

MINUTES OF THE BOARD MEETING
July 26, 2002
Verne Riffe Center
Columbus, Ohio

AGENDA ITEM #1 – CALL TO ORDER

BOARD MEMBERS PRESENT: Claire Adkins, Jonathan Hughes, Lori Mooney.

Lorna Fuller, and David Holben were unable to attend.

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; Cynthia Blocksom, Allison Grauer, Clerk 1, OBD.

The meeting was called to order at 10:35 a.m. Ms. Mavko noted that Ms. Mooney would be late, and that Ms. Fuller and Dr. Holben were unable to attend. A quorum was present for purposes of conducting business. Ms. Adkins introduced Ms. Blocksom, recently appointed Board member who is attending as our guest pending processing of her paperwork.

AGENDA ITEM #2 – APPROVAL OF MINUTES OF THE MAY 31, 2002 MEETING

The minutes from the May 31, 2002 meeting were reviewed and were approved as submitted. The following motion resulted:

RESOLUTION #1

Lori Mooney moved and Jonathan Hughes seconded a motion to approve the minutes of the May 31, 2002 Board meeting as submitted.

The motion was approved with vote as follows:

Claire Adkins	yes	Jonathan Hughes	yes
Lori Mooney	yes		

AGENDA ITEM #3 – APPROVAL OF LICENSES

Ms. Mavko presented the names of fifteen (15) persons who were issued limited permit licenses during FY 2002 since the May 31, 2002 meeting of the Board. The following motion was made:

RESOLUTION #2

Lori Mooney moved and Jonathan Hughes seconded a motion to place upon the minutes of the July 26, 2002 meeting the names of one (1) individual who was issued a limited permit with an expiration date of October 31, 2002 during FY 2002 since the May 31, 2002 meeting of the Board and whose name appears 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	Jonathan Hughes	yes
Lori Mooney	yes		

Ms. Mavko presented the names of fifteen (15) persons who were issued limited permit licenses during FY 2003 since the May 31, 2002 meeting of the Board. The following motion was made:

RESOLUTION #3

Lori Mooney moved and Jonathan Hughes seconded a motion to place upon the minutes of the July 26, 2002 meeting the names of fifteen (15) individuals who were issued limited permits with expiration dates of October 31, 2002 during FY 2003 since the May 31, 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	Jonathan Hughes	yes
Lori Mooney	yes		

Ms. Mavko presented the names of fifteen (15) dietitians who were issued licenses during FY 2002 since the May 31, 2002 meeting of the Board. The following motion was made:

RESOLUTION #4

Lori Mooney moved and Jonathan Hughes seconded a motion to place upon the minutes of the July 26, 2002 meeting, the names of fifteen (15) 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 May 31, 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 #4)

The motion was approved with vote as follows:

Claire Adkins	yes	Jonathan Hughes	yes
Lori Mooney	yes		

Ms. Mavko presented the names of nineteen (19) dietitians who were issued licenses during FY 2003 since the May 31, 2002 meeting of the Board. The following motion was made:

RESOLUTION #5

Lori Mooney moved and Jonathan Hughes seconded a motion to place upon the minutes of the July 26, 2002 meeting, the names of nineteen (19) dietitians who met qualifications, pursuant to Section 4759.06 ORC, and who were issued a license by the Executive Secretary during Fiscal Year 2003 since the May 31, 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 #5)

The motion was approved with vote as follows:

Claire Adkins	yes	Jonathan Hughes	yes
Lori Mooney	yes		

AGENDA ITEM #4 – FY 03 LICENSE RENEWAL UPDATE

Ms. Mavko reported that license renewal is progressing very well. In April, 3131 renewal applications were mailed, with 9 returned as undeliverable. All initially undeliverable mail has been resolved.

To date, 64 batches of renewal applications have been returned and processed by staff. Over 2964 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.

To date 2919 persons have renewed timely, 46 have renewed with a late fee, and 25 incomplete applications have been filed. 29 licensees have indicated that they are letting their license expire, and 63 have timely requested a change to inactive status. 96 Grandfathered dietitians, who are not registered with the Commission on Dietetic Registration have renewed their licenses. We currently have 98 licenses expired without reason.

All current Board members and staff have renewed their licenses.

This is the last year that the Treasurer's office will process our renewals for us. Our options will be to engage the services of a bank lock box or to self process the renewal applications and prepare the deposits. Costs for lock box services vary between sixty cents to one dollar per renewal.

Ms. Mavko has been meeting with other Board directors who self process to see if it is reasonable for OBD to do so. It appears that we could handle the extra work if we increase the summer intermittent position back to 40 hours per week. We are budgeted for 1,000 hours per year for this position, and continued effective utilization of staff in the position is desirable.

Other situations affecting renewal next year are that we will likely have a new computer licensing system, and clerical staff.

Based on information collected to date Ms. Mavko recommended that we continue to explore self-processing for FY 04 renewal. The Board agreed. Ms. Mavko will continue to collect information, draft procedures, and seek input from the office of the auditor and report back to the Board at the September meeting.

CHECKS RETURNED FOR INSUFFICIENT FUNDS

Ms. Mavko reported that each year a couple of checks are returned for insufficient funds. Generally in the past, we have been able to "buy back" the bad check with good money (another check or money order) and not incur a fee. However, in the future if we go to bank processing we most likely will have to pay a fee.

Additionally, this year we have an individual who has presented four checks that have been returned for insufficient funds – 1990, 1995, 2001, 2002.

Ms. Mavko requested that the Board approve development of a policy that the licensee be required to pay any check processing charges incurred by OBD if their check is returned for insufficient funds, and that licensees who have a check returned more than one time be required to pay by money order in the future. The Board agreed and directed Ms. Mavko to prepare a policy for approval at the September Board meeting.

AGENDA ITEM # 5 – DISCUSSION OF PENDING LEGISLATION

HB 314

On June 24, 2002 Ms. Mavko, (representing OBD) and Ms. McKnight and Mr. Vierow, (representing the Ohio Dietetic Association) met with Kyle Miller from the office of Representative Bryan Williams, Chairman of the Commerce and Labor Committee, and with Mellissa Kunselman from Speaker Householder's office to discuss a proposal for

new rule language being proposed by the Board in an attempt to better define general non-medical nutrition information. It is the Board's belief that some of the concerns of the proponents of HB 314 could be satisfied by incorporating the draft language into section 4759-2-01 of the Ohio Administrative Code when the Board does its five year rule review this coming winter. This would provide for clearer definition, is legally enforceable, and could be accomplished by February 9, 2003.

A copy of the draft language being proposed is attached to the minutes of this meeting.

Ms. Miller, and Ms. Kunselman made a suggestion to incorporate one additional word into the draft language. Ms. Miller agreed to discuss the Board's proposal with Representative Williams who could potentially follow-up with the sponsor of the bill, Representative Linda Reidelbach. Ms. Miller agreed to keep the Board updated on how this suggestion is received.

After the original meeting, Ms. Miller reported that the Board's proposal was shared with Representative Reidelbach, and that no response has been forthcoming. Because the legislature is not in session it may be a while before we hear back. Ms. Mavko will continue to monitor, and report to the Board on any developments regarding HB 314.

Legislative Report from Capitol Insights

Mr. Veirow announced that Pete O'Grady and Associates has been re-organized following the retirement of Mr. O'Grady. Additionally, Mr. Vierow's role is changing and he is working as Senior Legal Consultant for the company, which will now be, called Capitol Insights. He will be working out of his home, so has a new post office box and address. He will still be working as the legislative agent for the Ohio Dietetic Association, and as such continues to be interested in the activities of the Board.

Mr. Vierow provided the Board members with a status report on legislative activities, and reviewed dates for the fall legislative sessions. A copy is attached to the minutes of the meeting.

The Speaker of the House of Representatives has formed 7 committees to explore various issues this summer - including quality health care and malpractice insurance.

Other legislation being monitored has had no activity because the legislature is not in session.

AGENDA ITEM #6 - RECEIPT AND DISPOSITION OF COMPLAINT FROM THE INSPECTOR GENERAL'S OFFICE

On June 25, 2002 the Ohio Board of Dietetics received a letter from Thomas P. Charles, Inspector General, State of Ohio indicating that the Inspectors General's office had received a complaint from Pamela Popper regarding the Board, and included a copy of

Ms. Popper's complaint. Mr. Charles requested that the Board provide a response to the allegations contained in the complaint by Friday June 28, 2002.

The complaint contained many of the same allegations, accusations, faulty interpretations, and innuendo that have been asserted during testimony in support of HB 314.

Ms. Mavko contacted Chairman Adkins about the complaint from the Inspector General and was directed to prepare a response on behalf of the Board.

A timely written response was prepared by Ms. Mavko, and presented to Richard A Whitehouse of the Inspector Generals Office. Copies were provided to all Board members.

On July 1, 2002 the Intake Committee in the Inspector General's office reviewed the information and determined that there was insufficient cause to proceed with a full investigation.

Copies of the complaint, OBD's response letter, and a copy of the Inspector General's closure letter to Ms. Popper are attached to the minutes of the meeting.

This review supports the Boards belief that it has been operating and will continue to operate within the statutory authority provided to it by the legislature.

AGENDA ITEM #7 – REPORT OF RULES REVIEW COMMITTEE

The rules review subcommittee met on July 19, 2002. The committee developed a list of rules that have been identified as needing corrections, changes, or amendments since the last five-year rule review in 1997. The committee plans to meet three times and to review approximately one third of the rules at each meeting. Following each committee meeting the proposed changes will be presented to the full Board for their input. In this manner we should be able to accomplish the task and be ready to file the proposed rule changes in November.

The following proposed rule changes were reviewed:

4759-1-01	Public Notice of Rule Adoption	Rescind and replace
4759-1-02	Notice of Board Meetings	Amend
4759-3-01	Duties of Board Members	Amend
4759-4-01	Applications	Technical change
4759-5-01	Supervision of Persons Claiming Exemption – continuing education For exempt persons	Board directed no change

The Board approved of the proposed rule changes as presented by the committee with slight corrections except for rule 4759-5-01, where they directed the committee to make no change.

A copy of the subcommittee minutes from the July 19, 2002 meeting is attached to the minutes of this meeting.

The next rules review subcommittee meeting is scheduled for August 23, 2002.

AGENDA ITEM # 8- BOARD REPORTS

Chairman-Claire Adkins

Chairman Adkins thanked Ms. Mooney for her participation as Board member over the past nine years. Her historical perspective and insight will be missed by staff and the Board. Cynthia Blocksom from Cincinnati will replace Ms. Mooney as Dietitian member.

ODA Liaison – Pat McKnight

Pat McKnight reported that she met with Director Hayes of the Ohio Department of Jobs and Family Services about a number of nutrition issues. She also reported that Donna Skoda was appointed to the Medicare Advisory Committee, and is the first dietitian to be an appointee.

Ms. McKnight also provided the Board with copies of an NBC News transcript that was aired on Monday July 22, 2002 about finding reliable nutrition advice. Reporter Chip Reid recommended finding a licensed dietitian or nutritionist, or in states without licensure to get references, ask questions, and who is not offering miracle cures. A copy of the transcript is attached to the minutes of the meeting.

AGENDA ITEM #9 – STATUS OF BOARD ACTIONS

There are no outstanding Board actions upon which to report.

AGENDA ITEM # 10– ENFORCEMENT REPORT

Ms. Shaffer presented the enforcement report for the period of May 31, 2002 through July 26, 2002. There are currently 23 (23) cases pending. Four (4) cases were closed at the May 31, 2002 meeting and seven cases opened since that meeting.

In a comparison of FY 2002 by Quarter to Fiscal Year 2001 to date, the total number of cases continues to be lower for the fourth quarter.

Ms. Shaffer also presented the Board with a draft of the annual enforcement report. The draft includes statistics on complaint history for the past five years, categories of investigated complaints for FY 2002, a summary of actions taken or initiated by the Board for FY 2002, FY 2002 enforcement analysis, and a graph analysis of credentials used by investigated persons not meeting qualifications for licensure.

The information was reviewed and some suggestions made for including pertinent section in the Board's Annual Report. Ms. Mavko will draft the Annual Report including enforcement information and present it to the Board at the September meeting.

While reviewing enforcement information, Ms. Shaffer compiled descriptions of various alternative health activities that have been components of Board investigations during the past three years. She reviewed the theory behind the activities and how they were related to food, nutrition, or dietary supplements. A copy is attached to the minutes of this meeting.

A copy of each of the enforcement reports is attached to the minutes of the meeting.

AGENDA ITEM #11– EXECUTIVE SESSION

The Board moved into Executive Session at 2:45 p.m. with a roll call vote. In attendance were the following: Ms. Adkins, Mr. Hughes, Ms. Mooney, Ms. Shaffer, Ms. Mavko, Ms. Haddox, Ms. Grauer, and Ms. Blocksom were also invited to attend as observers. The following motion was made:

RESOLUTION #6

Lori Mooney moved and Jonathan Hughes 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	Jonathan Hughes	yes
Lori Mooney	yes		

AGENDA ITEM #12– FINDINGS, ORDERS, and ACTIONS

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

RESOLUTION #7

Lori Mooney moved and Jonathan Hughes seconded a motion to close the following complaints:

- 02OBD04** Education provided. Came into compliance. Follow up in 6 months.
- 02OBD81** Renewal issued with letter of caution and condition. Condition met.

The motion was approved with vote as follows:

Claire Adkins	yes	Lori Mooney	yes
Jonathan Hughes	yes		

RESOLUTION #8

Lori Mooney moved and Jonathan Hughes seconded a motion to close the following complaints:

- 01OBD86** Appears to meet minimum criteria for exemption per 4759.10(H)&(I) ORC. Send information letter to respondent.
- 02OBD05** Insufficient evidence.
- 02OBD61** Education provided. Came into compliance. Information letter to respondent.
- 02OBD75** Unfounded. Letter of caution regarding the appearance of practicing outside the scope of a dietitian
- 02OBD84** Records checked. Unfounded. Limited Permit issued.
- 03OBD02** Records checked. Unfounded. License renewed.
- 03OBD03** Records checked. Unfounded. Limited Permit issued.
- 03OBD04** Limited Permit issued with letter of caution. Information letters to supervisors.
- 02OBD47** Reinstated, no evidence of practice

The motion was approved with vote as follows:

Claire Adkins	yes	Lori Mooney	yes
Jonathan Hughes	yes		

AGENDA ITEM #13 – DIRECTORS REPORT – KAY MAVKO

1. Bruce Sinmaz is busy working for the Boards on various computer projects. He has developed a quick and dirty on-line verification for the Board if we wish to use it. It would be very basic, and is intended to be used just until we get the new licensure software installed and can put up a high quality site.

We tested it and found that we need to change the way some information is listed in our SRS Data. We will update the information and work on more testing. We will hopefully be able to demonstrate it to the Board at the September meeting. The Board directed Ms. Mavko to go ahead and get it up as soon as possible.

2. The Program Analyst from the U.S. Department of Health and Human Services came to see the Regulatory Boards and ask for our cooperation in reporting any licensees who have been disciplined and had their licenses suspended or revoked. Reporting of these disciplinary actions does not include disclosure of social security numbers.

The Social Security Act imposes some mandatory and some permissive exclusions for health practitioners from being a Medicare, Medicaid and Federal Healthcare Program provider for certain conditions. They include convictions, disciplinary actions, non-derivative actions, and other provisions. HHS excludes providers for minimum periods of five years, and additional increments of five years may be added for severe cases. Once excluded the provider must get his/her license back in the state in which it was suspended, or revoked in order to apply to gain back inclusion as a Medicare provider. The process to get back provider status would take a minimum of six months from the time re-application is made.

After meeting with the HHS representatives a number of the Ohio health related Board directors questioned the Attorney Generals office about the request. We have been advised that it should be considered an on-going public records request.

Mr. Hughes expressed concern about the severity of the consequences for practitioners who are excluded. He requested to see the written materials provided by HHS. Ms. Mavko said she would provide them to all OBD members for their review with the minutes of this meeting.

Ms. Mavko suggested that it would be appropriate to notify respondents who are disciplined that they will be reported to HHS. Ms. Haddox agreed that it would be appropriate to instruct the respondent issued an adjudication order or consent agreement that the report will be made to HHS.

Ms. Mavko will provide the requested information to the Board members, and add the topic to the September agenda.

3. The Board reviewed options for new letterhead again. Ms. Mavko surveyed other Boards who incorporate their Board members names onto letterhead and they reported no issues. It was decided that we will try a letterhead style that includes the names of the Board members on the letterhead page of correspondence. Since we will not be bulk printing stationary, changes would be easy to make if necessary.

4. At the last Joint Regulatory Boards meeting some concern was expressed that there is little consistency between the types of policies and procedures that exist for board operations. Additionally, when new boards and commissions begin operations, there is little direction available for determining what basic operating policies are necessary. For these and other reasons, a subcommittee agreed to meet to compile a collection of board policies and procedures that could be used as examples for best practice policies and procedures for managing a board or commission. Ms. Mavko is a participant on the committee, and has volunteered to share OBD's policies and procedures.
5. The State Building Security Review Committee under the leadership of Lt. Governor Maureen O'Conner has strongly recommended that all state agencies use the Department of Administrative Services (DAS) Disaster Recovery Plan as the standard plan.

Although OBD previously put a plan in place and it has recently been reviewed and updated, we are being asked to convert it to the DAS format. Ms. Mavko will begin this process in August after the budget, and annual reports are finished.

6. The West Virginia Board of Licensure of Dietitians is continuing business through 2006! The attempt to sunset them was unsuccessful thanks to the diligent efforts of dietitians, legislators, and staff of the agency. They were able to convince the chairman of the committee hearing the sunset proposal that the concerns expressed were not offset by the potential risk to the public if they no longer licensed dietitians.
7. As a follow-up the Board members were provided with a copy of the Architect and Landscape Architects Boards response to the Inspector General report regarding their agency.
8. The Council on Licensure, Enforcement and Regulation annual meeting will be held in September in Las Vegas. The Board has budgeted for one staff member and one Board member to attend. Ms. Mavko and Ms. Blocksom will attend.

Ms. Shaffer and Mr. Holben will attend the American Dietetic Association meeting on behalf of the Board in Philadelphia in October as budgeted.

The Board has also budgeted for one staff and one Board member to attend the Citizens Advocacy meeting, which will be held in San Francisco in November. Generally, the Director and the public member attend. Mr. Hughes is unable to go. Ms. Mavko will see if Ms. Fuller can attend with her.

AGENDA ITEM #14 – FINANCIAL REPORT

The financial report was presented for the period of May 1, 2002 through June 30, 2002 including Allocations and Appropriations, Expenditures, Revenues to date, and Comparison of Revenue and Disbursements. Expenditures as of June 30, 2002 totaled \$262,124.01. Revenue deposited through June 30, 2002 is \$271,169.48. This leaves an overall balance of plus \$9,045.47 which will remain in the 4K9 fund.

As a result of restricted spending to replace computers, hours reduced for the summer intermittent Clerk 1, and reduced travel, we were able to stay in a positive financial position. With the predicted increases in expenses for FY 2003, it is apparent that expenses will likely exceed revenue for the first time next year during FY 2003.

Without a fee increase the fiscal viability of the Board is in jeopardy.

Budget Projections for FY 2004 – 2005

Ms. Mavko attended the fiscal officers budget meeting earlier in the week. The Core budget level for OBD for FY 2004 – 2005 has been set at \$317,617 with a cap of 10%. This is a zero budget increase from FY 2003.

Due to the increases in costs including benefits, pass through costs for services, computer services, rent, postage, etc our operational costs will increase approximately 5% or \$15,000. This does not include any wage increases.

In order to continue to maintain the current level of operations, Ms. Mavko suggested requesting supplemental funds to cover re-printing of the Laws and Rules, costs for two computers and software, one new section of licensee file cabinets, and a safe . The Board approved the inclusion of these requests in the budget preparation. And as directed at the March meeting, to proceed with the necessary requests for a fee increase in order to assure that revenues collected would continue to cover expenses.

RESOLUTION #9

Lori Mooney moved and Jonathan Hughes seconded a motion to approve the financial report as submitted by the Executive Secretary, including approval of the May and June expenditures and FY 2004-2005 budget requests.

The motion was approved with vote as follows:

Claire Adkins	yes	Lori Mooney	yes
Jonathan Hughes	yes		

AGENDA ITEM #15-- UPCOMING BOARD MEETING DATES

The next regular Board meeting is scheduled for September 27, 2002.

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

September 27, 2002

November 15, 2002 **may be re-scheduled for November 8 pending confirmation by the board members absent from this meeting.**

AGENDA ITEM # 16- ADJOURNMENT

A motion was made to adjourn the meeting. There was consensus by the Board. The July 26, 2002 regular meeting of the Ohio Board of Dietetics adjourned at 4:55 p.m.

Respectfully submitted,

_____ **Date**_____

Kay Mavko
Executive Secretary, Ohio Board of Dietetics

_____ **Date**_____

Claire Adkins
Chairman, Ohio Board of Dietetics

_____ **Date**_____

Witness