

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla, OD  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 1 – Call to Order/Roll Call and Establishment of a Quorum**

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Dr. Madhu Chawla, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Madhu Chawla, OD, President

Donna Burke, Vice President

Lillian Wang, OD, Secretary

Cyd Brandvein

Martha Garcia, CLD, SLD

Glenn Kawaguchi, OD

Debra McIntyre, OD

Rachel Michelin

Mark Morodomi, JD

Maria Salazar Sperber, JD

David Turetsky, OD

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**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 2 – Public Comment for Items Not on the Agenda**

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The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections [11125](#), [11125.7\(a\)](#)].

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**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject: Agenda Item 3 - President's Report**

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*The Board's Mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.*

## **A. Welcome and Introductions**

Introductions of Board staff and members of the public (voluntary)

## **B. 2017 Board Meeting Dates**

The quarterly board meeting dates are scheduled as follows:

- August 4, 2017 – Bay Area
- November 2\*-3, 2017 – Riverside

*\*PROPOSED date for Mobile Clinic Discussion only*

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**To:** Board Members

**Date:** April 21, 2017

**From:** Lillian Wang, O.D.  
Board Secretary

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 4 – Approval of Board Meeting Minutes

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- A. October 21, 2016
- B. November 4, 2016
- C. January 26-27, 2017
- D. February 22, 2017
- E. March 20, 2017
- F. March 23, 2017



**Board of Optometry**  
 2450 Del Paso Road, Suite 105, Sacramento, CA 95834  
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**BOARD MEETING ACTION MINUTES  
 TELECONFERENCE  
 October 21, 2016**

**DRAFT**

MAIN LOCATION: 2420 Del Paso Road, Sequoia Room, Sacramento, CA 95834

**TELECONFERENCE LOCATIONS:**

Cameron Park Community  
 Service District  
 Outside Pavilion  
 2502 Country Club Drive  
 Cameron Park, CA 95682

Sam's Club  
 Optometrist Office  
 2401 N Rose Avenue  
 Oxnard, CA 93036

Moraga Country Club  
 1600 St Andrews Drive  
 Moraga, CA 94556

University Community Park  
 Craft Room  
 1 Beech Tree Lane  
 Irvine, CA 92612

Van Nuys State Building  
 Fourth Floor, Room 410  
 6150 Van Nuys Blvd.  
 Van Nuys, CA 91411

7488 Shoreline Dr., #B-1  
 Stockton, CA 95219

350 North Broadway  
 Escondido, CA 92025

<b>Members Present</b>	<b>Staff Present</b>
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Robert Stephanopoulos, Assistant Executive Officer
Lillian Wang, O.D., Secretary	Joanne Stacy, Policy Analyst
Cyd Brandvein, Public Member	Kurt Heppler, Legal Counsel
Martha Garcia, C.L.D., S.L.D	
Glenn Kawaguchi, O.D.	
Debra McIntyre, O.D.	
Rachel Michelin, Public Member	
Mark Morodomi, Public Member	
Maria Salazar Sperber, Public Member	
David Turetsky, O.D.	

**Friday, October 21, 2016**

**3:00 p.m.**

**FULL BOARD OPEN SESSION**

**1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Dr. Madhu Chawla, O.D. called the meeting to order. Dr. Chawla called roll and a quorum was established.

**2. Public Comment for Items Not on the Agenda**

***Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]***

No action was taken on this agenda item.

**3. Discussion, Consideration, and Possible Action on Board’s 2016 Sunset Report**

Members discussed online refractions.

Professional Members, Drs. Dave Turetsky, O.D., and Debra McIntyre, and public Member, Rachel Michelin want discussions regarding all issues brought to the next full Board meeting.

Public Member, Cyd Brandvein believes the Board begins and ends very strongly regarding why we should exist as a Board.

Ms. Michelin asserted she wants “mandated” removed from the children’s vision language.

Updates to the report will be provided next Friday, to be brought to the November meeting. New issues will be added to what already exists in each section. Ms. Brandvein asserted she wants it to be a clean copy of the report.

Board Legal Counsel, Kurt Heppler suggested that the Members consider the North Carolina issues and the items in the report to determine how they square with the Board’s primary purpose of protecting the public. He advised the Member to tackle these matters at the November 4, 2016 Board meeting.

Ms. Michelin asked if changing the composition of the Board may be a key issue. Mr. Heppler questions whether a change in composition would address the NC issue.

Upon request from public member, Rachel Michelin, Mr. Heppler stated he would provide her with an abbreviated breakdown via email of what constitutes the North Carolina board and issue and what it really means for California.

No action was taken on this agenda item.

**4. Adjournment**

**Board of Optometry**

2450 Del Paso Road, Suite 105, Sacramento, CA 95834

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BOARD MEETING ACTION MINUTES  
 Friday, November 4, 2016  
 DoubleTree by Hilton Hotel LAX  
 1985 East Grand Avenue  
 El Segundo, CA 90245

**DRAFT**

<b>Members Present</b>	<b>Staff Present</b>
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Robert Stephanopoulos, Assistant Executive Officer
Lillian Wang, O.D., Secretary	Joanne Stacy, Policy Analyst
Cyd Brandvein, Public Member	Kurt Heppler, Legal Counsel
Martha Garcia, CLD, SLD	
Glenn Kawaguchi, O.D.	
Debra McIntyre, O.D.	
Rachel Michelin, Public Member	
Mark Morodomi, Public Member, J.D.	
Maria Salazar Sperber, Public Member, J.D.	<b>Guest List</b>
David Turetsky, O.D.	On file

**Friday, November 4, 2016****9:00 a.m.****FULL BOARD OPEN SESSION****1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

**2. Public Comment for Items Not on the Agenda**

*Note: The Board may not discuss or take action on any matter raised during this public comment Section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]*

**3. President's Report**

Board President, Madhu Chawla provided a report on the following:

**A. Welcome and Introduction**

Dr. Chawla welcomed everyone in attendance.

**B. 2016-2017 Board Meeting Dates and Locations**

Possible locations were discussed and Members decided to alternate between Southern and Northern California areas.

### **C. Committee and Workgroup Structures**

Dr. Chawla provided a brief history and rationale for past and current workgroup structures.

Mr. Heppler initiated and discussed with Board Members and staff what to do if it is believed a conflict of interest exists with a Committee member and their workgroup.

### **D. Board President Monthly Updates**

Dr. Chawla announced that monthly updates will be sent to all Members subsequent to this meeting.

Dr. Chawla reported that she and Vice President Donna Burke were scheduled to attend the DCA Annual Distributing Cost Meeting. The meeting was rescheduled and neither Dr. Chawla nor Ms. Burke could attend. In lieu of this meeting, the DCA Budget Office provided a presentation for Ms. Burke.

### **E. DCA's Annual Distributed Costs Meeting**

Having received a presentation from the Department of Consumer Affairs Budget Office, Ms. Burke reported on this matter. Ms. Burke assured Members that the state is doing its due diligence to make certain that all spending allocations are needed and not exceeded. She briefly described the process.

### **F. DCA Internal Board Audit**

Executive Officer, Jessica Siefertman provided an overview of the audit process. Ms. Siefertman wishes to have any issues that are addressed, added to the Board's Strategic Plan in January.

### **G. Teleconference Procedures and Policies**

Ms. Siefertman reported that until the Board is able to obtain Skype, staff will begin using WebEx. She believes this system will significantly help with teleconference meetings.

No action was taken on this agenda item.

## **4. Update, Discussion and Possible Action on Concerns Raised Related to the National Board of Examiners in Optometry (NBEO) Examination and National Board Examinations (Parts I, II, and III); NBEO to Participate Via Telephone**

Dr. William Rafferty, O.D. and NBEO's Chief Executive Officer, Dr. Jack Terry, O.D. participated in open dialogue with the Board and answered Member's questions.

Discussion ensued regarding the accuracy and methodology of NBEO's forensic system of detecting exam results considered untrustworthy. Members are concerned about the reliability of the number of untrustworthy results detected. Members are disappointed in the lack of adequate communication from the NBEO. Members are concerned about repeated glitches and malfunctions of the electronic exam platform while applicants are testing.



Madhu Chawla moved to create a workgroup to address any and all concerns with the NBEQ. Cyd Brandvein seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**5. Presentation by the Association of Regulatory Boards of Optometry (ARBO) on the Optometric Education (OE) Tracker System**

Program Manager for ARBO, Sierra Rice provided a presentation of the OE Tracker System.

No action was taken on this agenda item.

**6. Update, Discussion and Possible Action Regarding OE Tracker Requirements and Potential Amendments to CCR § 1536 Continuing Education; Purpose and Requirements**

Rachel Michelin moved to direct staff to explore multiple options that would allow the State Board of Optometry to better audit and collect CE obtained by optometrists prior to the renewal of their license including what other boards are currently utilizing for the same purpose and process; and direct staff to explore ARBO, BreEZE and other potential electronic systems for collecting and auditing the CE coursework including the costs involved in implementing such a system for the Board. Cyd Brandvein seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**7. Approval of Board Meeting Minutes**

**A. August 26, 2016**

Rachel Michelin moved to approve the August 26, 2016 Board Meeting Minutes. Debra McIntyre seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**8. Update from the Department of Consumer Affairs, Which Include Updates Pertaining to the Department’s Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters**

Ms. Siefertman provided an update for the Board.

No action was taken on this agenda item.

**9. Executive Officer’s Report**

Assistant Executive Officer, Robert Stephanopoulos

**A. BreEZE**

Assistant Executive Officer, Robert Stephanopoulos reported on BreEZE.

**B. Budget**

Ms. Siefertman provided the Budget details for the Board.

**C. Personnel**

Mr. Stephanopoulos reported on personnel updates.

**D. Examination and Licensing Programs**

Ms. Siefertman reported on licensing matters.

**E. Enforcement Program**

Ms. Siefertman reported on the Board’s enforcement program.

No action was taken on this agenda item.

**10. Discussion and Possible Action on Board’s 2016 Sunset Report**

Members discussed and decided upon language changes and additions for each section of the report.

Members discussed and decided upon the format for displaying the specific comments or the summary of the comments in the Customer Satisfaction Survey results.

Members took informal votes on three questions;

**(1) how the Members would like the “New Issues” laid out in the Sunset Report? For question (1), Members agreed to authorize the Executive Officer to rework and integrate the language to make each section/topic consistent. At that point the Executive Officer has the option to call a meeting before she takes action.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**(2) whether to document the Customer Satisfaction Survey results as specific results or as a summary. For question (2) the informal votes were 5-specific and 6-summary.**

Member	Specific	Summary	Abstain	Absent	Recusal
Dr. Chawla		X			
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke		X			
Ms. Garcia	X				
Dr. Kawaguchi		X			
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber		X			
Dr. Turetsky		X			
Dr. Wang		X			

(3) Options are to remove Board the composition or work with legal staff to make the language vague. For question (3) the informal votes were 5-remove; 5-vague; 1-abstention.

Member	Remove	Vague	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein		X			
Ms. Michelin		X			
Ms. Burke	X				
Ms. Garcia		X			
Dr. Kawaguchi		X			
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber			X		
Dr. Turetsky		X			
Dr. Wang	X				

### 11. Update on RDO Advisory Committee

Dr. Chawla provided an update on the RDO Advisory Committee.

No action was taken on this agenda item.

### 12. Update on 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry

Policy Analyst, Joanne Stacy provided a legislative update on the following bills:

- A. **SB 482 (Lara) Controlled Substances: CURES Database**
- B. **SB 622 (Hernandez): Optometry**
- C. **SB 1039 (Hill) Professions and Vocations**

No action was taken on this agenda item.

### 13. Update, Discussion and Possible Action on Recommendations Regarding Children’s Vision Legislative Proposal (Formerly SB 402)

Ms. Stacy provided an update for the Board.

Professional Member, Glenn Kawaguchi, O.D. led the workgroup discussion.

**Cyd Brandvein moved for the Board to sponsor the legislative concept and direction of the children’s vision workgroup and request that workgroup Members together with staff to move forward with introducing the legislation in the 2017 legislative session. Madhu Chawla seconded. The Board voted unanimously (11- 0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				

<b>Ms. Burke</b>	X				
<b>Ms. Garcia</b>	X				
<b>Dr. Kawaguchi</b>	X				
<b>Dr. McIntyre</b>	X				
<b>Mr. Morodomi</b>	X				
<b>Ms. Sperber</b>	X				
<b>Dr. Turetsky</b>	X				
<b>Dr. Wang</b>	X				

**14. Update, Discussion and Possible Action on Recommendations Regarding Mobile Clinics and Potential Legislative Proposal**

Ms. Stacy provided an overview of this agenda item.

Ms. Michelin expressed a deep concern regarding the non-existent clarification of what a mobile clinic is. She believes the Board is not currently in a position to make any legislative proposals on this issue. Her recommendation is to begin with a full meeting discussion, and in consideration of the many interested parties that would like to be a part of the discussion. Members agreed.

Professional Member, Dr. Glenn Kawaguchi stated that although he understands the grayness around mobile clinics the Board's core role is consumer protection now. He asked if there is a possibility of focusing more specifically on current law and current potential enforcement action for which the Board should be paying close attention to.

Ms. Michelin responded that the Board will look better to potential authors having fully vetted this issue.

Professional Member, Ms. Martha Garcia, RDO noted from her perspective that without a clear definition of what a mobile clinic is, how can any enforcement action ensue? Her opinion is that a discussion regarding what constitutes a mobile clinic, is a good place to start.

Mr. Heppler added his opinion that the core building block of what arena defines a mobile clinic is the critical starting point from which following steps can be considered.

Dr. Kawaguchi clarified: he wants to make certain that public perception is not that the Board is not interested in regulating mobile clinics and providing consumer protection.

Members continued to discuss this matter and agree that defining mobile clinics is step one.

Ms. Siefertman explained for the Board the two requirements that currently limit mobile clinics which involve Statement of Licensure permits and Branch Office License permits. The two license types are registered to a specific location; the question then becomes would there be a type of exemption for mobile clinic providers to not have to register each location that they go to because the Board would not want the patient's homes registered and displayed on the Board's website.

Members decided to have a stand-alone Board meeting for this specific agenda item, and to include this matter in the Board's Strategic Plan.

No action was taken on this agenda item.

**15. Review, Consideration and Possible Action on Consumer Protection Committee Recommendations Regarding the Scope of Practice Educational Outreach**

Ms. Michelin, Chair of the Consumer Protection Committee provided an explanation of a two-part form-letter the Committee members created. The letter informs optometrists of their scope of practice, and what their certifications will allow. The Committee would like to have it mailed out to all California optometrist by the end of the year.

**Madhu Chawla moved to direct staff to move forward and mail the letter to all optometrists in the state. Lillian Wang seconded.**

Members made comments and modification suggestions regarding the letter and accepted a friendly amendment to the previous motion.

**Madhu Chawla moved to allow the Executive Officer and Counsel to review and modify the letter as appropriate. Cyd Brandvein seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**16. Update on Rulemaking Calendar and Possible Action Regarding Regulations Impacting the Practice of Optometry**

Ms. Stacy provided an update on the following regulations:

- A. Amendment to California Code of Regulations (CCR) § 1582 Unprofessional Conduct and Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval**
- B. Amendment to CCR § 1399.260 RDO Fees; § 1399.261 Contact Lens Dispenser Fees § 1399.263 Spectacle Lens Dispenser Fees**

**Cyd Brandvein moved to withdraw the rulemaking packet. Rachel Michelin seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				

Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

- C. Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1. Rev. 7-09, Form OLA-2m Rev. 11/07, and Form LBC-4, rev. 2/07
- D. Amendments to CCR § 1536 Continuing Optometric Education; Purpose and Requirements
- E. Proposed Revision to CCR § 1514.1 Co-Location Reporting Requirement
- F. Amendment to CCR § 1502 Delegation of Functions
- G. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates
- H. Amendment to CCR § 1506 Certificates – Posting
- I. Amendment to CCR § 1523.5 Abandonment of Applications
- J. Proposed Addition to CCR § 1503 Relating to Accreditation of Schools and Colleges of Optometry

Rachel Michelin moved to prepare regulations C, E, F, G, H, I, J and to accept the tweaks made to E. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**17. Future Agenda Items**

Items of discussion for future agenda items are pre-accusation settlement of cases and ARBOs OE Tracker system.

**FULL BOARD CLOSED SESSION**

**18. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters**

**FULL BOARD OPEN SESSION**

**19. Adjournment**

DRAFT





QUARTERLY BOARD MEETING  
ACTION MINUTES

**DRAFT**

January 26, 2017  
STRATEGIC PLANNING SESSION ONLY  
Department of Consumer Affairs  
HQ2 – Ruby Room  
1747 North Market Boulevard  
Sacramento, CA 95834

and

January 27, 2017  
Department of Consumer Affairs  
HQ1 – Hearing Room  
1625 North Market Boulevard  
Sacramento, CA 95834

Members Present	Staff Present
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Rob Stephanopoulos, Assistant Executive Officer
Lillian Wang, O.D., Secretary	Joanne Stacy, Policy Analyst
Cyd Brandvein, Public Member	Charles McGirt, Lead Licensing Analyst
Martha Garcia, CLD, SLD	Cheree Kimball, Enforcement Lead
Glenn Kawaguchi, O.D.	Brad Garding, Enforcement Technician
Debra McIntyre, O.D.	Kurt Heppler, Supervising Legal Counsel
Rachel Michelin, Public Member	
Mark Morodomi, JD, Public Member	
Maria Salazar Sperber, JD, Public Member	<b>Guest List</b>
David Turetsky, O.D.	On File

**January 26, 2017**

**8:30 a.m.**

**FULL BOARD OPEN SESSION**

**1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

**2. Public Comment for Items Not on the Agenda**

***Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]***

No action was taken on this agenda item.

**3. Strategic Planning Session – Discussion and Consideration of Strategic Plan**

Board members had discussions of the following topics to help identify new strategic goals and objectives for the upcoming strategic planning period:

- Examinations
- Laws and regulations
- Enforcement
- Outreach
- Organizational effectiveness

Next the Department of Consumer Affairs (DCA) SOLID Planning Solutions team will provide a typed copy to the Executive Officer and each Board Member for fine tuning. During the April 2017 meeting the Board will vote to approve the strategic plan.

No action was taken on this agenda item.

**4. Recess**

**January 27, 2017**

**9:00 a.m.**

**FULL BOARD OPEN SESSION**

**5. Call to Order/Roll and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

**6. Public Comment for Items Not on the Agenda**

***Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Section 11125, 11125.7(a)]***

Public Member, Cyd Brandvein commented that committee assignments were given out at the last meeting but were not given out; therefore, they are not on record; not reflected in the minutes. Board President, Madhu Chawla assured they will be placed on the next agenda.

**7. President’s Report**

**A. Welcome and Introductions**

Executive Officer, Jessica Siefertman introduced herself and invited staff to introduce themselves.

**B. 2017 Board Meeting Dates and Locations**

No action was taken on this agenda item.

**8. Approval of Board Meeting Minutes**

**A. September 23, 2016**

**B. October 21, 2016**

**C. November 4, 2016**

**D. November 21, 2016**

The October 21, 2016 and November 4, 2016 Board Meeting Minutes will be reviewed for errors/omissions and brought back to the next meeting.

**Rachel Michelin moved to post all audible meetings to the Board’s website in addition to what is already posted. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				

Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Rachel Michelin moved to approve the September 23, 2016 Board Meeting Minutes. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Rachel Michelin moved to approve the November 21, 2016 Board Meeting Minutes. Lillian Wang seconded. The Board voted 9-Aye; 2-Abstention and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke			X		
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi			X		
Dr. Turetsky	X				
Dr. Wang	X				

**9. Update from the Department of Consumer Affairs, Which May Include Updates Pertaining to the Department’s Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters**

Mr. Jon Burke, Manager of the Department of Consumer Affairs, Board & Bureau Relations team presented an update of activities; some of which are as follows:

- On January 10, 2017 Governor Brown released his proposed 2017/2018 budget.
- On January 24, 2017 Governor Brown delivered the State of the State Address.
- On January 13, 2017 Governor Brown appointed Ms. Jolie Onodera as Deputy Secretary of Legislation at the California Business, Consumer Services and Housing Agency.
- Several Department of Consumer Affairs Boards and Bureaus are scheduled for Sunset Review Hearing in February and March. The Board of Optometry's Sunset Review Hearing is scheduled for February 27, 2017.
- Since the launch of BreEZe in late January 2016, 49% of optometrist's renewals have been submitted via the online portal. 81% of optometrist's exam applications have come in online. Those who have chosen to submit their applications online have seen a dramatically quicker turn-around time. Of the renewals submitted online, 88% were processed in one day or less. Comparatively, those who mail in their applications typically have them processed within one to two weeks providing the application is complete.
- The Office of Information Services (OIS) maintenance and operations team is managing the effort to move the Registered Dispensing Opticians (RDO) program from the Medical Board into the Board of Optometry's BreEZe domain.
- Board Members are required to complete orientation training within one year of appointment and reappointment to the Board. Also required are the online Ethics training, Sexual Harassment Prevention training, and Defensive Driving training. 2017 is a mandatory Sexual Harassment Prevention training year for the Department of Consumer Affairs (DCA). All employees and Board Members are required to complete this training even if it was completed last year.
- DCAs Annual Report is now available on DCA's website.

Public Member, Mark Morodomi requested that the Governor's budget be sent to the Board Members.

## 10. Executive Officer's Report

Ms. Siefertman reported on the following:

### A. BreEZe

Ms. Siefertman announced a shout out to staff members, Kellie Flores and Jessica Swan for their amazing work with the RDO program.

### B. Budget

Budget Manager, Marina O'Connor provided a quick overview of the Board's budget process, fund condition and expenditure reports. The Board's budget is in a healthy status.

### C. Personnel

Ms. Siefertman reported on Personnel changes. Additionally, she announced that Policy Analyst, Joanne Stacy has been recruited to L.A. Care Health Plan and will be leaving the Board.

### D. Examination and Licensing Programs

Lead Licensing Analyst, Charles McGirt provided an update on Subject Matter Experts and release/receipt of NBEO scores and bottlenecks in the process; Also, bottlenecks in the process of receiving applicant's transcripts.

### **E. Enforcement Program**

Cheree Kimball reported on the Enforcement Unit. The Enforcement Unit is fully staffed for the first time in years. Staff is working with the Attorney General's Office on streamlining the case load process.

Ms. Kimball gave a shout-out to Enforcement Technician, Matt McKinney who came to the Board in November and has closed 96 cases as of the end of December. Mr. McKinney will be picking up the CE Audit Program in the coming months. Ms. Kimball gave a shout-out to Ms. Flores who is working on getting the RDO program over to Enforcement in BreEZe. Ms. Kimball gave a shout-out to Mr. Garding who has been doing the clerical and support work for the Enforcement program. His support has been essential to keeping things moving in during the last few years.

### **11. Bagley Keene-Open Meetings Act, Ethics and Conflict of Interest Training Summary by Legal Counsel**

Supervising Legal Counsel, Kurt Heppler provided an explanation of the Bagley Keene-Open Meetings Act for Members and the public. His explanation is summarized as follows:

- The public has the right to attend and record the open session period of Board meetings (without being disruptive).
- The public has the right to comment on Board actions.
- The public has the right to copy and inspect records.
- A historical record of meetings must be kept. Webcasts of meetings are being added to the internet with increasing frequency.
- If an item is not on the agenda, the Board cannot discuss nor take action on it.
- Notice; must be posted at least 10 days in advance of the meeting date with the time and location of the meeting. Committee and Sub-Committee meetings must be noticed and open to the public. The exception is an Advisory Committee with less than three persons without any delegated authority.
- Every vote needs to be recorded.
- Locations for teleconference meetings must be specified, and these locations must be accessible to the public and ADA-compliant.
- Business is conducted in open session unless close session is authorized by law; reasons for closed session are: Matters under the Administrative Procedures Act, examinations, and Executive Office Personnel matters; not because an item is controversial or embarrassing.
- Board decisions are made at Board meetings. The Open Meetings Act (OMA) permits contacts or communications between a member of a state body and one other person.
- Board Members are required to complete a conflict of interest questionnaire annually.

There were no comments from the public.

### **12. Update, Discussion and Possible Action on Recommendations Regarding California Laws and Regulations Examination Frequency**

Administration Chief for the Office of Professional Examination Services (OPES), Heidi Lincer provided an overview of a memo that was provided to the Members.

At the Board's request, OPES analyzed the possibility of increasing the number of examinations administered per year in order to reduce the amount of time required before a candidate who failed can retake the examination.

In light of the current pass rate and the added cost of increasing the number of examinations per year, OPES believes it is not feasible at this time to increase the number of examinations offered per year. The cost outweighs the benefits.

Should the Board decide to increase the number of examination help per year, the change would take time to build up the question bank to a level that could support the proposed frequency. In order to produce an examination that maintains adequate testing standard and is legally defensible, the Board would need to increase Subject Matter Expert (SME) attendance to 6 to 8 SMEs for each workshop on a consistent basis. If SME attendance improves and the question bank is adequately increased, then the additional forms per year could be developed. This process would take a minimum of one year.

**Donna Burke moved to accept OPES recommendation and continue to monitor. Glenn Kawaguchi seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**13. Update in 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry**

Ms. Stacy provided legislative updates on the following bills:

**A. SB 482 (Lara) Controlled Substances: CURES Database**

This bill will require some regulatory change from the Board

**B. SB 622 (Hernandez): Optometry**

This bill (Scope bill) will be showing up again

**14. Updates, Discussion, and Possible Action on Legislative Proposal**

**A. Children’s Vision; Education Code § 49455**

Ms. Stacy reported that an author has been found for this bill. Assemblymember, Autumn Burke has agreed to be the author.

Ms. Siefertman reported that should the Board decide to move forward with the remaining proposals, they can be requested to become part of the Sunset Bill if they are non-controversial which most of them are. The Board can also attempt to put them into an omnibus bill.

**B. Inspection Authority; Business and Professions Code (BPC) § 3030**

Ms. Sieferman clarified that this bill is for clean-up language to correct ambiguity.

Board Members and legal counsel discussed and questioned the language of BPC § 3030 regarding establishing the dividing line between when optometry and ophthalmology is being practiced and what the language is really saying.

**Mark Morodomi moved to accept the legislative proposal and delegate authority to the E.O. and Legal Counsel to streamline as long as the intent of the proposal is solved. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**C. Unlicensed Practice; BPC § 3040**

Ms. Sieferman clarified that this is merely a technical request regarding clean-up language.

**Lillian Wang moved to support a legislative proposal to amend BPC 3040 to the language recommended by staff. Donna Burke seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**D. NPDB Continuous Query; Eligibility for Licensure; BPC § 3046**

Ms. Sieferman explained that staff is currently enrolling all of its out-of-state applicants into the National Practitioners Databank (NPDB) to determine if applicants have been disciplined in any state for which they hold a license. The cost is \$2 per year per licensee. The cost may be added to the license renewal fee.

**Donna Burke moved to support a legislative proposal to amend existing statute in order to authorize the Board to enroll all applicants and licensees into the National Practitioner Databank Continuous Query system. David Turetsky seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**E. License Barriers for Out-of-State Licensed Optometrists; BPC § 3057**

Ms. Sieferman reported that this legislation is an attempt to continuously remove unnecessary barriers for licensure while still maintaining consumer protection. One issue for consideration is that any optometrist who has ever been suspended or revoked in another state they are not eligible to become licensed in California. Ms. Sieferman does not believe that was the intent of the law. The concern is regarding the Board's rehabilitation criteria. A person may have been disciplined in another state and subsequently become completely rehabilitated. However, the way the language is currently written, it provides no discretion to the Board to offer that person a license.

Dr. Kawaguchi wishes to ensure that the Board has the NPDB up prior to language changes being made. Ms. Sieferman ensured that although the legislative process may go forward, a delay in the effective date can be made to ensure that timing provides for the NPDB to be complete before the changes are implemented.

**Donna Burke moved to support a legislative proposal to strike BPC § 3057(a)(6) with a delayed implementation and stipulation that BPC 3046 is implemented first. Lillian Wang seconded. The Board voted (6-Aye, 5-No) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein		X			
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				



<b>Dr. McIntyre</b>		X			
<b>Mr. Morodomi</b>		X			
<b>Ms. Sperber</b>	X				
<b>Dr. Kawaguchi</b>		X			
<b>Dr. Turetsky</b>		X			
<b>Dr. Wang</b>	X				

DRAFT

**F. Foreign Graduates Pathways; Eligibility for Examinations; BPC § 3057.5**

Ms. Siefertman and the Foreign Graduate Workgroup, Drs. Chawla and Wang provided updates. The Board approved sponsoring legislation to create a pathway for licensure to foreign graduates in November 2014. However, SB 496 died upon receiving strong opposition from the Southern California College of Optometry (SCCO) and the California Optometric Association (COA). The concern is because there are very different levels of education and skills training amongst countries.

There currently exists a pathway for foreign graduates through an Advanced Standing Program which customizes a curriculum based on the foreign graduate’s transcripts. Three advanced standing programs exist in New England, New York, and Pennsylvania, however there are no such programs on the West Coast. California accredited schools believe there is not large enough of a demand for the program. Nevertheless, Western University College of Optometry is interested in administering such a program with input from SCCO and UC Berkeley.

**Glenn Kawaguchi moved to direct staff to evaluate the accreditation process as it relates to Advanced Standing Programs implementation and report back to the Board. Debra McIntyre seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**Lillian Wang moved to support a legislative proposal to repeal BPC 3057.5. Madhu Chawla seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				

Dr. Turetsky	X				
Dr. Wang	X				

**G. RDO Program’s Registration Expiration and Renewal Authority; BPC § 2420 and 2423**

Ms. Sieferman explained that this proposal is purely a technical change to move the renewal section to the applicable Registered Dispensing Optician (RDO) statutes.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Donna Burke moved to support a legislative proposal to move the renewal section to the applicable RDO statutes. Madhu Chawla seconded. The Board voted unanimously (11-0) and the motion passed.

**15. Update on Rulemaking Calendar and Possible Action Regarding Regulations Impacting the Practice of Optometry**

Ms. Stacy provided an update on the following regulations:

**A. Amendment to California Code of Regulations (CCR) § 1582 Unprofessional Conduct And Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval**

This regulation was approved and will go into effect on April 1, 2017.

**B. Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1, Rev. 7-09, Form OLA-2, Rev. 11/07, and Form LBC-4, rev. 2/07**

Ms. Stacy hopes to have this one prepared to go to DCA before she leaves.

**C. Amendments to CCR § 1536 Continuing Optometric Education; Purpose and Requirements**

This regulation was approved by the Office of Administrative Law and went into effect on January 1, 2017.

**D. Amendment to CCR § 1514.1 Co-Location Reporting Requirement**

Staff is attempting to prepare and send as quickly as possible.

**E. Amendment to CCR § 1502 Delegation of Functions**

Status is the same as D.

**F. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates**

Ms. Siefertman explained that this regulation was brought before the Board in February. If the Board wished to go forward with this, staff wanted to streamline the process and put the application in regulation. However, with the Board's decision to repeal BPC 3057.5 Members might want to hold off for now and see that happens with that legislation.

**G. Amendment to CCR § 1506 Certificates – Posting**

Ms. Stacy is working on this currently and hopes to have it to DCA before she leaves.

**H. Amendment to CCR § 1523.5 Abandonment of Applications**

The status of this regulation is the same as G.

**I. Addition to CCR § 1503 Relating to Accreditation of Schools and Colleges of Optometry**

The status of this regulation is also the same as G.

**16. Update, Discussion, and Possible Action on Implementing SB 482 and SB 1478; Proposed Amendments to California Code of Regulations (CCR) § 1525 Relating to License Renewals**

Ms. Stacy reported that SB 482 includes a requirement that the licensing agency determine who holds a DEA number and if they are using CURES. Staff has determined the most efficient method for accomplishing this requirement is to ask licensees during the time of renewal to provide a DEA number if applicable or otherwise to mark "no."

Staff recommends moving this piece into B of Item 15. Doing so will help this legislation go through the process more efficiently.

**Cyd Brandvein moved to join this package with the Agenda Item 15 (B) package then commence the rulemaking process with the first step being to send the necessary documents to the DCA and the State of California Business Consumer Services and Housing Agency for approval; then with that approval commence notice of the regulations. Lillian Wang seconded. The Board voted unanimously (17-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				

Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**17. Update, Discussion, and Possible Action on Implementing AB 1359; Proposed Amendments to CCR § 1568 Relating to Therapeutic Pharmaceutical Agents Certification Requirements**

Ms. Stacy explained that when the therapeutic pharmaceutical agents (TPA) certification was created it was split into three time periods with certain requirements according to when optometrists graduated. The new bill eliminates one of the time periods making it simply before or after January 1, 1996. It also eliminates the classroom hours from the requirements as those hours are not readily offered anymore. This bill brings the regulations up to date with the statutes in place. Ms. Stacy added that the TPA Certification application will need revision to reflect the changes.

**Cyd Brandvein moved to delegate authority to the Executive Officer to initiate the rulemaking process and circulate the language for the required time period. Glenn Kawaguchi seconded. The Board voted unanimously (17-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

**18. Future Agenda Items**

Ms. Burke requested that the offer from OPES to provide a presentation be placed on a future agenda.

During the November Board meeting, Members decided to hold a stand-alone meeting specific to mobile clinics. Ms. Michelin would like to see this placed on a future agenda item.

Dr. Turetsky requested and Ms. Siefertman assured that unlicensed optometric activity falling under online refractions will be placed on the agenda for the upcoming Public Relations Committee.

Ms. Brandvein would like updates from Committee meetings as well as the scheduled dates of upcoming Committee meetings to be added to the President's Report.

**FULL BOARD CLOSED SESSION**

19. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters
20. Pursuant to Government Code Section 11126(a)(a), the Board Will Meet in Closed Session to Conduct an Evaluation of the Executive Officer

**FULL BOARD OPEN SESSION**

21. Adjournment

DRAFT



SPECIAL BOARD MEETING  
 ACTION MINUTES  
 February 22, 2017  
 2420 Del Paso Road  
 Sequoia Room  
 Sacramento, CA 95834

**DRAFT**

and at the following teleconference locations:

4700 Natick Avenue  
 Sherman Oaks, CA 91403

Nugget Market – 2<sup>nd</sup> Floor  
 4500 Post Street  
 El Dorado Hills, CA 95762

and

Moraga Country Club  
 1600 St. Andrews Drive  
 Moraga, CA 94556

Las Lomas Community Park  
 Craft Room  
 10 Federation Way7  
 Irvine, CA 92603

Obexer's General Store Café  
 5300 West Lake Blvd.  
 Homewood, CA 96141

<b>Members Present</b>	<b>Staff Present</b>
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Kurt Heppler, Supervising Legal Counsel
Lillian Wang, O.D., Secretary	
Cyd Brandvein, Public Member	
Martha Garcia, CLD, SLD	
Rachel Michelin, Public Member	
Maria Salazar Sperber, JD, Public Member	
David Turetsky, O.D.	
<b>Excused Absences</b>	
Glenn Kawaguchi, O.D.	
Debra McIntyre, O.D.	
Mark Morodomi, JD, Public Member	<b>Guest List</b>
	On File

**February 22, 2017**  
**10:00 a.m.**

**FULL BOARD OPEN SESSION**

**1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

**2. Finding of Necessity for Special Meeting (Gov. Code, § 11125.4)**

Legal Counselor, Kurt Heppler stated his belief that “given the Board’s Imminent Sunset date and some of the difficulties obtaining product from the joint committee, complying with the 10 day notice requirement would place a substantial hardship on this body. The Board would not have an opportunity to prepare and approve its responses for the Sunset Committee Hearing within the allocated time frame.”

**Lillian Wang moved that the 10-day notice requirement would impose a hardship on the Board as they would not be able to meet to prepare an appropriate response to the release of the Sunset Issue Report and resulting legislation prior to the Hearing date of February 27, 2017. Donna Burke seconded. The Board voted unanimously (8-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**3. Public Comment for Items Not on the Agenda**

There were no comments.

**4. Discussion of Proposed Responses to Sunset Issues Report and Resulting Legislation; Possible Action**

Executive Officer, Jessica Siefertman explained that “staff has not yet received a public version of the report from the Committee. They did provide the four issues the Board is being asked to testify to. A proposed response has been prepared based on prior conversations the Board has had. Staff asks the Members to provide any input considered necessary for Dr. Chawla and Ms. Burke to testify to.”

Dr. Chawla opened the floor to discussion and possible action on the following:

**ISSUE # 2: *Should the RDO and Optometry funds be merged? Should the RDO program be merged into the Optometry Practice Act?***

Dr. Chawla stated that from her perspective the main objective is to make it known that the Board is discussing this. “It is on the Board’s radar.” “The Board is discussing what it perceives as the pros and the cons; it is most important to make certain the RDO program is sustaining itself, and that the Board can monitor the program.”

Ms. Burke commented that “the budget team will be a valuable resource to conduct any research the Board may need going forward.



Dr. Lillian Wang commented that “her concern is that both the RDO and optometry programs are self-sustaining, and that the optometry program is not funding the RDO program.”

Dr. Chawla provided a background on the Optometry Practice Act. “The Optometry Practice Act basically outlines what the practice of optometry is in this state.” The Act can be very difficult to interpret at times. Dr. Chawla expressed her view that the language needs to be cleaned up first. Once the language is made easier to interpret, she sees does not see a problem in attempting to merge the RDO problem into the Act.

Her second concern is that the Board knows “what some of the confusion was exactly; and what the scope of practice is for some of these assistants” Some assistants interpreted the Act incorrectly and were operating outside of their scope of practice. This presents a danger to the public. She reiterated that she does not have concerns about the merge in the future however there is a lot of work that must be done before this occurs.

Dr. David Turetsky agreed that “there needs to be better delineation of portions of the Act, especially as it relates to new and emerging technologies; and maybe incorporate the two professions into one. There needs to be a clear definition of what an optometrist can do versus what a spectacle or contact lens dispenser can do.”

The Members all agreed. There was no public comment.

**Donna Burke moved to authorize the Executive Officer to adopt the language that is specified in the recommendation, and work with the Sunset Committee to incorporate The language that Dr. Chawla offered regarding outlining the optometry practice. David Turetsky seconded. The Board voted unanimously (8-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**ISSUE # 10: *What is the status of the Board's inspection procedures?***

Dr. Turetsky stated that “some entities are skirting around the law. For example, an optical company will contract with an ophthalmology corporation to employ an optometrist; so then theoretically it is a medical office regardless of the fact that no physician has stepped foot in that practice.” Dr. Turetsky asked if the Board would have inspection authority in this case or if it would fall to the Medical Board. Mr. Heppler and Ms. Sieferman clarified that any place where optometry is being practiced, the Board has inspection authority.

Public Member, Cyd Brandvein would like to “have the Legislation and Regulation Committee examine ways that the Board may strengthen some of its rules to ensure that the Board has appropriate inspection authority over all areas and all locations where optometry is being practiced, including the RDO program.”

Donna Burke moved to approve the language that has been recommended and authorize the Executive Officer to work with the Sunset Committee to incorporate the additional language. Martha Garcia seconded. The Board voted unanimously (8-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**ISSUE #13: RDO Program. What is the status of the RDO Committee?**

There were no comments regarding this issue.

Donna Burked moved to accept the language that staff has provided the Sunset Committee to discuss at the Sunset Hearing. Lillian Wang seconded. The Board voted unanimously (8-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

**ISSUE #15: New and Emerging Technologies.**

Registered Dispensing Optician (RDO) Martha Garcia expressed concern over the “health aspect of new technologies. With regards to online eye examinations, who is responsible for filling those prescriptions?” Online refractions are too easy to obtain enabling consumers to avoid or overlook their eye/vision health needs. Ms. Garcia believes “the Board needs to have much more discussion and really begin enforce protection for the consumer; reach out to the consumer with information regarding what these services can and cannot provide.”

Ms. Burke suggested adding that “any and all emerging technologies will be investigated by the Board to ensure that the standard of care is met and that statute and regulations are adhered to.”

Ms. Wang pointed out that the new technologies are mostly utilized by younger people, and the Board should find a way of using technology to reach out to the younger generation with

this information. Ms. Michelin agreed. She stated “the Board needs to focus on the target market and not come across as negative towards social media technology.”

Dr. Chawla believes these points can be incorporated.

Ms. Sieferman clarified that “the purpose of asking the Committee to include the background information that they provided was to show the Board the intent of this issue which is basically specific to online refractions.” The Committee has provided a draft issue regarding outreach. Ms. Sieferman suggested that “perhaps information about what the Board plans to do using technology such as Twitter may be better applied to that response.”

Ms. Brandvein explained “that the Board needs to demonstrate that it embraces technology while at the same time providing education and outreach. She believes it is when the Board is in shut-down mode that people try to skirt around its regulations.”

Dr. Chawla suggested language such as “the Board is open to all new technologies and will be looking at them to see which can be incorporated and practiced while continuing to ensure quality patient care and quality patient health.”

Public Member, Maria Salazar is concerned that if the Board is too technical in its response it may be limiting itself.

Members robustly suggested and discussed various language options to address this issue.

Mr. Heppler recommended leading off with language that demonstrates the Board’s openness to emerging technology changes while maintaining its consumer protection obligations. He suggested “the Board recognizes that new technologies are continuously going to emerge in the market place and while the Board is cognitive of these changes it intends to make certain that the standard of care and other obligations are met.”

**Donna Burked moved to authorize the Executive Officer to work with the Sunset Committee to incorporate the language that the Board’s senior attorney has recommended. David Turetsky seconded. The voted 7-Aye; 1-Abstention and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin			X		
Ms. Burke	X				
Ms. Garcia	X				
Ms. Sperber	X				
Dr. Turetsky	X				
Dr. Wang	X				

## 5. Adjournment



SUNSET REPORT MEETING  
 FULL MINUTES  
 March 20, 2017  
 Main Location  
 2420 Del Paso Road  
 Sequoia Room  
 Sacramento, CA 95834

**DRAFT**

Teleconference locations:

Eyeglass World  
 1207 E. Valley Pkwy  
 Escondido, CA 92027

Kaiser Permanente  
 Department of Optometry  
 5601 De Soto Avenue, Rm 1761  
 Woodland Hills, CA 91367

Oakland Marriott City Center  
 2<sup>nd</sup> Floor – Lobby  
 1001 Broadway  
 Oakland, CA 94607

Coffee Bean  
 Conference Room  
 4360 E. Main Street, Suite E  
 Ventura, CA 93003

Las Lomas Community Park  
 Multipurpose Room  
 10 Federation Way  
 Irvine, CA 92603

Nugget Market – 2<sup>nd</sup> Floor  
 4500 Post Street  
 El Dorado Hills, CA 95762

<b>Members Present</b>	<b>Staff Present</b>
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Matt McKinney, Enforcement Analyst
Lillian Wang, O.D., Secretary	Kurt Heppler, Supervising Legal Counsel
Cyd Brandvein, Public Member	Taylor Schick, Fiscal Officer
Martha Garcia, CLD, SLD	
Rachel Michelin, Public Member	
Maria Salazar Sperber, JD, Public Member	
David Turetsky, O.D.	
Glenn Kawaguchi, O.D.	
Debra McIntyre, O.D.	<b>Guest List</b>
Mark Morodomi, JD, Public Member	On File

**March 20, 2017**  
**12:00 p.m.**

**FULL BOARD OPEN SESSION**

**1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

## 2. Public Comment for Items Not on the Agenda

**Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]**

There were no comments.

## 3. Discussion of Proposed Responses to Sunset Issues Report and Resulting Legislation; Possible Action

Dr. Chawla asked the Members if there was anything they would like revised. She opened the floor to discussion regarding whether the RDO and Optometry funds should be merged at this time.

Dr. David Turetsky, O.D. noted that the response to Issue # 12 states that the Public Relations and Outreach Committee will begin meeting on a quarterly basis in March 2017 which is too early. Ms. Sieferman will amend this date.

Public member, Mark Morodomi asked if the Board has taken any position regarding Issue # 2: *Should the RDO and Optometry funds be merged? Should the RDO program be merged into the Optometry Practice Act?* Dr. Chawla assured that this topic will be discussed. Martha Garcia, RDO affirmed that she is also interested in having this discussion. Dr. Chawla asked Executive Officer, Jessica Sieferman to provide an update of events over the last week regarding this issue. Ms. Sieferman reported that she was involved in a conference call with four Assembly consultants, Department of Finance, Agency and Department of Consumer Affairs (DCA) discussing merging the two funds. It appears this is the direction everyone hopes to move in. The entities mentioned are interested in the Board's concerns which Ms. Sieferman advised them of. She reported that at this time it is not yet known if the RDO fund will sustain itself. Ms. Sieferman explained that during the fee audit of the previous year the auditor reported that there are many unknowns at this time. It was recommended, and the Board sought to set a minimum of the fee increases in statute. The intent was to set the fee for the status quo now and observe over the next couple years what the fees actually need to be. The entities mentioned would still like to see the funds merged at this time. Merging the funds of DCA regulated entities would not be unique to this Board. The funds can be merged and tracked separately. In a couple years a fee audit of the entire Board (all licenses) may be performed to assess if fees are appropriate across the Board. At that time if necessary the Board may pursue fee increases for the RDO program through regulations or change the fee structure to the optometry program.

Dr. Chawla asked Ms. Sieferman to provide a background of the BCPs (budget change proposals) for the RDO program. Ms. Sieferman explained that the Board currently has a BCP pending. The BCP would allow reimbursement of services the Board provides the RDO program such as the Executive Officer's oversight, personnel assistance, and the Policy Analyst. The BCP is scheduled for Assembly hearing on Tuesday March 28, 2017. Dr. Chawla expressed her concern of either program ending up supporting the other program. She does not understand the urgency to merge the programs at this time. She believes the plan the Board had decided upon was a good plan. "Why not merge the programs together at the right time rather than hastily?"

Public member, Donna Burke agrees with Dr. Chawla. Ms. Burke does not see any benefit to the public by not waiting.

Dr. Turetsky has a different perspective on this. He believes that since the RDO program has come under the jurisdiction of the Board it should be considered joined “as like a marriage.” He believes the Board should have one funding source to deal with both programs, and he stated “the sooner this can be done the better.” Dr. Debra McIntyre, O.D. leans towards Dr. Turetsky’s perspective.

Mr. Morodomi is opposed to the merger at this time. He stated that “it is anti-transparent.” He questioned if there are legal issues, for example, with using money optometrists pay towards supporting the optometry program to regulate the RDO program? Legal Counsel, Kurt Heppler referred to the fact that the Legislature directed the merging of the funds and that all expenses would be paid out of the one fund. He does not see any constitutional or statutory prohibitions. Mr. Morodomi is still uncomfortable with this due to the lack of transparency. Dr. Chawla agrees with Mr. Morodomi.

Ms. Garcia is fine with the fund merge but she is concerned about the merging of the Practice Act given that the scope of practice for opticians and optometrists are very different.

Dr. Glenn Kawaguchi does not approve of the fund merge at this time. He understands the benefits which are legitimate. However, he believes there is risk in not knowing the actual costs of the RDO program. If there will be any risk to the optometry funds it will put consumers at higher risk.

Public member, Cyd Brandvein would like to hear the proposal from the state regarding how the two programs would be tracked before making a determination.

Public member, Rachel Michelin agrees with Ms. Brandvein. Additionally, she is also leaning towards Dr. Turetsky’s viewpoint. Ms. Michelin would also like to hear from the state regarding how they propose to merge and why they feel this way.

Dr. Chawla shares the same concerns as Ms. Burke, Mr. Morodomi and Dr. Kawaguchi. She feels it would help her if the state would explain the reason for their sense of urgency in this. Dr. Chawla invited Fiscal Officer, Taylor Schick to provide a presentation from the DCA Budget Office’s perspective.

Mr. Schick introduced himself and provided an overview. He started by noting that he is not advocating for nor against the merge. Rather he is here to explain the technical aspect. How law would be implemented should the Legislature choose to merge the funds. He addressed the concerns about transparency. He acknowledged that “with regards to fund mergers there exists a loss of initial visibility. However, regarding accountability the Department and the Board have the ability to set up distinct reporting structures for components of the budget. Therefore, the Board would be able to create a reporting structure that has two distinct budgets within the overall Board budget allowing expenditures to be tracked separately. Additionally, all revenue codes regardless of fee type are tracked separately with distinct coding structures.” So, although there would be an initial loss of visibility, there would not be a loss of data integrity. Mr. Schick stated that if the merger is pushed, the DCA Accounting Office would request that it become effective July 1, 2018, for the purpose of working with the Governor’s budget and all annual record keeping.

Ms. Burke questioned what the administrative impact would be of creating our own distinct reporting structures. Mr. Schick assured it would not have too much of an administrative impact on the Board. She also asked how tracking the programs separately would impact the Executive Officer’s workload. Ms. Siefertman replied that this would depend upon the level of detail required.

She explained that it does require more work to track programs separately due to gathering duplicative reports. She believes merging would make her workload easier.

Dr. McIntyre requested clarification, and Mr. Schick explained that currently if someone from the optometry program provides services to the RDO program there is not a way to move the expenditures between the funds and appropriations. This is the intent behind the BCP that would allow a reimbursement relationship between the programs. Mr. Schick believes merging the accounts creates an easier accounting process to transition costs. Additionally, there would not be the accounting issue of transferring money between funds. However, the Board would still need to track all expenditures for which reporting structure on an internal level. His recommendation would be to keep two distinct reporting structures for as long as necessary to be able to track side-by-side and ensure that one side is not supporting the other to the extent possible.

Ms. Siefertman clarified for Mr. Morodomi that although there is not enough data to confirm the fund status in future years, right now the RDO program is projected to sustain itself. Mr. Morodomi feels that until he sees that the RDO program will sustain itself, he will still have concerns.

Dr. Kawaguchi reported that he has been a part of multiple large corporate mergers, and they have never completely merged at a financial standpoint in less than two years. The reason is that one organization may interpret and manage their funds differently than another organization. Although the Board is projected to sustain itself with the RDO program, but since we do not know this for certain, the Board is still at risk.

At Dr. Kawaguchi's request, Mr. Schick assured he will research his notes to determine if the RDO program was ever created distinctly. He stated that currently the Medical Board does have several smaller programs under their purview that have their own distinct and separate funds. The RDO was one of those prior to moving under the jurisdiction of optometry.

Ms. Brandvein asked and Mr. Schick confirmed that on the Governor's budget displays there would be two separate fund condition displays for the optometry and RDO programs. Additionally, the Governor's budget contains an Expenditures-by-Category section which provides another area to identify how much of the expenditures are for the board and how much are for its sub-funds.

Ms. Michelin recommended that "if the Board's will is to not move forward with the merging at this time, that the Board present a clear and strategic plan to the Legislature and Governor's Office of our timeline and how the Board proposes to solve this issue, and stick to it." She still supports Dr. Turetsky's position. She asked that the Board reach out to the Governor's Office's to and find out what the Governor's position is on this.

Ms. Burke feels it is prudent upon the Board to have a strategic plan and a timetable. She stated that she cannot see how it benefits the consumers by moving forward when it is not known if the Board's projection is accurate. Ms. Burke suggests responding that it is the Board's recommendation to move with caution and obtain secure data in order to ensure the Board is representing the consumers in the best manner possible; this requires time to collect that data.

Dr. Turetsky questioned if the Board should have a bracket of dates such as 'no sooner than 2018 but no later than 2020?'

Dr. Chawla acknowledged and confirmed that Mr. Morodomi would like to include a stronger statement about why the Board feels as it does and Dr. Kawaguchi would like to have a timeline

and/or focused plan to demonstrate the Board’s commitment to solving and completing this matter. Members discussed language for this matter.

Katheryn Scott with Lenscrafters and EyeExam expressed appreciation to the Board for the “thoughtful discussions and thoughtful approach in moving the merger forward with 12 months of data.”

Dr. Chawla opened the floor to discussion regarding merging the RDO program into the Optometry Practice Act. Dr. Chawla warned that her concern with the merge is that it may create confusion regarding scope of practice of what and optician can or cannot perform. Additionally, she is concerned that the language of the Board’s proposed response deals only with the administrative aspect; she feels the Board needs to be stronger in its response about the actual practice aspects of optometry and opticianry.

Mr. Heppler and Ms. Siefertman explained that the merging is not to change any of the actual content of the practice acts; rather it is for easier comprehension and readability. When looking up various statutes and regulations, it is easier for consumers if they can find them all under one act versus three acts. Ms. Garcia and Dr. Chawla are concerned that moving them around will do the opposite and make it more confusing for people who have been used to finding various statutes in a particular place are suddenly unable to find them. Dr. Turetsky and Ms. Burke agree that having everything in one spot is easier for the reader. He believes it will help practitioners stay in compliance if they can find particular laws readily rather than searching through hundreds of pages; this would prove beneficial for consumer protection. Mr. Morodomi does not believe licensees look at the laws much. He believes a FAQ sheet would be helpful. Dr. Kawaguchi does not see any benefit in the integration. Additionally, he is concerned about the administrative time that would be involved. Ms. Garcia agrees. Ms. Brandvein would like the Board to look at this issue over a number of years rather than make a definitive decision at this time. She wishes to come back to this discussion with additional thoughts after the Advisory Committee has had opportunity to explore it and Members have fully vetted the issue. This response timeline should be no later than 2020. Ms. Michelin suggested mirroring the language decided upon for the funding issue; a timeline of twelve months. She needs more input from stakeholders before she can make a decision. Ms. Siefertman noted that current language has the funding merge and Practice Act merge in the same response already.

**Dave Turetsky moved to adopt the changes to the Sunset Report as discussed and to delegate authority to the Executive Officer, Legal Counsel, and the Sunset Committee to make changes that are consistent with the guidance discussed during this meeting and to make any grammatical or not-substantive changes necessary. Maria Salazar seconded. The Board voted unanimously (11-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				



Dr. Turetsky	X				
Dr. Wang	X				

4. Adjournment

DRAFT



**SPECIAL BOARD MEETING  
ACTION MINUTES**  
March 23, 2017  
Main Location  
2420 Del Paso Road  
Sequoia Room  
Sacramento, CA 95834

**DRAFT**

Teleconference locations:

Nugget Market – 2<sup>nd</sup> Floor  
4500 Post Street  
El Dorado Hills, CA 95762

Charter College – Oxnard Campus  
2000 Outlet Center Drive, Suite 150  
Oxnard, CA 93036

UC Berkeley, Tang Center  
Eye Clinic Lobby – 3<sup>rd</sup> Floor  
2222 Bancroft Way  
Berkeley, CA 94720

Oakland Marriott City Center  
2<sup>nd</sup> Floor Lobby  
1001 Broadway  
Oakland, CA 94607

Plaza Lane Optometry  
1537 Pacific Ave., Suite 100  
Santa Cruz, CA 95060

Eyeglass World  
Optometrist Office  
1207 E. Valley Pkwy  
Escondido, CA 92027

<b>Members Present</b>	<b>Staff Present</b>
	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Kurt Heppler, Supervising Legal Counsel
Lillian Wang, O.D., Secretary	
Martha Garcia, CLD, SLD	
Rachel Michelin, Public Member	
David Turetsky, O.D.	
Glenn Kawaguchi, O.D.	
Debra McIntyre, O.D.	
Mark Morodomi, JD, Public Member	
<b>Excused Absence</b>	
Madhu Chawla, O.D., President	
Cyd Brandvein, Public Member	<b>Guest List</b>
Maria Salazar, Public Member	On File

**March 23, 2017**  
**8:30 a.m.**  
**FULL BOARD OPEN SESSION**

**1. Call to Order/Roll Call and Establishment of a Quorum**

Vice President, Donna Burke called roll and a quorum was established.

**2. Finding of Necessity for Special Meeting (Gov. Code, § 11125.4)**

*Note: The Board will determine whether the delay necessitated by providing notice 10 days prior to a meeting pursuant to Government Code section 11125 would impose a substantial hardship on the body or that immediate action is required to protect the public interest.*

Rachel Michelin moved that the Board entertain a motion that the 10-day notice requirement would impose a substantial hardship because the Board will be able to meet to prepare and submit amendments prior to the March 28, 2017 deadline; and if the deadline is missed, the amendments would not be included prior to the April 5, 2017 Committee on Education hearing and would jeopardize the bill's success. Debra McIntyre seconded. The Board voted unanimously (8-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Ms. Burke	X				
Dr. Wang	X				
Ms. Garcia	X				
Ms. Michelin	X				
Dr. Turetsky	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				

**3. Public Comment for Items Not on the Agenda**

*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]*

There were no public comments.

**4. Discussion, Consideration, and Possible Action Regarding Children's Vision Workgroup Recommendation to Amend Board-Sponsored Legislation (Assembly Bill 1110)**

Public Member, Rachel Michelin led the discussion. Members discussed amendments to section 49455 of the Education Code from the Children's Vision Workgroup. Amendment areas discussed were:

- Adding existing law back into the bill to clarify the eye examinations are not replacing existing vision screening requirements,
- Removing the data collection requirement.
- Clarifying what must be included as part of a comprehensive examination.

Lillian Wang moved to allow the Committee to move forward with language with the intent of addressing the items discussed. Rachel Michelin seconded. The Board voted unanimously (8-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Ms. Burke	X				
Dr. Wang	X				
Ms. Garcia	X				
Ms. Michelin	X				
Dr. Turetsky	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				

Members discussed whether the Education Code should specifically state “including Charter schools and county offices of education. Additionally, they discussed a sample support letter to the author of the bill, Assembly Member, Autumn Burke.

**Mark Morodomi moved to authorize the Members of the Workgroup to attend both the press event and the hearing representing the Board. Lillian Wang seconded. The Board voted unanimously (8-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Burke	X				
Dr. Wang	X				
Ms. Garcia	X				
Ms. Michelin	X				
Dr. Turetsky	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				

**Debra McIntyre moved to authorize the Workgroup Members to amend the draft letter then send it out to their representatives. David Turetsky seconded. The Board voted unanimously (8-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Burke	X				
Dr. Wang	X				
Ms. Garcia	X				
Ms. Michelin	X				
Dr. Turetsky	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Mr. Morodomi	X				

## 5. Adjournment

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 5 – Update from the Department of Consumer Affairs

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A Department of Consumer Affairs (DCA) representative may present updates pertaining to the DCA's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, Legislative, Regulatory and Policy matters.

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Jessica Sieferman  
Executive Officer

**Telephone:** (916) 575-7184

**Subject:** Agenda Item 6 – Executive Officer’s Report

## A. BreEZe Database

The Board continues to see strong BreEZe usage, with the majority of initial and renewal optometry applications being submitted online. In addition, licensees renewing online experience significantly quicker timeframes than those submitting paper applications, with many renewing in one day or less vs. a six to eight week cycle time for paper applications. Board staff and the BreEZe team work closely together to identify BreEZe improvements.

The RDO Program transition into BreEZe is on target to complete at the end of May 2017. Starting mid-April, three staff will participate in Data Validation to verify the data properly converted. User Acceptance Testing will start shortly thereafter.

Staff participation during these key BreEZe project stages is crucial to the overall transfer success. Staff will continue to provide updates as they become available.

## B. Budget

### Optometry Fund Condition:

According to the Fund Condition Analysis (Attachment 1), the Board’s current year reserve level is projected to close with 16 months in reserve – 10 months over the statutory cap. This is largely due to the General Fund loan repayment that went back into the Board fund this fiscal year. The following year, however, projects higher expenditures than revenues, dropping the reserve down to 13.8 months. The DCA Budget team and Board staff projects continuous decrease in the reserve levels over the next few fiscal years, and the Board may need to consider a fee audit in FY 2020/22 to determine appropriate fee levels.

The Board’s Expenditure Report (Attachment 2) projects a 7.7% reversion, with expenditures reaching \$1,665,045. With one quarter left, the Board has expended 61% of its total budget.

### Registered Dispensing Optician (RDO) Fund Condition:

According to the RDO Fund Condition Analysis (Attachment 3), the RDO’s fund is projected to close with 4.4 months in reserve and increases to 6.6 months next fiscal year. The RDO Program’s Expenditure Report (Attachment 4) shows the Board has expended 31% of its total budget. This was mainly due to the cost savings measures put in place in order to assist in sustaining the fund.

### C. Personnel

The Board's Assistant Executive Officer, Rob Stephanopoulos, is on leave until May 2017. In order to assist the Board in crucial personnel duties, the Board's retired annuitant position was temporarily re-classed to a Staff Services Management position. Carol Wilson, having a decade of management experience, currently service as the Board's Acting Assistant Executive Officer. Ms. Wilson's assistance has been phenomenal. Without Ms. Wilson, many personnel duties would not have been able to get done timely.

The Board received 176 applications for the vacant policy position. The Executive Officer is reviewing and ranking each application and plans to hold interviews in early May.

In addition, the Executive Officer plans to work closely with DCA HR to re-class the vacant RDO Positions (0.5 Office Technician and 0.6 Special Investigator) to a 1.0 Staff Services Analyst to assist in the RDO enforcement caseload and clerical activities. The remaining 0.1 position would be added to the standing 0.9 MST position. Re-classing and combining these positions to two full time positions would help recruit and retain qualified individuals for the RDO Program.

Multiple staff attended Autumn Burke's press conference and the following hearing for AB 1110. All staff were encouraged to attend and bring their children to help advocate for the bill. Staff members without children were also encouraged to join, as management viewed this as a unique learning opportunity to see the legislative process in action. It also provided an opportunity for staff to interact with Board Members on the Children's Vision Workgroup.

### D. Examination and Licensing Programs

While the Policy Analyst Position is vacant, Ms. Kellie Flores assists the Board with recruiting and creating contracts for the California Laws and Regulations Examination (CLRE) Development Workshops. Below is the Proposed 2017/18 CLRE Development Workshop Schedule:

#### **FY 2017/18 Exam Development Schedule**

Item Writing	July 24, 2017
Item Review	August 28, 2017
Passing Score	October 23, 2017 (April '18 exam)
Reclass	April 23, 2018
Item Writing	May 21, 2018
Item Review	June 18, 2018
Passing Score	Will carry over to the next fiscal period

In addition, the Office of Professional Examination Services (OPES) proposed the following schedule for the Occupational Analysis:

#### **Occupational Analysis Schedule**

Interviews	September 11-22, 2017
OA workshop #1	October 9-10, 2017
OA workshop #2	November 13-14, 2017
Pilot survey	November 27 to December 8, 2017
Final survey	January 8 to February 9, 2018
OA workshop #3	March 26-27, 2018

At a future meeting, OPES will present detailed information regarding the Occupational Analysis process and available updates.

The Board's annual outreach to third year optometry students began with Board staff and Dr. Lillian Wang presenting to UC Berkeley College of Optometry students on Thursday, April 6. Feedback provided seemed positive from both students and staff.

The Board is scheduled to present at SCCO on May 10 at 9:00 am and Western on May 11 at 12:00 pm. If a Board Member is interested in presenting with staff, please let the Executive Officer

know prior to or during the Board meeting. While at each Southern California school, staff will meet with faculty to discuss electronic transcript submission after graduation and other ways to streamline the application process. If time allows, staff will also meet with Supervising Deputy Attorney Generals in Southern California to discuss enforcement cases and ways to streamline enforcement processes.

With graduation just weeks away, optometry licensing applications significantly increased in March and will most likely increase in the following months as well. While phone calls have decreased compared to prior years, staff anticipates higher phone call volume during graduation season. Board staff is working as a team to assist applicant callers with as little impact to licensing processing cycle times as possible.

Optometry licensing statistics are below. RDO Program Statistics will be provided to the members during the meeting.

### Optometrist License Applications FY 16/17

OPT: Optometrist License  
 BOL: Branch Office License  
 SOL: Statement of Licensure  
 FNP: Fictitious Name Permit

		Q1			Q2			Q3		
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
<b>OPTs</b>	<b>Received Apps (Paper) (1010)</b>	4	4	6	3	5	3	7	20	16
	<b>Received Apps (Online) (1010)</b>	12	10	8	5	4	6	13	13	57
	<b>Opened Licensure App (1020)</b>	20	18	13	18	8	13	13	6	77
	<b>Licenses Issued (1020)</b>	107	25	11	16	8	4	10	5	11
	<b>Approved Exam Apps (1010)</b>	14	14	7	15	6	13	11	7	78
	<b>Expired/Withdrawn/Canceled (incl. Exam Apps + License Apps)</b>	1	0	4	3	4	4	2	5	10
	<b>Avg. Cycle Time (Total Days) Exam Apps (1010)</b>	11	7	13	15	17	13	13	16	20
	<b>Avg. Cycle Time (Total Days) License Apps (1020)</b>	107	87	89	106	186	70	180	128	182
	<b>Pending Apps (incl. Exam Apps + License Apps)</b>	128	121	126	118	117	118	128	150	201

		Q1			Q2			Q3		
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
<b>BOLs</b>	<b>Received (Paper)</b>	2	1	2	2	2	2	2	3	2
	<b>Received Online</b>	2	3	4	5	6	4	3	6	2
	<b>Issued</b>	5	0	3	2	5	10	3	11	6
	<b>Expired/Withdrawn/Canceled</b>	0	1	0	2	3	0	1	0	1
	<b>Avg. Cycle Time (Total Days)</b>	21	NA	133	46	60	34	30	49	31
	<b>Pending Apps</b>	4	7	10	13	13	9	10	8	5

		Q1			Q2			Q3		
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
<b>SOLs</b>	<b>Received (Paper)</b>	11	11	7	13	11	9	22	8	5
	<b>Received Online</b>	12	13	13	8	5	9	6	5	16
	<b>Issued</b>	21	14	25	14	23	11	18	21	23
	<b>Expired/Withdrawn/Canceled</b>	10	2	1	2	3	1	4	0	3
	<b>Avg. Cycle Time (Total Days)</b>	26	19	23	19	26	15	21	33	18
	<b>Pending Apps</b>	14	22	16	21	11	17	23	15	10



		Q1			Q2			Q3		
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
<b>FNPs</b>	<b>Received (Paper)</b>	4	4	7	7	1	7	8	7	15
	<b>Received Online</b>	0	6	4	8	15	6	10	4	12
	<b>Issued</b>	11	1	10	6	11	12	9	16	24
	<b>Expired/Withdrawn/Canceled</b>	2	0	0	0	3	1	4	3	2
	<b>Avg. Cycle Time (Total Days)</b>	48	14	68	55	60	55	60	54	60
	<b>Pending Apps</b>	10	19	20	29	31	31	36	28	29

### E. Enforcement Program

Enforcement Analyst Kellie Flores is researching existing inspection programs within DCA to determine best practices for the Board's inspection program. Ms. Flores continues to act as Board Member Liaison, and is also assisting with the while the Board's policy analyst position is vacant.

The Board's CE Audit Notifications were updated to highlight the option to provide an OE Tracker number in lieu of submitting documentation to the Board. In addition, certified notification copies are emailed to licensees whenever possible, and licensees have the option to email, fax or mail CE audit documentation to the Board. These process improvements should help facilitate a more efficient process. Enforcement Analyst Matthew McKinney is processing the Board's first batch of CE Audits using this new process. Board staff will provide updates to the Board when available. Mr. McKinney also coordinated several Board-standard form and letter updates, including denial notices and citations.

Enforcement's Lead Analyst, Cheree Kimball was among the UC Berkeley presenters in April, explaining the enforcement process and common enforcement issues facing applicants and licensees. Ms. Kimball is also drafting/updating enforcement unit procedures, business processes, and probation documents.

As of March 2017, the Enforcement Unit had 218 pending enforcement cases (155 optometrists, 63 RDO Program). Two of these pending cases are designated as high priority, while the remaining are routine priority cases. The Enforcement Unit referred 16 cases to the Attorney General's (AG) Office this fiscal year, and has 22 cases pending at the AG's Office

	Q1 – FY16/17						Q2 – FY16/17						Q3 – FY16/17						FY Total	
	Routine		Expedite		High		Routine		Expedite		High		Routine		Expedite		High		OPT	RDO
	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO		
Cases by Priority	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO
Received	79	25	0	0	0	0	57	32	0	0	0	0	43	31	0	0	0	0	179	88
Closed	48	16	0	0	0	0	105	25	0	0	2	0	61	39	0	0	0	0	217	79
Pending	212	60	0	0	4	0	165	69	0	0	2	0	153	63	0	0	2	0	155*	63*
Average Age (days) – Pending	264	214	0	0	681	0	295	240	0	0	660	0	315	272	0	0	746	0	321	272
Referred to AG	1	3	0	0	0	0	2	0	0	0	0	0	4	6	0	0	0	0	7	9
Pending at AG	8	7	0	0	0	0	8	6	0	0	0	0	12	10	0	0	0	0	12	10
Final Disciplinary Orders	1	2	0	0	0	0	2	1	0	0	0	0	0	2	0	0	0	0	3	5

\*Pending total includes 9 OPT and 7 RDO cases reopened during Q3

### Attachment:

1. Optometry Fund Condition
2. Optometry Expenditure Report
3. RDO Fund Condition
4. RDO Expenditure Report

# 0763 - State Board of Optometry Analysis of Fund Condition

Prepared 4/5/2017

(Dollars in Thousands)

## 2017-18 Governor's Budget

### Based on FM 8 Projections

	Actual 2015-16	CY 2016-17	BY 2017-18
<b>BEGINNING BALANCE</b>	\$ 1,518	\$ 1,903	\$ 2,957
Prior Year Adjustment	\$ -39	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 1,479</u>	<u>\$ 1,903</u>	<u>\$ 2,957</u>
<b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 28	\$ 19	\$ 37
125700 Other regulatory licenses and permits	\$ 160	\$ 118	\$ 154
125800 Renewal fees	\$ 1,687	\$ 1,659	\$ 1,635
125900 Delinquent fees	\$ 10	\$ 9	\$ 10
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ 3	\$ -
150300 <span style="color: blue;">Income from surplus money investments</span>	<span style="color: blue;">\$ 9</span>	<span style="color: blue;">\$ 15</span>	<span style="color: blue;">\$ 8</span>
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 1	\$ 2
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	<u>\$ 1,896</u>	<u>\$ 1,824</u>	<u>\$ 1,846</u>
Transfers from Other Funds			
Loan Repayment from the General Fund (0001) to the State Optometry Fund (0763), per Item 1110-011-0763 Budget Act of 2011	\$ -	\$ 1,000	\$ -
Totals, Revenues and Transfers	<u>\$ 1,896</u>	<u>\$ 2,824</u>	<u>\$ 1,846</u>
Totals, Resources	<u>\$ 3,375</u>	<u>\$ 4,727</u>	<u>\$ 4,803</u>
<b>EXPENDITURES</b>			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 1,469	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 1,671	\$ 2,107
8880 Financial Information System for CA (State Operations)	\$ 3	\$ 3	\$ 2
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ -	\$ 96	\$ 104
Total Disbursements	<u>\$ 1,472</u>	<u>\$ 1,770</u>	<u>\$ 2,213</u>
<b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 1,903	\$ 2,957	\$ 2,590
<b>Months in Reserve</b>	12.9	16.0	13.8

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.

**BOARD OF OPTOMETRY - FUND 0763  
BUDGET REPORT  
FY 2016-17 EXPENDITURE PROJECTION**

**FM 8**

OBJECT DESCRIPTION	FY 2015-16		FY 2016-17				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET STONE	CURRENT YEAR EXPENDITURES	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	(MONTH 13)	2/29/2016	16-17	2/28/2017			
<b>PERSONNEL SERVICES</b>							
Salary & Wages (Staff)	376,903	266,894	464,000	275,805	59%	426,129	37,871
Statutory Exempt (EO)	65,840	39,504	82,000	53,662	65%	80,394	1,606
Temp Help Reg (907)	45,724	23,992	41,000	22,789	56%	39,845	1,155
Board Member Per Diem	7,400	5,200	7,000	6,500	93%	11,200	(4,200)
Overtime	2,348	2,348	0	626		626	(626)
Staff Benefits	215,717	146,035	313,000	171,391	55%	264,805	48,195
<b>TOTALS, PERSONNEL SVC</b>	<b>713,932</b>	<b>483,973</b>	<b>907,000</b>	<b>530,773</b>	<b>59%</b>	<b>822,999</b>	<b>84,001</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	9,573	7,729	16,000	9,139	57%	13,000	3,000
Fingerprint Report	4,879	2,171	5,000	1,895	38%	5,000	0
Minor Equipment	1,146	1,146	3,000	0	0%	0	3,000
Printing	6,624	1,435	8,000	10,070	126%	17,000	(9,000)
Communications	2,799	1,478	5,000	1,705	34%	3,000	2,000
Postage	10,456	7,007	11,000	4,225	38%	10,000	1,000
Travel In State	32,431	14,339	8,000	16,938	212%	35,000	(27,000)
Travel, Out-of-State	589		0	0		774	(774)
Training	983	0	1,000	420	42%	420	580
Facilities Operations	111,534	110,217	59,000	109,810	186%	109,810	(50,810)
C & P Services - Interdept.	97	20	3,000	0	0%	0	3,000
C & P Services - External	11,118	16,396	30,000	34,892	116%	34,892	(4,892)
<b>DEPARTMENTAL SERVICES:</b>							
OIS Pro Rata	243,808	184,500	273,000	182,000	67%	273,000	0
Admin Pro Rata	127,865	96,000	127,000	82,664	65%	127,000	0
Interagency Services	0	0	0	0		0	0
IA w/ OPES	17,160	24,784	0	24,720		24,720	(24,720)
DOI-Pro Rata	2,949	2,250	3,000	2,000	67%	3,000	0
Public Affairs Pro Rata	8,000	6,000	20,000	13,336	67%	20,000	0
PPRD Pro Rata	0	0	1,000	664	66%	1,000	0
<b>INTERAGENCY SERVICES:</b>							
Consolidated Data Centers	614	580	5,000	194	4%	700	4,300
DP Maintenance & Supply	3,378	3,378	1,000	2,565	257%	3,000	(2,000)
Statewid Pro Rata	101,246	75,935	0	0		0	0
<b>EXAM EXPENSES:</b>							
Exam Freight	0	0	484	0	0%	0	484
C/P Svcs-External Expert Administrative	49	49	0	0		0	0
C/P Svcs-External Expert Examiners	0	0	20,516	0	0%	0	20,516
C/P Svcs-External Subject Matter	1,844	307	0	1,030		12,230	(12,230)
<b>ENFORCEMENT:</b>							
Attorney General	74,589	53,720	237,000	67,755	29%	116,000	121,000
Office Admin. Hearings	18,605	11,030	38,000	17,361	46%	35,000	3,000
Court Reporters	1,072	489		821		2,000	(2,000)
Evidence/Witness Fees	1,520	0	16,000	0	0%	1,500	14,500
DOI - Investigations			0	0		0	0
Major Equipment		0	11,000	0	0%	0	11,000
<b>TOTALS, OE&amp;E</b>	<b>794,928</b>	<b>620,960</b>	<b>902,000</b>	<b>584,204</b>	<b>65%</b>	<b>848,046</b>	<b>53,954</b>
<b>TOTAL EXPENSE</b>	<b>1,508,860</b>	<b>1,104,933</b>	<b>1,809,000</b>	<b>1,114,977</b>	<b>123%</b>	<b>1,671,045</b>	<b>137,955</b>
Sched. Reimb. - Fingerprints	(4,966)	(1,470)	(6,000)	(2,205)	37%	(6,000)	0
Sched. Reimb. - Other	(2,350)	(1,410)		(1,645)			0
Probation Monitoring Fee - Variable	(9,700)	(6,200)		(3,400)			0
Unsched. Reimb. - Investigative Cost Recove	(22,875)	(21,545)		(3,985)			0
Unsch - DOI ICR Administrative Case	(32)	0		0			0
<b>NET APPROPRIATION</b>	<b>1,468,937</b>	<b>1,074,308</b>	<b>1,803,000</b>	<b>1,103,741</b>	<b>61%</b>	<b>1,665,045</b>	<b>137,955</b>
<b>SURPLUS/(DEFICIT):</b>							<b>7.7%</b>

# 0175 - Registered Dispensing Opticians Analysis of Fund Condition

(Dollars in Thousands)

## 2017-18 Governor's Budget Based on FM 8 Projections

	ACTUAL 2015-16	CY 2016-17	BY 2017-18
<b>BEGINNING BALANCE</b>	\$ 172	\$ 158	\$ 163
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 172	\$ 158	\$ 163
<b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 1	\$ 1	\$ 1
125700 Other regulatory licenses and permits	\$ 36	\$ 44	\$ 107
125800 Renewal fees	\$ 146	\$ 158	\$ 342
125900 Delinquent fees	\$ 6	\$ 7	\$ 12
150300 Income from surplus money investments	\$ 1	\$ 1	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	\$ 190	\$ 211	\$ 462
Transfers from Other Funds	\$ -	\$ -	\$ -
Transfers to Other Funds	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 190	\$ 211	\$ 462
Totals, Resources	\$ 362	\$ 369	\$ 625
<b>EXPENDITURES</b>			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 203	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 201	\$ 393
8880 Financial Information System for California (State Operations)	\$ 1	\$ -	\$ -
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ -	\$ 5	\$ 7
Total Disbursements	\$ 204	\$ 206	\$ 400
<b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 158	\$ 163	\$ 225
<b>Months in Reserve</b>	9.2	4.9	6.6

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.

**REGISTERED DISPENSING OPTICIANS - FUND 0175  
BUDGET REPORT  
FY 2016-17 EXPENDITURE PROJECTION**

**FM 8**

OBJECT DESCRIPTION	FY 2015-16		FY 2016-17				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES (MONTH 13)	EXPENDITURES 2/29/2016	STONE 2016-17	EXPENDITURES 2/28/2017	SPENT	TO YEAR END	BALANCE
<b>PERSONNEL SERVICES</b>							
Civil Service-Perm	29,637	20,067	98,000	10,976	11%	34,598	63,402
Comm Member (911)	0	0	0	0		500	(500)
Overtime	0	0	0	0		0	0
Staff Benefits	18,529	13,601	50,000	6,097	12%	19,000	31,000
<b>TOTALS, PERSONNEL SVC</b>	<b>48,166</b>	<b>33,668</b>	<b>148,000</b>	<b>17,073</b>	<b>12%</b>	<b>54,098</b>	<b>93,902</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	232	232	4,000	212	5%	400	3,600
Fingerprint Reports	0	0	0	137		300	(300)
Minor Equipment	0	0	0	0		0	0
Printing	404	18	2,000	192	10%	400	1,600
Communication	0	0	1,000	0	0%	0	1,000
Postage	1,015	0	2,000	1,193	60%	1,800	200
Travel In State	1	0	6,000	0	0%	11,200	(5,200)
Training	0	0	1,000	0	0%	0	1,000
Facilities Operations	0	0	0	0		0	0
C & P Services - Interdept.	0	0	0	0		0	0
C & P Services - External	17,070	9,252	2,000	3,000	150%	3,000	(1,000)
<b>DEPARTMENTAL SERVICES:</b>							
OIS Pro Rata	59,195	45,000	58,000	38,664	67%	58,000	0
Administration Pro Rata	10,988	8,250	24,000	16,000	67%	24,000	0
Interagency Services	0	0	0	0		0	0
Shared Svcs - MBC Only	18,536	18,536	0	0		0	0
DOI - Pro Rata	0	0	1,000	664	66%	1,000	0
Public Affairs Pro Rata	0	0	3,000	2,000	67%	3,000	0
PPRD Pro Rata	0	0	0	0		0	0
<b>INTERAGENCY SERVICES:</b>							
Consolidated Data Center	0	0	0	0		0	0
DP Maintenance & Supply	0	0	1,000	0	0%	0	1,000
Statewide - Pro Rata	15,667	11,750	0	0		0	0
<b>EXAMS EXPENSES:</b>							
Exam Supplies	0	0	0	0		0	0
<b>OTHER ITEMS OF EXPENSE:</b>							
<b>ENFORCEMENT:</b>							
Attorney General	26,501	16,258	50,000	23,293	47%	40,000	10,000
Office Admin. Hearings	1,470	1,470	5,000	0	0%	1,500	3,500
Court Reporters	0	0	0	0		0	0
Evidence/Witness Fees	0	0	0	0		0	0
DOI - Investigations	3,286	3,286	2,000	0	0%	2,000	0
Major Equipment	0	0	0	0		0	0
<b>TOTALS, OE&amp;E</b>	<b>154,365</b>	<b>114,052</b>	<b>162,000</b>	<b>85,355</b>	<b>53%</b>	<b>146,600</b>	<b>15,400</b>
<b>TOTAL EXPENSE</b>	<b>202,531</b>	<b>147,720</b>	<b>310,000</b>	<b>102,428</b>	<b>64%</b>	<b>200,698</b>	<b>109,302</b>
Sched. Reimb. - Fingerprints	0	0	(1,000)	0	0%	(1,000)	0
Unsched. Reimb. - ICR	0	0	0	(4,242)		0	0
Unsched. Reimb. - ICR - Prob Monitor	0	0	0	(1,800)		0	0
<b>NET APPROPRIATION</b>	<b>202,531</b>	<b>147,720</b>	<b>309,000</b>	<b>96,386</b>	<b>31%</b>	<b>199,698</b>	<b>109,302</b>
<b>SURPLUS/(DEFICIT):</b>							<b>35.4%</b>

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

**To:** Board Members **Date:** April 21, 2017

**From:** Kurt Heppler **Telephone:** (916) 575-7170  
Legal Counsel

**Subject: Agenda Item 7 – Bagley Keene-Open Meetings Act Pertaining to  
Teleconference Procedures and Meeting Locations Training**

The Board has significantly increased the number of teleconference over the past couple of years. In the current fiscal year (July 1, 2016 – June 31, 2017), 12 of the 17 noticed meetings were held via teleconference (71%).

Due to the increase, DCA's Legal Office will provide specific training for teleconference procedures as it pertains to the Bagley Keen-Open Meetings Act.

To assist in the training, please refer to the attached Teleconference Meeting Tips and Government Code (GC) § [11123](#) below.

Government Code (GC) § [11123](#)(b) provides specific requirements for teleconferences:

**GC § 11123:**

a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, “teleconference” means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

### **Attachment**

1. TIPS for Holding a Teleconference Meeting



# TIPS for Holding a Teleconference Meeting

Each teleconference location must be noticed on the meeting agenda and posted 10 full days prior to the meeting (Government Code Section 11125).<sup>1</sup> Please keep in mind the Internet team needs a minimum of 24 hours to post something to the website. In addition, agendas are typically posted during the workday (8 a.m.–5 p.m.), so the first day the agenda is posted does not count for the 10-day notice. Thus, agendas need to be finalized (approved by the Board of Optometry [Board] President and Department of Consumer Affairs' Legal Division) at least 12 days prior to the meeting.

## An Acceptable Location

- Choose a location accessible to all members of the public, free of charge.
- Locations that have age and membership restrictions are not acceptable.
- The location must be Americans with Disabilities Act (ADA) compliant. Additionally, authorization to use the location and display the appropriate signage must be secured.
- Make sure the location has a fixed and specific address so attendees can easily find it.
- Pick a location with a meeting room or office with a door. This will help minimize background noise or potential interruptions.
- Avoid coffee shops and restaurants, which tend to get loud during business hours. This can make it difficult for others to hear and may limit public participation.
- If the meeting includes a closed session, the location must have the capacity for the members to hear and deliberate in private on the designated items.
- Keep public perception in mind. Board meetings are governed by state law and need to reflect professionalism at all times—including how the location is noticed on the agenda. Although a local restaurant may be open to all ages, if it contains words such as “pub” in the name, it may be perceived as the Board conducting a meeting at a bar.
- If you are using a cellphone to conduct a meeting, verify that the location’s cell service is adequate.
- Find a location with Wi-Fi for easy access to meeting materials. If Wi-Fi is not available, make sure to save the meeting materials to your electronic device or print copies for yourself and the public.



## On Meeting Day

- **Make sure there is at least one Board member physically present at the noticed location** (Government Code Section 11123 (b)(1)(F)). If you are the only member at the noticed location and you are unable to attend, please immediately notify the Executive Officer, **as the meeting will need to be canceled.**
- Arrive at least 15 minutes early to test the teleconference line and adjust for any last-minute difficulties.
- Post meeting signs and agendas at the location entrance and where you are sitting. If you are located in a large building, more signs may be needed. Members of the public should be able to quickly and easily find where the meeting is being held.
- Leave sign-in sheets where they will be easily identifiable when entering the meeting.
- Make sure the public will be able to hear the discussion, view meeting materials, and participate during the open session of the meeting.
- Use a landline with a speakerphone, which is preferred. However, if you are using your cellphone, use your speakerphone and/or a Bluetooth speaker.



### CALIFORNIA STATE BOARD OF OPTOMETRY

2450 Del Paso Road, Suite 105, Sacramento, CA 95834

Phone: (916) 575-7170

Consumer Toll-Free: (866) 585-2666

Fax: (916) 575-7292

[www.optometry.ca.gov](http://www.optometry.ca.gov)

E-mail: [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov)

1 Special meetings only require 48-hour notice. However, the same agenda and location requirements apply. In addition, the agenda must be provided to all national press wire services and made available to newspapers of general circulation and radio or television stations (Government Code Section 11125.4(b)).

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Sacramento, CA 95834  
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[www.optometry.ca.gov](http://www.optometry.ca.gov)

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**To:** Board Members **Date:** April 21, 2017

**From:** Jessica Sieferman **Telephone:** (916) 575-7170  
Executive Officer

**Subject: Agenda Item 8 – Update, Discussion and Possible Action on 2017 Legislation Impacting Healing Arts Boards and the Practice of Optometry**

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The following bills, as currently written, impact the Board's functions and the practice of optometry. Legislation versions and status change frequently. For this reason, staff does not print or attach specific bill language. To view the most current bill version, status and corresponding analysis, please click on the applicable hyperlinks below. The information below is current as of April 6, 2017.

**A. [AB 443](#) (Salas) Healing Arts: Optometry: Required Examination: Notice**

Summary: As currently written, this bill would require the board, if it exercises its authority to require an applicant to take the regular examination, to notify the applicant of the timeframe to take and pass the examination and to provide the applicant with a minimum 30 days' notice before an available examination that the applicant is required to take the examination.

Status: Referred to the Assembly Committee on Business and Professions.

Recent Analysis: N/A

Staff Comments:

This bill is intended to expand the scope of practice of optometry. The California Optometric Association and author are negotiating specific bill provisions. The bill will be heard in its first committee on April 18 or April 25. Additional updates will be provided at the Board Meeting.

**B. [AB 767](#) (Quirk-Silva) Master Business License Act**

Summary: As introduced, this bill will create a business license center to develop and administer a computerized master business license system to simplify the process of engaging in business in this state. This bill will also authorize a person that applies for 2 or more business licenses that have been incorporated into the master business license system to submit a master application to the office requesting the issuance of the licenses.

In addition this bill will require the office to develop and adopt an Internet-based platform that allows the business to electronically submit the master application to the office, as well as the payment of every fee required to obtain each requested license and a master application fee. This bill will also

require the office to establish a reasonable fee for each master license application and to collect those fees.

Status: Referred to the Assembly Committee on Jobs, Economic Development and the Economy

Recent Analysis: N/A

Staff Comments: If passed, the Board total IT cost would be distributed amongst all DCA Boards, Bureaus, and other Programs. As currently written, the DCA projects the IT cost would be \$4,974,000 due to the workload associated with this bill and existing maintenance and operations cannot be redirected for this level of effort. It is important to not that, due to vague language, multiple presumptions were made in order to determine potential fiscal impact.

While staff has concerns with the bill, AB 767 is expected to change over the next several months. At this point, staff recommends the Board watch the bill. If no amendments are made at the August meeting, the Board may want to discuss this bill in more depth and decide to take a position.

**C. AB 1110 (Burke) Pupil Health: Eye and Vision Examinations  
(BOARD SPONSORED/SUPPORTED)**

Summary: This bill encourages elementary school children to have their eyes and vision examined by a physician, optometrist or ophthalmologist upon first enrollment or entry in elementary school. The examination is completely voluntary, and a parent may waive the examination for any reason.

The bill would require a school to notify parents and guardians of the examination requirement and waiver option. By imposing additional duties on schools, the bill would impose a state-mandated local program. The bill would prohibit a school from denying admission to, or taking adverse action against, a pupil if his or her parent or guardian fails to provide the results of the eye and vision examination. The bill would require the department to adopt regulations, rather than guidelines, to implement these provisions.

Status: Passed Assembly Committee on Education 4/5/17; Referred to Appropriations

Recent Analysis: [4/3/17 Assembly Education](#)

Staff Comments: The author held a successful press conference before the hearing on April 5. The Children's Vision Workgroup attended the event, and Ms. Rachel Michelin served as the emcee. Several Board staff and their children also participated. Various television, newspaper, and radio outlets covered the event and press releases continue to be published.

The Children's Vision Workgroup will provide additional updates on this important Board-Sponsored legislation at the Board Meeting.

**D. AB 1708 (Committee on Business and Professions)  
(BOARD SUNSET BILL)**

Summary: This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2022. In addition, this bill would redefine the term "advertise" to also include the use of the Internet.

Status: Referred to Committee on Business and Professions on 3/16/17

Recent Analysis: N/A

Staff Comments: As part of the Board's Response (Attachment 1) to the Joint Oversight Hearing [issue paper](#), the Board provided the Joint Oversight Committee legislative proposals to be included

in the Sunset Bill. Staff anticipates the proposed amendments being accepted. Staff will continue to monitor this bill closely and provide updates as they are available.

**E. [SB 572](#) (Stone) Healing Arts Licensees: Violations: Grace Period**

Summary: Existing law provides for the licensure and regulation of various healing arts professions by various boards, as defined, within the Department of Consumer Affairs. Existing law imposes certain fines and other penalties for, and authorizes these boards to take disciplinary action against licensees for, violations of the provisions governing those professions.

This bill would prohibit the boards from taking disciplinary action against, or otherwise penalizing, healing arts licensees who violate those provisions but correct the violations within 15 days, and who are not currently on probation at the time of the violations, if the violations did not cause irreparable harm and will not result in irreparable harm if left uncorrected for 15 days.

Status: Sen Business, Professions and Economic Development; Set for hearing April 17, 2017

Recent Analysis: N/A

Staff Comments: Staff is monitoring this bill closely. Staff has a concerns that this essentially provides a “green light” to licensees to violate the law as long as there is no “irreparable harm,” they aren’t on probation, and they correct the violation within 15 days.

Currently, the Board (through its Executive Officer) has discretion to consider each violation on a case by case basis and determine the appropriate action. The Board does not “penalize” as the language suggests. The Board obtains and maintains compliance at the lowest appropriate level. For minor violations, this often results in an educational letter to the licensee after compliance is obtained. If the same or similar violation occurs again, the Board may issue a citation based on factors set forth in California Code of Regulations § [1578](#). As currently written, however, staff is concerned the Board would not be able to take appropriate action for reoccurring violations as long as the licensee continues to correct within 15 days.

In addition, the Board’s Enforcement Unit is, for the most part, complaint driven. That means the Board investigates alleged violations once it receives a complaint from consumers, licensees, or other sources. Assuming the 15-day-clock starts the day the Board notifies the licensee of the alleged violation, this allows a licensee to break the law until the Board is notified of (or internally discovers) the potential violation.

Further, staff believes each statute governing healing arts professions were created for consumer protection. Staff is concerned this bill completely undermines the Board’s mandate by allowing numerous consumer protection statutes to be violated.

**F. [SB 641](#) (Lara) Controlled Substance Utilization Review and Evaluation System: Privacy**

Summary: Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires the operation of CURES to comply with all applicable federal and state privacy and security laws and regulations. Under existing law, data obtained from CURES may only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the department, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Existing law allows data obtained from CURES to be provided to public or private entities for statistical or research purposes, as approved by the department.

This bill would prohibit the release of data obtained from CURES to a law enforcement agency except pursuant to a valid court order, as specified.

Status: Senate Standing Committee on Public Safety; Set for hearing 4/18/17

Recent Analysis: N/A

Staff Comments: Staff had concerns when the bill was introduced. However, the bill was significantly amended on March 28, 2017 – mitigating those concerns. Staff will continue to monitor this bill as it progresses and provide any available updates at the Board Meeting.

**Attachment**

1. Board Responses to the Joint Oversight Hearing Background Paper

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

**To:** Board Members **Date:** April 21, 2017

**From:** Jessica Sieferman **Telephone:** (916) 575-7184  
Executive Officer

**Subject:** **Agenda Item 9 – Update, Discussion and Possible Action Regarding Merging the Dispensing Opticians Fund and the Optometry Fund and Merging Practice Acts: Chapter 5.45 Nonresident Contact Lens Sellers (BPC §§ 2546-2546.1), Chapter 5.5 Registered Dispensing Opticians (BPC §§ 2550-2569), Chapter 7 Optometry (BPC §§ 3000-3167)**

Effective January 1, 2016, as a result of AB [684](#), the Registered Dispensing Optician (RDO) Program was transferred from the Medical Board of California to the California State Board of Optometry (Board). The two programs are listed under three separate Business and Professions Code (BPC) sections:

- Chapter 5.45 Nonresident Contact Lens Sellers (BPC §§ [2546-2546.1](#))
- Chapter 5.5 Registered Dispensing Opticians (BPC §§ [2550-2569](#))
- Chapter 7 Optometry (BPC §§ [3000-3167](#))

In addition, the two programs have two separate funds identified in statute:

- Dispensing Opticians Fund (BPC §§ [2546.9](#), [2567](#))
- Optometry Fund (BPC § [3145](#))

### **RDO Fund Condition**

At the time the RDO program was transferred to the Board, the RDO Fund was not sustaining itself. A third party fee audit revealed fees needed to change immediately in order to sustain the fund at status quo operations (as performed by MBC). However, the audit acknowledged several unknowns for the future of the RDO Program – such as population, inspections, enforcement, etc. Thus, the auditor recommended setting a minimum fee increase to sustain the fund immediately and a higher statutory cap. Over the next few years, the Board would monitor the program and readjust fees if needed through the regulatory process.

Based on the information from the audit report, the Board sought amendments to the existing fee structures within the RDO Program. Those amendments were included in [SB 1039](#) (Hill), effective January 1, 2017. While the fee increases are projected to adequately sustain the RDO fund, the Board is and will continue to monitor the fund's actual performance to ensure the fund performs as projected.

### **Sunset Issue #2:**

As part of the [Joint Oversight Hearing Background Paper](#), the Legislature inquired as to whether the funds and practice acts should be merged. As part of the background, Committee Staff explained that “[b]ecause the Board administers two separate funds, there may be duplicate administrative work, such as reviewing

two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund.”

The Committee Staff listed other entities that recently merged acts/funds: Cemetery and Funeral Bureau (CFB), Board of Vocational Nursing and Psychiatric Technicians (BVNPT), and Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG).

In regards to merging the funds, the Board responded, in part, that it *“believes it is prudent to continue monitoring the fund since it only has two months of fiscal data. While the remaining fund condition data project sustainability, the board would like a minimum of one full fiscal year (2017/18) of data to assess the fiscal integrity of the RDO fund. In the interim, the board proposes to create a strategic plan so that it can move forward with merging the funds no later than fiscal year 2020/21.”*

In response to merging the acts, the Board acknowledged *“existing statutes within each practice act should be amended to provide clarity for licensees prior to any potential merge. The Board plans to analyze the existing statutes carefully in each act and discuss merging the funds and practice acts at future meetings and will create a strategic plan to move forward no later than fiscal year July 1, 2020. The Board will seek input from various stakeholders throughout this process.”*

The full Board Response to Issue #2 is attached (Attachment 1) for reference.

### **RDO Budget Change Proposal**

While all registration duties are performed by the RDO Program through its 0.9 Management Services Technician (MST) and enforcement and clerical duties will be performed by the remaining RDO Program vacancies,<sup>1</sup> the Board provides additional services to the RDO Program. These services include managerial oversight, personnel services, leg/reg services, and rent.

Due to the separate funds, the Board pursued a Budget Change Proposal (BCP) in 2016 (for FY 17/18) to allow the RDO Program to reimburse the Board for services provided. The BCP was approved by the Department of Consumer Affairs (DCA), Business, Consumer Services, and Housing Agency (Agency), Department of Finance (DOF) and included in the Governor’s Budget. The BCP was also approved as budgeted by the Senate Budget and Fiscal Review Subcommittee 4 on March 9, 2017 ([Senate Outcome](#)).

However, the Assembly Budget Subcommittee No. 4 only approved funding for one year ([Assembly Outcome](#)). This coincided with Assembly Staff recommendation which stated the *“[c]onsolidation of the RDO and the Board of Optometry is under consideration at this time. If these boards are merged, the reimbursement that this proposal requests on an ongoing basis would be unnecessary.”*

### **March 20, 2017 Teleconference Direction to Staff and Outcomes**

In addition to approving the Board responses to identified issues, the Board directed staff to do perform the following outreach and report back to the Board:

- Committee Staff - inquire as to the urgency of merging the funds/acts,
- Administration - see if they have a position on the merge,
- Stakeholders – see if they have any concerns or input, and
- Other recently merged DCA entities to identify pros/cons/input.

### **Committee Staff**

During a telephone conversation with Committee Staff, it was clarified that it is not so much of an urgency issue as it is about assisting the Board in implementing efficiencies. They also suggested that merging the acts removes perception that the programs are separate and distinct rather than the reality that they are regulated under one Board as a whole. During this preliminary discussion, the Committee Staff appeared open to potentially delaying the merge for a fiscal year or two, but they do not want to wait until

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<sup>1</sup> In FY 16/17, the RDO Program was approved for a 0.5 Office Technician to assist in clerical duties and a 0.6 Special Investigator to assist with inspections and enforcement. However, Board management is working to convert the two positions into a 1.0 Staff Services Analyst for enforcement and clerical duties. The remaining 0.1 would be switched to the 0.9 MST position, resulting in two full time positions for the RDO Program. Management believes the duties more align with these classifications and will be easier to recruit and retain qualified individuals.

FY 2020/21. Discussions will continue with Committee Staff, the Committee Chair, the Speaker's Office, and Board staff.

### Administration

Staff reached out to the Administration and will report updates, if available, at the Board Meeting.

### Stakeholders

Preliminary discussions with some stakeholders identified minor concerns. A representative from the California Optometric Association (COA) stated they are, for the most part, ok with merging the funds and the acts. Their only concern thus far is ensuring merging the practice acts does not unintentionally remove enforcement authority/applicability from other code sections.

For example, BPC § [655](#) applies to those "licensed pursuant to Chapter 5.5 (commencing with Section 2550)." If the acts were merged, applicable law sections would need to be updated accordingly.

During the March 20 meeting, Katheryn Scott with Lenscrafters and EyeExam expressed appreciation to the Board for the "thoughtful discussions and thoughtful approach in moving the merger forward with 12 months of data." She also stated they are committed to not having the RDO Program be a "burden" on the Board.

Staff continues to reach out to stakeholders and will provide any available updates at the Board Meeting.

### Other Entities

Staff reached out to two of the three entities who recently merged as identified in the Background Paper. Both merges were performed at the entity's' request in an effort to streamline processes. Board staff requested information regarding any problems they encountered, pros and cons of merging the acts, anything they would have done differently, anything they found particularly helpful, etc.

The CFB requested their funds and practice act merge as part of their sunset. The CFB reported that there staff were already doing work from and for both funds and both acts, which resulted in a lot of duplicative regulations, and they were already largely working as though they were merged. Staff sought the merge to streamline their work and process. Before the merger they tracked everything to different funds and acts, but now they just track by license types (they have 13). They did not identify any negatives/cons that occurred as a result of the merge.

The BPELSG informed staff that their fund merge "was a much smoother action than [they] originally anticipated and Budgets Office was extremely helpful in this specific situation and they spearheaded most of the additional communication with OHR, Accounting, CalStars/Fi\$Cal, Agency and DOF" for them. BPELSG provided tips such as being familiar with fund codes and making the merge effective July 1 to coincide with the fiscal year. In addition, they said to be prepared for others to think the Board may be increasing fees; they said to clearly convey fees are not increasing – as this was a very important message. They did not merge practice acts and believed it would "prove to be very confusing for consumers" if they did. They reported their effort was solely about the financial aspects of merging the funds.

### Attachments

1. Issue #2 Board Response



**ISSUE #2: Should the RDO and Optometry funds be merged? Should the RDO program be merged into the Optometry Practice Act?**

**Background:** AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015 directed the transfer of all funds, duties, powers, purposes, responsibilities, and records from the Medical Board of California to the Board to regulate the RDO practice act and its fund. As a result, the Board now operates separate funds (the Optometry Fund and the Registered Dispensing Opticians Fund) for licensing and administrative purposes. Currently, the Board absorbs all enforcement-related costs for the RDO program. AB 684 did not provide for the combination of funds and yet, the Board is responsible for enforcement, licensing, regulations, and has regulatory authority over all of the licensees of the RDO program. Licensing fees, citations, and other administrative costs are collected and deposited into the appropriate fund based in accordance with current statute. Although the Board reports that it attempts to capture and separate the appropriate expenditures and revenues based on the fund, there may be times when the administration may overlap in auditing, licensing, and enforcement. Because the Board administers two separate funds, there may be duplicate administrative work, such as reviewing two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund.

Currently, the Board reports that no enforcement-related costs for the RDO program are charged to that program, meaning any enforcement-related costs for RDOs are attributed to the Optometry Fund. Merging the funds of DCA regulated entities would not be unique to this Board. In 2011, SB 933 (Runner), Chapter 449, Statutes of 2011, combined the acts applicable to speech-language pathologists, audiologists, and hearing aid dispensers and combined the funds from each of the previous regulatory entities. AB 180 (Bonilla), Chapter 395, Statutes of 2015, combined the acts applicable to the cemetery and funeral acts and merged the funds from each of the previous regulated entities under the Cemetery and Funeral Bureau's jurisdiction. AB 179 (Bonilla), Chapter 510, Statutes of 2015 combined the funds of the vocational nurses and the psychiatric technicians under the Board of Vocational Nursing and Psychiatric Technicians. AB 177, Chapter 428, Statutes of 2015, consolidated the separate funds of the Board of Professional Land Surveyors, Engineers, and Geologists.

**Staff Recommendation:** *The Committees may wish to inquire of the Board if there has been any discussion about consolidating the separate funds in an effort to streamline administrative costs and reduce administrative burdens. The Committees may wish to inquire of the Board how merging the practice acts would improve consumer protection and enhance administrative efficiencies for the Board.*

**Board Response:** The Board briefly discussed merging the practice acts and funds during its February 2017 meeting while reviewing the results of the RDO Fee Audit. It was also discussed briefly during its February and March 2017 teleconferences. Sustaining the RDO Program fund was the Board's first priority. With the RDO Fees now in effect, the Board plans to monitor the fund to ensure it is performing as projected. The board believes it is prudent to continue monitoring the fund since it only has two months of fiscal data. While the remaining fund condition data project sustainability, the board would like a minimum of one full fiscal year (2017/18) of data to assess the fiscal integrity of the RDO fund. In the interim, the board proposes to create a strategic plan so that it can move forward with merging the funds no later than fiscal year 2020/21.

The Board is committed to an effective RDO Program transition. Merging the practice acts may improve consumer protection and enhance administrative efficiencies by providing clarity in the statutes and

regulations and removing duplicative administrative work as mentioned in the above background section. The board will discuss the topic at future board meetings as well and conduct outreach and weigh the data. The Board is taking a cautious role to fully vet the issues surrounding merging the acts. While several practice acts have successfully merged in the past, the Board is not aware of any that absorbed a program that could not sustain itself. The Board is concerned that a merger may result in optometrists paying for the administration and discipline of a separate licensing program.

In addition, the Board acknowledges existing statutes within each practice act should be amended to provide clarity for licensees prior to any potential merge. The Board plans to analyze the existing statutes carefully in each act and discuss merging the funds and practice acts at future meetings and will create a strategic plan to move forward no later than fiscal year July 1, 2020. The Board will seek input from various stakeholders throughout this process. The Board can provide updates to the Committee and its staff on the Board's discussions related to this issue.

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Jessica Sieferman  
Executive Officer

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 10 – Update on Legislative Proposals

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The Board Approved Legislative Proposals (Attachment 1) were provided to the Joint Oversight Committee as part of the Board's response to the Joint Oversight Hearing Background Paper.

As of April 6, 2017, the amendments were not included in the Board's Sunset Bill (AB 1708). However, staff anticipates these amendments being included in the sunset bill or an omnibus bill this legislative session. Staff will provide any additional updates at the April meeting.

**Attachment**

1. Board Approved Legislative Proposals

### **Inspection Authority**

#### **3030.**

The board, or its designated agent, may at any time inspect the following:

1. Any premises in which ~~optometry~~ optometric services, as defined in section 3041, are provided or reasonably suspected of being provided.
- ~~1.2. Any premises in which the services of dispensing, adjusting, or fitting of contact or spectacle lenses are provided or reasonably suspected of being provided. is being practiced or in which spectacle or contact lenses are fitted or dispensed. The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect premises for which registration has lapsed or is delinquent.~~

### **Unlicensed Practice**

#### **3040.**

It is unlawful for a person to advertise, offer, or provide any services set forth in Section 3041 ~~engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist~~ without a valid, unrevoked California optometrist license. ~~having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.~~

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

### **Authority for NPDB**

Add to Chapter 7:

(a) The board shall develop an interface with the National Practitioner Data Bank for the purposes of conducting inquiries on applicants for licensure and receiving information on current licensees. The inquiries conducted and the information received by the board shall be limited to the determination of whether a healthcare license or registration held by the applicant or licensee has been subjected to discipline or whether the licensee or applicant has been the subject of an action required to be reported to the Data Bank by federal law or regulation.

(b) On or after July 1, 2018, the Board shall charge an applicant for licensure an additional two dollars (\$2) and a renewing licensee an additional four dollars (\$4) for the purposes of this section.

### **License Barrier**

#### **3057.**

(a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

[...]

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the National Practitioner Database and, if applicable, the verification of registration status with the federal Drug Enforcement

Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has never had his or her license to practice optometry revoked or suspended in any state where the person holds a license. This subsection shall remain in effect only until July 1, 2018 and shall be repealed as of that date unless a later enacted statute deletes or extends that date.

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code. [...]

### **Examination Sponsorship**

#### **Section 3057.5 of the Business and Professions Code is hereby repealed.**

#### **~~3057.5.—~~**

~~Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who meets all of the following requirements to take the examinations for an optometrist license:~~

~~(a) Is over 18 years of age.~~

~~(b) Is not subject to denial of a license under Section 480.~~

~~(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.~~

### **RDO Program's Registration Expiration and Renewal Authority**

#### **2420.**

The provisions of this article apply to, determine the expiration of, and govern the renewal of, each of the following certificates, licenses, registrations, and permits issued by or under the Medical Board of California: physician's and surgeon's certificates, certificates to practice podiatric medicine, physical therapy licenses and approvals, registrations of research psychoanalysts, ~~registrations of dispensing opticians, registrations of nonresident contact lens sellers, registrations of spectacle lens dispensers, registrations of contact lens dispensers~~, certificates to practice midwifery, and fictitious-name permits.

#### **2423.**

(a) Notwithstanding Section 2422:

(1) All physician and surgeon's certificates, certificates to practice podiatric medicine, ~~registrations of spectacle lens dispensers and contact lens dispensers~~, and certificates to practice midwifery shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

(2) Registrations of dispensing opticians will expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed.

(b) The Division of Licensing shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

(c) To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the licensing authority and pay the prescribed renewal fee.

Add to Chapter 5.5:

All spectacle and contact lens dispenser registrations shall expire at midnight on the last day of the birth month of the birth month of the registrant during the second year of a two-year term if not renewed.

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

**To:** Board Members **Date:** April 21, 2017

**From:** Practice and Education Committee **Telephone:** (916) 575-7170

**Subject:** **Agenda Item 11 - Update, Discussion and Possible Action Regarding the Practice and Education Committee Recommendations to Amend CCR § 1536 and Corresponding Application**

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### **Proposed Amendments Related to Child and Elderly Abuse Courses**

Business and Professions Code § [3059](#) (g), (h) gives the Board the authority to require courses on child and elderly abuse detection by licensees who are likely to contact abused or neglected children or elderly persons. Consequently, the Practice and Education Committee recommended the following amendments to California Code of Regulations (CCR) § [1536](#) during the August 28, 2015 Board meeting:

- (m) A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years.
- (n) A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats elder persons shall indicate on the renewal application completion of two hours of training in elder abuse identification and reporting in the previous five years.
- (o) The licensee shall maintain written documentation for five years after mandatory training as identified in sections "l" and "m," including program date(s), content, duration, and proof of participation.

However, upon guidance by legal counsel, the Board referred the language back to the Committee for further deliberation and refinement regarding how these hours would count toward continuing education.

After working with legal counsel, the Committee recommended the following amendments to CCR § 1536 for consideration:

- (m) A licensee who provides or may provide optometric services to children shall complete two hours of coursework relating to the detection of child abuse or neglect and the applicable reporting requirements.
- (n) A licensee who provides or may provide optometric services to elder persons shall complete of two hours of coursework relating to the detection of elder abuse or neglect and the applicable reporting requirements.
- (o) The coursework required by subdivisions (m) and (n) of this section shall be completed within the four years immediately preceding the license renewal date and shall be in addition to the coursework required by subdivisions (a) and (b) of this section, as applicable.

### **Proposed Amendments Related to Process Change and Application**

Recognizing the need to uniform and codify the Continuing Education (CE) Course approval process, the Practice and Education Committee (PEC) made several changes in early 2016.

The PEC revised the application ([here](#)) to include a copy of the course schedule, a detailed course outline and presentation materials (e.g., PowerPoint presentation). In addition, California Code of Regulations (CCR) § [1536](#) was revised to incorporate the application by reference and clarify items required, including a curriculum vitae (CV) for each instructor involved in the course. If one instructor presented on each course, the PEC requested a separate CV attached to each course.

The PEC further instructed staff that it did not want to see any applications that were missing any of the required information.

Since the Board implemented the process changes approved by the PEC, some CE Providers have complained about the cumbersome process. To fully understand the concerns from impacted providers, Board staff is creating a survey to send to each CE provider impacted in the last year as well as other stakeholders. The feedback provided would be brought to the PEC at a future meeting for consideration of additional process improvements.

The PEC decided to review all received applications – regardless of deficiencies to determine if enough information is provided to establish if the criteria set forth in CCR § 1536 (g) is met:

(g) The criteria for judging and approving continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

- 1) Whether the program is likely to contribute to the advancement of professional skills and knowledge in the practice of optometry.
- 2) Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.
- 3) Whether the proposed course is open to all optometrists licensed in this State.
- 4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

The PEC would like the following amendments to CCR § 1536 (f):

(f) Other continuing optometric education courses approved by the Board as meeting the criteria set forth in paragraph (g) below, after submission of the Continuing Education Course Approval Application (Form CE-01, Rev. [5/16/17](#)), hereby incorporated by reference, course [schedule/agenda](#), [topical outline](#) of subject matter [learning objectives](#), and curriculum vitae of all instructors or lecturers involved, to the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

In addition, the PEC proposes amending the corresponding application to align with the regulation amendments (Attachment 1).

#### **Action Requested:**

If the Board approves the PEC Recommendation, please entertain a motion to approve the proposed amendments and delegate authority to the Executive Officer to initiate the rulemaking process.

#### **Attachments:**

1. Proposed Amendments to Continuing Education Course Approval Application





**STATE BOARD OF OPTOMETRY**  
 2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834  
 P (916) 575-7170 F (916) 575-7292 [www.optometry.ca.gov](http://www.optometry.ca.gov)



## CONTINUING EDUCATION COURSE APPROVAL APPLICATION

**\$50 Mandatory Fee**

Pursuant to California Code of Regulations (CCR) § [1536](#), the Board will approve continuing education (CE) courses after receiving the applicable fee, the requested information below and it has been determined that the course meets criteria specified in CCR § 1536(g).

In addition to the information requested below, please attach a copy of the course [schedule/agenda](#), [a detailed course outline](#), [subject matter](#), [learning objectives](#) and presentation materials (e.g., PowerPoint presentation). Applications must be submitted 45 days prior to the course presentation date.

**Please type or print clearly.**

<b>Course Title</b>  _____	<b>Course Presentation Date</b>  <div style="text-align: center;"> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>                 /                 <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>                 /                 <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> </div>
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### Course Provider Contact Information

<b>Provider Name</b>  _____ <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(First)</span> <span>(Last)</span> <span>(Middle)</span> </div>		
<b>Provider Mailing Address</b>  Street _____ City _____ State ____ Zip _____		
<b>Provider Email Address</b> _____		
<b>Will the proposed course be open to all California licensed optometrists?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Do you agree to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	

### Course Instructor Information

Please provide the information below and attach the curriculum vitae for each instructor or lecturer involved in the course. If there are more instructors in the course, please provide the requested information on a separate sheet of paper.

<b>Instructor Name</b>  _____ <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(First)</span> <span>(Last)</span> <span>(Middle)</span> </div>	
<b>License Number</b> _____	<b>License Type</b> _____
<b>Phone Number</b> (____) _____	<b>Email Address</b> _____

***I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct.***

\_\_\_\_\_  
**Signature of Course Provider**

\_\_\_\_\_  
**Date**

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

**To:** Board Members **Date:** April 21, 2017

**From:** Madhu Chawla, OD **Telephone:** (916) 575-7170  
Board President

**Subject:** **Agenda Item 12 – Update, Discussion and Possible Action Regarding the Board’s 2017-2020 Strategic Plan**

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The Board held a Strategic Planning Session on January 26, 2017. The attached Draft Strategic Plan was developed by SOLID Training Solutions based on that session. Staff would like to point out that several objectives initially started with “task the...;” however, SOLID removed all of those references, because specific task assignments are generally given during the action planning phase.

Please review and provide input to the plan. After discussion and input have been provided, staff requests the Board adopt the Strategic Plan (as is or as amended).

**Attachment**

1. DRAFT Strategic Plan



# 2017-2020 Strategic Plan

Prepared by  
SOLID Planning Solutions  
Department of Consumer Affairs  
Adopted



# Table of Contents

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<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>MEMBERS OF THE BOARD .....</b>	<b>3</b>
<b>MESSAGE FROM THE PRESIDENT .....</b>	<b>4</b>
<b>ABOUT THE BOARD .....</b>	<b>5</b>
<b>STRATEGIC GOALS.....</b>	<b>9</b>
<b>MISSION, VISION, VALUES.....</b>	<b>8</b>
<b>GOAL 1: LICENSING.....</b>	<b>9</b>
<b>GOAL 2: EXAMINATION .....</b>	<b>13</b>
<b>GOAL 3: LAW AND REGULATION.....</b>	<b>14</b>
<b>GOAL 4: ENFORCEMENT.....</b>	<b>16</b>
<b>GOAL 5: OUTREACH .....</b>	<b>18</b>
<b>GOAL 6: ORGANIZATIONAL EFFECTIVENESS.....</b>	<b>18</b>
<b>STRATEGIC PLANNING PROCESS .....</b>	<b>19</b>

## MEMBERS OF THE CALIFORNIA STATE BOARD OF OPTOMETRY

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Madhu Chawla, OD, President

Donna Burke, Vice President

Lillian Wang, Secretary

Cyd Brandvein

Martha Garcia, CLD, SLD

Glenn Kawaguchi, OD

Debra McIntyre, OD

Rachel Michelin

Mark Morodomi

Maria Salazar Sperber

David Turetsky, OD

Edmund G. Brown, Jr., Governor

Alexis Podesta, Secretary, Business Consumer Services and Housing Agency

Dean Grafillo, Director, Department of Consumer Affairs

Jessica Siefertman, Executive Officer, California State Board of Optometry

## MESSAGE FROM THE PRESIDENT

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[INSERT MESSAGE HERE]

## ABOUT THE BOARD

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Since its inception over 100 years ago, the California State Board of Optometry (Board) has supported and helped consumers by advocating consumer interests before lawmakers, regulating to protect consumers from unlicensed practitioners and guarding our licensees against unfair competition, enforcing laws to protect the consumer and resolving disputes between business and a customer or a consumer and a licensee.

Our authority to protect the health and safety of California patients receiving optometric care through licensing, education, and regulation of the practice of Optometry was expanded on January 1, 2016, when Governor Jerry Brown signed Assembly Bill 684, transferring the practice of optical dispensary from the Medical Board of California (MBC) to our State Board. Overnight, the Board's regulatory population grew by 50% - expanding its regulatory oversight from 8,000 licensees to roughly 12,000 licensees and registrants.

Today, the Board regulates the largest population of optometrists and dispensers in the United States with over 17,400 licenses, registrations, and permits. The Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma.

With this significant change in population come new, emerging responsibilities. Our Board stands ready and has the capabilities and resources to maintain the same level of accountability, efficiency, effectiveness, integrity and customer service it has delivered since the last Sunset Review. Further, it is in the best interest of California consumers to continue protecting their eye care health and safety through the Board in its current constituted state – an independent Board that relies on the Department of Consumer Affairs (DCA) for administrative support.

As we continue our evolution – from a Board with challenges in 2002 to a well-functioning Board today – we are poised to meet the regulatory changes, adjust through internal improvements to our organizational structure and set a new path forward through a revised Strategic Plan that better aligns with our evolving consumer protection mandate. The Board currently has the following four committees, all composed of professional and public members.

## Achieving our Mission and Positioned to Move Forward

The Board's mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry. The Board accomplishes its mission through the following responsibilities:

- Promulgating regulations governing Board procedures, admission of applicants for examination for an optometric license; minimum standards of optometric and dispensing services offered and performed, the equipment and sanitary conditions in all registered locations;
- Investigating consumer complaints and criminal convictions including, but not limited to substance abuse, unprofessional conduct, incompetence, fraudulent action, and unlawful activity;
- Taking disciplinary action for violations of laws and regulations governing the practice of optometry and dispensing when warranted.
- Accrediting schools and colleges of optometry;
- Establishing educational and examination requirements to ensure the competence of candidates for licensure/registration;
- Setting and enforcing standards for continued competency of existing licensees;
- Establishing educational and examination requirements for optometrists seeking certification to use and prescribe certain pharmaceutical agents and other procedures; and
- Issuing branch offices licenses, statements of licensure and fictitious name permits.

California became the third state to regulate the optometry profession in 1903, and a new Optometry Practice Act, enacted in 1913, created the Board, defined its duties and powers, and prescribed a penalty for violations of the Act. The Act was later incorporated in the Business and Professions Code (BPC). Empowered with rulemaking authority (BPC Sections 3025 and 3025.5), the Board promulgated the first rule for the practice of optometry in 1923. In the same year, the legislature passed a law requiring all applicants for licensure to meet certain educational requirements, i.e., graduate from an accredited school or college of optometry and charged the Board with the responsibility of accrediting these schools. Prior to this time, individuals desiring to practice were not required to have any specific formal education.

On January 1, 2016, Assembly Bill 684, moved the RDO Program under the Board's jurisdiction, and created a Dispensing Optician Committee, comprised of two public members, two dispensers, and one Board Member to advise the Board on dispensing-related matters and education for registered opticians. Assembly Bill 684 replaced one of the Board's professional members with registered optician.



## Board Committees

The Board has the following committees composed of professional and public members:

- Legislation and Regulation  
Responsible for recommending legislative and regulatory priorities to the Board and assisting staff with drafting language for Board-sponsored legislation and recommending official positions on current legislation. The committee also recommends regulatory additions and amendments.
- Practice and Education  
Advises Board staff on matters relating to optometric practice, including standards of practice and scope of practice issues. Reviews staff responses to proposed regulatory changes that may affect optometric practice. Also reviews requests for approval of continuing education courses, and offers guidance to Board staff regarding continuing education issues.
- Consumer Protection  
Oversees the development and administration of legally defensible licensing examinations and consults on improvements/enhancements to licensing and enforcement policies and procedures.
- Public Relations – Outreach  
Assists with the development of outreach and development of educational materials to the Board's stakeholders.
- Children's Vision Workgroup  
SB 402 was created to address the gap in providing eye exams to entry elementary school students as a result of budgetary cuts in the public school system. Among other things, it mandated that children entering school receive a comprehensive eye exam in order to combat the one in three school vision screenings which miss vision problems. Due to the failure of SB 402 to pass out of the Senate Appropriations Committee, the Board created this workgroup, comprised of two members, tasked with meeting with stakeholders on this issue and providing legislation recommendations to the Board for consideration during the 2017 legislative session.
- Mobile Clinic Workgroup  
Protecting and providing families' access to convenient, quality eye care, and support to optometrists so they continue providing the vision care services Californians need and deserve in many environments, the Board created the Mobile Clinic Workgroup. Prior to the workgroup, Senate Bill 349 was introduced, which focused on creating guidelines for mobile optometric facilities; however, it failed to pass out of the Senate Committee on Business and Professions in 2015. The workgroup, comprised of two members, is tasked with

meeting with stakeholders on this issue and providing legislation recommendations to the Board for consideration during the 2017 legislative session.

- Foreign Graduate Workgroup

Recognizing that there was no pathway for foreign graduates to become licensed in California after they pass all required state and national examinations, the Board sponsored Senate Bill 496 (Senator Nguyen). If passed, this would have created the pathway for foreign graduates to become licensed in California; however, it was pulled by the author in 2015 after receiving several equivalency concerns from schools/colleges of optometry and the professional association. In order to determine the best avenue to move forward, the Board created this workgroup, comprised of two members, and tasked it to meet with stakeholders, including the accredited schools and colleges of optometry, to provide stronger legislation recommendations to the Board for consideration during the next legislative session.

- Dispensing Optician Committee – Development Workgroup

Due to the retirement of the Board's Executive Officer in 2015, this workgroup was created to take the lead in the outreach, advertising, and vetting process to fill the Board's Executive Officer position. The workgroup worked hand in hand with DCA's Office of Human Resources and implemented new hiring techniques in order to perform a nationwide search for the ideal candidate.

# STRATEGIC GOALS

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**1** *LICENSING*

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**2** *EXAMINATION*

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**3** *LAW AND REGULATION*

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**4** *ENFORCEMENT*

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**5** *OUTREACH*

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**6** *ORGANIZATIONAL EFFECTIVENESS*

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# California State Board of Optometry Mission, Vision, and Values

## Mission

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*To protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry.*

## Vision

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*To promote high quality optometric and optical care for the people of California.*

## Values

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**Consumer Protection** – *We make effective and informed decisions in the best interest and for the safety of Californians.*

**Integrity** – *We are committed to honesty, ethical conduct, and responsibility.*

**Transparency** – *We hold ourselves accountable to the people of California. We operate openly so that stakeholders can trust that we are fair and honest.*

**Professionalism** – *We ensure qualified, proficient, and skilled staff provides excellent service to the State of California.*

**Excellence** – *We have a passion for quality and strive for continuous improvement of our programs, services, and processes through employee empowerment and professional development.*

## GOAL 1: LICENSING

- *The Board provides applicants and licensees a method for obtaining and maintaining license registration, business licenses, and certifications required to practice optometry in California.*

- 1.1 Streamline the initial license and renewal process, including paperless options and synchronizing multiple license renewal dates, to improve staff efficiency and licensee compliance.
- 1.2 Review the possibility of including continuing education requirements for both spectacle and contact lens dispenser licenses to protect consumers and maintain licensee competence.
- 1.3 Continue monitoring and exploring opportunities to enhance BreEZe utilization (e.g. 100% continuing education compliance, usage of national database, etc.) to increase staff productivity and promote licensee compliance with continuing education requirements.

## GOAL 2: EXAMINATION

- *The Board works to provide a fair, valid and legally defensible licensing exam (California Law and Regulation Examination) and exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in California.*

- 2.1 Recruit more subject matter experts to create examination questions in order to strengthen the diversity of the test.
- 2.2 Analyze the examination requirements to evaluate for competency and the validity of the examination.
- 2.3 Create a budget change proposal to secure funds so the Board can perform an occupational analysis on the registered dispensing optician program in order to check for validity of the examination.
- 2.4 Consider the feasibility of developing a state law exam for opticians to verify their familiarity with California laws.

## GOAL 3: LAW AND REGULATION

- *The Board works to establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost-effective practices.*

- 3.1 Review federal law to identify methods that will strengthen existing California legislation regarding the sale of contact lenses and eye glasses as a means of improving enforcement and enhancing consumer protection.
- 3.2 Contact members of congress and the Federal Trade Commission regarding the current 48 hour law to obtain information that would assist in closing existing loopholes.
- 3.3 Continue prioritization for review and updates to existing statutes, legislation, and regulations, for both optometry and dispensing opticians, in order to identify whether or not they are the cause of enforcement delays and determine promulgation of new regulations.
- 3.4 Continue partnering with the Medical Board of California to identify potential loopholes regarding online and kiosk refraction administration to enhance consumer protection.
- 3.5 Review current methods and explore new opportunities to increase access to care (e.g. scope of practice, mobile clinics, new technology, tele-medicine).
- 3.6 Review and identify existing practice requirements with regards to unnecessary licensing barriers in an effort to reduce barriers to entry, enhance consumer access to care, and maintain consumer protection.
- 3.7 Explore the feasibility of proposing legislation to synchronize the expiration dates of all license types for a given individual.

## GOAL 4: ENFORCEMENT

- *The Board protects the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of optometry in California.*

- 4.1 Review enforcement timing between initial offense and when it is conveyed to the Board to act upon in order to protect the consumer and maintain patient access to care.
- 4.2 Explore the feasibility of participating in the FBI rap back program to expedite and enhance enforcement efforts.
- 4.3 Research the possibility of changing the statute to require licensees to self-report to the Board within thirty days of conviction or other disciplinary action as a means of expediting and enhancing enforcement efforts.
- 4.4 Research the possibility of requiring licensees to enroll in the national practitioner's databank to expedite and enhance enforcement efforts.
- 4.5 Develop proactive methods to enforce the unlicensed sale and distribution of cosmetic contact lenses.
- 4.6 Establish a partnership with DCA Boards and county and state organizations to identify and address unlicensed activity (e.g. contact lens sales and expired prescriptions) in an effort to protect consumers.
- 4.7 Review the corrective action for compliance (and revise if necessary) in order to deter unlicensed activity.
- 4.8 Analyze the 2012 disciplinary guidelines for optometrists and revise where necessary, to promote consistency and fairness with enforcement decisions and enhance consumer protection.



- 4.9 Adopt disciplinary guidelines for opticians to promote consistency and fairness with enforcement decisions and enhance consumer protection.

## GOAL 5: OUTREACH

- *The Board proactively educates, informs, and engages consumers, licensees, students, and other stakeholders on the practice of optometry and the laws and regulations which govern it.*

- 5.1 Review and educate licensees about the scope of practice for optometric assistants, opticians, RDO's, CLD's and SLD's to mirror the letter and chart sent to optometrists clarifying privileges for specific licensing certifications in order to enhance consumer protection.
- 5.2 Educate practitioners about current federal law regarding contact lens prescription release (48 hour law).
- 5.3 Educate licensees and registrants about advertising requirements (e.g. free eye exams, free 2<sup>nd</sup> pair of glasses, etc.) to avoid misleading the public and reduce licensee confusion.
- 5.4 Educate the public on how to adequately fill contact lens prescriptions based on expiration dates and quantity limits to increase awareness and enhance consumer protection.
- 5.5 Develop a public relations campaign to educate unlicensed sellers regarding contact lens distribution laws to mitigate future violations, therefore protecting consumers.
- 5.6 Promote BreEZe's online renewal capability to licensees to decrease manual entries and improve staff efficiency.
- 5.7 Develop a communication plan utilizing technology to communicate more effectively with stakeholders, patients, and licensees.

- 5.8 Develop a communication plan to raise awareness of the importance of children's vision health and wellness.

## GOAL 6: ORGANIZATIONAL EFFECTIVENESS

- *The Board works to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.*

- 6.1 Provide customer service training for staff to improve communication with stakeholders.
- 6.2 Investigate technology options for conducting committee and special meetings to broaden access to stakeholders and consumers.
- 6.3 Provide teambuilding training or exercises to Board members to improve Board functioning.
- 6.4 Provide teambuilding exercises between Board members and staff to improve relationships.
- 6.5 Improve communication and build relationships between the Governor's office, legislators, and the Board to effectively achieve the Board's objectives.

## Strategic Planning Process

To understand the environment in which the Board operates and identify factors that could impact the Board's success, the California Department of Consumer Affairs' SOLID unit conducted an environmental scan of the internal and external environments by collecting information through the following methods:

- An online survey sent to the Board's stakeholders, comprised of industry professionals, professional associations, California colleges, government agencies, consumers and others who expressed interest in the strategic direction of the Bureau. The online survey received 428 responses.
- Telephone interviews with all eleven Board members as well as interviews with the Executive Officer and Assistant Executive Officer in November, 2016.
- Focus group discussion with Board staff in November, 2016.

The most significant themes and trends identified from the environmental scan were discussed by the Board members and executive team during a strategic planning session facilitated by SOLID on January 26, 2016. This information guided the Board in the development of its mission, vision, and values, while directing the strategic goals and objectives outlined in this 2017–2020 strategic plan.



**CALIFORNIA STATE BOARD OF OPTOMETRY**

**2450 Del Paso Road, Suite 105**

**Sacramento, CA 95834**

**[www.optometry.ca.gov](http://www.optometry.ca.gov)**

Prepared by:



Department of Consumer Affairs  
1747 N. Market Blvd., Suite 270  
Sacramento, CA 95834

*This strategic plan is based on stakeholder information and discussions facilitated by SOLID for the California Board of Optometry in January 2017. Subsequent amendments may have been made after Board adoption of this plan.*

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

**To:** Board Members **Date:** April 21, 2017

**From:** Jessica Sieferman **Telephone:** (916) 575-7184  
Executive Officer

**Subject: Agenda Item 13 – Discussion and Possible Action Regarding Emerging Technologies and the Impact to Consumers and the Profession**

Emerging technologies, such as online refractions and kiosk refractions have been closely monitored by the Board since early 2015. The Board has also discussed the topic in multiple public meetings. For reference, staff compiled a hyperlinked list to prior materials and available Webcasts (Attachment 1).

#### Overall Consumer Protection Concern

The overall concern is patients do not fully understand the difference between a refraction test and a comprehensive eye exam. To the patient, he/she experiences a symptom (difficulty seeing near or far away), and the symptom is “fixed” with a quick and convenient refraction test and a pair of glasses. That patient may assume everything is fine and never see the need to have a comprehensive eye exam.

However, refractions (regardless of setting) cannot evaluate the underlying health of the eye or appropriately determine causation of the refractive error. For example, a patient struggling to see far away (symptom) may think they just need a prescription for glasses (perceived solution). So, that patient, believing all he/she needs is a quick prescription, receives a prescription and glasses from an online source. The patient thinks the problem is solved and his/her vision is fine. However, that patient might have an increase in blood sugar due to diabetes, and getting his/her blood pressure under control would not only negate the need for glasses, but also assist the patient in obtaining proper care for diabetes.

In addition, determining the refractive error is a minor portion of a comprehensive eye examination, and it is typically assessed *after* evaluating the overall health of the eye.

#### Consumer Protection Concern Discussed During Sunset Hearing

The Joint Oversight Hearing Background Paper identified emerging technologies, included online refractions, as Issue #15. The issue and Board response is attached for reference (Attachment 2). This consumer protection concern was discussed with Board Members, the Executive Officer and the Legislature during the Board’s Sunset Hearing. That portion of the hearing can be viewed [here](#).

During the hearing, several possibilities were discussed in order to address the issue including, but not limited to, the following:

- increasing accountability and liability,
- potentially requiring the corporations offering the services to register with the applicable regulatory board, and
- increasing educational outreach to consumers.

In addition, a representative from Center for Public Interest Law spoke mentioned an “in-person” requirement during public comment.

The Board also provided information regarding its efforts to educate the public on this issue.

#### Consumer Protection Concern Discussed During Informational Hearing

On March 14, 2017, the Board’s Executive Officer (EO), the California State Board of Pharmacy EO, and the Medical Board of California (MBC) Executive Director served on a healing arts panel to provide information during a joint informational hearing entitled *The Regulation of Corporations and the Impact on Professional Licensing*.

During that hearing, Chair Salas requested additional information related to emerging technologies and online refractions. The Board’s EO discussed the Board’s current consumer protection concerns and the jurisdictional issue with licensed ophthalmologists and medical corporations performing the services. The MBC Executive Director testified that the MBC is evaluating this issue on a case by case basis. Simply providing services online is not illegal; however the same industry standard of care must still be followed regardless of practice setting.

#### National Level Attention

Several states have raised similar concerns, and some have taken legislative/regulatory action in an attempt to address the issue. As previously reported at the August 2016 meeting, the Association of Regulatory Boards in Optometry (ARBO) discussed this during their 2016 annual meeting. Attorney and instructor at Lewis and Clark Law School provided an overview of issues regulatory boards are facing when it comes to new and innovative technology (Attachment 3). While it does not provide any legal advice, it offers some information and questions to consider when considering policy decisions.

Most recently, Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers attempted to add regulatory provisions providing safeguards to ensure that telemedicine meets an in-person standard of care. Upon review, however, the Federal Trade Commission (FTC) concluded the following:

*“Well-intentioned laws and regulations may impose unnecessary, unintended, or overbroad restrictions on competition, thereby depriving health care consumers of the benefits of vigorous competition. Thus, we suggest that regulators consider whether a restriction that could limit entry or access is narrowly tailored to the legitimate goals of the restriction, such as health and safety, and whether other provisions in the law or regulations already achieve, or could achieve, such goals through less competitively restrictive means [emphasis added]”*

*The proposed Delaware regulation could promote the use of telepractice and enhance competition in the provision of hearing and speech care services, likely increasing access, improving quality of care, and bringing other benefits, by allowing licensees to determine whether telepractice is an appropriate level of care. The proposed regulation may, however, unnecessarily limit those benefits by requiring that all initial evaluations be carried out in person, rather than by telepractice.”*

The full FTC letter is attached for reference (Attachment 4).

#### **Action Requested**

Please consider and fully discuss the Board’s consumer protection mandate and its role in regulating a profession with emerging technologies. In discussing potential ways to address the consumer protection concerns raised, please keep in mind the FTC guidance provided.

#### **Attachments**

1. Prior Board Discussions Related to Emerging Technology
2. Issue #15 Board Response
3. Reasonable Regulation in an Electronic Era
4. FTC November 29, 2016 Letter



**Prior Board Discussions Related to Emerging Technology**

- April 23-24, 2015 Board Meeting
  - [Materials](#) (pgs.188-203)
  - [Webcast](#) (starting 3:22:11)
- November 20, 2015
  - [Materials](#) (pgs. 79-134)
- December 16, 2015 Public Relations and Outreach Committee (PROC) Meeting
  - [Materials](#)
- February 19, 2016 Board Meeting
  - [Materials](#) (pgs. 166-119)
  - [Webcast](#) (starting 4:44:44)
- April 21, 2016 PROC Meeting
  - [Materials](#)

**ISSUE #15: New and Emerging Technologies.**

**Background:** Currently, the traditional business model for a consumer to receive optometric services is by visiting an optometric practice at a brick and mortar establishment. At a traditional site, a comprehensive eye examination is typically provided. Recent technological advances are beginning to reshape consumers' access to eye care services. An online refractive test is a service provided through a website. It is a vision test which can be used as a tool by eye care practitioners to determine an individual's needs for an eyeglass or contact lens prescription. Consumers take the test online, pay a fee for services and can then receive a prescription for eyeglasses or contact lenses from a licensed eye care practitioner (either and Optometrist or an Ophthalmologist). These online examinations require consumers to utilize a computer or a smartphone and the examination can be conducted in the privacy of an individual's home.

A quick Google search demonstrates a variety of options for persons interested in acquiring a prescription through online service providers. According to one company's website (Opternative), the way it works is that a consumer registers online and answers questions to ensure eligibility, once approved, the consumer then utilizes a smartphone and a computer for the test (for free), after the examination, the consumer pays a \$40 fee for an Ophthalmologist to review and approve a prescription, which then a consumer can take and fill accordingly.<sup>2</sup> This type of service is not considered to be a "comprehensive examination" as it only measures the need for a person's prescription for eyeglasses or contact lenses. As noted by Opternative on its website,

"Opternative is not a replacement for a comprehensive eye health examination. Our licensed Ophthalmologists use Opternative online technology to evaluate a patient's visual acuity and a portion of the ocular health profile, diagnose refractive error, and issue a prescription for corrective eyewear, where clinically appropriate. Our services are limited to patients between the ages of 18 and 50 who are in good health. All tests are conducted and all prescriptions are issued based on the independent clinical judgement of an ophthalmologist. Because our services are not a replacement for an eye health examination, we encourage everyone to obtain a comprehensive eye health exam at least once every 2 years. We prohibit patients from taking an Opternative test more than 4 consecutive years without certifying that they have received a comprehensive eye health exam first. If you need help finding an eye care professional near you, please contact us at [info@opternative.com](mailto:info@opternative.com)."

According to the Optometric Association, "vision screening programs can't substitute for regular professional vision care. Children or adults who pass a vision screening could still have an eye health or vision problem."

While these services are not purported to offer a full service eye health screening to detect more serious eye conditions, there is concern that consumers may not be aware and mistake a vision screening on-line program as a replacement for a more comprehensive service. It may be beneficial for the Board to ensure consumers are aware of the differences in services offered including information about where and to whom consumers can raise concerns with quality of care issues.

**Staff Recommendation:** *The Board should advise the Committees on whether or not there is a method to verify that the online examinations are valid for what they purport to be. Further the Board should advise the Committees on what, if anything, the Board is doing to provide consumers with information regarding online vision service providers. Lastly, the Board should advise about the current relationship between online examinations and Optometric telehealth.*

**Board Response:** The Board welcomes emerging technologies that better serve California consumers. The Board will continue to take the necessary steps to ensure the same standard of care is followed regardless of practice setting. The Board is taking a two-pronged approach to the issue of online refractions and refractions performed in kiosks within mercantile settings. First, it is refining its outreach message to specifically target consumers (and potential consumers) of online services to provide them with the most accurate information as to what these services can provide and what they can't – most notably, the inability to effectively and appropriately examine the overall health of the eye as well as the inability to determine whether a change in a patient's prescription is due to a normal refractive shift or if the change was caused by an ocular health issue.

The Board will increase its social media presence and utilize available technology to reach the technologically savvy consumer. Second, the Board is investigating complaints filed regarding online services. Using a variety of methods, and during these investigations, Board staff will work closely with the Division of Investigation and the Office of the Attorney General to verify that the applicable laws and regulations are being followed. The Board is also reviewing how these services mesh with existing telehealth statutes.

**ARBO Annual Meeting  
Boston, June 2016**

**REASONABLE REGULATION IN AN ELECTRONIC ERA**

**Barbara J. Safriet  
Lewis & Clark Law School  
Portland, OR**

**ISSUES FOR REGULATORY/LICENSING AUTHORITIES**

1-How to reconcile the utilization of virtual, “boundary-less” health modalities with geographically-bounded legal restrictions?

- potential (and often, actual) benefits from innovative technology—
  - expand access, geographically and for routine care
  - gain efficiencies, by reducing time/costs to patients
  - promote monitoring and adherence
  - increase data collection and analysis
  - trigger patient awareness of need for more comprehensive care
  
- problems with current state-based regulation—
  - varying legal definitions- telehealth or telemedicine
  - some state have no definitions for these modalities
  - other states require dual licensure (remote and resident state)
  - differing authority and coverage for providers and patients
  - varying payments by governmental and commercial insurers
  - perils of exceeding the scope of practice in the remote state
  - potential conflicts for liability coverage, documentation, etc.
  
- professional ethical provisions, and state regulations—
  - traditionally based on the essential nature of in-person, face-to-face contact; given technology, is this still valid?
  - bundled all profession-related services into the exclusive domain of a profession; with new kinds of providers and technological advances, will the trends of “un-bundling” and de-regulation continue?

2- Who regulates the development of new technologies and their utilization by whom, and based on what?

- federal -- development and assessment of product, licensing of product, patent and copyright protections, and marketing
- state legislature or agency – authorized providers; payment for services

3- How to assure compliance with:

- federal antitrust laws when regulations are developed and promulgated by market participants?

- constitutional requirements of due process and equal protection?

- do restrictions address a real, as opposed to a hypothetical, need for public health and safety?

- are restrictions tailored to the substantiated problem, and do they assess the effects on patients' access and costs, as well as quality?

4- What is the role of regulatory boards in protecting patient health and safety?

- the best/highest level of services? Or appropriate services? Or acceptable services? And who decides what those mean?

**RESOURCES:**

***The Promise of Telehealth For Hospitals, Health Systems and Their Communities***, American Hospital Association, January 2015

<http://www.aha.org/research/reports/tw/15jan-tw-telehealth.pdf>

***Realizing the Promise of Telehealth: Understanding the Legal and Regulatory Challenges***, American Hospital Association, May 2015

<http://www.aha.org/research/reports/tw/15may-tw-telehealth.pdf>

***Real-time Teleophthalmology in Rural Western Australia*** – Karim A. Johnson et al, *Australian Journal of Rural Health* [Volume 23, Issue 3](#), pages 142–149, June 2015

<http://onlinelibrary.wiley.com/doi/10.1111/ajr.12150/abstract;jsessionid=68A8CB4774810366A5096A57443963B4.f03t01?deniedAccessCustomisedMessage=&userIsAuthenticated=false>

***Iowa Board of Medicine votes to establish standards for physicians who use telemedicine***

[http://www.medicalboard.iowa.gov/Board%20News/2014/Press%20release%20-%20Board%20votes%20to%20establish%20standards%20for%20physicians%20who%20use%20telemedicine%20-%20October%2010%202014%20\(2\).pdf](http://www.medicalboard.iowa.gov/Board%20News/2014/Press%20release%20-%20Board%20votes%20to%20establish%20standards%20for%20physicians%20who%20use%20telemedicine%20-%20October%2010%202014%20(2).pdf)

[New rule establishes standards for physicians who use telemedicine](#)

Iowa Board of Medicine Final Rule effective, June 3, 2015

**Telehealth Policy Trends and Considerations  
National Conference of State Legislatures (2015)**

<http://www.ncsl.org/research/health/telehealth-policy-trends-and-considerations.aspx>

**American Telehealth Association (2015)**

**50 State Telehealth Gaps Analysis- Coverage and Reimbursement**

**[http://www.americantelemed.org/docs/default-source/policy/2016\\_50-state-telehealth-gaps-analysis--coverage-and-reimbursement.pdf](http://www.americantelemed.org/docs/default-source/policy/2016_50-state-telehealth-gaps-analysis--coverage-and-reimbursement.pdf)**

**State Laws and Reimbursement Policies with the Center for Connected Health Policy. (2016) <http://cchpca.org/state-laws-and-reimbursement-policies>.**

***North Carolina State Board of Medical Examiners v. Federal Trade Commission,***

U.S. Supreme Court, 2015

**[http://www.supremecourt.gov/opinions/14pdf/13-534\\_19m2.pdf](http://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf)**.

**FTC Staff Comment to the Alaska State Legislature Regarding Telehealth Provisions In Senate Bill 74, Which Would Allow Licensed Alaska Physicians Located Out-of-State To Provide Telehealth Services**

March,

2016 **[https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-alaska-state-legislature-regarding-telehealth-provisions-senate-bill-74-which/160328alaskatelehealthcomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-alaska-state-legislature-regarding-telehealth-provisions-senate-bill-74-which/160328alaskatelehealthcomment.pdf)**



Office of Policy Planning  
Bureau of Competition  
Bureau of Economics

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

November 29, 2016

Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers  
Cannon Building  
861 Silver Lake Blvd.  
Dover, DE 19904

The staffs of the Federal Trade Commission's ("FTC") Office of Policy Planning, Bureau of Economics, and Bureau of Competition<sup>1</sup> (collectively, "FTC staff") appreciate the opportunity to respond to the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers' ("Board") notice requesting comments on its proposed revisions to its telecommunication and telehealth regulations. The Board proposes to eliminate an existing restriction on evaluation and treatment by correspondence, including telecommunication at 24 Del. Admin. Code § 3700-9.2.1.4, and replace it with a new § 3700-10, on "Telepractice."<sup>2</sup> The new regulation would promote the use of telepractice by allowing licensed Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers (collectively, "licensees")<sup>3</sup> to determine whether telepractice is an appropriate level of care for a patient. However, before licensees could provide telepractice services, the proposed regulation would require an in-person initial evaluation.<sup>4</sup>

The Board takes a significant and, we believe, positive step by proposing to remove existing restrictions on service by telecommunication and allow licensees to determine whether telepractice is an appropriate level of care. The proposed regulatory changes could enhance consumer choice by providing an alternative to in-person care, potentially reducing travel expenditures, increasing access to care, and increasing competition. The Board might boost these benefits, however, by allowing licensees to determine on a case-by-case basis whether telepractice is appropriate for an initial evaluation, rather than requiring that all initial evaluations be carried out in person. Accordingly, we encourage the Board to consider the potential effects on competition and access of the proposed prohibition on initial evaluations delivered by telepractice, in conjunction with any potential health and safety consequences of the proposed regulation.

## **I. Interest and Experience of the Federal Trade Commission**

The FTC is charged under the FTC Act with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>5</sup> Competition is at the core of



America's economy,<sup>6</sup> and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and increased innovation. Because of the importance of health care competition to the economy and consumer welfare, anticompetitive conduct in health care markets has long been a key focus of FTC law enforcement,<sup>7</sup> research,<sup>8</sup> and advocacy.<sup>9</sup> In particular, many of our recent state advocacy comments have addressed scope of practice and supervision provisions that may unnecessarily limit the range of procedures or services a practitioner may provide, or unnecessarily restrict a particular type of practitioner from competing in the market.<sup>10</sup>

Telehealth is an area of particular interest to the FTC because of its potential to increase practitioner supply, encourage competition, and improve access to affordable, quality health care. In a 2004 report, the federal antitrust agencies considered the competitive effects of state restrictions on the interstate practice of telemedicine,<sup>11</sup> and the central finding of that analysis remains applicable today: "When used properly, telemedicine has considerable promise as a mechanism to broaden access, lower costs, and improve health care quality."<sup>12</sup> More recently, FTC staff submitted a comment to the Alaska legislature supporting proposed legislation that would allow Alaska-licensed physicians located out-of-state to provide telehealth services in the same manner as in-state physicians.<sup>13</sup> FTC staff also recently commented on telehealth regulations proposed by the Delaware Boards of Occupational Therapy Practice and Dietetics/Nutrition.<sup>14</sup> The conclusions of the agencies' 2004 report and the prior FTC staff comments, which support reduction of barriers to telemedicine, underpin this comment.<sup>15</sup>

## **II. Delaware's Proposed Telepractice Regulation for Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**

As a prerequisite to its proposed telepractice regulation covering the provision of speech/language pathology, audiology and hearing aid dispensing professional services, the Board proposes to eliminate an existing regulation, 24 Del. Admin. Code § 3700-9.2.1.4, that does not allow licensees to "evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication."<sup>16</sup> A telepractice regulation would be added at § 3700-10.<sup>17</sup>

The proposed regulation defines telepractice as "the application of telecommunications technology to the delivery of speech/language pathology, audiology and hearing aid dispensing professional services at a distance by linking clinician to client or clinician to clinician for intervention and/or consultation . . . ."<sup>18</sup> The regulation would have several provisions to ensure that "interventions" are appropriately delivered by telepractice and meet in-person standards of care:

"The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care."<sup>19</sup>

"The licensee shall limit the practice of telepractice to the area of competence in which proficiency has been gained through education, training and experience."<sup>20</sup>

“Licensees who deliver telepractice services must possess specialized knowledge and skills in selecting interventions that are appropriate to the technology and that take into consideration client and disorder variables.”<sup>21</sup>

These provisions provide safeguards to ensure that telepractice meets an in-person standard of care. The proposed regulation, however, also would create a requirement that all “[i]nitial evaluations shall be performed face to face and not through telepractice.”<sup>22</sup> The proposed regulation would allow a licensee to “be responsible for determining and documenting that telepractice is an appropriate level of care for the client only after an initial face to face evaluation.”<sup>23</sup> Accordingly, while the proposed regulation would rely on the judgment of licensees to determine whether to provide telepractice interventions and consultations, it prohibits initial evaluations by telepractice, potentially prohibiting some telepractice diagnostic services and discouraging practitioners and consumers from using telepractice for post-evaluation treatment or intervention.

### **III. Likely Competitive Impact of Delaware’s Proposed Telepractice Regulation**

#### **A. Telepractice Has the Potential to Increase Competition and Access to Speech and Hearing Care Services**

Generally, competition in health care markets benefits consumers by containing health care prices, expanding access and choice, and promoting innovation. Telehealth can potentially increase the supply of practitioners and thereby enhance price and non-price competition, reduce transportation expenditures, and improve access to quality care.<sup>24</sup> Many health care professionals and expert bodies support the use of telehealth to address access to health care challenges arising from an aging population, health care workforce shortages, and geographic and other maldistributions of providers that can lead to shortages in urban as well as rural areas.<sup>25</sup>

Telepractice as a delivery model for audiology and speech/language pathology services offers the same potential to enhance competition among providers and improve access to quality care. Practitioners and expert bodies such as the National Academies of Sciences, Engineering, and Medicine have recognized the potential for telepractice to address geographic and economic barriers to hearing and speech care, especially in underserved communities.<sup>26</sup>

The Delaware Division of Public Health has acknowledged the potential for telehealth to mitigate the state’s healthcare access challenges caused by shortages in critical healthcare specialties and underserved geographic locations.<sup>27</sup> While Delaware is a small state, many of its health resources are unevenly distributed. For example, there are few audiologists in Sussex and Kent counties relative to New Castle, suggesting that telehealth would allow New Castle practitioners to serve Sussex and Kent patients.<sup>28</sup> Experts have found that many audiology and speech/language pathology rehabilitation services can be effectively provided through telepractice, potentially improving access to care arising from shortages, economic disparities, and/or poor mobility.<sup>29</sup> As the Delaware *State Plan on Aging* points out, the elderly and individuals with disabilities could especially benefit from telehealth because it would allow them to “receive some medical care at home, or in other more convenient settings.”<sup>30</sup>

The potential for improved health outcomes and access to cost-effective medical care motivated the Delaware Medicaid Program's 2012 decision to reimburse services delivered by telemedicine.<sup>31</sup> Telepractice delivery of speech/language pathology and audiology services could help reduce Delaware's Medicaid transportation expenditures as well as individuals' pecuniary and time costs.<sup>32</sup>

### **B. A Range of Services May Safely and Effectively be Provided by Telepractice**

The literature indicates that a number of speech and hearing care services can be provided safely and effectively through telepractice. In speech/language pathology, schools are the most common setting in which telepractice is used.<sup>33</sup> For both adults and children, telepractice, often conducted via interactive audio-videoconferencing,<sup>34</sup> may be used for screening, treatment, and consultation. In schools, telepractice is used to evaluate and treat a number of impairments, including language, articulation, and fluency disorders.<sup>35</sup> Typically, a student receiving telepractice speech/language pathology services at school is assisted by a telepractice assistant, such as a teacher's aide, nursing assistant, or other type of support personnel to help students and other patients focus on the task and provide technology support.<sup>36</sup> The use of speech/language pathology telepractice could help alleviate chronic shortages of speech/language pathologists in Delaware schools.<sup>37</sup>

A number of audiology services, such as the diagnostic hearing assessment of adults and infants, cochlear implant programming, and hearing aid fitting and programming, can also be provided remotely.<sup>38</sup> For example, the U.S. Department of Veterans Affairs ("VA") has a tele-audiology program that provided more than 15,000 tele-audiology encounters in FY 2014, making tele-audiology one of its top 15 telehealth programs. The program provides services such as hearing aid fitting and programming, and cochlear implant programming. Telepractice encounters typically link a practitioner at a VA medical center with a patient at a community outpatient clinic, where a trained assistant is available to set up specialized equipment that the practitioner operates remotely.<sup>39</sup>

Similarly, the diagnostic evaluation of infants who failed a newborn hearing screening test at a birth hospital can be performed via telepractice by connecting a pediatric audiologist at a major medical center with an infant brought to a community hospital or clinic. A facilitator sets up the equipment for use on the infant, and a remote audiologist conducts a comprehensive diagnostic evaluation, including video-otoscopy, auditory brainstem response, and other tests.<sup>40</sup>

Allowing the telepractice diagnostic evaluation of infants who failed a newborn hearing screening test may improve follow-up and enhance quality of care, yielding significant long-term benefits for children with hearing loss. The Joint Committee on Infant Hearing recommends that diagnostic hearing evaluation of infants who fail newborn hearing screening occur by three months of age. However, because of shortages of pediatric audiologists and the difficulties of travel for some parents, due to lack of transportation, the need for childcare, lost wages, or a combination of these factors, many infants appear to be missing timely evaluation.<sup>41</sup> According to the Centers for Disease Control and Prevention ("CDC"), 58.7% of Delaware infants who failed the newborn hearing screen were not confirmed as having received the recommended audiological evaluation needed to diagnose a hearing loss in 2014.<sup>42</sup> Teleaudiology has been

found to be an effective way to address barriers to obtaining diagnostic hearing evaluation and to reduce or eliminate the number of infants not receiving an audiological evaluation.<sup>43</sup>

Such a program could enable Delaware-licensed audiologists located in New Castle County or out-of-state to provide diagnostic evaluations to infants in Sussex and Kent counties, addressing the shortages in those counties and potentially reducing the number of infants who did not receive an audiological evaluation.<sup>44</sup> Importantly, improved follow-up may enable children found to have a hearing loss to receive treatment without delay, likely allowing them to acquire language skills comparable to hearing children.<sup>45</sup> Such early identification and intervention not only improves a child's quality of life, but also helps avoid substantial educational and societal costs arising from delayed treatment.<sup>46</sup>

### **C. The Proposed Restriction on Telepractice Initial Evaluations Could Unnecessarily Discourage the Use of Telepractice**

In important respects, the proposed regulation likely would encourage the delivery of speech/language and audiology services by telepractice, thereby increasing competition, consumer choice, and access to care.<sup>47</sup> The proposed elimination of § 3700-9.2.1.4 would remove the existing restriction on providing speech/language and audiology services by telecommunications, setting the stage for the provision of telepractice services.<sup>48</sup> Proposed §§ 3700-10.2.4.3-10.2.4.5 would hold licensees to existing in-person standards of care, and with the exception of initial evaluations, § 3700-10.2.4.1 would entrust the decision whether to use telepractice to the practitioners best positioned to make that determination.<sup>49</sup>

The proposed regulation would, however, limit telepractice delivery to “interventions and consultations,” and would require that all initial evaluations be performed in person.<sup>50</sup> Across-the-board restrictions not required by legitimate health and safety concerns may unnecessarily discourage the use of telepractice and limit its potential benefits. For example, the proposed rule appears to restrict some types of telepractice services, such as speech/language hearing services and newborn hearing screening follow-up, that may include an initial evaluation.<sup>51</sup>

The American Speech-Language-Hearing Association's (“ASHA”) guidelines and model regulations include no provisions that would categorically restrict telepractice initial evaluations. Indeed, they define telepractice to include “assessment” as well as intervention and consultation, without distinguishing between initial and subsequent assessments.<sup>52</sup> To ensure appropriate care, ASHA supports holding practitioners to an in-person standard of care and making practitioners responsible for determining whether assessments and interventions should be provided by telepractice, given the nature of the patient's condition.<sup>53</sup>

ASHA's endorsement of telepractice assessment is consistent with positions taken by other professional organizations. For example, several physicians' organizations have recognized the need for flexibility with regard to the initial evaluation of a patient and have adopted telehealth policies permitting remote examination of a patient during an initial encounter, so long as the practitioner is held to an in-person standard of care.<sup>54</sup>

Requiring initial in-person examination or evaluation requirements in the health professions may restrict entry of qualified telehealth practitioners, potentially decreasing competition, innovation, and health care quality, while increasing price.<sup>55</sup> Thus, several state legislatures and health care regulatory boards, including Delaware’s Board of Occupational Therapy Practice, have recently eliminated or declined to adopt provisions requiring an initial in-person evaluation.<sup>56</sup>

Similarly, of the 19 states and the District of Columbia with laws, regulations, or policies on speech/language pathology or audiology telepractice, only three—Kentucky,<sup>57</sup> Montana,<sup>58</sup> and Texas<sup>59</sup>—require an in-person initial evaluation or contact.<sup>60</sup> Moreover, neither Kentucky nor Montana requires the distant telepractice provider to make an in-person evaluation if a qualified, in-person practitioner evaluates the client prior to the provision of telepractice services.<sup>61</sup>

The Board could avoid a blanket restriction in the proposed regulation by allowing licensed practitioners to determine whether telepractice is appropriate for an initial evaluation, just as they are permitted to do for subsequent visits, consistent with the in-person standard of care and related health and safety concerns. Allowing the licensed practitioner to determine whether to use telepractice for an initial evaluation would put the decision in the hands of the practitioner in the best position to weigh access, health, and safety considerations on a case-by-case basis. In addition, because the nature of many speech/language pathology and audiology services requires a facilitator to assist with the patient and/or specialized equipment,<sup>62</sup> licensees often will have a proxy for an in-person encounter. In any event, the Board’s proposed rules already would require telepractice providers to ensure that their services are appropriate for the client’s condition, and would hold providers to an in-person standard of care.<sup>63</sup>

For these reasons, we encourage the Board to consider whether the proposed regulation could provide potentially greater access, quality of care, and other benefits to patients by broadening the proposed definition of telepractice to include evaluations and eliminating the apparent prohibition of initial evaluations conducted by telepractice.<sup>64</sup>

#### **IV. Conclusion**

Well-intentioned laws and regulations may impose unnecessary, unintended, or overbroad restrictions on competition, thereby depriving health care consumers of the benefits of vigorous competition.<sup>65</sup> Thus, we suggest that regulators consider whether a restriction that could limit entry or access is narrowly tailored to the legitimate goals of the restriction, such as health and safety, and whether other provisions in the law or regulations already achieve, or could achieve, such goals through less competitively restrictive means.

The proposed Delaware regulation could promote the use of telepractice and enhance competition in the provision of hearing and speech care services, likely increasing access, improving quality of care, and bringing other benefits, by allowing licensees to determine whether telepractice is an appropriate level of care. The proposed regulation may, however, unnecessarily limit those benefits by requiring that all initial evaluations be carried out in person, rather than by telepractice.

We commend the Board and support the proposed regulation’s flexibility in generally allowing licensees to determine whether to use telepractice. At the same time, we urge the Board to consider whether allowing licensees to decide whether and when to use telepractice delivery, including on initial evaluations, would better promote competition and access to safe and affordable care.

We appreciate your consideration.

Respectfully submitted,

Tara Isa Koslov, Acting Director  
Office of Policy Planning

Ginger Zhe Jin, Director  
Bureau of Economics

Deborah Feinstein, Director  
Bureau of Competition

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<sup>1</sup> This letter expresses the views of the Federal Trade Commission’s Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize staff to submit this comment.

<sup>2</sup> 3700 State Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 20 Del. Reg. Regs. 107 (proposed August 1, 2016) (Telepractice regulation to be codified at 24 DEL. ADMIN. CODE § 3700-10) [hereinafter Proposed Regulation]. For a discussion of § 3700-9.2.1.4 and § 3700-10, *see infra* Section II. The Board uses the term “telepractice” rather than telehealth or telemedicine, consistent with the American-Speech-Language-Hearing Association’s decision to use the term “to avoid the misperception that these services are used only in health care settings.” AMERICAN-SPEECH-LANGUAGE-HEARING ASS’N, TELEPRACTICE (Practice Portal), Overview, <http://www.asha.org/PRPPrintTemplate.aspx?folderid=8589934956> (last visited Oct. 19, 2016) [hereinafter ASHA, TELEPRACTICE]. ASHA’s Practice Portals are “developed through a comprehensive process that includes multiple rounds of subject matter expert input and review.” *See* ASHA, Telepractice Content Development, <http://www.asha.org/Practice-Portal/Professional-Issues/Telepractice/Telepractice-Content-Development/> (last visited Nov. 1, 2016).

<sup>3</sup> This advocacy comment focuses on speech/language pathology and audiology because most of the available academic literature and other information sources discuss those services. We note, however, that the proposed regulation would cover hearing aid dispensers as well as speech/language pathologists and audiologists. To the

extent that hearing aid dispensers provide services remotely, we see no reason why an analysis of the likely competitive impact of the proposed regulation would differ for those providers.

<sup>4</sup> See Proposed Regulation, *supra* note 2, §§ 3700-10.2.4.1, 10.2.4.2.

<sup>5</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>6</sup> *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

<sup>7</sup> See generally FTC STAFF, OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS (2016), <https://www.ftc.gov/system/files/attachments/competition-policy-guidance/hcupdaterev.pdf>.

<sup>8</sup> See, e.g., FTC & U.S. DEP’T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

<sup>9</sup> FTC and staff advocacy can include letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, amicus briefs, or reports. See, e.g., Comment from FTC Staff to Valencia Seay, Senator, Ga. State Senate (Jan. 29, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-georgia-state-senator-valencia-seay-concerning-georgia-house-bill-684/160201gadentaladvocacy.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-georgia-state-senator-valencia-seay-concerning-georgia-house-bill-684/160201gadentaladvocacy.pdf) (regarding removal of direct supervision requirements for dental hygienists); Brief of Amicus Curiae FTC in Support of No Party, In re Nexium (Esomeprazole) Antitrust Litig., No. 15-2005 (1st. Cir. Feb. 12, 2016), [https://www.ftc.gov/system/files/documents/amicus\\_briefs/re-nexium-esomeprazole-antitrust-litigation/160212nexiumbrief.pdf](https://www.ftc.gov/system/files/documents/amicus_briefs/re-nexium-esomeprazole-antitrust-litigation/160212nexiumbrief.pdf); FTC STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (2014), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf).

<sup>10</sup> Many of these competition advocacy comments have focused on proposed state-level changes to statutes and rules governing the scope of practice and supervision of advanced practice registered nurses. The FTC staff report, *Policy Perspective: Competition and the Regulation of Advanced Practice Nurses*, presents an overview of these comments and an in depth analysis of the competitive effects of such statutes and rules. See FTC STAFF, POLICY PERSPECTIVES, *supra* note 9.

<sup>11</sup> See FTC & U.S. DEP’T OF JUSTICE, *supra* note 8, ch. 2, at 30 (section on “*State Restrictions on the Interstate Practice of Telemedicine*”). More recently, FTC staff held a workshop series, *Examining Health Care Competition*, where a panel on *Innovations in Health Care Delivery* explored competition issues related to telehealth. See Transcript of Examining Health Care Competition Workshop 67-122, Fed. Trade Comm’n (Mar. 20, 2014), [https://www.ftc.gov/system/files/documents/public\\_events/200361/transcriptmar20.pdf](https://www.ftc.gov/system/files/documents/public_events/200361/transcriptmar20.pdf).

<sup>12</sup> FTC & U.S. DEP’T OF JUSTICE, *supra* note 8, Executive Summary at 23.

<sup>13</sup> See Comment from FTC Staff to Steve Thompson, Representative, Alaska State Legislature (Mar. 25, 2016), <https://www.ftc.gov/policy/policy-actions/advocacy-filings/2016/03/ftc-staff-comment-alaska-state-legislature-regarding> (regarding telehealth provisions in Senate Bill 74, which would allow licensed Alaska physicians located out-of-state to provide telehealth services).

<sup>14</sup> See Comment from FTC Staff to the Delaware Board of Occupational Therapy Practice (Aug. 3, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-delaware-board-occupational-therapy-concerning-its-proposed-telehealth-regulation/v160014\\_delaware\\_ot\\_proposed\\_advocacy.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-delaware-board-occupational-therapy-concerning-its-proposed-telehealth-regulation/v160014_delaware_ot_proposed_advocacy.pdf) (regarding its proposed telehealth regulation); and Comment from FTC Staff to the Delaware Board of Dietetics/Nutrition (Aug. 16, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-delaware-board-dietetics/nutrition-regarding-its-proposed-telehealth-regulation/staff\\_comment\\_delaware\\_diet\\_telehealth\\_signed.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-delaware-board-dietetics/nutrition-regarding-its-proposed-telehealth-regulation/staff_comment_delaware_diet_telehealth_signed.pdf).

<sup>15</sup> This advocacy also draws on knowledge acquired during the *Innovations in Health Care Delivery* panel of the 2014 FTC workshop, *Examining Health Care Competition*, *supra* note 11.

<sup>16</sup> 24 DEL. ADMIN. CODE § 3700-9.2.1.4. Although the scope of the conduct prohibited by § 3700-9.2.1.4 is unclear, it is the only state with such a provision and its effects may be far-reaching. See, e.g., Jana Cason & Janice A.

Brannon, *Telehealth Regulatory and Legal Considerations: Frequently Asked Questions*, 3 INT’L J. TELEREHAB. 15, 16-17 (“[T]he Delaware Board, through an unfortunate choice of wording, significantly limits the use of telehealth within their state for speech-language pathologists and audiologists by defining telecommunication in this way.”)

<sup>17</sup> See Proposed Regulation, *supra* note 2.

<sup>18</sup> Proposed Regulation, *supra* note 2, § 3700-10.1.

<sup>19</sup> Proposed Regulation, *supra* note 2, § 3700-10.2.4.3.

<sup>20</sup> Proposed Regulation, *supra* note 2, § 3700-10.2.4.4.

<sup>21</sup> Proposed Regulation, *supra* note 2, § 3700-10.2.4.5.

<sup>22</sup> Proposed Regulation, *supra* note 2, § 3700-10.2.4.2.

<sup>23</sup> Proposed Regulation, *supra* note 2, § 3700-10.2.4.1.

<sup>24</sup> See, e.g., Comment from FTC Staff to Steve Thompson, *supra* note 13.

<sup>25</sup> See generally Am. Acad. of Pediatrics, *Policy Statement: The Use of Telemedicine to Address Access and Physician Workforce Shortages*, 136 PEDIATRICS 202, 203 (2015) (urban as well as rural children “face significant disparities in access and time-distance barriers, which could be partly alleviated by the use of telehealth”); Hilary Daniel & Lois Snyder Sulmasy, *Policy Recommendations to Guide the Use of Telemedicine in Primary Care Settings: An American College of Physicians Position Paper*, 163 ANN. INT. MED. 787, app. (2015) (“Limited access to care is not an issue specific to rural communities; underserved patients in urban areas have the same risks as rural patients if they lack primary or specialty care . . . .”); Rashid L. Bashshur et al., *The Empirical Foundations of Telemedicine Interventions for Chronic Disease Management*, 20 TELEMED. & E-HEALTH 769, 770 (2014) (“Differences in access to care reflect economic, geographic, and functional as well as social, cultural, and psychological factors . . . . many residents of the inner city have limited access to medical resources for economic reasons.”).

<sup>26</sup> See, e.g., NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, HEARING HEALTH CARE FOR ADULTS: PRIORITIES FOR IMPROVING ACCESS AND AFFORDABILITY 124-25, 132 (Dan G. Blazer et al. eds., 2016) [hereinafter NATIONAL ACADEMIES] (discussing the use of teleaudiology to improve access to hearing health care for underserved and vulnerable populations); M.L. Bush et al., *Rural barriers to early diagnosis and treatment of infant hearing loss in Appalachia*, 36 OTOL. NEUROTOL. 93 (2015); D.W. Swanepoel et al., *Telehealth in audiology: The need and potential to reach underserved communities*, 49 INT’L J. AUDOL. 195 (2010); Janice K. Tucker, *Perspectives of Speech-Language Pathologists on the Use of Telepractice in Schools: Quantitative Survey Results*, 4 INT’L J. TELEREHAB. 61 (2012) (“The potential benefits of telepractice are substantial [] and could include: greater access to speech-language pathology services for underserved populations (e.g., rural and inner city students) . . . .”).

<sup>27</sup> See, e.g., DEL. DIV. OF PUB. HEALTH, STATE OFFICE OF PRIMARY CARE, DELAWARE PRIMARY CARE HEALTH NEEDS ASSESSMENT 2015 60 (Feb. 2016), [www.dhss.delaware.gov/dph/hsm/files/dephealthneedsassessment2015.pdf](http://www.dhss.delaware.gov/dph/hsm/files/dephealthneedsassessment2015.pdf) (“Telehealth in Delaware is used to address health care access issues, whether from shortfalls in critical health care specialties or in underserved geographic locations . . . . The use of telehealth in Delaware is supported by state government as an important cost-effective, access improvement tool.”).

<sup>28</sup> As explained by an audiologist who testified at the November 2015 public hearing of the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, “there is only one audiologist in Kent and Sussex County who is conducting follow-ups for newborns who fail hearing screenings. Due to the shortage, children are not getting subsequent follow-up appointments. There is a need for providing remote services to families who live far from the hospital and lack transportation.” 20 Del. Reg. Regs. 107, 108 (2016) (statement of Liesel Looney of Nemours/ Alfred I. duPont Hospital for Children). The relative scarcity of audiologists in Kent and Sussex counties is consistent with licensing data: Records of active Delaware audiology licenses showed three in Sussex County (1.52/100,000 people; 0.32/100 sq mi); 6 in Kent County (3.7/100,000 people; 1.01/100 sq mi), and 30 in New Castle County (5.57/100,000 people; 6.85/100 sq mi). License records were obtained from State of Delaware, Search for a License, <https://dpronline.delaware.gov/mylicense%20weblookup/Search.aspx> (last visited



Oct. 18, 2016). Populations and areas for the counties: Sussex (197,145; 950 sq mi); Kent (162,310; 594 sq mi); New Castle (538,479; 438 sq mi). *See* 2010 Census Data for Delaware, [http://stateplanning.delaware.gov/census\\_data\\_center/2010\\_data.shtml](http://stateplanning.delaware.gov/census_data_center/2010_data.shtml) (last visited Oct. 31, 2016); Delaware geography, <http://delaware.gov/topics/facts/geo.shtml> (last visited Oct. 31, 2016). *See generally*, Del. Div. of Pub. Health, *supra* note 27 (describing variations in health needs of Delaware counties and regions for a number of health professions).

<sup>29</sup> *See, e.g.*, Michelle von Muralt et al., *Telerehabilitation in Audiology*, in TELEPRACTICE IN AUDIOLOGY 153 (Emma Rushbrooke & K. Todd Houston, eds. 2016); Farzan Irani & Rodney Gabel, *Telerehabilitation: Adult Speech and Swallowing Disorders*, in TELEPRACTICE IN SPEECH-LANGUAGE PATHOLOGY (K. Todd Houston, ed. 2014); NATIONAL ACADEMIES, *supra* note 26, at 124-125 (“Tele-audiology fills a specific need for people who live in rural areas, for those who do not have transportation or are not physically able to travel to obtain audiology services . . . .”); *supra* note 26 and accompanying text.

<sup>30</sup> *See* DIV. OF SERVS. FOR AGING & ADULTS WITH PHYSICAL DISABILITIES, DEL. HEALTH & SOC. SERVS., DELAWARE STATE PLAN ON AGING: OCTOBER 1, 2012 TO SEPTEMBER 30, 2016 (2012), [www.dhss.delaware.gov/dsaapd/files/state\\_plan\\_on\\_aging\\_12\\_15.pdf](http://www.dhss.delaware.gov/dsaapd/files/state_plan_on_aging_12_15.pdf) (telehealth services will improve the lives of older persons and persons with disabilities “by allowing persons to receive some medical care at home, or in other more convenient settings”).

<sup>31</sup> *See* Press Release, Delaware Health and Social Services & Office of Governor Markell, Delaware Medicaid Program to Reimburse for Telemedicine-Delivered Services Beginning July 1 (June 27, 2012), <http://news.delaware.gov/2012/06/27/delaware-medicaid-program/>. (“Telemedicine will improve access to information and medical care,” and lead “to better health outcomes for patients and reduced costs for hospitalizations and transportation.” (quoting Gov. Jack Markell)).

<sup>32</sup> States that receive federal Medicaid funds are required to ensure transportation for Medicaid beneficiaries to and from medical appointments. *See* 42 C.F.R. § 431.53. The Delaware Medicaid & Medical Assistance Program pays for nonemergency transportation to covered services, which include any services that would be reimbursed when provided face to face. *See Medical Transportation*, STATE OF DEL., <http://www.dhss.delaware.gov/dhss/dmma/medical.html> (last updated June 2, 2016); Del. Div. of Pub. Health, *supra* note 27, at 61 (“Delaware Medicaid reimburses health care providers for telehealth services if the services are also covered when provided face-to-face.”). By providing access to care that would otherwise be unavailable, telepractice could also reduce medical costs for some types of patients, potentially resulting in long-term savings for Medicaid. *See* Michael P. Towey, *Speech Therapy Telepractice for Vocal Cord Dysfunction (VCD): MaineCare (Medicaid) Cost Savings*, 4 INT’L J. TELEREHAB. 33 (Spring 2012).

<sup>33</sup> *See* ASHA, TELEPRACTICE, *supra* note 2, School Setting Considerations (“The effectiveness of telepractice as a service delivery model in the schools is well documented.”); Tucker, *supra* note 26, at 61 (1.8% of speech/language pathologists report using telepractice).

<sup>34</sup> *See* ASHA, TELEPRACTICE, *supra* note 2, Telepractice Technology; Michael P. Towey, *Speech Telepractice: Installing a Speech Therapy Upgrade for the 21<sup>st</sup> Century*, 4 INT’L J. TELEREHAB. 73 (2012) (“The implementation of speech therapy telepractice . . . is steadily evolving from the use of expensive dedicated video conferencing systems to significantly less expensive hardware and web-based systems.”).

<sup>35</sup> *See* Tucker, *supra* note 26, at 63. ASHA’s list of speech/language impairments that can be addressed by telepractice (including non-school settings) includes articulation disorders, autism, dysarthria, fluency disorders, language and cognitive disorders, dysphagia, voice disorders. *See* ASHA, TELEPRACTICE, *supra* note 2, section on Practice Areas in Speech-Language Pathology.

<sup>36</sup> *See, e.g.*, Tucker, *supra* note 26, at 63 (discussing the locations of students receiving telepractice and the use of telepractice assistants); ASHA, TELEPRACTICE, *supra* note 2, Facilitators in Telepractice for Audiology and Speech-Language Services.

<sup>37</sup> *See* FREDDIE CROSS, U.S. DEP’T OF EDUCATION, TEACHER SHORTAGE AREAS: NATIONWIDE LISTING 1990-1991 THROUGH 2016-2017 29-31 (Aug. 2016), <http://www2.ed.gov/about/offices/list/oep/pol/tsa.pdf> (shortages of speech pathologists in Delaware from 2002-2017).

<sup>38</sup> See, e.g., Robert H. Eikelboom & De Wet Swanepoel, *Remote Diagnostic Hearing Assessment*, in TELEPRACTICE IN AUDIOLOGY 123 (Emma Rushbrooke & K. Todd Houston, eds. 2016); Madan Dharmar et al., *Reducing Loss to Follow-Up with Tele-audiology Diagnostic Evaluations*, 22 TELEMED. & EHEALTH 1 (2016) (study of California newborn tele-audiology evaluation program); Colleen Psarros & Emma Van Wanrooy, *Remote Programming of Cochlear Implants*, in TELEPRACTICE IN AUDIOLOGY 91 (Emma Rushbrooke & K. Todd Houston, eds. 2016); Chad Gladden et al., *Tele-audiology: Expanding Access to Hearing Care and Enhancing Patient Connectivity*, 26 J. AM. ACAD. AUDIOLOGY 792, 795-96 (2015) (describing hearing aid fitting and programming by the Dep't of Veterans Affairs). See also NATIONAL ACADEMIES, *supra* note 26, at 124 (listing current teleaudiology capabilities for adults). ASHA's list of audiology services that can be provided by telepractice includes aural rehabilitation, cochlear implant fitting, hearing aid fitting, infant and pediatric hearing screenings, pure tone audiometry, speech in noise testing, and videotoscopy. See ASHA, TELEPRACTICE, *supra* note 2, Practice Areas in Audiology.

<sup>39</sup> See Gladden et al., *supra* note 38, at 793, 795. See also NATIONAL ACADEMIES, *supra* note 26, at 125 ("One of the leading users of tele-audiology services is the VA, which serves a large number of patients who live outside urban areas and far from VA medical centers[.]"). The VA is also exploring "home hearing tests, the scanning and transmission of ear canal images, and the programming of hearing aids in the home through smartphones or tablet computers."

<sup>40</sup> See, e.g., Dharmar, *supra* note 38, at 1-3; National Center for Hearing Assessment and Management (NCHAM), *Timely Diagnosis: A Resource Guide Supporting Teleaudiology*, <http://www.infantheating.org/teleaudiology/index.html> (use of teleaudiology for early hearing detection and intervention in infants).

<sup>41</sup> See Joint Committee on Infant Hearing, *Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs*, 120 PEDIATRICS 899, 900-901 (2007); Dharmar, *supra* note 38, at 1-2.

<sup>42</sup> See CDC, 2014 Annual Data Early Hearing Detection and Intervention (EHDI) Program, Summary of Loss to Follow-up/Loss to Documentation in 2014, [http://www.cdc.gov/ncbddd/hearingloss/2014-data/2014\\_lfu\\_summary\\_web\\_3.pdf](http://www.cdc.gov/ncbddd/hearingloss/2014-data/2014_lfu_summary_web_3.pdf) (reporting a total of 81 infants who were not confirmed as receiving a follow-up audiological evaluation (lost to follow-up or documentation) out of the 138 who did not pass the newborn screen). Infants not confirmed as having received an audiological evaluation may include some who have had one, as well as those who were not evaluated. See Suhana Alam et al., *Improved Newborn Hearing Screening Follow-up Results in More Infants Identified*, 20 J. PUB. HEALTH MANAG. PRACT. 220, 221 (2014) (explaining that EHDI programs are not usually able to determine whether infants not confirmed as having an audiological evaluation did not receive the testing, or received it but the results were not reported to the EHDI program).

<sup>43</sup> See Dharmar, *supra* note 38; NCHAM, *supra* note 40 (program at Utah State University).

<sup>44</sup> See *supra* note 28 and accompanying text.

<sup>45</sup> See, e.g., Dharmar, *supra* note 38, at 1.

<sup>46</sup> *Id.* ("It is estimated that when children with hearing loss are not identified early and do not receive early intervention, the additional costs for education is nearly \$420,000 with a life-time societal cost of \$1 million per child.").

<sup>47</sup> In addition to concerns about the proposed regulation's restriction on telepractice initial evaluations, we have concerns about proposed § 3700-10.2.1.2, which provides that "During the telepractice treatment session, the client shall be located within the borders of the State of Delaware." In the context of practitioners licensed only in Delaware, this restriction would follow general licensing restrictions. However, if a practitioner is licensed and/or authorized by an additional state (or states), it appears that such a practitioner could appropriately provide telepractice services to a client located outside of Delaware, restricted to the additional state or states in which she or he was licensed. Accordingly, we suggest that the Board modify the wording of § 3700-10.2.1.2 to take such situations into account.

<sup>48</sup> See *supra* note 16 and accompanying text.

<sup>49</sup> See *supra* notes 19-21, 23 and accompanying text.

<sup>50</sup> See *supra* notes 18, 22 and accompanying text.

<sup>51</sup> See *supra* notes 33-36, 40-43 and accompanying text.

<sup>52</sup> ASHA defines “Telepractice” as “the application of telecommunications technology to the delivery of speech language pathology and audiology professional services at a distance by linking clinician to client/patient or clinician to clinician for assessment, intervention, and/or consultation.” See ASHA, TELEPRACTICE, *supra* note 2, Overview. See also ASHA, MODEL TELEPRACTICE SERVICE DELIVERY REGULATIONS § .01, <http://www.asha.org/uploadedFiles/ModRegTelepractice.pdf> (“Telepractice Service’ means the application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention and/or consultation.”).

<sup>53</sup> See, e.g., ASHA, MODEL TELEPRACTICE SERVICE DELIVERY REGULATIONS § .02(A) (“Services delivered via telecommunication technology must be equivalent to the quality of services delivered face-to-face, i.e. in-person.”), § .02(C, D) (“Telepractitioners must have the knowledge and skills to competently deliver services via telecommunication technology by virtue of education, training and experience. . . . The use of technology, e.g. equipment, connectivity, software, hardware and network compatibility, must be appropriate for the service being delivered and be able to address the unique needs of each client.”). See also ASHA, TELEPRACTICE, Roles and Responsibilities (audiologists and SLPs are responsible for “selecting and using assessments and interventions that are appropriate to the technology being used and take into consideration client patient and disorder variables”).

<sup>54</sup> Although we take no position on the telemedicine policies of the Federation of State Medical Boards (“FSMB”) and the American College of Physicians (“ACP”), we note that under both policies, a physician-patient relationship can be established during a telemedicine encounter. See FED’N OF STATE MED. BDS., MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF MEDICINE 5 (2014), [https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB\\_Telemedicine\\_Policy.pdf](https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB_Telemedicine_Policy.pdf) (the physician-patient relationship to “be established using telemedicine technologies so long as the standard of care is met.”); Daniel & Sulmasy, *supra* note 25, at 787-88, App. (ACP takes the position that “a telemedicine encounter itself can establish a patient-physician relationship,” so long as the physician meets “the standard of care required for an in-person visit”). Occupational therapy organizations and practitioners have taken similar positions, concluding that telehealth may be used throughout the course of care – including for evaluation, intervention, and monitoring – when practitioners are held to existing professional standards of care. See Comment from FTC Staff to the Delaware Board of Occupational Therapy Practice, *supra* note 14, at note 38.

<sup>55</sup> See Comment from FTC Staff to Steve Thompson, *supra* note 13.

<sup>56</sup> See, e.g., *id.* (describing the 2014 adoption by the Alaska State Legislature of a law allowing in-state Alaska licensed physicians to provide telehealth services without an in-person physical examination, and advocating the adoption of provisions in Senate Bill 74 that would allow out-of-state physicians to provide telehealth services in the same manner ); *Bill History/Action for 29th Legislature: SB 74*, ALASKA STATE LEGISLATURE, [http://www.akleg.gov/basis/get\\_bill.asp?session=29&bill=sb++74](http://www.akleg.gov/basis/get_bill.asp?session=29&bill=sb++74) (last updated July 15, 2016) (noting adoption of Alaska SB 74, which eliminated an in-person physical examination requirement for Alaska licensed physicians located out of state); FTC Staff Comment to the Delaware Board of Occupational Therapy Practice, *supra* note 14, at note 22 (in-person evaluation requirement in the 2015 version of a proposed regulation was eliminated); Ala. State Bd. of Med. Examiners, Certification of Emergency Rules: Emergency Repeal of Chapter 540-X-15 (Aug. 25, 2015), <http://www.albme.org/Documents/Rules/Temp/540-X-15ER%20repealed.pdf> (repeal of telemedicine rules requiring an in-person physical examination or a telehealth evaluation with the patient at an established medical site in light of their potential antitrust implications).

<sup>57</sup> See 201 KY. ADMIN. REGS. 17:110 § 2 (2016) (“Telehealth and telepractice . . . (2) Client Requirements. A practitioner-patient relationship shall not commence via telehealth. An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur. A licensed health care practitioner may represent the licensee at the initial, in-person meeting. . . .”).

<sup>58</sup> See MONT. ADMIN. R. 24.222.916 § 1 (2016) (“Establishing the practitioner-patient relationship (1) A practitioner-patient relationship may commence via telepractice following a practitioner’s in-person evaluation of the prospective patient to assess the patient’s: (a) need for services, and (b) candidacy for telepractice, including

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behavioral, physical, and cognitive abilities to participate in telepractice services. Telepractice services may be provided by the patient’s evaluator or another qualified speech-language pathologist or audiologist by the board.”).

<sup>59</sup> See 16 TEX. ADMIN. CODE § 111.212(h) (2016) (“The initial contact between a licensed speech-language pathologist and client shall be at the same physical location to assess the client’s candidacy for telehealth, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications prior to the client receiving telehealth services.”). Texas has a Board for speech-language pathologists and audiologists, and another Board for hearing aid fitters and dispensers. Each Board adopted “Joint Rules for Fitting and Dispensing of Hearing Instruments for Telepractice,” requiring that “[a] client’s initial professional contact with a provider shall be in person at the same physical location.” 16 TEX. ADMIN. CODE § 111.232(j) (2016) (audiologists); 16 TEX. ADMIN. CODE § 112.150 (l) (2016) (hearing aid fitters and dispensers). For audiologists, there are apparently no initial contact requirements for telepractice services other than hearing aid fitting and dispensing.

<sup>60</sup> See ASHA, State Telepractice Requirements, <http://www.asha.org/Advocacy/state/State-Telepractice-Requirements/> (last visited Oct. 29, 2016) (information at website “is reviewed on an annual basis”).

<sup>61</sup> See *supra* notes 57 and 58.

<sup>62</sup> See, e.g., Eikelboom & Swanepoel, *supra* note 38, at 131 (“The local assistant is key in most aspects of teleaudiology.”); Gladden et al., *supra* note 38, at 795; *supra* note 36 and accompanying text.

<sup>63</sup> See *supra* notes 19-21 and accompanying text.

<sup>64</sup> We suggest that “evaluations” be included in Proposed Regulation, *supra* note 2, § 3700-10.2.4.5 as well as § 3700-10.1. In addition, we note that a requirement for the use of a facilitator for telepractice initial evaluations would be less restrictive and more narrowly tailored to the apparent goals of the restriction than the proposed requirement that initial evaluations be performed in-person.

<sup>65</sup> See FTC STAFF, POLICY PERSPECTIVES, *supra* note 9. See also THE WHITE HOUSE, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 30 (2015), [https://www.whitehouse.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf) (excessively stringent restrictions on the services that a practitioner can provide may limit the supply of labor, restrict competition, restrict access to services, and increase the price of services).

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

**To:** Board Members **Date:** April 21, 2017

**From:** DOC Appointments Committee **Telephone:** (916) 575-7170

**Subject:** **Agenda Item 14 – Update, Discussion and Possible Action to Appoint Dispensing Optician Committee Members**

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The Dispensing Optician Committee (DOC) Appointments Committee (Committee) provided a detailed timeline for the DOC progress at the Board's February 22 Special Board Meeting and during the February 27 Joint Oversight Hearing.

At that time, it was reported that the Committee held interviews with qualified dispensing candidates immediately following the Board's January 26, 2017 meeting. The Committee approved three candidates to move forward to the Board during the April 2017 meeting. In addition, it was reported that the Board received one additional application from a public member and planned to interview the candidate in the near future.

Since then, the Committee approved one public member candidate to move forward to the Board during the April meeting. The Board received another public candidate application and plans to interview the candidate prior to the meeting. If approved, the Committee will move the public candidate forward as well.

Candidate information will be distributed to Members at the meeting. The Board will be asked to interview and appoint candidates for two dispenser positions and two public member positions. In addition, the Committee would like the Board to nominate and appoint the Board Member position on the DOC.



- **Yearly Elections:** Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

### **Vice President**

- **Board Business:** Performs the duties and responsibilities of the President when the President is absent.
- **Board Budget:** Serves as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Review budget change orders with staff.
- **Strategic Plan:** Serves as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board.
- **Board Member On-Boarding:** Welcomes new members to the Board, is available to answer questions, and assist new Board Members with understanding their role and responsibilities. May participate in on-Boarding meeting with staff and new members.

### **Secretary**

- **Attendance:** Calls roll to establish quorum
- **Board Motions:** Restates the motion prior to discussion.
- **Board Business:** Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Reviews and provides edits to draft minutes which have been transcribed by staff following recorded webcasts, note taking and other methods to record public meetings.
- **Yearly Elections:** Reviews template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents:** Maintains copies of administrative documents, e.g., Board Member Handbook, Administrative Law Book, Bagley-Keene Open Meeting Act for reference during Board Meeting.

### **Action Requested**

Please seek nominations and provide time for each candidate to make any additional statements. After all statements have been made, please solicit public comment. Once all have been heard, please conduct roll call votes on each office position.

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla, OD  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 16 – Future Agenda Items

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The Board may discuss and decide whether to place a matter on the agenda of a future meeting. Future agenda items currently include, but are not limited to, the following:

- Occupational Analysis Offered by OPES
- Board Prioritization of Future Agenda Items
- Committee Reports With Projected Next Meeting Dates
- Staff Outreach at CE Events
- Control Over Scope of Practice – What Other States Are Doing
- Revising Business and Profession Code Section [3077](#): Branch Office License
- Online Refractions Outreach Campaign
- Continuing Education Requirements for Registered Dispensing Opticians, Registered Spectacle Lens Dispensers, and Registered Contact Lens Dispensers
- Public Participation During Board Meetings via Teleconference
- Pre-Accusation Settlements – Identification of Statutes
- Breeze/ARBO with OE Tracker



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

**To:** Board Members

**Date:** April 21, 2017

**From:** Board Staff

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 17 - Pursuant to Government Code Section [11126\(c\)\(3\)](#), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters

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

**To:** Board Members

**Date:** April 21, 2017

**From:** Madhu Chawla, OD  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 18 – Adjournment

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