

# MINNESOTA BOARD OF OPTOMETRY

2829 University Avenue SE, Suite 403, Minneapolis, MN 55414  
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## July 9, 2014 Board Meeting

The Minnesota Board of Optometry met on Wednesday, July 9, 2014 in the Conference Room of Suite 403, University Park Plaza Building, 2829 University Avenue SE, Minneapolis, MN for the purpose of conducting such business as would normally come before the Board.

Roger Pabst, O.D., President called the meeting to order at 9:57 AM.

Roll call of board members:

**Present were:**

Roger Pabst, O.D.  
John Muellerleile, O.D.  
Patrick O'Neill, O.D.  
Michelle Falk, O.D.  
Don Sipola, O.D.

**Also present were:**

Jennifer Middleton, Office of the Attorney General  
Anna Hartsel, Office & Administrative Specialist  
Randy Snyder, Executive Director

**Members Absent:** Kari Slotten, Public Member

The roll call was completed and a quorum declared present. A motion to approve the agenda with the addition of Latisse discussion to new business; and items requiring discussion with the AAG moved up in the agenda as the AAG was required to leave at 10:55 AM was made by Muellerleile, and seconded by O'Neill. Motion passed.

Minutes of the April 2, 2014 board meeting were approved as presented; motion by Sipola, seconded by O'Neill and the minutes were approved.

Significant discussion took place on the board's current role in defining fee splitting or Minnesota Rule 6500.0400 and Minnesota Statute 148.57 (Subd 3). The following was adopted with direction that the guidance document is sent to all Minnesota OD's.

**Minnesota Statute 148.57 (Subd 3).**

The board may revoke the license or suspend or restrict the right to practice of any person who has been convicted of any violation of sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision of sections 148.571 to 148.576 or who is found by the board to be incompetent or guilty of unprofessional conduct. "Unprofessional conduct" means any conduct of a character likely to deceive or defraud the public, including, among other things, free examination advertising, the loaning of a license by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; **splitting or dividing a fee with any person**; the obtaining of any fee or compensation by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by

sections [148.52](#) to [148.62](#); the advertising by any means of optometric practice or treatment or advice in which untruthful, improbable, misleading, or impossible statements are made. After one year, upon application and proof that the disqualification has ceased, the board may reinstate such person.

Minnesota Board of Optometry Minn. Rule 6500.0400 Subp. 3 **Employment of cappers or steerers.** Any optometrist employing or engaging for a salary, fee, or commission any person, firm, or corporation to steer, solicit, lure, or entice any person to come to the optometrist's office or branch office for optometric service is considered as employing "cappers" or "steerers" to obtain business and this constitutes unprofessional conduct.

The Minnesota Board of Optometry adopts the following guidance:

Minnesota laws for nearly all professional licenses (similar to Optometrist office settings) direct that 'fee splitting constitutes unprofessional conduct'. Fee Splitting includes, but is not limited to, soliciting patients or potential patients through internet based marketing systems which utilize vouchers or coupons to secure medical services, or any other paid referral system for the same, where the Optometrist and a third party each keep or receive part of the fee paid by the patient or potential patient for each voucher or coupon.

Current Minnesota Statute 148.57 and Minnesota Rule 6500.0400 prohibit fee splitting; therefore models such as Groupon and Living Social with shared discount offers may be problematic for the Optometrist. Licensed Optometrists can use discount offers such as Groupon appropriately *only* when the licensee pays a flat fee for advertising and not a fee that is conditional on volume purchases.

Significant discussion and final action took place on Dr. Morrison's Minnesota Optometric Association (MOA) letter asking for scope of practice clarification regarding ERG testing, use of Prokera for corneal protection, and use of Tear Lab-Osmolarity testing for dry eye. The board had also been asked about the removal of skin tags, and the dispensing of Latisse in the office.

The board reviewed the MOA letter using the current scope of practice statutes as the guiding document outlined in Minnesota Statutes 148.56. The AAG reminded the board that it cannot interpret law, and may not offer legal advice in authorizing specific procedures. She emphasized the importance of referring to the current legislatively approved statutes and current promulgated Rules. The board provide guidance on current statutes and rules and in that spirit, the board determined ERG testing does measure the powers of vision ((148.56 (a), (2)), that it is used in the diagnosis or management of ocular disease, deficiency, deformity or abnormality of the human eye and adnexa ((148.56 (a),(7)), that it is included in the curricula of accredited schools or colleges of optometry ((148.56 (a),(7)), and is not limited or prohibited by Minnesota statute, specifically 148.56 (b),(1-5), or the adopted rules of the board. It further determined use of Prokera as a bandage contact lens used in the treatment or management of corneal disease is used in the diagnosis or management of ocular disease, deficiency, deformity or abnormality of the human eye and adnexa ((148.56 (a),(7)), that it is included in the curricula of accredited schools or colleges of optometry ((148.56 (a),(7)), and is not limited or prohibited by Minnesota statute, specifically 148.56 (b),(1-5), or the adopted rules of the board. It further determined the use of Tear Lab-Osmolarity testing for dry eye is used in the diagnosis or management of ocular disease, deficiency, deformity or abnormality of the human eye and adnexa ((148.56 (a),(7)), that it is included in the curricula of accredited schools or colleges of optometry ( (148.56 (a), (7)), and is not limited or prohibited by Minnesota statute, specifically 148.56 (b),(1-6), or the adopted rules of the board.

The removal of skin tags was next addressed. It was determined skin tags on the ocular adnexa are a disease, deficiency deformity or abnormality of the adnexa of the human eye, and treatment or management, including removal, with or without injection is included in the curricula of accredited schools or colleges or optometry ((148.56),(a),(7)) however use of injection in performing the procedure is prohibited by Minn. Statute 148.56 (b) (1).

The individual Optometrists agree that the general professional procedures outlined in the requests above meet the intent of Minnesota Statute 148.56, however the current AG's determination is that courts would be required to determine specific challenges on a case by case basis and this cannot be a function of the board. After significant discussion Dr. Sipola moved that the technical and professional components required for the four procedures discussed above are described in 148.56 (a) and are not prohibited in 148.56 (b) or by any rule of the board except only injection is prohibited in the removal of skin tags limited to the ocular adnexa.

Second to the motion by O'Neill and the motion carried with all voting aye.

The dispensing of Latisse "in office" was next discussed. MN Statute 148.574 prohibits dispensing legend drugs at retail. The board determined Latisse is a legend drug, and similar to any other legend drug, the optometrist may dispense the drug "in office" but not at retail profit.

The following applicants/new licensees requesting a Minnesota Optometry license were presented to the Board. Each applicant has provided documentation meeting the requirements for licensure by examination in the state of Minnesota as a licensed optometrist. The board approved a delegation of authority for board staff to initially license candidates that provide an application with all requirements clearly met. With the listed thirty-one new Optometrists, Minnesota has 1078 active licensees. The motion to approve the licenses as granted to practice optometry in the state of Minnesota as listed was made by Muellerleile, seconded by Sipola. The motion passed with all voting aye.

Loren	John	Baldus	Alexander	Earl	Moses
Emily	Kay	Bjore	Jessica	Lynn	Murphy
Mark	R.	Buboltz	Jenna	Kay	Nelson
Amy		Chang	Vinh	Thai	Ngo
Staci	Lynn	Collison	Alisa	Alyssa	Nola
Krystal	Leigh	Eckstein	RaeAnn	Marie	Nordwall
Kelly	Noel	Freese	Elizabeth	Caroline	O'Connor
Hanna	Rae	Froehlich	Dominique	Marie	Oker
Devon	Renee	Gubbins	Svetlana		Roytman
Joshua	James	Hanske	Erin	Marie	Sinkoff
Lauren	Kelsey	Haverly	Jeanette	LaRose	Strommen
Hannah J.		Hays	Ethan	Ranger	Taylor
Kathryn		Grace Huebner	David	Michael	Turner
Kristal	Lynn	Jones	Kathryn	Rose	Van Den Einde
Charles J.		Kopp	Kristina	Marie	White
Joseph	John	Lawrence			

The license reinstatement of Dr. John F. Kludt, License # 2360 was reviewed and approved meeting the intent of Minnesota Rules 6500.2900; motion by Sipola, second by Muellerleile. The motion passed with all voting aye.

Mr. Snyder reported on the most recent financials, May, 2014. The board will end the year within budget. The budget work begins in August and the Executive Committee will serve as the MBO budget committee if necessary. The Office of the Legislative Auditor is still on site and no exit is currently scheduled. Dr. Muellerleile was approved as a ARBO delegate and had airfare booked through Travel Leaders, the state travel agent. The historic floods required him to cancel and Delta did not declare the floods as a declared event worthy of a refund. The board was billed \$520.85 for the ticket issued to Dr. Muellerleile which must be used by April 28<sup>th</sup> and would require a \$200.00 rebooking fee. The board stated that if Dr. Muellerleile could use the ticket, he may and reimburse the board the amount of the new ticket not to exceed \$ 320.85. A motion to approve the budget/finance report was made by Falk, seconded by O'Neill. Motion carried.

The Continuing Education Committee reported on their work including discussion on continued competency versus volunteer earned clock hours and the importance of those for public safety.

OE Tracker has revised their individual CE recording policy. All CE Sponsors that forward their COPE approved sessions attendee list will have all of their session attendees' clock hours uploaded in the OD's individual OE Tracker. Effective July 1, 2014 all INDIVIDUALLY submitted certificates of attendance will only be uploaded for those officially enrolled in OE Tracker with current paid memberships. The board recommended that an update be emailed to all Minnesota licensees of this change in policy.

MBO staff volunteered to provide OE Tracker mobile application education to any Minnesota CE provider over the next two years to encourage the mobile application and efficient OE Tracker uploads. Using the QRC technology the approval code is placed at conference exit doors at the completion of the session; is scanned using an iPhone or newer Droid and uploaded into the individuals' OE Tracker.

Legislative strategies for SF 1904 were discussed; The Reviser's Office will be contacted this summer with Senator Jensen being asked to serve as Chief Author and Senator Latz, Senator Neumann asked to sign as co-authors in the Senate. The Board will wait on the House side until post-election and contact most of the House Health and Human Services Committee members for additional authors. The state jurisprudence test will need to be 'refreshed' once the new legislation is enacted. Chair Pabst appointed Dr. Sipola and Dr. Falk to serve as the committee to revise the state law examination. Work can begin on those exams while the legislation is pending. The board will revisit the OE Tracker fees once the bill is signed and the board is authorized to increase fees. (Late note, 51% of Minnesota Optometrists pay the annual OE Tracker fee so if the MBO paid the OE Tracker fee at the group discounted rate, the net effort would be 51% of the MN OD's would save 25% of their fee!)

Dr. O'Neill reported on the ARBO annual meeting. His outline is provided in the board materials. Although Minnesota remains effective in its public protection role, continuous improvement is warranted in the areas of:

- monitoring the national examination processes,
- enhanced narcotic medications effect on hydrocodone abuse issues,
- board certification and the reminder that MBO has the entry to practice or licensure portion only as their mission,

- telemedicine; ARBO will be establishing a Task Force to model a similar national document as the just published by the Federation of State Medical Boards (FSMB) completed for the MD's. It is the established opinion that a patient residing in and receiving care in the state of Minnesota will have a Minnesota licensed Optometrist as a minimum standard.
- cosmetic contacts and the enhanced ability to have the board fine rather than merely cease and desist as recently obtained by the state of Maryland.
- Military licensure review was completed by the majority of the states during this past year.
- Medical marijuana has been initially discussed in some jurisdictions but no national strategy is emerging for the optometric community.
- The dangers of internet sales and foreign manufactured 'contact lenses' is an emerging issue. The FDA is concerned with dedicated resources to report such issues.
- Dale Atchison, FARB reaffirmed his position that certification issues are not in the domain of a licensing board and the challenges presented by NBEO and other certification bodies should not be merged into the work of entry level licensure.
- Dr. Roger Pabst, Minnesota was named as President of ARBO for 2014-2015.

Jessica Heckman, Minnesota OD was approved to be a COPE reviewer. Motion by Sipola, second by Falk, motion carried with all voting aye.

There were no other reports offered by ARBO, MOA or MAOO.

Dr. Falk provided a verbal report on work on the Prescription Monitoring Program. As many states have initiated similar programs, work has begun to regionalize the notifications so that border cities would have access to monitor medication seekers. Schedule 5 modifications and allowing Veterinarians to the query option has been added as many drug seekers use their pets to access narcotic medications. Dr. Falk will forward the latest written report and Randy Snyder will forward to the board.

The Minnesota Board of Optometry's Record Retention Policy was approved by the Minnesota Historical Society, Minnesota Management and Budget office, and the Attorney General's office. Board appointments for 2015 will begin the fall of 2014 and can be completed online. The conference room WIFI will be reviewed with IT staff to assure connectivity for the next board meeting.

Massachusetts board asked about specific tests that are listed in a comprehensive eye exam or requirements for an office visit. Minnesota Rules do provide guidance for medical record minimums expected during the office visit. The survey will be returned to ARBO.

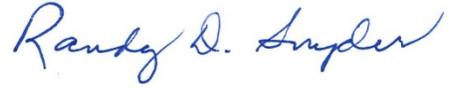
The board will conduct the next scheduled business meeting on September 24, 2014, January 21, and March 25, 2015.

Meetings are open to the public and normally held at University Park Plaza, 2829 University Avenue SE, Minneapolis, MN.

Motion was made by Dr. O'Neill to adjourn the meeting. Motion was seconded by Dr. Muellerleile. Motion passed.

The meeting adjourned at 12:23 PM.

Respectfully submitted,

A handwritten signature in blue ink that reads "Randy D. Snyder". The signature is written in a cursive style with a large initial 'R'.

Randy Snyder  
Executive Director

Approved by

A handwritten signature in black ink that reads "Don Sipola O.D.". The signature is written in a cursive style with a large initial 'D'.

Don Sipola, O.D.  
Secretary