

MINUTES OF THE BOARD MEETING
May 31, 2002
Verne Riffe Center
Columbus, Ohio

AGENDA ITEM #1 – CALL TO ORDER

BOARD MEMBERS PRESENT: Claire Adkins, Lorna Fuller, David Holben

Lori Mooney arrived at 10:30, Jonathan Hughes was absent due to illness.

OTHERS PRESENT: Beth Shaffer, OBD Compliance Specialist; Kay Mavko, OBD Executive Secretary; Kelley Haddox, Assistant Attorney General; Pat McKnight, Ohio Dietetic Association Liaison; Fred Vierow, Legislative Agent, Ohio Dietetic Association; Allison Grauer, Clerk 1, OBD.

The meeting was called to order at 10:05 a.m. Ms. Mavko noted that Ms. Mooney would be late, and that Mr. Hughes was ill. A quorum was present for purposes of conducting business. Ms. Mavko introduced Allison Grauer, who is employed by the Board this summer as Intermittent Clerk 1 to assist with license renewal and is attending today's meeting as a guest of the Board.

AGENDA ITEM #2 – APPROVAL OF MINUTES OF THE MARCH 15, 2002 MEETING

The minutes from the March 15, 2002 meeting were reviewed and were approved as submitted. The following motion resulted:

RESOLUTION #1

Dr. Holben moved and Lorna Fuller seconded a motion to approve the minutes of the March 15, 2002 Board meeting as submitted.

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes		

AGENDA ITEM #3 – APPROVAL OF LICENSES

Ms. Mavko presented the names of twenty (20) persons who were issued limited permit licenses during FY 2002 since the March 15, 2002 meeting of the Board. The following motion was made:

RESOLUTION #2

Dave Holben moved and Lorna Fuller seconded a motion to place upon the minutes of the May 31, 2002 meeting the names of twenty (20) individuals who were issued limited permits in FY 2002 since the March 15, 2002 meeting of the Board and whose names appear on the list presented to the Board by the Executive Secretary. (See attached list labeled Resolution #2)

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes		

Ms. Mavko noted that one of the Limited Permits was issued with a letter of caution.

Ms. Mavko presented the names of fifty-one (51) dietitians who were issued licenses during FY 2002 since the March 15, 2002 meeting of the Board. The following motion was made:

RESOLUTION #3

Dave Holben moved and Lorna Fuller seconded a motion to place upon the minutes of the May 31, 2002 meeting, the names of fifty-one (51) dietitians who met qualifications, pursuant to Section 4759.06 ORC, and who were issued a license by the Executive Secretary during Fiscal Year 2002 since the March 15, 2002 meeting of the board and whose names appear on the list presented to the Board by the Executive Secretary. (See attached list labeled Resolution #3)

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes		

Ms. Mooney arrived at the meeting at 10:35.

AGENDA ITEM #4 – FY 03 LICENSE RENEWAL UPDATE

Ms. Mavko reported that license renewal is going very well. In April, 3131 renewal applications were mailed, with 9 returned as undeliverable. Staff have found 8 corrected addresses, so only 1 FY03 renewal application remains undeliverable.

To date, 34 batches of renewal applications have been returned and processed by staff. Over 1600 licenses have been issued. We are processing batches as quickly as we receive them, and are efficiently entering the data into the SRS system, and into our Supervision data table.

The revised format of the application appears to be effective. We have had few questions by phone about filling out the form.

The Board was reminded that June 30 is the day that current licenses expire, and it is the last date for timely post-marking of the renewal application. June 30 falls on a Sunday. The Communique' that accompanied the renewal application clearly reminded licensees that most U.S. Post offices do not postmark mail on Sundays – so they must plan accordingly. In past years, licensees whose renewal applications arrived late often cited the inability to post-mark their mail as the reason for the late renewal.

AGENDA ITEM # 5 – DISCUSSION OF PENDING LEGISLATION

HB 314

Ms. Mavko provided the Board members with a copy of the letter and information submitted on behalf of the Board to Representative Bryan Williams, Chairman of the Commerce and Labor Committee. The letter included the following information:

OBD staff reviewed the laws of twenty-six states with dietetic licensure and compared the scopes of practice with Ohio's. It appears that the scope of dietetic practice as defined in the *Laws and Rules Governing the Practice of Dietetics in the State of Ohio* are very consistent with those of other states that require licensure for dietetic and nutrition practices.

The Board engaged a sub-committee to develop potential language that might better define “general nutrition education” as an exemption from dietetic licensure. The subcommittee began meeting in April and will submit draft language to the Board at this meeting.

A copy of the letter is attached to the minutes of the meeting.

Michael Wise in the Attorney General's office reviewed the testimony of Representative Jim Hughes as presented at the last hearing on HB314. In his testimony, Representative Hughes asserts that he believes that the Ohio Dietetic Practice Act violates commercial

free speech, and one's privilege against self-incrimination in the Ohio Constitution and by the Fifth Amendment of the U.S. Constitution.

Mr. Wise disagrees with Representative Hughes' opinion and analyzes the reasons. A copy of the analysis was provided to the Board members, and is attached to the minutes of the meeting.

Based on this analysis, it appears that the current law is constitutional.

SB162

SB 162, proposing certain health care policies, contracts, agreements, and plans will provide the same benefits for the surgical treatment of obesity as for any other medically necessary surgical treatment, is assigned to the Senate Health, Human Services & Aging committee. Three persons who had the surgery testified about the improvements in their lives, the battles with insurance to authorize the surgery, and the reduction in serious health problems that will result in cost savings for insurance companies.

Budget Bill SB 261

The Budget bill was passed by both the House and Senate. It includes a provision that allows the director of the Office of Budget and Management to transfer cash to the General Revenue Fund (GRF) from various other fund accounts (including the regulatory Boards rotary 4K9 fund where OBD's revenues reside) as are necessary to ensure expenditures from the GRF don't exceed amounts credited to it.

The budget manager for the regulatory boards has told us that if money from the 4K9 fund is moved, he has recommended that a balance be left that would satisfy negative expenditures that Boards might incur in FY 2003. The regulatory Boards should then look at fee increases for FY 2004 and beyond.

This makes it even more important for OBD to plan ahead for a fee increase in the next budget cycle, 2004-2005. Our expenses are predicted to exceed revenues in FY 2003 and we will be in a position to draw down our portion of the 4K9 fund. OBM has also planned for the new computer system costs to be come from the 4K9 fund reserves rather than our individual budget allocations. This makes it important that reserves be maintained to fund the computer project.

Other legislation being monitored has had little or no activity.

AGENDA ITEM #6 – REPORT FROM THE GENERAL NUTRITION EDUCATION COMMITTEE

As directed at the March 15, 2002 regular Board meeting, a sub-committee of the Board was appointed to consider re-defining the term “general nutrition education”, to explore potential language for exemption for non-licensed persons to provide general nutrition education, and to review the impact such a change would have on the law - including the current exemptions.

The following persons were appointed to the committee: Dave Holben, OBD Educator member; Jonathan Hughes, OBD Public member; Pat McKnight, ODA liaison to OBD; Beth Shaffer, OBD Compliance Specialist; Kelley Haddox, Assistant Attorney General; Kay Mavko, OBD Director. The sub-committee met three times, and presented draft language as reported in the May 10, 2002 sub-committee minutes. The Board members reviewed the sub-committee recommendations prior to the meeting.

Upon review of the recommendations, and following discussion and input from Board members and staff agreed, the Board agreed to revise the sub-committee recommendations. Jonathan Hughes, OBD Public member (and also sub-committee member), was absent from the Board meeting and his input from a public perspective is deemed by the Board to be critical to this issue. Therefore, the Board directed Ms. Mavko to send a copy of the revised language proposal to Mr. Hughes for his review and input. If he agrees that the proposal is acceptable, Ms. Mavko was directed to contact Representative Williams’s office to request a meeting to discuss the Board proposal. If Mr. Hughes does not agree with the changes made at the May Board meeting, Ms. Mavko will contact Chairman Adkins for direction.

Copies of the sub-committee report, and of the revised draft language agreed upon by the Board are attached to the minutes of the meeting.

Chairman Adkins thanked the sub-committee members for their time and efforts on this project.

AGENDA ITEM # 7- BOARD REPORTS

Chairman-Claire Adkins

Chairman Adkins noted that Ms. Mooney’s term as dietitian member is due to conclude on June 30, 2002. Because it is unlikely that a successor will be appointed prior to the July 26, 2002 meeting, Ms. Mooney has been asked to attend the July meeting. We will acknowledge her nine years of Board membership at that time.

ODA Liaison – Pat McKnight

Ms. McKnight reported she has submitted the names of three individuals to the Governor's office for consideration for appointment to the Board. Ms. Mavko also reported that a letter was sent on behalf of the Board noting the current diversity of members and the desire for geographic diversity of Board members.

*** Later during the meeting, Ms. Mavko received a telephone call from the Governor's office and reported that Cynthia Blocksom, M Ed, RD, LD from Cincinnati will be appointed to the Board.

Ms. McKnight reported that the date for the 2003 Legislative Workshop will be March 26, 2003. The space has been reserved at the Riffe Center.

Ms. McKnight reported that she has received a background report proposing a membership dues increase for members of the American Dietetic Association. It appears that they will be suggesting a \$40 per year increase for Active members beginning in FY 2003-04. Because OBD will be seeking a licensure fee increase beginning in FY 2004, it will be important to communicate effectively to licensees who are both licensed and members of the association so that they do not become confused.

The Board directed Ms. Mavko and Ms. McKnight to work together to develop a plan for communicating the fee increase information timely, effectively, and in a manner that will be least likely to cause confusion. They will report back to the Board at the next Board meeting regarding their plans.

Director's Report – Kay Mavko

1. Each of the Board members was provided with a copy of the Inspector General's report that was recently released regarding allegations of mismanagement within the Architects Examiners and Landscape Architects Board. The complaints investigated alleged that the administrative assistant was abusing overtime and travel, and not performing all of the duties within her position description.

The investigation found abuse and mismanagement in a variety of areas and based on the findings numerous recommendations were made.

Upon review of the report, discussion with the Inspector General's office, and a review of OBD policies, Ms. Mavko shared a couple areas of concern with the Board.

First, the dietetic practice act is unclear about how Board members should be compensated. It is not clear in agency policies, or meeting minutes that OBD Board members are to be paid on a per-diem basis. Ms. Mavko reports that when she was hired as Director, she was instructed by then Chairman Mooney to pay Board members on a per diem basis.

Per diem compensation for Board members is the policy of most of the other regulatory Boards, and the Department of Administrative Services has a policy about paying Board members a per diem rate. Additionally, in 1993 a previous Board member brought up the matter, and a previous Assistant Attorney General reported back to the Board that per diem compensation was appropriate. However, there does not appear to have been a motion made to clearly direct that Board members should receive per diem compensation for their attendance at Board meetings and for their representation on behalf of the Board.

Additionally, the dietetic licensure law is not clear.

Therefore, in order to clarify this matter officially, the Board made the following motion:

RESOLUTION #4

As a point of clarification, Lori Mooney moved and Lorna Fuller seconded a motion that members of the Ohio Board of Dietetics receive a fixed per diem as defined by Department of Administrative Services Payroll Policy code A09 for payment for eight hours on each day the member attends regular or special Board meetings and when representing or conducting official business for the agency.

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes	Lori Mooney	yes

The second item of concern is that there is no OBD policy specifically designating that the Executive Secretary may use discretionary authority to approve work hours of staff including times when staff are in travel status, working off site, or attending off-site meetings.

It is sometimes inefficient for staff who are attending meetings off site, or traveling on investigations to return to the office for short periods at the end of the workday. Although the Board has verbally encouraged the Executive Secretary to make such decisions, there is no written policy.

After discussion and agreement that it is appropriate for the Executive Secretary to use discretionary authority in this area, the following motion was made:

RESOLUTION #5

As a point of clarification, Lorna Fuller moved and Dave Holben seconded a motion that the Executive Secretary may use discretionary authority to approve work hours of staff including those in travel status, working off-site, or attending off-site meetings. This authority should be included in OBD policies and procedures.

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes	Lori Mooney	yes

Ms. Mavko will draft a revision to the Work Rules policy for presentation to the Board at the July 2002 meeting.

2. Ms. Mavko updated the Board on the progress of the CAVU computer software acquisition. Monday June 3, 2002 the CAVU project manager, and technical support will be in town for kickoff meetings. Two weeks of training for IS personnel will begin June 10, 2002 and it looks like implementation is on target. As currently projected, Cosmetology will convert data 8/26/02, train staff 8/29-9/5/02, and begin testing 9/17/02. Go live is scheduled for 10/4/02. Other pilot Boards will come up as follows: Medical 11/7/02; OTPTAT 12/10/02; Sanitarian 1/10/03.

OBD is at the back of the pack - after renewal next year.

3. Ms. Mavko shared a copy of an editorial note made in News and Views by the Citizens' Advocacy Center. They criticized various Boards (including the Dietetics and Medical Boards in Ohio) over scope of practice conflicts and noted that they believe "all that energy would be more constructively spent trying to design a process whereby scopes of practice decisions could be evidence-based and apply across jurisdictions." A copy of the editorial note is attached to the minutes of the meeting.
3. The Ohio Hospital Association (OHA) has traditionally been an opponent of licensure, and in particular new licensure. OHA now has developed new principles regarding their position on licensure as a result of their Workforce Taskforce. OHA's vision is that licensing of health care occupations should assure public safety while preserving flexibility for hospitals and designing satisfying work experiences. OHA's ten guiding principles will be shared with other health care organizations as needed. A copy of their "Principles for Licensing Health Care Workers" is attached to the minutes of the meeting.
4. Because OBD's zip code has changed, and the Board members expressed a desire to include the fax number on the official letterhead, staff prepared 6 examples of new letterhead for discussion by the Board. Two of the styles included the names of Board members and staff. When discussing the options, there was significant debate on whether to include Board member names. The Board directed Ms. Mavko to survey other Boards that use letterhead including their Board members names to see if incorporation of that information has led to any positive or negative situations. She will report back at the July meeting.

5. Ms. Mavko reported that she was speaker at the National Kidney Foundation Annual Ohio Renal Conference on May 8, 2002. Approximately 30 person attended her presentation regarding “Scope of Practice Issues for Dietitians”.
6. Ms. Mavko, Jan Lanier, and a representative of the Ohio Pharmacy Board have been asked to speak about “Limits of Licensure: The Law and You” at the Annual Diabetes Symposium in November. The presentation is a panel discussion of scope of practice issues.
7. Ms. Mavko reported that one Board member is purchasing health insurance benefits now as a Board member. The process of paying in advance for the costs, depositing the payments, and withdrawing the costs from our correct payroll account are all being worked out. Once the process is firmly in place and working properly, Ms. Mavko will write a policy that includes the necessary information. It is noted that Board members may sign-up for health insurance benefits at any time.
8. Ms. Mavko presented each of the Board members with a copy of the “Licensed Dietitians In Ohio” brochure which was developed and approved at the last Board meeting. The changes in print style, and paper type were incorporated. The consensus of the Board was that the brochure may be printed and used as needed in order to educate the public about Ohio Licensed Dietitians and the complaint process. A copy of the brochure is attached to the minutes of the meeting.
9. Representatives of the State Highway Patrol visited each of the Board offices, including OBD, to review our disaster recovery plan, security plans, policies, and procedures. As a result of this review they suggested that we develop new policies addressing office security, and contaminated mail. Ms. Mavko drafted policies on each and submitted them to the Board for their review, input, and approval. The following motion resulted:

RESOLUTION #6

Lori Mooney moved and Lorna Fuller seconded a motion to approve the following draft policies submitted to the Board by the Executive Secretary: “Policy 7.4 - Office Security” and “Policy 7.5 Contaminated Mail”.

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes	Lori Mooney	yes

The policies will be added to the agency Policy and Procedures book and to the Disaster Recovery Plan.

10. Ms. Mavko reported to the Board members that she has spoken with Mr. Markun in West Virginia about the status of their licensure Board. He is hopeful that the committee will schedule a hearing on June 9, 2002 regarding the bill to continue the Board's activities. He is confident that there is support among the committee members, but the Chairman who feels negatively toward the Board controls the agenda. Mr. Markun and the Board members have met with the committee Chairman in order to reason with her. Ms. Mavko will continue to monitor this situation.

AGENDA ITEM #8 – REPORTS FROM ODA ANNUAL MEETING, OCD-HCF, FRAUD CONFERENCES

Board members and staff that attended the Ohio Dietetic Association annual meeting, the Ohio Consulting Dietitians in Health Care Facilities meeting, and the Auditors Fraud Conference shared the highlights of those meetings with the Board members.

It was noted that Ms. Mavko, Ms. Mcknight and Board members held a special session at the ODA meeting to talk to attendees about licensure issues. It was an informal discussion group held during the poster sessions and was a good way to personally interact with licensees. The Board suggested that we try to do it again next year.

AGENDA ITEM #9 – FINANCIAL REPORT

The financial report was presented for the period March 1 through April 30, 2002, including Allocations and Appropriations, Expenditures, Revenues to Date, and Comparison of Revenue and Disbursements. Expenditures as of April 30, 2002 totaled \$224, 679. Revenue deposited through April 30, 2002 is \$42,699.

A copy of the Financial Report is attached to the minutes of the meeting.

Proposed Budget Allotments

A copy of the proposed Budget Allotment Plan Worksheet was presented to the Board. The approved budget amount of \$317,617 will be distributed a little bit differently this year. Because operations / maintenance costs have increased significantly during the past year this allotment plan moves dollars into the maintenance category from other spending categories that usually have a balance at years end. A copy of the proposed allotment worksheet is attached to the minutes of the meeting.

RESOLUTION #7

Lorna Fuller moved and Lori Mooney seconded a motion to approve the Financial Report including expenditures as presented for the months of March and April 2002 and to approve the FY 2003 Allotments Worksheet as proposed.

The motion was approved with vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Dave Holben	yes	Lori Mooney	yes

Budget Planning for FY 2004-2005

Ms. Mavko reported that even though the Board has agreed to seek a fee increase there are no additional requirements other than the usual forms to prepare for the Budget process for FY 2004-2005. The Board members and staff suggested various items be included as follows:

- Each year of the budget cycle seek funding for travel to CAC, ADA, CLEAR, ODA, Attorney General's Conference, Auditor's Conference, OCDHCF meeting, Dietetic Technician Workshop, training for secretarial staff, support for Ms. Haddox to attend relevant FARB meeting, and other relevant meetings that may arise.
- FY04--Software upgrades for word processing, and to accommodate CAVU
- FY04 – new lap-top computer
- FY05 -- scanner
- FY04 – licensee file section
- FY04 & 05 – adequate funding to support re-classification of staff as appropriate

AGENDA ITEM #10 – STATUS OF BOARD ACTIONS

There are no outstanding Board actions upon which to report.

AGENDA ITEM # 11– ENFORCEMENT REPORT

Ms. Shaffer presented the enforcement report for the period of March 15, 2002 through May 31, 2002. There are currently fifteen (15) cases pending. Thirty-three (33) cases were closed at the March 15, 2002 meeting and four cases opened since that meeting.

In comparison of FY 2002 by Quarter to Fiscal Year 2001 to date, the total number of cases is down - particularly this third quarter.

Ms. Shaffer also reported on eight expired Limited Permit holders who did not renew or apply for an initial license by the April 30, 2002 expiration date. All but one of the licensees were located. Those found are not practicing dietetics, are now licensed, or are working out of state, and are in compliance with the law.

A copy of the Enforcement Report is attached to the minutes of the meeting.

AGENDA ITEM #12– EXECUTIVE SESSION

The Board moved into Executive Session at 3:30 p.m. with a roll call vote. In attendance were the following: Ms. Adkins, Ms. Mooney, Ms. Fuller, Dr. Holben, Ms. Shaffer, Ms. Mavko, Ms. Haddox. Ms. Grauer was also invited to attend as an observer. The following motion was made:

RESOLUTION #8

Dr. Holben moved and Lorna Mooney seconded a motion to move into Executive Session pursuant to Ohio Revised Code 121.11 (G)(3), for the purpose of discussing matters pertaining to investigations of charges, complaints against licensees, and consultation with legal counsel.

The motion was approved with roll call vote as follows:

Claire Adkins	yes	Lorna Fuller	yes
Lori Mooney	yes	Dave Holben	yes

Lorna Fuller left the Board meeting at 4:00 p.m. The Board moved out of executive session at 4:30 p.m.

AGENDA ITEM #13– FINDINGS, ORDERS, and ACTIONS

The following findings, orders, and actions resulted from the Executive Session held during the meeting:

RESOLUTION #9

Dr. Holben moved and Lori Mooney seconded a motion to close the following complaints:

- 01OBD82 Insufficient evidence. No further investigation indicated.**
- 01OBD100 Education provided. Ceased practice. Appears to meet exemption pursuant to 4759.10 (G) ORC.**
- 02OBD79 Came into compliance. Supervised Limited Permit issued with letter of caution. Informational letter sent to supervisor.**
- 02OBD60 Education provided. Came into compliance pursuant to 4759.10 (H) &(I) ORC.**
- 02OBD83 Renew license. Unfounded.**

The motion was approved with vote as follows:

Claire Adkins	yes	Lori Mooney	yes
David Holben	yes		

AGENDA ITEM #14 – DISCUSSION OF RULES REVIEW

Ms. Mavko reminded the Board members that pursuant to section 119.032 of the Ohio Revised Code, the Board is required to review each of administrative rules in 4759 of the Ohio Administrative Code to determine whether to continue the rule without change, or to amend, or rescind it prior to February 9, 2003. The agency must consider the continued need for the rule, the nature of any complaints or comments received concerning it, and any relevant factors that may have changed in the subject matter affected by the rule.

The Board discussed the manner in which the rule review process could be most expediently accomplished, and the following motion resulted:

RESOLUTION #10

Lori Mooney moved and David Holben seconded a motion to engage a sub-committee of the Board to review the Administrative Rules as required by Section 119.032 of the Ohio Revised Code. Members of the sub-committee shall include one Board member, the Director, Compliance Specialist, Ohio Dietetic Association liaison, and Assistant Attorney General.

The motion was approved with vote as follows:

Claire Adkins	yes	Lori Mooney	yes
David Holben	yes		

The Board members agreed to appoint Ms. Fuller to the sub-committee. Because she was not in attendance at the time the appointment was made, Ms. Mavko was asked to check with Ms. Fuller to determine if she is able to meet the commitment required. Ms. Mavko will contact all of the sub-committee members when arrangements for meetings are made.

The sub-committee will draft the proposed rule changes, or amendments, and present recommendations for input from the full Board at each of the next three meetings.

According to the Joint Committee on Agency Rules Revues Dates Calculator, OBD will need to file our rules on November 25, 2002 (ten days after the November Board meeting.), and plan for a January Public Hearing, so that any new or amended rules may be enacted prior to the February 9, 2003 deadline.

AGENDA ITEM #15-- UPCOMING BOARD MEETING DATES

The next regular Board meeting is scheduled for July 26, 2002.

The following meeting dates are tentatively scheduled for the remainder of calendar year 2002.

- July 26, 2002
- September 27, 2002
- November 15, 2002

AGENDA ITEM # 16- ADJOURNMENT

A motion was made to adjourn the meeting. There was consensus by the Board. The May 31, 2002 regular meeting of the Ohio Board of Dietetics adjourned at 5:10 p.m.

Respectfully submitted,

_____ Date _____
Kay Mavko
Executive Secretary, Ohio Board of Dietetics

_____ Date _____
Claire Adkins
Chairman, Ohio Board of Dietetics

_____ Date _____
Witness