

BOARD MEETING MINUTES

January 19, 2023 (approved 4/28/23)

CALL TO ORDER.

Dr. Gutierrez called the November meeting of the Texas Optometry Board (TOB) to order at 12:31 p.m.

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
Dennis McKinney, Assistant Attorney General

MINUTES. The Board reviewed the November 3, 2022 meeting minutes. A motion was made by Dr. Cornett to accept the minutes as corrected and seconded by Mrs. Chambers. 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 spoke about the CPR/BLS rule. He directed the Executive Director to hold a stakeholders’ meeting on Board Rules 279.1 and 279.3. He announced committee memberships would remain the same.

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 November meeting. Dr. Cornett provided an update as the liaison for the University of Houston College of Optometry (UHCO). He reported UHCO had no updates since the November meeting.

PUBLIC COMMENT. The Public Comment period opened at 12:45 p.m. No public comment was received.

EXECUTIVE DIRECTOR’S REPORT. Ms. McCoy presented the Executive Director’s Report. 1. For Quarter 1 of FY23, the Board had 80 percent of its budget remaining with 75 percent of the year remaining. As of the end of December, the agency had 66 percent of its budget remaining with 8 months left in the fiscal year – this includes a large one-time interagency

transfer to HPC for IT and database services. Mrs. McCoy reported at the time of the meeting there are no financial concerns to report and the Board is in good financial standing. Mrs. McCoy reported the initial appropriation for the agency was released and the agency will get \$37,000 in FY24 and \$18,000 in FY25 for a total increase of \$55,000 over the biennium.

2. The agency filed its FY23 Quarter One Performance Measures on January 4, 2023. There were no issues to report.

3. Mrs. McCoy reported that as of January 11, 2023, there were 4,986 total licensees (4,653 active; 327 inactive; 6 retired), 3,846 total OGS (3,751 active; 93 inactive, 2 retired) and 122 military licensees.

4. Of the 2,738 licensees set to renew by December 31, 2022, 2,386 were renewed. The remaining 352 licenses were set to expired status on January 10, 2023.

5. Mrs. McCoy announced she will be making a presentation to UHCO students on the evening of February 21, 2023 regarding the Texas Optometry Board and our licensing process and requirements. RSO will be invited by UHCO.

6. Mrs. McCoy reported the 88th Legislative Session convened on Tuesday January 10th. As of January 12, no bills directly impacting optometry or the Texas Optometry Board had been filed. The agency is monitoring legislation that would impact health professional and agency administration, generally. She noted that the agency has been notified that in order to maintain access to criminal history information, certain statutes must be updated. Mrs. McCoy is working with the OOG and DPS on language to be included in an omnibus bill for impacted agencies.

7. In December, the Governor banned state officers and employees from downloading or using TikTok on any government-issued devices, including cell phones, laptops, tablets, desktop computers, and other devices capable of Internet connectivity. Each state agency has until February 15, 2023, to implement its own policy governing the use of TikTok on personal devices that state employees use for state business. DIR and DPS are developing a model plan for other state agencies that would address vulnerabilities presented by the use of TikTok on personal devices by January 15, 2023.

8. In conjunction with the Administrative/Licensing Committee, the Executive Director will be working on updates to the licensing process to eliminate any unnecessary obstacles.

COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Cornett, Chair of the Administrative/Licensing Committee, provided the report. The Committee reviewed two applications for licensure. The first was an applicant with disciplinary action in another state. The Committee took no formal action on the application, but directed the Executive Director to speak to the applicant regarding the disciplinary action. The second was an applicant that had been previously denied application because he had not practiced in the United

States for 7 years. The Committee determined he met the requirements of the statute and could apply for licensure as a normal applicant.

He reported that 35 applicants took the jurisprudence exam with only one person failing to pass the exam. He noted in FY23 Quarter 1, 37 licenses had been issued and 940 licenses had been renewed. He reported two licensees had passed away: Kenneth Eckert and William Benjamin.

Dr. Cornett reported the Committee discussed updates to the licensing process. Of those updates, he referred three items to the Rules Committee including eliminating the requirement to require a letter from the Dean prior to application, eliminating the requirement for original undergraduate degrees, and eliminating the requirement for original birth certificates. The Committee directed staff to update other processes that do not require a rule change including allowing the online application to be completed with a verified digital signature, eliminating the requirement for photos, and allowing the NPDB self-query to be submitted via a digitally certified self-query.

Dr. Cornett reported the Committee moved to cancel three unclaimed initial licensees that were previously awarded in May 2022. Dr. Schutte seconded the motion. The motion passed unanimously (FOR-9/AGAINST 0/ABSTAIN-0).

CONTINUING EDUCATION COMMITTEE. Dr. Patrick, Chair of the Continuing Education Committee, provided the report. Dr. Patrick reported she had reviewed the Professional Responsibility Course submitted by UHCO, but had not yet received the same course from RSO.

She reported that several courses had been submitted for approval. Dr. Patrick reported the Committee approved 22 hours of Continuing Education - 11 diagnostic/therapeutic, 7 general, and 4 opioid. She clarified that any additional opioid CE taken over the requirement would be counted as diagnostic/therapeutic.

Dr. Patrick moved that the CE courses recommended by the Committee be approved. Dr. Thompson seconded the motion. The motion passed unanimously (FOR-9/AGAINST 0/ABSTAIN-0).

INVESTIGATION-ENFORCEMENT COMMITTEE. Dr. Gutierrez announced the Board would postpone action on Case No. 2022-00064 until the next Board meeting.

Dr. Cornett 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. 2022-00042 and 2022-00079. The motion was seconded by Mrs. Chambers. The motion passed unanimously (FOR-9/AGAINST-0/ABSTAIN-0).

At 1:02 p.m., the Board went into Executive Session to discuss confidential investigation information and consult with legal counsel concerning legal matters involving case number 2022-00042 and 2022-00079. The Board returned to Open Session at 1:36 p.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. 2022-00042. Ms. McCoy reported the following:

In case Number 2022-00042, the Investigation-Enforcement Committee recommends the Respondent's license be suspended for a period of six (6) months or when the conditions outlined in the order met, whichever is longer, from the date of the fully executed order. The Respondent shall pay an administrative monetary fine in the amount of \$2,500, the Respondent shall successfully complete 30 verified instruction or classroom hours of a board approved course in glaucoma diagnosis and treatment and pharmacology of approved oral and anti-glaucoma drugs from an accredited college or school of optometry (however, the Respondent would be ineligible to become a Glaucoma Certified Optometrist.) The Respondent shall take and submit proof of successful completion of continuing education on the subject of appropriate medical record keeping. Respondent shall submit the course to the Executive Director prior to taking the course for approval. The Respondent shall shadow an ophthalmologist who is a fellowship-trained Glaucoma Specialist for a total of 16 hours. 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. Hopping moved to accept the recommendations of the Investigation-Enforcement Committee related to Case Number 2022-00042. The motion was seconded by Dr. Patrick.

Dr. Hopping moved to amend the recommendation of the Investigation-Enforcement Committee related to Case Number 2022-00042 to add the Respondent, after the suspension period, shall submit five cases for review in month three and month six. Dr. Thompson seconded. The motion passed unanimously.

Dr. Thompson moved to accept the recommendations of the Investigation-Enforcement Committee related to Case Number 2022-00042, as amended by Dr. Hopping. The motion was seconded by Mrs. Chambers. The motion passed unanimously. Dr. Gutierrez, Dr. Cornett, and Mr. Pena 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. 2022-00079. Ms. McCoy reported the following:

In case Number 2022-00079, the Investigation-Enforcement Committee recommends the Respondent's license be suspended for a period of six months, however if the conditions of the order are met within three months, the suspension will be probated for the final three months. The Respondent shall pay an administrative monetary fine in the amount of \$2,500. The Respondent shall take and pass the Texas Jurisprudence Exam. The Respondent shall abide by the Laws of the State of Texas, the Texas Optometry Act, and the rules and regulations of the Board.

Dr. Patrick moved to accept the recommendations of the Investigation-Enforcement Committee related to Case Number 2022-00079. The motion was seconded by Dr. Hopping. The motion passed unanimously. Dr. Cornett, Dr. Hopping 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 FY22 Q4 – total number of cases closed: 42, average days to close – 51.5, total number of inspections conducted: 10, and penalties assessed: 8. For FY23 Q1 - total number of cases closed: 25, average days to close: 45, total number of inspections conducted: 0, and penalties assessed: 1 (by the Board). For the first month of FY23 Q2, total number of cases closed: 6, average days to close: 43, total number of inspections conducted: 0, and penalties assessed: 0. For glaucoma, one case was reviewed by a Case Review Consultant who said no standard of care issues were found and the case is not being handled per the usual complaint process.

She reported there are 22 cases currently open: 4 at SOAH, 2 awaiting informal conference, 14 pending, and 2 that were for Board review today.

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 277.1 with amendments, 277.2 with amendments, 277.3, 277.4, 277.5, 277.6, 277.10, 277.11, and 277.12. Dr. Thompson seconded the motion. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

22 TAC Chapter 279.2, 279.4, 279.11, 279.12, 279.13, and 279.15. Dr. Schutte seconded the motion. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

Dr. Hopping reported the Board would postpone action on 22 TAC Chapter 279.1 and 279.3 pending the Executive Director convening a stakeholder committee.

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 280.1, 280.2, 280.3, 280.5, 280.6, 280.8, 280.9 and 280.10 and close the Quadrennial Rule Review for Chapter 280. Dr. Patrick seconded the motion. The motion passed unanimously (FOR-9/OPPOSE-0/ABSTAIN-0).

COMMITTEE ON PEER ASSISTANCE.

Mrs. Chambers reported that the Board has 6 optometrists (5 volunteer enrollments and one Board ordered) in the Professional Recovery Network (PRN) program.

QUARTERLY BOARD MEMBER TRAINING. Ms. McCoy provided a quarterly board member training on the Texas Budget Process.

ANNOUNCEMENTS. He announced that the next scheduled meeting is set for April 27-28, 2022, 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 2:02 p.m. (FOR-9/AGAINST 0/ABSTAIN-0).