

BOARD OF EXAMINERS IN OPTOMETRY

Regular Session Minutes

Wed. July 31, 2019
MDH Metro Executive Center
4201 Patterson Avenue #105
Baltimore, MD 21215
9:30 a.m.

The regular session of the Board of Examiners in Optometry's meeting was held on Wednesday, July 31, 2019. Board members present were, Andrew Doyle, O.D., Mesheca Bunyon, O.D., Francisco Burgos, O.D., Marc Gordon, O.D., Rona Pepper and Margaret Hubbard. Also present was Deborah Donohue, Interim Board Counsel and Patricia G. Bennett, Board Executive Director. Kecia Dunham, Licensing Coordinator and Kelechi Mezu Nnabue, O.D was not in attendance. Jennifer Cohen, Executive Director, MOA, Kim Lang, Boards and Commission Liaison were in attendance was not in attendance.

A. Call to Order

Dr. Doyle, Board President, called the regular session to order at 9:33 a.m. and read the following statements into the record:

Maryland Board of Examiners in Optometry Mission Statement

The Board of Examiners in Optometry was created in 1914. The Board of Examiners in Optometry is composed of five optometrist members, in our case, Andrew Doyle, Mesheca Bunyon, Kelechi Mezu, Fran Burgos, and Mark Gordon and two consumer members, Rona Pepper and Margaret Hubbard. All members are appointed by the Governor with the advice and consent of the Secretary of Health. The Board is mandated to regulate the practice of optometry in Maryland and protect the public health and welfare of its citizens by ensuring the delivery of vision services by qualified optometrists. It is the responsibility of the Board to:

- Credential and license applicants
- Participate in administration of national licensing examination
- Certify optometrists to use diagnostic pharmaceutical agents and therapeutic pharmaceutical agents in practice of optometry
- Promulgate and adopt regulations to govern the practice of optometry in Maryland
- Monitor continuing education programs and continuing education compliance
- Investigate complaints against licensees concerning alleged violations of the law and conduct hearings concerning these violations
- Discipline licensees found to be in violation of the law
- Evaluate and monitor the quality assurance program and standard of care for the citizens of the state

COMAR 10.01.14.02. - Public Attendance

The general public may attend and observe an open session of a public body within or established by the Maryland Department of Health. B. Except in instances when a public body expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, a member of the public attending an open session may not participate in the session.

B. Approval of Agenda

Dr. Doyle moved and Dr. Gordon seconded the approval of the meeting agenda. The Board’s vote was unanimous.

C. Minutes

The regular session minutes of the March 27, 2019 meeting were reviewed and a motion was made by Ms. Dr. Doyle and seconded by Ms. Hubbard to accept the minutes as written. The Board’s vote was unanimous.

D. Committee Reports

1. Continuing Education – Dr. Bunyon

Dr. Bunyon reported that there were no items for review or discussion.

2. Budget – Rona Pepper

Ms. Pepper presented the Board’s current financial report –

Special Fund Balance Carryover from FY 18 -	\$109,040
Revenue FY 19	\$267,343
Expenses FY19	\$314,183
Special Fund Balance Carryover from FY 19	\$62,200
Budget FY 20	\$308,372

3. ARBO

Dr. Doyle gave an oral presentation highlighting topics of interest that he summarized from his written report that was attached to the agenda. The NBEO/ARBO history, legal update on regulatory issues, news from other states and the ASCO report on applicant pools were hot topics. Dr. Doyle talked about a remote eye care presentation that was given. He also stated that ARBO has developed Telehealth Guidelines. He indicated that the guidelines would be helpful to the Board as it looks to amend its statute or regulations to address this contemporary issue of concern within the profession. A major consideration will be to set parameters to protect patients. Dr. Doyle asked that Ms. Bennett forward the guidelines to all Board members and

4. QEI Committee

Dr. Doyle reported that with the passage of the new law, the QEI Committee and quality assurance program will no longer be mandated. However, the Board needs to effect regulations to establish standards of quality for TPA certified optometrists and optometric care and remove the quality assurance committee provisions from regulation.

E. Old Business

1. Regulations

Standards of Quality for TPAs and optometric care – Effective March 1, 2020, the Board must recommend to the Secretary quality assurance guidelines for therapeutically certified optometrists and optometric care. After considering the recommendations, the Secretary shall adopt regulations that establish standards of quality for therapeutically certified optometrists and optometric care.

Deborah Donohue provided an update for the Board regarding the *Maryland Board of Physicians, et al. v. Geier, et al.*, which was decided on June 26, 2019 by the Court of Special Appeals.

- Suit was filed against the Board, individual Board members, administrative prosecutor, and staff members by a licensee and his family members concerning language in a final order for disciplinary action taken.

- Circuit Court entered judgment against the Board and all individual defendants (in their personal capacities), and assessed \$1.25 million in compensatory and \$1.25 million in punitive damages, and awarded attorneys fees in the amount of \$2.4 million (almost triple what was actually paid).
- For the first time, the Court of Special Appeals recognized absolute quasi-judicial immunity in State court for participants in Board disciplinary matters for non-constitutional State torts in the course of disciplinary functions.
- All of the claims against the Board, individual Board members, administrative prosecutor, and staff members were dismissed.
- The plaintiffs have the opportunity to petition the Court of Appeals to issue a writ of certiorari. The Court of Appeals has discretion as to whether or not to grant the petition and consider the appeal.

1. Legislation

Jen Cohen, MOA

***Approval of the 2019 MOA Annual Convention education program as a Board Approved Scope Expansion Certification Course**

The Board reviewed and approved the 10-hour course that will be presented at the annual MOA convention. Dr. Gordon moved and Ms. Pepper seconded the motion to approve the course as presented.

***Informing Licensees about 2019-20 Licensure Requirements and Statutory/Regulatory Changes**

The MOA prepared a draft letter with supporting documents regarding the statutory and regulatory changes for distribution to licensees via USPS. The Board will send information to licensees via Constant Contact and mail.

***Licensee Questions for Board**

The Board provided responses to several questions that MOA staff have received from licensees.

Practice Date – TPA licensees can begin practice as early as March 1, 2020 provided the course has been taken and the Board has received documentation.

Reciprocity – All applicants coming from other jurisdictions must take the 10-hour course regardless, except for individuals who graduate from schools or colleges of optometry beginning July 1, 2019.

TPA downgrade – Any TPA certified optometrist who fails to take the course and provide documentation to the Board by June 30, 2020, will automatically be downgraded to DPA certification. In order to be recertified at the TPA level, licensees must take a Board approved 10- hour course and meet any current requirements for TPA certification.

This 10-hour course requirement will remain a requirement for any applicant for TPA certification, except for individuals who graduated after July 1, 2019.

Jen Cohen also mentioned some legislation that the MOA will be following during the 2020 session – Children’s Vision Bill and Consumer Protection

Concept Paper 2021

Sunset Extension - Legislation to Extend Termination Date

Ms. Bennett informed the Board that the Maryland Program Evaluation Act has changed effective July 1, 2019. The mandatory evaluations that were performed on a schedule (every 10 years) were repealed and government entities request their own legislation to extend their termination dates – sunset. An entity is evaluated only if directed by specific entity or by legislation. The Board’s Sunset or termination date is July 1, 2023. The Board should request legislation in 2021 for introduction in the 2022 session. The Department of Legislative Services has provided a template to be used.

The Board also discussed its decision to submit a concept paper in 2021 to address some provisions in its statute that require updating. Some examples include:

Delegation of duties – 11-101 (g) (1) iii

Background Checks
Failure to comply with any Board Order
Failure to cooperate with an investigation
Telehealth

F. Executive Director's Report – Pat Bennett

1. ARBO Board of Directors – Ms. Bennett shared that she was elected to the Board and thanked the Board and Jen Cohen, MOA for their support.
2. 2019 Online Renewals – The Board issued renewal licenses to 407 licensees with 100% CE compliance.
3. Online Applications – To date there have been 50 online applications processed
4. Maryland Program Evaluation Act – See notes above in Concept Paper 2021
5. NBEO Part III Clinical Skills Exam Survey – NBEO sent survey for input regarding the new exam and the survey was sent to practitioner Board members for feedback.
6. Board Member Orientation – 10/7/19 – Open to newly appointed and interested Board members
7. Board Law Exam – Ms. Bennett stated that the Board would need to review its law exam and rewrite some questions that address the new law and amended regulations. Dr. Doyle recommended that the Board reconsider having NBEO administer its law exam.

G. New Business

1. Licenses Issued - Dr. Bunyon moved and Dr. Burgos seconded the motion to approve and accept the 24 newly licensed optometrists.
2. NBEO Current/ Future Opportunities – NBEO sent a notice about current and future opportunities for participation on committees, examiners, item writers, and the Part III restructure. Dr. Doyle has been invited to serve on the NBERC which meets in October in Charlotte, NC.
4. Email from JoAnn Park, O.D. – The Board will respond to Dr. Park that there are no provisions in statute to waive the 500 hour active practice requirement.
5. IPL Research Question – The Board will send a response citing the definition of optometry in statute and recommending that they be guided by the definition when determining whether a particular treatment or procedure falls within the scope of practice of a licensed optometrist in Maryland.
6. Inquiry re: Tele Optometry -The Board has determined that until it has enacted legislation, effected regulations, or developed guidelines, standards or policy relative to the practice of tele-optometry in Maryland, the practice would not be allowed.
7. Inactive Status Request – Molly Wiles, O.D. – The Board's process is that at the time of license renewal licensees can request that their licenses be placed on inactive status and pay the \$250 fee. The Board cannot credit the one-year renewal fee that she paid and apply it towards the inactive status fee.

H. Adjournment

Dr. Doyle closed the regular session at 11:30 a.m. to move into administrative session in order to comply with specific constitutional, statutory or judicially imposed requirements that prevent public disclosure about a particular proceeding or matter and to discuss the investigation of complaints against specific licensees. Ms. Pepper moved and Ms. Hubbard seconded the motion to adjourn. The Board's vote was unanimous.

Respectfully submitted,



Patricia G. Bennett, MSW