

BOARD MEETING MINUTES

November 3, 2023

CALL TO ORDER.

Dr. Gutierrez called the November meeting of the Texas Optometry Board (TOB) to order at 8:52 a.m. He announced a time-certain of 9:05 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

John Todd Cornett, O.D. Member

Bill Thompson, O.D. Member

Meghan Schutte, O.D. Member

Janice McCoy, Executive Director

Dennis McKinney, Assistant Attorney General

Carey Patrick, O.D., Rene Pena, Public Members, and Ty Sheehan, Public Member, were absent.

MINUTES. The Board reviewed the August 4, 2023, meeting minutes. A motion was made by Dr. Schutte to accept the minutes as drafted and seconded by Mrs. Chambers. The motion passed unanimously (FOR – 6/OPPOSED – 0/ABSTAIN – 0).

BOARD CHAIR REPORT. Dr. Gutierrez presented the Board Chair Report. Dr. Gutierrez reported on general board matters. He created an Inspection Process workgroup and appointed Dr. Schutte and Dr. Thompson to the workgroup. He outlined the process for the Professional Responsibility 2024 continuing education course.

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 major updates, but the Dean did have concerns with the number of new optometry schools opening as it could dilute the applicant pool and impact faculty recruitment. Kyle Sandberg will serve as the PR course master. Dr. Cornett provided an update as the liaison for the University of Houston College of Optometry (UHCO). He reported Dean Twa stated NBEO test scores for UHCO graduates was below normal again this year, that UHCO was accredited again and the class size remains steady at approximately 100 students. The Dean also asked about the use of the Canadian exam in addition to the NBEO. Dr. Joe DeLoach will serve as the PR course master.

2024 Board Meeting Dates: The Board agreed to the following dates for the 2024 Board meetings: February 8-9, May 2-3, August 1-2, and October 31-November 1.

Travel Policy: The Board discussed the Policy on Authorized Travel by Board Members that was introduced at the August Board meeting. Dr. Thompson moved to adopt the Board Member Travel Policy. Mrs. Chambers seconded. The motion passed unanimously (FOR – 6/OPPOSED – 0/ABSTAIN – 0).

PUBLIC COMMENT. The Public Comment period opened at 9:05 a.m. Mr. Micah Rodriguez representing National Vision, Inc. provided comment on Agenda Item #9 related to 22 TAC 279.1 and 279.3. Mr. Clifton Bergfeld representing National Vision, Inc. provided comment on Agenda Item #9 related to 22 TAC 279.1 and 279.3.

EXECUTIVE DIRECTOR'S REPORT. Ms. McCoy presented the Executive Director's Report. She reported that for FY23 the Board lapsed approximately \$7,100. For the first month of FY24 (through the end of September 2023), the Board had 93.28 percent of its budget remaining with 91.67 percent of the year left and at the time the Board had no financial concerns. She reported the GAA provides for \$9,092 to spend to access the National Practitioners Databank – which is not enough for all of licensees – and she would use undesignated funds to subscribe to all licensees this fiscal year. She reported the agency filed its FY23 Annual Performance Measures on September 27, 2023 and explained, as usual, the agency was out of range on a few measures – mostly positive for the agency.

She reported that as of October 25, 2023, there were 5,248 total licensees (4,890 active; 351 inactive; 7 retired), of which 4,029 were OGS (3,923 active; 104 inactive, 2 retired) and 118 were military. The renewal season opened on October 16, 2023 for licensees with a Dec 31 2023 expiration date. Licensees were notified via email of their license expiration.

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 audit will have some negative feedback related to payments and she would be working on updating policies and procedures to be in compliance with Comptroller rules.

Finally, she reported on the updates to the licensing process. The rule changes related to the jurisprudence exam went into effect in late August and it appears the process is working better. Additionally, the agency is sending out the final licensing letter to initial licensees via email – in order to reduce the time between licensure and ability to practice.

LEGAL REPORT.

The Chair asked for a motion to go into Executive Session regarding legal matters. At 9:19 a.m. Dr. Hopping so moved and was seconded by Dr. Schutte (FOR – 6/OPPOSED – 0/ABSTAIN – 0).

The Chair announced the Board would go into Executive Session to discuss and consult with legal counsel regarding legal matters including SOAH Docket 514-22-08281, SOAH Docket 514-22-08282 and the lawsuit styled Anthony Nguyen, O. D v Texas Optometry Board as authorized by Texas Government Code 551.071.

At 9:46 a.m., the Chair announced “the Board is now in Open Session. The Board did not take any action during Executive Session.”

COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Schutte, Chair of the Administrative/Licensing Committee, provided the report. She reported in FY23 Quarter 4, 138 licenses had been issued and 5 expired licenses had been renewed. For FY24

Quarter 1 as of October 25, she reported 24 new licenses had been issued and 366 licenses had been renewed since renewal season opened October 16, 2023.

Dr. Schutte provided the remainder of her report in the form of a motion. The Committee reviewed two applications for licensure without examination (LWOE). The Committee approved one of the applications and pended the second application awaiting a completed application. The Committee reviewed one application for licensure for an applicant who had not passed Part I of the NBOE and denied that application. The Committee reviewed two applicants for OGS certification. The Committee denied one applicant who was seeking an exemption from the required 30-hour course and passage of the required examination. The Committee pended decision on the second applicant to seek legal counsel.

Dr. Cornett seconded the motion. The motion passed unanimously (FOR-6/AGAINST 0/ABSTAIN-0).

CONTINUING EDUCATION COMMITTEE. Ms. McCoy provided the report noting that the Committee reviewed 18 total courses (comprising 7 general hours, 20 DT hours, and 10 opioid hours) and recommended approval of all 18 courses. Dr. Thompson moved to adopt the report. Dr. Schutte seconded the motion. The motion passed unanimously (FOR-6/AGAINST 0/ABSTAIN-0).

Ms. McCoy reported the Committee also discussed topics to cover in the Professional Responsibility Course. Dr. Gutierrez reiterated that the Board should get topics to both Dr. Patrick and Dr. Hopping by November 17 and that Dr. Hopping would finalize the topics for the course with Dr. Patrick reviewing the course work developed by UHCO and RSO.

INVESTIGATION-ENFORCEMENT COMMITTEE. Ms. McCoy provided a summary of investigative activity to the Board regarding complaints and investigations for FY23 Q4: Total Number of Cases closed: 45 / Average Days to Close in Quarter: 69 / Total Number of Inspections Conducted: 0 / Penalties Assessed: 2. For the first month of FY24 Q1: Total Number of Cases Closed: 11 / Average Days to Close in Quarter: 143 / Total Number of Inspections Conducted: 0 / Penalties Assessed: 1 (through Board action). She reported there were 13 cases currently open: 10 at SOAH (3 awaiting final PFD and 7 awaiting hearing), and 3 under investigation.

She reported she issued 2 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. Hopping. The motion passed unanimously (FOR-6/AGAINST-0/ABSTAIN-0).

She reported that the Board had opened one glaucoma complaint as the result of a NPDB notification, but the case was closed with no violation of standard of care issues.

RULES COMMITTEE. Dr. Hopping provided a report in the form of a motion. He moved the Board propose amendments to 22 TAC Chapter 279.1 and 279.3 for publication in the Texas Register with preamble and for submission to the Governor's Office for approval. He noted this was the same language approved by the Board at the April 28, 2023, Board meeting. Mrs. Chambers seconded. Dr. Gutierrez asked the technology workgroup to review what technology might be available to allow for synchronous tele-examination for the three findings required to be completed by the optometrist. After discussion, the motion passed (FOR-5/AGAINST-1/ABSTAIN-0).

Dr. Hopping reported the Committee also discussed what happens to patients records when an optometric practice closes. He noted the Executive Director would be reviewing how other states and other agencies advise their licensees on this issue and would report back to the Committee.

COMMITTEE ON PEER ASSISTANCE.

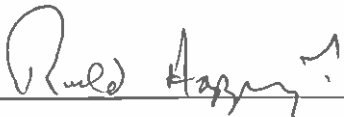
Mrs. Chambers reported that the Board has three optometrists (two volunteer enrollments and one Board ordered) in the Professional Recovery Network (PRN) program.

QUARTERLY BOARD MEMBER TRAINING. Ms. McCoy provided a quarterly board member training on strategic planning.

ANNOUNCEMENTS. Dr. Gutierrez provided a list of the agency's accomplishments. Dr. Hopping, in the form of a motion, read a resolution honoring Dr. Gutierrez for his service to the Board. All members seconded the motion. The motion passed unanimously (FOR-6/AGAINST 0/ABSTAIN-0).

ADJOURNMENT. Dr. Cornett moved that the meeting be adjourned and Dr. Thompson seconded the motion. The motion passed unanimously. The meeting was adjourned at 10:19 a.m. (FOR-6/AGAINST 0/ABSTAIN-0).

Approved:



Presiding Officer

2/9/24

Date



Executive Director

2-9-24

Date