



CALIFORNIA STATE BOARD OF
OPTOMETRY

Board Meeting

Monday, April 11, 2011

Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699





Governor Edmund G. Brown Jr.
State of California

Brian Stiger, Senior Chief
Deputy Director
Department of Consumer Affairs



Lee Goldstein, OD, MPA
President

Alejandro Arredondo, OD
Vice President

Monica Johnson
Secretary

Donna Burke
Member

Kenneth Lawenda, OD
Member

Fred Naranjo, MBA
Member

Edward J. Rendon, MA
Member

Alexander Kim, MBA
Member

Susy Yu, OD, MBA, FFAO
Member

Board Staff

Mona Maggio
Executive Officer

Administration

Andrea Leiva
Elizabeth Bradley
Krista Eklund

Licensing

Jeff Robinson
Nancy Day
Elvia Melendrez

Enforcement

Margie McGavin
Lydia Bracco
Dillon Christensen
Cheree Kimball
Brianna Miller
Jessica Siefertman

California State Board of Optometry
2420 Del Paso Road, Suite 255, Sacramento, CA 95834

Board Meeting Notice
Monday, April 11, 2011
Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699
(714) 870-7226

10:00 a.m.

FULL BOARD OPEN SESSION

1. **Call to Order** - Establishment of a Quorum
2. **President's Report**
 - A. Welcome and Introductions
3. **Approval of Board Meeting Minutes**
 - A. October 22, 2010 Meeting
 - B. January 11, 2011 Meeting
4. **Director's Report**

Representative from the Department of Consumer Affairs (DCA)
5. **Executive Officer's Report**
 - A. Budget Update
 - B. Board Operations
6. **Review and Possible Approval of the Records Retention Schedule**
7. **Review and Possible Approval of the Disciplinary Guidelines**
 - A. SB 1441 Uniform Standards
 - B. Revised Disciplinary Guidelines
8. **Review and Possible Approval of the Case Management Requirement for Glaucoma Certification**
 - A. Case Management Course
 - B. Grand Rounds Program
9. **Examination/Licensing Program Report**
 - A. California Law and Regulations Examination (CLRE)
 - B. CAS to ATS Conversion
 - C. Program Statistics and Performance Measures
10. **Enforcement Program Report**
 - A. Unlicensed Activity/Outreach to California District Attorneys
 - B. CLEAR Training
 - C. Fingerprint Program
 - D. Probation Program
 - E. Statistics/Performance Measures

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.

11. Review of Rulemaking Calendar

- A. Status of Title 16, CCR §1518, Fictitious or Group Names, §1523, Licensure Examination Requirements, §1531, Licensure Examination, §1532, Re-Examination, §1533, Re-Scoring of Examination Papers, §1536, Continuing Optometric Education, and §1561, Topical Pharmaceutical Agents Usage – Purpose and Requirements
- B. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR §1525.1, Fingerprint Requirements
- C. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR §1513, Registered Name Only
- D. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR §1514, Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern
- E. Discussion and Action to Approve Draft Language and Commence a Section 100 Rulemaking for CCR §1519, Ophthalmic Device Standards
- F. Discussion and Action to Approve Draft Language and Commence a Rulemaking to Add and Amend Regulations Pertaining to Senate Bill 1111 and Senate Bill 1441 to Division 15, Title 16 of the CCR

12. Legislative Update

- A. AB 761 (Roger Hernández) Optometrists as CLIA Lab Directors
- B. SB 709 (Kevin de León) Children's Vision
- C. SB 690 (Ed Hernandez) Provider Anti-Discrimination
- D. AB 675 (Curt Hagman) Continuing Education Promoting Labor Organizing, Politics Not Accepted for Licensure Renewal Requirements
- E. Potential Spot Bill from Ophthalmological/Medical Associations Pertaining to Optometry Scope of Practice and Glaucoma Certification
- F. Urgency Bill for Expert Consultants by the Senate Business, Professions & Economic Development Committee

13. Review and Update Pertaining to the Strategic Plan

14. Public Comment for Items Not on the Agenda

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

15. Suggestions for Future Agenda Items

FULL BOARD CLOSED SESSION

16. Pursuant to Government Code Section 11126(e)(1) the Board Will Confer With Legal Counsel to Discuss Pending Litigation: *California Academy of Eye Physicians & Surgeons, and California Medical Association v. State Board of Optometry, Case Number CGC-11-507241, San Francisco Superior Court*

17. Pursuant to Government Code Section 11126 (c)(3), to Deliberate on Disciplinary Decisions

- A. Stipulated Settlement and Disciplinary Order, Huyen Nguyen, O.D., License Number OPT 10148
- B. Default Decision, Brett Cornelison, O.D., License Number OPT 9861
- C. Stipulated Settlement and Disciplinary Order, Brent Lee Gibson, O.D., License Number OPT 10198

18. Discussion Regarding Executive Officer Pay Scale

FULL BOARD OPEN SESSION

19. Adjournment

Public comments will be taken on agenda items at the time the specific item is raised. *Time limitations will be determined by the Chairperson.* 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.

NOTICE: 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.

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

To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

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

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

Alejandro Arredondo, O.D., Vice-President

Monica Johnson, Secretary

Donna Burke

Alexander Kim, M.B.A.

Kenneth Lawenda, O.D.

Fred Naranjo, M.B.A.

Edward J. Rendon, M.A.

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

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To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 2– President’s Report**

- A. Welcome and Introductions
- B. DCA Director and Board President Conference Calls
- C. California Optometric Association (COA)
Legislative Day, March 23, 2011
- D. Other

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To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 3 – Approval of Board Meeting Minutes**

Board Members are asked to review and approve the draft minutes from the following meetings:

- A. October 22, 2010 Board Meeting
- B. January 11, 2011 Board Meeting

Minutes to be provided at the Board meeting.

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To: Board Members

Date: April 11, 2011

From: Brian Stiger, Senior Chief
Deputy Director
Department of Consumer Affairs

Telephone: (916) 575-7170

Subject: Agenda Item 4– Director’s Report

The Director’s Report will be presented by a representative from the Department of Consumer Affairs.

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www.optometry.ca.gov

To: Board Members

Date: April 11, 2011

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7176

Subject: Agenda Item 5 – Executive Officer’s Report

2011 Board Meeting Dates:

June 21, 2011	Junipero Serra State Building	Los Angeles, CA.
August 5, 2011	Department of Consumer Affairs	Sacramento, CA
November 4, 2011	Northern CA.	TBD

Board Members

The Board consists of 11 members, five of whom shall be public members. (BPC section 3010.5)

Name	Appointment Authority	Date(s) of Appointment		Expiration of Term
		Initial	Reappointment	
Dr. Lee Goldstein, OD	Professional - Governor	04/2003	11/01/2007	06/01/2011
Dr. Susy Yu, OD	Professional - Governor	04/2003	05/24/2007	06/01/2010
Monica Johnson	Public - Governor	12/2005	05/25/2010	06/01/2013
Dr. Alejandro Arredondo, OD	Professional - Governor	11/01/2007		06/01/2011
Dr. Kenneth Lawenda, OD	Professional - Governor	11/2007	12/22/2010	06/01/2014
Fred Naranjo, MBA	Public - Governor	04/2003	11/01/2007	06/01/2011
Donna Burke	Public - Senate Rules	10/07/2010		06/01/2011
Edward Rendon, MA	Public - Assembly	01/06/2009		06/01/2011
Alexander C. Kim	Public - Governor	12/27/2010		06/01/2014
Vacant (06/01/2009)	Professional - Governor			
Vacant (06/01/2009)	Professional - Governor			

Budget

2010/2011 Fiscal Year

The Board’s budget authority for the 2010/2011 fiscal year is \$1,651,385. Our expenditure projections indicate that at the end of the 2010/2011 fiscal year, the Board anticipates an unexpended reserve in the amount of \$179,654. The expenditure projections for the remainder of the fiscal year indicate we will not exceed our current budget authority.

Fund Condition

The board's current fund condition reflects an eight (8) month reserve balance.

Revenue

As of December 31, 2010, the Board has received \$1,000,421. A comparison of the revenue for previous budget years reveals a consistency in the Board's revenue.

Fiscal year 2011/2012

The Board's 2011/2012 Budget is \$1,577,000

The current administration faces the daunting challenge of addressing a \$25 billion dollar General Fund budget deficit. Since assuming office, governor Brown's actions to date are focused on resolving the structural imbalance in a manner that is balanced and sustainable. The Board anticipates future direction to review operational costs to identify potential areas for savings. Executive Order B-1-11, which orders the reduction of the number of state issued cell phones, and Executive Order B-2-11, which orders the reduction of state vehicles, are recent examples of the kinds of strategies being used to accomplish the state's savings goals.

On February 9, 2011, Governor Brown issued a press release (attached) which stopped the proposal to sell 11 state owned properties in an effort to generate revenue for the general fund. Instead, Governor Brown proposed to amend his budget proposals to include borrowing \$830 million from special fund reserves.

The Board of Optometry's loan amount is one million dollars.

The Governor's plan includes protections to ensure that these programs are not impacted:

- Loans will come from reserves—not program budgets.
- All loans will be paid back by FY 2013-14.
- If programs need additional funding before then, the Department of Finance (DOF) will transfer money back.

These loans will be scheduled in FY 11-12 to the General Fund. DOF did indicate the same standard language will be tied to these loans as taken in the past that basically stated the money will be paid back with interest, will not adversely impact your program through a reduction of services and will be returned prior to any fee increase.

The Board's fund reserve will dwindle to a one month reserve after the loan is taken. The Board and Budget Office will closely monitor the need to have the loan repaid in a more timely manner if necessary.

The Governor's proposed budget does contain positive news for the Board. The budget includes one permanent full-time position (PY) at the staff services manager I classification.

BreEZe

BreEZe, DCA's project to replace existing CAS and ATS databases, is on schedule. DCA anticipates that the contract will be awarded in July 2011. The first phase of implementation of the new database is scheduled for December 2012; the Board of Optometry is scheduled for implementation in Phase Three.

Cheree Kimball and Jessica Sieferman have been serving as subject matter experts (SMEs) on the BreEZe project, lending their expertise in CAS and the business requirements of DCA, as well as representing the Board of Optometry's interests and requirements for the BreEZe project. During the first phase of the project, Ms. Kimball and Ms. Sieferman, as well as other SMEs from throughout DCA, assisted in the creation of Requirement Flow Diagrams (RFDs). These diagrams were created to broadly show how work flows throughout DCA's Enforcement, Licensing and Cashiering Units, while enabling vendors to visualize this work flow and better understand and place each system requirement.

During the second phase, DCA SMEs met with representatives of the two bidding companies and reviewed each of the 978 system requirements. The purpose of these Bidder Working Sessions was to get feedback from the bidders to ensure the system requirements were as clear and concise as possible before going forward.

The BreZE Project Team (Team) just started the third phase of the project. During this phase, the Team will conduct meetings with each Board/ Bureau to ensure the RFDs meet their individual needs. Specifying and refining the RFDs for each Board/ Bureau will assist DCA and the vendor during implementation phases. Ms. Sieferman was asked to assist the Team in a pre-analysis of the RFDs for each Board/Bureau before the team conducted their meetings. This pre-analysis will consist of analyzing business processes and ensuring each section of the RFDs is applicable to individual Board/Bureau process. Ms. Sieferman will be offering her services 1-2 days per week for the next six months.

Andrea Leiva serves on the BreZE Forms Workgroup in order to standardize all forms in preparation for the new system in 2014

Move

Permits have been obtained. It is anticipated that construction will be completed and we will be moved in by early to mid June. Thus far, the project is well under our projected costs. \$125,000 was placed in the architectural revolving fund (ARF) for the costs associated with the construction and move, projected costs are \$80,000. Once complete the additional space affords the Board the room to accommodate all staff positions in one office as well as provide opportunity for future growth.

Personnel

Margie McGavin accepted a position as the Enforcement Program Coordinator with the Bureau of Electronic & Appliance Repair, Home Furnishings and Thermal Insulation. Margie's last day with the Board is April 22, 2011. Staff, members and constituents will greatly miss Margie's contributions to the Board and its Enforcement Program.

Dillon Christensen's limited term office technician position ends August 21, 2011. Staff is working with Personnel and Budgets to determine if the Board would be able to continue to keep Dillon on staff with the hopes that a BCP can be drafted and approved to make this position, permanent.

Sunset Review

The Joint Committee on Boards, Commissions, and Consumer Protection conducts hearings to evaluate all boards and commissions to ensure they effectively, efficiently, and transparently administered in the public interest. This review is commonly referred to as Sunset Review. Several DCA Boards are currently undergoing the review. The Board of Optometry is scheduled for review January 1, 2014. Staff is monitoring the questions and issues the Committee is asking those boards going through the current review process.

Website

The following additions/updates were made to the Board's website since the last Board Meeting:

- New Fingerprint Requirements Effective June 21, 2010 – Updated
- Frequently Asked Questions About Glaucoma Certification
- Winter 2011 Board of Optometry Newsletter
- Infection control Guidelines Regulation Approved
- Application for Glaucoma Certification/Documentation of Co-Management of Glaucoma Patients for Preceptorship Program - Now Available
- 2011 Candidate handbook and Study Guide
- New 2011 Law Examination Workshop Dates
- 2011 Revised Edition of the Laws and Regulations (Practice Act)

Highlights

The icons for Join Our Mailing List; Expert Witness Recruitment and the Customer Satisfaction Survey were redesigned and updated to be more “eye catching” and hopefully enhance the viewers’ interest in “clicking” and participating in Board activities.

Attachments:

Expenditure Projection

Fund Condition

Press Release

**BOARD OF OPTOMETRY - 0763
BUDGET REPORT
FY 2010-11 EXPENDITURE PROJECTION**

February 28, 2011

OBJECT DESCRIPTION	FY 2009-10		FY 2010-11				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET STONE	CURRENT YEAR EXPENDITURES	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	(MONTH 13)	2/28/2010	2010-11	2/28/2011			
PERSONNEL SERVICES							
Salary & Wages (Staff)	250,856	144,355	420,150	248,554	59%	380,644	39,506
Statutory Exempt (EO)	70,412	46,555	81,732	50,399	62%	76,385	5,347
Temp Help Reg (Seasonals)	59,618	53,210	11,807	34,109	289%	55,224	(43,417)
Temp Help (Exam Proctors)							0
Board Member Per Diem	7,200	3,800	7,353	3,000	41%	5,143	2,210
Committee Members (DEC)							0
Overtime							0
Staff Benefits	161,393	113,307	249,904	135,438	54%	197,240	52,664
Salary Savings	0	0	(42,352)	0	0%		(42,352)
TOTALS, PERSONNEL SVC	549,479	361,227	728,594	471,500	65%	714,636	13,958
OPERATING EXPENSE AND EQUIPMENT							
General Expense	16,720	9,040	60,780	9,511	16%	16,720	44,060
Fingerprint Reports	2,983	1,523	5,306	2,830	53%	5,306	0
Minor Equipment	2,706	489	1,000	707	71%	1,000	0
Printing	7,103	3,684	9,318	3,047	33%	5,162	4,156
Communication	5,208	2,425	8,686	2,522	29%	6,000	2,686
Postage	11,060	6,457	12,847	9,147	71%	12,000	847
Insurance			0				0
Travel In State	34,407	18,467	32,455	9,516	29%	9,516	22,939
Travel, Out-of-State	0	0					0
Training	575	575	3,565	890	25%	890	2,675
Facilities Operations	186,563	60,496	58,676	62,131	106%	176,000	(117,324)
Utilities			0				0
C & P Services - Interdept.	15	15	2,943	9,576	325%	9,576	(6,633)
C & P Services - External							0
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	74,234	54,376	82,658	53,310	64%	82,658	0
Admin/Exec	67,106	44,816	99,864	66,576	67%	99,864	0
Interagency Services	0	0	146	0	0%	0	146
IA w/ OER	22,244	22,244		21,864		21,864	(21,864)
DOI-ProRata Internal	2,503	1,800	3,800	2,534	67%	3,800	0
Public Affairs Office	2,901	3,904	7,716	5,144	67%	7,716	0
CCED	3,264	2,176	4,692	3,128	67%	4,692	0
INTERAGENCY SERVICES:							
Consolidated Data Center	668	7,000	31,639	7,000	22%	7,000	24,639
DP Maintenance & Supply	478		1,413	98	7%	200	1,213
Central Admin Svc-ProRata	19,302	14,477	60,194	45,146	75%	60,194	0
EXAM EXPENSES:							
Exam Supplies	0	0	484	0	0%	0	484
Exam Freight							0
Exam Site Rental						257	(257)
C/P Svcs-External Expert Administrative				150			
C/P Svcs-External Expert Examiners	0	0	55,703	0	0%		55,703
C/P Svcs-External Subject Matter	20,691	8,634		4,475		9,000	(9,000)
ENFORCEMENT:							
Attorney General	113,058	66,430	294,055	112,463	38%	175,000	119,055
Office Admin. Hearings	19,126	11,380	46,930	18,595	40%	20,000	26,930
Court Reporters	1,599	574		453		680	(680)
Evidence/Witness Fees	31,003	13,498	35,921	12,529	35%	20,000	15,921
DOI - Investigations	11,143	8,144	0			0	0
Major Equipment	2,198	0	8,000	0	0%	8,000	0
Special Items of Expense							0
Other (Vehicle Operations)	41	41					0
TOTALS, OE&E	658,899	362,665	928,791	463,342	50%	763,095	165,696
TOTAL EXPENSE	1,208,378	723,892	1,657,385	934,842	115%	1,477,731	179,654
Sched. Reimb. - Fingerprints	(2,346)	(1,173)	(6,000)	(3,162)	53%	(6,000)	0
Sched. Reimb. - Other	(5,690)	(3,085)		(2,890)			0
Unsched. Reimb. - Other	(34,077)	(19,976)		(26,485)			0
NET APPROPRIATION	1,166,265	699,658	1,651,385	902,305	55%	1,471,731	179,654
SURPLUS/(DEFICIT):							10.9%

0763 - State Board of Optometry Analysis of Fund Condition

Prepared 2/9/11

(Dollars in Thousands)

Proposed FY 2011-12 GF Loan w/o Repay

	ACTUAL 2009-10	CY 2010-11	Governor's Budget BY 2011-12
BEGINNING BALANCE			
Prior Year Adjustment	\$ 806	\$ 1,220	\$ 1,143
Adjusted Beginning Balance	\$ 9	\$ -	\$ -
	\$ 815	\$ 1,220	\$ 1,143
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 15	\$ 14	\$ 14
125700 Other regulatory licenses and permits	\$ 116	\$ 115	\$ 115
125800 Renewal fees	\$ 1,425	\$ 1,425	\$ 1,425
125900 Delinquent fees	\$ 8	\$ 8	\$ 8
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 1	\$ 1	\$ 1
150300 Income from surplus money investments	\$ 7	\$ 10	\$ 16
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 1,573	\$ 1,574	\$ 1,580
Transfers from Other Funds			
Proposed GF Loan Repayment	\$ -	\$ -	\$ -
Transfers to Other Funds			
Proposed GF Loan	\$ -	\$ -	\$ -1,000
Totals, Revenues and Transfers	\$ 1,573	\$ 1,574	\$ 580
Totals, Resources	\$ 2,388	\$ 2,794	\$ 1,723
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	\$ 1	\$ 2	\$ 2
8880 Financial Information System for CA (State Operations)	\$ -	\$ 1	\$ 7
1110 Program Expenditures (State Operations)	\$ 1,167	\$ 1,651	\$ 1,568
BrEZe funding realignment	\$ -	\$ -3	\$ -
Total Disbursements	\$ 1,168	\$ 1,651	\$ 1,577
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,220	\$ 1,143	\$ 146
Months in Reserve	8.9	8.7	1.1

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2012-13

SACRAMENTO – In a move that will save taxpayers \$6 billion dollars over the next 35 years, Governor Jerry Brown today called off the previous administration's "short-sighted" proposal to sell and leaseback 11 state properties.

"The sale and leaseback proposal was short-sighted and would have cost taxpayers billions of dollars in the long-run," said Brown, "Selling and leasing back the state's buildings for one-time gains is not prudent."

The 2009-10 budget authorized the sale and leaseback of 11 state properties, and the 2010-11 budget assumes \$1.2 billion in revenues from this deal.

To replace the one-time revenue this would have generated, Brown proposes amending his budget proposal to include borrowing \$830 million from special fund reserves.

His plan includes protections to ensure that these programs are not impacted:

- Loans will come from reserves—not program budgets.
- All loans will be paid back by FY 2013-14.
- If programs need additional funding before then, the Department of Finance will transfer money back.

"My proposal will not affect program funding in any way," said Brown.

The Governor's proposal will cost approximately \$18 million in interest on the loans.

It will not be necessary to borrow more than \$830 million to bridge the gap because of additional revenues and cost savings, including \$90 million more from the Medi-Cal managed care tax and \$100 million less in prison infrastructure project costs.

Under the original plan, once the properties were sold the state would pay approximately \$56 million annually to lease them for state use, increasing over time. According to the Legislative Analyst's Office, overall the deal is equivalent to borrowing at a 10.2 percent interest rate—double what the state pays for its general obligation bonds. In total, over 35 years the sale and leaseback plan would cost California \$6 billion more than state ownership.

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To: Board of Optometry members

Date: April 11, 2011

From: Lydia Bracco
Enforcement Analyst

Telephone: (916) 575-7183

Subject: Agenda Item 6 - Review and Possible Approval of the Records Retention Schedule

Records Management is the professional management of information in the physical form of records from the time records are received or created through their processing, distribution, and use to placement in a storage and retrieval system until either eventual elimination or identification for permanent archival retention.

All Board/Bureau/Division/Programs are required to maintain a current records retention schedule. Records retention schedules must be renewed every five years from the date of signature by the Department of General Services. Failure to maintain a current schedule could result in loss of files or not being able to send or retrieve files from the State Records Center. From 2001 to 2006 the Boards retention schedule had been pending. At this time, we are unable to confirm if a schedule is current or not.

The Board manager is responsible for identifying what records they have from their creation, how they are or should be maintained through their life and how they are maintained or destroyed at the end of that life.

Each Board/Bureau/Division/Program is required to designate an employee as the records management coordinator/primary contact pertaining to the records management for their office. The Executive Officer of the Board of Optometry chose Lydia Bracco as their Records Management Coordinator. She is responsible for corresponding with the DCA Records Management Coordinator, maintaining and amending records retention schedules, transfer lists, and State Record Center file requests.

Following the DCA Business Services Guidelines, a Records Retention Schedule was updated and will be maintained throughout the years.

Action:

Staff requests Board members review and approve the records retention schedule.

Attachment:

Records Retention Schedule

Submit three copies to: Department of General Services, California Records and Information Management, 707 Third St. 2nd Fl., W. Sacramento, CA 95605.

A CalRIM Consultant may be reached by phone at (916) 375-4404, by fax at (916) 375-4408 or by email at CalRIM@dgs.ca.gov

(1) DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs		(2) AGENCY BILLING CODE 57190		(3) PAGE 1 OF 7 PAGES		
(4) DIVISION/ BRANCH/ SECTION Board of Optometry		(5) ADDRESS 2420 Del Paso Rd., Suite 255, Sacramento, CA 95834				
CHECK THE APPROPRIATE BOX						
(6) <input type="checkbox"/> New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]						
(7) <input checked="" type="checkbox"/> Revising a previous schedule. [Complete boxes (13) –(16)] (A new approval number will be assigned)						
(8) <input type="checkbox"/> Amending some pages of a previous schedule. [Complete boxes (13) – (16)] (The original approval number will remain in effect.)						
NEW SCHEDULE INFORMATION (If applicable)		(9) SCHEDULE NUMBER BO-5	(10) SCHEDULE DATE 4/11/11	(11) NUMBER OF PAGES 7	(12) CUBIC FEET (Total Schedule) 522	
PREVIOUS SCHEDULE INFORMATION (If applicable)		(13) SCHEDULE NUMBER BO-4	(14) APPROVAL NUMBER 02-028	(15) APPROVAL DATE (S) 2/20/02	(16) PAGE NUMBER(S) REVISED 1, 2, 3, 4, 5, 6, 7, 8, 9	
(17) MISSION/FUNCTIONAL STATEMENT : The mission of the California State Board of Optometry 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.						
PART I – AGENCY STATEMENTS						
As the program manager (or person authorized to sign for the program manager) directly responsible for the records listed on this records retention schedule, I certify that all records listed are necessary and that each retention period is correct. For revisions, all items on the previous schedule are included or accounted for on the recapitulation. Vital records identified by this schedule are protected. If protection is not currently provided but plans are underway, the details of such plans are shown in Column 45, Remarks.						
(18) SIGNATURE - MANAGER RESPONSIBLE FOR THE RECORDS		(19) TITLE		(20) PHONE NUMBER	(21) DATE SIGNED	
In accordance with Government Code 14755, approval of this Records Retention Schedule by the Department of General Services is hereby requested. Retention periods shown have been established in accordance with the criteria set forth by Section 1667 of the State Administrative Manual.						
(22) SIGNATURE- RECORDS MGMT. ANALYST		(23) CLASSIFICATION		(24) NAME (Printed or Typed)	(25) PHONE NUMBER	(26) DATE SIGNED
PART II – DEPARTMENT OF GENERAL SERVICES APPROVAL (Per Government Code Section 14755)						
(27) SIGNATURE –CalRIM CONSULTANT			(28) APPROVAL NUMBER		(29) DATE SIGNED	(30) EXPIRATION DATE
PART III – ARCHIVAL SELECTION (Per Government Code Section 14755)					FOR ARCHIVES' STAMP	
THE ATTACHED RECORDS RETENTION SCHEDULE:						
(31) <input type="checkbox"/> Contains no material subject to further review by the California State Archives						
(32) <input type="checkbox"/> Contains material subject to archival review. Items stamped "NOTIFY ARCHIVES" may not be destroyed without clearance by the California State Archives. (Per Section 1671 of the State Administrative Manual.)						
(33) SIGNATURE – CHIEF OF ARCHIVES OR DESIGNATED REPRESENTATIVE			(34) DATE SIGNED			

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS <i>(Double spaces between items)</i>	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)		(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

(38)											
<u>PROGRAM MANAGEMENT</u>											
1	3		Applicant Examination License File (applications, forms, letters, transcripts, score reports, requests)	PM		C+5			C+5	X,I	PRA; IPA - GC6254 – Law requires these records remain confidential. Current (C) until last time candidate sat for license examination then merge into Licensed Optometrist file. Scores are only applicable for 5 years per B & P Code 3054
2	4		Foreign Optometry School/College Graduate Sponsorship File (letters, diplomas, transcripts, score reports/results, requests)	PM		C			C	X,I	PRA; IPA - GC6254 – Law requires these records remain confidential. Current until foreign graduate applies for California licensure then merge into Licensed Optometrist file
3	6		California Laws & Regulations Examination (CLRE) Materials (booklets, answer keys, reports, results)	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Confidential destruct (CD). Active for historical reference until policy change
4	331		Licensed Optometrist File (applications, certificates, approval documents, Fingerprint forms, corporation licenses, branch office licenses, Nat'l Bd. of Examiners in Optometry score reports)	P	V	A			A	X,I	PRA, IPA - GC6254 – Law requires these records remain confidential. CD Active until licensee is deceased, after Board is notified of death, move to deceased file storage, keep for 5 years then destroy
5	4		Licensed Optometrist File (deceased) (application, license, correspondence)	P		C+5			C+5	X	PRA - GC6254 – Law requires these records remain confidential. CD Current, combine with Licensed Optometrist file, keep for 5 years until destruction
6	15		Fictitious Name Permit File (application, correspondence)	P		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Active until licensee is deceased then combine with Licensed Optometrist file until destruction

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS <i>(Double spaces between items)</i>	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)		(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

(38)

SUMMARY OF CHANGES

This RRS BO-5 revises BO-4 (approval date 2/20/02). The item number (not page number, unless indicated by "Page") changes are as follows:

<u>BO-4</u>	<u>BO-5</u>
#6, #7, #8, #9, #29	
#10	4
#23	6
#24	7
#26	8
#27	9
#28	10
#30	11
#31	12
#15	13
#16	14
#12	15
#13	16
#14	17
#7	18
#18, #19	19
#20	20
#21	21
#22	22
Page 9 #1	23
Page 9 #2	24
#32 removed – library/reference material	25
#11	
25 missing	4 & *

- indicates items consolidated/moved
*- indicates item discontinued

* Provide total of office and departmental

INSTRUCTIONS FOR FILLING OUT MS Word ELECTRONIC FORM

The California Records and Information Management (CalRIM) Program of the Department of General Services will review schedules for compliance with their Records Retention Handbook, Records Retention Schedule Guidelines and the records retention section of the California Acquisition Manual. The Chief of State Archives in the Office of the Secretary of State will review schedules for records series worthy of preservation for historical or research purposes. Titles, and descriptions of records listed on the schedule must be sufficiently detailed to insure understanding by persons unfamiliar with the business process of the department. For additional information concerning the scheduling of records refer to the aforementioned publications available on the DGS website (www.dgs.ca.gov).

* The attached form is formatted as a table; therefore, to add line items after page two, add additional rows to make formatting easier and consistent.

1. Department that the schedule belongs to.
2. Enter the appropriate billing code of the department.
3. Enter page numbers and total pages (e.g. 1 of 3, 2 of 3)
4. Division/ branch/ section within the department.
5. Address of the division/ branch/ section.
6. Double Click on the box if submitting a new schedule.
7. Double Click on the box if submitting a revision to previous schedule.
8. Double Click on the box if amending pages of a previous schedule.
9. Each department should establish its own system of numbering schedules. Enter the assigned number on each page.
10. Enter the date schedule was prepared.
11. Enter total number of pages of the schedule.
12. Enter the total number of cubic feet for all items scheduled (round off to nearest cubic foot).
13. If applicable, enter the schedule number from the previous schedule.
14. If applicable, enter the approval number assigned to the previous schedule.
15. If applicable, enter the CalRIM approval date shown in block 28 of the previous schedule on STD 73 Rev.6-02. (Block 22 if referring to STD 72 Rev. 2-96 on the previous schedule.
16. If applicable, enter the total number of pages included on the previous schedule.
17. Enter the mission/functional statement for the entity responsible for the records described on the schedule.
18. Signature of manager responsible for the records.
19. Manager's title.
20. Manager's phone number.
21. Date schedule signed by the manager.
22. Signature of the department's records management analyst (RMA).
23. Enter the official state classification of the department's RMA, i.e., Records Management Analyst I, Business Services Officer I, etc.
24. Name of the RMA.
25. RMA's phone number.
26. Date schedule is signed by the RMA.
27. Signature of CalRIM consultant.
28. Approval number assigned by CalRIM consultant.
29. Date schedule signed by CalRIM consultant.
30. This date is computed by adding five years to the date shown in Block 29.
31. This block is checked by the California State Archives if the schedule does not contain archive or long term reference records.
32. This block is checked by the California State Archives if the schedule contains material subject to archival review.
33. Signature of Chief of Archives or designated representative.
34. Date schedule is signed by Archives.
35. Enter the CalRIM Approval number shown in block 28.
36. Page numbers will automatically be entered in this field starting at page 2
- Item numbers must be sequentially assigned beginning with number 1 on the second page of the schedule.
37. Enter cubic feet of records (office and departmental) contained in each item (round off to nearest cubic foot). Leave blank when scheduling electronic/magnetic records.
38. This column is used by the Chief of Archives to designate records which may be of historical value. If the notation "Notify Archives" appears in this column, the

Secretary of State's Archive Unit must be notified before the records can be destroyed or transferred (SAM Section 1673.1).

39. Exact title of the records series must be entered in this column. The same title must also be used on the Records Transfer List, STD 71, if the records are later transferred to the State Records Center. **Do not delete** records for a discontinued program until all such records (including any stored at the Records Center) have been destroyed or ownership transferred to another entity. Acronyms must be spelled out in full the first time they are shown on the schedule.
40. Enter the appropriate storage media code for the series of records described; P-- paper (except for computer printouts); C -- computer printouts; M--magnetic or electronic (computer hard drives, computer tapes or disks, or word processing discs); D – diazo microfilm or microfiche (working copies); S – Silver halide microfilm; RM – Removable Media consisting of ZIP, JAZ , etc.; CD – Compact Disk, etc.; OD – Optical Disk; RAID (redundant array of independent disks).
41. Enter an "X" if the series of records is considered vital (essential) to department operations. Vital records require special protection from loss through the use of vault storage, microfilm, CD, magnetic tape or similar storage media. Enter the method of protection used in Column 48 (Remarks).
42. Enter the length of time the records series will be retained in the office. For records such as active license files or active tax accounts, enter the word "Active" in this column. Then enter the length of time (if any) the records will be held in office space when they are no longer active. In these cases Column 48 must state the event which terminates the active life of the records. Intermediate terms (such as, "indefinite" or "continuous") must be avoided unless specifically stipulated by law or government code.
43. Records removed from office space and retained in less expensive spaces (such as a basement or other storage area) are considered to be department stored.
44. Records should be stored in the State Records Center when they meet the eligibility test of Section 1681 of the State Administrative Manual. The number of years records will remain in the Records Center must be entered in this column.
45. Enter the total number of years from Columns 43, 44, and 45. Include the active periods, if any.
46. PRA (Exempt) and IPA
 - a. Enter an "X" if the record is exempt from disclosure under the provisions of the Public Records Act. (Records so identified must show the authority for such exemption in Column 48.)
 - b. When the record is exempt from disclosure, but the data subject is allowed access under the provisions of the Information Practices Act, enter an "I".
47. Enter information which will explain or clarify treatment of the records, such as: citations from the Public Records Act (Government Code Section 6250 et seq.), Information Practices Act (Civil Code Section 1798 et seq.) or other State or federal statutes, the State Administrative Manual (SAM), California Acquisition Manual (CAM), State or Federal audit guidelines, Attorney General's instructions, or agency policy statements, etc. Other helpful information includes, but is not limited to:
 - a. Events that trigger purging, updating or transferring records or that terminate active status.
 - b. Cross references to previous retention schedules under which material is stored at a records center, such as "See superseded Schedule 58, Item 166, Approval 88-200."
 - c. Type of destruction required when the records have reached the end of their retention period (such as, confidential witnessed destruction).
 - d. Authority that stipulates the retention period of a record series.
 - e. Authority that exempts disclosure of information to the public.

Prepare three copies of the schedule and forward all to the California Records and Information Management Program (CalRIM), 707 3rd Street, 2nd Floor, West Sacramento, California 95605, interagency mailing address is Z-1.

This form is provided in MS Word for your convenience. If the required fields or format are altered in any way, CalRIM will not accept the form.

2420 Del Paso Road, Suite 255
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To: Board Members

Date: April 11, 2011

From: Jessica Sieferman

Telephone: (916) 575-7170

Subject: Agenda Item 7 – Review and Possible Approval of Disciplinary Guidelines

A. SB 1441 Uniform Standards

SB 1441 (Chapter 548, Statutes of 2008) was authored by Senator Ridley-Thomas, Chair of the Senate Business, Professions and Economic Development Committee. SB 1441 created the Substance Abuse Coordination Committee (SACC) subject to Bagley-Keene Open Meeting Act and required the committee, by January 1, 2010, to formulate uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Attachment #1 specifies the first 12 out of the 16 uniform standards that will be incorporated in the Board's Disciplinary Guidelines. Uniform Standards 13, 14, and 15 only apply to Boards with Diversion programs and will not be incorporated in our guidelines. In addition, Uniform Standard 16 is each Board's reporting criteria to DCA and not pertinent to the Disciplinary Guidelines.

Due to continued opposition from various Boards and Bureaus throughout DCA, Uniform Standard #4 Subcommittee provided rationale for amending the standard (Attachment #2) and met on March 9, 2011 to discuss the proposed amendments. These amendments were approved by the Subcommittee (Attachment #3) and will now be subject to adoption by the Substance Abuse Coordination Committee.

B. Revised Disciplinary Guidelines

The Board's Disciplinary Guidelines have been revised to incorporate SB 1441 Uniform Standards, promote consistency, and provide further clarification of conditions (Attachment #4). In addition, specific conditions were added to better protect the health, safety, and welfare of the public.

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

1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled “Disciplinary Guidelines and Model Disciplinary Orders”~~ comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”(DG-3 4, ~~5-99~~ 7-2010) which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Sections 315, 480, 729, 3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, ~~11400.24~~ and 11425.50(e), Government Code.

Uniform Standards for Those Licensees Whose License Is On Probation Due to a Substance Abuse Problem

Pursuant to Senate Bill 1441, the following standards shall be adhered to in all cases in which a licensee’s license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

#1. CLINICAL DIAGNOSTIC EVALUATION

If a clinical diagnostic evaluation is ordered, the following applies:

The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

- holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
- has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
- is approved by the board.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The clinical diagnostic evaluation report shall:

- set forth, in the evaluator’s opinion, whether the licensee has a substance abuse problem;
- set forth, in the evaluator’s opinion, whether the licensee is a threat to himself/herself or others; and,
- set forth, in the evaluator’s opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee’s rehabilitation and safe practice.

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

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

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

#2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION

The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by board staff.

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

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

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

#3. BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER

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

#4. DRUG TESTING STANDARDS

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segment of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II*</u>	<u>Year 2+</u>	<u>36-104 per year</u>

*The minimum range of 36-104 tests identified in level II is for the second year of probation and each year thereafter.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, a licensee shall notify and secure the approval of the licensee's board. Prior to returning to any healthcare employment, the licensee shall be subject to

level I testing frequency for at least 60 days. At such time the person returns to employment, if the licensee has not previously met the standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

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

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

#5. PARTICIPATION IN GROUP SUPPORT MEETINGS

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

#6. DETERMINING WHEN TREATMENT IS NECESSARY

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

- license type;

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

#7. WORKSITE MONITOR REQUIREMENTS

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

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

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

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

2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

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

8. Procedure for Positive Tests

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work;
and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

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

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

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

9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES

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

1. Failure to complete a Board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;

4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the "biological fluid testing" term and condition;
6. Testing positive for a banned substance;
7. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.
8. Failure to adhere to any suspension or restriction in practice.

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

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

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

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

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

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

11. PETITION FOR RETURN TO PRACTICE

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

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

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

12. PETITION FOR REINSTATEMENT

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

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

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

Uniform Standard #4 Subcommittee DRUG TESTING PROPOSED AMENDMENTS - RATIONALE

Uniform Standard #4, adopted by the Uniform Standards Committee in 2009, provides that any person subject to testing shall be tested a minimum of 104 times (an average of 2x/week) the first year and no less than 50 times, every year thereafter. The Uniform Standard #4 Subcommittee was established to revisit this standard to determine if it was the most pragmatic approach, given additional considerations, and provide a recommendation to the full Uniform Standards Committee for consideration.

According to the analysis of SB 1441, the drive to establish standards was to maintain public confidence in different healthcare licensing boards' *"diversion programs."* The author stated the bill was necessary to "ensure that public safety remains the paramount mission of healing arts licensing boards when dealing with licentiates who are suffering from drug or alcohol *abuse or dependency* problems." "The impetus for this bill [was] the repeated failures of the MBC's Physician Diversion Program (PDP), and the immediate and grave risks to the public posed by physicians who continue to practice medicine despite their chemical dependency." Some additional noted factors were: failure to respond to potential relapses timely; failure to require a physician to immediately stop practicing medicine, after testing positive; 26% of tests were not done as randomly scheduled, and failure to have a method to formally evaluate its collectors, group facilitators and diversion evaluation committee members to determine whether they are meeting program standards. In addition, the author pointed out that "no audit or review has been conducted on the other health care licensing boards that maintain and operate their own *diversion programs* for licensees that suffer from chemical *dependency* or on the singular program (e.g. Maximus) which administers the diversion programs... ."

One of the most difficult hurdles in establishing Uniform Standards for all health boards, is the fact that there are numerous boards/bureaus, each with their own methodology and approach to discipline and for a handful of boards/bureaus, this includes rehabilitation or diversion programs.

Health care boards with diversion programs find their programs successful in providing immediate intervention for licensees whose substance abuse has not risen to the threshold of actual harm to the public. The diversion programs provide immediate removal from the practice, while the licensee focuses on recovery. Diversion provides a mechanism for immediate evaluation, treatment, monitoring, support, and recovery of the licensee.

For some boards, revocation or surrender of the license is the only option for high risk cases (under the influence while at work, numerous alcohol/drug convictions or acts). These boards establish their role solely as a Consumer Protection agency and do not find that it is their role, nor are they the best qualified, to provide rehabilitative efforts. Some may also believe that a licensee's commitment to recovery and maintaining sobriety will be stronger, if that licensee seeks rehabilitation and establishes a support base on his/her own accord. Following the revocation/surrender of a license, most licensees may return to the board requesting reinstatement after a period of one year. At that time, he/she may provide evidence and

testimony of rehabilitative efforts. Generally, if reinstatement of the license is granted, the licensee will be tested for a set period of time. With that being said, it is possible that an underlying substance abuse problem may exist even for a person who may only have two convictions or acts, that result in probation.

While there is no shortage of compassion for the licensee in regard to his/her struggles with alcohol or drug abuse or addiction and the financial liabilities of testing, boards/bureaus understand that their role, first and foremost, is to ensure patient safety. Alcohol and drug violations or violations where alcohol/drugs were a contributing factor, may be indicative of a more serious substance abuse problem. The only alternative in these high risk cases is revocation or surrender of the license.

The proposed amendments to Uniform Standard #4, were developed based on:

- * An article published in the Journal of Addictive Diseases in 2003, titled "Simulation of Drug Use and Urine Screening Patterns,"¹
- * The Diagnostic and Statistical Manual of Mental Disorders,² with consideration given to risk factors associated with health care workers, and
- * The testing frequency of physicians in 35 other states who reported this data to the Federation of State Physician Health Programs, Inc. (attached).

The article published in the Journal of Addictive Diseases in 2003, titled "Simulation of Drug Use and Urine Screening Patterns" is referenced in numerous documents including the "Physician Health Program Guidelines," developed by the Federation of State Physician Health Programs, Inc., and published in 2005. The abstract for this article provides:

"Urine drug screens are used extensively in substance abuse treatment, especially methadone maintenance treatment programs, as well as criminal-justice and clinical research settings. While positive urinalysis generally indicates drug use, no information is provided about the context or pattern of use. A computer generated model was created to examine the influence of drug use patterns and drug screen schedules upon urine test results. The results indicate that (1) when urine testing is performed at a rate of eight times per year, the probability of testing positive in a given month is little better than 50-50 even for daily use, (2) infrequent drug use is difficult to detect regardless of drug testing frequency, and (3) the benefits of more frequent drug testing are greatest with moderate drug use. The data presented provides a guide for clinicians to match drug screen schedules to frequency or pattern of suspected drug use."

¹ Crosby, Ross D. , Carlson, Gregory A. and Specker, Sheila M. (2003) 'Simulation of Drug Use and Urine Screening Patterns', Journal of Addictive Diseases, 22: 3, 89 — 98

²American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000.

As published in this article, through a computer-generated model, the *mean average days to a positive urine test* considering the frequency of drug use vs. the frequency of urine testing, was developed. Below are those tables for substances that can be detected within a 1) 24 hour window (e.g. alcohol) and 2) 72 hour window (most other drugs).

	24-Hour Detection Window Urinalysis Frequency					72-Hour Detection Window Urinalysis Frequency				
	2x/wk	1x/wk	2x/mo	1x/mo	8x/yr	2x/wk	1x/wk	2x/mo	1x/mo	8x/yr
Every Day	3	7	15	30	46	3	7	15	30	46
Every Other Day	7	14	31	59	93	4	8	18	35	51
2x/week	12	24	51	110	152	5	11	23	48	71
1x/week	23	46	102	219	323	9	18	40	80	118
2x/month	52	108	305	437	670	19	39	91	160	272
1x/month	107	193	403	781	1625	36	71	150	306	560

In principal, testing a licensee an average of two times per week sounds like a sound practice to detect alcohol/drug use. However, the number of days substance use is detected in the more chronic user (and therefore, in most scenarios, the greater the risk) varies much less, regardless of the frequency of testing. One could make the argument that this is evidence for more frequent testing. However, given consideration to the risk factor of a person who uses once a month or less, the importance of "randomness" in testing, and the need to find a reasonable and pragmatic approach, this solution would appear to be implausible.

When this standard was initially established, there were several issues that had not been considered. This paper will address some of those issues, including random testing, sobriety, disparity of substance use, feasibility, and potential outcomes.

Random Testing

The current standard of testing 104 times per year and 50 times each year thereafter, diminishes the most key component in testing: randomness. Random is defined as without definite aim, direction, rule or method. It is clearly established that if a person can gauge when they will be tested, they will consider one or more days a "safety period" following the submission of a biological sample for testing. Therefore, it is key that some testing be done back-to-back, as well as, at different intervals. Proposing a specific number of tests, and publicly announcing those figures, provides active users, a much more reliable "safety period" to use, especially for alcohol and any other drugs that stay in the system less than three days. By establishing a minimum standard *range*, and diligently employing "randomness" in testing, the "safety period" is diminished. It is critical with any Testing Frequency Schedule, that testing is done without regular intervals or patterns.

Sobriety

There are also cases where a person who is an admitted recovered substance abuser or addict, has already participated in a rehabilitation program before entering diversion or being placed on probation. In cases where there is evidence that the person has been randomly tested and has maintained sobriety, some flexibility should be granted to the board in determining the duration of high frequency testing, that is equivalent to the proposed testing schedule.

Disparity in Substance Use

As suggested in the analysis of SB 1441, consideration should also be given to licensees who the board has reason to believe pose a risk to patients and those where the risk is speculative.

Many, if not all, boards/bureaus pursue disciplinary action for single violations (e.g. single conviction for marijuana use, DUI, discipline in another state for minor violations, etc...) or violations that occur outside of the work place. Failure to acknowledge the great disparity in a single conviction vs. an admitted user and the testing requirement employed thereof, may have negative consequences. Applying the same rigid standard for both low and high risk testers is not equitable, nor was it the intent or driving force for SB 1441. It is possible that a shift may occur over a period of time, where some boards/bureaus find an alternative, lesser form of discipline in these cases, that does not include drug testing. Weighing the intrusive and financially burdensome testing requirements with the cause for action, testing may be found to be far reaching and overzealous.

According to the *Webster's New World Medical Dictionary, Third Edition*, "There is no universally accepted definition of substance abuse." However, a definition of substance abuse that is frequently cited is that in DSM-IV, the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) issued by the American Psychiatric Association. The DSM-IV defines, in summary, "substance abuse" as recurrent or continued substance use despite negative consequences.

While a single occurrence of a person under the influence on the job or driving under the influence, by itself would not classify that licensee with "substance abuse," the fact that our role as a consumer protection agency has a direct correlation to a person being under the influence on the job, creates a greater concern. Whereas a person driving under the influence (outside of work) is considered a lower risk because it indicates a misuse of alcohol *and* does not directly impact the safety of patients in the person's role as a health care provider. In addition, most individuals do not repeat this behavior after a single incident that results in negative consequences.³

³DSM-IV sites, "At some time in their lives, as many as 90% of adults in the US have had some experience with alcohol, and a substantial number (60% males and 30% females) have had one or more alcohol-related adverse life events (e.g. driving after consuming too much alcohol, missing school or work due to a hangover). Fortunately, most individuals learn from these experiences to moderate their drinking and do not develop Alcohol Dependence or Abuse."

Feasibility

Drug testing costs have been another area of concern expressed by many. While costs should not deter a board/bureau from carrying out its highest priority of consumer protection, they must be given some weight of consideration, in the application of testing frequency. Costs are identified in the chart below. Boards/bureaus have the option of passing this cost on to those who directly incur the charges, or they may use fees collected from the general licensee population to cover all or a portion of the costs.

TESTING COSTS	Urine Analysis	Collection Fee	Totals
Current Rate	\$30-\$58 per test	\$20-\$30	\$50-\$88 each
Total Cost for First Year at 104x year	\$3120 - \$6032	\$2080-\$3120	\$5200-\$9152
Total Cost for First Year at 104x year X 20 New Probationers	\$62,400-\$120,640	\$41,600-\$62,400	\$104,000-\$183,040

Testing a probationer 104 times the first year, would currently cost approximately \$7,200 per each probationer. Keep in mind, that many probationers are required to repay discipline costs in the first year of probation that can range greatly. In addition, some boards require probationers to pay a monthly monitoring fee. It is realistic to believe, that all these fees could total \$1000 a month and it is likely, a great deal more for several boards. While the position that probation is a final opportunity to regain clear licensure, and that costs should bear no weight, there are a number of factors that should be considered:

- * The disparity in income levels of allied health professionals vs. registered nurses and physicians.
- * Licensees who are unemployed.
- * Licensees who are tolling.
- * Administrative Law Judge's and each board's willingness to revoke a licensee based on the sole violation that the license is unable to pay for testing, and the financial repercussions should board's absorb these costs.

The disparity in income levels for many allied health professionals vs. physicians is great. It is estimated that some allied health professionals have annual salaries near \$50,000, and to the extreme other end, physicians may have a salary near or over \$200,000. While this should not necessarily effect frequency in testing, it should be considered by boards in whom pays for testing.

There are also licensees in every profession, whether on probation or in a diversion program, who are unemployed or tolling (residing out-of-state). These people pose no immediate threat to the public or California consumers, and a method of extending the time period for testing should be considered.

For some boards, probationers are required to provide a credit card number to the drug testing contractor, which is billed for every test. Probationers pay the collection fee, at the time they

provide a specimen. If payment is not made, the contractor will no longer test the probationer. Of course, many boards should attempt to test such probationers if they continue to practice, but many lack the resources to maintain a high frequency of testing. [SB 1172, statutes of 2010, also provides a mechanism for boards to suspend a probationer or a person in diversion for failing to test or testing positive, that may be implemented by each board in the near future].

Testing 104x a year, may result in a probationer's non participation in the testing program. Many boards will be forced to send the case to the Office of the Attorney General to pursue revocation for a probationers' failure to adhere to the Biological Fluid Testing term and condition.

For example, let's look at a board who licenses lower salaried allied health personnel, that may have 65 probationers subject to biological fluid testing, at any given time. While existing probationers may not be subject to the first year requirements, up to 20 new probationers established each year, will be subject to new testing requirements.

It is realistic to believe that at least half, if not more, will not be able to afford testing 104x a year, resulting in the pursuit of revocation of the license. Therefore, it is estimated that this board will incur the prosecution and hearing costs associated with revoking ten probationers, for an annual cost of an estimated \$50,000. These costs do not take into account the staff resources needed to process these cases.

Further, it is uncertain, if at hearing, an Administrative Law Judge, or even the board itself, for that matter, would revoke the individual, if cost is the sole basis for revocation. If an extension of probation is ordered, it will only set the probationer up for failure, as he/she will still not be able to afford the testing. Or it could be ordered that the probationer is not responsible for the costs, to which the board would then need to pay these additional costs, after already incurring costs for prosecuting the violation. This would result in additional layers of bureaucracy and costs, not serve the public or the licensee, and be completely inefficient. Further, the inequity, would raise additional issues with other probationers who are paying the costs.

Therefore, the many boards who have passed testing costs on to the licensees, may find it difficult to achieve any form of resolution, if in fact, licensees are being further disciplined, solely because they cannot pay testing costs.

Potential Outcomes

Implementing the existing standards of testing 104 x the first year and 50 x each year thereafter, could have irrevocable effects. There is no evidence or even the suggestion of evidence to provide that implementing the existing standard will provide the greatest benefit to consumers.

Immediate implementation of these standards could result in greater substance abuse due to lack of randomness, lesser discipline for minor violations, and greater bureaucracy, that would likely result in fee increases for all boards. None of California's boards come close to testing any probationer 104 x a year and therefore, there is no means to reasonably assert projected reliability or effectiveness.

However, should boards need to increase their fees to sustain a drug testing program in the future, they may consider legislation that specifically raises a fee to fund their drug testing program.

RECOMMENDATIONS

1. **Recommendation:** Establish minimum testing frequency "ranges" and clear standards to secure the "random" component of a testing program and provide boards flexibility in assessing the level of risk.

Establishing minimum standard "ranges" will diminish a licensee's ability to anticipate when testing will occur. Clearly, the frequency of testing should be increased for any person the board suspects is currently using or has had a lapse in sobriety for a minimum of a year⁴, and where that board does not pursue immediate suspension or expeditious revocation of the license. In such cases, testing may actually exceed the minimum range. In any case, the proposed standards should include specific instruction to maintain an effective "random" testing program.

2. **Recommendation:** Provide an exception that allows boards flexibility in determining the duration of high frequency testing, equivalent to the proposed testing frequency schedule, in cases where there is evidence that the person has been randomly tested and has maintained sobriety for a length of time. No greater purpose is served by requiring a licensee to undergo the same level of testing when he/she has already participated in a bona fide program. In fact, failure to recognize equivalent testing standards may be punitive and may have negative repercussions.
3. **Recommendation:** Provide an exception from the standard testing frequency schedule, for those isolated incidents that occur outside and unrelated to the workplace and span a great period of time. This will provide some equity in applying standards for low risk candidates and prevent potential repercussions mentioned previously.
4. **Recommendation:** Provide an exception and extension for persons tolling or who are unemployed. These licensees pose no threat to California consumers. Failure to recognize this may appear punitive and result in adverse outcomes.
5. **Recommendation:** Collect useful and reliable data for a three-year period following implementation, to review the outcomes and effectiveness of this standard and determine if amendments are appropriate. There was no evidence, scientific or otherwise, to support the original standards. These proposed standards are based on some research, yet the real outcomes are unknown. Given the numerous unknown outcomes and the potential adverse effects, it is key to responsible government, to measure and review real data and experiences to determine the effectiveness of this standard.

⁴The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), cites, "Because the first 12 months following Dependence is a time of particularly high risk for relapse, this period is designated "Early Remission" and "During the first 12 months after the onset of remission, the individual is particularly vulnerable to having a relapse."

In summary, the existing uniform standard #4 is premature, unfounded, rigid, and inequitable on many levels. There is clearly potential for serious consequences. It is clear there are a number of interested parties on both sides of this issue, though all are passionate about consumer protection. The proposed amendments provide a compromise from both ends of the spectrum, with the condition to revisit the issue with real data, three years following implementation to determine if amendments are necessary. The proposed amendments are a responsible and reasonable approach to prevent adding layers of bureaucracy, scapegoats, and misfortunes, while providing greater consumer protection. The proposed amendments are a significant leap, specifically in increasing frequency, for many, if not most boards. If acted upon in good faith, while collecting appropriate data, together, we can achieve the most effective standard to protect consumers.

**Uniform Standard #4 Subcommittee
PROPOSED AMENDMENTS
FINAL
March 10, 2011**

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

The following ~~drug testing standards shall apply to each licensee subject to drug testing~~ govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

~~Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.~~

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year as a minimum for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, a licensee shall notify and secure the approval of the licensee's board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment, if the licensee has not previously met the standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

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

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs, and shall include, but may not be limited to:

Probationer/Diversionee Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversionee

Dates Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test

Dates Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels)

Date Contractor Notified Board of Questionable Test

Identify Substances Detected or Questionably Detected

Dates Failed to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing

Dates Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which)

Final Outcome and Effective Date (if applicable)

California State Board of Optometry

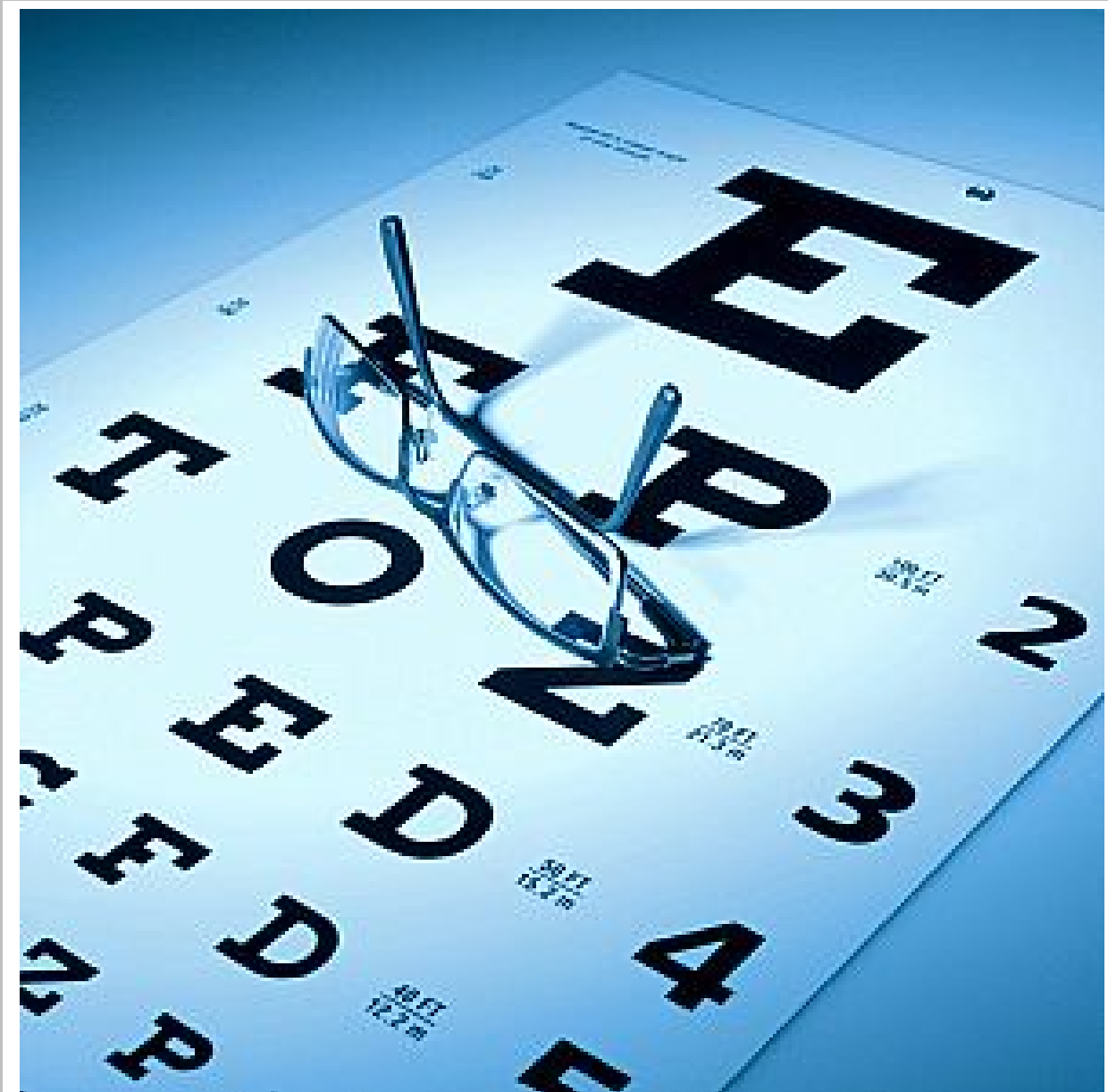
Uniform Standards Related to Substance Abuse and

Disciplinary Guidelines

(2011)

"Protection of the Public Shall be the Highest
Priority"

Business and Professions Code, Section 3010.1



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INTRODUCTION

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

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

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

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

If, at the time of hearing, the Administrative Law Judge finds that the Respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice optometry safely, a stayed revocation order with probation is recommended.

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

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

PUBLIC RECORD

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

COST RECOVERY

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

PROBATION MONITORING PURPOSE

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

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

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

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Board of Optometry Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(h)]. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

DISCIPLINARY GUIDELINES

2011 Edition

EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE

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

EVIDENCE IN AGGRAVATION OF DISCIPLINE

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

EVIDENCE IN MITIGATION OF DISCIPLINE

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

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY ADMINISTRATIVE LAW JUDGES

~~State of California Board of Optometry
Disciplinary Guidelines
and Model Disciplinary Orders
(May 1999)~~

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

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

Additional copies of this document may be obtained by contacting the Board of Optometry at its offices in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies. [In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 125.](#)

~~Disciplinary Guidelines~~

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

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

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

MODEL DISCIPLINARY ORDERS

Revocation-Single Cause

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

Revocation - Multiple Causes

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

Suspension - Single Cause

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

Suspension - Multiple Causes (run concurrently)

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

Suspension - Multiple Causes (run consecutively)

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

Standard Stay Order

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

STANDARD CONDITIONS; ~~TO BE INCLUDED IN ALL CASES OF PROBATION~~

~~General Probationary Conditions~~

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

~~A probationary term is generally issued for a period between 3 and 5 years, dependent upon whether any aggravating or mitigating factors exist. Standard conditions are imposed on each and every probationer regardless of cause for discipline. For applicants, Condition 9, Cost Recovery, does not apply.~~

- ~~1. Obey all laws [26]~~
- ~~2. Quarterly Reports~~
- ~~3. Tolling of probation if respondent moves out of state [28]~~
- ~~2-3. Cooperate With Probation surveillance [27] Monitoring Program~~
- ~~4. Probation Monitoring Costs~~
- ~~5. Function as an Optometrist~~
- ~~6. Notice to Employer~~
- ~~7. Changes of Employment or Residence~~
- ~~8. Cost Recovery~~
- ~~15-9. Take and Pass Re Licensure Examination(s)~~
- ~~13-10. Community Service ~~Free Services~~~~

- [11. Valid License Status](#)
- ~~28.~~[12. Tolling of probation if respondent moves out of state for Out-Of-State Residence or Practice](#)
- [13. License Surrender](#)
- ~~5~~[14. Violation of Probation](#)
- ~~4.~~[15. Completion of Probation](#) ~~[30]~~

SEVERABILITY CLAUSE

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

26. 1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, and all ~~rules~~ [regulations](#) governing the practice of optometry in California.

[Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.](#)

Staff

2. QUARTERLY REPORTS

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

Staff

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

[Failure to submit complete and timely reports shall constitute a violation of probation.](#)

27-3. COOPERATE WITH PROBATION ~~surveillance~~ MONITORING PROGRAM

Respondent shall comply with ~~Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the Board or its agent.~~ the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear to a venue as directed.

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

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

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

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

4. PROBATION MONITORING COSTS

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

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

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

SB 1441 #3

Staff

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

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

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her probation period.

Staff

6. NOTICE TO EMPLOYER

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

Staff

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

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

7. CHANGES OF EMPLOYMENT OR RESIDENCE

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

Staff

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O.

Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. COST RECOVERY

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

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

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

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

15.9. TAKE AND PASS LICENSURE Re EXAMINATIONS

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

~~(Continue with either one of these two options.)~~

~~(OPTION #1: Condition Subsequent)~~

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

~~(OPTION #2: Condition Precedent)~~

~~Respondent shall not practice optometry until respondent has passed the required examination and has been so notified by the Board in writing.~~

Staff

~~Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.~~

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

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

Staff

~~13.~~ **10. COMMUNITY SERVICE** ~~Free Services~~

Within ~~60~~ 30 days of the effective date of this decision, ~~r~~ Respondent shall submit to the Board, for its prior approval, a community service program in which ~~r~~ Respondent ~~shall~~ provides free ~~non-optometric professional services~~ on a regular basis to a community ~~of or~~ charitable facility or agency, ~~for at least amounting to a minimum of~~ (Ex: 20) hours ~~a per month for the first (Ex: 24) months of probation.~~ of probation. Such services shall begin no later than 15 days after respondent is notified of the approved program.

Staff

11. VALID LICENSE STATUS

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

Staff

~~28.~~ **12. TOLLING** ~~of probation if respondent moves out of state~~ **FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

~~The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the Board in writing of the date of departure, and the date of return, if any.~~

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

Staff

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

13. LICENSE SURRENDER

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

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

30-14. VIOLATION OF PROBATION

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

2915. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's ~~certificate~~ license shall be fully restored.

Staff

Staff

STANDARD ALCOHOL/DRUG CONDITIONS

The following standards are in addition to standards 1-16 and apply to every licensee who is on probation for substance abuse, pursuant to SB1441 Uniform Standards.

~~8.16. Drugs & Abstain~~ Abstention From Use of Mood Altering Substances

~~9. Drugs - Exception for Personal Illness~~

~~11. Alcohol - Abstain From Use~~

~~12.17.~~ Biological Fluid Testing

18. Participate in Group Support Meetings

~~8.16. Drugs & Abstain~~ **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall abstain completely from the personal use or possession of ~~controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription.~~ **NOTE: Also use Condition No.9 which exempts "use or possession" for personal illness.** alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

SB1441, #4

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

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

~~9. Drugs - Exception for Personal Illness~~

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

~~NOTE: Add this exception whenever Condition 8 is used.~~

~~11. Alcohol - Abstain From Use~~

~~Respondent shall abstain completely from the use of alcoholic beverages.~~

12-17. BIOLOGICAL FLUID TESTING

Respondent, at his/her expense, shall immediately ~~submit to biological fluid testing, at Respondent's cost, upon the request of the Board or its designee.~~ participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at the frequency outlined by the Department of Consumer Affairs Uniform Standards for Substance Abuse #4.

Respondent shall be required to make daily contact to determine if he/she is required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

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

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

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

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

18. PARTICIPATE IN GROUP SUPPORT MEETINGS

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

SB1441, #4

OPTIONAL CONDITIONS

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

- (SB 1441, #6) 19. Notice to Patients
- (SB 1441, #6) 20. Alcohol and Drug Treatment
- (SB 1441, #7) ~~12-21.~~ Worksite Monitor
- 22. Direct Supervision
- ~~14-23.~~ Remedial Education Course
- ~~7-24.~~ Actual Suspension
- 25. Employment Limitations
- ~~17-26.~~ Psychotherapy or Counseling Program
- (SB 1441, #1) ~~16-27.~~ Psychiatric or Psychological Mental Health Evaluation
- ~~18-28.~~ Medical Health Evaluation
- ~~19-29.~~ Medical Treatment
- 30. Restitution
- 31. Third Party Billing System Audit
- ~~10-32.~~ Lens Prescriptions – Maintain Records
- ~~21.~~ Third Party Presence. Sexual Transgressions
- ~~22-33.~~ Restricted Practice – Incompetence
- ~~24-34.~~ Restrictions as to Branch Offices
- ~~25-35.~~ Restrictions as to Advertisement
- 36. Take and Pass NBEO Exams

19. NOTICE TO PATIENTS

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

Staff

~~Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment~~
~~Within 15 days of the effective date of this decision, respondent shall submit the name, business address and business telephone number of three persons who are professionally qualified to provide counseling and treatment for drug, alcohol or other chemical abuse appropriate to the case. Thereafter the Board through its staff shall select one of these persons to provide the necessary counseling and treatment. Within 30 days of written notification of~~

~~this selection to the respondent the respondent shall, in consultation with this counselor and treating professional, prepare and submit to the Board for its approval, a counseling and treatment program all costs of which shall be paid by the respondent. Respondent shall successfully complete this counseling and treatment program as a condition of probation.~~

20. ALCOHOL AND DRUG TREATMENT

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

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

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

20-21. WORKSITE MONITOR

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

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

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

The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored or be another health care professional if no monitor with like practice is available. The worksite

SB 1441, #6

SB 1441, #7

monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

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

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

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

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

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

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

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

~~(OPTIONAL)~~

~~Respondent is prohibited from engaging in solo practice.~~

Quarterly Reports of Performance are due for each year of probation and the entire length of probation from the worksite monitor, as follows:

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

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

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

22. DIRECT SUPERVISION

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

Staff

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

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

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

14. 23. REMEDIAL EDUCATION Course

~~Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval an educational program or course to be designated by the Board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all costs being paid by respondent. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course.~~

~~Respondent shall provide written proof of attendance in such course or courses as are approved by the Board.~~

Respondent shall take and successfully complete the equivalency of (Ex: 16) semester units in each of the following areas (Ex: eye disease, when to refer, contact lenses) . All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as an optometrist, or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision. Successful completion is a grade of "C" or "70%" or better for any completed course.

Staff

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

~~7.-~~**24. Actual-SUSPENSION**

As part of probation, ~~f~~R Respondent ~~is shall be~~ suspended from the practice of optometry for a period of (Ex: 90 days) beginning the effective date of this decision. If not employed as an optometrist or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

Staff

25. EMPLOYMENT LIMITATIONS

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

Staff

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

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

~~17.-~~**26. PSYCHOTHERAPY OR COUNSELING PROGRAM**

Within 60 days of the effective date of this decision, ~~f~~R Respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of ~~f~~R Respondent's choice. Upon approval, ~~f~~R Respondent shall undergo and continue treatment, at ~~f~~R Respondent 's cost, until ~~the Board deems that no further psychotherapy is necessary.~~ such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require ~~f~~R Respondent to

undergo psychiatric or psychological evaluations by a Board-appointed psychiatrist or psychologist.

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

~~16-27. Psychiatric or Psychological~~ **MENTAL HEALTH EVALUATION**

~~Respondent shall~~, within 30 days of the effective date of this ~~d~~Decision, and on a periodic basis thereafter as may be required by the Board or its designee, ~~respondent shall undergo a psychiatric or psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychiatrist or psychologist, at respondent's cost, who shall furnish a psychiatric or psychological report to the Board or its designee. If respondent is required by the Board or its designee to undergo psychiatric or psychological treatment, respondent shall within 30 days of the requirement notice submit to the Board for its prior approval the name and qualifications of a psychiatrist or psychologist of respondent's choice. Upon approval of the treating psychiatrist or psychologist, respondent shall undergo and continue psychiatric or psychological treatment, at respondent's cost, until further notice from the Board. Respondent shall have the treating psychiatrist or psychologist submit quarterly status reports to the Board. (OPTIONAL) Respondent shall not engage in the practice of optometry until notified by the Board of its determination that respondent is mentally fit to practice safely. NOTE: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.~~ have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of an optometrist. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.

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

~~18-28.~~ **MEDICAL HEALTH EVALUATION**

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

Staff

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

(OPTIONAL)

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

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

~~19.~~ **29. MEDICAL TREATMENT**

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

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

30. RESTITUTION

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

31. THIRD PARTY BILLING SYSTEM AUDIT

Within sixty (60) days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. If requested by the Board, the Board shall be advised of the results of the audit, and may obtain any and all copies of any documents audited or the results of the audit, upon request. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit results and/or copies of the audited records within ten (10) days from audit completion shall constitute a violation of probation.

Staff

Staff

~~10.~~**32. LENS PRESCRIPTIONS - MAINTAIN RECORDS**

Respondent shall maintain a record of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. name and address of the patient
2. date
3. price of the services and goods involved in the prescription
4. visual impairment identified for which the prescription was furnished.

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

~~21. Third Party Presence. Sexual Transgressions~~

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

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

~~22.~~**33. RESTRICTED PRACTICE-~~IN~~COMPETENCE**

During probation, Respondent is prohibited from practicing Ex. Specified optometric procedures).

~~24.~~**34. RESTRICTION ~~AS TO~~ ON BRANCH OFFICES**

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

~~25.~~**35. RESTRICTIONS ~~AS TO~~ ON ADVERTISEMENTS**

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

36. Take and Pass NBEO Exam

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

SB1111

RECOMMENDED DISCIPLINE BASED ON VIOLATION

~~Specific Probationary Conditions~~

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the California State Board of Optometry and the appropriate range of penalties for each violation. Each discipline listed corresponds with a number under the chapter "Model Disciplinary Orders." Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation.

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

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 32. Maintain rRecords of prescription for review [10]~~

If Warranted:

~~2. If warranted, 24. Suspension of 30 days or more [7]~~

~~3. If warranted, 21. Worksite Monitoring [20]~~

~~4. If warranted, 23. Remedial Education course [14]~~

~~5. If warranted, Community service [13]~~

Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16 CCR sec. 1565)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 32. Maintain rRecords of prescription for review [10]~~

If Warranted:

~~2. If warranted, 24. Suspension of 30 days or more [7]~~

~~3. If warranted, 21. Worksite Monitoring [20]~~

~~4. If warranted, 23. Remedial Education course [14]~~

~~5. If warranted, Community service [13]~~

Excessive Prescribing or Treatments (B&P Code sec. 725; 3110(n); 3110(o))

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

- ~~1. 23. Remedial Education course [14]~~
- ~~32. Lens Prescriptions – Maintain Records~~

If Warranted:

- ~~2. If warranted, 24. Suspension of 30 days or more [7]~~
- ~~3. If warranted, 21. Worksite Monitoring [20]~~
- ~~4. If warranted, 33. Restricted Practice [22]~~

Sexual Misconduct (B&P Code sec. 726)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: ~~Stayed Revocation, at least 3 years probation~~ Revocation

Maximum Penalty: ~~Revocation~~

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

SB 1111

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: ~~Stayed Revocation, at least 3-5 years probation~~

Maximum Penalty: ~~Revocation~~

Required:

- 1-15. Standard Conditions
- ~~3. If warranted, 27. Psychiatric or psychological~~ Mental Health eEvaluation [16][17]

If Warranted:

- 24. Suspension
- ~~1. If warranted, 33. Restricted Practice [22]~~
- ~~2. If warranted, 21. Worksite Monitoring [20]~~
- 26. Psychotherapy or Counseling Program
- ~~4. If warranted, 28. Medical eEvaluation [18][19]~~
- 29. Medical Treatment

Gross Negligence & Inefficiency (B&P Code sec. ~~3090-3110~~ (b); Title 16 CCR sec. 1510)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: ~~Stayed Revocation, at least 3-5 years probation~~

Maximum Penalty: ~~Revocation~~

Required:

- 1-15. Standard Conditions
- ~~1. Re-examination [15]~~
- ~~2. 23. Remedial Education course [14]~~
- ~~5. If warranted, 21. Worksite Monitoring [20]~~

If Warranted:

- 22. Direct Supervision
- ~~4. If warranted, 24. Suspension of 30 days or more [7]~~

[25. Employment Limitations](#)

~~3. If warranted, 33. Restricted pPractice [22]~~

[30. Restitution](#)

[35. Restrictions on Advertisements](#)

[36. Take and Pass NBEO Exam](#)

Failure to Refer Patient (B&P Code sec. ~~3109~~ [3110\(y\)](#))

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ [3-5](#) years probation

~~Maximum Penalty:~~ Revocation

Required:

[1-15. Standard Conditions](#)

~~1. Re-examination [15]~~

~~2. 23. Remedial Education course [14]~~

If Warranted:

~~3. If warranted, 33. Restricted pPractice [22]~~

~~4. If warranted, 24. Suspension of 30 days or more [7]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

[25. Employment Limitations](#)

~~Ophthalmic Devices~~, **Violation of Quality Standards for Prescription**

Ophthalmic Devices (B&P Code sec. 2541.3; Title 16 CCR sec. 1519)

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ [3-5](#) years probation

~~Maximum Penalty:~~ Revocation

Required:

[1-15. Standard Conditions](#)

~~1. Reexamination [15]~~

~~2. 23. Remedial Education course [14]~~

If Warranted:

~~3. If warranted, 33. Restricted pPractice [22]~~

~~4. If warranted, 24. Suspension of 30 days or more [7]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

[36. Take and Pass NBEO Exam](#)

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

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ [3-5](#) years probation

~~Maximum Penalty:~~ Revocation

Required:

[1-15. Standard Conditions](#)

~~1. Reexamination [15]~~

~~2. 23. Remedial Education course [14]~~

If Warranted:

- ~~3. If warranted, 33. Restricted pPractice [22]~~
- ~~4. If warranted, 24. Suspension of 30 days or more [7]~~
- ~~5. If warranted, 21. Worksite Monitoring [20]~~

Failure to Follow Infection Control Guidelines (B&P Code sec. 3110(w))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-15. Standard Conditions
- 21. Worksite Monitor
- 23. Remedial Education

If Warranted:

- 22. Direct Supervision
- 24. Suspension

Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~**Maximum Penalty:** Revocation~~

Required:

- 1-15. Standard Conditions
- ~~1. Reexamination [15]~~
- ~~2. 23. Remedial Education course [14]~~

If Warranted:

- ~~3. If warranted, 33. Restricted pPractice [22]~~
- ~~4. If warranted, 24. Suspension of 30 days or more [7]~~
- ~~5. If warranted, 21. Worksite Monitoring [20]~~

~~**Unprofessional Conduct. Dishonesty and Fraud, Misrepresentation or Dishonesty**~~ (B&P Code sec. 810; 3090; 3101; ~~3110 (e) 3126; 3127~~)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~**Maximum Penalty:** Revocation~~

Required:

- 1-15. Standard Conditions
- ~~1. Reexamination [15]~~
- ~~2. 23. Remedial Education course [14]~~
- 31. Third Party Billing System Audit

If Warranted:

- ~~2. If warranted, 24. Suspension of 30 days or more [7]~~
- ~~3. If warranted, Community service [13]~~
- 21. Worksite Monitor
- 22. Direct Supervision
- 25. Employment Limitations
- 30. Restitution
- 35. Restrictions on Advertisements

Procuring a License by Fraud (B&P Code sec. 123; 496; ~~3110(i) 3095; 3126~~)
Maximum Discipline: Denial or Revocation

Minimum ~~Penalty~~ **Discipline**: Denial or Revocation
~~Maximum Penalty: Denial or Revocation~~

~~**Practice During Suspension** (B&P Code sec. 3127)~~
~~Minimum Penalty: Revocation~~
~~Maximum Penalty: Revocation~~

Practicing without Valid License (B&P Code sec. 3110(s))
Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-15. Standard Conditions
- 23. Remedial Education

If Warranted:

- 21. Worksite Monitor
- 24. Suspension
- 35. Restrictions on Advertisements

~~**Alcohol Abuse**~~ **Using Controlled Substances or Alcohol** (B&P Code sec. ~~820-3110 (l)~~)

Maximum Discipline: Revocation and Cost Recovery
Minimum ~~Penalty~~ **Discipline**: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty: Revocation~~

Required:

- 1-15. Standard Conditions
- 17-18. Standard Alcohol/Drug Conditions
- 23. Remedial Education

- ~~1. Reexamination [15]~~
- ~~2. Abstain from drugs [8, 9]~~
- ~~3. Biological fluid testing [12]~~

If Warranted:

- ~~4. 20. Drug or Alcohol~~ ~~Counseling and~~ Treatment ~~[23]~~
- ~~5. If warranted, 24. Suspension of 30 days or more [7]~~
- ~~6. If warranted, 21. Worksite Monitoring [20]~~
- 22. Direct Supervision
- ~~7. If warranted, 33. Restricted pPractice [22]~~
- 25. Employment Limitations
- 26. Psychotherapy or Counseling Program
- 27. Mental Health Evaluation
- 28. Medical Health Evaluation
- 29. Medical Treatment

SB 1441

~~**Aiding and Abetting Unlicensed Practice**~~ **Employing Suspended or Unlicensed Optometrist** (B&P Code sec. ~~3102-3110 (t)~~; 3106)

Permitting Another to Use License (B&P Code sec. ~~3102~~ 3110 (u); 3106)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course~~ ~~[14]~~

~~2. Re-examination~~ ~~[15]~~

If Warranted:

~~3. If warranted, 34. Restrictions on number of bBranch eOffices~~ ~~[24]~~

~~4. If warranted, 24. Suspension of 30 days or more~~ ~~[7]~~

~~5. If warranted, 21. Worksite Monitoring~~ ~~[20]~~

~~6. If warranted, 33. Restricted pPractice~~ ~~[22]~~

25. Employment Limitations

Acceptance of Unlawful Employment By Unlicensed Person (B&P Code sec. 310~~39~~)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course~~ ~~[14]~~

~~2. Re-examination~~ ~~[15]~~

If Warranted:

~~3. 24. Suspension of 30 days or more~~ ~~[7]~~

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

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course~~ ~~[14]~~

~~2. Re-examination~~ ~~[15]~~

If Warranted:

~~3. If warranted, 34. Restrictions on number of bBranch eOffices~~ ~~[24]~~

~~4. If warranted, 24. Suspension of 30 days or more~~ ~~[7]~~

~~5. If warranted, 21. Worksite Monitoring~~ ~~[20]~~

~~6. If warranted, 33. Restricted pPractice~~ ~~[22]~~

Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; ~~3104~~; ~~3129~~ 3102; ~~3130~~ 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~**Maximum Penalty:** Revocation~~

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

~~2. Re-examination [15]~~

If Warranted:

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, 35. Restrictions on Submit~~

~~a Advertisements for prior approval [25]~~

~~5. If warranted, Community service [13]~~

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~**Maximum Penalty:** Revocation~~

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

If Warranted:

~~2. Re-examination [15]~~

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, 35. Restrictions on Submit~~

~~a Advertisements for prior approval [25]~~

~~5. If warranted, Community service [13]~~

~~**Holding Out Without Certificate Advertising While Not Holding Valid License**~~ (B&P Code sec. ~~3128~~ 3101)

Maximum Discipline: Revocation and Cost Recovery

Minimum Penalty-Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

~~**Maximum Penalty:** Revocation~~

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

If Warranted:

~~2. Re-examination [15]~~

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~5. If warranted, Community service [13]]~~

35. Restrictions on Advertisements

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

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

Minimum ~~Penalty-Discipline~~: 30 days ~~stayed~~, suspension, and at least one-year probation

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

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

~~2. Re-examination [15]~~

If Warranted:

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, Community service [13]~~

35. Restrictions on Advertisements

Unlawful Solicitation (B&P Code sec. ~~3096~~ 3097)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty-Discipline~~: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

~~2. Re-examination [15]~~

If Warranted:

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, Community service [13]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

~~6. If warranted, 33. Restricted practice [22]~~

Unlawful Referrals (B&P Code sec. 650)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty-Discipline~~: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty:~~ Revocation

Required:

1-15. Standard Conditions

If Warranted:

~~1. 23. Remedial Education course [14]~~

~~2. Re-examination [15]~~

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, Community service [13]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

~~6. If warranted, 33. Restricted practice [22]~~

35. Restrictions on Advertisements

Employment of Cappers or Steerers (B&P Code sec. ~~3100~~ 3104)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty-Discipline~~: Stayed Revocation, ~~at least~~ 3-5 years probation

~~Maximum Penalty: Revocation~~

Required:

1-15. Standard Conditions

~~1. 23. Remedial Education course [14]~~

~~2. Re-examination [15]~~

If Warranted:

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, Community service [13]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

~~6. If warranted, 33. Restricted practice [22]~~

35. Restrictions on Advertisements

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

Maximum Discipline: Revocation and Cost Recovery

~~Minimum **Penalty-Discipline:** Stayed Revocation, at least 3-5 years probation~~

~~Maximum Penalty: Revocation~~

~~Terms and conditions depend on the nature of the criminal conviction~~

Required:

1-15. Standard Conditions

If Warranted:

~~1. 23. Remedial Education course [14]~~

~~2. If warranted, Reexamination [15]~~

~~3. If warranted, 24. Suspension of 30 days or more [7]~~

~~4. If warranted, Community service [13]~~

~~5. If warranted, 21. Worksite Monitoring [20]~~

~~6. If warranted, 33. Restricted practice [22]~~

~~7. If drug related and warranted (see conditions for drug abuse) 17-19. Standard Alcohol/ Drug Conditions~~

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

Fictitious Name Violation (B&P Code sec. ~~3125~~ 3078; Title 16 CCR sec. 1513; 1518)

Maximum Penalty: 6 month Suspension. Revocation and Cost Recovery for successive violations

~~Minimum **Penalty-Discipline:** 30 days stayed. Suspension, and at least one year probation on the standard conditions Stayed Revocation, 3 years probation~~

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

Required:

1-15. Standard Conditions

23. Remedial Education

If Warranted:

35. Restrictions on Advertisements

Violation of Probation

Maximum Discipline: Impose discipline that was stayed

Minimum ~~Penalty~~ Discipline: Impose an actual period of suspension
Maximum ~~Penalty~~: ~~Impose penalty that was stayed.~~

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

Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

Maximum Discipline: Revocation and Cost Recovery

Minimum ~~Penalty~~ Discipline: Stayed Revocation, ~~at least~~ 3-5 years probation

Maximum ~~Penalty~~: ~~Revocation~~

Required:

1-15. Standard Conditions

If Warranted:

~~1. If warranted, 23. Remedial~~ Education eCourse for corporate principals involved [~~14~~]

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

~~3. If warranted, 24. Suspension of 30 days or more for corporate license and the license of any corporate principal involved~~ [~~7~~]

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

~~5. 21. Worksite Monitoring~~ [~~20~~]

~~6. If warranted, 33. Restricted~~ practice [~~22~~]

30. Restitution

35. Restrictions on Advertisements

Fraudulently Altering Medical Records (B&P Code sec. 3105)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-15. Standard Conditions.

23. Remedial Education

If Warranted:

21. Worksite Monitor

22. Direct Supervision

24. Suspension

31. Third Party Billing System Audit

False Representation of Fact (B&P Code sec. 3106)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-15. Standard Conditions

If Warranted:

22. Direct Supervision

- [23. Remedial Education](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)
- [30. Restitution](#)
- [31. Third Party Billing System Audit](#)
- [33. Restricted Practice](#)
- [34. Restrictions on Branch Offices](#)
- [35. Restrictions on Advertisements](#)

Unprofessional Conduct (B&P code sec. 3110)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 5 years probation

Required:

- [1-15. Standard Conditions](#)
- [21. Worksite Monitor](#)
- [23. Remedial Education](#)

If Warranted:

- [22. Direct Supervision](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)

Violating or abetting violation of any section of Optometry Practice

Act (B&P Code sec. 3110(a))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 5 years probation

Required:

- [1-15. Standard Conditions](#)
- [23. Remedial Education](#)

If Warranted:

- [21. Worksite Monitor](#)
- [22. Direct Supervision](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)
- [30. Restitution](#)
- [31. Third Party Billing System Audit](#)
- [35. Restrictions on Advertisements](#)

Repeated Negligent Acts (B&P Code sec. 3110 (c))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Revocation and Cost Recovery

Incompetence (B&P Code sec. 3110 (d))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- [1-15. Standard Conditions](#)
- [21. Worksite Monitor](#)
- [23. Remedial Education](#)
- [22. Direct Supervision](#)

- [24. Suspension](#)
- [25. Employment Limitations](#)
- [36. Take and Pass NBEO Exam](#)

Conduct Warranting License Denial (B&P Code sec. 3110 (f))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- [1-15. Standard Conditions](#)

If Warranted:

- [17-19. Standard Alcohol/ Drug Conditions](#)
- [20. Alcohol or Drug Treatment](#)
- [21. Worksite Monitor](#)
- [22. Direct Supervision](#)
- [23. Remedial Education](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)
- [26. Psychotherapy or Counseling Program](#)
- [27. Mental Health Evaluation](#)
- [30. Restitution](#)
- [31. Third Party Billing System Audit](#)
- [32. Lens Prescription – Maintain Records](#)
- [35. Restrictions on Advertisements](#)
- [36. Take and Pass NBEO Exam](#)

License Discipline by Other State or Agency (B&P Code sec. 3110 (h))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- [1-15. Standard Conditions](#)

If Warranted:

- [17-19. Standard Alcohol/ Drug Conditions](#)
- [20. Alcohol or Drug Treatment](#)
- [21. Worksite Monitor](#)
- [22. Direct Supervision](#)
- [23. Remedial Education](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)
- [26. Psychotherapy or Counseling Program](#)
- [27. Mental Health Evaluation](#)
- [31. Third Party Billing System Audit](#)
- [32. Lens Prescription – Maintain Records](#)
- [36. Take and Pass NBEO Exam](#)

Making False Statement on Application (B&P Code sec. 3110 (i))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- [1-15. Standard Conditions](#)

If Warranted:

- [21. Worksite Monitor](#)
- [23. Remedial Education](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)

Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum Discipline: [Stayed Revocation, 3-5 years probation](#)

Required:

- [1-15. Standard Conditions](#)
- [23. Remedial Education](#)
- [24. Suspension](#)

If Warranted:

- [21. Worksite Monitor](#)
- [22. Direct Supervision](#)

Failure to Maintain Adequate Records(B&P Code sec. 3110 (g))

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum Discipline: [Stayed Revocation, 3-5 years probation](#)

Required:

- [1-15. Standard Conditions](#)

If Warranted:

- [21. Worksite Monitor](#)
- [23. Remedial Education](#)
- [24. Suspension](#)
- [31. Third Party Billing System Audit](#)

Altering or Using Altered License (B&P Code sec. 3110 (v))

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum Discipline: [Stayed Revocation, 3-5 years probation](#)

Required:

- [1-15. Standard Conditions](#)
- [21. Worksite Monitor](#)
- [23. Remedial Education](#)
- [24. Suspension](#)

Professional Services Beyond the Scope of the License (B&P Code sec. 3110 (r))

Maximum Discipline: [Revocation and Cost Recovery](#)

Minimum Discipline: [Stayed Revocation, 3-5 years probation](#)

Required:

- [1-15. Standard Conditions](#)
- [23. Remedial Education](#)

If Warranted:

- [21. Worksite Monitor](#)
- [24. Suspension](#)
- [25. Employment Limitations](#)

Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-15. Standard Conditions

If Warranted:

23. Remedial Education

Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-15. Standard Conditions

If Warranted:

21. Worksite Monitor

23. Remedial Education

24. Suspension

25. Employment Limitations

GLAUCOMA CASE MANAGEMENT COURSE DEVELOPED BY THE CALIFORNIA SCHOOLS AND COLLEGES OF OPTOMETRY

1571(a)(4)(A) Case Management Course:

GOAL:

To assist California optometrists in becoming glaucoma certified pursuant to CCR section 1571.

OBJECTIVES:

1. Present a variety of cases selected for maximum educational value
2. Analyze and emphasize unique educational components
3. Develop contemporary treatment and management plans, including referrals when appropriate for medical or surgical consultation
4. Facilitate learning environment through open discussions
5. Demonstrate proficiency through a competency exam

CASE MANAGEMENT COURSE REQUIREMENTS:

Completion of the 16-hour Case Management Course is equivalent to prospectively treating 15 individual glaucoma patients for 12 consecutive months. Therefore, completion of the 16-hour Case Management Course will count as a 15-patient credit towards the Case Management Requirement. The full course must be completed to receive the 15-patient credit.

The course must be developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board.

The course may be conducted live, over the Internet, or by use of telemedicine.

Glaucoma Definitions:

“Simple”: open angle glaucoma, successfully managed with monotherapy.

“Moderate to Advanced”: glaucoma unsuccessfully managed with monotherapy.

Aspects that may contribute to the complexity of the disease include:

- Diagnosis
- Treatment
- Management
- Progression

- Stage

Case Management Course Template:

Each case should include the following elements:

1. Primary exam
2. Assessment of glaucoma
3. Findings/Analysis
4. Decision making/Diagnosis
5. Treatment and management
6. Follow-up and outcomes

Cases:

The cases should include a range of topics, such as but not limited to:

A. Treatable by 1571(a) (1) & (2)

Ten cases (minimum) with at least one in each of the following:

1. Moderate or advanced primary open angle glaucoma
2. Exfoliative glaucoma
3. Pigmentary glaucoma
4. Acute Angle Closure (emergency stabilization only)

B. Diagnosed and Referred

Four cases (minimum) with at least one from each of the following two categories:

1. **Angle Closure Glaucoma**
Acute angle closure
Chronic angle closure
Mixed mechanism glaucoma
2. **Secondary Glaucomas**
Traumatic
Post-surgical
Medically induced
Infective or inflammatory glaucoma

C. Other

One case (minimum) with at least one from the following category:

1. **Pseudoglaucoma**

GLAUCOMA GRAND ROUNDS PROGRAM DEVELOPED BY THE CALIFORNIA SCHOOLS AND COLLEGES OF OPTOMETRY

1571(a)(4)(B) Grand Rounds Program:

GOAL:

To assist California optometrists in becoming glaucoma certified pursuant to CCR section 1571.

OBJECTIVES:

1. Present a variety of patients selected for maximum educational value
2. Evaluate and analyze live patients via supervised examinations
3. Develop contemporary treatment and management plans, including referrals when appropriate for medical or surgical consultation
4. Facilitate learning environment through active participation, open discussions, and follow-up meeting attendance
5. Participants will follow and treat patients as defined in CCR section 1571 (a)(4)

GRAND ROUNDS PROGRAM REQUIREMENTS:

Completion of the 16-hour Grand Rounds Program is equivalent to prospectively treating 15 individual glaucoma patients for 12 consecutive months. Therefore, the 16-hour Grand Rounds Program will count as a 15-patient credit towards the Case Management Requirement. The full program must be completed to receive the 15-patient credit.

The program must be developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board.

Glaucoma Types (such as)

1. Glaucoma suspects
2. Narrow angle
3. Primary open angle glaucoma (early, moderate, late)
4. Secondary open angle glaucoma such as:
 - *Pigment Dispersion

***Exfoliative**

Grand Rounds Program Template

Each case in the program should include the following elements:

1. Perform in-person examination
2. Evaluate data and test results pursuant to CCR section 1571 (a)(4)(B)(1).
3. Develop diagnosis
4. Recommend treatment and management plan
5. Participate in group discussions with instructor feedback
6. Attend follow-up meetings to review data and patient progress

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www.optometry.ca.gov

To: Board Members

Date: April 11, 2011

From: Andrea Leiva, Policy Analyst
Jeff Robinson, Licensing Analyst
Nancy Day, Licensing Technician

Telephone: (916) 575-7170

Subject: Agenda Item 9 – Examination/Licensing Program Report

California Laws and Regulations (CLRE)

Board staff has been working with Psychological Services, Inc. (PSI), the Board's computer-based testing vendor, in order to begin providing invitations for testing eligibility via e-mail instead of regular mail. Many candidates are typically in a transition period when they apply to take the law exam and do not have a permanent address. E-mailing eligibility notices will allow candidates to receive this important information regardless of their current location. If a candidate does not provide an e-mail address to the Board, they will automatically receive their invitation in the regular mail to the address provided in their application for licensure. Staff will be conducting outreach to candidates to inform them of this change via the Board's website and Law Exam Candidate Handbook.

Board staff has also completed updating the Board's 2011 Laws and Regulations. There is now only one document on the website that candidates can refer to when they are studying, not multiple links which created confusion. Staff is hopeful that studying for the CLRE will now be easier.

CAS to ATS Conversion

The Department of Consumer Affairs' Consumer Affairs System (CAS) and Applicant Tracking System (ATS) units of the Office of Information Services (OIS) held what was termed a "Retro Renewals Fingerprint Project" meeting on February 2, 2011 for several of its boards, including Optometry, currently receiving the California State Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) fingerprint data of new license applicants that is sent directly to ATS.

The meeting provided information and direction to those boards seeking to convert the CAS records of those licensees required to be fingerprinted or re-fingerprinted per the direction of Title 16 of the California Code of Regulations (CCR) sections 1525.1 and 1525.2 over to ATS. This conversion will allow the boards to begin receiving the fingerprint data of previously licensed individuals as is done with the new license applicants. The result of this project is beneficial because, as is done for the new license applicants, it will allow licensing staff to export the fingerprint data of those licensees into CAS and provide them with the ability to verify those who have met the provisions of CCR 1525.1 and 1525.2.

The target date for implementation of this project was April 1, 2011. Although Optometry has approved the modifications made by OIS to CAS and ATS, we were informed recently that other boards have yet to approve them so it may be until the end of April before the project is complete.

Program Statistics and Performance Measures

The following attachments show the numbers of license applications received, pending completion, and those that were completed and issued licenses/permits from 11/10 through 03/11. Currently, the Department of Consumer Affairs' Licensing for Job Creation (LJC) unit does not calculate statistics on the optometrist license type because "...the data does not lend itself well to measurement in most cases." Board staff is of the opinion that this is caused by a large number of applicants for licensure as an optometrist who are completing residencies and/or have sought to practice optometry elsewhere.

Licensing Program Statistical Overview

License Type 11/2010 12/2010 01/2011 02/2011 03/2011

OPTOMETRIST					
Applications Received	3	15	13	11	18
Applications Pending	213*	228*	241*	252*	270*
Licenses Issued	6	7	6	3	5
STATEMENTS OF LICENSURE					
Applications Received	14	16	22	28	43
Applications Pending	13*	19*	25*	28*	38*
Licenses Issued	8	10	10	0	19
BRANCH OFFICE					
Applications Received	4	9	6	13	1
Applications Pending					17*
Licenses Issued	0	5	0	1	11
FICTITIOUS NAME PERMITS					
Applications Received	15	14	15	16	12
Applications Pending					18*

Permits Issued	5	8	3	7	14
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*Number includes applications submitted prior to 11/10 that are still pending information from the applicant and/or are in the process of being transferred to CAS

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To: Board Members

Date: April 11, 2011

From: Enforcement Staff

Telephone: (916) 575-7170

Subject: Agenda Item 10 – Enforcement Program Report

Unlicensed Activity/California District Attorneys Association

Brianna Miller, Enforcement Analyst

Since 2010, the California State Board of Optometry (Board) has received approximately 20 complaints against unlicensed vendors (retail stores, tattoo parlors, gas stations, etc.) selling cosmetic contact lenses without a prescription. In committing to our efforts to both enforce and publicize this matter, the Board has continued to conduct more outreach.

On February 24, 2011, staff attended the California District Attorney Association's (CDAA) training conference, hosted by the Department of Consumer Affairs (DCA), in which District Attorneys discussed how they can aid Boards and Bureaus in their enforcement efforts. As the unlicensed sale of lenses results in misdemeanor citations, staff identified the need to educate these District Attorneys about the Board's Unlicensed Activity efforts pertaining to the sale of cosmetic contact lenses.

Accordingly, enforcement staff members, Brianna Miller and Cheree Kimball, presented this information at the Northern California Consumer Protection Committee's roundtable discussion on March 4, 2011 in Berkeley. Approximately forty prosecuting attorneys, representatives from the Division of Investigation, and legal council from DCA attended this meeting.

Committee members expressed that they had no prior knowledge that it is legally prohibited for contact lenses to be sold without a prescription by an unlicensed dispenser and were particularly taken aback by the possible health threats. Therefore, the prosecutors asked several questions about this program, in particular the Board's usage of an educational letter to thwart sales. The prosecutors also inquired if their immediate prosecution of a business that is selling lenses without a license or prescription would infringe on the Board's enforcement procedures. Additionally, the Board has since received contact from a District Attorney expressing interest in helping the Board enforce any complaints against businesses in Monterey County.

CLEAR Training

Margie McGavin, Enforcement Analyst

In February 2011, members of the Board's Enforcement Unit attended the Council on Licensure, Enforcement and Regulation (CLEAR), National Certified Investigator/Inspector Training (NCIT) Basic Program sponsored by the Department of Consumer Affairs. Lydia Bracco, Brianna Miller, and Jessica Sieferman attended this three-day program in investigation and inspection techniques and procedures. This course concluded with an examination for certification. Course topics included the following:

- Professional Conduct
- Principles of Administrative Law and the Regulatory Process
- Investigative Process
- Principles of Evidence
- Evidence Collection, Tagging and Storage
- Interviewing Techniques
- Report Writing
- Overview of Inspections and Inspection Procedures
- Administrative and Criminal Proceedings

Dillon Christensen has been scheduled to attend the next Basic NCIT in April 2011. The Department of Consumer Affairs plans to offer the Advanced NCIT training in August 2011, which will be attended by staff. Margie McGavin and Cheree Kimball have previously attended this training.

Fingerprint Report

Lydia Bracco, Fingerprint Coordinator/Enforcement Analyst

California Code of Regulations Section 1525.1, adopted in June 2010, states, "(a) As a condition of renewal for a licensee who was initially licensed prior to January 1, 1998, or for whom an electronic record of the submission of fingerprints no longer exists, such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice."

Licensees have indicated that this language is unclear. Thus, to alleviate confusion regarding optometrists needing their fingerprints completed, staff proposes clarifying changes to regulation 1525.1, which will be discussed in detail in Agenda Item #11.

Staff continues to streamline the fingerprinting process. The Office of Information Services (OIS) is coordinating the transfer of records from CAS (Consumer Affairs System) into ATS (Applicant Tracking System) to reflect compliance with the fingerprint requirement. The transfer will commence once OIS has communicated with the affected DCA boards and bureaus, which is anticipated in April 2011.

The Board is implementing a plan to insert fingerprint requirement notices into renewal notice envelopes. In order to execute this, the following must first be accomplished:

1. The Board's Executive Officer will approve the language of the notification. **(Attachment #1)**
2. Staff will contact DCA, Digital Print Services to reproduce the notification.

3. Upon completion of reproduction, the form will be forwarded to the Production Support Unit (PSU). PSU will then request Employment Development Department (EDD) to insert, assemble and mail the renewal notices, with this notification, on behalf of the Board.

The color of the document has changed from Goldenrod to Neon Green in hopes that it will better attract the attention of the licensee.

Probation Program

Jessica Sieferman, Probation Monitor

During the last quarter, Jessica Sieferman conducted probation compliance and orientation interviews at the Division of Investigation (DOI) offices in Sacramento and Hayward, California. These interviews have improved communication, eliminated confusion regarding probation conditions, and established a stronger understanding of the probation requirements. These improvements assist the Board in ensuring and maintaining compliance.

Five probationers continue to submit to Biological Fluid Testing (BFT) through Phamatech, Inc., DCA's contracted vendor. The Board's testing frequency has complied with the frequency outlined in DCA's Uniform Standard #4: 104 times during the first year, and 50+ times during every year thereafter. However, due to the changes previously discussed in Agenda Item #7, the frequency of testing will comply with the amended adopted guidelines.

The Board's five probationers subject to BFT received a written notification from the Board and Phamatech announcing a change in Phamatech's log-in procedure (**Attachment #2**). This change was necessary because licensees waiting until the last hour (11:00 PM) to log-in to Phamatech were having difficulty finding a collection site open. In addition, Boards with larger volume such as Board of Registered Nursing (BRN) were experiencing a growing problem with probationers diluting their tests and requested DCA/Phamatech's log-in window change from 24 hours to 12 hours per day.

In addition, Phamatech has corrected reporting inconsistencies experienced when reporting their results to the Board. Ms. Sieferman discovered this inconsistency after reviewing testing results of a probationer that was reported by Phamatech as "failed to log-in" and "failed to show." Phone records from one probationer proved that they had in fact called in on dates Phamatech reported they had not. All records have been corrected and are now being reported accurately.

In addition to submitting BFT, the five probationers are required to attend some form of group support meetings throughout their entire probation term. Last quarter, Ms. Sieferman attended both Narcotics Anonymous and Alcoholics Anonymous meetings in order to obtain a better understanding of the offerings of these organizations, and experiences the probationers endure while participating in their programs.

Ms. Sieferman, Mona Maggio and staff from BRN, Board of Behavioral Sciences, Bureau of Security Investigative Services, Bureau of Private Post Secondary Education, and Contractors State License Board completed the creation of DCA's first probation monitoring training course. This course was offered to all DCA staff responsible for monitoring probation. The two day training course was held on February 28 and March 1, 2011. Ms. Sieferman, Ms. Maggio and Ms. Cheree Kimball each instructed portions of the course (**Attachment #3**).

Participants of this course were introduced to a new resource, the Probation Monitoring Forum, created by Ms. Sieferman. This forum was created to connect Probation Monitors throughout DCA in order to share information. In addition to the Probation Manual created and presented in the course, the Probation Monitoring Forum contains beneficial forms/reports, pertinent documents such as the Administrative Procedures Act, DOI and Deputy Attorney General rosters, as well as general

information pertaining to probation monitoring. Through this forum, probation monitors are able to post their best practices, tips, and questions for all monitors to read, utilize, and respond to. This forum may also be used to clarify any probation reporting requirements and help ensure probation data reported to DCA is consistent and accurate.

Probation Program Statistics:

Below are the statistics for the Probation Program as of March 14, 2011:

Probation Data	As of 12/29/10*	Completed	New	Total	% of Total
Male	25	1	3	27	84
Female	5	0	0	5	16
Pending AG	3	3	1	1	3
Active	16	0	0	18	56
Tolled	6	0	0	6	19
Surrendered	8	0	0	8	25
Total:	30			32	100%

*last reported data to the Board

Statistics/ Performance Measures

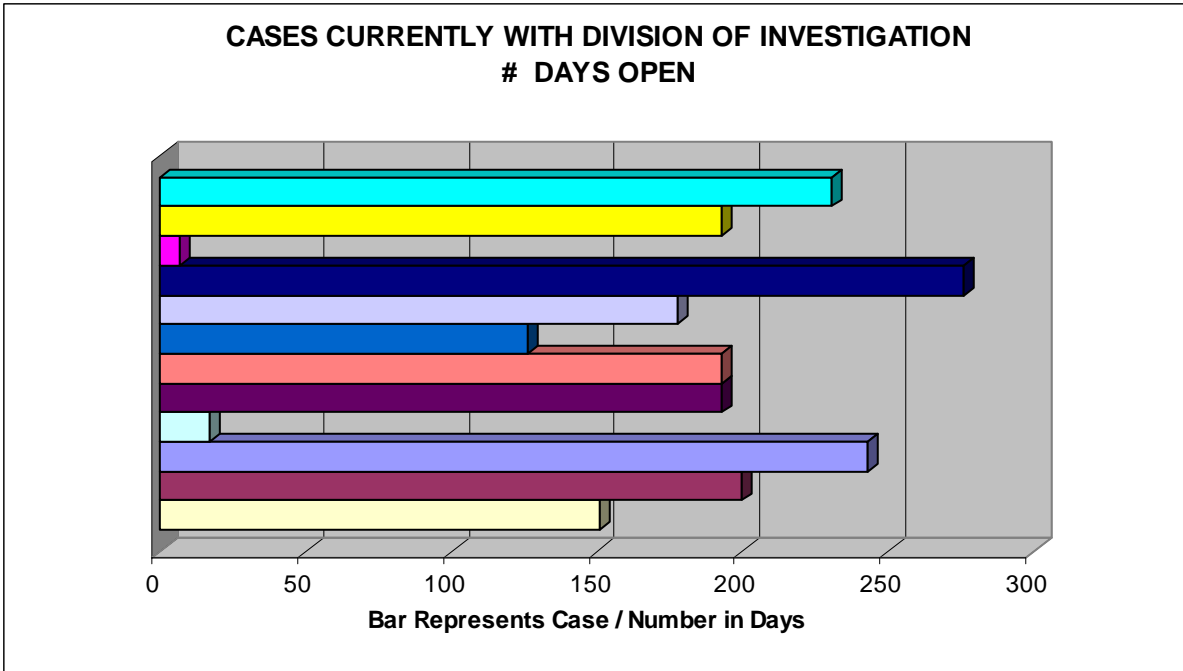
Margie McGavin, Enforcement Analyst

Cheree Kimball, Enforcement Analyst

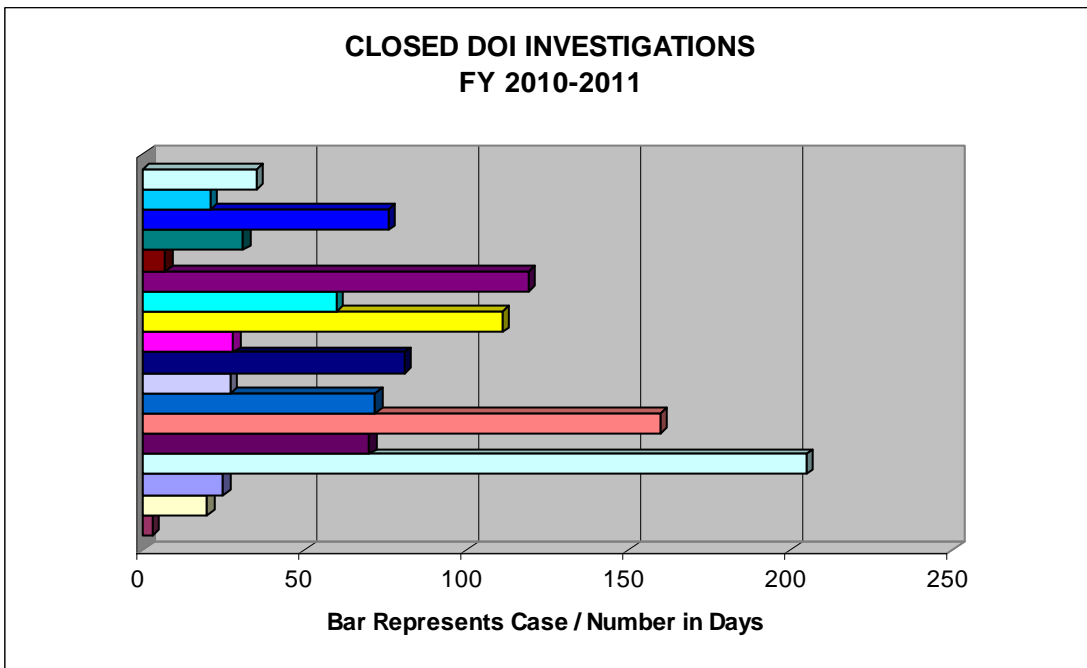
The California State Board of Optometry Performance Measures for the second quarter of the 2010/2011 fiscal year are available, and have been posted on the Department of Consumer Affairs Website at www.dca.ca.gov. This data represents complaints and investigations in process for October 2010 through December 2010. **(Attachment #4)**

As you will note, the number of complaints significantly dropped in December 2010, which is typical for this particular time of the year. The average for the intake process is currently at 4 days, which exceeds our target of 7 days.

The Intake and Investigation process has an average of 92 days from receipt of complaint to closure. This is slightly over our target of 90 days. A contributing factor to the number of days a complaint remains open is whether the case is being investigated by Board staff or at the Division of Investigation (DOI). In the past fiscal year, the Board has significantly increased its caseload referral to DOI, as reflected in the Enforcement Statistical Overview. This represents an 866% increase in cases submitted to the DOI from the previous year. The following chart reflects the amount of Optometry cases currently at DOI, and the number of days each of these cases has been with DOI for investigation.



The following chart indicates the number of cases forwarded to the DOI in the current fiscal year, and which have been completed.



The Board of Optometry Enforcement Unit's Statistical Overview for the current and three previous fiscal years are as follows:

Enforcement Statistical Overview

Fiscal Year	2007/2008	2008/2009	2009/2010	2010/2011*
Complaints				
Complaints Received	175	189	172	141
Complaints Pending	45	126	57	50
Complaints Closed	130	165	264	141
Subsequent Arrest Reports Received		31	21	9
Cases Referred to Division of Investigation (DOI)	9	0	3	29
Cases Pending at DOI	3	3	2	21
Cases Referred to Expert	3	4	14	5
Cases referred to the Office of the Attorney General (AG)	2	3	10	7
Cases Pending at the AGs Office			13	15
Filings				
Citations Issued	1	5	5	2
Accusations Filed	5	4	9	9
Statement of Issues Filed	0	0	1	0
Interim Suspension Orders (PC 23)	0	0	1	0
Notice of Warnings Issued	29	18	0	0
Disciplinary Decision Outcomes				
Revoked	0	0	0	2
Revoked, Stayed, Suspension & Probation	0	0	1	0
Probation Revoked	0	0	0	0
Revoked, Stayed & Probation		4	4	3
Surrender of License	0	0	1	1
License Issued on Probation	0	0	0	1
Public Reprimand	1	0	0	0
Other Decision	1		0	0
Decisions by Violation Type				
Fraud	0	2	0	0
Gross Negligence/Incompetence	1	1	1	1
Sexual Misconduct	0	0	0	0
Personal Conduct (Alcohol/Substance Abuse)	0	1	2	4
Unprofessional Conduct	0	0	1	0
Probation Violation	0	0	2	2
Other	1			0

*Statistics through February 28, 2011

IMPORTANT NOTICE

BOARD OF OPTOMETRY

New Fingerprinting Requirements

Regulations require the submission of fingerprints upon license renewal. If your license was issued prior to 2007 and you were fingerprinted by the Board, you are still required to submit fingerprints. Due to a change in the regulations, fingerprints are now checked by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), not, as in the past, just by the DOJ. Live Scan is required for California residents and a Manual Fingerprint Card is required for non-California residents.

Fingerprinting by another agency or your employer is not sufficient to meet the requirement.

There is a one-time processing of your fingerprints in order to maintain a current and active Optometry license in California. The current processing fee for DOJ and FBI is \$51.00. In addition, a print "rolling" fee may be required at the fingerprint site. The fingerprint requirement will be waived if the license is renewed in an inactive status. However, a request to have an inactive Optometry license activated will require fingerprints be submitted. Fingerprints may be submitted anytime prior to the renewal.

There are two methods available for completing the fingerprint requirement. The first method is Live Scan and must be used for Optometrists residing in California. The second method for Optometrists not residing in California is a manual fingerprint card (hard card). Instructions for obtaining and completing both methods are found below.

To obtain information regarding the submission of your fingerprints and/or to complete the Live Scan Service form you may visit the Board's website at <http://www.optometry.ca.gov/faqs/fingerprint.shtml>.

Method 1 - Live Scan Process (California residents only)

If you reside in California, you must use the Live Scan Service. At the Live Scan site, your fingerprints will be electronically scanned and transmitted immediately to the Department of Justice and Federal Bureau of Investigation for processing. Begin by following the instructions below.

Completing the Request for Live Scan Service Form:

Complete all areas on the form marked with an asterisk, print three copies. Take all three forms to the Live Scan site with your fee.

After your fingerprints are scanned:

1st copy of form is kept by the Live Scan Operator

2nd copy of form, attach to your renewal form and mail to the Board of Optometry.

3rd copy of form is for your records

Visit <http://ag.ca.gov/fingerprints/publications/contact.htm> to locate Live Scan sites. Most local law enforcement agencies in California have Live Scan equipment. Hours of operation and fees vary, so please contact the Live Scan site directly for information. The Board can only accept Live Scan completed in California.

Method 2 – Manual Fingerprint Card (hard card)(non-California residents only)

To request a manual fingerprint card (hard card), you may submit a request in writing to the Board of Optometry, 2420 Del Paso Rd., Suite 255, Sacramento, CA 95834, fax (916) 575-7292 or call (916) 575-7170.

Instructions for hard card submittal:

Please take the hard card to a qualified fingerprint office, i.e., law enforcement, where they will roll your prints (a fee may be charged). Log on to the Board's website at www.optometry.ca.gov, click on the New Fingerprint Requirements on the What's New Page, click the Fingerprint Certification Form link, complete the form, sign and date it. Send the completed card and form with the \$51 Dept. of Justice and FBI fees to the Board of Optometry, Attn. Fingerprint Coordinator, 2420 Del Paso Rd., Suite 255, Sacramento, CA 95834. Please make checks/ money orders payable to the California State Board of Optometry.

Failure to submit a full set of fingerprints will make your license ineligible for renewal and may be grounds for discipline by the Board.



STATE BOARD OF OPTOMETRY
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Important Notice
Change to Biological Fluid Testing Requirement
CERTIFIED AND REGULAR MAIL

February 15, 2011

Dr. _____, O.D.

Dear Dr. _____ :

The Board of Optometry (Board) is advising you of a procedural change to the biological fluid testing (BFT) administered by Phamatech Laboratories & Diagnostics (Phamatec).

Current procedures require you to log into Phamatech's secure web site or call the toll-free telephone number daily to determine if you must appear and provide a specimen that day. The notification to test is available from 12:05 a.m. to 11:50 p.m.

Effective **March 1, 2011**, the log in and call in window will change. From that date forward, **you must log in or call in between the hours of 5:00a.m. and 5:00 p.m. daily.** If you check-in before or after this timeframe, you will receive a message from Phamatech directing you to call during the time allotted and/or that you have missed the call-in timeframe for that day. Failure to check-in between these hours will be reported to the Board as "failed to log in or call in" and is a probation violation. Failure to provide a specimen on any day required is also a probation violation.

Please make the necessary changes to your daily routine to ensure that you are compliant with the BFT requirements. If you have any questions regarding this matter or any other aspect of your probation, please contact me at (916) 575-7184.

Sincerely,

Jessica Siefertman
Probation Monitor
Jessica.Siefertman@dca.ca.gov

HOW TO MONITOR PROBATION

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California State Board of Optometry

Performance Measures

Q2 Report (Oct - Dec 2010)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These additional measures are being collected internally at this time and will be released once sufficient data is available.

Volume

Number of complaints and convictions received.

Q2 Total: 56

Complaints: 55 Convictions: 1

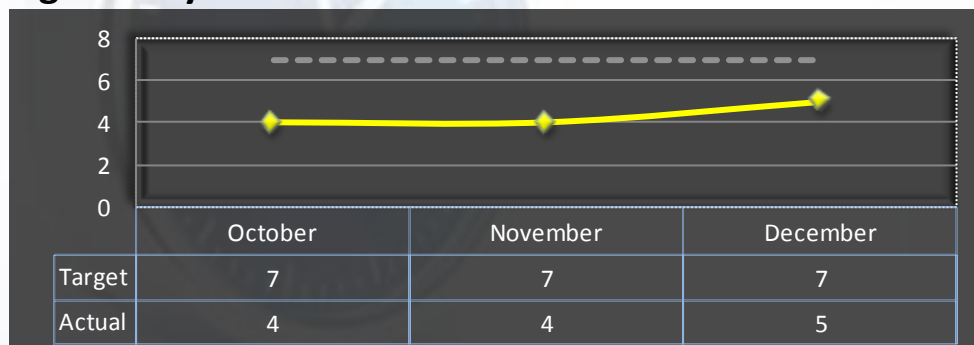
Q2 Monthly Average: 19

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 7 Days

Q2 Average: 4 Days

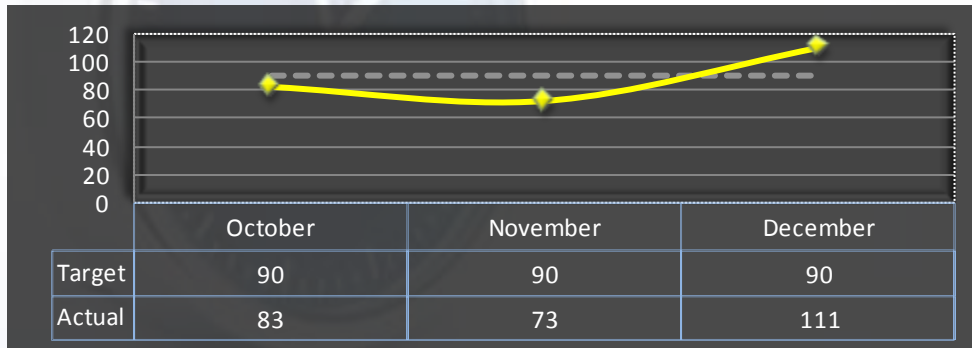


Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 90 Days

Q2 Average: 92 Days



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 365 Days

Q2 Average: N/A

The Board did not close any disciplinary cases this quarter.

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 6 Days

Q2 Average: N/A

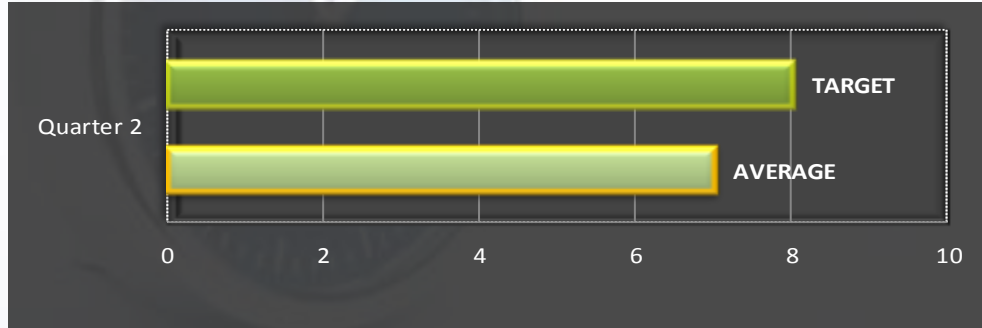
The Board did not contact any new probationers this quarter.

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 8 Days

Q2 Average: 7 Days



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Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** April 11, 2011
From: Andrea Leiva **Telephone:** (916) 575-7182
Policy Analyst
Subject: Agenda Item 11 – Review of Rulemaking Calendar

A. Status of Title 16, CCR § 's:

1518 Fictitious or Group Names

Corrects the permit fee and clarifies that FNP's must be renewed annually (See Attachment 1).

1523 Licensure Examination Requirements

Updates the regulation with current information such as forms incorporated by reference and name changes to exam titles (See Attachment 2).

1531 Licensure Examination

Updates the regulation with current information (See Attachment 3).

1532 Re-Examination

Updates and clarifies information regarding additional re-examination of sections of the national examination and the Board's law exam (See Attachment 4).

1533 Re-Scoring of Examination Papers

Re-titles the regulation to "Re-Scoring of California Laws and Regulations Examination Papers" (See Attachment 5).

1561 Topical Pharmaceutical Agents Usage – Purpose and Requirements

Updates the regulation with current information (See Attachment 6).

The listed regulations above, which were all in one rulemaking package, were approved by the Office of Administrative Law (OAL) on February 8, 2011 and became effective on March 10, 2011. This information was posted on the Board's website and is included in the updated 2011 Law Book.

1536 Continuing Optometric Education

Updates the regulation with current information and offers new CE opportunities including up to eight credits for course work in ethics, up to two credits for a full's day attendance at a Board meeting, up to four credits upon receipt of a CPR certification, the recognition of the Association of Regulatory Boards in Optometry's Optometric Education Tracker system as proof of CE, and the ability for the Board to grant extensions, in its discretion (See Attachment 7).

The above regulation has been reviewed favorably by the Department of Consumer Affairs' legal, legislative, budget and executive offices, as well as the State and Consumer Services Agency (SCSA). The file was returned to Board staff on March 30, 2011 and was submitted to OAL on April 6, 2011. OAL has 30 business days to review this file.

B. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR § 1525.1, Fingerprint Requirements

Background

The Board adopted regulations effective June 21, 2010, requiring criminal background checks for all licensees who have either not been fingerprinted as a condition of licensure or for whom no electronic record exists in the Department of Justice (DOJ) criminal offender record identification database. The regulation also requires that fingerprints be provided to the Federal Bureau of Investigation (FBI).

The Board's Fingerprint Coordinator works daily to identify the licensees who must comply with this requirement and assists multiple licensees with questions regarding the process.

Issues

Staff has found that many licensees affected by the fingerprint requirement do not understand what they need to do because the language is confusing in the regulation. Thus, to alleviate the confusion and reduce the number of calls received by the Fingerprint Coordinator, staff recommends that CCR § 1525.1 be amended for clarification purposes. The regulation currently states:

“As a condition of renewal for a licensee who was initially licensed prior to January 1, 1998, or for who an electronic record of the submission of fingerprints no longer exists...”

1. The January 1, 1998 date should be changed to January 1, 2007. The 1998 date is too early because optometrists licensed as late as the end of 2006 also do not have any electronic records of submitted fingerprints on file. When licensees who graduated after 1998 read the regulation as currently written, they believe that they don't have to meet the requirement, but they do. The Fingerprint Coordinator has been communicating this to optometrists who call the office for clarification, and has posted this information on the Board's website but is concerned about the licensees who don't call and thus remain out of compliance.

Furthermore, the Board's receptionist also receives a high volume of calls from licensees requesting clarification. The licensees are reading the regulation, interpreting it differently than its intent, and using their interpretation as an argument to bypass the requirement. Because the law is not clear, staff is having trouble explaining what is required and needs the regulation to be amended to reinforce the correct requirement.

2. Licensees began consistently submitting fingerprints to the DOJ **and** the FBI in 2007. Deleting language in the regulation that states “for whom an electronic record of the submission of fingerprints no longer exists...” would be beneficial for clarity purposes because there are almost no records of the submission of fingerprints in existence in our files. Previously (before 2007) fingerprints were mostly only sent to the DOJ and not the FBI. Now, it is a requirement that the FBI check fingerprints. Changing the date from 1998 to 2007 will cover all licensees and ensure the requirement is met.

Action Requested

Board staff requests that the Board review the proposed language as amended, make edits if necessary, approve it, and make a motion to begin a rulemaking for this proposal (See Attachment 8).

C. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR § 1513, Registered Name Only

&

D. Discussion and Action to Approve Draft Language and Commence a Rulemaking for CCR § 1514, Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern

Background

Current law requires that all signs, cards, stationary or other advertising clearly and prominently identify an optometrist. Current law also requires that an optometrist who is practicing in a rented space at a commercial location display all advertising in such a way that it will be clear that the optometrist is separate and distinct from the other occupants.

Issues

While enforcement staff was reviewing various optometry websites, signage and other advertising, it was found that it has become a common practice for optometrists to alter their names by either shortening their Fictitious Name Permit, or their first name (such as Stephen to Steve). Also, while investigating office locations or other mercantile locations, it was noted that some locations do not have proper signage indicating who owns the business or who is providing services at the location.

Thus, to further clarify the use of an optometrist name in advertising and at business locations, staff proposes to amend CCR § 1513 and § 1514 (See Attachment 9).

1. CCR § 1513 - add language specifying further that advertising must identify optometrists “as listed on their registration or certification” since the title of the regulation (Registered Name Only) is not clear enough.
2. CCR § 1514 – amend the language to further clarify that signage is required at commercial/mercantile locations to indicate that it is owned by an optometrist and the practice is separate and distinct from other occupants.

Action Requested

Board staff requests that the Board review the proposed language as amended, make edits if necessary, approve it, and make a motion to begin a rulemaking for this proposal.

E. Discussion and Action to Approve Draft Language and Commence a Section 100 Rulemaking for CCR § 1519, Ophthalmic Device Standards

Background

Current law requires optometrists to follow ophthalmic device standards from the American National Standards Institute (ANSI). The current regulation only refers to ANSI standards Z80.1 and Z80.2. ANSI is the voice of the U.S. standards and conformity assessment system. The institute oversees the creation, promulgation and use of thousands of norms and guidelines that directly impact businesses in nearly every sector; from acoustical devices to construction equipment, from dairy and livestock production to energy distribution, and many more. ANSI is also actively engaged in accrediting programs that assess conformance to standards – including globally-recognized cross-sector programs such as the ISO 9000 (quality) and ISO 14000 (environmental) management systems.

Issue

This regulation has not been updated since 1976. Since then, Z80.2 no longer exists, and there are 19 “new” standards which apply to optometry as it is practiced today (See Attachment 10 for a list of all new

ANSI standards). This change was prompted by a licensee inquiring which standards should be used in his practice.

Staff originally thought it was possible to do a Section 100 change (non-controversial change), but upon further research, the regular rulemaking process is required.

Action Requested

Board staff requests that the Board review the proposed language as amended, make edits if necessary, approve it, and make a motion to begin a rulemaking for this proposal (See Attachment 11) .

F. Discussion and Action to Approve Draft Language and Commence a Rulemaking to Add and Amend Regulations Pertaining to Senate Bill 1111 and Senate Bill 1441 to Division 15, Title 16 of the CCR

Background

Senate Bill 1111

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

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

Senate Bill 1441

Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes 2008) created the Substance Abuse Coordination Committee (SACC). The SACC was mandated to formulate uniform and specific standards in specified areas so that each healing arts board could deal with substance-abusing licensees, whether or no the Board chooses to have a formal diversion program. The standards were completed last year, and upon DCA's recommendation, Board are strongly encouraged to incorporate these uniform standards by reference to their disciplinary guidelines.

Action Requested

Board staff requests that the Board members review and discuss DCA's proposed language for the following regulations prompted by Senate Bill 1111 and SB 1441 (See Attachment 12 for SB 1111 proposed language and Attachment 13 for SB 1441 proposed language). Staff would also like to request a final motion to begin a rulemaking for this proposal.

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

Amend CCR, Title 16, §1523, Licensure Examination Requirements

Amend CCR, Title 16, §1575, Disciplinary Guidelines

Amend CCR, Title 16, §1575.1, Required Actions Against Registered Sex Offenders

Amend CCR, Title 16, §1575.2, Unprofessional Conduct

Attachments:

- 1) CCR §1518 Final Approved Language
- 2) CCR §1523 Final Approved Language
- 3) CCR §1531 Final Approved Language
- 4) CCR §1532 Final Approved Language

- 5) CCR §1533 Final Approved Language
- 6) CCR §1561 Final Approved Language
- 7) CCR §1536 Proposed Language
- 8) CCR §1525.1 Proposed Language
- 9) CCR §1513 and 1514 Proposed Language
- 10) ANSI Standards
- 11) CCR §1519 Proposed Language & Authority Business and Professions Code § 2541.3
- 12) SB 1111 Proposed Language
- 13) SB 1441 Proposed Language

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§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 ~~3125~~ 3078, Business and Professions Code. Reference: Sections ~~3125~~ 3078, 3152 and 3163, Business and Professions Code.

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§ 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 eExamination (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.

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§ 1531. Licensure Examination

(a) The licensure examinations ~~is~~ are composed of:

Section I - Applied Basic Science. ~~Written~~ written cognitive examination approved by the ~~B~~board 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 ~~III~~IV - 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.

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§ 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.

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§ 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 Bboard. The request shall be submitted in writing and mailed to the principal office of the Bboard. The request shall be postmarked no later than 75 days after the date the examination results are mailed.

Note: Authority cited: ~~Sections 3023.4 and 3025~~, Business and Professions Code. Reference: Section 3054, Business and Professions Code.

**FINAL APPROVED LANGUAGE
EFFECTIVE MARCH 10, 2011**

§ 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 subdivision (b)(1) (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.

PROPOSED LANGUAGE/ORDER OF ADOPTION

§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, the American Heart Association, or other association approved by the Board. 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~~ 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.

PROPOSED LANGUAGE

§ 1525.1, FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to ~~January 1, 1998~~ April 1, 2007, ~~or for whom an electronic record of the submission of fingerprints no longer exists,~~ such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under §300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Note: Authority cited: Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code. **Reference:** Section 3110, Business and Professions Code; and Section 11105, Penal Code.

History:

1. New section filed 6-21-2010; operative 6-21-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 26).

PROPOSED LANGUAGE

§1513. REGISTERED NAME ONLY

All signs, cards, stationery or other advertising must clearly and prominently identify the individual optometrist or optometrists- as listed on their registration or certification.

Authority cited: Sections 651 and 3025, Business and Professions Code. Reference: Sections 651 and 3125, Business and Professions Code.

History

1. Amendment filed 1-31-64; effective thirtieth day thereafter (Register 64, No. 3).
2. Amendment filed 4-3-75; effective thirtieth day thereafter (Register 75, No. 14).
3. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises.

(c) The practice shall contain All signs, and advertising, ~~and that display shall likewise be the practice as~~ separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 651 and 3025, Business and Professions Code.

History

1. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).

ANSI Z80.1-2010

Ophthalmics - Prescription Spectacle Lenses

Applies to the processing of all prescription ophthalmic spectacle lenses in edged or assembled form. It is a processing guideline for optical laboratories applicable to prescription eyewear prior to transfer for dispensing and for the dispenser prior to the delivery of the finished eyewear to the patient. Relevant optical specifications and tolerances of this standard should apply also to uncut lenses supplied by an optical laboratory to be used in filling a specific prescription.

ANSI Z80.3-2010

Ophthalmics - Nonprescription Sunglass and Fashion Eyewear Requirements

This standard applies to all nonprescription sunglasses and fashion eyewear, normally used for casual, dress, and recreational purposes, having lenses of substantially plano power. This standard specifically excludes products covered by ANSI Z87.1-2003, ANSI Z80.1-2005, ASTM F803-2003, and high-impact resistance eyewear designed exclusively for designated sports use. Sunglass needs for aphakics may not be met by this standard.

ANSI Z80.5-2010

Ophthalmics - Requirements for Ophthalmic Frames

This standard shall apply to the manufacture of all frames intended for street wear as ophthalmic eyewear with prescription lenses, excluding specialty and novelty products such as lorgnettes and monocles.

ANSI Z80.7-2002

Ophthalmics - Intraocular Lenses

Applies to the Physical & Mechanical Requirements, Optical Requirements, & Biocompatibility and Chemical Testing Requirements of Intraocular Lenses.

ANSI Z80.9-2010

Ophthalmics - Devices for Low Vision

This Standard applies to optical and electro-optical devices specified by the manufacturer for use by visually impaired persons as low-vision devices. It specifies optical and mechanical requirements and test methods. It includes devices with optical and/or electrical and/or electronic components used for image capture or display.

ANSI Z80.10-2009

Ophthalmics - Ophthalmic Instruments - Tonometers

This standard, together with [ISO 15004-1:2006](#) - Fundamental requirements and test methods - Part 1: General requirements applicable to all instruments - First edition, specifies minimum requirements and the design compliance procedure for tonometers intended for routine clinical use in the estimation of intraocular pressure (IOP) for the detection, diagnosis, and management of ocular abnormalities.

ANSI Z80.11-2007

Laser Systems for Corneal Reshaping

This standard applies to any laser system whose primary intended use is to alter the shape of the cornea through the removal of corneal tissue, resulting in the improvement of visual performance.

ANSI Z80.12-2007

Multifocal Intraocular Lenses

This standard applies to any ocular implant whose primary indication is the correction of aphakia and whose optic is designed to provide simultaneous distance and near vision. For the purposes of this standard, these implants are referred to as multifocal intraocular lenses (MIOLs). This standard does not consider optics designed to provide astigmatic power correction. The term "near vision", as used in this standard, includes useful vision at the distance of claimed benefit; e.g., near and/or intermediate distances.

This standard addresses specific requirements for MIOLs that are not addressed in the normative references, and includes vocabulary, optical properties and test methods, mechanical properties and test methods, labeling, biocompatibility, sterility, shelf-life and transport stability, and clinical investigations necessary for this type of device. As with any standard, alternative validated test methods may be used.

ANSI Z80.13-2007

Phakic Intraocular Lenses

This standard applies to any intraocular lens (IOL) whose primary indication is the modification of the refractive power of a phakic eye. It does not include IOLs used to correct presbyopia or astigmatism. This standard addresses the vocabulary, optical properties and test methods, mechanical properties and test methods, labeling, biocompatibility, sterility, shelf-life and transport stability, and clinical investigations necessary for this type of device. As applies to any standard, alternative validated test methods may be used.

ANSI Z80.17-2008

Focimeters

Z80.17 is the standard that sets tolerances and specifies test devices to verify those tolerances for the primary instrument used to measure the optical power of spectacle and contact lenses to insure that they meet the requirements set for them by their respective ASC Z80 standards.

ANSI Z80.18-2010

Ophthalmics - Contact Lens Care Products: Vocabulary, Performance Specifications and Test Methodology

Applies to contact lens care products (CLCP) which are marketed for use with hard (PMMA), rigid gas permeable (RGP), enhanced oxygen permeable materials, and soft hydrophilic contact lenses. These products are intended for use in the care of contact lenses: e.g., rinsing, storing, disinfection, conditioning, neutralization, cleaning, hydration, and/or for alleviating discomfort of lens wear and improving lens tolerance by physical means.

ANSI Z80.20-2010

Ophthalmics - Contact Lenses - Standard Terminology, Tolerances, Measurements and Physicochemical Properties

This American National Standard applies to contact lenses worn over the front surface of the eye in contact with the precorneal tear film. The standard covers rigid intracorneal and haptic (scleral) contact lenses, as well as soft paralimbal contact lenses.

ANSI Z80.21-2010

Ophthalmics - Instruments - General-Purpose Clinical Visual Acuity Charts

Applies to displays of optotypes for all clinical visual acuity measurement systems that use recognition of high-contrast optotypes and that are designed for general use including optotypes printed on opaque media, those intended for transillumination, electronically generated or projected displays. It does not apply to special testing of visual acuity, e.g., low-vision or low-contrast charts

ANSI Z80.23-2008

Corneal Topography Systems - Standard Terminology, Requirements

This standard applies to instruments, systems and methods that are intended to measure the shape of the cornea of the human eye over a majority of its anterior surface. Terms peculiar to the characterization of corneal shape are defined. Minimum requirements for instruments and systems classified as corneal topographers are outlined. Tests and procedures that verify that a system or instrument complies with the standard and thereby qualifies as a corneal topographer per this standard are described.

ANSI Z80.24-2007

Ophthalmics - Information Interchange for Ophthalmic Optical Equipment

This Standard establishes a method by which machines and computer software systems used in the fabrication of ophthalmic lenses can exchange information.

ANSI Z80.25-1996 (R2002)

Ophthalmics - Instruments: Fundamental Requirements and Test Methods

Specifies characteristics which are common to many ophthalmic instruments, such as: safety issues, environmental use conditions, electrical requirements, storage and transport conditions, radiation hazards, marking requirements, accompanying documents and others. Because these characteristics are common to many ophthalmic instruments it is economical to standardize them in a single horizontal standard rather than include the characteristics in each of the individual instrument standards.

ANSI Z80.26-1996 (R2003)

Ophthalmics - Data Processing and Interchange Information for Ophthalmic Instruments

This communication standard is intended for use by all manufacturers of ophthalmic instruments and laboratory equipment. There is a broad range of different instrumentation within this category, and there are large systems that incorporate ophthalmic instruments within broader product manufacturing systems. The communications framework that is discussed in this specification is designed to allow ophthalmic instruments and systems to use a consistent means of communication, with a consistent set of communication messages.

ANSI Z80.27-2001

Ophthalmics - Aqueous Shunts for Glaucoma Application

Updated 4/2011

Applies to physical and mechanical properties and performance of finished aqueous shunts, their biocompatibility-properties and describes elements of a clinical protocol which may be used to assess the clinical performance of these devices for treatment of glaucoma.

ANSI Z80.28-2010

Ophthalmics - Methods of Reporting Optical Aberrations of Eyes

This standard specifies standardized methods for reporting the optical aberrations of eyes.

ANSI/ASSE Z87.1-2003

**Occupational and Educational Personal Eye and Face Protection Devices
(historical document)**

Sets forth criteria related to the description, general requirements, testing, marking, selection, care, and use of protectors to minimize or prevent injuries, from such hazards as impact, non-ionizing radiation and chemical type injuries, in occupational and educational environments including, but not limited to, machinery operations, material welding and cutting, chemical handling, and assembly operations. (historical document)

PROPOSED LANGUAGE

§1519. OPHTHALMIC DEVICE STANDARDS

The minimum quality standards for prescription ophthalmic devices sold, dispensed or furnished by licensed optometrists shall be from the 1972 standards of the American National Standards Institute Z80.1 and Z80.2. The following listed standards shall apply:

- (a) ANSI Z80.1 – 2010
- (b) ANSI Z80.3 – 2010
- (c) ANSI Z80.5 – 2010
- (d) ANSI Z80.7 – 2002
- (e) ANSI Z80.9 – 2010
- (f) ANSI Z80.10 – 2009
- (g) ANSI Z80.11 – 2007
- (h) ANSI Z80.12 – 2007
- (i) ANSI Z80.13 – 2007
- (j) ANSI Z80.17 – 2008
- (k) ANSI Z80.18- 2010
- (l) ANSI Z80.20 – 2010
- (m) ANSI Z80.21 – 2010
- (n) ANSI Z80.23 – 2008
- (o) ANSI Z80.24 – 2007
- (p) ANSI Z80.25 – 1996 (R2002)
- (q) ANSI Z80.26 – 1996 (R2003)
- (r) ANSI Z80.27 – 2001
- (s) ANSI Z80.28 – 2010
- (t) ANSI Z87.1 – 2003 I don't think we need this one...but not sure.

Authority cited: Section 2541.3, Business and Professions Code. Reference: Section 2541.3, Business and Professions Code.

History

1. New section filed 11-17-76; effective thirtieth day thereafter (Register 76, No. 47).

AUTHORITY 2541.3

(a) The State Department of Public Health, the State Board of Optometry and the Division of Licensing and Division of Medical Quality of the Medical Board of California shall prepare and adopt quality standards and adopt regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. In promulgating these rules and regulations, the department and the boards shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards that are equivalent or more stringent than the current standards of the American National

Standards Institute regarding ophthalmic materials.

(b) No individual or group that deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists, or ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device that does not meet the minimum standards set by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California.

(c) Any violation of the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California pursuant to this section shall be a misdemeanor.

(d) Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Division of Licensing and Division of Medical Quality of the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

(e) The State Board of Optometry or the Division of Licensing and Division of Medical Quality of the Medical Board of California may send any prescription ophthalmic device to the State Department of Public Health for testing as to whether or not the device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct the testing in its own facilities or may contract with any other facility to conduct the testing.

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

Board of Optometry – Proposed Language

(1) DCA Provision

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

Reason for this Change:

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

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

Proposed Language:

1502. Delegation of Certain Functions

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

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

(2-3) DCA Provisions

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

Reason for this Change:

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

- **726(a) & (b) – Sexual misconduct:** Currently defined in BPC Section 726. Recommend – Define in regulation that sexual misconduct is unprofessional conduct.

Reason for this Change:

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

Proposed Language:

1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

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

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

As used in this section, the term “sex offense” shall mean any of the following: NEW

(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(b) Any offense defined in Sections 261.5, 313.1, 647b, 243.4(a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

(c) Any attempt to commit any of the offenses specified in this section.

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

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

(4) DCA Provision

- **720.12 – Denial of application for registered sex offender:** Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.

Reason for this Change:

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

Proposed Language

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

1575.1. Required Actions Against Registered Sex Offenders.

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

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

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

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

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

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

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

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

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

(5-8) DCA Provisions

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

Reason for this Change:

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

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

Reason for this Change:

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

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

Reason for this Change:

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

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

Reason for this Change:

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

Proposed Language:

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

1575.2. Unprofessional Conduct.

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

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

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

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

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

(c) Failure to cooperate and participate in any board investigation pending against the licensee
Whenever the board is conducting an investigation, an optometrist or a candidate for licensure shall respond to the board's requests for information and/or evidence in writing within 30 days of the date mailed to or personally delivered on the optometrist or candidate for licensure. NEW
This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional

or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

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

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

(2) The arrest of the licensee.

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

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

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

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

(9) DCA Provision

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

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

Reason for this Change:

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

Proposed Language:

1523. Licensure and Examination Requirements.

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

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

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

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

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

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

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

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

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

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

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

(h) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice optometry safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant.

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

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

Board of Optometry – Proposed Language

1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled “Disciplinary Guidelines and Model Disciplinary Orders”~~ comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (DG-3 4, 5-99 7-2010) which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

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

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To: Board Members

Date: April 11, 2011

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 12 – Legislative Update

AB 761 (Roger Hernández) Optometrists as Clinical Laboratory Improvement Amendments of 1998 (CLIA) Lab Directors

What this bill does:

This bill expands the category of persons who may perform clinical laboratory tests or examinations that are classified as waived to include licensed optometrists if the results of the tests can be lawfully utilized within their practice, and would provide that a laboratory director may include a licensed optometrist, as specified for purposes of waived examinations.

Background:

Optometrists are currently allowed to perform CLIA waived tests under their scope of practice and are authorized to be lab directors for more complex tests under federal law, but state law hasn't been updated. As a result, optometrists cannot even perform the more simple, CLIA waived tests in their offices. CLIA waived test are simple laboratory examinations and procedures that are cleared by the Food and Drug Administration (FDA) for home use; employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible; or pose no reasonable risk of harm to the patient if the test is performed incorrectly. The specified tests that can be performed are as follows:

1. Dipstick or Tablet reagent urinalysis (non automated) for the following
 - Bilirubin
 - Glucose
 - Hemoglobin
 - Ketone
 - Leukocytes
 - Nitrite
 - pH
 - Protein
 - Specific gravity
 - Urobilinogen
2. Fecal occult blood
3. Ovulation tests – visual color comparison tests for luteinizing hormone
4. Urine pregnancy tests – visual color comparison tests
5. Erythrocyte sedimentation rate-non-automated
6. Hemoglobin – copper sulfate – non-automated'
7. Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use
8. Spun microhematocrit
9. (added 1/19/93) Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

As of November 1997, the CLIA waiver provisions were revised by Congress to make it clear that tests approved by the FDA for home use automatically qualify for CLIA waiver.

Status:

Double referred to the Assembly Business & Professions Committee and Assembly Health Committee. No date set.

Action Requested:

Board staff supports AB 761. Allowing optometrists to perform these test will benefit the patient because the optometrists will be able to perform a more comprehensive evaluation of the patient's condition, resulting in the most accurate diagnosis and development of a treatment plan. Also, sending CLIA waived tests to an outside lab unnecessarily delays appropriate diagnosis and treatment. If optometrists are going to be allowed to perform CLIA waiver tests, then it is only reasonable to allow them to be laboratory directors for that purpose.

Staff would like to request approval from the Board members to submit a letter of support for AB 761 (See Attachment 1 for language of the bill).

SB 709 (Kevin de León) Children's Vision

What this bill does:

This bill would create the Voluntary Children's Vision Educational Fund in the State Treasury for the purposes of funding projects that help educate parents and guardians about the need for children to receive comprehensive eye examination prior to entering school. The bill would require the fund to consist of specified money received by the state on a voluntary basis and would provide that all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for expenditure by the Superintendent of Public Instruction for carrying out the purposes of this act.

Background:

The current system that provides vision screenings to detect vision problems is seriously flawed. Even the best vision screenings miss 30 percent of children with significant eye or vision problems. They are usually done too late and miss early detection and prevention of amblyopia, which is the leading cause of blindness in children.

Status:

Re-referred to Senate Education Committee.

Action Requested:

Staff would like to request that the Board members review this legislation and indicate their position on the bill, if any, so that Board staff may write a letter of support or take no action (See Attachment 2 for language of the bill).

SB 690 (Ed Hernandez) Provider Anti-Discrimination

What this bill does:

This bill would prohibit a health care service plan contract or health insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating against any health care provider who is acting within the scope of that provider's license, as specified.

Background:

Commonly, health plans and insurance companies limit types of health care providers allowed to provide services. An example provided by the California Optometric Association (COA) states that optometrists who are permitted to provide routine vision care under a health plan or insurance contract are often

prohibited from treating medical eye conditions, such as glaucoma, that are within their scope of practice. Evidence shows optometrists can reduce costs, improve quality and increase access to care. Unfortunately, traditional contracting arrangements that created separate provider panels for vision care prevent optometrists from being used to their fullest potential. This practice also limits patient choice and access to a range of beneficial providers.

Status:

Senate Health Committee. Set for hearing April 27, 2011.

Action Requested:

Staff would like to request that the Board members review this legislation and indicate their position on the bill, if any, so that Board staff may write a letter of support or take no action (See Attachment 3 for language of the bill).

AB 675 (Curt Hagman) Continuing Education Promoting Labor Organizing, Politics Not Accepted for Licensure Renewal Requirements

What this bill does:

This bill would provide that continuing education courses that advance or promote labor organizing on behalf of a union or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than five years.

Status:

Hearing postponed by Assembly on Business, Professions and Consumer Protection.

Action Requested:

Staff would like to request that the Board members review this legislation and indicate their position on the bill, if any, so that Board staff may write a letter of support or take no action (See Attachment 4 for language of the bill).

Potential Spot Bill from Ophthalmological/Medical Associations Pertaining to Optometry Scope of Practice and Glaucoma Certification

There is a possibility that the California Academy of Eye Physicians and Surgeons (CAEPS) will be sponsoring legislation in order to repeal the recently enacted glaucoma regulations. Board staff is reviewing "spot bills" that may become CAEPS' legislation, and communicating with other stakeholders in order to stay on top of this issue, should action be necessary. At this time, it is unknown who the author of the bill will be.

Urgency Bill for Expert Consultants by the Senate Business, Professions & Economic Development Committee

The Board of Optometry, along with other health boards from the Department of Consumer Affairs, will be participating in an urgency bill in order to allow expert consultants to provide their services to boards and bureaus without contracts.

Current law requires consultants hired by a board or bureau to enter into a contract that follows all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public

Contract Code. This requirement has not been enforced until now, thus many boards and bureaus have not been using contracts to hire expert consultants.

Thus, instead of being able to obtain an expert consultant in a day without a contract, it will take 30 to 90 days with a contract. The Department's Contract's Unit has streamlined their own processes to drastically shorten the turn around processing time to 2-3 weeks of receiving a request for an Expert Consulting contract. Although many boards and bureaus appreciate the department's assistance, requiring expert consultants to contract with the state significantly increases staff workload and deters future expert consultants from working with the Board.

The Board has two types of expert consultants:

1. *Subject Matter Experts (SME) for Law Exam Development:*
Typically, SME's participate in one or two workshops a year for continuing education (CE) credits. Many participating SME's see this as a CE opportunity, not as a form of work. SME's sign up at will, sometimes a couple of weeks in advance and sometimes cancel a day before the workshop. This group enjoys the flexibility and ease of which they can participate in these workshops and a contract will be a burden for them as well as Board staff. SME's are not paid. They receive a \$100 per day per diem as well as reimbursement for all travel costs and meals during the time they are providing services to the state. Staff would have to do nine separate contracts per workshop, since many SME's do not like to commit so far in advance.
2. *Expert Witnesses for Enforcement Issues:*
Typically, expert witnesses are asked to review confidential case material, prepare written reports and, possibly testify at administrative hearings. They are paid at a rate of \$100 an hour for record review and preparation of a written report, and \$150 an hour for testimony at a hearing. Since expert witnesses are paid, this type of expert consultant will be easier to contract with. Also, there are only about five to ten enforcement complaint cases a year that require an expert witness.

Board staff is monitoring this bill's development and plans to be in support once it is introduced. For the time being, staff is complying with the contract requirement and will be submitting 30 contracts in the next couple of weeks.

AB 778 (Atkins) To Maintain Californians Health Care Access and Patients Choice

What this bill does:

This bill would authorize a dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation to do the following:

1. own a health care service plan that provides vision care services,
2. share profits with the health care service plan,
3. contract for specified business services with the health care service plan, and
4. jointly advertise vision care services with the health care service plan.

The bill would prohibit those persons or entities from engaging in conduct designed to influence or interfere with the medical decisions of an optometrist, as specified. A violation of this provision would be a crime.

Background:

Millions of Californians prefer to get their glasses where and when they see their optometrist. In this state, there are few options to take advantage of this type of convenience. The two most common options include:

1. Going to a private optometrist who sells frames and lenses; or
2. Using a retail optical store that exists in the same location as optometrists, who are employed by a separate health plan, which is known as co-location model.

To the patient, both look the same. However, the co-location model provides a one-stop experience with flexible evening and weekend office hours where patients receive quality eye care services and can fill their prescription on the same visit.

Due to a vagueness in the law, this type of practice is currently not allowed. This bill will codify the current business practices of the co-location model. The legislation will specifically allow a specialty health care plan to have business relationships with an optical dispenser (See Attachments 6-8 for more details.)

Status:

Referred to Assembly Health Committee and Business, Professions & Consumer Protection Committee from committee chair, with author's amendments (03/31/2011).

Action Requested:

Staff would like to request that the Board members review this legislation and recommends that it be referred to the Board's Legislative and Regulation Committee for further discussion (See Attachment 5 for language of the bill).

Attachments

- 1) AB 761 Bill Language – Optometrists as CLIA Lab Directors
- 2) SB 709 Bill Language – Children's Vision
- 3) SB 690 Bill Language – Provider Anti-Discrimination
- 4) AB 675 Bill Language – Continuing Education
- 5) AB 778 Bill Language – CA Healthcare Access and Choice
- 6) AB 778 - Californians for Healthy Vision Memorandum
- 7) AB 778 – Californians for Healthy Vision Eye Care Service Models Comparison Chart
- 8) AB 778 – Californians for Healthy Vision Fact Sheet

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 761

Introduced by Assembly Member Roger Hernández

February 17, 2011

An act to amend Sections 1206.5 and 1209 of the Business and Professions Code, relating to optometrists.

LEGISLATIVE COUNSEL'S DIGEST

AB 761, as introduced, Roger Hernández. Optometrists.

Existing law provides for the regulation and licensure of clinical laboratories and clinical laboratory personnel by the State Department of Public Health. Existing law prohibits the performance of a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 unless the test or examination is performed under the overall operation and administration of a laboratory director, as defined, and is performed by specified persons, including certain health care personnel. Existing law provides for the licensure and regulation of optometrists by the State Board of Optometry.

This bill would expand the category of persons who may perform clinical laboratory tests or examinations that are classified as waived to include licensed optometrists if the results of the tests can be lawfully utilized within their practice, and would provide that a laboratory director may include a licensed optometrist, as specified for purposes of waived examinations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1206.5 of the Business and Professions
2 Code is amended to read:
3 1206.5. (a) Notwithstanding subdivision (b) of Section 1206
4 and except as otherwise provided in Section 1241, no person shall
5 perform a clinical laboratory test or examination classified as
6 waived under CLIA unless the clinical laboratory test or
7 examination is performed under the overall operation and
8 administration of the laboratory director, as described in Section
9 1209, including, but not limited to, documentation by the laboratory
10 director of the adequacy of the qualifications and competency of
11 the personnel, and the test is performed by any of the following
12 persons:
13 (1) A licensed physician and surgeon holding a M.D. or D.O.
14 degree.
15 (2) A licensed podiatrist, a licensed dentist, *a licensed*
16 *optometrist*, or a licensed naturopathic doctor, if the results of the
17 tests can be lawfully utilized within his or her practice.
18 (3) A person licensed under this chapter to engage in clinical
19 laboratory practice or to direct a clinical laboratory.
20 (4) A person authorized to perform tests pursuant to a certificate
21 issued under Article 5 (commencing with Section 101150) of
22 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.
23 (5) A licensed physician assistant if authorized by a supervising
24 physician and surgeon in accordance with Section 3502 or 3535.
25 (6) A person licensed under Chapter 6 (commencing with
26 Section 2700).
27 (7) A person licensed under Chapter 6.5 (commencing with
28 Section 2840).
29 (8) A perfusionist if authorized by and performed in compliance
30 with Section 2590.
31 (9) A respiratory care practitioner if authorized by and
32 performed in compliance with Chapter 8.3 (commencing with
33 Section 3700).
34 (10) A medical assistant, as defined in Section 2069, if the
35 waived test is performed pursuant to a specific authorization
36 meeting the requirements of Section 2069.
37 (11) A pharmacist, as defined in Section 4036, if ordering drug
38 therapy-related laboratory tests in compliance with clause (ii) of

1 subparagraph (A) of paragraph (5) of, or subparagraph (B) of
2 paragraph (4) of, subdivision (a) of Section 4052, or if performing
3 skin puncture in the course of performing routine patient
4 assessment procedures in compliance with Section 4052.1.

5 (12) A naturopathic assistant, as defined in Sections 3613 and
6 3640.2, if the waived test is performed pursuant to a specific
7 authorization meeting the requirements of Sections 3613 and
8 3640.2.

9 (13) Other health care personnel providing direct patient care.

10 (14) Any other person performing nondiagnostic testing pursuant
11 to Section 1244.

12 (b) Notwithstanding subdivision (b) of Section 1206, no person
13 shall perform clinical laboratory tests or examinations classified
14 as of moderate complexity under CLIA unless the clinical
15 laboratory test or examination is performed under the overall
16 operation and administration of the laboratory director, as described
17 in Section 1209, including, but not limited to, documentation by
18 the laboratory director of the adequacy of the qualifications and
19 competency of the personnel, and the test is performed by any of
20 the following persons:

21 (1) A licensed physician and surgeon holding a M.D. or D.O.
22 degree.

23 (2) A licensed podiatrist or a licensed dentist if the results of
24 the tests can be lawfully utilized within his or her practice.

25 (3) A person licensed under this chapter to engage in clinical
26 laboratory practice or to direct a clinical laboratory.

27 (4) A person authorized to perform tests pursuant to a certificate
28 issued under Article 5 (commencing with Section 101150) of
29 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

30 (5) A licensed physician assistant if authorized by a supervising
31 physician and surgeon in accordance with Section 3502 or 3535.

32 (6) A person licensed under Chapter 6 (commencing with
33 Section 2700).

34 (7) A perfusionist if authorized by and performed in compliance
35 with Section 2590.

36 (8) A respiratory care practitioner if authorized by and
37 performed in compliance with Chapter 8.3 (commencing with
38 Section 3700).

39 (9) A person performing nuclear medicine technology if
40 authorized by and performed in compliance with Article 6

1 (commencing with Section 107150) of Chapter 4 of Part 1 of
2 Division 104 of the Health and Safety Code.

3 (10) Any person if performing blood gas analysis in compliance
4 with Section 1245.

5 (11) (A) A person certified or licensed as an "Emergency
6 Medical Technician II" or paramedic pursuant to Division 2.5
7 (commencing with Section 1797) of the Health and Safety Code
8 while providing prehospital medical care, a person licensed as a
9 psychiatric technician under Chapter 10 (commencing with Section
10 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5
11 (commencing with Section 2840), or as a midwife licensed pursuant
12 to Article 24 (commencing with Section 2505) of Chapter 5, or
13 certified by the department pursuant to Division 5 (commencing
14 with Section 70001) of Title 22 of the California Code of
15 Regulations as a nurse assistant or a home health aide, who
16 provides direct patient care, if the person is performing the test as
17 an adjunct to the provision of direct patient care by the person, is
18 utilizing a point-of-care laboratory testing device at a site for which
19 a laboratory license or registration has been issued, meets the
20 minimum clinical laboratory education, training, and experience
21 requirements set forth in regulations adopted by the department,
22 and has demonstrated to the satisfaction of the laboratory director
23 that he or she is competent in the operation of the point-of-care
24 laboratory testing device for each analyte to be reported.

25 (B) Prior to being authorized by the laboratory director to
26 perform laboratory tests or examinations, testing personnel
27 identified in subparagraph (A) shall participate in a preceptor
28 program until they are able to perform the clinical laboratory tests
29 or examinations authorized in this section with results that are
30 deemed accurate and skills that are deemed competent by the
31 preceptor. For the purposes of this section, a "preceptor program"
32 means an organized system that meets regulatory requirements in
33 which a preceptor provides and documents personal observation
34 and critical evaluation, including review of accuracy, reliability,
35 and validity, of laboratory testing performed.

36 (12) Any other person within a physician office laboratory if
37 the test is performed under the supervision of the patient's
38 physician and surgeon or podiatrist who shall be accessible to the
39 laboratory to provide onsite, telephone, or electronic consultation
40 as needed, and shall: (A) ensure that the person is performing test

1 methods as required for accurate and reliable tests; and (B) have
2 personal knowledge of the results of the clinical laboratory testing
3 or examination performed by that person before the test results are
4 reported from the laboratory.

5 (13) A pharmacist, if ordering drug therapy-related laboratory
6 tests in compliance with clause (ii) of subparagraph (A) of
7 paragraph (5) of, or subparagraph (B) of paragraph (4) of,
8 subdivision (a) of Section 4052.

9 (c) Notwithstanding subdivision (b) of Section 1206, no person
10 shall perform clinical laboratory tests or examinations classified
11 as of high complexity under CLIA unless the clinical laboratory
12 test or examination is performed under the overall operation and
13 administration of the laboratory director, as described in Section
14 1209, including, but not limited to, documentation by the laboratory
15 director of the adequacy of the qualifications and competency of
16 the personnel, and the test is performed by any of the following
17 persons:

18 (1) A licensed physician and surgeon holding a M.D. or D.O.
19 degree.

20 (2) A licensed podiatrist or a licensed dentist if the results of
21 the tests can be lawfully utilized within his or her practice.

22 (3) A person licensed under this chapter to engage in clinical
23 laboratory practice or to direct a clinical laboratory if the test or
24 examination is within a specialty or subspecialty authorized by
25 the person's licensure.

26 (4) A person authorized to perform tests pursuant to a certificate
27 issued under Article 5 (commencing with Section 101150) of
28 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code
29 if the test or examination is within a specialty or subspecialty
30 authorized by the person's certification.

31 (5) A licensed physician assistant if authorized by a supervising
32 physician and surgeon in accordance with Section 3502 or 3535.

33 (6) A perfusionist if authorized by and performed in compliance
34 with Section 2590.

35 (7) A respiratory care practitioner if authorized by and
36 performed in compliance with Chapter 8.3 (commencing with
37 Section 3700).

38 (8) A person performing nuclear medicine technology if
39 authorized by and performed in compliance with Article 6

1 (commencing with Section 107150) of Chapter 4 of Part 1 of
2 Division 104 of the Health and Safety Code.

3 (9) Any person if performing blood gas analysis in compliance
4 with Section 1245.

5 (10) Any other person within a physician office laboratory if
6 the test is performed under the onsite supervision of the patient's
7 physician and surgeon or podiatrist who shall: (A) ensure that the
8 person is performing test methods as required for accurate and
9 reliable tests; and (B) have personal knowledge of the results of
10 clinical laboratory testing or examination performed by that person
11 before the test results are reported from the laboratory.

12 (d) Clinical laboratory examinations classified as
13 provider-performed microscopy under CLIA may be personally
14 performed using a brightfield or phase/contrast microscope by one
15 of the following practitioners:

16 (1) A licensed physician and surgeon using the microscope
17 during the patient's visit on a specimen obtained from his or her
18 own patient or from a patient of a group medical practice of which
19 the physician is a member or employee.

20 (2) A nurse midwife holding a certificate as specified by Section
21 2746.5, a licensed nurse practitioner as specified in Section 2835.5,
22 or a licensed physician assistant acting under the supervision of a
23 physician pursuant to Section 3502 using the microscope during
24 the patient's visit on a specimen obtained from his or her own
25 patient or from the patient of a clinic, group medical practice, or
26 other health care provider of which the certified nurse midwife,
27 licensed nurse practitioner, or licensed physician assistant is an
28 employee.

29 (3) A licensed dentist using the microscope during the patient's
30 visit on a specimen obtained from his or her own patient or from
31 a patient of a group dental practice of which the dentist is a member
32 or an employee.

33 SEC. 2. Section 1209 of the Business and Professions Code is
34 amended to read:

35 1209. (a) As used in this chapter, "laboratory director" means
36 any person who is a duly licensed physician and surgeon, or, only
37 for purposes of a clinical laboratory test or examination classified
38 as waived, is a duly licensed naturopathic doctor, *or a duly licensed*
39 *optometrist*, or is licensed to direct a clinical laboratory under this
40 chapter and who substantially meets the laboratory director

1 qualifications under CLIA for the type and complexity of tests
2 being offered by the laboratory. The laboratory director, if qualified
3 under CLIA, may perform the duties of the technical consultant,
4 technical supervisor, clinical consultant, general supervisor, and
5 testing personnel, or delegate these responsibilities to persons
6 qualified under CLIA. If the laboratory director reapportions
7 performance of those responsibilities or duties, he or she shall
8 remain responsible for ensuring that all those duties and
9 responsibilities are properly performed.

10 (b) (1) The laboratory director is responsible for the overall
11 operation and administration of the clinical laboratory, including
12 administering the technical and scientific operation of a clinical
13 laboratory, the selection and supervision of procedures, the
14 reporting of results, and active participation in its operations to
15 the extent necessary to ensure compliance with this act and CLIA.
16 He or she shall be responsible for the proper performance of all
17 laboratory work of all subordinates and shall employ a sufficient
18 number of laboratory personnel with the appropriate education
19 and either experience or training to provide appropriate
20 consultation, properly supervise and accurately perform tests, and
21 report test results in accordance with the personnel qualifications,
22 duties, and responsibilities described in CLIA and this chapter.

23 (2) Where a point-of-care laboratory testing device is utilized
24 and provides results for more than one analyte, the testing
25 personnel may perform and report the results of all tests ordered
26 for each analyte for which he or she has been found by the
27 laboratory director to be competent to perform and report.

28 (c) As part of the overall operation and administration, the
29 laboratory director of a registered laboratory shall document the
30 adequacy of the qualifications (educational background, training,
31 and experience) of the personnel directing and supervising the
32 laboratory and performing the laboratory test procedures and
33 examinations. In determining the adequacy of qualifications, the
34 laboratory director shall comply with any regulations adopted by
35 the department that specify the minimum qualifications for
36 personnel, in addition to any CLIA requirements relative to the
37 education or training of personnel.

38 (d) As part of the overall operation and administration, the
39 laboratory director of a licensed laboratory shall do all of the
40 following:

1 (1) Ensure that all personnel, prior to testing biological
2 specimens, have the appropriate education and experience, receive
3 the appropriate training for the type and complexity of the services
4 offered, and have demonstrated that they can perform all testing
5 operations reliably to provide and report accurate results. In
6 determining the adequacy of qualifications, the laboratory director
7 shall comply with any regulations adopted by the department that
8 specify the minimum qualifications for, and the type of procedures
9 that may be performed by, personnel in addition to any CLIA
10 requirements relative to the education or training of personnel.
11 Any regulations adopted pursuant to this section that specify the
12 type of procedure that may be performed by testing personnel shall
13 be based on the skills, knowledge, and tasks required to perform
14 the type of procedure in question.

15 (2) Ensure that policies and procedures are established for
16 monitoring individuals who conduct preanalytical, analytical, and
17 postanalytical phases of testing to ensure that they are competent
18 and maintain their competency to process biological specimens,
19 perform test procedures, and report test results promptly and
20 proficiently, and, whenever necessary, identify needs for remedial
21 training or continuing education to improve skills.

22 (3) Specify in writing the responsibilities and duties of each
23 individual engaged in the performance of the preanalytic, analytic,
24 and postanalytic phases of clinical laboratory tests or examinations,
25 including which clinical laboratory tests or examinations the
26 individual is authorized to perform, whether supervision is required
27 for the individual to perform specimen processing, test
28 performance, or results reporting, and whether consultant,
29 supervisor, or director review is required prior to the individual
30 reporting patient test results.

31 (e) The competency and performance of staff of a licensed
32 laboratory shall be evaluated and documented by the laboratory
33 director, or by a person who qualifies as a technical consultant or
34 a technical supervisor under CLIA depending on the type and
35 complexity of tests being offered by the laboratory.

36 (1) The procedures for evaluating the competency of the staff
37 shall include, but are not limited to, all of the following:

38 (A) Direct observations of routine patient test performance,
39 including patient preparation, if applicable, and specimen handling,
40 processing, and testing.

1 (B) Monitoring the recording and reporting of test results.

2 (C) Review of intermediate test results or worksheets, quality
3 control records, proficiency testing results, and preventive
4 maintenance records.

5 (D) Direct observation of performance of instrument
6 maintenance and function checks.

7 (E) Assessment of test performance through testing previously
8 analyzed specimens, internal blind testing samples, or external
9 proficiency testing samples.

10 (F) Assessment of problem solving skills.

11 (2) Evaluation and documentation of staff competency and
12 performance shall occur at least semiannually during the first year
13 an individual tests biological specimens. Thereafter, evaluations
14 shall be performed at least annually unless test methodology or
15 instrumentation changes, in which case, prior to reporting patient
16 test results, the individual's performance shall be reevaluated to
17 include the use of the new test methodology or instrumentation.

18 (f) The laboratory director of each clinical laboratory of an acute
19 care hospital shall be a physician and surgeon who is a qualified
20 pathologist, except as follows:

21 (1) If a qualified pathologist is not available, a physician and
22 surgeon or a clinical laboratory bioanalyst qualified as a laboratory
23 director under subdivision (a) may direct the laboratory. However,
24 a qualified pathologist shall be available for consultation at suitable
25 intervals to ensure high quality service.

26 (2) If there are two or more clinical laboratories of an acute care
27 hospital, those additional clinical laboratories that are limited to
28 the performance of blood gas analysis, blood electrolyte analysis,
29 or both, may be directed by a physician and surgeon qualified as
30 a laboratory director under subdivision (a), irrespective of whether
31 a pathologist is available.

32 As used in this subdivision, a qualified pathologist is a physician
33 and surgeon certified or eligible for certification in clinical or
34 anatomical pathology by the American Board of Pathology or the
35 American Osteopathic Board of Pathology.

36 (g) Subdivision (f) does not apply to any director of a clinical
37 laboratory of an acute care hospital acting in that capacity on or
38 before January 1, 1988.

- 1 (h) A laboratory director may serve as the director of up to the
- 2 maximum number of laboratories stipulated by CLIA, as defined
- 3 under Section 1202.5.

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AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 709

Introduced by Senator De León

February 18, 2011

An act to amend Section 49452 of *add Section 49453* to the Education Code, relating to pupil health, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as amended, De León. Pupil health: ~~sight and hearing tests.~~ *comprehensive eye examinations.*

Existing law requires the governing board of any school district to provide for the adequate testing of sight and hearing of each pupil enrolled in the schools of the district by specified persons. *Existing law also requires, upon first enrollment in a school district, and at least every 3rd year thereafter until the child has completed 8th grade, a child's vision to be appraised by the school nurse, a qualified supervisor of health, or other specified person, and requires this evaluation to include tests for visual acuity and color vision, as specified. If a defect is noted by the supervisor of health, or his or her assistant, existing law requires a report to be made to the parent or guardian of the child that asks the parent or guardian to take such action as will cure or correct the defect.*

~~This bill would make technical, nonsubstantive changes to that provision:~~

This bill would create the Voluntary Children's Vision Educational Fund in the State Treasury for the purpose of funding projects that help educate parents and guardians about the need for children to receive comprehensive eye examinations prior to entering school. The bill would require the fund to consist of specified money received by the state on

a voluntary basis and would provide that all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for expenditure by the Superintendent of Public Instruction for carrying out the purposes of this act. By establishing a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *One in four schoolaged children have some form of vision*
4 *problem. Without a comprehensive eye examination before they*
5 *enter school, many children will suffer from undetected vision*
6 *problems, and some may even be misdiagnosed as having a*
7 *learning disorder.*

8 (b) *Approximately 80 percent of what a child learns is directly*
9 *related to vision. Comprehensive eye examinations ensure that*
10 *children can get the education they need to succeed in life.*
11 *According to the federal Centers for Disease Control and*
12 *Prevention, impaired vision can affect a child's cognitive,*
13 *emotional, neurological, and physical development by potentially*
14 *limiting the range of experiences and kinds of information to which*
15 *the child is exposed.*

16 (c) *Studies have demonstrated a clear link between delinquent*
17 *behavior and uncorrected vision. Pupils may not realize that they*
18 *cannot see well and instead believe that they are unable to learn,*
19 *leading them to give up on school. A study at one high school in*
20 *Maryland found that 98 percent of those classified as juvenile*
21 *delinquents suffered from a visual condition.*

22 (d) *According to the National Institutes of Health, vision*
23 *screening methods detected only 40 to 65 percent of children's*
24 *vision disorders. Comprehensive eye examinations are necessary*
25 *to detect problems that a simple screening can miss, such as eye*
26 *coordination, eye diseases, moderate amounts of farsightedness,*
27 *astigmatism, and the internal health of the eye.*

28 (e) *Obtaining a comprehensive eye examination prior to entering*
29 *school ensures that California pupils get the eye care they need*

1 to see well and stay healthy so they can fully participate in their
2 education.

3 SEC. 2. Section 49453 is added to the Education Code, to read:

4 49453. The Voluntary Children's Vision Educational Fund is
5 hereby created in the State Treasury for the purpose of funding
6 projects that help educate parents and guardians about the need
7 for children to receive comprehensive eye examinations prior to
8 entering school. The fund shall consist of money received by the
9 state on a voluntary basis from the federal government, individuals,
10 businesses, organizations, industry, and other sources for the
11 purposes of this section. Notwithstanding Section 13340 of the
12 Government Code, all money in the fund is continuously
13 appropriated to the department without regard to fiscal years for
14 expenditure by the Superintendent, in consultation with the
15 department, for carrying out the purposes of this section.

16 SECTION 1. Section 49452 of the Education Code is amended
17 to read:

18 ~~49452. The governing board of a school district shall, subject~~
19 ~~to Section 49451, provide for the testing of the sight and hearing~~
20 ~~of a pupil enrolled in a school of the district. The test shall be~~
21 ~~adequate in nature and shall be given only by duly qualified~~
22 ~~supervisors of health employed by the district; or by certificated~~
23 ~~employees of the district or of the county superintendent of schools~~
24 ~~who possess the qualifications prescribed by the Commission for~~
25 ~~Teacher Preparation and Licensing; or by contract with an agency~~
26 ~~duly authorized to perform those services by the county~~
27 ~~superintendent of schools of the county in which the district is~~
28 ~~located, under guidelines established by the State Board of~~
29 ~~Education, or accredited schools or colleges of optometry,~~
30 ~~osteopathic medicine, or medicine. The records of the tests shall~~
31 ~~serve as evidence of the need of the pupils for the educational~~
32 ~~facilities provided physically handicapped individuals. The~~
33 ~~equipment necessary to conduct the tests may be purchased or~~
34 ~~rented by governing boards of school districts. The state, any~~
35 ~~agency, or political subdivision thereof may sell or rent any such~~
36 ~~equipment owned by it to the governing board of a school district~~
37 ~~upon terms as may be mutually agreeable.~~

SENATE BILL

No. 690

Introduced by Senator Hernandez

February 18, 2011

An act to add Section 1373.15 to the Health and Safety Code, and to add Section 10177.15 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 690, as introduced, Hernandez. Health care coverage: discrimination.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits certain discriminatory acts by health care service plans and health insurers.

This bill would prohibit a health care service plan contract or health insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating against any health care provider who is acting within the scope of that provider's license, as specified.

Because a willful violation of the bill's provisions relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1373.15 is added to the Health and Safety
2 Code, to read:

3 1373.15. (a) No health care service plan contract that is issued,
4 amended, renewed, or delivered on or after January 1, 2014, shall
5 discriminate with respect to provider participation or coverage
6 under the plan against any health care provider who is acting within
7 the scope of that provider's license or certification.

8 (b) Notwithstanding subdivision (a), this section shall not be
9 construed to require that a health care service plan contract with
10 any health care provider willing to abide by the terms and
11 conditions for participation established by the plan or issuer.

12 (c) Nothing in this section shall be construed as preventing a
13 health care service plan from establishing varying reimbursement
14 rates based on quality or performance measures.

15 SEC. 2. Section 10177.15 is added to the Insurance Code, to
16 read:

17 10177.15. (a) No health insurance policy that is issued,
18 amended, renewed, or delivered on or after January 1, 2014, shall
19 discriminate with respect to provider participation or coverage
20 under the policy against any health care provider who is acting
21 within the scope of that provider's license or certification.

22 (b) Notwithstanding subdivision (a), this section shall not be
23 construed to require that a health insurer contract with any health
24 care provider willing to abide by the terms and conditions for
25 participation established by the insurer or issuer.

26 (c) Nothing in this section shall be construed as preventing a
27 health insurer from establishing varying reimbursement rates based
28 on quality or performance measures.

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 675

Introduced by Assembly Member Hagman
(Coauthor: Senator Huff)

February 17, 2011

An act to add Section 110.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 675, as introduced, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than 5 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 110.6 is added to the Business and
2 Professions Code, to read:

3 110.6. Notwithstanding any other provision of law, if a board
4 described in Section 101 requires its licensees to satisfy continuing
5 education requirements by pursuing a course of continuing
6 education, the following shall apply:

7 (a) Continuing education courses shall contain only content
8 relevant to the particular practice regulated by the board pursuant
9 to its laws and regulations. Continuing education courses that
10 advance or promote labor organizing on behalf of a union, or that
11 advance or promote statutory or regulatory changes, political
12 candidates, political advocacy, or political strategy shall not be
13 considered content relevant to the practice regulated by the board
14 and shall not be acceptable for meeting continuing education
15 requirements. For the purposes of this section, "courses" includes
16 institutes, seminars, lectures, conferences, workshops, and any
17 other public events.

18 (b) (1) To the extent applicable, if an approved provider offers
19 a course described in subdivision (a), the provider shall not
20 represent that the course is acceptable for meeting the continuing
21 education requirements. If a provider violates this requirement,
22 the board shall withdraw its approval of the provider, subject to
23 paragraph (2).

24 (2) If, after the board provides the provider notice and an
25 opportunity to be heard, the board finds that the provider violated
26 the requirement in paragraph (1), the board shall withdraw approval
27 of the provider for no less than five years.

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011-12 REGULAR SESSION

ASSEMBLY BILL

No. 778

Introduced by Assembly Member Atkins

February 17, 2011

An act to add Sections 2553.7 and 2553.8 to the Business and Professions Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 778, as amended, Atkins. Health care service ~~plans~~. *plans: vision care.*

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides that health care service plans shall not be deemed to be engaged in the practice of a profession, and may employ, or contract with, any licensed health care professional to deliver professional services, and may directly own, and may directly operate through its professional employees or contracted licensed professionals, offices and subsidiary corporations. *Existing law provides that those professionals may not own or control offices or branch offices unless otherwise expressly authorized.*

Existing law provides for the licensure and regulation of dispensing opticians by the Medical Board of California. Existing law provides that a violation of those provisions is a misdemeanor.

~~This bill would declare the intent of the Legislature to enact legislation related to health care service plans under the Knox-Keene Act and the entities with which a health care service plan may transact business authorize a dispensing optician, an optical company, a manufacturer~~

or distributor of optical goods, or a nonoptometric corporation to own a health care service plan that provides vision care services, share profits with the health care service plan, contract for specified business services with the health care service plan, and jointly advertise vision care services with the health care service plan. The bill would prohibit those persons or entities from engaging in conduct designed to influence or interfere with the medical decisions of an optometrist, as specified. ~~Because a violation of that provision would be a crime, the bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) Health care service plans, including specialized health care
- 4 service plans, are regulated by the Department of Managed Health
- 5 Care.
- 6 (b) To ensure that quality care and coverage are provided to
- 7 enrollees, a health care service plan, including a specialized health
- 8 care service plan, is required to do all of the following:
- 9 (1) Establish a department-approved quality assurance program
- 10 to ensure that enrollees are continuously provided the appropriate
- 11 level of services covered by the plan.
- 12 (2) Ensure that a separation of fiscal and administrative
- 13 management from medical services exists within the plan.
- 14 (3) Periodically submit information to the department to
- 15 demonstrate delivery of quality care, accessibility of services to
- 16 enrollees, and prompt resolution of complaints.
- 17 (4) Establish procedures meeting specified requirements for
- 18 reviewing the utilization of services and facilities.
- 19 (5) Participate in comprehensive medical and financial audits
- 20 conducted by the department.

1 (c) Existing law prohibits an optometrist from engaging in
2 certain business relationships with a registered optical dispenser.

3 (d) Existing law allows a health care service plan to hire and
4 contract with licensed professionals and to engage in a business
5 relationship with any entity. However, existing law is unclear
6 about the relationships between health care service plans that
7 provide vision services and optical companies.

8 (e) Providing statutory clarity regarding permissible business
9 relationships between a health care service plan providing vision
10 services and optical companies will provide certainty and allow
11 regulating entities to ensure that plans are engaged in appropriate
12 business relationships.

13 SEC. 2. Section 2553.7 is added to the Business and Professions
14 Code, to read:

15 2553.7. Notwithstanding any other provision of law, a
16 dispensing optician, an optical company, a manufacturer or
17 distributor of optical goods, or a nonoptometric corporation may
18 do all of the following:

19 (a) Own a health care service plan that provides vision care
20 services and share its profits.

21 (b) Contract for business services with, lease office space or
22 equipment to or from, or share office space with, a health care
23 service plan that provides vision care services.

24 (c) Jointly advertise vision care services with a health care
25 service plan that provides vision care services.

26 SEC. 3. Section 2553.8 is added to the Business and Professions
27 Code, to read:

28 2553.8. (a) A registered dispensing optician, an optical
29 company, a manufacturer or distributor of optical goods, or a
30 nonoptometric corporation shall not engage in conduct designed
31 to influence or interfere with the medical decisions of an
32 optometrist employed by, or who has contracted with, a specialized
33 vision care service plan for fiscal or administrative reasons.

34 (b) Pursuant to subdivision (g) of Section 1367 of the Health
35 and Safety Code, the medical decisions of an optometrist who is
36 employed by, or who has contracted with, a specialized vision care
37 service plan shall be unhindered by fiscal and administrative
38 management.

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 ~~SECTION 1. It is the intent of the Legislature to enact~~
9 ~~legislation to clarify existing law with regard to health care service~~
10 ~~plans that are regulated under the Knox-Keene Health Care Service~~
11 ~~Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)~~
12 ~~of Division 2 of the Health and Safety Code) and the entities with~~
13 ~~which a health care service plan may transact business.~~

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CALIFORNIANS FOR HEALTHY VISION

MEMORANDUM

To: Interested Parties
From: Californians for Healthy Vision
Date: March 1, 2011
Re: AB 778 (Atkins) - To Maintain Californians Health Care Access and Patients Choice

Millions of Californians prefer to get their glasses where and when they see their eye doctor. In this state, there are a few options to take advantage of this type of convenience. The most popular options include going to a private optometrist who also sells frames and lenses; or (2) using a retail optical store that exists in the same location as optometrists who are employed by a separate health plan, which is known as co-location model. On the surface, both look the same to the patient. However, the co-location model provides a one-stop experience with flexible evening and weekend office hours where patients receive quality eye care services and can fill their prescription in the same visit. This arrangement provides patients with exceptional care, broadens eye care access, and creates thousands of jobs in the state.

Unfortunately, due to the vagueness in the law, millions of Californians may find that their optometrists at a co-located office are no longer there. California could become one of only three states in the country to not allow patients to have the option of receiving vision services at a co-location vision office.

Legislative Solution – Assembly Bill 778 (Atkins)

To best ensure that Californians will not be severely limited, *Californians for Healthy Vision* supports AB 778 that will codify the current business practices of the co-location model. The legislation will specifically allow a specialty health care plan to have business relationships with an optical dispenser. This solution is needed in order to provide statutory clarity and stability.

AB 778 will not create a new type of business practice or interfere with current business models. The legislation will simply codify the current model used by optical companies and Knox-Keene plans in the state that is regulated by the Department of Managed Health Care (DMHC). All existing regulatory structures will remain intact and in force. Additionally, the legislative solution we are seeking will not allow an optical company to hire an optometrist or ophthalmologist. This proposal is limited to defining rights for licensed Knox-Keene plans.

AB 778 is needed to preserve a model that hundreds of optometrists prefer and millions of Californians use to access eye care services.

CALIFORNIANS FOR HEALTHY VISION

California's Two Major Eye Care Service Models

	Patient Visits an Optometrist at a CO-LOCATION OFFICE*	Patient Visits an Optometrist at a PRIVATE OFFICE
Optometrist Licensing Requirements	All optometrists are licensed by the California Board of Optometry.	All optometrists are licensed by the California Board of Optometry.
State Oversight & State Regulations	Regulated by California Department of Managed Health Care (DMHC) : <ul style="list-style-type: none"> • Approves health care plan • Ensures financial solvency of plan • Ensures medical competency of all providers • Ensures separation of financial and medical decisions • Responds to consumer complaints about plan <p>Board of Optometry provides oversight and regulation of all licensed optometrists and their practice.</p>	Not directly overseen or regulated by California Department of Managed Health Care (DMHC). <p>Board of Optometry provides oversight and regulation of all licensed optometrists and their practice.</p>
State Audits	DMHC audits regularly all aspects of operation.	No state audits unless there is a complaint to the Board of Optometry. Private plans may perform audits on a limited basis.
Optician Licensing & Regulation	All opticians and optical locations are licensed and regulated by the California Medical Board .	Not required to use licensed opticians.
Patient Options to Fill Prescription	Patients may: <ul style="list-style-type: none"> • Visit ANY eyewear specialist to fill their prescription. • Visit onsite co-location office to fill their prescription, often within one hour. 	Patients may: <ul style="list-style-type: none"> • Visit ANY eyewear specialist to fill their prescription. • May be directed to the doctor's eyewear showroom. The prescription may then be sent out to an optician or crafted in house.

* *Co-Location Offices* is where a separate optical retail store and DMHC-regulated optometry office exist in the same location where patients can receive an eye exam and fill their prescription during the same visit.



Eye care access and thousands of jobs in California are in jeopardy

WHAT ARE THE FACTS – Assembly Bill 778?

There are two major vision care models in California.

The two major eye care models in the state are: (1) offices run by private optometrists who are licensed by the Board of Optometry and (2) co-location offices where a separate optical retail store and optometry office exist in the same location where patients can receive an eye exam and fill their prescription during the same visit. The opticians working at the optical retail store are regulated by the Medical Board and the optometry office is regulated by the DMHC and the Board of Optometry.

For decades, millions of Californians have used the convenient co-location model that provides a one-stop experience where patients receive quality eye care and fill their prescription during the same visit. This arrangement provides patients with exceptional care, broadens eye care access, and creates thousands of jobs in the state. However, due to vagueness in the law, these Californians may find that their optometrists at these stores are no longer there. California could become one of only three states in the country to not allow patients to have the option of receiving vision services at a co-location vision office.

WILL CALIFORNIANS BE FORCED TO HAVE ONLY ONE OPTION FOR EYE CARE?

Vision care choice of Californians could be severely limited.

Optical companies often sublease space to a separate vision health plan (Knox-Keene Specialty Service Plan) that employs optometrists. Due to an ambiguity in the law that regulates these relationships, optometrists, their staff and optical employees may be forced out of their jobs. The result will force California patients and doctors to lose access to the type of care they prefer to give and receive, severely limiting access and affordable vision care services that our state enjoys today.

Assembly Bill 778 (Atkins) - A legislative clarification is needed.

The creators of the original law never intended to prevent vision services that use this model from operating in California. To protect vision care choice, access and quality, the State Legislature needs to clear up the ambiguity and ensure that these companies and optometrists that Californians have used for decades will continue. The legislation will codify into law that companies that use the co-location model can continue to operate in California.

WHAT WILL THE IMPACT BE ON QUALITY AND ACCESS TO EYE CARE?

Working families will be severely limited in accessing eye care services.

Patients regularly cite quality of care and convenience as the two most important factors when choosing a vision care provider. The co-location model allows patients to receive exceptional care and prescribed glasses in just one visit at convenient hours. Many working families need to use these services as they are easily accessible and offer services in the evenings and weekends. Unless the state passes legislation to ensure these eye care services can continue to operate and serve millions of Californians, the optometrists employed by the health care plans could be forced to leave.

Californians will be limited to only one vision care option that requires less oversight.

Companies and optometrists that operate in a co-location model are subject to more oversight and quality control than private optometrists. Under the close oversight of California's Department of Managed Health Care, optometrists employed under a health care plan and providing services at a retail optical store have consistently surpassed all regulatory requirements of a specialized health care service plan, including quality of care, member accessibility, and financial soundness.

WHAT WILL BE THE IMPACT ON CALIFORNIA'S ECONOMY?

Current law has created economic instability and may result in the loss of thousands of quality jobs.

With the vagueness in the current law, it has created instability and a deterrent for companies that use the co-location model to invest in California. If legislation is not passed to clarify the law, quality jobs in the medical field will be lost.

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

To: Board Members

Date: April 11, 2011

From: Andrea Leiva and Brianna Miller
Policy Analyst Enforcement Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 13 – Review and Update Pertaining to the Strategic Plan

Background

On March 25, 2010 the Board adopted its 2010-2011 Strategic Plan. Staff has begun working on achieving the goals established in the strategic plan. See Attachment 1 for more detail.

Attachments

1) Strategic Plan Quarterly Report

**STATE BOARD OF OPTOMETRY
STRATEGIC PLAN QUARTERLY REPORT
APRIL 11, 2011**

GOAL 1 – LICENSING: Provide applicants and licensees a fast, accurate and cost effective process for obtaining and maintaining licensure registration and certifications required to practice optometry in the State of California

Develop and implement procedures for routine continuing education audits.

➤ Cheree

- The first continuing optometric education (CE) audits were conducted in December, 2009, March 2010, October 2010 and April 2011.
- Additional departmental enforcement drills, reports and classes have prevented more frequent auditing.
- Staff's goal is to conduct audits on a monthly basis, auditing 10% of licenses renewed as active in a given month.
- Krista Eklund is assisting in the CE audit process by sending out the initial audit letters and tracking responses to the audit.
- Challenges faced regarding the CE audits include misunderstandings regarding the specifics of the CE requirements and options for licensees who are not actively practicing due to illness, lack of employment or living out of state.
- Staff hopes to address the most common misconceptions in an upcoming newsletter article.

Status: Ongoing

Establish and clarify categories of licensure via legislation.

➤ Mona, Andrea

- September 24, 2010 - Staff met with the Board's Legislation and Regulation Committee to discuss proposed legislation for the 2011-2012 cycle. The following legislation related to licensure was considered:
 1. Amend Business and Professions Code (BPC) § 3057.5., Eligibility of Graduates from Foreign Universities
Committee Decision: No action taken. It was determined that staff has been interpreting the law incorrectly. Foreign graduates need to have a "Doctor of Optometry" degree, not a bachelors, masters, etc. Staff was instructed to stop sponsoring foreign graduates, especially since California is the only Board sponsoring these individuals. The suggestion to create a committee to evaluate optometry degrees from foreign countries was rejected.
 2. Add Retired License Category to the California BPC
Committee Decision: Committee found this proposal reasonable and voted to bring the proposed language presented to the Board's next meeting for further discussion. The committee also requested that staff present the language of Assembly Bill (AB) 2848, authored by Ed Hernandez in 2008, which did not get approved by the Governor. This language can be used as a reference. Staff plans to present this proposal at the Board's next meeting in order to submit the proposal in the 2012 legislative session.
- January 1, 2011 - Senate Bill 1489 is approved by the Governor and becomes effective. The following BPC § relating to licensure were amended for clarity purposes:
 1. BPC § 3046. Eligibility Requirements for Licensure
 2. BPC § 3057.5. Eligibility of Graduates from Foreign Universities
 3. BPC § 3147. Renewal of Expired Certificates
 4. BPC § 3147.6. Restoration of Certificate Following Failure to Renew Within Specific Period
 5. BPC § 3147.7. Applicability of Provision to Out of State Licensees

Licensing staff is planning to revisit these BPC's in order to further clarify licensure requirements, specifically for out of state licensees with active licenses.

- January 11, 2011 – Citizen's Advocacy Center presents on Continued Competency for Health Care Professionals at this Board meeting. Dr. Goldstein would like to discuss with Board staff the possibility of developing a pilot to determine the benefits of continued competency in California, since this is becoming a hot topic at the national level.
- March 2011 – Licensing staff is planning to develop a way for out-of-state licensed optometrists who are glaucoma certified to obtain licensure in California through reciprocity.

Target Completion Date: Retired License Category legislation to be submitted in 2012 legislative session.

Implement online license renewals.

➤ Mona, Cheree

- The Department has established the Online Professional Licensing Unit in order to implement online license renewals. This new process is still in the pilot phase.
- Staff has expressed interest in participating in future pilots and is waiting to receive more information from the Department's team.
- In late 2010, the Department's iLicensing Program was officially rolled into the BreEZe project. The Board is currently included in Phase Three of BreEZe implementation, which should occur in June 2013.
- Cheree and Jessica continue to work closely with the BreEZe project team to ensure the best possible outcome from the BreEZe project.

Status: 2014

Establish an appropriate address of record, including a requirement for a valid E-mail address, for Board communications and consumer protection.

➤ Jeff, Nancy, Andrea

- Added a new box to applications for licensure and license renewal forms so individuals can provide their email address.
- Staff is entering e-mail addresses into the Automated Tracking System (ATS) and Consumer Affairs System (CAS) for our records.
- Staff is entering new applicant's e-mail addresses to the Board's interested parties list so they will receive e-mail updates.
- At Board meetings, staff encourages attendees to provide email addresses. Staff has added the option to provide an e-mail address to all customer satisfaction surveys.

Target Completion Date: Mid 2012

Establish methods to deal more effectively with exceptions to the current licensure process.

➤ Jeff, Nancy

- Staff is working to identify the most common instances where exceptions are necessary, such as:
 1. Explore the reasons why Fictitious Name Permit (FNP) renewal applications still indicate a grace period of 30 days.
 2. Requests to waive delinquent fees.

- CAS is not able to accommodate exceptions but a new system is being developed by the Department of Consumer Affairs (DCA) which will be available in 2014.

Target Completion Date: 2014

Update forms to be more consistent, clear and user friendly.

➤ Jeff, Nancy, Lydia, Brianna, Andrea

- Since June 2010 licensing staff has been exploring ways to assist new applicants and licensees with the resources available and working on updating renewal forms to make them more user friendly. This will be completed at the end of April 2011.
- The Board's complaint form was revised in June, 2010.
- A glaucoma preceptorship form was created in 01/11. All other forms are a work in progress.
- Andrea serves on the BreZE Forms Workgroup in order to standardize all forms in preparation for the new system in 2014.

Target Completion Date: 2014

Improve efficiency in processing applications.

➤ Jeff, Nancy

- Staff has explored possible automated licensing options for applicants for optometrist licensure but learned recently that the National Board of Examiners in Optometry (NBEO) does not have the ability to interface with the systems the Board uses to help expedite the receipt of a Official Score Report.
- DCA has implemented a job creation initiative in order to enable individuals and/or businesses to expeditiously enter California's workforce and contribute to its job growth. Staff has supported this process by streamlining its licensing procedures. The Board's California Laws and Regulations Examination (CLRE) vendor, Psychological Services, Inc. (PSI), is now notifying applicants for optometrist licensure of their eligibility to take the CLRE via e-mail which is designed to reduce the time it takes to process exam applications. Pending applications for licensure have been reduced by 50% department-wide allowing approximately 36,300 individuals to enter the workforce.
- All Boards can run statistical reports to track the processing of applications. Staff is working on using this tool to improve efficiency.
- Because ATS proved to be incompatible with what the Board needs to complete the processing of FNP's and Branch Office Licenses (BOL), licensing staff has continued to use CAS when issuing them. The cashiering of fees required of FNP's and BOL's is processed through ATS and certain reportable information is collected from it. All other reportable FNP and BOL information is gathered through CAS. A tracking log has been created to assist staff in monitoring the receipt of FNP and BOL Applications and those that are in need of follow-up. Staff plans to meet with ATS staff to discuss data programming and training that best meets the Board's needs when processing FNP's and BOL's.

Target Completion Date: Ongoing

Review current accreditations and affirm and apply the accreditation process for new schools of optometry and clinics.

➤ Mona, Jeff, Andrea

- Staff is planning to invite representatives from Western University of Health Sciences College of Optometry (Pomona, CA), University of the Incarnate Word School of Optometry (San Antonio, TX), and Midwestern University Arizona College of Optometry (Glendale, AZ) to a future board meeting so that they may present to the Board an overview of their programs. These are new colleges that have received the pre-accreditation status of preliminary approval from the Accreditation Council on

Optometric Education (ACOE).

- Staff is planning on monitoring ACOE to make sure all the schools and colleges of optometry that are currently accredited continue to be accredited.
- Staff is preparing to amend California Code of Regulations (CCR) section 1570 in order to add the new schools upon the Board's approval of the new schools.

Target Completion Date: June 2011; Regulation in 2011

GOAL 2 – EXAMINATIONS: Provide a fair, valid and legally defensible licensing exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in the State of California

Successfully implement computer based testing for California Laws and Regulations Examination.

- Andrea, Jeff
- Effective April 1, 2010

Target Completion Date: COMPLETED

Perform ongoing exam development and validation workshops of California Laws and Regulations Examinations.

- Andrea, Office of Professional Examination Services
- 2010 Workshops for October 2010-March 2011 Exam Form
 1. April 11-12: Item Writing and Review
 2. May 10: Exam Construction
 3. June 7: Passing Score
- 2010 Workshops for April 2011-September 2011 Exam Form
 1. October 24-25: Item Writing and Review (Postponed to April 2011)
 2. November 8: Exam Construction
 3. December 6: Passing Score
- 2011 Workshops for November 2011 – March 2012 Exam Form
 1. March 27-28: Item Writing and Review
 2. April 24-25: Item Writing and Review
 3. June 13: Exam Construction
 4. June 27: Passing Score

Target Completion Date: Ongoing

Expand subject matter expert pool.

- Andrea
- Current # of Experts who have participated: **50** (24 “regulars”)
- Outreach conducted for recruitment:
 1. Post workshops on website.
 2. Send multiple email blasts with workshop dates and information two to four months prior to start of workshops to the Board's interested parties list, schools and colleges of optometry, and California Optometric Associations state-wide.
 3. Mail out invitations to 500 optometrists; specifically the graduating classes of 2000-2011. Must capture entry-level practice.

- Working on fact sheet in order to distribute at outreach events to create awareness of this Continuing Education opportunity.
- The Board along all DCA boards and bureaus is now required to contract with subject matter experts in order to receive their services. Although this will create a large work load for staff, delay scheduled workshops, and deter many experts from participating in the workshops, staff is complying until further notice.

Target Completion Date: Ongoing

Outreach to schools and colleges regarding exam information.

➤ Jeff, Andrea

- Constantly updating Laws/Regulations link on the Board of Optometry’s website to keep licensees up-to-date on current law.
- Offer students the opportunity to speak with staff regarding effective study techniques for successful passage of the law exam.
- E-mail information to schools and colleges’ exam coordinators and deans to create awareness of any changes in the law exam as soon as they happen.
- Provide information during Board’s yearly presentation to schools and colleges of optometry. Presentations will now be held for the 3rd year students instead of the 4th year students, so that the 3rd year students will actually be able to use the information provided to them.

Target Completion Date: Always Ongoing

GOAL 3 – LEGAL AND REGULATORY: Establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost effective practices

Pursue legislation necessary to implement strategic goals and objectives.

➤ Mona, Andrea

- September 24, 2010 - Staff met with the Board’s Legislation and Regulation Committee to discuss proposed legislation for the 2011-2012 cycle. The following legislation was considered:
 1. Amend BPC § 3041. Acts Constituting Practice of Optometry
Committee Decision: No Action. The California Optometry Association is dealing with finger stick testing in AB 761. Regarding Blepharitis, staff determined more research was necessary.
 2. Amend BPC § 3070. Notice of Address for Practice of Optometry
Committee Decision: This was not discussed. Licensing staff has yet to schedule time to meet and work on this BPC.
 3. Amend BPC § 3110. Unprofessional Conduct regarding cooperation by practitioners being investigated.
Committee Decision: No Action. Committee recommended that staff attempt to make these changes via regulations. A provision for cooperation has been inserted into California Code of Regulations (CCR) § 1575.2, Unprofessional Conduct.
 4. Add Inspection Authority to the California BPC
Committee Decision: Committee found this proposal reasonable and voted to bring the proposed language presented to the Board’s August meeting for further discussion. Due to the current fiscal climate, this issue has been in suspense, especially since a new inspector position will be required for implementation. Staff continues to do research and monitor possible support.

- January 1, 2011 –Urgency Legislation for Expert Consultants is in the process of being developed by the Senate Business, Professions & Economic Development Committee. The legislation will allow DCA boards and bureaus to continue utilizing expert consultants or subject matter experts as currently is being done without having to go through the formal contract process.
Board Staff's position: Support
- Sometime in 2011 – Staff has heard from multiple sources that the California Academy of Eye Physicians and Surgeons is planning to create legislation in order to amend the glaucoma certification requirements established by CCR § 1571 (SB 1406). Board staff is monitoring potential “spot bills.”
Board staff's position: Do not Support

Target Completion Date: 2012

Pursue changes to California Code of Regulations to implement new laws affecting optometry.

➤ Andrea

- In Progress: 1536. Continuing Optometric Education
1519. Ophthalmic Device Standards
1570. Educational Equivalency
1525.1. Fingerprint Requirements
1513. Registered Name Only
1514. Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern
XXXX. Sponsored Free Health Care Events – Requirements for Exemption (Number TBD, multiple regulations; This proposal will be brought to the Board's August meeting. A template for the regulations have been provided by DCA and staff is monitoring other Board's proposed language for the time being.)
SB 1111 and SB 1441
1502. Delegation of Certain Functions
1523. Licensure and Examination Requirements
1575. Disciplinary Guidelines
1575.1. Required Actions Against Registered Sex Offenders
1575.2. Unprofessional Conduct
- Approved: 1518. Fictitious or Group Names
1520. Infection Control Guidelines
1523. Licensure Examination Requirements
1531. Licensure Examination
1532. Re-Examination
1533. Re-Scoring of Examination Papers
1561. Topical Pharmaceutical Agents Usage – Purpose and Requirements
1571. Requirements for Glaucoma Certification

Target Completion Date: Rulemaking packages to be developed and submitted to the Office of Administrative Law in June 2011

Monitor and participate in all legislation that affects the practice of optometry, including new technologies and emerging trends.

➤ Mona, Andrea

- In Progress: AB 761 Clinical Laboratory Test (CLIA)
Board Staff's position: Support

SB 709 Children's Vision
Board Staff's position: TBD

SB 690 Provider Anti-Discrimination
Board Staff's position: TBD

AB 675 CE Promoting Politics, Labor Unions Not Permitted
Board Staff's position: TBD

AB 778 California Healthcare Access and Choice
Board Staff's position: TBD

Urgency Bill for Expert Consultants by Senate BP & ED Committee
Board staff's position: Support

Spot Bill by CAEPS to repeal glaucoma regulations
Board staff's position: Do not support

- Approved: AB 2683, Practice of Optometry in Healthcare Facilities, SB 1489, Omnibus Bill

Target Completion Date: January 1, 2012

Successfully participate in Sunset Review process and extend the Board's sunset date.

➤ Mona, All Staff

- Staff is planning on reviewing the preparatory materials of other Boards who have already gone through sunset review to get a sense of the questions that the Sunset Review Committee will be asking.

Target Completion Date: The Board's Sunset Review has been extended to January 1, 2014.

Establish process for assessing continuing competency of optometrists.

➤ Mona, Board Members

- Review of current continuing education requirements.
- Considerations - Should optometrists be required to re-examine after a certain amount of years in practice? Every 5 years, every 10 years?
- Staff will work with other state Boards to develop a process.

Target Completion Date: 2011-2012

GOAL 4 – ENFORCEMENT: Protect the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of optometry in the State of California

Participate in the development and implementation of DCA's new enforcement model.

➤ All Enforcement Staff

- 2010 – Margie participated in the Department's Best Practices Committee to streamline enforcement procedures.
- Summer 2010 to present – Cheree and Jessica are participating in the Department's BreEZe Project, which includes the implementation of a new database that will satisfy both licensing and enforcement requirements and track a wider variety of statistics with more accuracy. Cheree, Jessica, and Andrea are active members in workgroups developed as part of this project. These groups are: Data Conversion, Reports, and Forms.
- Ongoing – Jessica and Cheree participate in the Enforcement User's Groups meetings which meet quarterly to discuss enforcement statistics and case tracking.

- Jessica served on the Probation Monitoring Workgroup that created a training program for the Department's probation monitors, which Mona and Jessica participated in from February 28, 2011 to March 1, 2011. This workgroup created a Probation Monitoring Manual as a reference for probation monitors throughout the department. Likewise, Jessica created a forum for the Department's probation monitors to share best practices.
- In accordance with the Consumer Protection Enforcement Initiative, Cheree issues monthly statistical reports to the Department detailing complaint case activity.
- **Target Completion Date:** The BreEZe project is anticipated to be completed by 2014.

Train and augment enforcement staff on the implementation of the entire enforcement process.

➤ All Enforcement Staff

- Ongoing – Staff holds weekly meetings to discuss enforcement processes and cases.
- April 2010 to May 2010 – Staff attended and graduated from the Department's Enforcement Academy training series.
- Dillon Christensen will attend the Enforcement Academy in Spring 2011.
- Jessica and Cheree are participating in the Enforcement Users Group, which meets quarterly to discuss how to monitor statistics and case tracking.
- February 1, 2011 – Brianna, Jessica, and Lydia attended the National Certified Investigator/Inspector Training. This two-day course discussed investigative report writing and how to properly and effectively conduct an interview and investigation
- February 24, 2011 – Brianna, Jessica, Lydia, and Cheree attended the California District Attorney Association (CDAA) training conference hosted by the Department. Here, Department representatives discussed their enforcement processes and District Attorneys presented exemplar cases to promote participation with them by Boards and Bureaus.

Target Completion Date: Ongoing

Develop and implement training program and retain subject matter experts.

➤ Brianna

- December 30, 2010 – Brianna created a recruitment advertisement form which will be posted on the Board's website and, possibly, distributed in a mass-mailing to licensees.
- January 2011 – The Board has begun developing an Expert Witness Handbook, which will serve as reference material for future Experts.
- March 11, 2011 – In conjunction with the Department's design team, Brianna and Andrea created a new link to advertise expert witness recruitment on our website. Ideally, this will attract more interested parties.

Target Completion Date: 2011-2012

Explore feasibility of gaining site inspection authority.

➤ Margie

- Pending development. Due to the current fiscal climate, this issue has been in suspense. Legislation would be required and it is not feasible at this time. The Board will continue to do research and monitor possible support.

Target Completion Date: TBD

Explore further options for preventing unlicensed practice of optometry.

➤ Brianna

- June 2010 – Board staff developed an educational letter requesting that businesses selling cosmetic contact lenses without a license provide evidence of either optometric license or registration to dispense from the CA Medical Board and that they cease the sale of the lenses if they did not have a license.
- On June 24, 2010 – The Unlicensed Activity Unit met with staff to present the resources that are available to DCA Boards in order to fight unlicensed activity. However, the Board has since elected to discontinue its interaction with the Unlicensed Activity Unit.
- October 2010 – As the Halloween season increases the visibility of cosmetic contact lenses, the Board sought to educate the public about the dangers of purchasing contact lenses without a prescription from an unlicensed dispenser by distributing a flier to teenagers and hosting a press conference at a costume store.
- March 4, 2011 – Brianna and Cheree gave a presentation at the Northern California Consumer Protection Committee's roundtable discussion about the Board's unlicensed activity cases as they pertain to the unlicensed sale of cosmetic contact lenses. The District Attorneys in attendance expressed interest in prosecuting these cases and the Board has since been contacted from one attorney interested in trying any cases involving businesses selling these lenses in Monterey County.

Target Completion Date: Ongoing

GOAL 5 – EDUCATION AND OUTREACH: Proactively educate, inform and engage consumers, licensees, optometry students and other stakeholders on the practice of optometry and the laws and regulations which govern it.

Publish summaries of disciplinary actions.

➤ Dillon, Andrea

- March 2010 – staff began posting this information.
- December 2010 – Dillon scanned all disciplinary actions to prepare them for web postings. In doing so, he reviewed each document and redacted the names that pertained to the complainant. Thus far, summaries for disciplinary cases from 2007 to present have been posted on the website. Summaries for disciplinary actions rendered prior to 2007 are projected to be published on the website by 2012. However, this may not be necessary if the Department finalizes its own Public Disclosure Project.
- Disciplinary actions are included in the Board's bi-annual newsletter.
- Summaries for each new disciplinary action rendered will be posted on the website on an ongoing basis.

Target Completion Date: The Board anticipates that all existing actions will be published by 2012. However, this will remain ongoing with each new disciplinary action rendered.

Develop and disseminate a “Your State Board Starter Kit for New Optometrists.”

➤ All Staff

- Pending development.

Target Completion Date: TBD

Continue the program for outreach to optometry students in California.

➤ All Staff

- Staff has requested and received preliminary approval from the University of CA, Berkeley, the Southern CA College of Optometry, and Western University of Health Sciences to hold three of our quarterly Board meetings on their campuses. This will be beneficial to the students and increase the Board’s visibility.

Target Completion Date: 2010-2011

Continue outreach to licensed optometrists at optometric events.

➤ All Staff

- Staff is researching the possibility of attending California Optometric Association (COA) Society meetings state-wide.
- 2011 – Staff plans to attend the Monterey Symposium.
- Staff continues to request permission to attend ARBO meetings.
- Staff participates in COA’s Key Person day each year and will continue to do so.

Target Completion Date: Ongoing

Expand involvement in consumer outreach and health fairs.

➤ All Staff

- Staff plans to work with the DCA Outreach Unit to identify possible events for participation.
- Staff plans to speak with the Department of Health Services and COA societies to identify possible events for participation.

Target Completion Date: Ongoing

Develop regular PR opportunities that highlight timely and pertinent optometric information.

➤ All Staff

- DCA has requested that the Board hold another press conference during Halloween to discuss decorative contact lenses. To be completed in 2011.
- March 4, 2011 – Brianna and Cheree gave a presentation at the Northern California Consumer Protection Committee’s roundtable discussion about the Board’s enforcement of unlicensed activity as it relates to the sale of cosmetic contact lenses by unlicensed vendors. The Southern California meeting facilitator has expressed interest in having staff members present this same information at a future meeting.

Target Completion Date: Ongoing

Develop and disseminate new publications and forms in multiple languages.

➤ Andrea, All Staff

- October 2010 – Jessica completed the design of a flyer for the Board's Halloween cosmetic contact lens outreach. It was posted on the Board's website and distributed to California school PTA's.
- November 2010 – Andrea completed the design of a new logo which has been posted on the Board's website, added to all letterhead, fact sheets, applications, forms, and all materials distributed to the public.
- The Board of Optometry Newsletter is printed bi-annually. Andrea assembled and distributed the Winter 2011 newsletter to 2500 randomly chosen licensees and posted on the Board's website.
- With staff, Andrea is developing the Fall 2011 edition.
- Staff must identify what additional publications/brochures need to be updated and will work with the Department's Office of Publications, Design & Editing (PDE).

Target Completion Date: 2012 to have all forms, fact sheets, applications re-designed and updated. Additional publications are ongoing.

Continue to leverage the Board website as a source of education and outreach to consumers and licensees.

➤ Andrea

- Staff is constantly updating the Board's website to find the best and most user-friendly ways to provide information to licensees and consumers. Key changes include:
 1. New Laws and Regulations Tab
 2. Updated Laws and Regulations Book section
 3. Citations and Disciplinary Actions Page
 4. Addition of a Customer Satisfaction link on the homepage
 5. Utilize web blast email tool to draw attention to website updates.
 6. Update the "What's New" section of the homepage constantly with actual "new" information to keep the public interested
- January 2011 - Staff met with DCA's internet team manager for guidance on the most effective ways to provide information to licensees and the public. Staff was instructed to clean up the Optometry Board website in order to be ready for DCA's website overhaul. The new Governor, Jerry Brown is pushing a re-design of all government websites so that they will be more user-friendly and visually appealing. <http://www.gov.ca.gov/>

Target Completion Date: Website overhaul – September 2011 or sooner. Update of forms, applications, fact sheets – August 2011

Develop and foster partnership with health care advocates and stakeholders.

➤ All Staff

- Staff has excellent working relationships with the following organizations:
 1. COA – wrote an article for 2010 September/October newsletter and working on another article for their 2011 July/August newsletter
 2. VSP – worked with staff on AB 2683, which became effective January 1, 2011.
 3. Department of Health Services

4. California Medical Board – collaborate on enforcement issues
5. Enforcement staff participated in a roundtable discussion with Northern California District Attorneys.

Target Completion Date: Ongoing

Proactively participate in DCA's disaster recovery efforts.

➤ All Staff

Target Completion Date: Ongoing

GOAL 6 – ORGANIZATIONAL EFFECTIVENESS: Develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve Board's provision of programs and services.

Identify staff training needs and establish corresponding training plan.

➤ All Staff

- Staff is proactive when it comes to their training needs

Target Completion Date: Ongoing

Solidify the Board's national presence as a regulator of optometry.

➤ All Staff, Board Members

- Continue to request permission to attend national optometric meetings held by ARBO, AOA, COA and others.
- Dr. Susy Yu is an active member of ARBO's Board of Directors.

Target Completion Date: Ongoing

Implement new Board member orientation and training program.

➤ Mona, Margie

- Pending development.
- Orientation and training information will be incorporated into the Administrative Procedures Manual.

Target Completion Date: 2011

Update and revise Administrative Procedures Manual.

➤ Brianna

- March 2011 – Staff is executing updates and revisions to the manual. This will be published in the form of a handbook and will include more referential material.
- Information pertaining to the Board member orientation and training program will be included in the manual.

Target Completion Date: June 2011

Continually update and disseminate California Laws and Regulations Related to the Practice of Optometry.

➤ Andrea

- May 2010 - An internal copy of the law book for staff was completed.
- March 2011 - A second updated internal version of the law book was completed and has been posted on the website and provided to staff.

Target Completion Date: COMPLETED

Develop and implement an online customer satisfaction survey.

➤ Andrea

- Update on results to be provided at a future Board meeting.

Target Completion Date: August 2011

Continue to hold Board meetings in geographically diverse areas of state and invite local stakeholders.

➤ Mona, Board Members

- California schools and colleges of optometry

Target Completion Date: Ongoing

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

To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 14– Public Comment for Items Not on the Agenda**

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

Comments from the public:

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

To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 15– Suggestions for Future Agenda Items**

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

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

To: Board of Optometry Members

Date: April 11, 2011

From: Enforcement Staff

Telephone: (916) 575-7170

Subject: Agenda Items 16 – 18: Full Board Closed Session

Pursuant to Government Code Section 11126 (c)(3), to Deliberate on Disciplinary Decisions

16. Pursuant to Government Code Section 11126(e)(1) the Board Will Confer with Legal Counsel to Discuss Pending Litigation: *California Academy of Eye Physicians & Surgeons*, and *California Medical Association v. State Board of Optometry*, Case Number CGC-11-507241, San Francisco Court
17. Pursuant to Government Code Section 11126(c)(3), to Deliberate on Disciplinary Decisions
 - A. Stipulated Settlement and Disciplinary Order, Huyen Nguyen, O.D., License Number OPT 10148
 - B. Default Decision, Bret Cornelison, O.D., License Number OPT 9861
 - C. Stipulated Settlement and Disciplinary Order, Brent Lee Gibson, O.D., License Number OPT 10198
18. Discussion Regarding Executive Officer Pay Scale

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

To: Board Members

Date: April 11, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 19 - Adjournment
