



STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

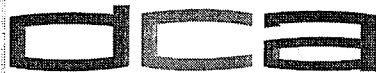
California State Board of Optometry

Legislation and Regulation Committee Meeting

Friday, September 24, 2010

Western University of Health Sciences, College of Optometry
Health Education Center, Classroom A 1205
309 E. Second Street
Pomona, CA 91766





Arnold Schwarzenegger,
Governor
State of California

Bill Leonard, Secretary
State and Consumer Services
Agency

Brian Stiger, Senior Chief
Deputy Director
Department of Consumer Affairs



Lee Goldstein, OD, MPA
President

Alejandro Arredondo, OD
Vice President

Monica Johnson
Board Secretary

Kenneth Lawenda, OD
Member

Fred Naranjo, MBA
Member

Edward J. Rendon, MA
Member

Katrina Semmes
Member

Susy Yu, OD, MBA, FAAO
Member

Board Staff

Mona Maggio
Executive Officer

Administration
Andrea Leiva
Elizabeth Bradley
Krista Eklund

Licensing
Jeff Robinson
Nancy Day
Elvia Melendrez

Enforcement
Margie McGavin
Lydia Bracco
Dillon Christensen
Cheree Kimball
Brianna Miller
Jessica Sieferman

California State Board of Optometry

2420 Del Paso Road, Suite 255, Sacramento, CA 95834

Telephone: (916) 575-7170 Fax: (916) 575-7292

Website: www.optometry.ca.gov

E-Mail: optometry@dca.ca.gov

MEETING NOTICE

Legislation and Regulation Committee

Friday, September 24, 2010

Western University of Health Sciences, College of Optometry

Health Education Center, Classroom A 1205

309 E. Second Street, Pomona, CA 91766

(909) 706-3506

***This meeting will commence following the adjournment of the 9:00 a.m. meeting of the California State Board of Optometry.**

- I. Welcome and Introductions
- II. Discussion and Possible Action to Approve Draft Language and Recommend to the Board of Optometry to Commence a Rulemaking to Add and Amend Regulations Pertaining to Senate Bill 1111 and Senate Bill 1441 to Division 15, Title 16 of the California Code of Regulations (CCR).
 - A. Amend CCR, Title 16, Section 1502, Delegation of Certain Functions
 - B. Amend CCR, Title 16, Section 1523, Licensure and Examination Requirements
 - C. Amend CCR, Title 16, Section 1575, Disciplinary Guidelines
 - D. Add CCR, Title 16, Section 1575.1, Required Actions Against Registered Sex Offenders
 - E. Add CCR, Title 16, Section 1575.2, Unprofessional Conduct
- III. Discussion and Consideration of Legislative Proposals for 2011-2013 Legislative Session
 - A. Amend California Business and Professions Code (BPC), Section 3041, Acts Constituting Practice of Optometry
 - Blepharitis
 - Fingerstick Testing
 - B. Amend California BPC Section 3057.5, Eligibility of Graduates from Foreign Universities
 - C. Amend California BPC Section 3070, Notice of Address for Practice of Optometry
 - D. Amend California BPC Section 3110, Unprofessional Conduct
 - E. Add Inspection Authority to the California BPC
 - F. Add Retired License Category to the California BPC
- IV. Public Comment for Items Not On the Agenda
- V. Adjournment

NOTICE

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry 2420 Del Paso Road, Suite 255, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The Board of Optometry's mission is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers, and to ensure high quality care.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Dr. Lee Goldstein, OD, MPA
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 1 – Welcome and Introductions**

Legislative and Regulation Committee Members

Lee Goldstein, O.D., M.P.A., Board President

Susy Yu, O.D., M.B.A., F.A.A.O.

Monica Johnson, Secretary

Edward J. Rendon, M.P.A.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Andrea Leiva and Jessica Sieferman
Policy Analyst Probation Monitor

Telephone: (916) 575-7182
(916) 575-7184

Subject: Agenda Item 2 – Discussion of Draft Language of Regulations Pertaining to Senate Bill 1111 and Senate Bill 1441 to Division 15, Title 16 of the California Code of Regulations (CCR).

Action Requested:

Board staff requests that the Board members review and discuss the Department of Consumer Affairs' (DCA) proposed language for the following regulations prompted by Senate Bill 1111 and Senate Bill 1441.

- Amend CCR, Title 16, Section 1502, Delegation of Certain Functions
- Amend CCR, Title 16, Section 1523, Licensure and Examination Requirements
- Amend CCR, Title 16, Section 1575, Disciplinary Guidelines
- Add CCR, Title 16, Section 1575.1, Required Actions Against Registered Sex Offenders
- Add CCR, Title 16, Section 1575.2, Unprofessional Conduct

The proposed language for the above regulations is included in Attachment 1.

Background:

Senate Bill 1111

DCA sponsored Senate Bill 1111 to provide health care boards with the necessary tools to implement the Consumer Protection Enforcement Initiative and streamline the enforcement and discipline process. This bill failed in the Senate Business, Professions and Economic Development Committee on April 19, 2010.

Despite this outcome, DCA has identified nine provisions from Senate Bill 1111 that can be implemented via regulation in order to meet DCA's goal of completing a case in 12-18 months. Board staff was able to find the authority to implement all nine provisions and has worked with DCA and the Board's legal counsel in order to draft proposed language.

Senate Bill 1441

Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes 2008) created the Substance Abuse Coordination Committee (SACC). The SACC was mandated to formulate uniform and specific standards in specified areas so that each healing arts board could deal with substance-abusing licensees, whether or not the Board chooses to have a formal diversion program (Attachment 2). The standards were completed this year, and upon DCA's recommendation, Boards are strongly encouraged to incorporate these uniform standards by reference to their disciplinary guidelines (Attachment 3).

Issues/Discussion:

Amend CCR, Title 16, Section 1502, Delegation of Certain Functions

- Does that Board want to give this power to the Executive Officer or is Board discussion vital to a final decision like this one?

Amend CCR, Title 16, Section 1523, Licensure and Examination Requirements

- Does the Board want to pay the full cost of the psychological or medical evaluation of the applicant?

Amend CCR, Title 16, Section 1575, Disciplinary Guidelines

- Optometry already has Business and Professions Code (BPC) section 3110 Unprofessional Conduct which states:

*"The Board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
(m) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist."*

- Do we need to add DCA's language at all knowing the above?
- Our law doesn't define a "sexually related crime," so should we edit the language to meet the Board's needs?
- DCA's language uses definitions for sexual contact from the Government Code and Education Code. Are these definitions too restrictive or too broad?
- By adding more specific language, are we reducing the Board's discretion?
- The Board has not had multiple disciplinary issues involving sexual misconduct.
- Would it be better to define sexual misconduct under BPC section 3110?

Add CCR, Title 16, Section 1575.1, Required Actions Against Registered Sex Offenders

- Should this be required, or left to the Board's discretion?

Add CCR, Title 16, Section 1575.2, Unprofessional Conduct

- CCR section 1575.2(b) = BPC section 3110(x) which states:
"Failure or refusal to comply with a request for the clinical records of a patient, this is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause."
- Is 1575.2(b) needed, or is it a good way to clarify and emphasize BPC section 3110(x)?

Attachments:

- 1) Proposed Language
- 2) SB 1441 Uniform Standards
- 3) 2010 Disciplinary Guidelines
- 4) 1999 Disciplinary Guidelines

**Department of Consumer Affairs (DCA)
SB 1111 and SB 1441 Proposed Changes through Regulations**

Board of Optometry – Proposed Language

(1) DCA Provision:

- **720.2(b) - Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender license:** Permits the Board to delegate to the Executive Officer the authority to adopt a "stipulated settlement" if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement.
Recommend – Amend 16 CCR 1502.

Reason for this Change:

According to the Attorney General's Office (AG), when a filed case settles, the receipt of a Notice of Defense from the licensee will trigger either settlement discussions or the taking of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The executive officer of the Board can provide summary reports of all settlements to the Board and the Board can provide constant review and feedback to the Executive Officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the Board's headquarters and when it has been placed on the Board's agenda for a vote. Delegating this authority to the Executive Officer will result in a final disposition of these matters much quicker. The fact that the Board of Registered Nursing for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center of Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

Proposed Language:

1502. Delegation of Certain Functions

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to adopt default decisions and approve settlement agreements for the revocation, surrender or interim suspension of license, which shall not include disciplinary decisions where revocation is ordered or stayed; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Section 3027 and 3090, Business and Professions Code.

(2-3) DCA Provisions:

- **720.10 – Revocation for sexual misconduct:** Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in an act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

Recommend – Amend regulations/disciplinary guidelines.

- **726(a) & (b) – Sexual misconduct:** Currently defined in BPC Section 726.

Recommend – Define in regulation that sexual misconduct is unprofessional conduct.

Reason for this Change:

720.10 - This section is similar to language which currently exists for physicians (BPC Section 2246), for psychologists (BPC Section 2960.1), for respiratory care therapists (BPC Section 3752.7), for marriage and family therapists (BPC Section 4982.26), and for clinical social workers (BPC Section 4992.33). There is no reason why other optometrists, like other health professionals, should not be subject to the same requirements for revoking a license for acts of sexual exploitation or conviction of a sex offense, or denying or revoking of a license of a person who is a registered sex offender.

726 - There is no reason why optometrists who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding that such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

Proposed Language:**1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders"~~ comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (DG-3 4, 5-99 7-2010) which are hereby incorporated by reference. Deviation from these ~~disciplinary guidelines and orders~~ standards, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Sections 315, 480, 729, 3090, 3091 and 3110, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11400.21 and 11425.50(e), Government Code.

(4) DCA Provision:

- **720.12 – Denial of application for registered sex offender:** Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.

Reason for this Change:

This section is similar to language which currently exists for physicians (BPC Section 2221(d) and Section 2232), for dentists (BPC Section 1687), for physical therapists (BPC Section 2660.5) and for psychologists (BPC Section 2964.3). There is no reason why other health professionals should not be subject to the same requirements for revoking a license for acts of sexual exploitation or conviction of a sex offense, or denying or revoking a license of a person who is a registered sex offender.

Proposed Language

Section 1575.1 is added to Article 12 of Division 15 to read as follows:

1575.1. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny a licensee or discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 3090, Business and Professions Code. Reference: Sections 480, 3025, 3056, 3110, and 3120, Business and Professions Code.

(5-8) DCA Provisions:

- **720.14 – Confidentiality agreements regarding settlements:** Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public.
Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.

- **720.16(d) and (f) – Failure to provide documents and 720.18 (d) – Failure to comply with court order:** Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records.
Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.

- **737 – Failure to provide information or cooperate in an investigation:** Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation.
Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.

- **802.1 – Failure to report an arrest, conviction, etc.:** Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.
Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.

Reason for this Change:

720.14 – This section is similar to language which currently exists for physicians (BPC Section 2220.7). Assembly Bill 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other health professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus preventing a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delay and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from protecting the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a healthcare professional.

720.16(d), (f) & 720.18(d) – These sections are similar to language which currently exists for physicians and surgeons and podiatrists (BPC Sections 2225 and 2225.5) and section 720.18 is also similar to language which currently exists for dentists and psychologists (BPC Section 1684.5 and 2969). When a board or the Attorney General is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to the board; and, (2) the board or the Attorney General have sought a court order and the court has issued a subpoena mandating the release of the records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records.

737 – This section is similar to other state statutes and to BPC Section 6068(i). This statutory requirement was recommended by the Attorney General's Office (AG). According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required licensees to cooperate with investigation being conducted by disciplinary authorities. (See list of statutes provided by the AG's Office.) The AG argues that the enactment of a statutory

requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

802.1 – There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

Proposed Language:

Section 1575.2 is added to Article 12 of Division 15 to read as follows:

1575.2. Unprofessional Conduct.

In addition to the conduct described in Section 3110 of the Code, "unprofessional conduct" also includes, but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action;

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the reseal of records to the board.

NOTE: Authority cited: Section 3090 and 3110, Business and Professions Code. Reference: Sections 480, 3010.1, 3010.5, 3024, and 3025, Business and Professions Code.

(9) DCA Provision:

720.32 – Psychological or medical evaluation of applicant: Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice.

Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.

Reason for this Change:

Boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one of mental illness or other physical illness.

Proposed Language:**1523. Licensure and Examination Requirements.**

(a)(1) Application for licensure as an optometrist shall be made on a form prescribed by the Board (Form 39A-1, Rev. 3-96), which is hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(2) Application for licensure by an out of state licensed optometrist as defined in Business and Professions Code Section 3057, shall be made on forms prescribed by the Board (Form OLA-2, Rev. 11/07 and Form LBC-4, rev. 2/07), which are hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(b) An application shall be accompanied by the following:

(1) The fees fixed by the Board pursuant to Section 1524 in this Article.

(2) Satisfactory evidence of graduation from an optometry school approved by the Board.

(3) One classifiable set of fingerprints on a form provided by the Board.

(c) Completed applications for examination shall be filed with the Board not later than 30 days prior to the date set for the beginning of the examination for which application is made.

(d) An incomplete application shall be returned to the applicant together with a statement setting forth the reason(s) for returning the application and indicating the amount of money, if any, which will be refunded.

(e) Permission to take the Patient Management and California Laws and Regulations examination sections shall be granted to those applicants who have paid the necessary fees and who meet the educational qualifications to take the examination.

(f) Once the applicant has passed the examination, an official notice will be sent with instructions for submission of the licensure fee. Licensure shall be contingent on the applicant's passing the clinical demonstration portion of the National Board of Examiners in Optometry examination as provided in Section 1531 in this Article.

(g) Admission into the examination shall not be construed to limit the Board's authority to seek from an applicant such other information as may be deemed necessary to evaluate the applicant's qualifications for licensure.

(h) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice optometry safely because the applicant's ability to practice may be impaired

due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant.

Note: Authority cited: Sections 3025, 3044, 3045, 3057, 3090 and 3091, Business and Professions Code.
Reference: Sections 480, 820, 3044, 3045 and 3057, Business and Professions Code.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



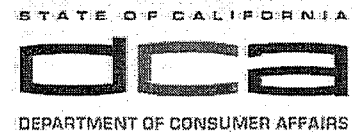
Brian J. Stiger, Director

April 2010 (Corrected Version)

November Corrections shown underlined

December Corrections shown double underlined

April Corrections shown *italics and underlined*



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Kim Madsen
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

Mona Maggio
Board of Optometry

Donald Krpan, D.O.
Osteopathic Medical Board/Naturopathic Medicine

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board

Annemarie Del Mugnaio
Speech-Language Pathology & Audiology Board

Susan Geranen
Veterinary Medical Board

Teresa Bello-Jones
Board of Vocational Nursing & Psychiatric Technicians

Staff Working Group

Susan Lancara, DCA, Legislative & Policy Review
LaVonne Powell, DCA Legal Counsel
Laura Edison Freedman, DCA Legal Counsel
Katherine Demos, DCA, Legislative & Policy Review
Kristine Brothers, Acupuncture Board
Kim Madsen, Board of Behavioral Sciences
April Alameda, Board of Chiropractic Examiners
Richard DeCuir, Dental Board of California
Kimberly Kirchmeyer, Medical Board of CA
Jeff Hanson, Board of Occupational Therapy

Margie McGavin, Board of Optometry
Felisa Scott, Osteopathic Medical Board
Anne Sodergren, Board of Pharmacy
Glenn Mitchell, Physician Assistant Committee
Debi Mitchell, Physical Therapy Board of CA
Carol Stanford, Board of Registered Nursing
Liane Freels, Respiratory Care Board
Amy Edelen, Veterinary Medical Board
Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians

Table of Contents

Uniform Standard #1	4
Uniform Standard #2	6
Uniform Standard #3	7
Uniform Standard #4	8
Uniform Standard #5	9
Uniform Standard #6	10
Uniform Standard #7	11
Uniform Standard #8	13
Uniform Standard #9	14
Uniform Standard #10	15
Uniform Standard #11	17
Uniform Standard #12	18
Uniform Standard #13	19
Uniform Standard #14	23
Uniform Standard #15	24
Uniform Standard #16	25

#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

~~Any licensee in a board diversion program or whose license is on probation, who the board has reasonable suspicion has a substance abuse problem shall be required to undergo a clinical diagnostic evaluation at the licensee's expense. The following standards apply to the clinical diagnostic evaluation.~~

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

- ~~1. The clinical diagnostic evaluation shall be paid for by the licensee;~~
1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, *which includes scope of practice* to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

Uniform Standards

April 2010

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. ~~His or her license shall be automatically suspended placed on inactive status~~ The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least ~~one (1) month~~ 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.
3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance, ~~the board shall:~~

1. ~~The licensee's license shall be automatically suspended; Place the licensee's license on inactive status~~ The board shall order the licensee to cease practice; ~~and~~
2. ~~Immediately~~ The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the ~~suspension of reactivate the license~~ cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. ~~Inactivation Automatic Suspension~~ Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test *negative* for at least a month of continuous drug testing before being allowed to go back to work. ~~(, and)~~
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) year.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

Specimen Collectors:

- a) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- b) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- c) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- e) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- f) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

Uniform Standards

April 2010

- g) ~~The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.~~
- h) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- i) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
 - a) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
 - b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.
 - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

Uniform Standards

April 2010

- d) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

Treatment Providers

1. Treatment facility staff and services must have:
 - a) Licensure and/or accreditation by appropriate regulatory agencies;
 - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
 - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
 - e) Means to provide treatment/progress documentation to the provider.
2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:
- a) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
 - b) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
 - c) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

Uniform Standards

April 2010

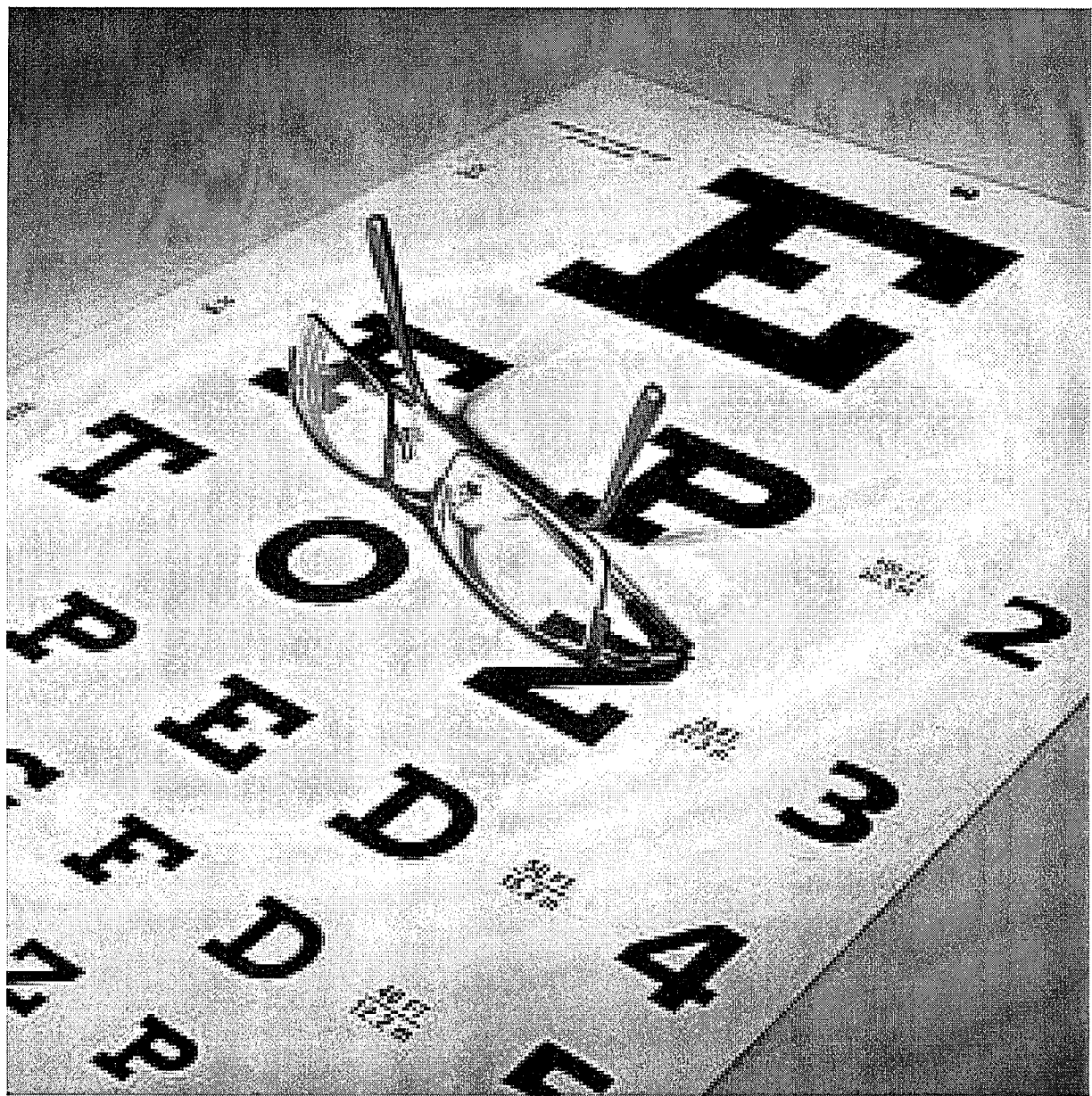
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

California State Board of Optometry

**Uniform Standards Related to Substance Abuse and
Disciplinary Guidelines**

“Protection of the Public Shall be the Highest Priority”

Business and Professions Code, Section 3010.1



2420 Del Paso Rd., Suite 255
Sacramento, CA 95842

2010 Edition

T: 916.575.7170 F: 916.575.7292 E: optometry@dca.ca.gov

Table of Contents

Uniform Standards Related to Substance Abuse.....3
Uniform Standards for Licensees Whose License is on Probation
Due to a Substance Abuse Problem.....3
Board Communication W/ Employers.....3
Drug Testing Standards.....3
Participation in Group Support Meetings.....4
Determining When Treatment is Necessary.....5
Major/Minor Violations.....5
Petition for Return to Practice.....6
Petition for Reinstatement.....6

Introduction.....7
Public Record.....7
Cost Recovery.....7
Probation Monitoring Purpose.....8
Citations.....8
Stipulated Settlements.....8

DISCIPLINARY GUIDELINES.....9
Evidence in Aggravation/Mitigation of Penalty.....9
Disciplinary Guidelines Summary for Use by ALJs.....9

PROBATIONARY TERMS AND CONDITIONS.....14
Standards Terms and Conditions.....15
Standard Alcohol/Drug Conditions.....19
Specialty Conditions.....20

STANDARDS FOR VIOLATIONS & CONSEQUENCES.....24

§1575. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (DG-4, 7-2010), which are hereby incorporated by reference. Deviation from these disciplinary guidelines and standards, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation, For example: the presence of mitigating factors; the age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Sections 315, 480, 729, 3090, 3091 and 3110, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11400.21 and 11425.50(e), Government Code.

Uniform Standards for Those Licensees Who's License Is On Probation Due to a Substance Abuse Problem.

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER

The licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

DRUG TESTING STANDARDS

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year of probation, and at any time as directed by the board. After the first year, licensees who are practicing shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

PARTICIPATION IN GROUP SUPPORT MEETINGS

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

DETERMINING WHEN TREATMENT IS NECESSARY

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, severity of substance abuse, and
- threat to self or the public.

MAJOR/MINOR VIOLATIONS & CONSEQUENCES

Major violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;
4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the "biological fluid testing" term and condition;
6. Testing positive for a banned substance;
7. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.
8. Failure to adhere to any suspension or restriction in practice.

Consequences for a major violation include, but are not limited to, the following:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation (if applicable);
 - b) the licensee must test *negative* for a least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit complete and required documentation in a timely manner;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.

5. Any other violation that does not present a threat to the Respondent or public.

Consequences for minor violations include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

PETITION FOR RETURN TO PRACTICE

"Petition" as used in this standard is an informal request as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

PETITION FOR REINSTATEMENT

"Petition for Reinstatement" as used in this standard is an informal request as opposed to a "Petition for Reinstatement" under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse, prevention plan, and community activities.
4. Demonstrated ability to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

INTRODUCTION

The California State Board of Optometry's mission is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers and to ensure high quality care.

In keeping with its obligation to protect the consumer of optometric services from the unsafe, incompetent and/or negligent optometrist, the Board of Optometry has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violation of the Optometry Practice Act.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys, licensees and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and specialty probationary terms and conditions.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board seeks outright revocation of the license. For respondents who have demonstrated rehabilitation and a capacity to practice optometry safely, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the optometrist is suspended in order to correct deficiencies in skills, education or personal rehabilitation.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record and shall be available on the Internet, pursuant to Business and Professions Code, section 27.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including, but not limited to, expert consultant opinions and services, pursuant to Business and Professions Code, section 125.3. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING PURPOSE

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The purpose is NOT for the Board to rehabilitate the probationer. Probation is a privilege afforded by the Board to:

- 1) Allow for the probationer's rehabilitation if that is his/her choice;
- 2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences, and
- 3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a respiratory care practitioner.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Board of Optometry Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

DISCIPLINARY GUIDELINES

2010 Edition

EVIDENCE IN AGGRAVATION/MITIGATION OF PENALTY

The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

EVIDENCE IN AGGRAVATION OF PENALTY

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. Violations involved or were in the presence of children.
4. History of prior discipline.
5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
6. Perjury on official Board forms.
7. Violent nature of crime or act.
8. Violation of Board Probation.
9. Failure to provide a specimen for testing in violation of terms and conditions of probation.
10. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

EVIDENCE IN MITIGATION OF PENALTY

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.
4. No prior criminal or disciplinary history.

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY ADMINISTRATIVE LAW JUDGES

These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 125.

These guidelines are incorporated by reference in Section 1575 of Division 15 of Title 16 of the California Code of Regulations

Key
 "R" - Required Term and Condition
 "W" - Include Term and Condition if Warranted

		TERMS AND CONDITIONS OF PROBATION														
Code		1-16. Standard Terms & Conditions	17. Abstinence from Mood Altering Sub.	18. Biological/Fluid Testing	19. Participate in Group Support Meetings	20. Alcohol and Drug Treatment	21. Worksite Monitor	22. Direct Supervision	23. Supervisor Quarterly Reports	24. Remedial Education	25. Suspension	26. Employment Limitations	27. Therapy or Counseling Program	28. Mental Health Evaluation	29. Restitution	30. Third Party Billing Audit
650	Unlawful Referrals Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R						
655	Prohibited Arrangements by Optometrists Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R						
3070	Address of Optometrist; Notice by Mail Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3075	Display of Certificate; Multiple Offices Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W									
3076	Temporary Practice Not at Registered Place of Practice Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								W						
3077	Office, Branch Offices; Rules and Regulations Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3078	Practice Under False or Assumed Name Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								R						
3097	Solicitation Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								W						
3098	Misuse of Professional Titles or Abbreviations Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3099	Claim of Specialist in Eye Disease Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3100	Claim of Special Knowledge Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3101	Advertising While Not Holding Valid License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								W						

SH

Key
 "R" - Required Term and Condition
 "W" - Include Term and Condition if Warranted

Code	TERMS AND CONDITIONS OF PROBATION														
	1-16 Standard Terms & Conditions	17. Abstinence from Mood Altering Sub.	18. Biological Fluid Testing	19. Participate in Group Support Meetings	20. Alcohol and Drug Treatment	21. Worksite Monitor	22. Direct Supervision	23. Supervisor Quarterly Reports	24. Remedial Education	25. Suspension	26. Employment Limitations	27. Therapy or Counseling Program	28. Mental Health Evaluation	29. Restitution	30. Third-Party Billing Audit
3102 Advertising Free Eye Examinations Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								R						
3103 Including Advertisement of Optometry Practice in Other Advertisement Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								R						
3104 Employing "Cappers" or "Steerers" Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3105 Altering Medical Record Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W	W	W	R	W					W
3106 False Representation Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W	W	W	W	W	W			W	W
3107 Use of Improperly Obtained License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R	W	W				
3108 Contagious or Infectious Disease Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R														
3109 Accepting Employment by Unlicensed Person Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R	W					
3110 Unprofessional Conduct Maximum: Revocation Minimum: Revocation stayed, 5 years probation	R					R	W	W	R	W	W				
3110(a) Violating or abetting violation of any section of the Optometry Practice Act Maximum: Revocation Minimum: Revocation stayed, 5 years probation	R					W	W	W	R	W	W			W	W
3110(b) Gross Negligence Maximum: Revocation Minimum: Revocation stayed, 5 years probation	R					R	W	W	R	W	W			W	
3110(c) Repeated Negligent Acts Min/Maximum: Revocation															

b7

TERMS AND CONDITIONS OF PROBATION

Key

"R" - Required Term and Condition

"W" - Include Term and Condition if Warranted

Code

	1-16 Standard Terms & Conditions	17. Abstinence from Mood Altering Sub.	18. Biological Fluid Testing	19. Participate in Group Support Meetings	20. Alcohol and Drug Treatment	21. Worksite Monitor	22. Direct Supervision	23. Supervisor Quarterly Reports	24. Remedial Education	25. Suspension	26. Employment Limitations	27. Therapy or Counseling Program	28. Mental Health Evaluation	29. Restitution	30. Third Party Billing Audit
3110(d) Incompetence Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					R	W	W	R	W	W				
3110(e) Fraud, Misrepresentation or Dishonesty Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					R	W	W	R	W	W			W	R
3110(f) Conduct Warranting License Denial Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R	W	W	W	W	W	W	W	W	W	W	W	W	W	W
3110(g) Illegal Advertising Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R						
3110(h) License Discipline by Other State or Agency Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R	W	W	W	W	W	W	W	W	W	W	W	W		W
3110(i) Procuring License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			W	R					
3110(j) Making False Statement in Application Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			W	W	W				
3110(k) Conviction of a Crime Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W	W	W	W	W	W			W	W
3110(l) Using Controlled Substances or Alcohol Maximum: Revocation Minimum: Revocation stayed, 5 years probation	R	R	R	R	W	W	W	W	R	W	W	W	W		W
3110(m) Sexually Related Crime Minimum/Maximum: Revocation															
3110(n) Excessive Prescribing, Furnishing or Administering Controlled Substances Maximum: Revocation Minimum: Revocation stayed, 5 years probation	R					R			R	W					
3110(o) Repeated Acts of Excessive Use of Diagnostic or Therapeutic Procedures Maximum: Revocation Minimum: Revocation stayed, 3 years probation	R				R	W	W	W	R	W				W	

TERMS AND CONDITIONS OF PROBATION

Key

"R" - Required Term and Condition

"W" - Include Term and Condition if Warranted

Code	1-16 Standard Terms & Conditions	17. Abstinence from Mood Altering Sub.	18. Biological Fluid Testing	19. Participate in Group Support Meetings	20. Alcohol and Drug Treatment	21. Worksite Monitor	22. Direct Supervision	23. Supervisor Quarterly Reports	24. Remedial Education	25. Suspension	26. Employment Limitations	27. Therapy or Counseling Program	28. Mental Health Evaluation	29. Restitution	30. Third Party Billing Audit
3110(p) Prescribing, Furnishing, or Administering Drugs without Good Faith Examination Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W	W	W	R	R					
3110(q) Failure to Maintain Adequate Records Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			W	W					W
3110(r) Professional Services Beyond the Scope of the License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R	W	W				
3110(s) Practicing without Valid License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R	W				W	
3110(t) Employing Suspended or Unlicensed Optometrist Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			W		W				
3110(u) Permitting Another to Use License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W			R	R					
3110(v) Altering or Using Altered License Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					R			R	R				W	
3110 (w) Failure to Follow Infection Control Guidelines Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					R	W	W	R	W					
3110(x) Failure to Comply with Patient's Record Request Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R								W						
3110(y) Failure to Refer to Physician When Warranted Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					R			R	W	W				
3160-3166 Violations by Professional Corporations Maximum: Revocation Minimum: Revocation stayed, 3-5 years probation	R					W	W	W	W					W	

PROBATIONARY TERMS AND CONDITIONS

A probationary or conditional license is generally issued for a period between 3 and 5 years, dependent upon whether any aggravating or mitigating factors exist. The following is a summary of terms and conditions of probation:

STANDARD CONDITIONS

1. Obey All Laws
2. Quarterly Reports
3. Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as an Optometrist
6. Notice to Employer
7. Notice to Patients
8. Changes of Employment or Residence
9. Cost Recovery
10. Take and Pass Licensure Examination(s)
11. Community Service
12. Valid License Status
13. Tolling for Out-Of-State Residence or Practice
14. License Surrender
15. Violation of Probation
16. Completion of Probation

STANDARD ALCOHOL/DRUG CONDITIONS

17. Abstention from Use of Mood Altering Substances
18. Biological Fluid Testing
19. Participate in Group Support Meetings

SPECIALTY CONDITIONS

20. Alcohol and Drug Treatment
21. Worksite monitor
22. Direct Supervision
23. Supervisor Quarterly Reports
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Therapy or Counseling Program
28. Mental Health Evaluation
29. Restitution
30. Monitor Billing System Audit

STANDARD CONDITIONS

Standard conditions are imposed on each and every probationer regardless of cause for discipline. For applicants, Condition 9, Cost Recovery, does not apply.

SEVERABILITY CLAUSE Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California.

Respondent shall notify the Board in writing within three days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

2. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring.

Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

5. FUNCTION AS AN OPTOMETRIST Respondent shall function as an optometrist for a minimum of 24 hours per week for the entire term of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

6. NOTICE TO EMPLOYER Respondent shall provide to the board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers

and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement of Issues in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

7. NOTICE TO PATIENTS During the period of probation, Respondent shall post a notice in a prominent place in his/her office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometrist license is on probation and shall contain the telephone number the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to his practice of Optometry. The above-described notices shall be approved by the board within 30 days of the effective date of this decision.

8. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

9. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in a Board approved payment plan, within 6 months from the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

10. TAKE AND PASS LICENSURE EXAMINATIONS

(A) Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

(B) Respondent shall take and pass section(s) ____ of the National Board of Examiners of Optometry (NBEO). Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

(C) Respondent shall take and pass the California Laws and Regulations Examination (CLRE). Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

11. COMMUNITY SERVICE Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which respondent provides free professional services on a regular basis to a community of charitable facility or agency, amounting to a minimum of ____ hours per month of probation. Such services shall begin no later than ____ days after respondent is notified of the program and to be completed no later than ____.

12. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

14. LICENSE SURRENDER During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition

of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

15. VIOLATION OF PROBATION If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

16. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

STANDARD ALCOHOL/DRUG CONDITIONS

17. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

18. BIOLOGICAL FLUID TESTING Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at least 104 times during the first year of probation, and at any time as directed by the board. After the first year, licensees who are practicing shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

Respondent shall be required to make daily contact to determine if he/she is required to submit a specimen for testing, including weekends and holidays, at a lab approved by the

Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reactivate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/ or a petition to revoke probation against Respondent's optometrist license.

19. PARTICIPATE IN GROUP SUPPORT MEETINGS Respondent shall attend at least one (1), but no more than five (5), 12-step recovery meetings or equivalent (e.g. Narcotics Anonymous, Alcoholics Anonymous, etc.) during each week of probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

SPECIALTY CONDITIONS

The conditions imposed are dependent upon the violation(s) committed.

20. ALCOHOL AND DRUG TREATMENT Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and shall be used in administrative discipline.

21. WORKSITE MONITOR During the period of probation, Respondent shall be assigned a worksite monitor. The worksite monitor shall not have financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the respondent that is being monitored or be another health care professional if no monitor with like practice is available. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

1. the licensee's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates licensee had face-to-face contact with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

22. DIRECT SUPERVISION During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to an optometrist who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed optometrist. The appropriate level of supervision must be approved by the Board prior to commencement of work.

23. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

24. Remedial Education Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas . All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist, or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision. Successful completion is a grade of "C" or "70%" or better for any completed course.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

25. SUSPENSION As part of probation, Respondent shall be suspended from the practice of optometry for a period of _____, beginning the effective date of this decision. If not employed as an optometrist or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

[Respondents subject to Biological Fluid Testing shall be suspended a minimum number of days, as follows: Applicants 30 days Licensees 10 days]

26. EMPLOYMENT LIMITATIONS Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

27. THERAPY OR COUNSELING PROGRAM Respondent, at his or her expense, shall participate in a Board approved on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required on a quarterly basis.

28. MENTAL HEALTH EVALUATION Respondent shall, within 30 days of the effective date of this Decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of an optometrist. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.

If Respondent fails to have the above assessment submitted to the Board within the 30-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

29. Restitution Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$_____ paid to _____.

30. Monitor Billing System Audit Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

STANDARDS FOR VIOLATIONS & CONSEQUENCES

MAJOR VIOLATIONS & CONSEQUENCES

Major violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;
4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the "biological fluid testing" term and condition;
6. Testing positive for a banned substance;
7. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.
8. Failure to adhere to any suspension or restriction in practice.

Consequences for a major violation include, but are not limited to, the following:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation (if applicable);
 - b) the licensee must test *negative* for a least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Board.

MINOR VIOLATIONS & CONSEQUENCES

Minor violations include, but are not limited to, the following:

1. Failure to submit complete and required documentation in a timely manner;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the Respondent or public.

Consequences for minor violations include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

2420 Del Paso Rd., Suite 255
Sacramento, CA 95842

T: 916.575.7170 F: 916.575.7292 E: optometry@dca.ca.gov

State of California Board of Optometry

Disciplinary Guidelines

and Model Disciplinary Orders

(May 1999)

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the Board of Optometry has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by administrative law judges, attorneys, optometrists and ultimately the board, shall be revised from time to time following public hearing by the board and will be disseminated to interested parties upon request.

This document is divided into three sections as follows: (1) Disciplinary guidelines for specific violations of the Optometry Practice Act and other related laws; (2) model language for use in crafting disciplinary orders; and (3) guidelines for the imposition and assessment of administrative fines and citations. The board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate variations in individual cases.

Additional copies of this document may be obtained by contacting the Board of Optometry at its offices in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies.

Disciplinary Guidelines

The board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the board would request that the Administrative Law Judge hearing the matter include some statement of this in the Proposed Decision so that the circumstances can be better understood and evaluated by the board upon review of the proposed decision and before its ultimate action is taken.

For purposes of this document terms and conditions of probation are divided into two general categories: (1) General Conditions which are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and (2) Specific Conditions which are those that address the specific circumstances of the case and require discretion to be imposed depending on the nature and circumstances of a particular case. B&P refers to the California Business and Professions Code. CCR refers to the California Code of Regulations

General Probationary Conditions

The five standard conditions of probation generally appearing in every case are as follows:

1. Obey all laws [26]
2. Cooperate with probation surveillance [27]
3. Tolling of probation if respondent moves out-of-state [28]
4. Completion of probation [29]
5. Violation of probation [30]

Specific Probationary Conditions

Excessive Prescribing (B&P Code sec. 725).

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Maintain records of prescription for review [10]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Education course [14]
5. If warranted, Community service [13]

Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16

CCR sec. 1565)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Maintain records of prescription for review [10]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Education course [14]

5. If warranted, Community service [13]

Excessive Treatments (B&P Code sec. 725)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education Course [14]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Restrict practice [22]

Sexual Misconduct (B&P Code sec. 726)

Minimum Penalty: Stayed Revocation, at least 7 years probation

Maximum Penalty: Revocation

1. Psychiatric or psychological evaluation [16][17]
2. Education course [14]
3. Require third party present [21]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Mental or Physical Fitness (B&P Code sec. 820; 3097)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. If warranted, Restrict practice [22]
2. If warranted, Monitoring [20]
3. If warranted, Psychiatric or psychological evaluation [16][17]
4. If warranted, Medical evaluation [18][19]

Gross Negligence & Inefficiency (B&P Code sec. 3090; Title 16 CCR sec. 1510)

Failure to Refer Patient (B&P Code sec. 3109)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Ophthalmic Devices, Violation of Quality Standards (B&P Code sec. 2541.3; Title 16 CCR sec.

1519)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Violation of Sanitary Standards (B&P Code sec. 3025.5; Title 16 CCR sec. 1520)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec.

1560; 1561; 1562; 1563)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Unprofessional Conduct, Dishonesty and Fraud (B&P Code sec. 810; 3090; 3101; 3126; 3127)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Community service [13]

Practice During Suspension (B&P Code sec. 3127)

1. Revocation

Alcohol Abuse (B&P Code sec. 820)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Abstain from drugs [8, 9]
3. Biological fluid testing [12]
4. Drug or Alcohol Counseling and Treatment [23]
5. If warranted, Suspension of 30 days or more [7]

6. If warranted, Monitoring [20]

7. If warranted, Restrict practice [22]

Alcohol Abuse (B&P Code sec. 3105; 3105.1)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]

2. Abstain from Alcohol [11]

3. Biological fluid testing [12]

4. Drug or Alcohol Counseling and Treatment [23]

3. If warranted, Suspension of 30 days or more [7]

6. If warranted, Monitoring [20]

7. If warranted, Restrict practice [22]

Aiding and Abetting Unlicensed Practice (B&P Code sec. 3102; 3106)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Re-examination [15]

3. If warranted, Restrict number of branch offices [24]

4. If warranted, Suspension of 30 days or more [7]

5. If warranted, Monitoring [20]

6. If warranted, Restrict practice [22]

Acceptance of Unlawful Employment (B&P Code sec. 3103)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Reexamination [15]

3. If warranted, Suspension of 30 days or more [7]

Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Reexamination [15]

3. If warranted, Restrict number of branch offices [24]

4. If warranted, Suspension of 30 days or more [7]

5. If warranted, Monitoring [20]

6. If warranted, Restrict practice [22]

Deceptive Advertising (B&P Code sec 651; 651.3; 3099; 3104; 3129; 3130; 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14] 2. Reexamination [15]

2. Re-examination [15]

3. If warranted, Suspension of 30 days or more [7]

4. If warranted, Submit advertisements for prior approval [25]

5. If warranted, Community service [13]

Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Re-examination [15]

3. If warranted, Suspension of 30 days or more [7]

4. If warranted, Submit advertisements for prior approval [25]

5. If warranted, Community service [13]

Holding Out Without Certificate (B&P Code sec. 3128)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]

Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)

Minimum Penalty: 30 days stayed, suspension, and at least one-year probation
Maximum Penalty: 6-month suspension. Revocation for successive violation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]

Unlawful Solicitation 0 3096

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Unlawful Referrals (B&P Code sec. 650)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Employment of Cappers or Steerers (B&P Code sec. 3100)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

Terms and conditions depend on the nature of the criminal conviction

1. If warranted, Education course [14]
2. If warranted, Reexamination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted. Monitoring [20]

6. If warranted, Restrict practice [22]

7. If drug related and warranted (see conditions for drug abuse)

8. If related to sexual misconduct and warranted (see conditions for sexual misconduct)

Procuring a License by Fraud (B&P Code sec. 123; 496; 3095; 3126)

Denial or Revocation

Fictitious Name Violation (B&P Code sec. 3125; Title 16 CCR sec. 1513; 1518)

Minimum Penalty: 30 days stayed. Suspension, and at least one-year probation on the standard conditions

Maximum Penalty: 6-month suspension. Revocation for successive violation.

Violation of Probation

Minimum Penalty: Impose an actual period of suspension

Maximum Penalty: Impose penalty that was stayed.

The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164;

3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. If warranted. Education course for corporate principals involved [14]

2. If warranted. Reexamination for corporate principals involved [15]

3. If warranted, Suspension of 30 days or more for corporate license and the license of any corporate principal involved [7]

4. If warranted, Community service for corporate principals [13]

5. If warranted, Monitoring [20]

6. If warranted, Restrict practice [22]

MODEL DISCIPLINARY ORDERS

MODEL NUMBERS

1. Revocation-Single Cause

Certificate No. (Ex.: 12345) issued to respondent (Ex: John Smith. O.D.) is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (Ex: II. and III) separately and for all of them.

3. Suspension - Single Cause

Certificate No. _____ issued to respondent _____ is suspended for a period of (Ex: 30-days/one year).

4. Suspension - Multiple Causes (run concurrently)

Certificate No. ___ issued to respondent _____ is suspended pursuant to Determination of Issues _____, separately and for all of them. All suspensions shall run concurrently.

5. Suspension - Multiple Causes (run consecutively)

Certificate No. ___ issued to respondent _____ is suspended (Ex: 30 days) pursuant to Determination of Issues _____. These suspensions shall run consecutively, for a total period of (Ex: 90-days).

6. Standard Stay Order

However (revocation/suspension) is stayed and respondent is placed on probation for (Ex: three) years upon the following terms and conditions:

7. Actual Suspension

As part of probation, respondent is suspended from the practice of optometry for (Ex: 90 days) beginning the effective date of this decision.

8. Drugs & Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription.

NOTE: Also use Condition No.9 which exempts "use or possession" for personal illness.

9. Drugs - Exception for Personal Illness

Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a licensed physician.

NOTE: Add this exception whenever Condition 8 is used.

10. Lens Prescriptions - Maintain Records

Respondent shall maintain a record of all lens prescriptions dispensed or administered by respondent during probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

11. Alcohol -Abstain From Use

Respondent shall abstain completely from the use of alcoholic beverages.

12. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the board or its designee.

13. Community Services - Free Services

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval a community service program in which respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least (Ex: 20) hours a month for the first (Ex: 24) months of probation.

14. Education Course

Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all

costs being paid by respondent. Following the completion of each course, the board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

15. Re-examination

Within 60 days of the effective date of this decision, or within some other time as prescribed in writing by the board, respondent shall take and pass an oral or written exam, in a subject to be designated and administered by the board or its designee. If respondent fails this examination, respondent must take and pass a re-examination as approved by the board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. The respondent shall pay the cost of any such examination.

(Continue with either one of these two options.)

(OPTION #1: Condition Subsequent)

If respondent fails the first examination, respondent shall cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to respondent from the board. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

(OPTION #2: Condition Precedent)

Respondent shall not practice optometry until respondent has passed the required examination and has been so notified by the board in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

NOTE: The condition precedent option is particularly recommended in cases where respondent has been found to be grossly negligent or inefficient.

16. Psychiatric or Psychological Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a psychiatric or psychological evaluation (and psychological testing, if deemed necessary) by a board-appointed psychiatrist or psychologist, at respondent's cost, who shall furnish a psychiatric or psychological report to the board or its designee.

If respondent is required by the board or its designee to undergo psychiatric or psychological treatment, respondent shall within 30 days of the requirement notice

submit to the board for its prior approval the name and qualifications of a psychiatrist or psychologist of respondent's choice. Upon approval of the treating psychiatrist or psychologist, respondent shall undergo and continue psychiatric or psychological treatment, at respondent's cost, until further notice from the board. Respondent shall have the treating psychiatrist or psychologist submit quarterly status reports to the board.

(OPTIONAL)

Respondent shall not engage in the practice of optometry until notified by the board of its determination that respondent is mentally fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.

17. Psychotherapy

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until the board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the board. The board may require respondent to undergo psychiatric or psychological evaluations by a board-appointed psychiatrist or psychologist.

NOTE: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and drug abuse) relate to the violations but is not at present a danger to patients.

18. Medical Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a medical evaluation, at respondent's cost, by a board-appointed physician who shall furnish a medical report to the board or its designee.

If respondent is required by the board or its designee to undergo medical treatment, respondent shall within 30 days of the requirement notice submit to the board for its prior approval the name and qualification of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment, at respondent's cost, until further notice from the board. Respondent shall have the treating physician submit quarterly reports to the board.

(OPTIONAL)

Respondent shall not engage in the practice of optometry until notified by the board of its determination that respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

19. Medical Treatment

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until the board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the board. The board may require respondent to undergo periodic medical evaluations by a board-appointed physician.

NOTE: This condition is for those cases where there is evidence that medical illness or disability was a contributing cause of the violations but the respondent is not at present a danger to his patients.

20. Monitoring

Within 30 days of the effective date of this decision, respondent shall submit to the board for its prior approval a plan of practice in which respondent's practice shall be monitored by another optometrist, who shall provide periodic reports to the board. Any cost for such monitoring shall be paid by respondent.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the board.

(OPTIONAL)

Respondent is prohibited from engaging in solo practice.

21. Third Party Presence. Sexual Transgressions

During probation, respondent shall have a third party present while examining or treating female/male/minor/patients. The third party individual or individuals authorized for this purpose may be subject to approval by the board or its designee. Any costs incurred for compliance with this term shall be paid by the respondent.

NOTE: Sexual transgressors should normally be placed in a monitoring environment.

22. Restricted Practice -Incompetence

During probation, respondent is prohibited from practicing Ex. specified optometric procedures).

23. Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment

Within 15 days of the effective date of this decision, respondent shall submit the name, business address and business telephone number of three persons who are professionally qualified to provide counseling and treatment for drug, alcohol or other chemical abuse appropriate to the case. Thereafter the board through its staff shall select one of these persons to provide the necessary counseling and treatment. Within 30 days of written notification of this selection to the respondent the respondent shall, in consultation with this counselor and treating professional, prepare and submit to the board for its approval, a counseling and treatment program all costs of which shall be paid by the respondent. Respondent shall successfully complete this counseling and treatment program as a condition of probation.

24. Restriction as to Branch Offices

During the period of probation, the respondent shall be restricted as to the number and location of branch offices that the respondent may operate or in which the respondent may have any proprietary interest as designated and approved in writing by the board.

25. Restriction as to Advertisement

During the period of probation, the respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of optometry to the board for its prior approval. Such advertisement may be published or disseminated to the public only after written approval by the board.

STANDARD CONDITIONS; TO BE INCLUDED IN ALL CASES OF PROBATION

26. Obey all laws

Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

27. Cooperate with probation surveillance

Respondent shall comply with the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.

28. Tolling of probation if respondent moves out-of-state

The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is

required to immediately notify the board in writing of the date of departure, and the date of return, if any.

29. Completion of probation

Upon successful completion of probation, respondent's certificate will be fully restored.

30. Violation of probation

If respondent violates probation in any respect, the board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item III A. – Discussion to amend California Business and Professions Code (BPC), Section 3041: Blepharitis and Fingerstick Testing

Action Requested:

After the date that this agenda item was noticed, Board staff decided to withhold its discussion regarding Blepharitis and Fingerstick Testing and will not seek action this legislative session.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Jeff Robinson
Licensing Analyst

Telephone: (916) 575-7171

Subject: Agenda Item III B. – Eligibility of Graduates from Foreign Universities

Issue

Since section 3057.5 was added to the California Business and Professions (B&P) Code in 1971, the California State Board of Optometry (Board) has granted sponsorships to graduates of foreign universities seeking to become California-licensed optometrists. Because the school curriculum of these universities varies, there has always been a question of whether that curriculum was reasonably equivalent to that which is offered at accredited universities.

History

Past Board activity reveals that in the mid-1980s, the Board sought to implement a plan that would provide the necessary public protection while permitting graduates of unaccredited foreign universities to seek licensure in California. Attempts at this failed due to a charge by a former California State senator that the Board was using educational equivalency as a barricade for graduates of foreign universities.

Because of the senator's concerns, the Board amended California Code of Regulations (CCR) section 1530.1. This section gave graduates of foreign universities who did not hold a degree admission to the Board's optometry licensure examination on the assumption that their education was reasonably equivalent to the education offered at accredited universities in the United States. Specifically, CCR section 1530.1 states:

"...provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency."

Unfortunately, the Board's efforts to establish a remedial course curriculum were unsuccessful. Legislation repealing the Board's authority to require educational equivalency was signed into law in 1987, exempting those who graduated from foreign universities prior to 1980. In 1991, the Board was required to fund a remedial course offered by the University of California, Los Angeles. Of the forty-one students who took the course, only one was known to have gone on to pass the license examination and become a California-licensed optometrist.

In November, 2004, the Board established a task force that consisted of two public and two professional members, charged with identifying measures that would ensure the protection of the public while permitting graduates of foreign universities a fair and objective opportunity to seek

optometrist licensure in California. The task force met in March, 2005, and discussed the following:

- Legislative History
- Past Board Activity
- Other Regulatory Board Policies
- National Board of Examiners in Optometry Policies and Statistics and,
- The New England College of Optometry's Program for Graduates of Foreign Optometry Schools

After their discussion, they voted to make the following recommendations to the Board for consideration:

1. That Board staff members determine the equivalency for graduates of foreign, unaccredited optometry schools who do not hold a *doctor of optometry* (OD) degree
2. That clear and objective criteria be established for evaluating the education of graduates of foreign, unaccredited schools based on existing standards set forth by organizations recognized as being experts in education evaluation and,
3. Develop interim objective standards for pending applicants

Current Board Policy/Procedure

To my knowledge, and since being charged with the review of graduates of foreign universities, our procedure has been to accept sponsorship requests for those applicants who have received *OD, doctor of medicine in ophthalmology, or bachelor of science in optometry* degrees from certain schools (e.g., City University London) that do not award an OD degree. I am of the opinion that this practice has been followed to avoid any opposition from those graduates whose school did not offer an OD degree, but have the education necessary to become a licensed, practicing optometrist in their country.

Staff Recommendations

Staff recommends that, because graduates of foreign universities often receive degrees other than that of an OD degree, but are still eligible to practice optometry in the country where they graduated, the committee revisit B&P Code section 3057.5 and CCR section 1530.1. The possibility of revising said provisions must be discussed in order to further clarify the type of education that will be deemed acceptable of a foreign graduate and what should be considered, "...satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board..."

Many accredited schools/colleges of optometry require graduates of foreign universities to submit official transcripts to an approved foreign transcript evaluation service (e.g., World Education Services, Inc.) for a course-by-course US equivalency report. Staff believes that it would be beneficial if the Board required the same.

We have learned recently that the Board is currently the only state board of optometry sponsoring graduates of foreign universities. This could explain the small percentage of these graduates who eventually become California-licensed optometrists.

We have never charged a fee for sponsoring a foreign graduate. Staff believes that, because of the administrative costs the Board incurs from document review, the use of materials, and the service we provide for those state boards who license those graduates we've sponsored, a fee should be attached to sponsorship requests. This could possibly be done by requiring the foreign applicant to submit, along with his/her written request for sponsorship, an application for licensure and the \$275 application fee which is an evaluation/processing fee that all applicants for licensure pay to the Board. Adding this fee may alleviate the need to seek the addition of an additional fee.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: All Staff

Telephone: (916) 575-7170

Subject: Agenda Item III C. – Amend California Business and Professions Code (BPC),
Section 3070, Notice of Address for Practice of Optometry

Action Requested:

Board staff requests that the committee members discuss the possibility of amending BPC Section 3070.

Materials will be provided at the committee meeting.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation Committee Members **Date:** September 24, 2010

From: Andrea Leiva and Jessica Siefertman **Telephone:** (916) 575-7182
Policy Analyst Probation Monitor (916) 575-7184

Subject: **Agenda Item III D. – Amend California Business and Professions Code (BPC), Section 3110 Unprofessional Conduct**

Action Requested:

Board staff requests that the Board members discuss the possibility of amending BPC Section 3110, Unprofessional Conduct in order to add a provision that will define the failure to comply with an investigation as unprofessional conduct.

The proposed language for the above section is included in Attachment 1.

Background:

This statutory requirement was recommended by the Attorney General's Office (AG) and Board staff has found a need for its enactment. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the Board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

Issues/Discussion:

Although the addition of this provision is also included in Agenda Item 2(E) suggesting that it be added via regulation, staff would like present the option of having this provision be added into BPC section 3110 as well.

Attachments:

- 1) Proposed Language for BPC Section 3110
- 2) Example - Architects Board

Proposed Language

3110. Unprofessional Conduct

The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Whenever the board is conducting an investigation, an optometrist or a candidate for licensure shall respond to the board's requests for information and/or evidence in writing within 30 days of the date mailed to or personally delivered on the optometrist or candidate for licensure.

~~(z)~~ (y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041.

Architect's Board Example:

§ 160 Rules of Professional Conduct

A violation of any rule of professional conduct in the practice of architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

(a) Competence:

(1) An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

(2) In addition to subsection (a)(1) above, when practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions.

(b) Willful Misconduct:

(1) In designing a project, an architect shall have knowledge of all applicable building laws, codes, and regulations. An architect may obtain the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes and regulations.

(2) Whenever the Board is conducting an investigation, an architect or a candidate for licensure shall respond to the Board's requests for information and/or evidence within 30 days of the date mailed to or personally delivered on the architect or a candidate for licensure.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee

Date: September 24, 2010

From: Margie McGavin
Enforcement Manager

Telephone: (916) 575-7174

Subject: Agenda Item III E. – Add Inspection Authority to the California Business and Professions Code

Background

The Board of Optometry's (Board) enforcement unit is charged with investigating and ensuring compliance of the Laws and Regulations Regarding Optometry. However, these laws and regulations do not include the authority to audit and inspect an optometrist's practice location.

Currently, if an inspection is required, the Board must enlist the assistance of the Division of Investigation (DOI), who as peace officers, have inspection authority. These investigators may enter an optometric office and require the inspection of the premises including patient records, financial and billing information, infection control procedures, etc. However, the DOI investigators often are not aware of the specifics in regard to optometric offices, and may overlook important information critical to the investigation.

The Board of Pharmacy, Board of Barbering and Cosmetology, Board of Respiratory Care, Dental Board, and the Board of Physical Therapy are several of the California regulatory boards within the Department of Consumer Affairs that have the authority to inspect the facilities in which their licensee's practice. These inspections are to ensure the compliance of the laws and regulations of these boards, which in turn, protect the citizens of California.

Inspection authority will allow Board staff the ability to inspect and ensure compliance in the following areas:

- Licensure – ensure the practicing optometrist has notified the board of this location.
- License postings (usually posted in examination rooms, not visible to the general public).
- Infection Control – use of proper handwashing and other infection control procedures.
- Therapeutic and Ophthalmic Solutions – ensure expiration dates are being adhered to.
- Patient Charting – complete documentation, billing, and financial information.
- Business and Financial information – ensuring proper ownership, fictitious name and branch office licensure.

Action Requested

The following is proposed language modeled after the Respiratory Care Board's Business and Professions Code § 4082, granting authority to inspect an optometrist's location of practice. Staff requests that the Board members review and discuss the legislative proposal.

Authority to make inspections of and require reports from optometric practices

(a) The board, or any licensed optometrist, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a practice of optometry or any other facility or corporation providing optometric care, treatment, or services and the optometric staff thereof, with respect to the optometric care, treatment, services, or facilities provided therein, or the employment of staff providing the optometric care, treatment, or services, and may inspect and copy optometric patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of a licensee or employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

Attachments

1. Respiratory Care Board, B&P Code §3717
2. Physical Therapy Board: B&P Code §2608
3. Board of Barbering and Cosmetology: B&P Code § 7313
4. Board of Pharmacy: B&P P Code §4080-4082
5. Dental Board of California: B&P Code §1611.5

California Respiratory Care Board

4082. (a) The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect and copy respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

2225. (a) Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a doctor of podiatric medicine and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents, and representatives of the board or the California Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the California Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a doctor of podiatric medicine is limited to records of patients who have complained to the board or the California Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the California Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the California

Board of Podiatric Medicine, they shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

Physical Therapy Board of California

2608.5. Each member of the board, or any licensed physical therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing physical therapy care, treatment or services and the physical therapy staff thereof, with respect to the physical therapy care, treatment, services, or facilities provided therein, and may inspect physical therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a physical therapist and shall be subject to the restrictions against disclosure described in Section 2263.

4082. The willful, unauthorized violation of professional confidence constitutes unprofessional conduct.

California Board of Barbering and Cosmetology

7313. (a) (1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The board shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the board, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice of violation shall be provided to the Bureau for Private Postsecondary and Vocational Education.

© With prior written authorization from the board or its executive officer, any member of the board may enter and visit, in his or her capacity as a board member, any establishment, during business hours or at any time when barbering, cosmetology, or electrolysis is being performed. The visitation by a board member shall be for the purpose of conducting official board business, but shall not be used as a basis for any licensing disciplinary action by the board.

California Board of Pharmacy

4080. All stock of any dangerous drug or dangerous device or of shipments through a customs broker or carrier shall be, at all times during business hours, open to inspection by authorized officers of the law.

4082. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

4082. When called upon by an inspector, the owner or manager of any entity licensed by the board, or other store, shop, building, or premises retailing, wholesaling, or storing drugs or devices shall furnish the inspector with the names of the owner or owners, manager or managers, and employees together with a brief statement of the capacity in which these persons are employed on the premises.

DENTAL BOARD OF CALIFORNIA

1611.5. The board may inspect the books, records, and premises of any dentist licensed under this chapter in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action by the board, and may employ inspectors for this purpose.

A licensee's failure to allow an inspection or any part thereof shall be grounds for suspension or revocation of the license in accordance with Section 1670.



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee

Date: September 24, 2010

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7176

Subject: Agenda Item III F. – Add Retired License Category to the California BPC

Background

The Board of Optometry (Board) receives numerous inquiries and requests from licensees regarding a retired license status. Currently, if a licensee retires from practice, he or she can do either of the following:

- 1) Request that his/her license be placed on inactive status and pay a biennial renewal fee of \$425. By definition, an inactive license means that a licensee may not engage in practice and is exempt from continuing education requirements.
- 2) Not pay a fee and allow his or her license to expire. Allowing a license to expire means that the license will go into delinquent status and will ultimately be cancelled after three years.

The two primary complaints from licensees with respect to the license status options that are available to them upon retirement are as follows:

- Renewing with an inactive status requires paying an inactive renewal fee every two years when an individual does not intend to ever practice again; and,
- If a licensee allows his or her license to expire, the Board's web site labels his or her license status as "Delinquent" until the license is cancelled after three years.

Discussion

Staff identified that some licensees have a ____ status code which indicates a retired license status. Licensees who desired to have their license denoted with this code would write a letter requesting their license be placed in a retired status and staff would comply. However, the Board does not have a retired license category and has no authority to use such a status code. Optometrists who advertise themselves as a retired optometrist would actually be in violation of advertising guidelines, though the Board has no record of taking action against a licensee for using this title. If the Board received a complaint against a licensee for using this status, we would educate the licensee to remove such statement from his/her advertisement.

The retired license proposal is modeled after retired license status language for California pharmacists, architects, professional engineers, and land surveyors. The Board of Behavioral Sciences (BBS) sponsored AB 2191 seeking a retired status category for marriage and family therapists, licensed clinical social workers, licensed educational psychologists and licensed professional counselors. BBS anticipates this bill will be signed by the Governor and will become law, effective January 1, 2011.

This attached proposal does the following:

1. Permits a licensee to have a retired status available to them;
2. Allows a retired licensee to reactivate their license within three years;
3. Requires a one-time \$_____ fee for the issuance of a retired license;
4. Exempts a retired licensee from continuing education requirements; and,
5. Requires a retired licensee to pass current licensure examination if the licensee wishes to restore his or her license to full active status after three years.

Recommendation

Staff requests that the Committee discuss the language and appropriate fee for this license category, if acceptable, move to take this proposal to the Board at its October 2010 meeting for its consideration to sponsor legislation creating a retired license status as proposed.

Attachment

A. Proposed Legislative Language

**BOARD OF OPTOMETRY
PROPOSED LEGISLATIVE LANGUAGE**

§ 3147.8 RETIRED LICENSE; CONDITIONS

- (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to an optometrist who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.
- (b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active optometry license is required. An optometrist holding a retired license shall be permitted to use the titles "retired optometrist" or "optometrist, retired."
- (c) The holder of a retired license shall not be required to renew that license.
- (d) The holder of a retired license issued less than three years ago, who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice optometry to active status by:
- (1) Paying the current renewal fee.
 - (2) Completing the required continuing education as specified in Section 1536 of the California Code of Regulations.
- (e) The holder of a retired license issued more than three years ago, who has not committed an act or crime constituting grounds for denial of licensure may, upon request, restore his or her license to practice optometry to active status by:
- (1) Applying for licensure and paying the required fees.
 - (2) The holder of the expired license shall take and pass the following examinations:
 1. The National Board of Examiners in Optometry (NBEO) Part III Clinical Skills or other clinical examination approved by the Board
 2. The California Law and Regulations Examination (CLRE)
- (f) After having taken and passing the examinations identified in subsection (d) the retired license shall be restored to an active license.

§ 3152 FEE SCHEDULE

The amount of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

- (a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).
- (b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).
- (c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).
- (d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).
- (e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).
- (f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).
- (g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).
- (h) The application fee for a certificate to treat lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).
- (i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).

(j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).

(k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).

(l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).

(m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).

(n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).

(o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).

(p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).

(q) The fee for a retired license shall not exceed _____ (\$).



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Dr. Lee Goldstein, OD, MPA
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 4 – Public Comment for Items Not on the Agenda



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation and Regulation
Committee Members

Date: September 24, 2010

From: Dr. Lee Goldstein, OD, MPA
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 5 – Adjournment
