

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: January 26, 2018

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 10 – Update, Discussion and Possible Action Regarding Proposed Amendments to Board Member Handbook

Background

Some Board Members recently requested the Board reconsider how per diem is calculated for meetings and board-related activities.

Specifically, concerns have been raised regarding committee meetings that typically last one or two hours (some lasting less than thirty minutes) and \$100 per diem is paid for the full day. One suggestion received was to amend the “Salary Per Diem” section to compensate members for actual time spent during the committee meetings, much like “Board-specified work” authorized by the Board President.

In addition, some members requested the Board consider time spent for enforcement case review and meeting preparation as authorized work eligible for per diem accrual.

Per the [2016 Board Member Handbook](#) (pgs. 17-18), for Committee Meetings – like Board Meetings – (1) members are compensated \$100 for any fully attended meeting, regardless of its length, and (2) unless authorized, members are not compensated for “preparation time”.

Legal and Policy Considerations

The Board’s legal counsel opined that a proposal to change the way per diems are calculated for committee meetings is strictly a policy call; in other words, nothing legally prevents the Board from defining “per diem” for Committee meetings. In one Attorney General opinion discussing a similar statute, 60 Ops.Cal.Atty.Gen. 16, (1977), the Attorney General:

- noted that courts deciding the issue outside of California have opined that “where compensation of a public official is set by statute at a certain sum per day, performance of any substantial service on a particular day entitles such official to the full amount *even though such service does not require a full day*”; but
- concluded that it was permissible to interpret the statute to *allow* for a proration where the service rendered on a given day required less than a normal workday, because “providing compensation for a public officer which fairly favors the public treasury over the benefit of the officer *is preferred*” Id.

There are legal and policy arguments for both positions:

1. Favoring Granting a Per Diem for Less Than An 8 Hour Meeting:

- Most courts looking at the issue have decided that “per diem” allows for a full day’s payment, regardless of the time occupied, where substantial official service is performed.
- Committee meetings should be treated the same as Board meetings in that substantial services are being performed.
- Committee members are not necessarily paid for meeting preparation, so even though some meetings are short, the preparation may be substantial (this may be true for the Practice and Education Committee (PEC) where members must review course submissions).
- Although a Committee meeting may not be long, attendance at one may require a member to devote an entire workday in being available. For example, travel to and from locations may leave insufficient time for any other gainful activity.

2. Favoring Moving to an Accrual Policy for Committee Meetings:

- Nothing legally prevents it, and most of the Board’s Committee meetings last only 1-2 hours, some (like PEC) may be shorter, yet it cost the Board \$100 in per diems for each member, plus travel expenses.
- Committee meetings are different than Board meetings in that more are held per year, and they are not as significant as Board meetings where action of the Board is taken.
- Public policy and optics favor saving Board money, not compensating members.

Other Board Policies

Many other Boards’ handbooks contain policies consistent with the Board’s current policy. The Board of Behavioral Sciences issued a policy that stated, “Normally per diem is paid in (8) hour increments... [for Committee meetings.]. In addition, the Board of Vocational Nursing and Psychiatric Technicians put a proposal similar to this discussion at a Board meeting, but the policy was not reflected in the adopted Handbook of the Board.

If the Board decides to change its current policy, legal counsel provided the following amendment for consideration:

“Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board Members, except for attendance at official Board or Committee Meetings and unless a substantial official service is performed by the Board Member. Attendance at gatherings, events, hearings, conferences or meetings, other than official Board or Committee Meetings, in which a substantial official service is performed, shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board Member’s attendance.
2. **For a Board Meeting**, the term “day actually spent in the discharge of official duties” shall mean such time as is expended from the commencement of a Board Meeting **or Committee Meeting** to the conclusion of that meeting. Where it is necessary for a Board Member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses. **For a Committee Meeting, the term “day actually spent in the discharge of official duties” shall mean such time as is expended from the commencement of a Committee Meeting to the conclusion of that meeting, however, fractions of an eight-hour day will be accumulated and per diem shall be claimed only for each eight hours actually spent in the discharge of official duties.**
3. Board Members will be provided with a copy of the salary per diem form submitted on their behalf.

For Board -specified work, Board Members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and committee work. That work does not include preparation time for Board or Committee Meetings. Board Members cannot claim salary per diem for time spent traveling to and from a Board or Committee Meeting.”

If the Board decides to grant per diem for enforcement case review and/or meeting preparation time, the last paragraph would also need to be amended to reflect the updated policy.

Requested Action

After discussing the information provided, please vote whether to amend the Board Member Handbook “Salary Per Diem” section.