



STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

California State Board of Optometry

Board Meeting

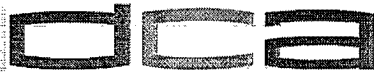
Monday, October 22, 2010

Southern California College of Optometry
2575 Yorba Linda Blvd., TVCI Room
Fullerton, CA 92831

and

The Department of Consumer Affairs
1625 North Market Blvd.
Sacramento Room S306, 3rd Floor
Sacramento, CA 95834





DEPARTMENT OF CONSUMER AFFAIRS

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Governor
State of California

Bill Leonard, Secretary
State and Consumer Services
Agency

Brian Stiger, Senior Chief
Deputy Director
Department of Consumer Affairs



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Brianna Miller
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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

Friday, October 22, 2010

9:00 a.m.

Southern California College of Optometry

TVCI Room

2575 Yorba Linda Blvd.

Fullerton, CA 92831

And

The Department of Consumer Affairs

1625 North Market Blvd.

Sacramento Room S306, 3rd Floor

Sacramento, CA 95834

- I. Welcome and Introductions.
- II. Review and Possible Approval of the Responses Considering the Comments Submitted during the 15-day Comment Period (October 5, 2010 to October 19, 2010) Pertaining to the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification.
- III. Review and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Section 1536, Continuing Optometric Education.
- IV. Review and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Sections 1518, 1523, 1531, 1532 and 1561, Fictitious Name Permits, Licensing and Examinations.
- V. Approval of Board Meeting Minutes.
 - A. March 16, 2010
 - B. March 25-26, 2010
 - C. May 11, 2010
 - D. September 24, 2010
 - E. October 4, 2010
- VI. Public Comment for Items Not On the Agenda.
- VII. 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: Board Members

Date: October 22, 2010

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

Telephone: (916) 575-7170

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

Call to Order and Establishment of a Quorum

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.

Alejandro Arredondo, O.D., Vice-President

Kenneth Lawenda, O.D.

Fred Naranjo, M.B.A.

Katrina Semmes

Donna Burke



Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members **Date:** October 22, 2010

From: Mona Maggio, Executive Officer
Michael Santiago, Legal Counsel
Andrea Leiva, Policy Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 2 – Review and Possible Approval of the Responses Considering the Comments Submitted During the 15-Day Comment Period (October 5, 2010 to October 19, 2010) Pertaining to the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification**

Action Requested:

To be provided at the meeting.

Background:

This proposal establishes the requirements for glaucoma certification for licensees that graduated prior to May 1, 2008. Senate Bill (SB) 1406 (Chapter 352, Statutes of 2008, Correa) became effective on January 1, 2009 and expanded the scope of practice of optometrists to include, among other things, the treatment of glaucoma. Business and Professions Code (BPC) section 3041.10 establishes procedures to be followed by the Board in order to make sure that the public is adequately protected during the transition to full certification for all licensed optometrists interested in treating and managing glaucoma patients.

Below is a timeline of the Board's progress so far:

August 24, 2009 – Board approves the language and initiates a rulemaking.
November 6, 2009 – The Notice is published and the 45-day comment period begins.
December 21, 2009 – 45-day comment period ends.
December 22, 2010 – Regulatory hearing is held, no comments received.
March 16, 2010 – Board makes final approval of the modified language after acknowledging all comments received.
March 24 – April 8, 2010 - 15-day comment period on modified text.
May 11, 2010 – Board makes final approval of the language after acknowledging all comments received and direct staff to complete the rulemaking file.
May 17 – August 23, 2010 – Package is approved by the Department of Consumer Affairs, Consumer Services Agency, and the Department of Finance.
August 25, 2010 – Staff submits the package for final review to the OAL.
September 24, 2010 – The Board votes to withdraw the regulation from the Office of Administrative Law after reviewing the Office's concerns with the regulation.
September 27, 2010 – The Board withdraws the regulation.
October 4, 2010 – The Board meets to approve modified text.
October 5, 2010 – October 19, 2010 – 15 day comment period for modified text.
October 22, 2010 – Board meeting to discuss comments and move forward with the rulemaking file.

Issues/Discussion:

Summary of Objections or Recommendations Received During the 15-day Comment Period:

To be provided at the meeting.

Staff Recommendation:

To be provided at the meeting.

Attachments:

To be provided at the meeting.



Memo

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www.optometry.ca.gov

To: Board Members

Date: October 22, 2010

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 3 – Discussion and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Section 1536, Continuing Optometric Education**

Action Requested:

Staff requests that the Board review and fully consider the comments received pertaining to CCR, Title 16, Section 1536, Continuing Optometric Education. The comments were received during this regulation's 45-Day comment period which began on July 2, 2010 and ended on August 16, 2010. A proper response will show adequate consideration of the comment and will thoroughly describe why the comment is being accepted or rejected pursuant to Government Code section 11346.9, subdivision (a)(5).

Staff also requests that if any recommendations are accepted from the comments, the Board approve the resulting modified text in order to initiate the 15-day comment period for public review.

Background:

The main purpose of the proposed amendments to Title 16, CCR section 1536 are to clean up and update the existing regulation's language for informational and clarity purposes. This proposal also adds new continuing optometric education (CE) opportunities, specifically:

- 1) Up to eight credit hours for course work in ethics in the practice of optometry;
- 2) Up to two credit hours for a full day's attendance of a Board meeting;
- 3) Up to four credit hours for course work to receive certification in cardiopulmonary resuscitation (CPR) from the American Heart Association or the American Red Cross;
- 4) The ability for the Board to recognize and utilize the Association of Regulatory Boards in Optometry's (ARBO) Optometric Education (OE) Tracker system as proof of CE course attendance; and
- 5) The ability for the Board to grant an extension, in its discretion if good cause exists, to licensees who are unable to complete sufficient hours of CE.

Important Dates:

March 25, 2010 – Board approves the language and moves to initiate the rulemaking process.

July 2, 2010 – The Notice is published in the California Regulatory Notice Register and the 45-day comment period begins.

August 16, 2010 – 45-day comment period ends and the regulatory hearing is scheduled for the same day. Two comments were received.

Issues/Discussion:

Summary of Objections or Recommendations Received During the 45-day Comment Period:

Mary Schombert, Regulatory Specialist, Health & Safety Institute (HSI)

As currently worded, the regulation would allow that four CE credits be awarded only for CPR courses taught by the American Heart Association (AHA) or the American Red Cross (ARC). This restrictive wording would prevent the use of training programs produced by HSI under the brand names of American Safety & Health Institute (ASHI) and MEDIC First Aid. These two organizations have more than 30 years of experience producing emergency medical training programs.

Also, AHA and ARC collect training revenues from the sale of their proprietary training materials. Thus the Board's endorsement of AHA and ARC grants those organizations control of the Optometry training market. This will hurt ASHI and MEDIC First Aid training centers by shutting them out of the training market, and deprive California optometrists of equivalent training options that would benefit from a market economy.

HSI would like to ask the Board to consider either adding ASHI and MEDIC First Aid by name to the list of approved CPR courses in the regulation or to consider adding equivalency wording to the regulation, extending acceptance of CPR programs to those produced by training providers that follow the guidelines of the AHA and require a hands-on training component for certification. (See Attachment 2 for full comment)

Kristine Shultz, Director of Governmental Affairs & External Relations, California Optometric Association (COA)

Ms. Shultz expressed COA's support for the Board's proposed amendments to the regulation. (See Attachment 3)

Staff Recommendation:

Staff would like to recommend that the Board accept HSI's recommendation and suggests amending the proposed language as indicated in Attachment 1. Staff agrees with HSI's reasoning.

Attachments:

- 1) CCR 1536 Suggested Modified Text if comment is accepted
- 2) Copy of Comment Received on July 15, 2010 by Mary Schombert, Regulatory Specialist, Health & Safety Institute
- 3) Copy of August 16, 2010 Regulatory Hearing Minutes

BOARD OF OPTOMETRY

PROPOSED LANGUAGE

Amend section 1536 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1536. Continuing Optometric Education; Purpose and Requirements

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the renewal deadline license expiration date. Such course work shall be subject to Board approval. ~~No more than~~ Up to eight hours of course work ~~may~~ shall be in the area of patient care management or ethics in the practice of optometry. ~~Courses dealing with business management shall not be approved.~~ Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of ~~continuing education~~ continuing optometric education every two years in order to renew his or her ~~certificate license~~. Thirty-five of the required 50 hours of ~~continuing education~~ continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (f).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(4) A full day's attendance at a California State Board of Optometry Board meeting. Up to two credit hours shall be granted for a full day.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross or the American Heart Association. Up to four credit hours shall be granted for this course.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, or the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

OR

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, or the American Heart Association, or the Health and Safety Institute's American Safety and Health Institute, and MEDIC First Aid associations. Up to four credit hours shall be granted for this course.

OR

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from a provider that follows nationally recognized CPR guidelines involving hands on training, the American Red Cross or the American Heart Association. Up to four credit hours shall be granted for this course.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education offerings courses officially sponsored or accredited recognized by any accredited school or college of optometry.

(2) Continuing optometric education offerings courses provided by of any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education offerings courses approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

(f) Other educational programs continuing optometric education courses approved by the Board as meeting the criteria as set forth in paragraph (g) below, after submission of a program course, schedule, topical outline of subject matter, and curriculum vitae of all instructors or lecturers involved, to the Executive Officer of the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve of an educational program a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

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

(1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry.

(2) Whether the speakers instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and

attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance at continuing education programs shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance at continuing education courses shall be submitted by the licensee to the Executive Officer or his/her designee Board upon request, and shall contain the following minimal information:

- (1) ~~The n~~Name of the sponsoring organization.
- (2) ~~The n~~Name, signature, practice address, and license number of the attending licensee.
- (3) ~~The s~~Subject or title of the educational program course.
- (4) ~~The n~~Number of continuing optometric education hours in actual attendance provided for attending the course.
- (5) ~~The d~~Date of the educational program course was provided.
- (6) ~~The l~~Location of the educational program where the course was provided.
- (7) ~~The n~~Name(s) and signatures of the course instructor(s).
- (8) Such other evidence of course content or attendance as the Board may deem necessary.

Use of a ~~Board-specified certificate form~~ certificate of course completion provided by the Board is recommended for any educational programs continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the ~~Executive Officer on Board~~ Board upon request.

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

(i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the ~~24 months~~ two years immediately preceding the ~~annual license renewal~~ license expiration date.

(2) Those licensees as the Board, in its discretion, determines were unable to attend complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

(3) Any licensee who is renewing an active license for the first time, if ~~he/she~~ he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.

(j) The Board may conduct an audit of any licensee's attendance ~~at continuing education programs~~ of a continuing optometric education course as a means of verifying compliance with this section.

(k) ~~As a condition of license renewal, all licensees are required to maintain current certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, American Heart Association, or other association approved by the Board. Training required for the CPR certificate shall not be credited toward the requirements of subdivision (a). Exemptions will be made for licensees as the Board, in its discretion, determines were unable to maintain current~~

CPR certification due to physical impairment, illness, incapacity, or other unavoidable circumstances.

Note: Authority cited: Sections ~~3023.1~~ and 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.

Andrea Leiva

From: Marybeth Schombert
Sent: Thursday, July 15, 2010 1:30 PM
To: Andrea Leiva
Cc: Ralph Shenefelt
Subject: Optometry Board Regulation changes

VIA EMAIL

July 15, 2010

Andrea Leiva
California Board of Optometry
2420 Del Paso Rd, Ste 255
Sacramento, CA 95834

Ms. Leiva,

I am writing from the Health & Safety Institute (HSI), a nationally recognized producer of emergency medical training programs under the brand names American Safety & Health Institute (ASHI) and MEDIC First Aid, with regards to the new regulations the Board of Optometry has proposed regarding continuing education. In particular, subsection 1536 (c)(5) which addresses the acceptance of CPR courses for four hours of CE credit.

As currently worded, the regulation would allow four of CE credit be awarded only for CPR courses taught by the American Heart Association or the American Red Cross. This restrictive wording would prevent the use of training programs produced by ASHI and MEDIC First Aid, two organizations with more than 30 years of experience producing emergency medical training programs. Both brands follow the same evidence-based guidelines in the creation of their programs as the American Heart Association and the American Red Cross (ARC). In fact, representatives from both ASHI & MEDIC First Aid were part of the International Liaison Committee on Resuscitation (ILCOR) 2005 conference which produced those guidelines. Both ASHI and MEDIC First Aid training programs have been approved by the United States Coast Guard, California EMSA, and other state agencies across the country (letters available upon request).

It should also be noted that the AHA and ARC collect training revenues from the sale of their proprietary training materials. Thus the Board's endorsement of AHA and ARC training programs grants those organizations control of the Optometry training market. This will hurt not only ASHI and MEDIC First Aid Training Centers, damaging their reputation and shutting them out of a training market, but also Optometrists in California, depriving them of an equivalent training option and preventing them from benefiting from a market economy.

We would ask the Optometry Board to consider either adding ASHI and MEDIC First Aid by name to the list of approved CPR courses in the regulation or to consider adding equivalency wording to the regulation, extending acceptance of CPR programs to those produced by training providers that follow the guidelines of the American Heart Association and require a hands-on training component for certification.

Please feel free to contact me by email or at 800-447-3177 ext 325 with any question regarding this

7/15/2010

letter.

Best regards,

Marybeth Schombert
Regulatory Specialist
mschombert@hsi.com

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Health & Safety Institute- We Make Learning to Save Lives Easy®.

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DEPARTMENT OF CONSUMER AFFAIRS
2420 Del Paso Road
Yosemite Room, 1st Floor
Sacramento, CA 95834

Monday, August 16, 2010
10:00 a.m.

Minutes of Public Hearing on the
Board of Optometry's Amendments
to California Code of Regulations
Section 1536

Staff Present: Margie McGavin, Enforcement Manager
Board of Optometry

Dillon Christensen, Enforcement Unit
Board of Optometry

Attendees: Erica Eisenlauer, Legislative Analyst
Department of Consumer Affairs, Division of Legislation and Policy
Review

Kristine Shultz, Director, Governmental and External Affairs
California Optometric Association

The public hearing was called to order at 10:07 a.m. on Monday, August 16, 2010 by Dillon Christensen for the purpose of hearing comments from interested parties on proposed amendments to California Code of Regulations section 1536, Continuing Optometric Education. The proposed regulatory action had been properly noticed and filed with the Office of Administrative Law.

Dillon Christensen: We will now take oral comments on the proposed regulations. We have one person who signed in and is present to speak. Would you come forward, please Ms. Shultz?

Kristine Shultz: Hello, my name is Kristine Shultz and I am with the California Optometric Association (COA). I would like to express COA's support for the Board's proposed amendments to the regulation. Thank you.

Dillon Christensen: Thank you, Ms. Shultz.

There being no additional individuals interested in testifying or submitting comments, the public hearing was closed at 11:30 a.m.



Memo

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www.optometry.ca.gov

To: Board Members

Date: October 22, 2010

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 4 – Discussion and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Sections 1518, 1523, 1531, 1532 and 1561, Fictitious Name Permits, Licensing and Examinations**

Action Requested:

Staff requests that the Board review and fully consider the comments received pertaining to CCR, Title 16, Sections 1518, 1523, 1531, 1532 and 1561, Fictitious Name Permits, Licensing and Examinations. The comments were received during these regulations' 45-Day comment period which began on June 18, 2010 and ended on August 2, 2010. A proper response will show adequate consideration of the comment and will thoroughly describe why the comment is being accepted or rejected pursuant to Government Code section 11346.9, subdivision (a)(5).

Background:

This proposal will update subsection (a) of the regulation by correcting the permit fee required to obtain a Fictitious Name Permit from \$10 to \$50. Also, to clarify that a permit is to be renewed annually on January 31 and that failure to renew in a timely manner will result in a \$25 delinquency fee.

Important Dates:

March 25, 2010 – Board approves the language and moves to initiate the rulemaking process.

June 18, 2010 – The Notice is published in the California Regulatory Notice Register and the 45-day comment period begins.

August 2, 2010 – 45-day comment period ends and the regulatory hearing is scheduled for the same day. Two comments were received.

Issues/Discussion:

Summary of Objections or Recommendations Received During the 45-day Comment Period:

Jim Kane, OD

Proposed changes are not appropriate in three areas:

1. A five times increase of the fee from ten to fifty dollars is onerous.
2. Requiring that this fee be paid every year should certainly not be necessary and appears to be another revenue-based imposition.
3. A Fictitious Business Name should belong to the person who devised it, registered it with the state, paid for it, filed paperwork with the Board for it and paid to publish it. It should not be the dictate of the Board to direct sellers of the practice to freely or automatically include it in the transition of practice ownership unless that is the wish of the selling doctor. Some names have significant and separate values from the practice itself and the owner of that name may choose to re-register that name and continue the use of it in another part of the state as part of the new office. A business

~~name has stand-alone proprietary value and should not be de-valued by government agency mandate. (See Attachment 2)~~

Kristine Shultz, Director of Governmental Affairs & External Relations, California Optometric Association (COA)

Ms. Shultz expressed COA's support for the Board's proposed amendments to the regulation (See Attachment 3).

Staff Recommendation:

Staff would like to recommend that the Board reject Dr. Kane's comments for the following reasons:

Proposed Response to Comment 1

Reject: This comment is rejected because this regulatory package does not increase Fictitious Name Permit fees. The fee increase that this regulation is reflecting became effective on April 28, 2009 upon the Secretary of State's approval of another rulemaking package pertaining to CCR section 1524, Fees. This proposed regulation is being updated to match subsection (h) of CCR section 1524, which increased the Fictitious Name Permit renewal fee from \$10 to \$50. CCR section 1518 should have been amended at the same time that CCR section 1524 was amended for consistency, but there was an oversight by previous Board staff.

Also, prior to 2009, the Board's last fee increase was implemented in 1993 (17 years ago) and was insufficient to support Board operations beyond Fiscal Year 2007/08. An analysis was conducted in order to determine the fee increases required for Board operations to continue (See Attachment 4). Changing the fee from \$10 to \$50 was the most reasonable solution so the Board could continue its operations, thus this fee is not onerous, but necessary.

Furthermore, the Board has been charging a \$50 renewal fee since April 28, 2009, the effective date of CCR section 1524. This information was posted on the Board's website immediately and sent to its interested parties list by mail and electronically as a public awareness effort.

Proposed Response to Comment 2

Reject: This comment is rejected because payment of the Fictitious Name Permit Fee must be paid yearly and is not a revenue-based imposition. The annual requirement is not new and was only added to the regulation for clarity purposes and to match prior regulations.

Since 1997, the Board has been requiring that the Fictitious Name Permit renewal fee be paid every year pursuant to CCR section 1524. Adding this language to CCR 1518 will improve Board operations by properly informing licensees, who are not familiar with other regulations, what they need to do when it comes to maintaining their Fictitious Name.

Proposed Response to Comment 3

Reject: This comment is rejected because it is irrelevant for the purposes of this rulemaking. The concern does not address any of the proposed changes.

Attachments:

- 1) CCR section 1518 Proposed Language
- 2) Copy of Comment Received on July 23, 2010 by Jim Kane, OD
- 3) Copy of August 2, 2010 Regulatory Hearing Minutes
- 4) Chart demonstrating the estimated fee increase in revenue from the approved rulemaking file of CCR section 1524, Fees

BOARD OF OPTOMETRY

PROPOSED LANGUAGE

Amend sections 1518, 1523, 1531, 1532, 1533 and 1561 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1518. Fictitious or Group Names

(a) Applications for a permit to use a fictitious or group name shall be submitted on a form provided by the Board containing such information as is required therein, and accompanied by the initial permit fee of ~~\$40.00~~ 50. The permit shall be renewed annually with a renewal fee of \$50 due on January 31 each year. Failure to renew a fictitious name permit in a timely manner will result in a \$25 delinquency fee added to the renewal fee.

(b) No permit shall be issued authorizing the use of a name which is deceptive or inimical to enabling a rational choice for the consumer public and which does not contain at least one of the following designations: "optometry" or "optometric." In considering whether a name is deceptive or inimical to enabling a rational choice for the consumer public the Board may consider, among other things, whether it has a tendency to deceive the public or is so similar to a name previously authorized in the same geographical area as to be deceptive or misleading.

(c) When an optometrist or optometrists acquire the ownership in an optometric practice of another optometrist or other optometrists, the successor optometrist or optometrists may use in connection with such practice the name or names of the predecessor optometrist or optometrists for a reasonable time not in excess of two years thereafter providing:

(1) The acquisition of the ownership in the practice of the predecessor optometrist or optometrists includes permission to use his/her or their names.

(2) The acquisition of the ownership includes the active patient records and prescription files of the practice.

(3) In any signs, professional cards, envelopes, billheads, letterheads, or advertising of any nature, the name or names of the successor optometrist or optometrists shall appear first and be followed by the term "succeeding," "successor to," or "formerly" and then the name or names of the predecessor optometrist or optometrists which shall not appear in letters larger than the letters in the name or names of the successor optometrist or optometrists.

Note: Authority cited: Section ~~3425~~ 3078, Business and Professions Code. Reference: Sections ~~3425~~ 3078, 3152 and 3163, Business and Professions Code.

§ 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~~ 7-09), 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-accredited school or college of optometry 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.~~

~~(cd) 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.~~

(d) Each applicant must achieve passing grades in all Board required examinations before being granted a license to practice optometry.

~~(e) Permission to take the Patient Management and California Laws and Regulations Examination (CLRE) sections shall be granted to those applicants who have submitted a paid application, paid the necessary fees and who meet the educational qualifications to take the examinations.~~

~~(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 applicants passing the ~~clinical demonstration~~ Clinical Skills portion of the National Board of Examiners in Optometry examination as provided in Section 1531 in this Article and passing the CLRE.~~

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

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

§ 1531. Licensure Examination

(a) The licensure examinations is are composed of:

Section I - Applied Basic Science ~~Written~~ cognitive examination approved by the Bboard and developed by the ~~board or the~~ National Board of Examiners in Optometry (NBEO). Basic Science and Clinical Science.

Section II - Patient Care Examination developed by the ~~board or the~~ Patient Care Assessment and Management/Treatment and Management of Ocular Disease Examination developed by the ~~National Board of Examiners in Optometry (NBEO)~~ NBEO. if the NBEO Patient Care Examination has been passed on or after January 2000.

Section III – Clinical Skills Examination developed by the NBEO.

~~Section IIIIV -- California Laws and Regulations Examination developed and administered by the Board or its contractor.~~

(b) All examinations for licensure developed by the NBEO and the Board prior to January 2010 may be accepted on a case by case basis in the evaluation of an applicant's qualifications for licensure.

Note: Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code.
Reference: Sections 3041.2 and 3053, Business and Professions Code.

§ 1532. Re-Examination

~~(a) Each applicant must achieve passing grades in all sections of the board's examination before being registered and granted a certificate of registration.~~

~~(b) An applicant who has failed to pass either section II of the National Board of Examiners in Optometry (NBEO) examination Patient Management or the California Laws and Regulations Examination sections after a period of five consecutive calendar years from the date of the first examination, must retake sections II and III of the NBEO examination both the Patient Management and the California Laws and Regulations Examination sections.~~

Note: Authority cited: Sections ~~3023.1 and~~ 3025, Business and Professions Code. Reference: Section 3054, Business and Professions Code.

§ 1533. Re-Scoring of California Laws and Regulations Examination Papers

~~Any person who has failed any section of the board examination.~~ Any person who fails to pass the California Laws and Regulations Examination may request that the papers he/she wrote in taking such examination be re-scored by the Board. The request shall be submitted in writing and mailed to the principal office of the Board. The request shall be postmarked no later than 75 days after the date the examination results are mailed.

Note: Authority cited: Sections ~~3023.1 and~~ 3025, Business and Professions Code. Reference: Section 3054, Business and Professions Code.

§ 1561. Topical Pharmaceutical Agents Usage - Purpose and Requirements

(a) The purpose of this article is to implement Business and Professions Code Section 3041.2, as added to said code by chapter 418 of the 1976 statutes. Only those optometrists meeting the requirements of this article may use topical pharmaceutical agents in the examination of human eyes.

(b) In order to use topical pharmaceutical agents in the examination of human eyes, an optometrist must:

(1) complete a course in pharmacology approved by the Board or have equivalent experience satisfactory to the Board; and ~~provide evidence of taking and passing either;~~

~~(2) the NBEO "Ocular Pharmacology" examination (also known as Section 9); or~~
(2) provide evidence of taking and passing either;

(3A) both the Applied Basic Science and Clinical Science Skills sections of the NBEO examination as it was constituted beginning in ~~April 1987~~ January 2010; or

(4B) a pharmacology examination equivalent to (i) ~~(2) or (3)~~ above and administered by an accredited school or college of optometry; ~~or~~

~~(5) a pharmacology examination equivalent to (2) or (3) above and administered by the Board.~~

(c) The Board will issue a Diagnostic Pharmaceutical Agents certification to optometrists fulfilling the requirements of subsection (b) authorizing them to use topical pharmaceutical agents.

Note: Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code.
Reference: Sections 3041 and 3041.2, Business and Professions Code.

From: James Kane [mailto:
Sent: Friday, July 23, 2010 1:18 PM
To: Kristine Shultz
Subject: Changes in Fictitious Business Names

Ms Schultz,

Proposed changes are not appropriate in 3 areas:

1. A five times increase of the fee from 10 to 50 dollars is onerous.
2. Requiring that this fee be paid every year should certainly not be necessary and appears to be another revenue-based imposition.
3. A FBN should belong to the person who devised it, registered it with the state, paid for it, filed paperwork with the board for it and paid to publish it. It should not be the dictate of the board to direct sellers of a practice to freely or automatically include it in the transition of practice ownership unless that is the wish of the selling Dr.. Some names have significant and separate values from the practice itself and the owner of that name may chose to re-register that name and continue the use of it in another part of the state as part of a new office. A business name has stand-alone proprietary value and should not be de-valued by government agency mandate.

Sincerely,
J Kane, OD

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail.
Get busy.

DEPARTMENT OF CONSUMER AFFAIRS

2420 Del Paso Road
Yosemite Room, 1st Floor
Sacramento, CA 95834

Monday, August 2, 2010
10:00 a.m.

Minutes of Public Hearing on the
Board of Optometry's Amendments
to California Code of Regulations Sections
1518, 1523, 1531, 1532, 1533, and 1561

Staff Present: Andrea Leiva, Policy Analyst
Board of Optometry

Dillon Christensen, Enforcement Unit
Board of Optometry

Attendees: Erica Eisenlauer, Legislative Analyst
Department of Consumer Affairs, Division of Legislation and Policy
Review

Kristine Shultz, Director, Governmental and External Affairs
California Optometric Association

The public hearing was called to order at 10:00 a.m. on August 2, 2010 by Andrea Leiva, Policy Analyst, Board of Optometry, for the purpose of hearing comments from interested parties on proposed amendments to California Code of Regulations sections 1518 Fictitious or Group Names, 1523 Licensure and Examination Requirements, 1531 Licensure Examinations, 1532 Re-Examination, 1533 Re-Scoring of Examination Papers, and 1561 Topical Pharmaceutical Agents Usage – Purposes and Requirements. The proposed regulatory action had been properly noticed and filed with the Office of Administrative Law.

Andrea Leiva: May I have the attendance sheet please? We will now take oral comments on the proposed regulations. We have one person who signed in and is present to speak. Would you come forward, please Ms. Shultz?

Kristine Shultz: Hello, my name is Kristine Shultz and I am with the California Optometric Association (COA). I would like to express COA's support for the Board's proposed amendments to all the regulations, Fictitious Name Permits, Licensing and Examinations. I would also like to thank the Board for all their hard work with these regulations and providing all the necessary background information. Thank you.

Andrea Leiva: Thank you, Ms. Shultz.

There being no additional individuals interested in testifying or submitting comments, the public hearing was closed at 11:25 a.m.

STATE OF CALIFORNIA

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 398 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Consumer Affairs	CONTACT PERSON Gary Randolph	TELEPHONE NUMBER 916-575-7173
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Optometry Fees Increase		NOTICE FILE NUMBER Z -2008-0722-09

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:
- | | |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards |
| <input type="checkbox"/> c. Impacts jobs or occupations. | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.)

(If any box in items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 2 Describe the types of businesses (include nonprofits): Licenses during business as a fictitious name permit or as a branch office.

Enter the number or percentage of total businesses impacted that are small businesses: 19%

3. Enter the number of businesses that will be created: None eliminated: None

Explain: N/A

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas): _____

5. Enter the number of jobs created: None or eliminated: None Describe the types of jobs or occupations impacted: N/A

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See attachment

a. Initial costs for a small business: \$ None Annual ongoing costs: \$ None Years: None

b. Initial costs for a typical business: \$ None Annual ongoing costs: \$ None Years: None

c. Initial costs for an individual: \$ See Attachment Annual ongoing costs: \$ See Attachment Years: See

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ N/A
4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: \$ N/A and the number of units: N/A
5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: N/A
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ None

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: See Attached
2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
 Explain: See Attached
3. What are the total statewide benefits from this regulation over its lifetime? \$ None

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: See Attached
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|---------------------------------|------------------------------|
| Regulation: | Benefit: \$ <u>See Attached</u> | Cost: \$ <u>See Attached</u> |
| Alternative 1: | Benefit: \$ <u>See Attached</u> | Cost: \$ <u>See Attached</u> |
| Alternative 2: | Benefit: \$ <u>N/A</u> | Cost: \$ <u>N/A</u> |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: N/A
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No
 Explain: N/A

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
 Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-93)*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ None in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election; (DATE)

d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

- 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- 6. Other:

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other: **See Attached**

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other.

SIGNATURE

[Signature]

TITLE

Executive Officer

AGENCY SECRETARY ¹

APPROVAL/CONCURRENCE

[Signature]
PROGRAM BUDGET MANAGER

DATE

11/4/08

DEPARTMENT OF FINANCE ²

APPROVAL/CONCURRENCE

[Signature]

DATE

1/12/09

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Attachment

ECONOMIC AND FISCAL IMPACT STATEMENT
State Board of Optometry
Consumer Information

Economic Impact Section

Section B

#1(c)

The total cost that an individual may incur, respective to a renewal increase of an optometric license, to comply with this regulation over their lifetime is approximately \$2,500.00

The total cost that an individual may incur, respective to an increase in applying for a branch office license, to comply with this regulation over their lifetime is approximately \$15.00.

The total cost that an individual may incur, respective to an increase in the renewal of a branch office license, to comply with this regulation over their lifetime is approximately \$600.00.

The total cost that an individual may incur, respective to an increase in applying for a fictitious name permit, to comply with this regulation over their lifetime is approximately \$40.00.

The total cost that an individual may incur, respective to an increase in the renewal of a fictitious name permit, to comply with this regulation over their lifetime is approximately \$600.00.

The total cost that an individual may incur, respective to an increase in applying for a statement of licensure, to comply with this regulation over their lifetime is approximately \$20.00.

The total cost that an individual may incur, respective to an increase in the renewal of a statement of licensure, to comply with this regulation over their lifetime is approximately \$600.00.

The total cost that an individual may incur, respective to an increase in applying for a certificate to treat primary open angle glaucoma, to comply with this regulation over their lifetime is approximately \$35.00.

The total cost that an individual may incur, respective to an increase in applying for a certificate to perform lacrimal irrigation and dilation, to comply with this regulation over their lifetime is approximately \$25.00.

Attachment

Page Two

ECONOMIC AND FISCAL IMPACT STATEMENT

Section C

#1

The regulation enables the Board to recover administrative and associated costs from candidates seeking licensure and/or post licensing certifications and licensure. In addition, the regulation would enable the Board to maintain budget reserve levels as prescribed by the Department of Consumer Affairs pursuant to B&P Code §3145.

Without this fee increase, the Board will be in a deficit situation. It is projected that the months in reserve for the end of FY2007-2007 will be 0.0, and summarily for FY 2008-2009 at -3.7 and FY 2009-2010 at -11.2.

Please see attached copy of the State Board of Optometry Analysis of Fund Condition. (Exhibit A)

#2

The overarching purpose of the Department of Consumer Affairs and the State Board of Optometry is protection of the health, safety and welfare of the public. The proposed language adds to that protection by ensuring continued regulation of the practice of optometry in the State of California.

Section D

#1

At its meeting on March 3, 2008, the Board considered several alternatives to the proposed language regarding an increase to Board fees. Taken into consideration were cost and revenue projections, fee comparisons to other similar licensing jurisdictions, and various fee increase options. Based on these reviewed considerations, the Board decided the proposed language would be the best solution.

#2

At this meeting, the Board addressed cost and revenue projections and agreed that increasing license, renewal, and penalty fees would allow the Board to maintain legal levels of budget reserve.

Fiscal Impact Section

Section B

#4 (Other)

The Board estimates an increase in revenue of approximately \$270,955 in the second half of FY 2008-2009 and \$581,495 in FY 2009-2010 with an estimated 300 newly licensed optometrists. Further, the Board estimates any costs incurred from implementing these fee increases would be minor and absorbable.

Estimated Fee Increase in Revenue

Fee Category	FY 2008/2009*					FY 2009/2010					
	Est. no. of applicants	Current fee	Proposed fee	Increase	Total	Est. no. of applicants	Current fee	Proposed fee	Increase	Total	
(b) Renewal of cert. of registration	1700	\$ 300	\$ 425	\$ 125	\$ 212,500	3,700	\$ 300	\$ 425	\$ 125	\$ 462,500	
(c) Delinquent for cert. of registration	21	\$ 25	\$ 50	\$ 25	\$ 525	85	\$ 25	\$ 50	\$ 25	\$ 2,125	
(d) Application fee for branch office lic.	30	\$ 60	\$ 75	\$ 15	\$ 450	60	\$ 60	\$ 75	\$ 15	\$ 900	
(e) Annual renewal of branch office lic.	171	\$ 60	\$ 75	\$ 15	\$ 2,565	342	\$ 60	\$ 75	\$ 15	\$ 5,130	
(h) App. fee for fic. name permit	90	\$ 10	\$ 50	\$ 40	\$ 3,600	180	\$ 10	\$ 50	\$ 40	\$ 7,200	
(i) Annual renewal of fic. name permit	497	\$ 10	\$ 50	\$ 40	\$ 19,880	994	\$ 10	\$ 50	\$ 40	\$ 39,760	
(i)(1) Delinquent for fic. name permit	20	\$ 0	\$ 25	\$ 25	\$ 500	40	\$ 0	\$ 25	\$ 25	\$ 1,000	
(j) App. fee statement of licensure	150	\$ 20	\$ 40	\$ 20	\$ 3,000	300	\$ 20	\$ 40	\$ 20	\$ 6,000	
(j)(1) Renewal of statement of licensure	448	\$ 0	\$ 40	\$ 40	\$ 17,920	895	\$ 0	\$ 40	\$ 40	\$ 35,800	
(j)(2) Delinquent for statement of licensure	25	\$ 0	\$ 20	\$ 20	\$ 500	100	\$ 0	\$ 20	\$ 20	\$ 2,000	
(l) App. fee for CE course	152	\$ 0	\$ 50	\$ 50	\$ 7,600	305	\$ 0	\$ 50	\$ 50	\$ 15,250	
(m) App. fee for POAG certification	19	\$ 0	\$ 35	\$ 35	\$ 665	38	\$ 0	\$ 35	\$ 35	\$ 1,330	
(n) App. fee for lacrimal certification	50	\$ 0	\$ 25	\$ 25	\$ 1,250	100	\$ 0	\$ 25	\$ 25	\$ 2,500	
Estimated Increase In Revenue					\$ 270,955						\$ 581,495

*Revenue estimated is for half of the fiscal year January 2009 - June 2009.



Memo

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

To: Board Members

Date: October 22, 2010

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

Telephone: (916) 575-7170

Subject: Agenda Item 5 – Approval of Board Meeting Minutes

Action Requested:

Please review and approve the following Board meetings minutes:

- A. March 16, 2010
- B. March 25-26, 2010
- C. May 11, 2010
- D. September 24, 2010
- E. October 4, 2010



MEETING MINUTES

Tuesday, March 16, 2010
Department of Consumer Affairs
1625 N. Market Blvd.
2nd Floor, El Dorado Room
Sacramento, CA 95834
(916) 575-7182
AND

Via telephone at the following locations:

- 9033 Wilshire Blvd., Suite 402 Beverly Hills, CA 90211
- Southern California College of Optometry, TVCI Conference Room
2575 Yorba Linda Blvd., Fullerton, CA 92831-1699

Sacramento

Members Present

Lee Goldstein, OD, MPA, Board President
Fred Naranjo, MBA, Public Member
Katrina Semmes, Public Member

Staff Present

Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Michael Santiago, Staff Counsel

Guest List

On File

Fullerton and Beverly Hills

Members Present - Fullerton

Alex Arredondo, OD, Board Vice President
Monica Johnson, Board Secretary
Ed Rendon, MA, Public Member
Susy Yu, OD, MBA, FAAO

Staff Present - Fullerton

Margie McGavin, Enforcement Manager

Member Present – Beverly Hills

Ken Lawenda, OD

Guest List

On File

FULL BOARD OPEN SESSION

- I. **Call to Order – Establishment of a Quorum**
Board President, Dr. Lee Goldstein, OD called the meeting to order at 9:06 a.m. Dr. Goldstein called roll and a quorum was established. Dr. Goldstein welcomed everyone in attendance. Board members, staff, and members of the audience in Sacramento, Fullerton, and Beverly Hills were invited to introduce themselves.
- II. **Review and Possible Approval of the Responses Considering the Comments Submitted During the 45-Day Comment Period and Testimony Provided at the December 22, 2009 Regulatory Hearing Pertaining to the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification.**
Dr. Goldstein requested that the Board members review and fully consider all the comments received in writing and verbally at the regulatory hearing. He also requested that the Board members discuss, make edits, if necessary, and approve the proposed responses to the comments drafted by Board staff. The responses must show adequate consideration of the comments, such as thoroughly explaining why a comment is being accepted or rejected.

Andrea Leiva, Policy Analyst began the discussion with a summary of comments 1-17, 19-24, 28, 37 and 39. All these comments state that the regulation should be accepted as proposed. There were no edits to the proposed responses to these comments from the Board members and the comments' support of CCR 1571 was accepted.

Ms. Leiva then summarized comment 18 by Dr. Tony Carnevali, O.D. This comment addressed the issues pertaining to his position as a special consultant to the Office of Professional Examination Services (OPES). Dr. Carnevali discusses:

- His 34 years of expertise in glaucoma diagnosis, treatment and management.
- Justifies that he was indeed an appropriate candidate to assist in the development of regulations for glaucoma certification.
- Details as to why there is no conflict of interest because of his employment at SCCO and his membership in various optometric associations.

The proposed response is to accept this comment because although this comment is not directly related to the proposed language, its support of the proposed regulation and the process in which it was developed should be acknowledged.

Dr. Craig Klinger, Executive Vice President of the Academy of Eye Physicians and Surgeons (CAEPS), and Veronica Ramirez from the California Medical Association (CMA) restated their opposition to CCR 1571.

Terry McHale and Cliff Berg, both on behalf of the California Optometric Association (COA) restated COA's support for the regulations and congratulated the Board for their hard work throughout this process. They also expressed COA's support of Dr. Carnevali and reminded all present that it was agreed to by the COA and CAEPS that a third party could be used for the development of the regulations.

The Board members made no edits to comment 18's proposed response and it was accepted as written.

Ms. Leiva then summarized written comments 25-26 regarding subsection 1571(b) by Jerry L. Jolley and Richard Van Buskirk. They state that although they support the proposed regulation, they recommend that subsection (b) be modified to permit optometrists that graduated on or after May 1, 1990 be exempt from the didactic course and case management requirements, instead of optometrists that graduated on May 1, 2008 or after.

The proposed response is to reject this comment for the following reasons:

- Business and Professions Code (BPC) section 3041, the scope of practice of optometry as amended by Senate Bill 1406, states that, "[f]or licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution [is required for glaucoma certification]."
- In order to implement this recommendation, BPC section 3041 would need to be amended.
- The Board does not have the authority to amend a statute; only the California legislature has this authority.

The Board members made no edits to comments 25-26's proposed response and it was accepted as written.

Ms. Leiva then summarized comment 27 from COA who opposed the proposed language submitted in the CAEPS' comment.

The proposed response is to reject this comment for the following reasons:

- The Board finds this comment to be irrelevant for the purposes of this rulemaking file because they are commenting on the comment provided by CAEPS.
- The proposed language provided by CAEPS will be addressed in the response to Comment 36 below.

Morica Johnson, Board Secretary, made a grammatical edit to the wording of the summary of the comment. Board staff noted the edit and the proposed response was accepted.

Ms. Leiva then summarized comments 29-33 and comment 35 which are all in opposition of the regulation and believe it should be amended or redeveloped for the following reasons.

1) The diagnosis and treatment of glaucoma cannot be learned from textbooks or lectures and practical hands-on experience is necessary. The current regulation allows an optometrist to treat glaucoma patients without actually managing a single glaucoma patient. A minimal number of patients should be treated in a supervised manner prior to certification.

The proposed response is to reject this comment for the following nine reasons:

- The Board rejects this recommendation because the treatment and management of glaucoma can be learned in the schools and colleges of optometry.
- Optometry students actually manage patients while in school getting hands-on experience, and almost all other states do not require optometrists to manage patients for glaucoma certification.
- Optometrists in all these other states have been treating glaucoma successfully for years and optometrists in California need to be able to practice at a level equivalent to their colleagues in the United States.
- The proposed Case Management Course in subsection (a)(4)(A) and the Grand Rounds Program in subsection (a)(4)(B) are sufficient as requirements for glaucoma certification
- The California schools and colleges of optometry have incorporated into their curriculum the training necessary to allow optometrists to recognize, diagnose, and refer patients with glaucoma to the appropriate physician or surgeon.
- Students must also pass all portions of the National Board of Examiners in Optometry (NBEO) Examination, which is required nationwide and represents a national standard of entry-level competence to practice Optometry.
- In addition, optometrists are required to be certified to use Therapeutic Pharmaceutical Agents (TPA) in order to treat glaucoma.
- Approximately 430,000 Californians are estimated to have glaucoma. It is extremely likely that the 7,000 actively licensed optometrists in California have encountered many of these patients in their practice and during their optometric training.

Dr. Kliger again re-stated CAEP's opposition for the regulation as written.

The Board members made no edits to the proposed response to the first concern of comments 29-33 and 35 and it was accepted as written.

2) The understanding of glaucoma management cannot be achieved in a one-year crash course because, most likely, no changes in vision will occur within the one particular year that the optometrist is training.

The proposed response is to reject this comment for the following reasons:

- The proposed regulation takes this claim into account.

- For those optometrists that graduated prior to May 1, 2000, in addition to the didactic course, the proposed Case Management and Grand Rounds options allow an optometrist to see a number of patients with different levels and complexity of glaucoma.
- The Case Management course will be designed to enhance optometrist's understanding of glaucoma, its subtleties and nuances, and its treatment.
- Optometrists who graduated prior to May 1, 2000 have spent a minimum of 10 years in practice, during which time they will have already diagnosed, referred, and co-managed a number of patients with glaucoma.
- For those optometrists who graduated after May 1, 2000 but prior to May 1, 2008, and are already licensed and practicing in California, the didactic course would not be required because it was part of their education. They would have to choose up to two of the three options outlined in subsection (a)(4)(A), (a)(4)(B), and (a)(4)(C) in order to meet the 25-patient requirement.
- In addition, these experienced optometrists will have already been practicing for several years diagnosing and referring glaucoma patients and many will also have been treating glaucoma under the guidelines of SB 929.
- For those that graduated on May 1, 2008 and after, since the education from the schools and colleges of optometry always expands to include scope expansions in order to provide the most up to date education to optometry students, the didactic course and all clinical training for glaucoma certification are already incorporated into their curriculum.
- Based on this evidence, no matter what category an optometrist seeking to become glaucoma certified is in, their prior training and experience far exceed what is being considered a "one-year crash course."
- It is important to note that SB 1406 expanded the scope of practice of optometry.
- From the beginning of their training, optometrists are taught when to refer to an ophthalmologist if a medication does not achieve the desired results, or causes intolerable side effects.
- The proposed regulation furthers the intent of SB 1406, which is to increase access to care.

The Board members made no edits to the proposed response to the second concern of comments 29-33 and 35 and it was accepted as written.

3) The regulations do not impose any additional requirements on students who graduated on or after May 1, 2008 and they should. It is recommended that they at least demonstrate the equivalent experience requirements of Senate Bill 929.

The proposed response is to reject this comment for the following reasons:

- Business and Professions Code (BPC) section 3041, as amended by SB 1406, does not require that there be any additional training for individuals who graduated on May 1, 2008 or after. SB 1406 mandated the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC) to presume that licensees who apply for glaucoma certification and who graduated from an accredited school of optometry on or after May 1, 2008 possess sufficient didactic and case management training in the treatment and management of patients diagnosed with glaucoma to be certified. After reviewing training programs for representative graduates, the committee in its discretion may (emphasis added) recommend additional glaucoma training to the Office of Professional Examination Services (OPES) pursuant to subdivision (f) to be completed before a license renewal application from any licensee described in this subdivision is approved.
- The language of the statute is permissive, so the GDTAC and OPES did not have to include additional training. OPES had to then examine the GDTAC's reports (two were

submitted, one from the optometrists and one from the ophthalmologists) and recommend curriculum requirements to the Board.

- The Board was then mandated to only adopt the findings of the office and implement certification.
- Since no additional training was recommended for those graduating on May 1, 2008 or after, the Board did not include additional training in the regulation.

Ms. Johnson asked whether the Board was able to reject OPES' findings. Board staff responded that this was not an option.

The Board members made no edits to the proposed response to the third concern of comments 29-33 and 35 and it was accepted as written.

4) The proposed regulation does not require additional continuing education for glaucoma certified optometrists.

The Board's proposed response is to accept in part for the following reasons:

- The OPES report gives the Board the discretion to consider specifying a given number of additional hours of continuing education (CE) to glaucoma certified optometrists to be completed every two year renewal period. This CE would be a part of the 35 hours in ocular disease requirement within the 50 hours of CE, and no more.
- Historically, from 2001 to 2006, there was a specific requirement of 12 hours in glaucoma CE, among other CE specifications but was eliminated because licensed optometrists found it difficult to meet the hourly requirements and the Board and the legislature agreed it was over-regulation of the profession.
- Despite the past action by the legislature to eliminate sub-categories, the Board is willing to accept this comment in part and designate that the glaucoma sub-category now require 10 hours specifically.

The Board members made no edits to the proposed response to the fourth concern of comments 29-33 and 35 and it was accepted as written.

5) The Board should investigate and consider the incident at the Palo Alto Veteran's Hospital before developing regulations at all. The Department of Consumer Affairs (DCA) mandated an investigation requested by CMA, CAEPS and the American Glaucoma Society and granted by Brian Stiger, Director of the DCA.

The proposed response is to reject this comment for the following reasons:

- The Board finds this comment to be irrelevant for the purposes of this rulemaking file.
- The Director's response did not impose a mandate on the Board. The Board has already taken the necessary steps to deal with this issue, which do not affect the regulation in any way (See Comment 40).

Dr. Klinger requested that the Board specifically provide what steps that were taken regarding the Palo Alto matter. He also pointed out that the Board should not rely on comment 40 as a sufficient response.

Board staff noted these recommendations and made edits to its response to better reflect the Board's position.

Ms. Johnson expressed her concern that she does not understand why Dr. Klinger continues to request that Board staff comment on the Palo Alto issue when the Board is not allowed to comment on pending investigations at Board meetings. Dr. Klinger was informed of this at the last

Board meeting and various other meetings and should be well aware of that. Ms. Johnson feels that Dr. Kilger's question is no longer germane to the issue being discussed today.

Michael Santiago, legal counsel for the Board addressed Dr. Kilger's comment and Ms. Johnson's concerns by clarifying that the comment was considered irrelevant for the purposes of this rulemaking and that the Board has given as much information as it can about the Palo Alto issue. The Board has considered CAEP's concern and already given their position as to why the comment is being rejected. The 45-day comment period has already ended so no further comments or requests need to be considered at this time.

Dr. Goldstein clarified that the intent of referring to comment 40 was not to justify the Board's proposed response or actions regarding this matter. Board staff and legal counsel have done everything they can in regards to the Palo Alto issue and will amend their response to reflect that more clearly.

Mr. Terry McHale stated that the Board's response is appropriate, as they have no jurisdiction over a federal situation. Mr. Cliff Berg echoed this sentiment. Dr. Kilger continued to push that the Palo Alto issue is relevant to the regulation and provided further justifications which can be found in the written comment provided by CAEPS during the 45-day comment period.

The Board members made no further edits to the proposed response to the fifth concern of comments 29-33 and 35 and it was accepted as amended.

6) The Board should not be basing this regulation on a report from an optometrist who is not glaucoma certified, treats glaucoma without a proper license from the State Board, and who is directly in a position to benefit personally and benefit his institution from allowing the broadest possible licensing for optometrists regarding glaucoma. An appropriate and unbiased consultant should be chosen to re-evaluate the report from the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC).

The proposed response is to reject this comment for the following reasons:

- Pursuant to BPC section 3041.10, the Board had no authority to choose what recommendations were to be followed. BPC section 3041.10 reads: "The board shall adopt the findings of the office and shall implement certification requirements pursuant to this section on or before January 1, 2010."
- The Office of Professional Examination Services hired the consultant, and this decision was based on their understanding of BPC section 3041.10. Comment 18 by Dr. Tony Carnevali addresses this issue in depth, explaining why these accusations are false.

The Board members made no edits to the proposed response to the sixth concern of comments 29-33 and 35 and it was accepted as written.

7) The regulations violate Business and Professions Code section 3041.10 because the public is not being adequately protected. The current requirement is minimal compared to the extensive glaucoma training met by ophthalmologists.

The proposed response is to reject this comment for the following reasons:

- The Board rejects this recommendation because the public is being protected and optometrists and ophthalmologists should not be compared because they are different professions.
- Optometry is a single system specialty that emphasizes *noninvasive* detection and therapeutic management of diseases and conditions of the eye and ocular adnexa.

Ophthalmology is a *surgical* sub-specialty that focuses on correction or treatment of ophthalmic disorders that cannot be effectively managed by less invasive means.

- Optometrists diagnose and treat eye disorders always within their scope of practice and refer to other medical and surgical sub-specialists, such as ophthalmology when more invasive treatment such as surgery or injection, is indicated or when a second opinion is appropriate.
- The claim that the proposed regulation is violating BPC section 3041.10 because the public is not being adequately protected is incorrect. By definition, optometrists do not engage in the same level of risk as eye surgeons, but they are legally held to the same standard of care as their medical counterparts. As of 2004, California optometrists are held to the same standard as physicians and surgeons pursuant to BPC section 3041.1
- Also, the Board's main mandate is to protect the public. The Board is well aware of that mandate and finds that the proposed regulations are sufficient and provide the appropriate foundation for optometrists to treat and diagnose glaucoma.

Ms. Johnson provided one editorial edit to the proposed response and it was made by Board staff. The Board members made no further edits to the proposed response to the seventh concern of comments 29-33 and 35 and it was accepted as amended.

8) The Board should do an objective appraisal of the current clinical education in glaucoma provided by optometric training.

The proposed response is to reject this comment for the following reasons:

- The Board finds this comment to be irrelevant for the purposes of this rulemaking file.
- The Board was mandated to follow the process in BPC section 3041.10, which required it to accept and implement the recommendations from OPES, not evaluate them.
- Performing an objective appraisal of the current clinical education in glaucoma provided by optometric training was completed by the GDTAC and OPES. Their results are reflected in the reports provided within this rulemaking file.
- Furthermore, the Accreditation Council on Optometric Education (ACOE) accredits all the schools and colleges of optometry.

Dr. Calman, President of CAEPS, commented that the ophthalmology members of the GDTAC did not receive the data they needed in order to make an objective appraisal of optometric education. Dr. Kliger supported this comment.

Mr. McHale added that when the legislation (SB 1406) was being developed, the schools and colleges of optometry and the COA provided hundreds of pages to the ophthalmologists regarding optometric education. Why are they are asking for more information now?

The Board members made no edits to the proposed response to the eighth concern of comments 29-33 and 35 and it was accepted as written.

9) The regulation is not consistent with the legislative intent of SB 1406 and is not sufficient to ensure the type of eye care that patients deserve.

The proposed response is to reject this comment for the following reasons:

- The proposed regulations are sufficient because the Board is doing everything it is entrusted to do to ensure that patients get the type of eye care they need and deserve.
- According to the Bill Analysis of SB 1406 by the Assembly Committee on Business and Professions, the legislature's intent was to increase access to quality eye care for underserved and rural populations.

- Also, according to the recommendation of the OPES report there were too many barriers that prevented a timely completion of certification, such as:
- A lack of ophthalmologists willing to co-manage with optometrists;
- Insufficient number of ophthalmologists in a patient's geographic area;
- Patients being required to pay for multiple visits because their insurance only covers one visit;
- Change in doctor access caused by change in insurance coverage;
- Ophthalmologists changing diagnosis from primary open angle glaucoma (POAG) to a secondary form not permitted to be treated by optometrist;
- Ophthalmologists refusing to sign forms after co-managing patients;
- Patients moving or changing doctors prior to the conclusion of the 2 year requirement;
- Patient health, mobility and compliance issues.
- Only 177 optometrists completed the glaucoma certification requirements from 2001 to the end of 2008 under SB 929 due to these barriers.

Ms. Johnson requested a clarification regarding the population of optometrist during the time SB 929 was being used for glaucoma certification.

Dr. Goldstein responded that when SB 929 was implemented, only 177 were able to complete the process out of 5500 licensed optometrists. Currently there are about 450 glaucoma certified optometrists out of 7000 licensed optometrists.

Kevin Schunke from the Medical Board of California ("Medical Board") questioned the statement in the proposed response that ophthalmologists changed the diagnosis from primary open angle glaucoma to a secondary form not permitted to be treated by optometrists. He wanted to know if that was the Board's position.

Ms. Leiva responded to Mr. Schunke that the statement came from the OPES report and is not the Board's position.

Mr. McHale stated that during the SB 1406 negotiations, nobody implied that ophthalmologists were not behaving appropriately and intentionally changing diagnoses.

Dr. Goldstein recommended that statement regarding the changing of diagnoses by ophthalmologist be removed from the proposed responses until further information made was available, if any, to prove that statement. The Board does not want to be the cause of any investigations spurred by a comment that may be incorrect. Board staff removed the sentence.

The Board members made no further edits to the proposed response to the ninth concern of comments 29-33 and 35 and it was accepted as amended.

Ms. Leiva then moved on to comment 34 made by the Medical Board. Their comment states that the regulation is missing:

- a) the statement that "the requirement for uniform curriculum and procedures established cooperatively by California schools and universities of optometry," and,
 - b) "the uniform curriculum and procedures be granted approval by the Board of Optometry."
- These elements were included in the recommendations made by the Office of Professional Examinations Services and the Board should add them or else they would not comply with the "consistency" standard of the Administrative Procedures Act. The two recommendations should be added in sections 1571 (a)(4)(A) and (B), which reference the curriculum and procedures, and case management and grand rounds program.

The Medical Board also recommended adding additional continuing education requirements.

The Board's proposed response is to accept this comment. The Board accepts all the suggested changes to sections 1571 (a)(4)(A) and (B) of the regulation in order to conform to the "consistency standard and have added additional continuing education requirements to the language. All changes have been incorporated in the modified text.

Discussion among the Board members and the public ensued for clarification purposes. The Board members made no edits to the proposed response to the Medical Board's comment and it was accepted as written.

Ms. Leiva then moved on to comment 36 and comment 38 from CAEPS. She stated that CAEPS agrees with comments 29-35 and have provided proposed language of their own within their comments. They request that the Board withdraw the regulations and redevelop them in a manner consistent with patient safety and the legislative intent of SB 1406 or consider the proposed amendments in their language. CAEPS object the regulation for the following twelve reasons:

1) Title: CAEPS recommends adding "and Treatment" to the title Requirements for Glaucoma Certification.

The Board's proposed response is to reject for the following reason:

The purpose of the regulations is to set forth the requirements for California licensed optometrist to become certified to diagnose and treat glaucoma. Adding "and Treatment" is not necessary as the treatment for glaucoma, including referral requirements, is defined in Business and Professions Code Section 3041, Acts Constituting Practice of Optometry. Also, BPC section 3041.10 states, "[t]he Board shall adopt the findings of the office and shall implement certification requirements pursuant to this section..." Thus, the Board is in compliance with BPC section 3041.10 when it titles this proposes regulation as "Requirements for Glaucoma Certification."

CAEPS then attempted to add an additional document to the rulemaking file as a comment in order to clarify their initial comment. The Board rejected the document since the 45-day comment period has already ended. Also, CAEPS would only be providing their document to the individuals and Board members present in Sacramento, not to the individuals and Board members in Southern California.

Mr. Santiago clarified that even if they provide their additional information to the Board and members and the public in Sacramento, it would not be included in the rulemaking file.

Despite the Board's rejection of the document CAEPS attempted to explain their document to the participants in Southern California unsuccessfully. It was decided by the Board that if Dr. Kilger had any further objections to the regulation, he could go ahead and make them verbally and not use the supplementary document as a basis, since everything in the document is included in their initial comment submitted during the 45-day comment period.

Dr. Kliger again expressed his opposition by stating that the regulation does not include any hands-on clinical experience and explained the comments CAEPS submitted during the 45-day comment period in detail.

Discussion ensued regarding the regulatory process and Dr. Goldstein and Board staff provided clarity for the public and Board members present.

Ms. Johnson noted that in BPC section 3041.10, it states that the Board should have had the regulations completed and in effect by January 1, 2010. She wondered why the Board is late and just now having a meeting to consider the comments. Is the Board still following 3041.10?

Mr. Santiago responded that even though it is taking longer to enact the regulations than expected, Board staff is following the process mandated by the legislature and 3041.10 until it is completed.

The Board members made no edits to the proposed response to the first concern in CAEPS' comments and it was accepted as written.

2) Subsection 1571(4): CAEPS recommends removing the language stating that a minimum of 25 patients be prospectively treated in a consecutive 12-month period.

The Board's proposed response is to reject for the following reason:

- The recommendations by OPES state that 25 patients must be treated for 1 year prospectively and the Board is to adopt these recommendations. By removing this key sentence, 1571(4)(A) and 1571(4)(B) would have no time requirement for when the treatment should be completed.

The Board members made no edits to the proposed response to the second concern in CAEPS' comments and it was accepted as written.

3) Subsection 1571(4)(A): CAEPS recommends that the 16-hour Case Management Course be approved by the Board and developed in collaboration with a board certified academic ophthalmologist with fellowship training in glaucoma. The Board may require collaboration of institutions to ensure a uniform experience.

The Board's proposed response is to reject for the following reason:

- This recommendation is redundant because the schools and colleges of optometry in California are already using these kinds of resources in order to develop their courses and curriculums, which must all be Board approved.

The Board members made no edits to the proposed response to the third concern in CAEPS' comments and it was accepted as written.

4) Subsection 1571(4)(A): CAEPS recommends that the case management course increase the cases from 15 to 50 cases of moderate to advanced complexity.

The Board's proposed response is to reject for the following reasons:

- The number of cases proposed in the regulation would be sufficient in number, quality, complexity, and length to provide the participant with a credible and worthwhile experience.
- Requiring more cases in this course would compromise the quality of the content being taught and force educators to spend less time on each case.
- This gives the schools and colleges flexibility in the number and types of cases that could be presented in each course and allows for *quality* instead of quantity.
- Furthermore, one of the recommendations in the report by OPES was to have the schools and colleges of optometry develop and recommend to the Board for approval the specific format and content of the case management course.
- Only July 31, 2009 all the California schools and colleges of optometry met in order collaborate on determining what components would need to be included in the case management program.
- The recommendations adopted by the Board from OPES were of course used as the foundation of the case management program and all program suggestions were discussed and agreed upon by the representatives.

The Board members made no edits to the proposed response to the fourth concern in CAEPS' comments and it was accepted as written.

5) Subsection 1571(4)(C): CAEPS recommends that the name of the Preceptorship Program be changed to Co-management Program.

The Board's proposed response is to reject for the following reasons:

- A preceptorship is a training period, which is what this regulation is establishing for glaucoma certification and is not permanent. The word preceptorship better encompasses this requirement.
- The Board rejects this comment because optometrists and ophthalmologists co-manage patients during their entire practice, whether it be for glaucoma or other conditions.

The Board members made no edits to the proposed response to the fifth concern in CAEPS' comments and it was accepted as written.

6) Subsection 1571(4)(C): CAEPS recommends editorial changes to the language for clarity purposes regarding the treatment of glaucoma patients for one year each as well as adding language requiring that the course add a monitoring program entails.

The Board's proposed response is to accept in part for the following reasons:

- The Board accepts the editorial changes for clarity purposes.
- The Board does not accept adding language requiring that the course add a monitoring program because it would need to be established by an accredited school or college of optometry utilizing qualifying preceptors.
- This recommendation was not part of the final report by OPES and the Board is mandated by BPC section 3041.10 to adopt their findings as submitted to the Board.
- Also this recommendation would be an expense to the schools and colleges and licensees.
- The preceptorship program option is meant to allow licensees who are not able to go to one of the schools and colleges of optometry the opportunity to become glaucoma certified on their own with a preceptor like in the SB 929 requirements.
- In addition, this suggestion for the language is permissive because the word "may" is used. The Board finds this suggestion unnecessary and chooses to exclude it.

After some discussion, the Board felt that the proposed response should be changed to say that anyone could choose the preceptorship option. The option is not meant for any particular licensees as indicated in the response, but is meant for everyone. Board staff made the change in order to clarify that point.

The Board members made no additional edits to the proposed response to the sixth concern in CAEPS' comments and it was accepted with amendments.

7) Subsection 1571(4)(C): CAEPS also recommends adding in the language that the patient be informed of the training arrangement in the preceptorship program.

The Board's proposed response is to reject for the following reasons:

- The care being provided, and the ultimate clinical decision-making, is still the responsibility of the supervising preceptor. The inclusion of a training experience does

not alter this relationship and informed consent is not required, as there is no change in the standard of care or quality of care being delivered.

The Board members made no edits to the proposed response to the seventh concern in CAEPS' comments and it was accepted as written.

8) Subsection 1571(4)(C): CAEPS also recommends adding a requirement to have licensees submit a Statement of Intent to the Board in order to participate in the program which would then authorize the licensee to prescribe anti-glaucoma medication (without a fee). The Board would then have to develop a suffix to the license number of the participant that will identify him/her as having such authority. This authority is automatically revoked if the participant ceases participation in the process or for any other reason at the discretion of the Board.

The Board's proposed response is to reject for the following reasons:

- The Board rejects this recommendation because according to BPC section 3041, before a TPA-certified optometrist can diagnose or treat glaucoma with TPAs (which includes prescribing anti-glaucoma medication), the TPA-certified optometrist must first receive certification to treat glaucoma. Thus, in order for the Board to implement this recommendation, the legislature would first have to amend BPC section 3041 to provide those TPA certified optometrists in glaucoma training programs with the ability to prescribe anti-glaucoma medication (without a fee).
- Current Board staff and Board funding could not absorb the time, workload, and expense of establishing and maintaining a new license status.

The Board members made no edits to the proposed response to the eighth concern in CAEPS' comments and it was accepted as written.

(9) Subsection 1571(4)(B): CAEPS recommends modifying the Grand Rounds Program. Their Grand Rounds course would allow up to 20 optometrists to form a group and each individual in the group would follow a minimum of five patients in his or her own practice. The patients would be "pooled" for educational purposes. The groups would meet initially and two other evenly spaced times, spanning the 12 months period, and at each meeting a participant would present two of their patients, followed by discussions led by faculty. One of the faculty members would be an academic glaucoma specialist ophthalmologist. Patients would be followed using the procedures CAEPS' recommended in their co-management program described above.

The Board's proposed response is to reject for the following reasons:

- The Board rejects this proposal because CAEPS' recommended Grand Rounds program is very similar to their recommended Preceptorship program.
- In the current proposed regulation, the purpose of having three different options is to maximize the learning experience, not provide repetitive courses.
- Each proposed training choice has ample education and "hands-on" training to ensure optometrists are more than prepared to treat glaucoma.
- The regulation specifies that the types of patients selected for presentation should include those with various types of glaucoma, at various stages of progression and complexity.
- Participants must actually examine the patient, do the necessary evaluation and testing, commit to a diagnosis, and finally make all decisions necessary for successful management of the patient.
- This approach will allow participants the opportunity to match their own diagnostic and clinical management skills with those of the experts, faculty and others in attendance.
- The program will be designed to assess the patient, plot the clinical course of the disease, and reveal the most contemporary thinking and principles that underlie the treatment and management decisions in glaucoma.

Ms. Ramirez of CMA again restated her opposition to the proposed regulation using information from the comments she submitted during the 45-day comment period.

Dr. Calman, President of CAEPS again restated their opposition and continued to note that the Board's proposed regulations would allow an optometrist to become glaucoma certified without ever actually treating a single patient. He supports CAEPS' suggested alternative, which they provided in their comments during the 45-day comment period. He feels that the proposed regulation is 90% of the way there, but needs to have a patient management component in order for CAEPS to support it.

Dr. Lawenda asked CAEPS to share with the Board ophthalmologists' educational requirements, since the Board has shared optometry's educational requirements.

Dr. Goldstein did not feel the question was germane to the matter at hand. This meeting is not for the discussion of whether one profession has more training than the other, whether the profession is optometry, ophthalmology, dentistry, podiatry etc. A discussion such as this could go on for 20 years. The Board was given a process to follow in order to establish glaucoma certification requirements and that is what they are doing here today.

The Board members made no edits to the proposed response to the ninth concern in CAEPS' comments and it was accepted as written.

10) Subsection 1571(b): CAEPS recommends adding language to impose a 10 patient credit requirement on licensees that graduated after May 1, 2008 to be completed under either their suggested co-management or grand rounds programs. This would allow for retrospective review of existing patients to satisfy the requirement and exempt graduates (functionally graduating May 1, 2011 or after to allow for the development of a documentation system) who can document 75 one-patient, one-supervisor, one-trainee encounters with patients on (or begun on) active medication treatment for authorized glaucoma (thus establishing a "meet it or not" standard based on actual individualized education experience).

The Board's proposed response is to reject for the following reasons:

- The intent of the legislature in passing the SB 1406, supported by letters from Senators Correa and Aanestad is very clear - graduates after May 1, 2008 are "presumed" to have met all prerequisites for glaucoma certification and therefore need no additional training. The Board has the authority to monitor and impose additional requirements, as it deems appropriate.
- After reviewing the didactic and clinical programs at various schools and colleges in California, it is evident the current curriculum provides a comprehensive foundation of knowledge and skills for the entry-level practice of optometry and glaucoma diagnosis, treatment, and management.
- Also internal mechanisms consisting of course grades, chart reviews, and clinical evaluations by faculty for ensuring proficiency and competency by students are well established and effective.
- Also, the curriculum review process at each institution is more than adequate to ensure the continuing evolution of the curriculum to make certain that it is always current and addresses the changing nature of the profession (i.e. entry level definition, standards of care, etc).
- The laws in most states, even those that had co-management requirements, are taking into consideration the comprehensive nature of the training that new optometry graduates receive and therefore have been willing to abolish co-management requirements. Seven of the nine states (California included) that require co-management have eliminated that requirement for optometrists graduating after a particular date.

- Nevada and California are the only two states left that require a co-management component for glaucoma certification.

Dr. Kliger again restated CAEPS' opposition to the regulation and reiterated statements from their comments submitted during the 45-day comment period. He reasoned that all CAEPS wants optometrists to do is co-manage five patients prior to becoming glaucoma certified.

Terry McHale addressed the Board and indicated that CAEPS never provided an alternative like they are now when the legislation was being negotiated. He also further expressed his support for the Board and the regulation.

The Board members made no edits to the proposed response to the tenth concern in CAEPS' comments and it was accepted as written.

11) Subsection 1571(e): CAEPS recommends adding language allowing optometrists who began the glaucoma certification process under the SB 929 legislation to continue to follow that process until the 12 month case management requirement is met.

The Board's proposed response is to reject for the following reasons:

- Making this change to the regulation would require a legislative amendment to BPC section 3041, which states:
"For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009."
- The process mandated by SB 929 requiring licensees to co-manage 50 patients in two years expired on January 1, 2010. The Board does not have the authority to amend a statute; only the California legislature has this authority.

The Board members made no edits to the proposed response to the eleventh concern in CAEPS' comments and it was accepted as written.

12) Subsection 1571(f): This completely new section recommended by CAEPS requires that an optometrist always consult with an ophthalmologist if the glaucoma patient they are treating has one or more of certain listed conditions.

The Board's proposed response is to reject for the following reasons:

- This recommendation is outside of the scope of this regulation as stated in the Initial Statement of Reasons.
- The treatments for glaucoma, including referral requirements are defined in Business and Professions Code Section 3041, Acts Constituting Practice of Optometry.
- It would be over-regulation of the practice of optometry to add a list of conditions, which will most likely change as the medical field learns more about glaucoma and how to treat it.
- After glaucoma certification is in place the Board may consider additional regulations regarding possible referral requirements while treating glaucoma.

The Board members made no edits to the proposed response to the twelfth concern in CAEPS' comments and it was accepted as written.

Ms. Leiva then moved on to comment 40 by Robert Tyler, a local attorney, who addressed the action taken against optometrists working at the Veterans Affairs Palo Alto Health Care System (VAPAHCS) who allegedly treated a 62-year old male veteran who suffered significant visual loss in one eye as a result of poorly controlled glaucoma. Mr. Tyler clarified that the use of this incident to justify that the glaucoma regulations be re-written is not valid due to various problems with complaint, the lack of documentation, and more importantly, a lack of provable breaches in patient safety.

The Board's proposed response is to accept the comment. Although this comment is outside the scope of the proposed language, the Board acknowledges that it addresses the VAPAHCS issue appropriately.

Dr. Goldstein recommended that the sentence, "addresses the VAHAHCS issue appropriately," be amended to say that the issued was addressed (remove appropriately). This change matches the changes made earlier regarding using Mr. Tyler's response as the Board's response. The amendments were made by staff. It was also clarified that Mr. Tyler was representing himself and Ms. Johnson recommended that be added to the response. Board staff complied with this request.

The Board members made no further edits to the proposed response to comment 40 and it was accepted with amendments.

Dr. Calman, shared with the Board that he has co-managed patients with optometrists under SB 929, he employs four optometrists in his practice and has worked with optometry students. He emphasized that optometrist and ophthalmologist only differ in how much training is appropriate in order for an optometrist to treat glaucoma. He said that we are not that far apart.

Dr. Calman stated that ophthalmology students have thousands of encounters with glaucoma patients, but he is not suggesting that this should be required of optometrists. He doesn't believe that an optometrist should be able to treat glaucoma without actually seeing a single glaucoma patient during their training. He asked the Board to please make sure they enact regulations that protect the public. Dr. Calman then expressed his distress that the Board did not accept any of CAEPS' suggestions, and that he understands that some of those rejections are due to legal reasons. He hopes that this will not be the end of the dialogue between the Board, CAEPS and others regarding glaucoma certification.

Mr. McHale addressed the Board stating that he did not understand CAEPS' continued disagreement with the regulations and the Board. It's true that optometrists are not that far apart and that's only because the work the Board has put in is so well done. Mr. Berg echoed Mr. McHale's support.

Dr. Marsden, President of the Southern California College of Optometry thanked the Board for all their work and stated that she looked forward to Dr. Calman's invitation to continue the discussion regarding glaucoma certification.

Dr. Kenneth Lawenda moved to approve the proposed responses as amended to the comments received during the 45-day comment period for California Code of Regulations section 1571. Fred Naranjo seconded. The Board voted unanimous (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

III. **Review and Possible Approval of the Modified Text for the Proposed Rulemaking, CCR, Title 16, Section 1571, Requirements for Glaucoma Certification.**

Staff requested that the Board review, make any edits necessary and approve the proposed revisions to the language in order to distribute the modified text and allow for a 15-day comment period to allow the public an opportunity to address the modified text.

Staff also requested that the Board members make a motion to delegate to the Executive Officer the authority to adopt the modified text at the expiration of the 15-day comment period, provided the Board does not receive any adverse comment directed to the modified text.

Dr. Kliger provided an editorial change to the proposed language. Board staff made the change.

Dr. Kenneth Lawenda moved to approve the modified text for California Code of Regulations section 1571. Fred Naranjo seconded. The Board voted unanimous (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

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

There were no comments for items not on the agenda.

V. **Adjournment**

Katrina Semmes moved to adjourn the meeting. Dr. Kenneth Lawenda seconded. The Board voted unanimous (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

The meeting was adjourned at 11:42 a.m.



Meeting Minutes

March 25, 2010

California State Board of Optometry
San Diego State Building
1350 Front Street
Auditorium
San Diego, CA 92101

Members Present

Lee Goldstein, OD, MPA
Board President
Alejandro Arredondo, OD
Board Vice President
Fred Naranjo, MBA, Public Member
Katrina Semmes, Public Member
Edward Rendon, MA, Public Member
Susy Yu, OD, MBA, FAAO

Staff Present

Mona Maggio, Executive Officer
Lydia Bracco, Fingerprint Coordinator
Andrea Leiva, Policy Analyst
Margie McGavin, Enforcement Manager
Jessica Siefertman, Enforcement Analyst
Michael Santiago, Staff Counsel

Guest List

On File

Members Absent (Excused)

Monica Johnson, Public Member
Board Secretary
Kenneth Lawenda, OD

Thursday March 25, 2010

1:00 p.m.

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 1:10 p.m. Four members were present. A quorum could not be established at this time. Dr. Goldstein deferred all agenda items requiring votes and motions to later in the day when a quorum was established.

Board member, Edward Rendon arrived at 1:30 p.m. Board member, Fred Naranjo arrived at 3:07 p.m.

2. Welcome and Introductions

Dr. Goldstein welcomed everyone in attendance. Board members, staff and members of the audience were invited to introduce themselves.

3. President's Report

Dr. Goldstein reported on the following:

A. California Optometric Association's House of Delegates

Dr. Goldstein noted, that on January 29 and 30, 2010 he attended the California Optometric Association's (COA) House of Delegates. Dr. Goldstein reported on the key activities and issues that were presented at this event.

Dr. Goldstein announced Harue J. Marsden, OD, MS, and Associate Professor at the Southern California College of Optometry (SCCO) as the newly elected President of the COA. Dr. Marsden is the first full-time optometric educator to be elected to the COA Presidency. Additionally, Dr. Marsden is chief of the Stein Family Cornea Masters/Residency; a Fellow of the American Academy of Optometry and Diplomate in the Cornea and Contact Lens Section. Dr. Marsden has provided international lectures, publications and research in the areas of orthokeratology, contact lens management of the post-surgical cornea and laboratory testing.

- Dr. Goldstein advised that as a result of the meeting, three matters of interest were brought forward that may appear on future Board agendas: Amending the Optometric Practice Act to include all continuing education courses on the subject of Neuro-optometric diagnosis and treatment of vision dysfunctions following traumatic brain injury and that these courses be recognized for Therapeutic Pharmaceutical Agents (TPA) continuing education. California has not taken a specific position on this.
- Board Certification which is a continuing item of controversy.
- Expansion of optometric access to health care plans.

B. Other Items of Interest

Dr. Goldstein reported that on March 24, 2010 he and Board Executive Officer, Mona Maggio and Enforcement Manager, Margie McGavin participated in a discussion at the COA Keyperson Day 2010 held at the Sacramento Convention Center. Interchange transpired regarding current Board activities and the status of the glaucoma certification rulemaking process. He added that this event provided an opportunity for the Board to reach out to optometric students and share information about licensing requirements, enforcement processes, and feeling comfortable about contacting the Board. Dr. Goldstein noted this was probably the first time such a large number of students, from the three California colleges, met together in one place to participate in such a comprehensive discussion.

Dr. Goldstein invited comments from Ms. Maggio and Ms. McGavin. Ms. Maggio reported that she found this event to be very informative. She noted that she particularly enjoyed the interchange with the students and she looks forward to working with the students as they become licensees.

On March 16, 2010, Dr. Goldstein and Ms. Maggio participated in a meeting of board presidents, executives officers, the Department of Consumer Affairs (DCA) executive staff and representatives from the Senate Business, Professions, and Economic Committee to discuss the DCA's Consumer Protection Enforcement Initiative (CPEI) and the Consumer Health Protection Enforcement Act, Senate Bill 1111 (Negrete McLeod).

Dr. Goldstein explained this initiative is a comprehensive look at the enforcement processes of healing arts boards in an effort to create more resources and improve process efficiency. He added that this comprehensive review by the DCA is of utmost concern.

4. Director's Report – Representative from Department of Consumer Affairs

Dr. Goldstein deferred this agenda item to the March 26, 2010 meeting when the Director's representative, Kimberly Kirchmeyer will be present.

5. Executive Officer's Report

Mona Maggio provided an overview of the following:

A. Budget Report

Ms. Maggio reported that the Board's budget authority for the 2009/2010 fiscal year is \$1,488,161. The Board's expenditure projections, including commitment to revert \$25,000 from the Board's Operating Expense and Equipment (OE&E) budget line for the OE&E reduction plan, and transferring \$125,000 to the Architectural Revolving Fund (ARF) for expenses related to the Board's future move, indicate that at the end of the 2009/2010 fiscal year, the Board anticipates an unexpended reserve in the amount of \$200,478.

Ms. Maggio explained that on January 8, 2010, the Governor issued an Executive Order S-01-10 which directs state agencies to take immediate steps to achieve an additional five percent salary savings by July 1, 2010 and maintain this additional salary savings level. State agencies are required to submit a plan to achieve the salary savings. Ms. Maggio stated that the Board's calculations for compliance with the Executive Order indicate the Board has already met this salary savings request due to the vacancies the Board has experienced this year. Ms. Maggio added that although the Board's budget for the new fiscal year includes two new half time positions, she does not expect to fill those positions immediately making it possible to meet the five percent reduction in the Board's personnel line as well.

B. Furlough

Ms. Maggio reported that the furloughs are ongoing. Despite recent court rulings in favor of state employees, including one ruling ordering the discontinuance of the furlough order for all special fund state agencies, it is expected these rulings will be challenged by the Governor. Ms. Maggio stated she anticipates the furloughs will continue through June 30, 2010. She added that several Executive Officers recall that, last year, the Governor won in a ruling which allows him to order state workers salaries to the federal minimum wage when furloughs end, providing he does not order layoffs.

C. Operations Report

Dr. Alejandro (Alex) Arredondo inquired about where the Board's revenue comes from. More specifically, he questioned if it comes from licensing fees. Ms. Maggio clarified and explained that a small amount of revenue comes from applications but the majority of the Board's budget comes from renewal fees.

Ms. Maggio announced that staff will attend an informational meeting on March 30, 2010 regarding participation in an on-line renewal program this will allow licensees to pay their license renewal fees by credit card. Ms. Maggio explained that to implement this program now, the Board would have to absorb the costs out of its current budget, which would be approximately \$7 per renewal. She added that the Board has the option of waiting until fiscal year 2011/2012, and submit a Budget Change Proposal (BCP) to request a budget augmentation to cover the new costs. Ms. Maggio noted that upon attending the meeting, a decision will be made to either participate in the pilot program or submit a BCP, for additional funding, during the next fiscal year.

Ms. Maggio announced, and congratulated Ms. Andrea Leiva, for the completion of the "2010 Optometry Business and Professions Code and Optometry Act" and the "2010 California Code of Regulations, Title 16, Division 15" (law book) which is updated and available on the Board's website. Ms. Maggio reported that staff had attempted to obtain a contract with Lexis Nexis, whereby changes and updates could be made to the law book by staff, and where staff would not have to rely upon Lexis Nexis, nor absorb the costs. This was not approved and Ms. Maggio noted that Ms. Leiva took it upon herself to make the revisions herself, whenever she had a spare moment.

Ms. Maggio reported that the "Frequently Asked Questions Pertaining to Glaucoma Certification" and the meetings page have also been updated.

Personnel Update

New Employees

Brianna Miller joined the Board on January 4, 2010 as the Enforcement Technician in the Enforcement Program. Lydia Bracco joined the Board on January 19, 2010 as the new Fingerprint Coordinator and Jessica Siefertman joined the Board on February 1, 2010 as the new Probation Monitor.

Departures

Elizabeth Bradley accepted a position as a legal secretary with the Department of Industrial Relations. Her last day with the Board was on December 31, 2009.

Michelle Linton-Shedd accepted a position as a staff services analyst with the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation. Her last day with the Board was February 16, 2010. Ms. Maggio announced that the Board is in current recruitment for both positions (receptionist and analyst for the Enforcement Program).

Sunset Review

Ms. Maggio reported that the sunset review process has been reinstated and the Board of Optometry is in the 2012/2013 review cycle. Ms. Maggio noted that she welcomes the sunset review process as an internal audit of how well the Board is doing.

6. Licensing Program Report

Mr. Jeff Robinson provided a statistical report of the applications received and licenses issued from July 1, 2009 through February 1, 2010.

Mr. Robinson reported that he foresees the licensing process to occur more swiftly this year due to the fact that the Board now requires applicants to submit applications for licensure prior to taking the California Laws and Regulations exam.

Dr. Goldstein inquired if the applications for glaucoma certification were all from doctors who have completed their certification according to the SB 929 protocol and if there have been any issues with any of them. Mr. Robinson responded that they were and there have not been any concerns.

7. Examination Program Report

Ms. Andrea Leiva provided an overview of the following:

A. Computer Administered California Laws and Regulations

Ms. Leiva announced that effective April 1, 2010, the Board would be contracting with Psychological Services, LLC (PSI) in order to administer the California Laws and Regulations Exam (CLRE). August 28, 2009 was the last time the National Board of Examiners in Optometry administered the CLRE. Ms. Leiva explained that information was posted to the Board's website in August 2009. In January 2010, Board staff sent a flyer for distribution to the schools and colleges of optometry; specifically to the student liaisons. In February 2010, an email blast was sent to all subscribers regarding the new testing format and study guide availability. The Spring 2010 newsletter included an article providing information regarding the new law exam.

On March 23, 2010 Ms. Leiva and Mr. Robinson participated in a BETA testing session of the CLRE at PSI's Sacramento test site and were pleased with the look of the

computerized exam and procedures for administration. Ms. Leiva reported that students taking the new exam would know whether they have passed or failed upon leaving the testing area, and typically they will receive their exam results within 30 days, expediting the licensing process.

Dr. Goldstein inquired if the testing sites are testing centers operated by PSI. Ms. Leiva confirmed that PSI has multiple testing centers for testing convenience.

Ms. Maggio added that the testing centers are very secure. Candidates taking the exam are photographed and fingerprinted and there are cameras and proctors in the exam room at all times.

B. CLRE Subject Matter Experts Survey Results

Staff and the Office of Professional Examination Services conducted a survey in order to determine what would be the best days of the week to hold the workshops so that there would be maximum participation. Saturdays, Sundays and Mondays were the best days of the week and staff scheduled the workshops accordingly.

C. CLRE Development Workshops Schedule

Ms. Leiva announced that Board staff have scheduled the workshops for the development of the California Laws and Regulations examination questions.

Ms. Leiva explained that she and staff from the Office of Professional Examination Services (OPES) worked together to schedule workshop dates where maximum participation would be achieved. The upcoming workshops dates are as follows:

April 11-12, 2010 (Sunday & Monday): Item Writing and Review Workshops

Purpose: To review the current questions in the California Laws and Regulations examination and to write new questions. Participants will receive training on how to write an exam question and will work in conjunction with a testing specialist to develop examination questions.

May 10, 2010 (Monday): Exam Construction Workshop

Purpose: In this workshop, subject matter experts will select potential questions for the 2010-2011 California Laws and Regulations Exams. Participants will evaluate items for each content area included in the examination and select those that best represent the knowledge required for entry into the profession.

June 7, 2010 (Monday): Passing Score Workshop

Purpose: This workshop establishes the passing score of the 2010-2011 California Laws and Regulations Exams. Under the facilitation of a testing specialist, participants will apply minimum competence standards to establish a criterion-referenced passing score.

8. Fingerprint Program Report

Division 15, of Title 16 of the California Code of Regulations (CCR) Regarding the Mandatory Submission of Fingerprints for Board Licensees

Lydia Bracco, Fingerprint Coordinator reported on the following:

Background

The DCA has long been aware that a percentage of its licensee population was never fingerprinted. However, a series of articles in the LA Times focused on a number of health care practitioners that possess a criminal past and intimated that the magnitude of the problem is more widespread. Additionally, these articles raised serious questions concerning the timeliness to the disciplinary process and whether individual practitioners are being held accountable.

DCA's healing arts boards fingerprinting budget change proposal for special fund augmentations; steps for criminal self disclosure; and current steps in the process.

Ms. Bracco reported that she and Ms. Maggio utilized the assistance of the Board of Registered Nursing (BRN) and the Board of Behavioral Sciences (BBS) for information regarding their fingerprint processes. Rather than 'reinvent the wheel', a decision was made to mimic many of the BRN's processes and forms.

Ms. Bracco presented samples of, and explanations for, the Board's 'next steps' in the process which include:

- Finalize notification letter that will be sent to those optometrists who need to comply or may be affected by the regulations.
- Update license renewal form to add fingerprint compliance question.
- Finalize rejection letter.
- Finalize Incomplete Renewal Application form and add form to the website.
- Complete the Fingerprint Information sheet which lists the procedures for using the Live Scan or manual fingerprint processes and provides suggestions on the type of businesses that do the work.
- Update the Request for Live Scan Service form to reflect the renewal type of application and add to the website.
- Finalize the Fingerprint Requirements for License Renewal and add to the website.

Mr. Rendon inquired if fingerprinting is at the Board's discretion. Ms. Bracco clarified that State Law requires fingerprinting under Business and Professions Code (BPC) Section 144.

Status of California Code of Regulations 1525, 1525.1 and 1525.2

Ms. Leiva provided a summary of the issues regarding this rulemaking file.

Ms. Leiva stated that Board staff withdrew the rulemaking file for the fingerprint regulations from the Office of Administrative Law (OAL) on Friday, March 19, 2010. OAL discovered a few problems with the file (specifically regarding the renewal form, which was not incorporated by reference in the proposed language). OAL has recommended minor corrections to the format of the language. Board staff and legal counsel have made the changes needed to the proposed language and the renewal form in order to comply with OAL's standards. Staff requests that the Board review, make any edits necessary and approve the proposed revisions in order to distribute the modified text and the renewal form. These items will be available for a 15-day comment period in order to allow public comment.

Ms. Leiva added that Board staff is working with the DCA and Employment Development Department (EDD) in order to update the form as quickly as possible. Staff hopes to resubmit this rulemaking file to OAL in the coming month. The Board has until June 26, 2010 to complete this rulemaking file.

Edward Rendon moved to approve the modified text. Dr. Alejandro Arredondo seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Mr. Rendon	X		
Ms. Semmes	X		

Dr. Alejandro Arredondo moved to approve the addition of the fingerprint compliance question to the license renewal form, and to delegate authority to the Executive Officer to proceed with rulemaking process, provided no negative comments are received. Katrina Semmes seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Mr. Rendon	X		
Ms. Semmes	X		

9. 2010 Legislation Proposals

A. AB 2683 (Hernandez) (Introduced) The Practice of Optometry in Health and Residential Care Facilities

Ms. Leiva reported that on February 19, 2010, Assembly Member Dr. Edward Hernandez introduced Assembly Bill (AB) 2683 to add Section 3070.1 to the BPC, relating to the practice of optometry in health and residential care facilities. Ms. Leiva stated that this bill would authorize the practice of optometry at a health or residential care facility, provided the optometrist meets the specified requirements, including, but not limited to, those related to maintaining a nonresidential primary business office, patient access to, and disclosure of, patient records, and specified record-keeping requirements. Ms. Leiva explained that optometrists who practice in a variety of non-traditional optometric settings have asked the Board to set minimum standards and clarify what is required for optometrists who work in these settings. She added that as a consumer protection agency, the Board feels it is necessary to establish guidelines in order to prevent any possible abuse by licensees regarding billing and services provided.

Dr. Goldstein opened the floor to questions and concerns from the Board members and members of the public.

It was asked if optometrists often practice in hospitals. Dr. Goldstein replied not in the State of California, although there is nothing that would prevent them from practicing in hospitals other than, possibly, hospital policies.

Dr. David Turetsky introduced concerns (on behalf of himself and his partner). Dr. Turetsky explained that although many providers are working in the patient's best interest, there are some optometrists who take advantage of patients who are not fully alert (i.e. Alzheimer's and Dementia patients) and provide these patients with quick, incomplete examinations, yet bill them. Additionally, he cited (for example) optometrists who provide

eye exams for staff members of these facilities and not patients. He noted that there is need of an enforcement component to properly audit patient care and reduce the potential for abuse. He added that the legislation of AB 2683 lacks an enforcement component.

Dr. Goldstein responded that there is an enforcement process with the Board. Additionally, hospitals have their own enforcement process. He added that anybody (not just the patient) can make a complaint. Enforcement Manager, Margie McGavin confirmed that this is correct. Anybody can make a complaint and an investigation would be conducted.

Dr. Turetsky noted that when it comes to nursing home facilities, people do not tend to have an overwhelming concern with the kind of care these patients receive. For that reason there is a huge opportunity for abuse.

Ms. McGavin responded that the intent of this bill is to address this potential for abuse but questioned if the language really captures this, or if it is just assumed.

Dr. Turetsky believes the language should require that exams be performed only under a physician's order to cut down on the abuse of facility staff receiving eye exams by the attending optometrist. He added that the Board might consider it beneficial to maintain listings of all of the facilities where the optometrists are practicing.

B. Omnibus Bill (Senate Business, Professions and Economic Development Committee)

Ms. Leiva announced that on March 11, 2010, the Committee on Business, Professions and Economic Development introduced Omnibus SB1489. She explained that an Omnibus bill enacts, amends, or repeals a number of provisions relating to the state's licensure of professions and vocations under the Department of Consumer Affairs, primarily in the BPC. Ms. Leiva noted that the bill makes non-controversial changes and is intended to clarify, update and strengthen licensing laws. If at any time, provisions in the bill become controversial, they will be removed.

The following statutes have been incorporated into S B1489 and are being amended for clarity purposes:

- 1) *BPC Section 3046, Expiration of Certificates; Renewal of Unexpired Certificates*
This amendment will change the language from singular examination to plural examinations. This was a typographical error when the initial language was drafted.
- 2) *BPC Section 3057.5, Eligibility of Graduates from Foreign Universities*
This statute was amended as a result of the amendment to BPC Section 3046 for consistency.
- 3) *BPC Section 3147, Renewal of Expired Certificates*
Current law does not specify that certifying completion of optometric continuing education is a requirement of license renewal for optometrists in the State of California. This amendment will clarify the requirements of license renewal.
- 4) *BPC Section 3147.6, Restoration of Certificate Following Failure to Renew Within Specific Period*
This amendment will clarify the requirements for licensure renewal for California licensed optometrists who fail to renew their license within three years after the expiration of the license.
- 5) *BPC Section 3147.7, Applicability of Provision to Out of State Licensees*

The proposal clarifies the requirements for licensure renewal for California licensed optometrists who fail to renew their license within three years after the expiration of the license. This amendment will require that out of state licensed optometrists who let his/her California license lapse for more than three years, but who can substantiate an active and current optometric license in another state, take and pass the California Laws and Regulations Exam (CLRE) in addition to meeting the other requirements for license renewal.

**10. Discussion of Optometrists Treating Blepharitis
(By Michael Santiago, Legal Counsel)**

Dr. Goldstein moved this agenda item to the March 26 meeting.

**11. Review and Adoption of Strategic Plan
(Facilitated by Sarah Wilson, Strategic Development Specialist, Department of Consumer Affairs Strategic Organization, Leadership and Individual Development)**

Sarah Wilson presented an overview of the Board's Strategic Plan and actions to date. The Board met on October 23, 2009 and December 1, 2009 to review and revise its 2007 Strategic Plan. Members made revisions to the Board's Mission, Vision, and Values Statements and identified the Plan's six goals.

Board staff met on February 11, 2010 for an opportunity to review the Board's edits and make their recommendations to the Plan.

Dr. Susy Yu moved to adopt the Strategic Plan. Dr. Alejandro Arredondo seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Mr. Rendon	X		
Ms. Semmes	X		

12. Public Comment for Items Not on the Agenda/Suggestions for Future Agenda Items

Dr. Alejandro Arredondo requested a status update on the cosmetic contact lenses discussions. Ms. McGavin reported that the unlicensed activity unit has been absorbed by the Department of Consumer Affairs Division of Investigations (DOI), but enforcement staff has not been receiving any reports from them. She added that she would like to pursue the possibility of having enforcement staff send out the notices of alleged unlicensed activity and refer to the Unlicensed Activity Unit when compliance is not attained by the violator.

Dr. Pam Miller with the American Board of Clinical Optometry (ABCO) announced that ABCO is a new credentialing agency for the purpose of board certification in clinical optometry. ABCO will be contacting all of the state boards requesting information and ensuring compliance with all state laws and regulations. She added that it is the goal of ABCO to support and work with the regulatory organizations as a liaison/advisor. Dr. Goldstein thanked Dr. Miller for providing the board with this information.

Ms. Maggio announced that the next board meeting would be scheduled for one of the days between July 26-28, 2010 in coordination with DCA's Board Member Training Day. This meeting will be held in Sacramento.

Board member, Fred Naranjo arrived and quorum was established.

13. Adjournment

Dr. Susy Yu moved to adjourn for the day and Katrina Semmes seconded the motion. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Mr. Rendon	X		
Ms. Semmes	X		

The meeting was adjourned at 3:25 p.m.

Meeting Minutes

March 26, 2010

San Diego State Building
1350 Front Street
Auditorium
San Diego, CA 92106-3106

Members Present

Lee Goldstein, OD, MPA
Board President
Susy Yu, OD, MBA, FAAO
Board Vice President
Monica Johnson, Public Member
Board Secretary
Alejandro Arredondo, OD
Katrina Semmes, Public Member
Fred Naranjo, MBA, Public Member

Staff Present

Mona Maggio, Executive Officer
Margie McGavin, Enforcement Manager
Andrea Leiva, Policy Analyst
Jeff Robinson, Lead Licensing Analyst
Michael Santiago, Legal Counsel

Guest List

On File

Members Absent (Excused)

Kenneth Lawenda, OD
Edward Rendon, MA, Public Member

Friday March 26, 2010

9:00 a.m.

FULL BOARD OPEN SESSION

14. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 9:15 a.m.
Dr. Goldstein called roll and a quorum was established.

15. Welcome and Introductions

Dr. Goldstein welcomed everyone in attendance

16. Approval of Meeting Minutes

A. October 22-23, 2009 Board Meeting

Monica Johnson moved to approve the minutes as amended. Dr. Susy Yu seconded the motion and the Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

B. December 1, 2009 Strategic Planning Session

Dr. Susy Yu moved to approve the minutes as amended. Monica Johnson seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

C. December 17, 2009 Legislation and Regulation Committee Meeting and the Joint Meeting of the Practice and Education Committees

Dr. Alejandro Arredondo moved to approve the minutes as amended. Dr. Susy Yu seconded. The Board voted (5 – Ayes; 0 – No; 1 abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson			X
Ms. Semmes	X		

D. January 21, 2010 Board Meeting

Dr. Alejandro Arredondo moved to approve the minutes as amended. Katrina Semmes seconded. The Board voted (5 – Ayes; 0 – No; 1 abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson			X
Ms. Semmes	X		

4. Director's Report – Representative from Department of Consumer Affairs

Dr. Goldstein welcomed Ms. Kimberly Kirchmeyer Department of Consumer Affairs (DCA) Deputy Director for Board & Bureau Relations. Ms. Kirchmeyer introduced a background of her activities. Ms. Kirchmeyer was appointed to her current position in December. Formerly, she worked for the DCA for 20 years with the Board of Barbering and Cosmetology, and the California Medical Board. Ms. Kirchmeyer thanked Board staff for a quick turnaround on requests from the Executive Office. Additionally, she expressed her desire to learn about issues facing the Board.

Ms. Kirchmeyer provided a report on the following:

- A. Senate Bill (SB) 139, Chapter 522, Office of Statewide Health Planning and Development (OSHDP)

The purpose of OSHPD is to determine healthcare workforce shortage and the need for schools by developing a workforce health database. The DCA is very supportive of OSHPD. OSHPD will be contacting the board to assist staff in participation. One possibility for data collection would be to attach a survey to each renewal form, which the DCA would forward to OSHPD.

Dr. Goldstein shared his concern that this would create more lead time instead of solve the problem. He stated that there is an increase of 15% of optometry schools (three new schools in the United States), and the profession is becoming less diverse based on school enrollment.

B. Consumer Protection Enforcement Initiative (CPEI)

Ms. Kirchmeyer explained that the length of time it takes to investigate and prosecute a licensee has come under intense scrutiny. In recent years some of DCA's healing arts boards have been unable to investigate and prosecute in a timely manner. Some boards take an average of 3 years which is an unacceptable timeframe that could put consumers' safety at risk. The CPEI's main purpose is to improve processing and shorten the time from 3 years to 12 -18 months. The CPEI is a systematic approach designed to address and streamline three specific areas:

- Administrative Improvements
- Staffing and IT Resources
- Legislative Changes

Steps the DCA is taking for this purpose include the following:

- Building best practices for developing an enforcement academy
- A Deputy Director was hired for enforcement and compliance to review and monitor the Board's enforcement programs.
- Making performance agreements with other state agencies (i.e. Attorney Generals Office and Office of Administrative Hearings)

C. Consumer Health Protection Enforcement Act Enforcement Reform (SB 1111)

The Consumer Health Protection Enforcement Initiative (CPEI) is a comprehensive initiative the DCA has launched to overhaul the enforcement process at the healing arts boards it oversees. The program is needed to enable healing arts boards to more efficiently investigate and prosecute consumer complaints against licensees under their regulation.

Monica Johnson moved to support SB 1111 as introduced and remain open to the possibility of evaluating further amendments to the bill. Fred Naranjo seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

D. Uniform Standards Regarding Substance Abusing Healing Arts licensees (SB 1441)
As required by SB 1441, the Substance Abuse Coordination Committee adopted 16 Uniform Standards to protect the public from substance abusing health care practitioners.

The DCA's legal unit helped establish legislation that will be introduced where legislation is needed in the following areas:

- Suspension of license
- Public notification of licensee restrictions
- Obtaining records.

17. Enforcement Program Report

Enforcement Manager, Margie McGavin provided an overview of the following:

A. Consumer Protection Enforcement Initiative

In January 2010, the DCA released its Consumer Protection Enforcement Initiative, "A Systematic Solution to a Systemic Problem". As reported in the Director's Report by representative, Ms. Kirchmeyer, this initiative addresses three specific areas 1) Administrative Improvements, 2) Staffing and IT Resources, and 3) Legislative Changes. These have been identified as areas that limit the boards' ability to investigate and act on enforcement cases. It is expected that once this initiative is fully implemented, it will reduce the average enforcement completion timeline for healing arts boards from 36 months to 12 – 18 months.

B. New Reporting Requirements to DCA

As part of the new enforcement model, the DCA is implementing new reporting requirements in order to increase accountability, and streamline existing business practices. The Monthly Enforcement Report was implemented beginning January 2010 and is submitted to the DCA on a monthly basis. Additionally, Staff members, Margie McGavin and Cheree Kimball recently attended a training session for the Enforcement Activity Reporting (EAR) system. The EAR is a web-based program that is designed to allow DCA boards, bureaus, committees, and programs to track and maintain their case activity, with time increments. The EAR system is anticipated to begin in April 2010, and will be utilized by the entire enforcement staff.

C. Consumer Health Protection Enforcement Act Enforcement Reform

As discussed in the Director's Report, the enforcement staff is and will continue to monitor SB 1111 and will implement the provisions once they become law.

D. Approved Uniform Standards Regarding Substance-Abusing Healing Arts

Senate Bill 1441 established the Substance Abuse Coordination Committee (SACC) within the DCA. This committee is comprised of the Executive Officers of the healing arts boards and a designee for the State Department of Alcohol Drug Programs. The bill required the committee to develop, by January 1, 2010, uniform and specific standards in specific areas that each healing arts board would be required to follow when addressing the issue of a substance abusing licensee and ensuring public protection. The SACC is subject to the Bagley-Keene Open Meeting Act.

E. Operational Improvements

New Members and Training

Since January 2010, the Board's enforcement staff have welcomed three new employees (Brianna Miller, Enforcement Technician; Lydia Bracco, Enforcement Analyst; and, Jessica Siefertman, Probation Monitor). Training is continuing for these new staff members and they are a wonderful asset to our team.

The enforcement unit has established new procedures in case processing and are utilizing the codes and procedures uniformly.

Web Postings

The Board staff has requested that the DCA Office of Information Services (OIS) post disciplinary history on the Board's website. Staff is now waiting for the completion, which could take place any day.

The enforcement staff has been working on improving our complaint intake and reporting processes. These improvements have been accomplished due to the recent increase in our enforcement staff and our diligent efforts to audit and ensure complete and proper Consumer Affairs System (CAS) reporting. Cases are now assigned and acknowledged within 5 days as opposed to 15 days.

F. Program Statistics

The enforcement staff has been working on improving our complaint intake and reporting processes. These improvements have been accomplished due to the recent increase in our enforcement staff and our diligent efforts to audit and ensure complete and proper Consumer Affairs System (CAS) reporting. Cases are now assigned and acknowledged within 5 days as opposed to 15 days. The Board of Optometry's average for desk investigations of 240 days (reported in January 2010), dropped significantly to 179 days for February 2010. Enforcement staff hopes to decrease this average further in the coming months.

Dr. Goldstein questioned the timelines of the complaint process noting that the Board of Optometry receives about one complaint a day. Ms. McGavin explained the process and average length of time for each step. Ms. McGavin added that all complaints have to be acknowledged, regardless of whether or not the Board of Optometry has jurisdiction.

Ms. Maggio added her observations of the process and noted that just to evaluate a complaint and figure out the steps needed, can take one day (for one complaint).

Mr. Fred Naranjo inquired into the typical kind of complaint. He acknowledged that he is very pleased with the headway that has been made in responding to inquiries and complaint handling by the Board's staff.

Continuing Optometric Education Audits

Ms. McGavin stated that the most common problem (regarding compliance) seems to be the requirement as set forth in Business and Professions Code section 3059(f) which encourages licensees to take coursework in pharmacology and pharmaceuticals. She explained that there has been some confusion about the requirement itself and which courses meet the requirement. She announced that staff would be meeting with the Continuing Education Committee to explore ways to streamline this, as well as provide outreach to licensees.

18. Review and Possible Approval of the Revised Consumer Complaint Form and instructions

Ms. McGavin explained that in reviewing the Board's Consumer Complaint Form, staff found the information provided to be problematic. This finding is supported by consumer inquiries regarding the complaint process and insufficient information provided in submitted complaints. She clarified that staff recommends revision of the Consumer Complaint Form to include:

- Instructions for completing the form,
- Notice on Collection of Personal Information,
- Authorization for Release of Patient Health Information, and
- Comprehensive review of the complaint and disciplinary process.
- Make the font consistent

Monica Johnson moved to approve recommended revisions of the Consumer Complaint Form. Fred Naranjo seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

19. Discussion and Consideration of Using Mail Ballots for Disciplinary Decisions

Ms. Maggio reported that the Department has asked staff to consider utilizing mail ballots to vote on disciplinary actions as allowed by the Administrative Procedures Act. She explained that staff is asking to use electronic mail balloting (in secure format) in addition to regular mail balloting for the purpose of the enforcement initiative. It would cut down on the timeframe that it takes for the Board to meet, discuss a case, and then vote on it.

Dr. Goldstein expressed his concern about how a quorum would be established for the exchange of information. He questioned: Would the Board be able to hold an online closed session? Do we have those capabilities? He added that some agenda items require discussion.

Ms. Maggio responded that the Board could hold a closed session via telephone and that items Board members wish to discuss would be voted as "hold for discussion".

20. Discussion and Possible Adoption of Customer Satisfaction Survey

Board President, Dr. Lee Goldstein moved this agenda item to the previous day's meeting on March 25. Ms. Leiva explained that the Board has determined that good customer service is essential in meeting our own Strategic Plan's vision, which is to be the leading health care profession Board that continuously provides optometrists and consumers with effective collaborative and proactive services.

Currently, the Board does not have a mechanism in place to measure the quality of service provided to the Board's constituents. Many of DCA's other boards and bureaus use customer satisfaction surveys to establish a baseline for the current level of customer satisfaction and obtain possible suggestions for improvement in customer service.

Thus, Board staff used sample surveys from other boards and bureaus and developed a survey for our Board. The survey will go on the Board's Web site and will be distributed in a variety of formats in order to ensure a high response rate. Board staff will report the feedback received in the surveys at the next Board meeting.

The survey will be distributed in the following ways:

- 1) Placed on the Board Web site in a prominent area;
- 2) Added to staff signature boxes in emails;
- 3) Sent via email blast to our interested parties list;
- 4) Added to the footnote of all outgoing correspondence;
- 5) Added to the Board's presentations at California schools and colleges of optometry;
- 6) Encourage staff to mention completion of the survey when assisting customer via telephone

Ms. Leiva added that there would be two separate surveys, one for licensing and one for enforcement. Both surveys will contain a "General Questions" page, which will evaluate the customer's satisfaction with the initial contact with the Board prior to being transferred to their respective unit.

21. Review of Rulemaking Calendar

Ms. Leiva provided an overview of the updated Rulemaking Calendar requested by the Office of Administrative Law (OAL). She summarized the proposed regulations implementing statutes enacted during 2009 and those prior to 2009.

22. Rulemaking Proposals

Ms. Leiva provided an overview of the proposed amendments to the following regulations:

- A. Discussion and Adoption of Amendments to California Code of Regulations (CCR) Title 16, Section 1520 Infection Control
- B. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1523, Licensure Examination Requirements
- E. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16 Section 1518, Fictitious or Group Names
- F. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section, 1531 Licensure Examination
- G. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1532 Re-examination
- H. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1533 Re-scoring of Examination Papers

Katrina Semmes moved to approve the regulations as amended. Dr. Susy Yu seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

- J. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1536 Continuing Optometric Education
- K. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1561 Topical Pharmaceutical Agents Usage – Purpose and Requirements

Monica Johnson moved to approve the regulations as amended. Katrina Semmes seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Ms. Semmes	X		

FULL BOARD CLOSED SESSION

Pursuant to Government Code Section 1126 (c)(3) the Board convened to close session at 11:35 a.m. to deliberate on the following disciplinary decisions:

- 23. Stipulated Settlement and Disciplinary Order, Richard Martin, OD, License Number 8799
- 24. Stipulated Settlement and Disciplinary Order, Brett Byron Cornelison, OD, License Number 9861

FULL BOARD OPEN SESSION

25. Adjournment

The meeting was adjourned at 1:00 p.m.



Meeting Minutes

Tuesday May 11, 2010
Department of Consumer Affairs
1625 N. Market Blvd.
2nd Floor, El Dorado Room
Sacramento, CA 95834
(916) 575-7170

AND

Via telephone at the following locations:

- 9033 Wilshire Blvd., Suite 402 Beverly Hills, CA 90211
- 155 Cadillac Drive, Sacramento, CA 95825
- Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Boulevard, Fullerton, CA 92831-1699

Sacramento

Members Present

Lee Goldstein, OD, MPA, Board President
Fred Naranjo, Public Member
Katrina Semmes, Public Member

Members Absent

Susy Yu, OD

Staff Present

Mona Maggio, Executive Officer
Michael Santiago, Staff Counsel
Andrea Leiva, Policy Analyst

Guest List

On File

Fullerton and Beverly Hills

Members Present in Fullerton

Alex Arredondo, OD, Board Vice President
Monica Johnson, Board Secretary
Ed Rendon, Public Member

Members Present in Beverly Hills

Ken Lawenda, OD

Staff Present in Fullerton

Margie McGavin, Enforcement Manager

Guest List

On File

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 10:05 a.m.

Dr. Goldstein called roll and a quorum was established. Dr. Goldstein welcomed everyone in attendance. Board members, staff, and members of the audience in Sacramento, Fullerton, and Beverly Hills were invited to introduce themselves.

Public Member Edward Rendon arrived at 10:12 a.m.

2. Discussion and Possible Approval of the Responses Pertaining to the Comments Received During the 15-Day Comment Period for the Modified Text, Regarding the

Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification.

Dr. Goldstein asked staff counsel, Michael Santiago if he had any comments at this time, which he did not. Policy Analyst, Andrea Leiva requested that the Board review and fully consider all of the comments received during the 15-day comment period for the modified text of California Code of Regulations (CCR) section 1571, Requirements for Glaucoma Certification. She also requested that the responses show adequate consideration of each comment and thoroughly explain why a comment is being accepted or rejected.

No changes were made to the modified text.

Ms. Leiva then summarized a comment by the California Medical Association (CME) who opposed changes to the modified text for the following reasons:

- The modifications to the regulation are minimal and fail to take critical patient safety concerns into account.
 - 1) The three-option certification process in Section 1571(a)(4) is complicated and allows optometrists to become certified to independently treat glaucoma without having ever treated a single patient.
 - 2) Patient safety is being sacrificed in order to increase patient access
While the CME appreciates the addition of glaucoma-specific continuing education requirements, the regulation fails to consider and incorporate additional training requirements for future optometry graduates.

The proposed response is to reject this comment for the following reasons:

- The Board has already addressed these concerns, which were presented during the 45-day comment period. Although these concerns are now targeted at the 15-day modified text, they are not new.
- The Board considered CMA's comments regarding the addition of continuing education (CE) for glaucoma certified optometrists and amended the proposed language to require that 10 of the 35 hours of CE in ocular disease be specific to glaucoma. The Board believes the schools and colleges of optometry provide sufficient education and training to ensure that all graduates successfully pass the national exam required of all optometry students in the U.S.A., and that all graduates have the minimum qualifications to treat patients.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Veronica Ramirez with CMA restated its opposition for the regulation as written.

Ms. Leiva then summarized comments made by the California Academy of Eye Physicians and Surgeons (CAEPS), which are in opposition of the modifications to the modified text for the following eight reasons:

- 1) The Board's proposed changes fail to address concerns over patient treatment and care and have in no way addressed the patient safety concerns outlined in their prior comments (during the 45-day comment period) and are therefore totally inadequate.**

The Board's proposed response is to reject this comment because all their concerns were addressed in the Board's responses to the comments they submitted during the 45-day comment period.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Monica Johnson, asked if it is true that the regulations could not go to the Office of Administrative Law (OAL) for final review while the comment period is still open. Staff counsel, Michael Santiago confirmed that this is correct.

Dr. Craig Kliger, representing the Academy of Eye Physicians and Surgeons (CAEPS) restated CAEP's opposition for the regulation as written.

2) The proposed amended regulations fail to meet the legal requirements necessary to forward them to the Office of Administrative Law (OAL) for final review.

The Board's proposed response is to reject this comment because it is vague and does not specifically address or discuss what "legal requirements" the commentators are referring to. It is the jurisdiction and responsibility of OAL to determine whether or not the regulations meet its requirements.

Dr. Goldstein opened the floor to questions or comments regarding this response and there were none.

3) Even on its face, the proposed language fails the "clarity" standards since the minimally amended Section (a)(4) continues to state the same thing. The language is patently deceptive because the proposed regulations then goes on to describe three options, two of which can satisfy the entire requirement but involve no patients undergoing prospective treatment for any defined period.

The Board's proposed response is to reject this comment because the Board already addressed the concern in the Board's responses to the comments they submitted during the 45-day comment period.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Dr. Kliger restated his belief that this language fails the "clarity" standards.

Ms. Johnson asked staff if optometry students manage patients and receive hands on experience while in school. Ms. Leiva confirmed this is correct.

CAEPS also introduced additional information to support their opposition of the regulations and refuted the Board's responses to the comments they submitted during the 45-day comment period as follows:

4) The Board refused to halt the regulatory process upon the urging of Brian Stiger, Director of the Department of Consumer Affairs, to allow for the appointment of a new consultant who was not an advocate of the California Optometric Association (COA), glaucoma and the scope of practice of optometry.

The Board's proposed response is to reject this comment because the Board already addressed this issue in the Board's responses to the comments they submitted during the 45-day comment period.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Ms. Johnson asked for the page number of the April 7, 2010 drafted letter where this point is made. Ms. Leiva responded that there is nothing there that tells the Board to halt the

regulatory process. Mr. Santiago clarified that the comment is using the text of the letter whereby the Director asks the Board to consider postponing the process.

Ms. Johnson requested a summary of the process of hiring a consultant.

Dr. Goldstein responded that the process of hiring a consultant was not a responsibility of the Board of Optometry. The allegation is that he had been involved in setting up the process and arranging for who would be chosen. This is false. Dr. Goldstein reported that he attended one meeting with the Office of Professional Examination Services (OPES) in the fall of 2008. It was an informational meeting only and was attended by the Board's attorney, former attorney, and Executive Officer. His role in the meeting was only to discuss what glaucoma is, and possible places OPES may search for consultants. Dr. Goldstein noted that the consultant chosen was not one that he chose to discuss.

Public Member, Mr. Fred Naranjo expressed his disgust that anyone would accuse Dr. Goldstein of wrongdoing, and noted that Dr. Goldstein's integrity is exemplary.

5) The Board was inappropriately involved in the development of the optometry-friendly job description for the selection of the Special Consultant. The compromise language in SB 1406 expressly limited the role of the Board in establishing the new clinical training requirements for glaucoma certification.

The Board's proposed response is to reject this comment for the following reason:

The commentor cites no provision of law for any possible inappropriate actions taken by the Board. The Board followed its legislative mandate. Furthermore, the Board already addressed this concern in the Board's responses to the comments they submitted during the 45-day comment period. To clarify further, in light of the additional information provided by CAEPS, the Board's involvement in the development of the consultant's statement of work did not occur in the manner grossly exaggerated by CAEPS. It is true that OPES requested that the Board provide a draft Statement of Work to assist them. OPES themselves state that they do not possess the core competencies of curriculum review and in addition are not experts in the field of optometry. The Board's involvement served only to educate and provide context to OPES about the practice of optometry and the treatment of glaucoma. In the draft Statement of Work provided by the Board, only the minimum requirements of what would be considered an appropriate consultant were included. The Board only provided a starting point for OPES and the rest was up to them as they were mandated by SB 1406.

The Board did not assist in the final development of the Special Consultant Position Duty Statement. The Board did not assist in the selection of the candidates that responded to the Job Description on the State Personnel Board's Vacant Position Database. The Board was not advised of the names/qualifications of the individuals who applied to serve as the consultant to OPES, nor were board representatives present during the interview process, nor were they consulted in the final selection of the consultant.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Dr. Andrew Calman, President of CAEPS, commented that comments have been about process and not to impugn the integrity of anyone on the Board.

6) The Board ignored its statutory obligation to respond to our "glaucoma treatment loophole" comments and other procedural requirement comments in violation of Government Code Section 11346.9.

The Board's proposed response is to reject this comment for the following reason:

This comment is an untrue and unsubstantiated statement. The loophole they are referring to is that an optometrist could become certified to treat glaucoma without actually treating a single patient. This comment was addressed in a document provided for this meeting which states "optometry students actually manage patients while in school getting hands-on experience, and almost all other states do not require optometrists to manage patients for glaucoma certification. Furthermore the proposed regulations take into account the education of optometrists who graduated on or after May 1, 2008, as well as the experience of optometrists who graduated prior to May 1, 2008 and are already licensed and practicing in California. The proposed Case Management Course in subsection (a)(4)(A) and the Grand Rounds Program in subsection (a)(4)(B) are sufficient as requirements for glaucoma certification in addition to the 24-hour didactic course in subsection (a)(3). The 24-hour didactic course was a requirement established by Senate Bill (SB) 929 and was not modified in SB 1406. The comments CAEPS submitted during the 45-day comment period regarding the procedural requirements provided by SB 1406 are not comments that should be directed to the Board. As CAEPS themselves stated in their comment as follows:

"The key element of the compromise language in SB 1406 expressly limited the role of the Board establishing the new clinical training requirements. The advisory committee, not the Board of Optometry was to establish the new glaucoma standards, and this resulted from an explicit amendment that took the power to establish those standards away from the Board making the legislative intent clear".

Additionally, the legislation mandate of SB 1406 states that the Board is to "adopt the findings" and implement the certification requirements provided by the Office of Professional Examination Services (OPES). Thus, although CAEPS asserts that the Board has frequently (and often "conveniently") relied on the fact that the language of SB 1406 has tied their hands, essentially forcing the Board to move ahead despite the clear patient safety concerns expressed by CAEPS and other, it is the truth.

The Board strongly believes that optometrists have the training needed in order to become glaucoma certified following the requirements set by the proposed regulation.

Dr. Goldstein opened the floor to questions or comments regarding this response and there was none.

7) There was no investigation made regarding the incident at the Palo Alto Veteran's Affairs Hospital and was considered irrelevant to the rulemaking process.

The Board's proposed response is to reject this comment for the following reason:

The Board again believes this matter is irrelevant to the proposed regulations and it is an incorrect statement. The Board does not take claims such as these lightly and has already taken all the legal actions that are available without a complaint being filed by a consumer or patient. Business and Professions (B&P) Code section 3010.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. However, when the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The Board strictly upholds this mandate.

In addition, the Board does not comment on complaints or open investigations. Accusations, Statement of Issues or other legal disciplinary actions are made public once the action has been filed. Only closed cases that result in discipline against a licensee are reported to the

public. There is no question that the Board would aggressively pursue this issue if a complaint were received in the future. The Palo Alto incident occurred on federal property and is beyond the Board's jurisdiction.

Dr. Goldstein opened the floor to questions or comments regarding this response and there was none.

8) The proposed changes CAEPS made to the regulations imposing the requested "consultation requirement" were within the purview of the Board to make even before SB 1406 was enacted. B&P Section 3025 clearly authorizes the Board to promulgate appropriate regulations.

The Board's proposed response is to reject this comment because it is false. The Board would not have been able to set any regulations regarding procedures for glaucoma certification until the scope of practice was expanded. SB 929 set the original guidelines and did not require regulations to clarify or effectuate the statute. SB 1406 expanded the scope of practice and established the process for these guidelines until their completion before overriding SB 1406 with other statutory authorities. Furthermore, the Board is aware of its mandate to protect the public. The Board strongly believes the proposed regulations are sufficient and the optometrists possess the necessary education and training to treat glaucoma safely.

Dr. Goldstein opened the floor to questions or comments regarding this response.

Joe Lang (lobbyist) retained by CAEPS to represent their interests, restated their belief that the process undertaken is flawed. He explained that due to insufficient time at the end of the legislative session, a process was recommended to the legislature intending to drive a consensus between the two professions (optometry and ophthalmology), which he asserts did not occur. Because a consensus was not achieved, two separate reports were submitted to the Office of Professional Examination Services (OPES). He further asserts that since SB 1406 was sunsetted, the Board has the authority to delay the regulatory process.

Ms. Johnson asked Mr. Lang what actions has he undertaken (on behalf of his client CAEPS) to correct the flaws he has identified (set up by SB 1406) in the legislative arena since SB 1406 was sunsetted.

Mr. Lang responded that since January 1, 2010 there have been many private discussions between representatives of the two professions, CME, and legislative staff which have resulted in their receipt of a framework for possible resolution. He added that they have not had time to fully evaluate that document.

Mr. Naranjo inquired if Mr. Lang had reached out to Board members or staff.

Mr. Lang responded he does not often become involved in the regulatory process and expressed his regret at not having been more involved at the advisory level.

Ms. Johnson requested clarification from staff counsel: Has SB 1406 been sunsetted and does the Board have authority to delay the regulatory process?

Mr. Santiago clarified that the entire bill was not sunsetted, rather a statute within the Business and Professions (B&P) Section 3041.10, which outlined the process the Board would follow in formulating regulations for treating glaucoma. He explained that although this statute was sunsetted, the Board is still charged with compliance in implementing the findings of the report that OPES provided for the Board. Ultimately, it will be up to the Office of Administrative Law (OAL) to make the final determination.

Dr. Calman restated Mr. Lang's concern.

Terry McHale, with Aaron Reed and Associates, representing the California Optometric Association (COA), commented that he was involved in this legislation when the first draft was made almost four years ago. He noted that this process has been extraordinarily long, detailed, and fair. The Board and the COA have done everything possible to meet the concerns of the CAEPS and the CME. Mr. McHale stated that he worked with Mr. Lang in drafting this legislation. He recalls with absolute clarity how they evaluated the students. The result of that evaluation was the legislative agreement, which states:

"Those who graduated from an accredited school of optometry on or after May 1, 2008 possess sufficient didactic and case management training in the treatment and management of patients diagnosed with glaucoma to be certified".

He noted that this kind of agreement could not have occurred if there was any doubt regarding the quality of the education and experience of these students. Furthermore, the students must attend accredited schools and pass a State and a National examination. He concluded by noting that extreme care was taken in drafting SB 1406 in ensure that the bill protects and provides care for the consumer.

Ms. Ramirez restated the CMA's opposition to the proposed regulation.

Dr. Lawenda moved to approve the responses to the comments received during the 15-day comment period for California Code of Regulations section 1571.

Mr. Naranjo seconded. The Board voted unanimous (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

Dr. Kliger expressed that his letter was intended to address a specific issue and not to malign a specific person.

3. Discussion and Possible Action To Adopt California Code of Regulations (CCR) Section 1520, Infection Control Guidelines

Since no comments were received during the January 19, 2010 hearing of the California Code of Regulations (CCR) section 1520, Board staff requests that the Board members adopt the proposed language and move to continue on with the rulemaking file.

Ms. Leiva provided a background summary of the proposed regulation. The Board initiated a rulemaking for CCR 1520 at the October 22-23, 2009 Board meeting. The proposed language expands and renames CCR section 1520, Hand Washing Facilities, and requires all Board licensees to follow minimum infection control guidelines in their practice in order to reduce the risk of transmission of infectious diseases or agents. This was prompted by the expansion of the scope of practice authorized by SB 1406, which now allows optometrists to perform venipuncture.

Dr. Goldstein opened the floor to questions or comments and there were none.

Ms. Katrina Semmes moved to adopt the proposed language and continue with the rulemaking file. Dr. Alejandro Arredondo seconded. The Board voted unanimous (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

4. Discussion and Possible Action to Initiate a Rulemaking to Add and Amend Sections of Division 15, of Title 16, of the CCR Related to the Board of Optometry's Enforcement Authority

Executive Officer, Mona Maggio began the discussion with a summary of SB 1111 which created the Consumer Health Protection Enforcement Act. This legislation was sponsored by the Department of Consumer Affairs (DCA) and was intended to address deficiencies in the enforcement processes of healing arts boards within DCA. This bill failed passage in the Senate Business, Professions and Economic Development Committee on April 22, 2010.

In light of the recent information, the DCA completed an initial review of SB 1111 and determined that many of the provisions in the bill could be implemented through regulation. The DCA has requested that each board place an item on their next agenda for the board to consider authorizing initiation of a rulemaking to implement these provisions.

The DCA's Legal Affairs Division has been working on specific language for particular boards that will be available to serve as a template for each board to use as deemed appropriate. In addition, the legislative office is preparing a stock initial statement of reasons that each board can work from.

Staff is asking the Board to give approval to initiate drafting the language into regulation for the provisions in SB 1111 (that fall under the Board's jurisdiction) for the Board's review and consideration. Staff is also requesting approval to initiate drafting language, to be included as appropriate, in the Board's disciplinary guidelines and regulations which will include provisions from SB 1441 (Chapter 548, Ridley-Thomas) pertaining to healing arts practitioners and substance abuse. The goal is to bring a draft of the language to the July 28, 2010 Board meeting.

Dr. Goldstein opened the floor to questions or comments and there were none.

Monica Johnson moved to direct staff to initiate the rulemaking process. Fred Naranjo seconded. The Board voted unanimous (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		

5. Public Comment for Items Not on the Agenda

Gil De Luna, representative for DCA Director, Brian Stiger thanked the Board for going forward with the regulations for SB 1111 and SB 1441.

Mr. De Luna requested that the Board members remember to file their Form 700, Statement of Economic Interests. He also suggested that the Board consider holding meetings via webcasting.

6. Adjournment

Monica Johnson moved to adjourn the meeting. Fred Naranjo seconded. The Board voted unanimous (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Mr. Naranjo	X		
Ms. Johnson	X		
Mr. Rendon	X		
Ms. Semmes	X		

The meeting was adjourned at 11:35 a.m.



Meeting Minutes
Friday, September 24, 2010

DRAFT

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

And

Via telephone at the following locations:

- 9033 Wilshire Blvd., Suite 402 Beverly Hills, CA 90211
- 325 Copa De Oro Drive, Brea, CA 92823
- 329 Bryant Street, Suite C, San Francisco, CA 90211

Pomona

Members Present

Lee Goldstein, OD, MPA, Board President
Monica Johnson, Secretary, Public Member
Susy Yu, OD, MBA, FAAO
Edward Rendon, MPA, Public Member

Members Absent

Katrina Semmes, Public Member

Staff Present

Mona Maggio, Executive Officer
Michael Santiago, Legal Counsel
Margie McGavin, Enforcement Manager
Jessica Sieferman, Probation Monitor
Andrea Leiva, Policy Analyst

Beverly Hills, Brea, and San Francisco

Members Present in Beverly Hills

Ken Lawenda, OD

Members Present in Brea

Alejandro Arredondo, OD, Vice President

Members Present in San Francisco

Fred Naranjo, MBA, Public Member

Guest List

On File

Friday September 24, 2010

9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 9:25 a.m.
Dr. Goldstein called roll and a quorum was established. Katrina Semmes was unable to participate due to a work commitment. In the interest of completing a full agenda,

Dr. Goldstein deferred the introductions of Board members, staff, and members of the audience until time of comment.

2. Discussion and Adoption of Amendments to Title 16, of the California Code of Regulations (CCR), Section 1520, Infection Control.

Policy Analyst, Andrea Leiva provided an overview of CCR Section 1520, Infection Control Guidelines.

Ms. Leiva explained that the proposal amends the current language in CCR 1520, Hand Washing Facility, to Infection Control Guidelines, in order to establish infection prevention practices for proper hand hygiene, appropriate use of personal protective equipment, handling of sharp instruments, and appropriate cleaning of patient care equipment, instruments, devices, and environmental care.

Ms. Leiva reported that the final rulemaking package was submitted to the Office of Administrative Law (OAL) on August 3, 2010. On September 3, 2010, the package was withdrawn from OAL after it was brought to staff's attention that there were a few discrepancies found during final review. The issues have been addressed as follows:

1. The proposed language was amended to reflect OAL's recommended CCR hierarchy for regulations subsections.
2. The proposed language was amended for consistency when referring to optometrists and staff.
3. The grammar in the proposed language was amended for consistency and clarity throughout.
4. The proposed language was amended to replace the occurrences of the word "should" with "shall", "must", or "may" in order to reduce ambiguity.

Ms. Leiva invited questions and/or comments from Board members.

Board members and staff discussed the striking of "Face shields" in subsection (2) (G) of the modified text as recommended by OAL. Board members agreed to delete "face shields" from the text.

Dr. Goldstein opened for further discussion.

Monica Johnson questioned the meaning of the word "assistants" in section 1520(a).

Ms. Leiva clarified that "assistants" is defined in the law book as persons who assist an optometrist. The word "staff" refers to administrative staff.

Dr. Kliger referred to subsection (2) (F) noting that the donning of gowns and eyewear, by optometrists and staff, don't protect patients from pathogens transmitted via airborne means. He suggested the Board may not want to regulate something which isn't necessary.

On behalf of all staff, Ms. Leiva requested that the Board review, make any edits necessary, and approve the proposed revisions to the language in order to distribute the modified text and begin the 15-day comment period. Additionally, Ms. Leiva requested that the Board members make a motion to delegate to the Executive Officer the authority to

adopt the modified text at the expiration of the 15-day comment period, provided the Board does not receive any adverse comments directed at the modified text.

Trina Rich, Infection Control Specialist, members of the public, Board members, and staff discussed the use of the word "gloves" in the modified text of subsection (2).

- Should the word "gloves" be added to subsection (2) (F)?
- Or is the use of the word "gloves" in (2) (A) sufficient and broad enough?
- What is the process for making a revision?

Ms. Rich recommended language to further amend Subsection (1) "Proper Hand Hygiene" and Subsection (2) "Use of Personal Protective Equipment".

Dr. Kenneth Lawenda moved to approve the modified text as amended. Dr. Alejandro Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Mr. Rendon	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

3. Discussion and Adoption of Amendments to Title 16, of the CCR Section 1571, Glaucoma Certification.

Michael Santiago provided an update pertaining to this rulemaking file. He reported that the Board has received comments from OAL that OAL cannot approve the rulemaking file with the language as currently proposed due to three areas where additional clarifying language is needed in the case management requirements.

Mr. Santiago explained the Board's options for the next course of action:

- 1) The Board withdraws the file by October 7, 2010 to address OAL's concerns and resubmits the package, with all changes, by November 5, 2010.
- 2) OAL disapproves the regulation package before November 6, 2010. Upon receiving OAL's formal letter of disapproval, the Board has 120 days to address their concerns and resubmit the regulation package. If substantive changes are made after OAL's disapproval, the Board will have to go out for a "Notice" and hold another hearing after a 45-day comment period.

Board members discussed the two options. Dr. Goldstein recommended withdrawing the package. Kimberly Kirchmeyer, Deputy Director, Department of Consumer Affairs, (DCA) Board/Bureau Support stated that DCA also recommends that the Board withdraw the rulemaking package, make the recommended changes and resubmit by November 5, 2010 to the OAL.

Executive Officer, Mona Maggio requested the Board members commit to holding a meeting on October 4, 2010 to approve the modified text and go out for the 15-day comment period. Regarding the scheduled Board meeting on October 21-22, 2010, Ms. Maggio requested canceling the 21st but holding the meeting on the 22nd to allow the Board time to review comments received from the 15-day comment period, provide feedback, and make any needed modifications before resubmitting to OAL.

Edward Rendon temporarily excused himself from the meeting. There were six Board members present for a quorum.

Dr. Kenneth Lawenda moved to withdraw the rulemaking package. Dr. Susy Yu seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

4. Public Comment for Items Not on the Agenda

Board members discussed their availability for October 4 and committed to holding the meeting via teleconference.

5. Adjournment

Monica Johnson made a motion to adjourn. Dr. Kenneth Lawenda seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

The meeting was adjourned at 10:06 a.m.



Meeting Minutes
Friday, October 4, 2010

DRAFT

Southern California College of Optometry
2575 Yorba Linda Boulevard, TVCI Room
Fullerton, CA 92831

And
Via Telephone at

The Department of Consumer Affairs
1625 North Market Boulevard
Sacramento Room S-306, 3rd Floor
Sacramento, Ca 95834

Fullerton

Members Present

Lee Goldstein, OD, MPA, Board President
Alejandro Arredondo, OD, Vice President
Monica Johnson, Secretary, Public Member
Susy Yu, OD, MBA, FAAO
Ken Lawenda, OD

Members Absent

Katrina Semmes, Public Member
Ed Rendon, Public Member

Staff Present

Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Michael Santiago, Legal Counsel

Sacramento

Members Present

Fred Naranjo, MBA, Public Member

Staff Present

Margie McGavin, Enforcement Manager

Guest List

On File

Friday October 4, 2010
9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 9:07 a.m.
Dr. Goldstein called roll and a quorum was established. Board members, staff, and members of the audience in Sacramento and Fullerton were invited to introduce themselves.

2. Discussion and Adoption of Modified Text of Title 16, of the California Code of Regulations (CCR), Section 1571, Requirements for Glaucoma

Legal Counsel, Michael Santiago and Policy Analyst, Andrea Leiva provided the background and current status of the rulemaking package, the action requested of the Board at today's meeting, the

next steps and timeline that staff must meet in order to meet the requirements of the Office of Administrative Law (OAL).

Senate Bill (SB) 1406 (Chapter 352, Statutes of 2008, Correa), became effective on January 1, 2009 and expanded the scope of practice of optometrists in California to include, among other things, the treatment of glaucoma. Business and Professions Code (BPC) section 3041.10 established procedures to be followed by the Board in order to make certain that the public would be adequately protected during the transition to full certification for all California licensed optometrists interested in treating and managing glaucoma patients. The timeline of the Board's progress thus far:

- *August 24, 2009* – Board approves the language and initiates a rulemaking.
- *November 6, 2009* – The Notice is published and the 45-day comment period begins.
- *December 21, 2009* – 45-day comment period ends.
- *December 22, 2010* – Regulatory hearing is held, no comments received.
- *March 16, 2010* – Board makes final approval of the modified language after acknowledging all comments received.
- *March 24 – April 8, 2010* - 15-day comment period on modified text.
- *May 11, 2010* – Board makes final approval of the language after acknowledging all comments received and direct staff to complete the rulemaking file.
- *May 17 – August 23, 2010* – Package is approved by the Department of Consumer Affairs, Consumer Services Agency, and the Department of Finance.
- *August 25, 2010* – Staff submits the package for final review to the OAL.
- *September 24, 2010* – The Board votes to withdraw the regulation from the Office of Administrative Law after reviewing the Office's concerns with the regulation.
- *September 27, 2010* – The Board withdraws the regulation.

Ms. Leiva shared the concerns received by OAL pertaining to "clarity" in proposed language regarding the number of patients that must be treated during the case management program, the definition of "treat", and the use of the phrase "one consecutive year" versus "twelve consecutive months." Additionally, the CCR Hierarchy was edited to match OAL's preference.

The Board reviewed the modified text as edited by staff. The Board made minor edits for further clarity. The Board also read and made minor edits to the addendum of the Final Statement of Reasons.

Mr. Joe Lang in Sacramento representing the California Academy of Eye Physicians and Surgeons requested that the Board provide him with the email from OAL outlining their concerns for his review. Ms. Leiva indicated that she would provide him with that information.

Additionally, OAL referenced one comment by the Academy of Eye Physicians and Surgeons (CAEPS) in their December 21, 2009 letter, on page 4 that was not responded to after the 45-day comment period. Ms. Leiva informed the Board that this comment will be addressed at the October 22, 2010 meeting, along with any other comments received during the upcoming 15-day comment period.

Ms. Leiva then identified the next steps to be as follows:

- 1) The Modified Text will be posted for a 15-day comment period.
- 2) Comments received will be reviewed and addressed at the Board's October 22, 2010 Board meeting.
- 3) The rulemaking file will be resubmitted to the Department of Consumer Affairs, and then to OAL for final review.

Dr. Kenneth Lawenda moved to approve the proposed revisions to the modified text in order to begin the 15-day comment period. Monica Johnson seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

Dr. Kenneth Lawenda moved to approve the addendum to the Final Statement of Reasons as modified. Dr. Susy Yu seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

3. Public comment for Items Not on the Agenda.

There were no comments received.

4. Adjournment

Dr. Kenneth Lawenda moved to approve to adjourn the meeting. Monica Johnson seconded. The Board voted unanimously (6-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Naranjo	X		

The meeting adjourned at 10:23 a.m.



Memo

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

To: Board Members

Date: October 22, 2010

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

Telephone: (916) 575-7170

Subject: Agenda Item 6 – 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: Board Members

Date: October 22, 2010

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

Telephone: (916) 575-7170

Subject: Agenda Item 7 – Adjournment
