CALIFORNIA STATE BOARD OF OPTOMETRY

ENFORCEMENT MANUAL

Board of Optometry
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Introduction

It is the mission of the Board of Optometry to assure that Californians have access to appropriate high quality eye and vision care and to implement and promote fair and just laws and regulations protecting the health and safety of consumers.

Protection of the public is the highest priority for the Board of Optometry and the Board has the power, duty and authority to investigate violations of the provisions of the Business and Professions Code, Chapter 7, Division 2, Section 3000 seq. (hereafter "The Optometry Practice Act"). The Board is also given specific authority to receive and investigate complaints and to discipline violators accordingly.

An effective and efficient Enforcement Program is essential to achieving the above-mentioned legislative mandates and the Board's mission. This manual sets forth the Board's enforcement procedures and policies as a reference for Board Members, legal counsel, and staff.

Complaint Handling Procedures

Complaint Intake

Complaints or reports of alleged violations may be sent to the Board from several sources including, but not limited to:

- Members of the public
- Patients
- City/County Officials
- Health Maintenance Organizations
- Insurance Companies
- Law Enforcement
- Licensees of the Board
- Professional Associations
- Other State & Federal Governmental Agencies, Boards or Bureaus
- Department of Consumer Affairs Investigators
- Employees of optometrists
- Board Members

Board staff reviews the complaint to determine which, if any, laws may have been violated and if the Board has jurisdiction over the potential violations.

Within ten days of receipt of the complaint, an acknowledgement letter is sent to the complainant (person who filed the complaint). The letter acknowledges receipt of the complaint, explains the complaint handling process and, if needed, requests additional information.

A summary of the complaint is also sent to the respondent (person against whom the complaint was filed). The respondent is asked to attempt to resolve the matter directly with the complainant and notify the Board of the outcome. If respondent is unable to resolve the matter, respondent is asked to explain why he/she was unable to do so, and provide his/her response to the allegations. If the respondent does not comply with the request within 2 weeks, a second request is sent to the respondent.
When appropriate, staff seeks to gain compliance of technical violations at the lowest

level possible, which can be achieved by educating the parties about the relevant sections of the Optometry Practice Act, mediation or issuing a Citation and Fine.

Complaint Mediation

If the process discussed above fails and the complaint alleges a minor and/or technical violation of the law not serious enough to warrant formal investigation and disciplinary action, staff may attempt to mediate the complaint to the satisfaction of the complainant.

If attempts to mediate fail, additional steps may be taken to obtain compliance and/or discipline the respondent, including issuing a Citation and Fine or opening a formal investigation.

Citation and Fine Program

Purpose and Authority

Sometimes, the facts of a complaint reveal that an individual did, out of ignorance or accidentally, violate section(s) of the Optometry Practice Act. If such a violation did not endanger health, safety, or welfare of the public, it may be determined that issuing a Citation and Fine to the licensee will suffice.

The Board's Citation and Fine Program is a means to impose penalties upon individuals found to be in violation of specific laws or regulations governing the practice of optometry. A Citation and Fine is considered a formal disciplinary action. It can also be the initial step in pursuing further disciplinary action. Unless contested, a citation does not involve the courts, the attorney general, district attorney or an administrative hearing.

The Citation and Fine Program increases the effectiveness of enforcement activities by providing the Board with:

- A method to address violations which would not normally warrant formal disciplinary action or criminal prosecution
- A relatively short period of time necessary for processing
- An additional record that can be used to provide a history of a licensee's compliance with the laws and regulations of Optometry

The specific laws governing the authority and operation of the citation process became effective September 16, 1999 and can be found in Sections 125.9, 3025 and 3135 of the Business and Professions (B&P) Code and Sections 1576 through 1581 of the California Code of Regulations (CCR).

The basic concepts for the citation and fine program are detailed below.

Content and Service

The Executive Officer (EO), or designee, may issue a citation. A citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both. The Board can issue a citation to a licensee for any violation of law, which would be grounds for discipline or for violation of any regulation adopted.

Each citation contains a written description of the nature and facts of each violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. A citation informs the cited individual of the right to an informal citation conference concerning the matter and the right to an administrative hearing.

The citation is served upon the individual personally, or by certified mail in accordance with the provisions of Section 11505(c) of the Government Code.

Citations for Unlicensed Persons

The EO is authorized to issue citations containing orders of abatement and fines against persons who are performing or who have performed services for which a license is required. This sanction is separate from and in addition to any other civil or criminal remedies.

Mitigating and Aggravating Factors

In assessing an administrative fine or issuing an order of abatement, consideration to the following factors is given:

- The gravity of the violation. If the violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection, a citation will not be issued.
- The good or bad faith exhibited by the cited person.
- The history of previous violations of the same or similar nature.
- Evidence that the violation was or was not willful.
- The extent to which the cited person has cooperated with the Board.
- The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation.
- Any other factors as justice may require.

Citable Offenses and Amount of Fines

The EO has the authority to assess fines for citable offenses. The total fines may not exceed $2,500 for each violation and duplicate fines for the same violation may not be imposed.

The table below lists the range of fines for each violation of the Business and Professions (B&P) Code and California Code of Regulations (CCR), as set in CCR Section 1579.

B&P Code	CCR Sections	Summary Description	Minimum & Maximum Fine
3070	1505	Notification of Address	$50. - $500.
3075	1506	Display of Certificate	$50. - $500.
3076		Temporary Practice	$50. - $500.
3098		Misuse of Title or Letters	$50. - $500.
3100		Employment of Cappers/Steerers	$50. - $500.
3125	1513,1518 & 1546	False/Assumed Name	$50. - $500.
3162	1549	Corporation Report/Renewals	$50. - $500.
	1565	Prescription Standards	$50. - $500.
	1566	Notice to Consumers	$50. - $500.
3077	1507 & 1550	Branch Offices	$501. - $1,000.
3129		Advertisement of Furnishing Services Without Cost	$501. - $1,000.
3165	1548	Shares Transfer/Ownership	$501. - $1,000.
650		Fee for Referral	$1,001. - $2,500
651	1512	False/Misleading Advertising	$1,001. - $2,500
655		Prohibited Relationships	$1,001. - $2,500
3090		Unprofessional Conduct	$1,001 .- $2,500
3096		Solicitation	$1,001. - $2,500
3102		Employment of Suspended/ Unlicensed Optometrist	$1,001. - $2,500
3103	1514	Accepting Unlawful Employment	$1,001. - $2,500
3104	1515	Improper Advertising	$1,001 .- $2,500
3127		Practice Without Certificate	$1,001. - $2,500
3128		Hold Self Out as Optometrist Without Valid Certificate	$1,001. - $2,500

Failure to Comply

If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his of her control after the exercise of reasonable diligence, they may request an extension of time in which to make the correction from the EO. Such a request must be in writing and made within the time set forth for the abatement.

If a citation or order of abatement is not contested, or if the citation is contested and the cited person does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed constitutes a violation and a failure to comply with the citation or order of abatement. Failure to comply with an order of abatement or pay an assessed fine may result in disciplinary or other appropriate judicial action being taken against the cited person.

If a fine is not paid after a citation has become final, the fine is added to the cited person's license renewal fee. A license will not be renewed without payment of the renewal fee and fine.

Contested Citations

If a cited person wishes to contest the citation, assessment of the administrative fine, or order of abatement, they must, within thirty (30) days after service of the citation, file a request for an administrative hearing regarding the acts charged in the citation.

In addition to, or instead of, requesting an administrative hearing, the cited person may, within thirty (30) days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the EO or designee.

Upon receipt of a written request for an informal citation conference, the EO or designee must, within sixty (60) days, hold an informal citation conference with the cited person. The cited person may be accompanied and represented at the informal citation conference by an attorney or other authorized representative.

If an informal citation conference is held, the request for an administrative hearing shall be deemed to be withdrawn and the EO or designee may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued, at the conclusion of the informal citation conference. If affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reason for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and his/her legal counsel, if any, within ten (10) days from the date of the informal citation conference.

If a cited person wishes to contest an affirmed or modified citation, the person shall, within thirty (30) days of notification, file in writing a request for an administrative hearing to the EO regarding the acts charged in the affirmed or modified citation.

Investigations

If the complaint is within the Board's jurisdiction and the alleged violation requires formal investigation, the complaint is referred to the Department of Consumer Affairs' Division of Investigation (DOI) for investigation. DOI investigators are sworn peace officers who conduct formal investigations on behalf of the Board. At the conclusion of an investigation, the investigator(s) may recommend disciplinary, civil, or criminal action against the licensee or that the case be closed. A case may be closed if no violation of law was found, if there is insufficient evidence to prosecute a legal action, or if the violation is not serious and the licensee agrees to comply with the law.

If the investigation results in a recommendation for discipline and the allegations are technical in nature and require subject matter expertise, the case is referred to an expert witness for review. Like the DOI investigator, the expert witness prepares a report of findings. This report is used to determine whether the case should be elevated from investigation to discipline.

Criminal violations may be referred to the local district attorney for action. Civil actions, such as injunctive relief and disciplinary actions against a licensee are referred to the Attorney General's (AG) Office for prosecution.

Other than criminal complaints, all referrals, whether civil or administrative are typically made by staff with the approval of the Executive Officer.

Criminal Actions

In some cases, the acts of a licensee may be serious enough to warrant criminal prosecution. In addition, where the offender is unlicensed but engaged in activities, which are regulated by the Board, criminal sanctions may be sought. The Board may go directly to the local District Attorney (DA) or City Attorney (CA), or the investigator may refer the matter to the local DA or CA for prosecution. Where a licensee is involved, disciplinary action may occur concurrently. In some cases, other state agencies or local law enforcement agencies may independently investigate and prosecute a licensee for violations pertaining to his/her practice.

Disciplinary action may also result after criminal prosecution. In these cases, through the Office of the AG, the Board may petition the court as part of a criminal trial to suspend or revoke a license as a condition of probation under Section 23 of the Penal Code.

Disciplinary Process

The Administrative Procedures Act (Government Code, Section 11500 through 11528) prescribes the process necessary to deny, suspend or revoke a license.

Pre-Hearing Legal Review
If the Deputy Attorney General (DAG) finds that the investigation revealed sufficient evidence to pursue administrative disciplinary action, an Accusation or Statement of Issues is drafted for the EO's signature.

- An Accusation is an action to suspend or revoke a license. In an Accusation, the Board has the burden of proving that the licensee committed the act or omission, which serves as the basis for the disciplinary action.

- A Statement of Issues is an action to deny a license. In a Statement of Issues, the respondent has the burden of proving that he/she possesses the qualifications for licensing and has been rehabilitated from the acts or crime, which serves as the basis for denial of his/her application.

The process for each action is essentially the same. In disciplinary or license denial cases, a Deputy Attorney General (DAG) acts as the Board's attorney and coordinates all necessary legal procedures. The respondent may contest the charges by filing a notice of defense, indicating the intent to defend oneself through the administrative hearing process. The DAG will then schedule a hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

Stipulated Settlements

Once an Accusation has been filed, rather than proceeding to a formal hearing, the parties may stipulate (agree) to a determination of the violations charged against the respondent and to a proposed penalty. Stipulations are negotiated and drafted by the DAG representing the Board and the respondent and his/her legal counsel. In negotiating a stipulation, the DAG is encouraged to work closely with the EO, or designee, to arrive at a stipulation that will be acceptable to the Board.

The stipulation is presented to the Board for its consideration in much the same way that a proposed decision is presented. In the case of a stipulation, the Board has more latitude to modify its term as part of the negotiation process and to look beyond the mere contents of an Accusation, though it should confine its consideration to information that is relevant to the charges at hand. While there is no time limit within which a stipulation must be considered, any undue delays should be avoided.

The Board's options when considering stipulations are:

- Accept the stipulation as presented
- Reject the stipulation as presented
- Reject the stipulation as presented and make a counter offer

Stipulations are strongly encouraged because they significantly reduce the time and money spent in prosecuting a disciplinary action. Each day of a formal hearing will cost the Board approximately $1,600.00.

Administrative Hearings

An administrative hearing is comparable to a trial in a civil or criminal court. Both parties introduce evidence (oral and documentary) and the respondent has a right to confront his or her accusers. Although the Board may sit with the ALJ and hear the case, most cases are heard by the ALJ sitting alone. Boards typically do not sit with the ALJ because it is an expensive procedure and may require several days to several weeks of each member's time.

Proposed Decision

After hearing the case and considering all the evidence presented, the ALJ renders a proposed decision that contains findings of fact, a determination of issues, and (if a violation is found), a proposed penalty. This proposed decision is submitted to the Board for its consideration and final decision.

It is critical for Board members to remember that *the only evidence upon which a decision may be based is the evidence presented at the hearing*. Evidence received outside the hearing (e.g., through telephone calls, reputation in the professional community, letters, information from staff, etc.) may not be considered. The respondent's constitutional rights to due process may be violated and the entire disciplinary action may be invalidated if evidence is received outside the hearing.

Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

If this occurs, the appropriate procedures are as follows:

- If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes that it is from a person against whom an action is pending, they should reseal the documents and send them to the Board's Executive Officer or Enforcement Manager.
- If a board member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board member would be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If Board members consider such outside information, they must disqualify themselves from discussions regarding final action on the case and voting on the case.

The Board may vote on the proposed decision by mail ballot or at a meeting in a closed session. The Board must vote upon a proposed decision within 100 days of its receipt or it becomes final as proposed by the ALJ.

The Board has three basic options when considering a proposed decision:

- Adopt the decision as written, including the proposed penalty
- Adopt the decision and reduce the penalty
- Not adopt the proposed decision and call for the transcript of the hearing

Rejecting a Proposed Decision/Nonadoption of a Decision

The Board is authorized to nonadopt a proposed decision and adopt their own decision. When this occurs, Board members must review the administrative record in order to issue a decision after nonadoption. The administrative record includes the following documents:

- accusation
- proposed decision
- order of nonadoption
- transcript of the hearing and the exhibits
- written argument of the respondent's attorney
- the written argument of the Deputy Attorney General

When rejecting a proposed decision, it is suggested that the case record be reviewed as outlined below. If board members agree with the ALJ's factual findings and legal determinations, but find the penalty inappropriate given the serious nature of the conduct, members' review of the case record will not be as intensive or comprehensive as the review process suggested below.

Accusation

Read this first. Make written notes of the code sections charged and a brief description

of what they cover. (For example: B&P §3090(b) – Unprofessional Conduct B&P §3090(c) - Gross ignorance.) These notes should be referred to frequently while reading the entire record. Carefully read the facts that are alleged to prove the code violations. The burden to prove the violations by "clear and convincing evidence to a reasonable certainty" is on the board.

Proposed Decision

Read this next. If "gross negligence," "repeated negligent acts," or "substantially-related" conduct is alleged, expert testimony will be necessary to prove the violations. Read the factual findings of the ALJ.

- Did the ALJ find the facts were proven? If not, why not?
- Was sufficient evidence introduced to prove the facts?
- Did the witnesses' testimony prove the facts?
- Did the ALJ find some witnesses more credible than others? If so, why?
- To which expert's testimony did the ALJ give the most weight? Why?
- Did the ALJ consider any evidence of mitigation introduced by the respondent?

Pay close attention to the ALJ's factual findings, as they will need to be evaluated when reading the transcript. Read the legal conclusions of the ALJ; typically called the "Determination of Issues." This is where the ALJ determines whether the facts proven constitute a violation of the code sections. Read the "Order" which contains the proposed penalty.

- Is it appropriate given the violations found?

Order of Nonadoption

This document is legally necessary. No need to pay much attention to it.

Transcript of the Hearing

Read this document next focussing on the questions below. Make frequent reference to notes taken, asking, "Is the evidence introduced proving the facts and the violations alleged?"

Sufficiency of the Evidence

- Has "clear and convincing evidence to a reasonable certainty" been introduced to prove <u>each</u> factual allegation?
- This evidence is necessary to support a finding.

Percipient Witnesses

- Have the witnesses who saw and/or heard something relevant proven the facts?
- Keep in mind the ALJ's credibility findings.
- Does the Board agree with his or her findings?
- If not, what evidence supports the Board's conclusion as to who is more credible?

Expert Witnesses

Experts are necessary to prove that certain conduct constituted a departure from the standard of care (negligence), or an extreme departure from the standard of care (gross negligence), or that certain conduct is "substantially related to the functions, qualifications, or duties of the [particular licensee]."

- Which expert's testimony was given most weight by the ALJ and why?
- Does the Board agree?
- If not, what evidence in the record supports the Board's conclusion?

Admission of Evidence

The transcript may contain many pages of the attorneys arguing over the admission of evidence. Do not waste much time reviewing this. The Board can always review this later if it continues to be an issue.

Written Argument by Respondent's Attorney after Nonadoption

The respondent's attorney's argument should be read before reading the DAG's argument. This argument will focus on the weaknesses of the Board's case and the strengths of the respondent's case.

A review of the argument from the respondent's attorney will force the Board to answer the hard questions as to whether:

- the facts were proven,
- the law was violated, and
- the penalty is appropriate.

Written Arguments by the Deputy Attorney General

Read this argument next. The DAG will contend the facts are clearly proven and they constitute a violation of the law. Since the burden of proof is on the board, ask whether the burden of proof has been met.

- Has the DAG adequately and convincingly responded to the contentions of the respondent's attorney as they legitimately relate to the burden of proving the case?

Review the Proposed Decision Again

After reviewing the accusation, the proposed decision, the transcript of the hearing, and the written argument of the attorneys, go back and again read the proposed decision. Board Members should now have a complete picture of the case. Make notes on the proposed decision where members agree and disagree with the ALJ as to the factual findings, the legal conclusions, and the proposed penalty. If Board members disagree, note the specific evidence in the record that supports that conclusion. The Board must cite "clear and convincing evidence beyond a reasonable certainty" to make a finding.

Summary and Conclusion

Hopefully, these suggestions will help the Board to systematically, intelligently, and efficiently review the administrative record in a complex or voluminous case.

During the entire review of the record, keep in mind the code sections alleged to have been violated and the facts alleged to have occurred. If this is kept as the focus, evaluation of all of the elements of the case should make the Board's decision after nonadoption much easier. Thorough review, and well-reasoned and clearly supportable findings, will also help to ensure the legal soundness of the Board's final decision.

Petition for Reconsideration

A respondent may petition the Board within 30 days of the effective date of a decision for reconsideration of the decision. In this instance, the respondent presents a written argument to the Board requesting dismissal of the charges or modification of the penalty. If the 30 day time period lapses or the Board does not act on the petition, it is deemed to be denied.

Appeal Process

A respondent has the right to appeal disciplinary action imposed by the Board by filing a writ of administrative mandamus in a Superior Court. This would be in the form of a request by the respondent for a stay or postponement of the decision invoking disciplinary action. A court has the authority to uphold or set aside a decision, or return the case to the Board with specific directions for further consideration.

A Decision rendered by a Superior Court can be further appealed to the Court of Appeals and then to the Supreme Court by either the Board or the respondent.

Petition for Reinstatement or Reduction of Penalty

When at least one year has elapsed since the effective date of a decision in a disciplinary matter, the subject of the action may petition the Board for reinstatement of a revoked license or reduction of penalty (Government Code Section 11522). The licensee or former licensee is referred to as the petitioner in these matters. The petitioner has the burden of proving that he/she is rehabilitated and should have his/her license reinstated or the penalty terminated or modified.

These petitions are always heard before the Board at a regularly scheduled meeting in public session, sitting with an ALJ. A DAG will represent the interests of the public's health, safety and welfare at such hearings.

The Board has adopted California Code of Regulations (CCR) Section 1516, which sets forth the criteria for determining whether a petitioner has shown rehabilitation. If the Board decides to deny the petition, it must state its reasons for doing so.

If a petition for reinstatement is granted after revocation, the Board may impose a period of probation with terms and conditions. If the terms and conditions of probation are violated, the license may be revoked after a hearing.

Enforcement Policies

Board's Role in Disciplinary Process

Board Members should not directly participate in complaint handling and resolution or investigations. To do so would subject the Member to disqualification in adjudication of any future disciplinary action against the licensee. Members should first learn that an action has been filed only after an Accusation has been served upon the respondent or his/her attorney. When deciding what action to take on a particular case, the Board must consider only the proposed decision, any documents introduced in evidence at the hearing and the Accusation. Consideration of any evidence outside the official record is grounds for disqualification.

It is suggested that Members not accept employment as an expert in cases that may come before the Board, as they may be called upon to adjudicate those issues. Such a situation would force that member to recuse him or herself.

In order to avoid any appearance that individual Members may unilaterally intervene with the complaint process, the following procedures should be followed:

- Any Member desiring to review specific complaints or complaint/investigative files must obtain the prior approval of the Board.
- The Board is to provide clear direction to the member regarding the scope and nature of his/her review.
- A report of the Member's general findings, excluding the particulars of the specific cases would be subsequently presented to the Board.
- The EO should maintain a list of all complaints or complaint/investigative files, which have been reviewed by the particular Member, which should include his/her identity, and the date of review.
- A member of the Board who has any substantive knowledge of the case or has a business or personal relationship with the respondent should disqualify him/herself from participation in the complaint review process in order to avoid any appearance of bias or conflict of interest.

Complaint Closure Policy

A complaint shall be closed for the following reasons:

- When there is insufficient substantiation of the violation.
- When the complaint falls within the jurisdiction of another agency and it is referred to the appropriate entity.
- When evidence of compliance is obtained in the case of a minor violation.
- When the Board adopts, amends or rejects an ALJ's decision, or adopts a stipulation.
- When the Board's interests have been satisfied in criminal court.

Disciplinary Guidelines

The disciplinary guidelines establish a range of recommended penalties, and terms and conditions of probation for specified violations. The guidelines were developed to facilitate uniformity of penalties. These guidelines provide meaningful guidance to licensees as to what can be expected for violations of law, to the DAG and staff in negotiating stipulations, and to the ALJ for consideration in preparing proposed decisions. Deviations from the guidelines are within the Board’s discretion.

Legal Opinions

In the event that a statute is unclear as to intent or meaning, the EO may request a legal interpretation from the Department of Consumer Affairs’ legal staff or the AG. An opinion from the Department's legal staff is informal but may be sufficient for the Board to take action or make decisions. Opinions from the AG are generally formal and published. The AG's opinion provides an interpretation of the law unless changed by court action or legislation.

Staff routinely interprets the Optometry Practice Act in responding to correspondence and telephone inquiries. Such interpretations can be appealed to the Board. Decisions by the Board can be appealed by recourse to the civil courts.

Expert Opinions

When necessary, staff depends upon assistance of outside optometric experts. Optometrists are expected to have the knowledge and skill ordinarily possessed, and to exercise the care and skill ordinarily used, by trained and skilled members of the optometric profession practicing their profession under similar circumstances. Experts are apprised of the confidential nature of complaints and investigations, and advised not to contact the subject optometrist. Experts may refer to standard optometric texts and references. However, they are not to discuss their review of matters with other optometrists, or otherwise solicit information from third parties. If a case goes to hearing, the expert may be called as a witness. The Board pays experts at the rate of $100.00 an hour for review and preparation of a written report and $150.00 an hour for testimony. Experts submit their bills on a witness fee claim form along with updated curriculum vitae at the same time they submit their written report.

Information contained in complaints filed with the Board or opinions of experts are privileged communications. The privilege that attaches to these communications is absolute. This absolute privilege would be available as a defense to any civil action for slander or defamation arising out of an individual's statement made to the Board in connection with a disciplinary proceeding.

Optometric experts review investigative reports, patient records, billings, etc., and are requested to provide a written report, using the following format:

- Summarize relevant history in chronological order. Prepare a concise opinion about patient history, using citations to patient records and witness statements where appropriate.

- State the standard of care for optometric procedures/tasks set forth in the patient records for each patient. State if the standard of care encompasses more than one acceptable course of conduct.

- Separately and specifically, identify each instance of a departure from the standard of care in each case by the optometrist in question for each patient. For each such instance, specify the appropriate legal category into which the conduct falls, i.e. gross ignorance, professional inefficiency, unprofessional conduct and/or sexual misconduct.

- Explain reasons for concluding the conduct is a departure from the standard of care.

- Address each case separately and express a general overview of the pattern of practice demonstrated by each case. The standard of optometric practice has been interpreted to be a statewide standard and not related to a specific local town, county or community.

Experts must:

- Be specific in expressing their views, stating where departures from the standard of care occurred, the proper course in their judgment and whether gross ignorance, professional inefficiency, unprofessional conduct and/or sexual misconduct is evident. Resist natural instincts to use common terms with reference to fellow optometrists such as "substandard care", etc., and adhere strictly to the aforementioned terms, even though they may not be terms, which are usually used.

- State whether there was injury to the patient in the event that gross ignorance and/or professional inefficiency occurred.

- Write clear, concise, and consistent opinions and based on each specific departure from the standard of care.

- Refrain from offering any recommendation about the appropriate disciplinary order for the doctor in question.