 4-0. Dr. Hopping, Dr. Schutte, Mr. Pena and Mr. Sheehan abstained from the vote (FOR-4/AGAINST-0/ABSTAIN-4).

Ms. McCoy provided a summary of investigative activity to the Board regarding complaints and investigations for FY 23 Q3: Total Number of Cases closed: 25 / Average Days to Close in Quarter: 53 / Total Number of Inspections Conducted: 63 / Penalties Assessed: 1 (by Board). For the first month of FY 23 Q4: Total Number of Cases Closed: 6 / Average Days to Close in Quarter: 70 / Total Number of Inspections Conducted: 0 / Penalties Assessed: 8

She reported there were 23 cases currently open: 8 at SOAH, 3 acted on by Board during meeting (1 SOAH and 2 from IE committee), and 12 under investigation.

She reported she has issued 8 penalties (ranging from \$250-\$300) resulting from Standard of Care issues arising from Board review of inspection reports.

Dr. Cornett moved to approve the penalties assessed by the Executive Director. The motion was seconded by Dr. Patrick. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0).

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

22 TAC Chapter 271.2, 271.3, 271.5, and 271.6. Mr. Sheehan seconded the motion. The motion passed unanimously (FOR-8/OPPOSE-0/ABSTAIN-0).

Dr. Hopping, adopt the following rules which will be become final 20 days after being filed with the Secretary of State:

Proposal: Amendments to 22 TAC Chapter 273.6, 273.7, 273.8, 273.12, and 273.14. Mr. Sheehan seconded the motion. The motion passed unanimously (FOR-8/OPPOSE-0/ABSTAIN-0).

Dr. Hopping announced the committee took no action on amendments to 22 TAC Chapter 279.1 and 279.3 postponing a decision until the November meeting.

QUARTERLY BOARD MEMBER TRAINING. Ms. McCoy provided a quarterly board member training on travel procedures.

ANNOUNCEMENTS. Dr. Gutierrez announced the CE Committee would be looking at the DEA's new 8 hour training requirement and how Texas could allow that training to count toward required CE. He stated the Technology Workgroup would continue. He announced the next Board meeting would be November 2-3, 2023 in person.

ADJOURNMENT. Dr. Patrick moved that the meeting be adjourned and Dr. Hopping seconded the motion. The motion passed unanimously. The meeting was adjourned at 1:43 p.m. (FOR-8/AGAINST 0/ABSTAIN-0).

Approved:



Presiding Officer

11/3/23

Date



Executive Director

11-3-2023

Date