CALIFORNIA STATE BOARD OF OPTOMETRY

Board Meeting

Friday, September 16, 2011

Department of Consumer Affairs
1625 North Market Boulevard
1st Floor Hearing Room, S-102
Sacramento, CA 95834

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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

Board Staff

Mona Maggio
Executive Officer

Administration
Andrea Leiva
Elizabeth Bradley
Krista Eklund

Licensing
Jeff Robinson
Nancy Day
Elvia Melendrez

Enforcement
Lydia Bracco
Dillon Christensen
Cheree Kimball
Brianna Miller
Jessica Sieferman

California State Board of Optometry

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

Board Meeting Notice

Friday, September 16, 2011
Department of Consumer Affairs
1625 North Market Boulevard
First Floor Hearing Room S-102
Sacramento, CA 95834
(916) 575-7170

10:00 a.m.
FULL BOARD OPEN SESSION
Call to Order - Establishment of a Quorum

1. **President's Report**
   A. Welcome and Introductions

2. **Approval of Board Meeting Minutes**
   A. June 21, 2011

3. **Executive Officer's Report**
   A. Staff Introductions
   B. Budget Update
      Presented by Wilbert Rumbaoa, Budget Analyst
      Cynthia Dines, Budget Manager
   C. BreEZe Update
      Presented by Sean O'Connor, BreEZe Business Project Manager
   D. Board Office Relocation
      Presented by Ken Brown, Project Manager
   E. Other

4. **Examination/Licensing Programs Report**
   A. California Law and Regulations Examination (CLRE)
   B. CAS to ATS Conversion
   C. Accreditation Council on Optometric Education Report of Actions
   D. Outreach to California Schools and Colleges of Optometry
   E. Continuing Education Program
   F. Statistics and Performance Measures
   G. Other

5. **Discussion and Possible Action to Amend California Code of Regulations (CCR) §1536 to Allow Therapeutic Pharmaceutical Agents (TPA) Certified Optometrists to Earn 50% of Continuing Education Credits by Internet or Correspondence Courses**

6. **Review and Possible Approval of the Revised Records Retention Schedule**

7. **Review and Possible Approval of Revised Board Member Administrative Procedures Handbook**

8. **Enforcement Program Report**
   A. Data Clean-up Project
   B. NCIT and Enforcement Academy
   C. National Practitioners Data Bank Audit
   D. Expert Witnesses
   E. Enforcement Survey

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.

8. Enforcement Program Report Cont.

F. Fingerprint Program
G. Probation Program
H. Statistics/Performance Measures
I. Unlicensed Activity
J. Other

9. Rulemaking Calendar

A. Discussion and Action to Approve Draft Language for CCR §1575.Uniform Standards Related to Substance Abuse (SB 1441) and Disciplinary Guidelines
B. Consideration of Comments Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR §1513. Registered Name Only, §1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern and §1525.1. Fingerprint Requirements
C. Discussion and Action to Approve Draft Language for CCR § 1531. Licensure Examination Pertaining to TMOD Portion of the National Board of Examiners in Optometry Licensing Examination

10. Legislation

A. Discussion of Amendments to Assembly Bill 778 since the July 21, 2011 Board Meeting, and Consideration of Possible Board Action
B. Urgency Bill for Expert Consultants by the Senate Business, Professions & Economic Development Committee

11. Discussion and Possible Action to Amend Business and Professions Code (BPC) §3070, Notice of Address for Practice of Optometry; Exemptions, §3075, Posting of License; Fee for Evidence of Licensure and CCR §1506 Certificates – Posting

12. 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)]

13. Suggestions for Future Agenda Items

2:30 p.m.

14. Petition for Reduction of Penalty and Early Termination of Probation

A. Dr. James Stuart Herzman, O.D., License Number OPT 10935
B. Dr. Lisa Elizabeth Breen, O.D., License Number OPT 14075

FULL BOARD CLOSED SESSION

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

FULL BOARD OPEN SESSION

16. Adjournment

Public Comments:
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. 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 2450 Del Paso Road, Suite 105, Sacramento, CA 95834**.** Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

Memo

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

To: Board Members

Date: September 16, 2011

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

Telephone: (916) 575-7170

Subject: **Agenda Item 1– President's Report**

A. Welcome and Introductions

B. Other

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members

Date: September 16, 2011

From: Lee Goldstein
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 2– Approval of Board Meeting Minutes**

Board Members are asked to review and approve the draft minutes from the June 21, 2011 meeting.

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov

Meeting Minutes

DRAFT

Tuesday, June 21, 2011
Junipero Serra Building
320 W. 4th Street
7th Floor Conference Room
Los Angeles, CA 90013

Members Present
Lee Goldstein, OD, MPA
Board President
Alejandro Arredondo, OD
Board Vice President
Monica Johnson,
Board Secretary

Fred Naranjo, MBA, Public Member
Kenneth Lawenda, OD
Alexander Kim, MBA, Public Member
Donna Burke, Public Member

Members Absent (Excused)
Edward Rendon, MA, Public Member

Staff Present
Mona Maggio, Executive Officer
Andrea Levia, Policy Analyst
Jessica Sieferman, Probation Monitor

Michael Santiago, Staff Counsel
Michelle McCarron, Deputy Attorney General

Guest List
On File

Tuesday
9:00 a.m.
FULL BOARD OPEN SESSION

1. **Call to Order – Establishment of a Quorum**
   Board President, Lee Goldstein, O.D. called the meeting to order at 9:00 a.m.
   Dr. Goldstein called roll and a quorum was established.

2. **President's Report**
   Dr. Goldstein welcomed everyone in attendance. He asked the Board members and members of the public to introduce themselves.

   Dr. Goldstein reported on his participation in the monthly Department of Consumer Affairs (DCA) conference call for all health board chairs. The most recent calls have discussed departmental initiatives, budget concerns, legislation and continuing competency. Dr. Goldstein would like the issue of a "Continuing Competency Pilot Program: to be on the agenda for the next State Board meeting. He also has asked Board member, Dr. Alejandro (Alex) Arredondo to participate on behalf of the board on the next departmental call scheduled July 12, 2011, as Dr. Goldstein will not be able to participate that day.

3. **Approval of Board Meeting Minutes**
The Board members were asked to review and approve the draft minutes from the following meetings.

A. *October 22, 2010 Meeting*
B. *January 11, 2011 Meeting*
C. *April 11, 2011 Meeting*

4. **Director's Report**
On behalf of the Director, Executive Officer, Mona Maggio provided an overview of the Department's current travel restrictions.

5. **Executive Officer's Report**
Executive Officer, Mona Maggio reported on the following:

A. Budget Update

Ms. Maggio provided a breakdown of the budget. The Board's budget authority for the 2010/2011 fiscal year is $1,651,385. As of May 31, 2011 Board expenditures total $1,254,041 which reflects 76% of the Board's total budget. Regarding expenditures to date, the Board has spent 52% on personnel services and 18% on Attorney General and Office of Administrative Hearing expenses. The remaining expenses are attributed to operating expenses, equipment and examination development.

The Board's fund condition reflects for current year an 8.7 month reserve balance. The reserve is project to drop to 1.1 month reserve next fiscal year (Governor's Budget) due to the loan to the General Fund in the amount of one million dollars. The loan will be shown in the fund condition.

Work on the 2011/2012 state budget began early 2011. To date, a final agreement on the state budget has not materialized. In the event a budget agreement is not in place by July 1, 2011, The Board is prohibited from spending any money from its $1,577.000 budget. So that the Board's core functions are not affected by a potential delay in reaching a budget agreement, Board staff has been making the necessary preparations to ensure minimal impact to our programs.

B. Board Operations

2011 Board Meeting Dates
The upcoming 2011 Board Meeting dates are as follows:

- August/September 2011 at Department of Consumer Affairs (DCA) in Sacramento, CA
- November 4, 2011 in Northern California (most likely in Oakland or San Francisco).

Board Members
There are currently three professional member vacancies and four members are serving in their grace periods.

Board Member, Donna Burke was reappointed to the Board by Senator Darrell Steinberg, Senate Rules Committee. Her term will expire on June 1, 2015. Ms. Maggio congratulated Ms. Burke on her reappointment.

Personnel
The Board staff is comprised of 13.5 positions – ten full time staff, one half-time staff and one seasonal clerk. The Board has two vacancies, one full time management services technician and one half-time associate governmental program analyst (AGPA), which is a limited term position that was obtained through the Department of Consumer Affairs Protection Initiative (CPEI). Once

the 2011/2012 budget is signed and in effect, the Board will be able to hire a staff services manager (SSMI) to provide a first level of supervision. Staff is also seeking to establish an AGPA position in its Enforcement Program and to make the limited term office position permanent.

Office Relocation
We have received the construction plan from the Project Manager, Ken Brown, DCA. The actual move is scheduled to begin July 27th (tearing down cubicals and moving files), with our first day up and running in the new office to be August 3rd. During the transition period, staff will be temporarily housed within the Bureau of Security and Investigative Services (BSIS).

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

- Continuing Education Regulation Updated - Effective June 17, 2011
- Reminder: Glaucoma Certified (TPG or TLG) Optometrists are required to Complete 10 Continuing Education (CE) Hours in Glaucoma Specific Education – Effective January 8, 2011
- Frequently Asked Questions – New Fingerprinting Requirements for Optometrists Licensed Prior to April 1, 2007
- Frequently Asked Questions About Glaucoma Certification
- Reformatted Meetings Page

Licensing Program
This is the peak season for evaluating optometrist applications and issuing licenses to new optometrists. The National Board of Examiners in Optometry (NBEO) released the candidate scores on June 14, 2011 and staff expects to receive the scores at the Board within a week. Because applicants are now required to submit an application for optometric licensure to become eligible to sit for the California Laws and Regulations Examination, the Board receives applications on an on-going basis versus prior years when applications were received primarily in April and May. This has provided an opportunity for staff to evaluate the applications as they are received and communicate with applicants on deficiencies and how to remedy them. In most cases, once the NBEO scores are received, the licenses will be issued within a day or two.
Health Resources and Services Administration – Data Bank
On June 14, 2011, Cheree Kimball, Dillon Christensen, and Ms. Maggio participated in a webinar sponsored by the U.S. Department of Health and Human Services, Health Resources and Services Administration Bureau of Health Professions, Division of Practitioner Data Banks. The purpose of the webinar was to discuss the upcoming audit of data bank compliance activities for chiropractic, optometric, and physical therapy licensing authorities. The Board will be participating in the review of compliance for the years 2006 – 2009. A Report of the audit's findings and recommendations will be reported at a future meeting.

Dr. Goldstein opened the floor to questions from Board members.

Dr. Kenneth Lawenda inquired if there have been any decisions regarding the American Board of Optometry (ABO) certification. Ms. Maggio replied there have not been any decisions. Dr. Goldstein suggested that this matter be discussed under Agenda Item 10.

Board Secretary, Monica Johnson noted that this is the first board meeting without former enforcement manager, Margie McGavin. She suggested that this would be a good time to recognize her service to the Board. Dr. Goldstein noted Ms. McGavin's wonderful job of updating members of enforcement matters.

Additionally, former Board member, Dr. Susy Yu was recognized for her service to the Board. Board members and staff discussed possible ways of providing appreciation for board members and staff members upon separation.

6. **Petition for Reduction of Penalty and Early Termination of Probation**
Administrative Law Judge (ALJ), Daniel Juarez presided over the hearings. Board members heard the following petitions:

A. Dr. David Muris, O.D., License Number OPT 5059
Agency Case Number: CC 2006-96
B. Dr. Casey Finn, O.D., License Number OPT 8638
Agency Case Number: CC 2005-104
C. Dr. Gregory Tom, O.D., License Number OPT 10427
Agency Case Number: CC 2003-125
D. Dr. Sharon Samski, O.D., License Number OPT 9531

Dr. Sharon Samski filed a Petition for Reduction of Penalty and Early Termination of Probation. However a Petition to Revoke Probation was filed by the Board on May 23, 2011. The Petition is currently pending at the Office of the Attorney General. In a letter dated June 4, 2011, Dr. Samski withdrew her Petition.
E. Dr. Richard Martin, O.D., License Number OPT 8799
Agency Case Number: CC 2007-71

FULL BOARD CLOSED SESSION

7. **Pursuant to Government code Section 11126(c)(3), to Deliberate on Petitions for Reduction of Penalty and Early Termination of Probation**

The Board convened to close session to deliberate on the following disciplinary decisions:

A. Dr. David Muris, O.D., License Number OPT 5059
B. Dr. Casey Finn, O.D., License Number OPT 8638
C. Dr. Gregory Tom, O.D., License Number OPT 10427
D. Dr. Sharon Samski, O.D., License Number OPT 9531
E. Dr. Richard Martin, O.D., License Number OPT 8799

8. **Pursuant to Government Code Section 11126(c)(3), to Deliberate on Disciplinary Matters**

The Board deliberated on the following disciplinary matters:

A. Proposed Decision and Disciplinary Order, Elise A. Millie, O.D., License Number OPT 13430
B. Revised Stipulated Settlement and Disciplinary Order, Brent Lee Gibson, OPT 10198
C. Stipulated Surrender of License and Disciplinary Order, Christine Ann Matson, O.D., OPT 7990

9. **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**

FULL BOARD OPEN SESSION

10. **Discussion and Possible Approval to Allow the Glaucoma Certification Case Management Course and Grand Rounds Program to Serve as Continuing Education Credit as Required in California Code of Regulations Section 1536**
Lead Licensing Analyst, Jeff Robinson provided and overview of the background and action requested of the Board.

California State Board of Optometry staff has received inquiries as to whether or not licensees seeking glaucoma certification could receive continuing optometric education (CE) credit for the completion of a Case Management course and/or Grand Rounds Program offered by

California schools/colleges of optometry.

Since it appears that the Case Management Courses and Grand Rounds Programs offered by the California schools/colleges of optometry meet the requirements listed in California Code of Regulations (CCR) Section 1536, it is the opinion of Board staff that licensees who complete either of the courses should be granted CE credit.

One of the California Optometry schools, Western University of Health Sciences School of Optometry, has not received its full accreditation yet. Therefore, the CE courses they provide do not meet the provisions of CCR 1536(e)(1). Board staff is uncertain as to how their courses should be handled.

Board staff is requesting that Board members:

- review the current procedures when granting CE credit for optometrists seeking Therapeutic Pharmaceutical Agent (TPA) certification, lacrimal irrigation and dilation certification, and glaucoma certification
- Discuss the possible approval of glaucoma certification Case Management Course and/or Grand Rounds Program for CE credit and,
- Discuss whether prior approval of the glaucoma certification course provided by the California schools/colleges is sufficient, or should Western be required to submit a "*Request for Approval of Continuing Optometric Education Course(s)*" along with the required information and fee?

Alex Arredondo moved to approve the glaucoma certification Case Management Course and/or Grand Rounds Program for CE credit. Donna Burke seconded. The Board voted unanimously (7 – 0) to pass the motion.

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

Donna Burke moved to have Western University of Health Sciences School of Optometry formally apply until fully accredited, and to have the courses approved by Jeff Robinson. Monica Johnson seconded. The Board voted unanimously (7 – 0) to pass the motion.

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

11. Discussion and Possible Action on Assembly Bill (AB) 778, Health Care Service Plans: Vision Care

Ms. Leiva provided an overview of AB 778.

Business and Professions Codes (BPC) section 655 prohibits business relationships between optometrists and opticians. Business relationships include:

- Membership;
- Proprietary Interest;
- Co-ownership;
- Landlord/tenant relationships; and
- Any profit-sharing arrangement in any form, directly or indirectly which includes:
    1) Stock Ownership;
    2) Interlocking directors;
    3) Trusteeship;
    4) Mortgage;
    5) Trust deed; and
    6) Manufacture, sale, or distribution to optometrists of optical products or anything related.

AB 778 proposes to allow registered dispensing opticians, and optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation to do the following:

- Own a health care services plan that provides vision care services and shares profits;
- Contract for business services with, lease office space or equipment to for from, or share office space with, a health care service plan that provides vision care services; and
- Jointly advertise vision care services with a health care service plan that provides vision care services.

There are two main issues that are of concern regarding the co-location of opticians and optometrists:

1) BPC sections 655 and 2556 are designed to protect consumers, have been part of California law for 90 years. The optical companies are interpreting provisions in the Knox-Keene Act (Health & Safety Code section 1395(b) specifically) as "relieving specialized health care service plans of restrictions on employing doctors, optometrists, and other health care professionals by providing in section 1395(b) that plans licensed under the Knox-Keene Act shall not be deemed to be engaged in the practice of a profession and may employ, or contract with, any professional to deliver services." According to the California Attorney General, this is not so. Knox-Keene specialized health care service plans must still comply with BPC sections 655 and 2556.
2) LensCrafters and Pearl Vision are also engaging in conduct designed to influence and interfere with the clinical decisions of their optometrists.

This bill would delete the consumer protection provisions.

Staff is requesting the Board discuss this bill and approve staff's suggested letter of opposition, which was already sent to Senate B&P consultant in order to meet the deadline for analysis. Prior to the start of the discussion, Board Member Dr. Ken Lawenda was asked to leave the room. Dr. Lawenda accepted employment from Luxottica as a consultant, and his participation in the discussion could be a possible conflict of interest, especially since the Board is still in litigation with Luxottica regarding this issue.

Ms. Sherry Ledakis, Deputy Attorney General gave a synopsis of the litigation involving Luxottica's subsidiaries.

Litigation commenced in February, 2002, with the filing of People v. Cole, Pearle Vision, et al. (hereafter "Pearle Vision") by the California Office of the Attorney General, in the San Diego Superior Court alleging unfair competition and illegal advertising under Business and Professions Code sections 17200 and 17500 against Cole and its subsidiaries, Pearl Vision, Inc. and Pearl Vision Care, etc.. The optical companies were alleged to be operating their California optical stores in violation of Business and Professions Code sections 655 and 2556.
The optical industry responded to the Attorney General's enforcement action against Pearle Vision by filing its own action filed in federal court to have the Code sections declared unconstitutional. On July 5, 2002, National Association of Optometrists and Opticians, LensCrafters, et al. v. Bill Lockyer, California Attorney General, and Kathleen Hamilton, Director of the Department of Consumer Affairs (hereafter "LensCrafters") was filed in the United States District Court, Eastern District. The suit sought to enjoin the State from enforcement of Business and Professions Code sections 655 and 2556 and for declaratory relief, alleging that the Code sections were unconstitutional violations of the Commerce Clause of the U.S. Constitution. The allegation was that the challenged provisions favored in-state optometrists, who could legally examine patients and also dispense eyewear in the same location, and disfavored out-of-state optical chains who could not legally offer eye exams in the same location where they sell eyewear.

For more than five years, Pearle Vision was prosecuted in the state courts while LensCrafters was simultaneously defended in the federal courts.

Early in Pearle Vision, the San Diego Superior Court issued a preliminary injunction against Cole and its subsidiaries to prohibit their "co-location" business practice, where they maintained optometrists on their dispensing premises and advertised eye exams through the HMO owned by Cole, known as Pearle VisionCare. Cole appealed - eventually to the California Supreme Court – and on June 12, 2006, the California Supreme Court held in favor of the People and against Cole and its subsidiaries. The Supreme Court held in part:

> "Sections 655 and 2556 of the Business and Professions Code prohibit certain business and financial relationships between registered dispensing opticians and licensed optometrists. We granted review in this case to consider whether the Knox-Keene Health Care Service Plan Act of 1975...creates an exemption to those prohibitions when a licensed specialized health care service plan sublets space within the retail stores of a registered dispensing optician that employs optometrists to provide professional optometric services to plan subscribers at those locations. The Court of Appeal held that although the provisions of the Knox-Keene Act establish an exemption to the rule against the corporate practice of optometry, they do not effect the statutory prohibitions of the relationships between registered dispensing opticians and licensed optometrists. On the facts of this case we agree with the Court of Appeals' conclusion. We therefore affirm the Court of Appeals' judgment."

(People v. Cole (2006) 38 Cal.4th 964, 969.)

On December 6, 2006, cross-motions for summary judgment were decided in favor of plaintiffs in LensCrafters, with Judge Lawrence Karlton holding that Business and Professions Code sections 655 and 2556 are unconstitutional, in that they violate the

Commerce Clause of the U.S. Constitution. The Attorney General and the Director of the Department of Consumer Affairs appealed to the Ninth Circuit Court of Appeals.

While the appeal was pending before the Ninth Circuit in LensCrafters, on July 18, 2007, in the Pearle Vision enforcement action, the State of California and Cole National, et al., entered into a "Stipulation for Entry of Final Judgment and Permanent Injunction."

In that stipulation, the parties agreed in part that causes of action for violations of Business and Professions Code sections 655 and 2556 would be dismissed without prejudice, meaning that the State was not prohibited from bringing an action for violation of those sections against Cole, *et al.*, in the future.

The stipulation also provided that Cole and its subsidiaries would pay $2.5 million to the Attorney General for costs and attorneys' fees incurred in prosecuting the action and would be enjoined from further violations of the law. Furthermore, the stipulation and judgment provided that for a six month period following final adjudication of the federal LensCrafters case, the Attorney General would not file any new case against Cole, *et al.*, based upon the Code sections that had been constitutionally challenged in LensCrafters, namely Business and Professions Code sections 655 and 2556.

On May 29, 2009, in LensCrafters, the Ninth Circuit reversed, holding that the trial court had erred in evaluating the constitutional challenge using the "strict scrutiny" standard, and remanded the matter back to Judge Karlton for evaluation of plaintiffs' claim under the correct standard. In remanding, the Ninth Circuit stated:

> "Here through the challenged laws, California has sought to protect optometrists, and ophthalmologists, as health care professionals from being effected by subtle pressures from commercial interests. The pressures of co-ownership and profit sharing are more obvious, but potentially even a landlord/tenant relationship could undermine health care quality if the landlord required a certain level of performance to maintain the lease. It is true that an optometrist or ophthalmologist would still be bound by professional and ethical standards. However, it is the subtle pressure to conform to commercial desires that the statutes seek to avoid. These subtle pressures would be difficult to regulate as violations of professional or ethical standards. Thus the California laws in this case are health regulations designed to protect health care providers from being unduly effected by commercial interests. We must give deference to the state's choice to protect its citizens in this way."

(National Ass'n of Optometrists & Opticians (NAOO) LensCrafters, Inc. v. Brown, (9th Cir. 2009) 567 F.3d. 521, 526.)

The Ninth Circuit instructed the trial court to apply the "Pike balancing test," which requires balancing the benefits of Business and Professions Code sections 655 and 2556 against the degree they burden interstate commerce. On April 28, 2010, the trial court applied the Pike balancing test and concluded that the burden on interstate commerce of the challenged laws is only minimal, if any, which does not outweigh the benefit of the laws. Accordingly, applying the correct Pike balancing standard, this time the court issued judgment in favor of the State of California, finding that the laws are constitutional.

LensCrafters, *et al.*, has appealed Judge Karlton's most recent decision to the Ninth

Circuit Court of Appeals where briefing has been completed and the parties await scheduling of oral argument.

Mr. Wallace W. Lovejoy, a representative for Luxxotica, addressed their concerns regarding the Board's action and memo regarding AB 778. They explained that the memo had fundamental misstatement and inaccuracies that would unduly interfere with full and accurate consideration of AB 778 and the benefits it could offer to the public.

Mr. Lovejoy outlined the four misimpressions that the memo invites as follows:

1. It is Not Accurate to Say Optical Companies Have Been Violating the Law

No court has ever found LensCrafters or Pearle Vision to be in violation of sections 655 and 2556. To the contrary, it is the confusion that these existing laws have created with respect to the co-location of vision services Knox-Keene plans with optical companies that prompted AB 778 in the first place. Since 1986, numerous optical companies, such as LensCrafters, Pearle Vision, Sterling Optical and Site for Sore Eyes, have associated with Knox-Keene health care service plans which employ or contract with optometrists. The memo suggests that these optical companies intentionally violated the law when they co-located with affiliated Knox-Keene plans. This is not true. Numerous California agencies during the same time period, including the Department of Managed Healthcare (DMHC), the Department of Corporation, the Medical Board, and the Board of Optometry viewed these arrangements as lawful. Not only have these state agencies known about such relationships, they have continued to license, register and renew these businesses with these co-location arrangements for over 20 years. AB 778 seeks to clarify law so that consumer can continue to be served with a variety of options for optical care. It does not, as the memo suggests, seek to continue to foster unlawful conduct.

2. No Court, Nor the Attorney General, Has Made the "Findings" Referenced in the Memo

The "findings" in the memo supporting the argument that co-location permitted by AB 778 will be harmful to consumers are not "findings" at all nor contain "undisputed" facts. The "findings" are taken from a document submitted by the Attorney General in the NAOO v. Harris action purporting to set forth "undisputed facts." The Attorney General did not conduct a study or investigation to develop such "findings." After reviewing all the evidence, the trial court repeatedly held that there was "no evidence" in the record of any harm to consumers when optical stores are permitted to co-locate with optometrists employed by Knox-Keene plans. The "findings" in the memo cannot be considered accurate or complete statements of facts. For example:

- Government officials in California testified that the quality of care was not lessened when optometrists co-locate with optical chains under the Knox-Keene model.
- The California Department of Consumer Affairs (DCA) likewise found in a 1982 report that there is "no evidence that examination quality is worse when optometrists are corporate employees..." The DCA recommended eliminating the laws that are challenged in the NAOO action, concluding that "in sum, the web of corporate practice regulations works unevenly and inconsistently; rests on premises which are unproven, demonstrably false, or are contradicted by evidence of how corporation operate in fields other than optometry; avoids known consumer abuses; and operate effectively in only one consistent way – stifling competition." It was on the basis of this evidence that the trial court repeatedly concluded that "there is no evidence that the quality of eye care varies by practice setting."
- The statement in the memo that optical chains "get away with providing lower quality eye exams, and high priced eyewear" because patients "are not knowledgeable enough" to know whether they received a quality eye exam. The independent, unbiased government agencies studying this issue determined that consumers do not

receive lower quality exam in the co-located model.

- The memo describes purported practices that allegedly interfered with the ability of optometrists to exercise their professional judgment. These assertions were contested and rejected by the trial court when it determined that there is "no evidence which links the complained practiced to actual harm to the public's health."

3. The Memo Contains Numerous Factual Inaccuracies About Optical Companies and the Impact They and AB 778 Will Have on the State of California

- The memo asserts that a co-location model requires quotas and financial incentives. These assertions are made based on years old allegations by the Attorney General's office. AB 778 specifically addresses and ensures that conduct such as quotas and financial incentives are prohibited.
- The multiple suggestions in the memo that AB 778 will result in job losses is incorrect. AB 778 preserves the status quo.
- The memo's representation of LensCrafters' operation in Canada is incorrect. Under the laws of all ten provinces in Canada, an optical store is permitted to sublease space directly to an optometrist – a manner of co-location prohibited by California.

4. AB 778 Benefits Consumers and Optometrists

AB 778 seeks to preserve the co-location model under which quality eye care and eyewear have been offered to California consumers for the last 25 years. The co-location model employs and contracts with hundred of doctors and associates that are providing quality eye care to thousands of patients.

The convenience of the co-location model has made optometry services accessible to millions. The flexibility of practicing in an HMO setting is not unique to optometry and has become an attractive choice to many doctors and medical practitioners across disciplines. AB 778 protects this increasingly attractive employment option for optometrists while further protecting a doctor from financial influence by the eyewear company in a co-located setting. Healthcare in California has changed significantly over the past 30 years, and AB 778 reflects those changes.

Mr. Lovejoy explained further that Luxxotica is sensitive to the concerns of the Board related to the relationship of the doctor to the retail location. He shared proposed amendments to AB 778 which include:

- Prevent quotas that require a doctor to see a certain number of patients.
- Prevent any financial relationships between retail and the doctor.
- Continue to protect patient records.
- Increase communication between the DMHC and the Board of Optometry.

He requested that the Board rescind its letter of opposition to the legislature, especially since their decision was based on incorrect information.

The Board Members discussed AB 778 and its impact to consumers and optometrists. All members were in support of Board staff's actions pertaining to the legislation, and maintained a position of opposition.

Donna Burke moved to accept staff's action so far. Alex Arredondo seconded. The Board voted unanimously (7 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		

Dr. Arredondo	**X**		
Ms. Johnson	**X**		
Dr. Lawenda	**X**		
Mr. Naranjo	**X**		
Ms. Burke	**X**		
Mr. Kim	**X**		

12. Public Comment for Items Not on the Agenda

13. Suggestions for Future Agenda items

Board member, Fred Naranjo suggested having webinars at the optometry schools for the senior classes. Board members and staff discussed when webinars may begin.

Ms. Johnson requested that scheduling be done at this time. The tentative meeting date decided upon is September 13, 2011.

Dr. Arredondo requested a future discussion on Latisse.

Board member, Donna Burke asked what is currently being done to make the public aware that the Board exists and that there is a website they can go to for information.

Policy Analyst, Andrea Leiva replied that the Department has various publications that are distributed annually (i.e. consumer guide with all of the various boards and contact information). Additionally the Department distributes flyers at outreach events.

Ms. Johnson inquired if the Board can have a Facebook page.

Board member, Alexander Kim noted that he concurs that public outreach is very important. He stated that he has participated in multiple events, free eye exams were given, and they were a great networking resource.

Dr. Goldstein suggested that Mr. Kim and Ms. Burke become a Public Relations Committee. Board and staff members all agreed. Ms. Maggio will facilitate the set-up of this committee.

Adjournment

Donna Burke moved to adjourn the meeting. Ken Lawenda seconded. The Board voted unanimously (7 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	**X**		
Dr. Arredondo	**X**		
Ms. Johnson	**X**		
Dr. Lawenda	**X**		
Mr. Naranjo	**X**		
Ms. Burke	**X**		
Mr. Kim	**X**		

The meeting was adjourned at 5:00 p.m.

Monica Johnson, Board Secretary

Date

Memo

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

To: Board Members **Date:** September 16, 2011

From: Mona Maggio, Executive Officer **Telephone:** (916) 575-7176

Subject: **Agenda Item 3 – Executive Officer's Report**

A. Introduction of Board Staff

Administration
Andrea Leiva, Policy Analyst
Krista Eklund, Administration Support
Elizabeth Bradley, Reception/Cashiering/Mail

Licensing
Jeff Robinson, Licensing Analyst/CE Program
Nancy Day, Licensing Technician
Elvia Melendrez, Licensing Clerk

Enforcement
Brianna Miller, Enforcement /Special Projects Analyst
Cheree Kimball, Enforcement Analyst/CE Audits
Lydia Bracco, Enforcement Analyst/Fingerprint Coordinator
Jessica Sieferman, Enforcement Analyst, BreEZe SME
Dillon Christensen, Enforcement Support/Purchasing

B. Budget Update

Presented by Wilbert Rumbaoa, Budget Analyst and Cynthia Dines, Budget Manager

C. BreEZe Update

Presented by Sean O'Connor, BreEZe Business Project Manager

D. Board Office Relocation

Presented by Ken Brown, Project Manager, DCA Facilities

.

E. Updates

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 Initial	Reappointment	Expiration of Term
Dr. Lee Goldstein, OD	Professional - Governor	04/2003	11/01/2007	*06/01/2011
Dr. Alejandro Arredondo, OD	Professional - Governor	11/01/2007		*06/01/2011
Monica Johnson	Public - Governor	12/2005	05/25/2010	06/01/2013
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	06/01/2015
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			
Vacant (06/01/2010)	Professional - Governor			

There are currently three professional member vacancies and four members are serving in their grace periods.

Dr. Lee Goldstein, OD; Dr. Alejandro Arredondo, OD; and Mr. Fred Naranjo are currently serving their one year grace period on the Board. Mr. Edward Rendon has informed the Board that he is unable to serve during his grace period. His appointing authority has been made aware of this situation.

Executive Orders

On April 26, 2011, Governor Brown issued Executive Order B-06-11, which restricts in-state and out-of-state travel. Specifically, no travel will be permitted unless it is mission critical or at no cost to the state. Mission critical travel is defined as travel directly related to enforcement responsibilities, auditing, revenue collection, a function required by statute, contract or executive directive, and job required training necessary to maintain licensure or similar standards required for holding a position.

The Board will continue to evaluate all travel for compliance with the Executive Order and its statutory mandates.

Personnel

The Board staff is comprised of 14 positions - ten full time staff, one half-time staff and one seasonal clerk. The Board has two vacancies, one staff services manager and one half-time associate governmental program analyst (AGPA), which is a limited term position that was obtained through the Department of Consumer Affairs Consumer Protection Initiative (CPEI). Staff is drafting hiring freeze exemption requests to fill the SSMI, AGPA, .5 MST and a limited term student position to assist with the unpacking of boxes and perform one time organizational projects..

Attachments:

1. Executive Order B-06-11

EXECUTIVE ORDER B-06-11

4-26-2011

WHEREAS the Governor's 2011-12 budget proposes to close the state's structural budget deficit in part through increased efficiency that will substantially reduce state operational expenses; and

WHEREAS since the beginning of this Administration, Executive Orders and other directives have been issued to restrict hiring in state government, drastically reduce the number of state cell phones and vehicles, and stop spending taxpayer dollars on free giveaway and gift items; and

WHEREAS the Governor's 2011-12 budget proposes to cut state operational expenses by reducing discretionary expenditures and increasing efficiency; and

WHEREAS restricting both in-state and out-of-state travel to only non-discretionary purposes will further reduce operational expenditures.

WHEREAS the Governor's 2011-12 budget proposes a reduction of $413 million ($250 million from the General Fund) in state operation efficiencies and other savings; and

WHEREAS restrictions on travel are necessary to help achieve these savings; and

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, by virtue of the power vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that discretionary travel is prohibited. All in-state non-discretionary travel must be approved by Agency Secretaries or Department Directors who do not report to an Agency Secretary. All out-of-state travel must be approved by the Governor's Office.

IT IS FURTHER ORDERED that the new travel restrictions are as follows:

1. No travel, either in-state or out-of-state, is permitted unless it is mission critical or there is no cost to the state.

Mission critical means travel that is directly related to:

• Enforcement responsibilities.
• Auditing.
• Revenue collection.
• A function required by statute, contract or executive directive.
• Job-required training necessary to maintain licensure or similar standards required for holding a position.

Mission critical does not mean travel to attend:

• Conferences (even those that historically have been attended).
• Networking opportunities.
• Professional development courses.
• Continuing education classes and seminars.
• Non-essential meetings that can be conducted by phone or video conference.
• Events for the sole purpose of making a presentation unless approved by the Department Director.

2. No travel is permitted for more than the minimum number of travelers necessary to accomplish the mission-critical objective. This restriction applies even when there is no cost to the state.

3. Agency Secretaries or Department Directors who do not report to an Agency Secretary may authorize in-state travel when the request conforms to the principles identified above.

4. As referenced in Budget letter 11-06, Agencies and Departments must submit their out-of-state travel requests to the Governor's office by May 6, 2011. No substitutions will be allowed for trips approved per this Budget Letter.

5. The Department of Finance will issue all necessary instructions and forms to implement this restriction on state travel. In addition, the Department of Finance will work with agencies and departments to develop targets for budgetary reductions in lieu of travel restrictions. Departments that achieve their target budget reductions, as determined by the Director of the Department of Finance, may seek exemption from the provisions of this executive order.

IT IS REQUESTED that other entities of State government not under my direct executive authority conduct an analysis to determine the discretionary nature of their travel in order to reduce unnecessary costs.

This Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that it be given widespread publicity and notice.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 26th day of April 2011.

_____
EDMUND G. BROWN JR.
Governor of California

ATTEST:

Memo

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

To: Board Members **Date:** September 16, 2011

From: Andrea Leiva, Policy Analyst; Jeff Robinson, Licensing Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 4– Examination/Licensing Program Report**

California Law and Regulations Examination (CLRE)
Andrea Leiva, Policy Analyst

The Board will be holding seven workshops in order to develop the 2011-2012 CLRE. A variety of licensees continue to apply to the workshops and thanks to them, we continue to have a fair, psychometrically sound, valid, and legally defensible examination.

- **October 2-3, 2011 (Sunday & Monday): Exam Plan Review Workshop**
  Purpose: To review the current questions in the California Laws and Regulations examination. Participants will work in conjunction with a testing specialist to review the examination questions.
  8 CE CREDITS

- **November 13-14, 2011 (Sunday & Monday): Item Writing and Review Workshop**
  Purpose: To review the current questions in the California Laws and Regulations examination and to write new questions. Participants will receive training on how to write an exam question and will work in conjunction with a testing specialist to develop examination questions.
  8 CE CREDITS

- **December 5, 2011 (Monday): Exam Construction**
  Purpose: In this workshop, subject matter experts will select potential questions for the 2011-2012 California Laws and Regulations Examinations. Participants will evaluate items for each content area included in the examination and select those that best represent the knowledge required for entry into the profession.
  4 CE CREDITS

- **January 23, 2012 (Monday): Passing Score**
  Purpose: This workshop establishes the passing score of the 2011-2012 California Laws and Regulations Examinations. Under the facilitation of a testing specialist, participants will apply minimum competence standards to establish a criterion-referenced passing score.
  4 CE CREDITS

- **February 26-27, 2012 (Sunday & Monday): Item Writing and Review Workshop**
  Purpose: To review the current questions in the California Laws and Regulations examination and to write new questions. Participants will receive training on how to write an exam question and will work in conjunction with a testing specialist to develop examination questions.
  8 CE CREDITS

- **March 26, 2012 (Monday): Exam Construction 7 SPOTS AVAILABLE**
  Purpose: In this workshop, subject matter experts will select potential questions for the 2011-2012 California Laws and Regulations Examinations. Participants will evaluate items for each content area included in the examination and select those that best represent the knowledge required for entry into the profession.
  4 CE CREDITS

- **April 23, 2012 (Monday): Passing Score 9 SPOTS AVAILABLE**
  Purpose: This workshop establishes the passing score of the 2011-2012 California Laws and Regulations Examinations. Under the facilitation of a testing specialist, participants will apply minimum competence standards to establish a criterion-referenced passing score.
  4 CE CREDITS

Candidates for licensure continue to perform well on the CLRE and staff has very little complaints from candidates. Many candidates are pleased with PSI's flexibility in scheduling and are encouraged to contact the Board if they have any questions regarding the examination study guide and study materials. (See Attachment 1 for Statistics)

Consumer Affairs System (CAS) to Applicant Tracking System (ATS) Conversion
Jeff Robinson, Licensing Analyst

The inception of California Code of Regulations (CCR) sections 1525 and 1525.1 in 2010 added fingerprint requirements as a condition of renewal for those optometrists licensed prior to January 1, 1998, and for those whose record of being fingerprinted no longer existed.

The Board currently uses the Department of Consumer Affairs' (DCA) Applicant Tracking System (ATS) to, among other things, process new applicants for optometrist licensure. Upon the submission of an application for licensure, an electronic file is created for the applicant. After all items required for licensure are entered into the system the information is then "exported" into the department's Consumer Affairs System (CAS) which forwards the information to the Board's web site and to the Department of General Services (DGS) where the printing and mailing of a licensed optometrist's wall/pocket license or engraved certificate takes place.

Fingerprints submitted by new applicants are reviewed by the California State Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). Upon completion of the review, the information is then imported from the DOJ and FBI directly into the applicant's/licensee's ATS file. This process has now been made available to those licensed prior to January 1, 1998, and those whose record of being fingerprinted no longer exists after it was learned that many of this and other Board's electronic records of their licensees had not been converted from CAS to ATS in 2007 when ATS was first implemented. This compelled DCA's Office of Information Services Application Services Unit to work with each Board to rectify the matter.

Board staff members Jeff Robinson and Lydia Bracco worked with the staff of the Applications Services Unit for several weeks before the conversions were successfully implemented on June 15, 2011. The Board now receives fingerprint information as swiftly for our licensees as we do our new applicants which benefits us greatly.

Outreach to California Schools and Colleges of Optometry
Jeff Robinson, Licensing Analyst

Board staff has been corresponding with the two accredited California schools/colleges of optometry and Western University of Health Sciences' College of Optometry regarding our

desire to begin meeting with 3rd year optometry students to provide them with an introduction and insight into the California State Board of Optometry and its continuing mission.

We have been informed by one of the schools/colleges that the 2012 spring quarter (March – May) might be the best time to meet with their 3rd year students and all of the schools/colleges would still like for us to meet with their 4th year students which, we can do for the 2012 graduates. However, staff believes that once we begin meeting with the 3rd year students, there will no longer be a need to meet with the 4th year students.

Continuing Education Program
Jeff Robinson, Licensing Analyst

The Board's continuing optometric education (CE) program continues to function at a high rate. It is the opinion of Board staff that the provision of an alternative means of CE course approval sits very well with the 140 providers of over 200 courses submitted since July 1, 2010.

National Board of Examiners in Optometry (NBEO) - Updates
Jeff Robinson, Licensing Analyst

National Center of Clinical Testing in Optometry (NCCTO)
The NBEO's National Center of Clinical Testing in Optometry (NCCTO) has opened for testing. Recently, members of the ARBO Board of Directors toured the facility while attending the NCCTO Open House in Charlotte, NC. The new center is designed to be efficient and secure in order to provide accurate, valid testing results. The NCCTO utilizes many innovations, including professionally-trained patients, uniform instrumentation, video recording of examinations, and has space dedicated to proctored, online law examinations. These innovations, along with the consolidation to one uniform testing site, will serve all state-wide licensing agencies well as they perform their duties in granting optometric licensure to appropriate candidates and ensuring the public welfare.

More information is available on the NBEO website www.optometry.org.

Injection Skill Exam (ISE)
The ISE will now be included as one of the skills being tested on Part III-Clinical Skills Exam (CSE). Any candidate registered for the CSE beginning in August 2011 will be required to take the ISE. Candidates will receive an official NBEO score for the Injections Skill. The score for the ISE will not be calculated into your overall Part III score and will not be reflected in CSE pass-fail decisions. ISE scores will be included on Candidates' NBEO score report.

California's optometry practice act does not currently allow for the use of injections by licensed optometrists. Scope expansion legislation will be required to obtain the ability to do this procedure.

Statistics and Performance Measures
Jeff Robinson, Licensing Analyst

To be provided at the meeting.

Attachments

1. CLRE Candidate Performance Statistics
2. Statistics and Performance Measures (to be provided at the meeting)

California Laws and Regulations Examination (CLRE)
Candidate Performance Statistics

***Please Note:** Every six months, there is a new version of the CLRE.

VERSION 1

April 1, 2010 to September 30, 2010		
Site City	**Pass**	**Fail**
Alberquerque - Yale	1	1
Anaheim	44	3
Atlanta - Room A	1	1
Atlanta - Room B	1	0
Bakersfield	2	0
Boston	1	1
Carson	30	0
Charlotte	1	0
Cranberry Township	1	1
El Monte	8	1
Fresno	3	0
Hayward	25	1
Houston - Northwest FWY	3	0
Las Vegas - Room B	1	0
Portland	2	4
Riverside	9	0
Sacramento	9	0
San Diego	16	2
San Francisco	5	1
Santa Clara	15	1
Santa Rosa	3	0
Southfield	0	1
TOTALS	**181**	**18**
PERCENTAGE	**90.95%**	**9.05%**
First-Time	**181**	**18**
Repeater	**0**	**0**

VERSION 2

October 1, 2010 to March 30, 2011		
Site City	**Pass**	**Fail**
Anaheim	23	2
Atlanta - Room A	1	0
Atlanta - Room B	0	1
Bakersfield	2	0
Boston	1	0
Carson	5	1
Charlotte	1	0
Cranberry Township	2	0
El Monte	5	1
Fresno	1	0
Hayward	3	0
Houston	1	1
Las Vegas - Room A	2	0
Las Vegas - Room B	1	1
Riverside	1	0
Sacramento	3	1
San Diego	4	0
San Francisco	1	0
Santa Clara	1	1
Santa Rosa	0	2
TOTALS	**58**	**11**
PERCENTAGE	**81.69%**	**15.49%**
First-Time	**51**	**11**
Repeater	**7**	**0**

VERSION 3

April 1, 2011 to September 06, 2011		
Site City	**Pass**	**Fail**
Alberquerque - Yale	1	0
Anaheim	21	2
Bakersfield	1	0
Boston	6	0
Carson	15	3
Charlotte	2	0
El Monte	18	1
Fresno	3	0
Hayward	28	1
Houston	1	0
Las Vegas - Room B	2	0
Portland	2	1
Riverside	6	0
Sacramento	8	2
San Diego	19	2
San Francisco	5	2
Santa Clara	19	0
Santa Rosa	3	0
West Des Moines	2	0
TOTALS	**162**	**14**
PERCENTAGE	**90.50%**	**7.82%**
First-Time	**149**	**12**
Repeater	**13**	**2**

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members **Date:** September 16, 2011

From: Andrea Leiva, Policy Analyst; Jeff Robinson, Licensing Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 5– Discussion and Possible Action to Amend California Code of Regulations (CCR) §1536 to Allow Therapeutic Pharmaceutical Agents (TPA) Certified Optometrists to Earn 50% of Continuing Education Credits by Internet or Correspondence Courses**

Action Requested:
Staff requests that the Board members review, discuss, and make any edits necessary to the proposed changes to CCR §1536. An approval of the draft language is necessary in order to begin a rulemaking.

Background:
Currently, optometrists who are Diagnostic Pharmaceutical Agents (DPA) certified are required to complete 40 hours of continuing optometric education (CE). Optometrists who are TPA certified are required to complete 50 hours of CE (See Attachment 1).

Section (c)(1) allows optometrists to complete up to 20 hours of biennial course work using documented and accredited self study through correspondence or an electronic medium. This means that for DPA certified optometrists, half of the required CE can be completed online. This is not the case for TPA certified optometrists.

Online technology advances are changing the way licensees gain knowledge, making it easier to meet continuing education requirements. This trend is gaining popularity as many people are realizing the advantages that this medium provides. For example, with online education, licensees can obtain quality, individualized instruction, the ability to enroll in CE courses anywhere there is internet connectivity, and providing electronic access to records of CE program completion. Other advantages include:

- The ability to learn anywhere in the world;
- Increased interaction for students with instructors;
- On-demand availability of CE courses; and
- Reduced time spent on learning and increased retention.

Issue/Discussion:
Board staff recommends that TPA certified optometrists should also be permitted to complete half of their CE online like DPA certified optometrists. Proposed draft language is being provided (See Attachment 2) to possibly implement this change.

For further discussion: Considering the online education trend, would it be more beneficial to allow optometrists to complete more than half of their CE online?

Attachments

1. CCR §1536 Current Language
2. CCR §1536 Proposed Draft Language

ORIGINAL LANGUAGE

§ 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 license expiration date. Such course work shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. 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 optometric education every two years in order to renew his or her license. Thirty-five of the required 50 hours of continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (e).

(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 courses officially sponsored or recognized by any accredited school or college of optometry.

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

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

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

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

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

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

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

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance 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 shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

(4) Number of continuing optometric education hours provided for attending the course.

(5) Date the course was provided.

(6) Location where the course was provided.

(7) 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 certificate of course completion provided by the Board is recommended for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the 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 two years immediately preceding the license expiration date.

(2) Those licensees as the Board, in its discretion, determines were unable to 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 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 of a continuing optometric education course as a means of verifying compliance with this section.

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

PROPOSED LANGUAGE

DRAFT 1

§ 1536. Continuing Optometric Education; Purpose and Requirements.

(a) ~~Except as otherwise provided in Section 1536(b), each licensee~~ An optometrist certified to use diagnostic pharmaceutical agents (DPA) shall complete 40 hours of ~~formal~~ continuing optometric education ~~course work within the two years immediately preceding the license expiration date~~ every two years in order to renew his or her license. Such ~~course work~~ continuing optometric education shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. Business management courses are not accepted by the Board.

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

(c)An optometrist certified to treat glaucoma pursuant to California Code of Regulations Section 1571 shall be required to complete ten 10 hours of glaucoma specific continuing education every two years in order to renew his or her license. These 10 hours shall be part of the required 35 hours as provided in Section 1536(b).

(c) Up to 20 hours for DPA certified optometrists and up to 25 hours for TPA certified optometrists, 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 courses officially sponsored or recognized by any accredited school or college of optometry.

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

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

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

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

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

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

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

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance 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 shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

(4) Number of continuing optometric education hours provided for attending the course.

(5) Date the course was provided.

(6) Location where the course was provided.

(7) 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 certificate of course completion provided by the Board is recommended for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the 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 two years immediately preceding the license expiration date.

(2) Those licensees as the Board, in its discretion, determines were unable to 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 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 of a continuing optometric education course as a means of verifying compliance with this section.

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

Memo

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

To: Board of Optometry Members **Date:** September 16, 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 and control of the records of an organization from the time they are created or received up to their eventual disposal. This may include processing, distribution, organization, retrieval, classification, storing, securing, and destruction (or in some cases, archival preservation) of records.

The Records Retention Schedule (RRS) was approved by the Board at the April 11, 2011 meeting. Since that meeting, staff found the RRS needed to be in line with DCA's Electronic Data Retention Policy, therefore revising the structure of the document. Staff is retaining the paper documents in the same manner as electronic.

The policy recommends Enforcement Records reflect a description of files in certain categories, i.e., Non-Jurisdictional, No Violation, Non-Disciplinary Action Taken and Disciplinary Action Attempted. These categories have specific years of retention attached to them, thus making the files more organized and convenient when the maximum specified retention period is reached and it is time to purge the documents.

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

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

Attachment:
Records Retention Schedule (prior RRS & current)

STD.73 (REV. 6/2002)

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES

RECORDS RETENTION SCHEDULE

STATE RECORDS PROGRAM

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	(2) AGENCY BILLING CODE	(3)
Department of Consumer Affairs	57190	PAGE 1 OF 7 PAGES

(4) DIVISION/ BRANCH/ SECTION	(5) ADDRESS
Board of Optometry	2420 Del Paso Rd., Suite 255, Sacramento, CA 95834

CHECK THE APPROPRIATE BOX

(6) ☐ New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]

(7) ☒ Revising a previous schedule. [Complete boxes (13) –(16)] (A new approval number will be assigned)

(8) ☐ 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-4	(10) SCHEDULE DATE 4/13/11	(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) ☐ Contains no material subject to further review by the California State Archives

(32) ☐ 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 # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
			PROGRAM MANAGEMENT								
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		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 # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
7	62		Disciplinary File (Dept. of Investigation (D of I) or other investigation court/hearing documents, related correspondence, mail votes)	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Active until licensee is deceased then combine with Licensed Optometrist file until destruction
8	39		Complaint File (original complaint, requests for DOI/other investigation documents & resulting findings, related correspondence)	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Active until licensee is deceased then combine with Licensed Optometrist file until destruction
9	9		Non-jurisdictional Complaint File (original complaint, complaint opening/closing documents)	P		C+1			C+1		Active for 1 year from date of receipt then destroy. Recycle (R)
10	3		Complaint File - contact lens (File (original complaint, complaint opening/closing documents)	P		C+5			C+5		Active for 5 years from date of receipt then destroy. R
11	3		Complaint File – practicing without a license (original complaint, D of I investigation document, possibly court documents)	P		C+10			C+10		Active for 10 years from date of receipt then destroy. R
12	2		Consumer Complaint Statistics (surveys, logs, reports)	PM		A			A		Active for historical reference until policy change. R
13	4		Board Statistics (reports, license information)	PM		A			A		Active for historical reference until policy change. R
14	4		Continuing Education Course File (approvals/denials)	PM		A+3			A+3		Active for 3 years from course date then destroy. R
15	1		License verification letters from applicants	P		C+3			C+3		Current for 3 years from verification request date then destroy. R
16	2		License Print Audit Control Reports	PM		A+3			A+3		Active for 3 years from course date then destroy. CD
17	3		Rules & Regulations (rulemaking files, amended/changed regulations)	PM		A			A		Active for historical reference until policy change. R
18	2		Legislative Analysis & Proposed Legislation	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. CD Active for historical reference until policy change

ITEM # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
			ADMINISTRATIVE MANAGEMENT								
19	1		Executive Officer general correspondence	PM		A			A		Active for historical reference until policy change. R
20	6		Board/Committee meeting minutes	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. CD Active for historical reference until policy change
21	2		Board Policy	PM		A			A		Active for historical reference until policy change. R
22	1		Legal Opinions (Attorney General and DCA legal)	PM		A			A		Active for historical reference until policy change. R
23	6		Budget (Dept. of Finance/DCA submissions, Annual Financial Plans, CALSTARS reports)	PM		A			A		Active for historical reference until policy change. R
24	4		Reports of Revenue Collection (checks/payments, audit reports; payroll records)	P		C+5			C+5		Retain in-office for five years after attributed fiscal year then dispose. R
25	2		Claims (travel expense/per diem, witness, subject matter expert; contracts, purchase requests/orders, vouchers, vendor invoices/payment records, direct payment transfers, property transactions)	PM		A+2			A+2		Active until person/witness/expert separates, retires or transfers. Retain additional two years then destroy. CD Other records not associated with person/witness/expert: retain for 5 years after attributed fiscal year. R
26	3		Personnel Records (board member/staff personnel files; attendance records; miscellaneous transactions (appointment notices, etc))	PM		A+2			A+2	X,I	PRA, IPA - GC6254 – Law requires these records remain confidential. CD Active until person separates, retires, or transfers. Retain additional two years then destroy.
27			Records Management (Records Retention Schedule Approval Request and Records Retention Schedules (RRS) (Std. 72 and 73)	PM		C			C		Retain as current until superseded. R
28			Std. 70-records inventory worksheet	PM		A			A		Retain as current until next inventory. R
	***522**										

ITEM # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
			SUMMARY OF CHANGES This RRS BO-4 revises BO-4 (approval date 2/20/02). The item number (not page number, unless indicated by "Page") changes are as follows: BO-4 — BO-4/2011 #6, #7, #8, #9, #29 — 4 #10 — 6 #23 — 7 #24 — 8 #26 — ~~9~~12 #27 — ~~10~~13 #28 — ~~11~~14 #30 — ~~12~~15 #31 — ~~13~~16 #15 — ~~14~~17 #16 — ~~15~~18 #12 — ~~16~~19 #13 — ~~17~~20 #14 — ~~18~~21 #17 — 22 #18, #19 — ~~20~~23 #20 — ~~21~~24 #21 — ~~22~~24 #22 — ~~23~~26 Page 9 #1 — ~~24~~27 Page 9 #2 — ~~25~~28 #32 removed – library/reference material #11 — ~~4~~ 6 & * 25 missing # - indicates items consolidated/moved *- indicates item discontinued								

*** Provide total of office and departmental**

STD.73 (REV. 6/2002)

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES

RECORDS RETENTION SCHEDULE

STATE RECORDS PROGRAM

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	(2) AGENCY BILLING CODE	(3)
Department of Consumer Affairs	57190	PAGE 1 OF 7 PAGES

(4) DIVISION/ BRANCH/ SECTION	(5) ADDRESS
Board of Optometry	2450 Del Paso Rd., Suite 105, Sacramento, CA 95834

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(6) ☐ New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]

(7) ☒ Revising a previous schedule. [Complete boxes (13) –(16)] (A new approval number will be assigned)

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(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:

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(32) ☐ 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

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			PROGRAM MANAGEMENT								
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		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 5 years, notify Archives
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 # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
7	63		Disciplinary File (Dept. of Investigation (D of I) or other investigation court/hearing documents, related correspondence, mail votes)	PM		C			C	X	PRA - GC6254 – Law requires these records remain confidential. 75 years from date of closure or until board is notified of death. CD
8	**4**		**Open Complaint File (original complaint, requests for DOI/other investigation documents & resulting findings, related correspondence)**	**PM**		**A**			**A**	**X**	**PRA - GC6254 – Law requires these records remain confidential.** **Active until investigation is complete. Outcome of investigation will determine placement of file in other category.**
9	**16**		**Non-jurisdictional, Referred to Another Agency Complaint File (original complaint, complaint opening/closing documents)**	**PM**		**C+2**			**C+2**		**Current for 2 years from date of receipt then destroy. Recycle (R)**
10	**10**		**No Violation, Closed Without Merit Complaint File (original complaint, complaint opening/closing documents)**	**PM**		**C+5**			**C+5**		**Current for 5 years from date of receipt then destroy. R**
11	**23**		**Non-Disciplinary Action Taken, Insufficient Evidence, Administrative Action Taken Complaint File (original complaint, D of I investigation document, possibly court documents)**	**PM**		**C+5**			**C+5**		**Current for 5 years from date of receipt then destroy. R**
12	2		Consumer Complaint Statistics (surveys, logs, reports)	PM		A			A		Active for historical reference until policy change. R
13	4		Board Statistics (reports, license information)	PM		A			A		Active for historical reference until policy change. R
14	4		Continuing Education Course File (approvals/denials)	PM		A+3			A+3		Active for 3 years from course date then destroy. R
15	1		License verification letters from applicants	P		C+3			C+3		Current for 3 years from verification request date then destroy. R
16	2		License Print Audit Control Reports	PM		A+3			A+3		Active for 3 years from course date then destroy. CD
17	3		Rules & Regulations (rulemaking files, amended/changed regulations)	PM		A			A		Active for historical reference until policy change. R
18	2		Legislative Analysis & Proposed Legislation	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. CD Active for historical reference until policy change

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19	1		Executive Officer general correspondence	PM		A			A		Active for historical reference until policy change. R
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21	2		Board Policy	PM		A			A		Active for historical reference until policy change. R
22	1		Legal Opinions (Attorney General and DCA legal)	PM		A			A		Active for historical reference until policy change. R
23	6		Budget (Dept. of Finance/DCA submissions, Annual Financial Plans, CALSTARS reports)	PM		A			A		Active for historical reference until policy change. R
24	4		Reports of Revenue Collection (checks/payments, audit reports; payroll records)	P		C+5			C+5		Retain in-office for five years after attributed fiscal year then dispose. R
25	2		Claims (travel expense/per diem, witness, subject matter expert; contracts, purchase requests/orders, vouchers, vendor invoices/payment records, direct payment transfers, property transactions)	PM		A+2			A+2		Active until person/witness/expert separates, retires or transfers. Retain additional two years then destroy. CD Other records not associated with person/witness/expert: retain for 5 years after attributed fiscal year. R
26	3		Personnel Records (board member/staff personnel files; attendance records; miscellaneous transactions (appointment notices, etc))	PM		A+2			A+2	X,I	PRA, IPA - GC6254 – Law requires these records remain confidential. CD Active until person separates, retires, or transfers. Retain additional two years then destroy.
27			Records Management (Records Retention Schedule Approval Request and Records Retention Schedules (RRS) (Std. 72 and 73)	PM		C			C		Retain as current until superseded. R
28			Std. 70-records inventory worksheet	PM		A			A		Retain as current until next inventory. R
	***522**										

ITEM # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (*Double spaces between items*) (40)	MEDIA (41)	VITAL (42)	RETENTION OFFICE (43)	RETENTION DEPT. (44)	RETENTION SRC (45)	RETENTION TOTAL (46)	PRA (Exempt) & IPA (47)	REMARKS (48)
			SUMMARY OF CHANGES This RRS BO-4 revises BO-4 (approval date 2/20/02). The item number (not page number, unless indicated by "Page") changes are as follows: BO-4 — BO-4/2011 #6, #7, #8, #9, #29 — 4 #10 — 6 #23 — 7 #24 — 8 #26 — 12 #27 — 13 #28 — 14 #30 — 15 #31 — 16 #15 — 17 #16 — 18 #12 — 19 #13 — 20 #14 — 21 #17 — 22 #18, #19 — 23 #20 — 24 #21 — 24 #22 — 26 Page 9 #1 — 27 Page 9 #2 — 28 #32 removed – library/reference material #11 — 6 & * 25 missing # - indicates items consolidated/moved * - indicates item discontinued								

(35) CalRIM APPROVAL NUMBER											(36) Page 6 of 7
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*** Provide total of office and departmental**

Memo

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To: Board Members **Date:** September 16, 2011

From: Brianna Miller
Enforcement Analyst **Telephone:** (916) 575-7185

Subject: **Agenda Item 7 – Review and possible approval of revised Board Member Administrative Procedures Handbook**

Action Requested:
Staff requests that the Board review, edit, and approve the updated Administrative Procedures Manual and combined Board Member Handbook, which will serve as a reference tool for Board Members.

Issue:
A new edition of the Bagley-Keene Open Meeting Act was distributed in January 2011 which featured new language. Accordingly, the Board of Optometry's Administrative Procedures Manual was updated to address these amendments.

An instructional manual will be included with the Administrative Procedures Manual for Board Member use. This referential guide will aid members in understanding Board processes and procedures discussed in meetings, such as the legislative process, enforcement process, and how to read a disciplinary decision.

Attachments:
1) 2011 Edition of the California State Board of Optometry Administrative Procedures Manual
2) Board Member Handbook

State of California
State and Consumer Services Agency

CALIFORNIA STATE BOARD OF
OPTOMETRY

Administrative Procedure Manual

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
www.optometry.ca.gov

2011 Edition

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Chapter 1. Introduction

Overview

The California State Board of Optometry (hereafter Board) was created by the California Legislature in 1973 under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. In 1923, the Board promulgated the first rules for the practice of optometry and the State Legislature first required all applicants for licensure to be graduates of an accredited school or colleges of optometry. The Board is responsible for accrediting these schools. To assure competent and ethical practitioners and protect the public from harm, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board.

Today, the Board is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the State and Consumer Services Agency under the aegis of the Governor. DCA is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While the DCA provides administrative oversight and support services, the Board has policy autonomy and sets its own policies, procedures, and initiates its own regulations.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code (BPC) Section 3010.1).

The Board is presently comprised of 7 members of 11 possible positions. By law, five must be public members and six must be optometry professionals (licensed optometrists of the State of California actually engaged in the practice of optometry at the time of appointment or faculty members of a school or college of optometry). No more than two faculty members may be on the Board at any one time and they may not serve as public members. No member of the Board shall have a financial interest in any purchase or contract under Board purview nor shall he/she have financial interest in the sale of any property or optical supplies to any prospective candidate for examination before the Board. The public members shall not be licensees of the Board or of any other Healing Arts Board. The Governor appoints three public members and the six professional members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. Board members may serve up to two, four-year terms. Board members are paid $100 for each day actually spent in the discharge of official duties and are reimbursed travel expenses.

Board Responsibilities

With approximately 7,000 practicing optometrists and 500 optometric corporations, the largest population of optometrists in the United States, the Board is charged with the following duties and responsibilities:

- Accrediting the schools and colleges providing optometric education.

- Establishing educational requirements for admission to the examination for certificates of registration as California licensed optometrists.

- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.

- Setting and enforcing standards for continued competency of existing licensees.

- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe authorized pharmaceutical agents.

- Issuing certification to diagnose and treat glaucoma for patients over the age of 18.

- Licensing branch offices and issuing fictitious name permits.
    - Effective January 1, 2007, the Board of Optometry no longer registers Optometric Corporations. However, the Board has maintained the authority to regulate those in existence.
- Promulgating regulations governing:
    - Procedures of the Board
    - Admission of applicants for examination for licensure as optometrists
    - Minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions
- Providing for redress of grievances against licensees by investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, or unlawful activity.

- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted.

This procedures manual is provided to Board members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency.

Definitions

ALJ	Administrative Law Judge.
AOA	American Optometric Association
APA	Administrative Procedure Act
BPC	Business and Professions Code
CLEAR	Council on Licensure Enforcement and Regulations
COA	California Optometric Association

DCA	Department of Consumer Affairs
EO	Executive Officer
OAH	Office of Administrative Hearings. This state agency provides neutral judges to preside over administrative cases.
OAL	Office of Administrative Law. This state agency reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.
Regulation	A standard that implements, interprets, or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.
SAM	State Administrative Manual
Statute	A law passed by the legislature.
Stipulation	A form of plea bargaining in which a disciplinary case is settled by negotiated agreement prior to hearing.
President	Where the term "President" is used in this manual, it will be assumed to include "his or her designee"

General Rules of Conduct

- Board members shall not speak or act for the Board without proper authorization.
- Board members shall maintain the confidentiality of non-public documents and information.
- Board members shall adequately prepare for Board responsibilities.
- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
- Board members shall treat all applicants and licensees in a fair an impartial manner.
- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- Board members shall not use their positions on the Board for personal, familial or financial gain.

Chapter 2. Board Meeting Procedures

Frequency of Meetings

(BPC Section 3017)

The Board shall hold regular meetings every calendar quarter.

Special meetings of the Board may be held upon request of a majority of the members of the Board or upon the call of the President.

Six members constitute a quorum at a Board meeting.

Notice of each meeting and the time and place thereof shall be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

Board Meeting Attendance at Board Meetings

(Board Policy)

Board members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Executive Officer and ask to be excused from the meeting for a specific reason.

Public Attendance at Board Meetings

(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This act governs meetings of the state regulatory boards and meeting of committees of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included in the agenda.

The Bagley-Keene act stipulates that the Board is to provide adequate notice of meetings to be held to the public as well as provide an opportunity for public comment. The meeting is to be conducted in an open session, except where closed session is specifically noted.

If the agenda contains matters that are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Closed Sessions at Board Meetings

(Government Code Section 11126 et seq.)

A Board may meet in a closed session to discuss: personnel matters (appointments, employment, evaluation of performances, etc.); examination matters wherein the Board prepares, approves, grades, or administers examinations; matters which would constitute an invasion of privacy if discussed in an open session; administrative disciplinary matters; pending

litigation; as a response to confidential final draft audit report; and, as a response to threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment.

Closed Session Procedural Requirements

(Government Code Section 11126 et seq.)

The Board shall disclose in the open meeting a generalization of the items to be discussed in a closed session. This can be accomplished by those items on the agenda as a closed session item.

All closed sessions must be held during a regular or special meeting (section 11128). A staff person shall be designated to attend the closed session and record the discussion topics and decisions made, which will be available only to members.

All information discussed in the closed session is confidential and must not be disclosed to outside parties.

Quorum

(BPC Section 3010.1)

Six of the members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

(Board Policy and Government Code Section 11125 et seq.)

Any Board member may submit items for a Board meeting agenda to the Executive Officer 15 days prior to the meeting.

No item shall be added to the agenda subsequent to the provision of the meeting notice. However, an agenda item may be amended and then posted on the Internet at least 10 calendar days prior to the meeting.

Items not included on the agenda may not be discussed.

Notice of Meetings

(Government Code Section 11120 et seq.)

According to the Opening Meeting Act, meeting notices (including agenda for Board meetings) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The

notice shall include a staff person's name, work address, and work telephone number so that he or she can provide information prior to the meeting.

Notice of Meetings to be Posted on the Internet

(Government Code Section 11125 et seq.)

Notice shall be given and also made available on the Internet at least 10 calendar days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide information prior to the meeting. However, it need not include a list of witnesses expected to appear at the meeting.

Written notices shall include the address of the Internet site where notices required by this article are available.

Special Meetings

(Government Code Section 11125 et seq.)

A special meeting may be held where compliance with a 10-day meeting notice would impose a hardship or when an immediate action would be required to protect the public interest.

Notice for a special meeting must be posted on the Internet at least 48 hours prior to the meeting. Upon commencement, the Board must state the specific facts which necessitate special meeting as a finding. This finding must be adopted by a two-thirds vote; failure to adopt the finding terminates the meeting.

Record of Meetings

(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting. Board minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meetings may be tape-recorded if determined necessary for staff purposes. Tape recordings may be disposed of upon Board approval of the minutes.

Meeting by Teleconferencing

(Government Code Section 11123 et seq.)

Board Meetings held by a teleconference must comply with requirements applicable to all meetings.

The portion of the meeting that is open session must be made audible to the public present at the location specified in the meeting notice. Each teleconference meeting location must be identified in the meeting notice and agenda.

All votes taken during this meeting shall be by roll-call.

Use of Electronic Devices During Meetings

(Bagley-Keen Act)

Members should not text or email each other during an open meeting on any matter within the Board's jurisdiction.

Meeting Rules

(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Chapter 3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board members shall have Board President approval for travel except for regularly scheduled Board and committee meetings to which the Board member is assigned.

Travel Arrangements

(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Executive Officer's Assistant on lodging accommodations.

Out-of-State Travel

(State Administrative Manual Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims

(State Administrative Manual Section 700 et seq. and DCA Travel Guidelines)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Executive Officer's Assistant maintains these forms and completes them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the Director and are provided to Board members.

Salary Per Diem

(BPC Section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by BPC Section 103.

In relevant part, this section provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board meeting or committee meeting to the

conclusion of that meeting. Where it is necessary for a Board member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and AOA or CLEAR committee work. That work does not include preparation time for Board or committee meetings. Board members cannot claim salary per diem for time spent traveling to and from a Board or committee meeting.

Chapter 4. Selection of Officers & Committees

Officers of the Board

(BPC Section 3014)

The Board shall elect from its members a President, Vice-President, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Election of Officers

(Board Policy)

The Board elects the officers at the last meeting of the fiscal year. Officers serve a term of one-year beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President until the election for President is held. Elected officers shall then serve the remainder of the term.

Committee Appointments

(Board Policy)

The President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the

Board President in consultation with the Vice President, Secretary and the Executive Officer. Appointment of non-Board members to a committee is subject to the approval of the Board.

Attendance of Committee Meetings

(Government Code Section 11122.5 (c)(6))

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

Chapter 5. Board Administration and Staff

Appointment of Executive Officer

(BPC Section 3027)

The Board shall employ an Executive Officer and other necessary assistance in the carrying out of the provisions of the BPC, Chapter 7.

The executive officer shall perform the duties delegated by the Board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the Board. With the approval of the Director of Finance, the Board shall fix the salary of the Executive Officer. The Executive Officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

Board Administration

(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs, operations and staff shall be the responsibility of the Executive Officer. Board members should not interfere with day-to-day operations, which are under the authority of the Executive Officer.

Legal Counsel

The Board's legal counsel acts represents the Board for litigation and accordingly for services rendered by the Office of the Attorney General. The Board's legal counsel provides "in-house" counsel.

Board Budget

(Board Policy)

The Secretary shall serve as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Secretary.

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate al budget issues to the Administration and Legislation.

Press Releases

(Board Policy)

The Executive Officer may issue press releases with the approval of the Board President.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board's strategic planning process. The Vice President shall serve as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will conduct an annual strategic planning session and may utilize a facilitator to conduct the strategic planning process.

Legislation

(Board Policy)

In the event time constraints preclude Board action, the Board delegates to the Executive Officer and the Board President the authority to take action on legislation that would affect the practice of optometry or responsibilities of the Board. The Board shall be notified of such action as soon as possible.

Communication with Other Organizations & Individuals

(Board Policy)

Any and all representations of the Board or Board policy must be made by the Executive Officer or Board President, unless approved otherwise. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Executive Officer's Office.

Executive Officer Evaluation

(Board Policy)

Board members shall evaluate the performance of the Executive Officer on an annual basis.

Board Staff

(DCA Reference Manual)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-today personnel transactions.

Business Cards

(Board Policy)

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address. A Board member's business address, telephone and fax number, and email address may be listed on the card at the member's request.

Chapter 6. Other Policies & Procedures

Board Member Orientation

(BPC section 453)

Newly appointed members shall complete a training and orientation program provided by DCA within one year of assuming office. This one-day class will discuss board member obligations and responsibilities.

Materials Provided to Incoming Board Members

(Government Code section 11121.9)

A copy of the Bagley-Keene Act must be provided to each new member upon his or her appointment.

Board Member Ethics Training

(Government Code section 12950.1)

Newly appointed board members shall attend an ethics training course within six months of assuming office and every two years thereafter.

Pursuant to Government Code section 12950.1, each member shall attend at least two hours of interactive training covering sexual harassment prevention within six months of his or her appointment.

Board Member Disciplinary Actions

(Board Policy)

The Board may censure a member if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner. The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as chair. In accordance with the Public Meetings Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(BPC Sections 106 and 106.5)

The Governor has the power to remove from office at any time any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

(Government Code Section 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. State law requires written notification. A copy of this letter shall also be sent to the director of DCA, the Board President, and the Executive Officer.

Conflict of Interest

(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Candidates, Applicants and Licensees

(Board Policy)

Board members shall not intervene on behalf of a candidate or an applicant for licensure for any reason. Nor shall they intervene on behalf of a licensee. All inquiries regarding licenses, applications and enforcement matters should be referred to the Executive Officer.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board members or the staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board member may access the file of a licensee or candidate without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the office of the Board.

Ex Parte Communications

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting *ex parte* communications. An *ex parte* communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an *ex parte* communication with Board enforcement staff while a proceeding is pending. Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call form an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board

member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Executive Officer.

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Overview of California's Legislative Process

The California State Legislature consists of two houses: the Senate and the Assembly. The Senate has 40 members and the Assembly has 80 members.

All legislation begins as an idea or concept. The first step to move an idea toward legislation is for a Senator or Assembly Member to author this idea as a bill. Once a legislator has established himself or herself as an author, he or she will proceed to the Legislative Council where a bill is drafted; it is then returned to the legislator for introduction in a house (if a Senator authors a bill, it will be introduced to the Senate; if an Assembly Member authors a bill, it will be introduced to the Assembly). This house is called the House of Origin.

Once a bill is introduced on the floor of its house, it is sent to the office of State Printing. At this time, it may not be acted upon until 30 days after the date which it was introduced. After the allotted time has lapsed, the bill moves to the Rules Committee of its house to be assigned to a corresponding Policy Committee for hearing.

During committee hearing, the author presents his or her bill to the committee and witnesses provide testimony in support or opposition of the bill. At this time, amendments may be proposed and/or taken. Bills can be amended multiple times. Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. A bill is passed in committee by a majority vote.

If the bill is passed by committee, it returns to the floor of its House of Origin and is read a second time. Next, the bill is placed on Third Reading and is eligible for consideration by the full house in a floor vote. Bill analyses are prepared prior to this reading. During the third reading, the author explains the bill and members discuss and cast their vote. Bills that require appropriation or, that take effect immediately, generally require 27 votes in the Senate and 41 votes in the Assembly to be passed. Other bills require majority vote. If a bill is defeated, its author may seek reconsiderations and another vote.

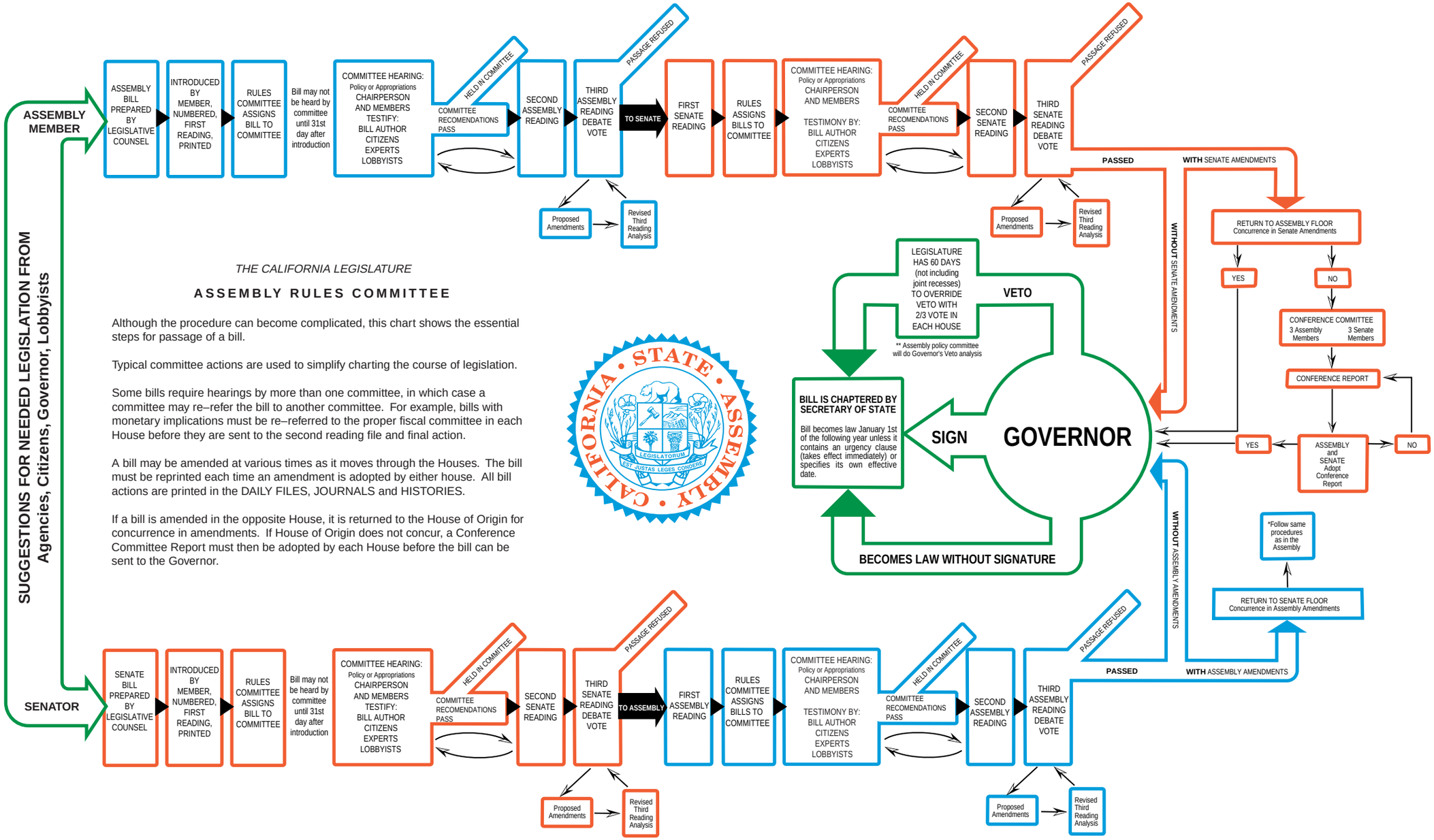
Once a bill has been approved by the House of Origin, it is submitted to the second house where the aforementioned process is repeated. Here, if an agreement is not reached, the bill dies or is sent to a two-house committee where members can come to a compromise. However, if an agreement is made, the bill is returned to both houses as a conference report to be voted upon.

Should both houses approve a bill, it proceeds to the governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is in session, the governor must act within 12 days; otherwise, he has 30 days to do so. A two-thirds vote from both houses can override the governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the governor are assigned a chapter number by the Secretary of State. Chaptered bills typically become part of the California Codes. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

THE LIFE CYCLE OF LEGISLATION

From Idea into Law



Overview of Regulations

Regulations are administratively enforceable. They may govern an agency as well as interpret or make specific laws that are enforced or administered by said agency.

In order to prepare a rulemaking action, an agency is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

The issuance of a notice of proposed regulation initiates a rule making action. To do this, an agency must create a notice to be published in the California Regulatory Notice Register and mailed to interested parties. It must also post the notice, proposed text, and statement of reasons for the rulemaking action on its website.

Once the notice has been posted, the Administrative Procedures Act (APA) requires a 45-day comment period from interested parties before the agency proceeds further with the proposed regulation. During this time an agency can also decide if it wants to hold a public hearing to discuss the proposed rulemaking action. However, if it opts against this, but an interested person requests a hearing at least 15 days prior to the end of the written comment period, the agency must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, an agency will often decide to revise its proposal. If it chooses to do so, APA procedures require that the agency assess each change and categorize them as (a) nonsubstantial, (b) substantial and sufficiently related, or (c) substantial and not sufficiently related. Any change that has been categorized as substantial and sufficiently related must be available for public comment for at least 15 days before the change is adopted in the proposal. All comments must then be considered by the agency.

Additionally, if the agency cites new material that has not been available to the public while revising the proposal, these new references must be presented to the public for 15 days.

The agency is also responsible for summarizing and responding on record to public comments submitted during each allotted period. These are to be included as part of the final statement of reasons. By doing so, the agency demonstrates that it has understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation.

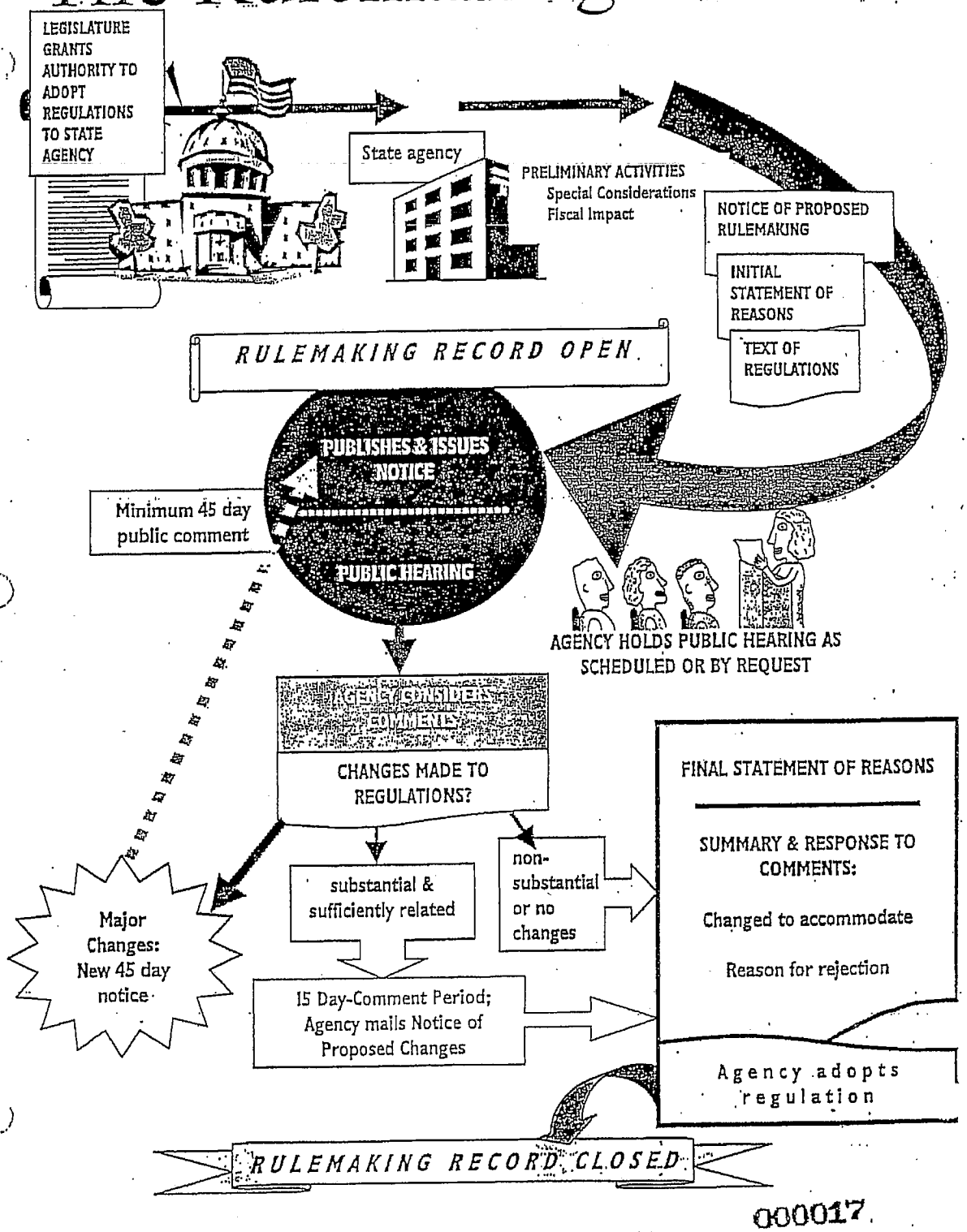
After the agency has fulfilled this process, it must adopt a final version of the proposed rulemaking decision. Once this has been accomplished, the rulemaking action must be submitted to the Office of Administrative Law (OAL) for review within a year from the date which the notice was published. OAL has 30 days to review the action.

During its review, OAL must determine if the rulemaking action satisfies the standards set forth by APA. These standards are: necessity, authority, consistency, clarity, nonduplication, and reference. It must also have satisfied all procedural requirements governed by the APA.

If OAL deems that the rulemaking action satisfies the aforementioned standards, it files the regulation with the Secretary of State and it is generally effective within 30 days. The regulation is also printed in the California Code of Regulations.

If OAL, however, determines that the action does not satisfy these standards, it returns the regulation to the agency which can revise the text, post notice of change for another comment period, and, finally, resubmit the proposed regulation to OAL for review; or, the agency may appeal to the governor.

The Rulemaking Process



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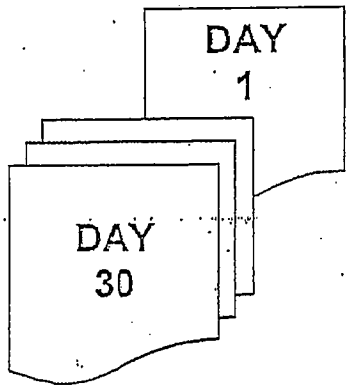
OAL REVIEW

State agency must submit rulemaking record within 1 year of notice publication

OAL has 30 WORKING days to review a regulation

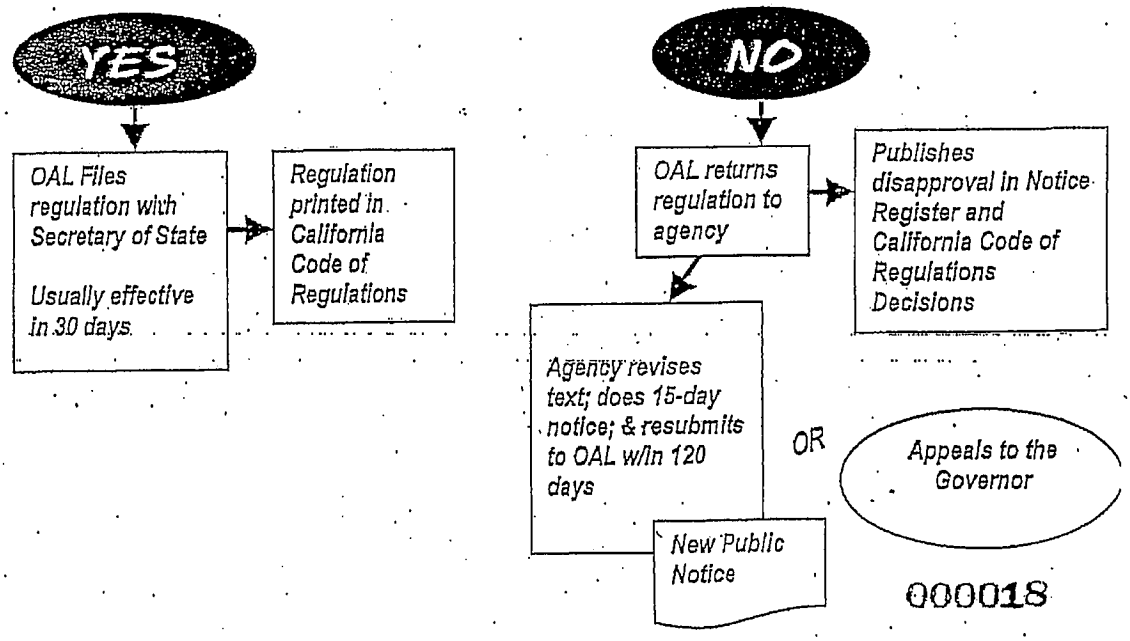


APA STANDARDS:

AUTHORITY
REFERENCE
CONSISTENCY
CLARITY
NON-DUPLICATION
NECESSITY

& PROCEDURAL REQUIREMENTS

DOES THE RULEMAKING SATISFY THE APA?



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Complaint and Disciplinary Process

Under the Department of Consumer Affairs, the California Sate Board of Optometry (Board) conducts disciplinary proceedings in accordance with the Administrative Procedure Act, Government Code Section 11370, and those sections that follow. The Board conducts investigations and hearings pursuant to Government Code Sections 11180 through 11191.

Typically, the disciplinary process begins with a complaint case. Complaints can come to the Board via consumers, optometrists, and other agencies. Under Business and Professions Code 800 et seq., civil judgments or settlement against a licensee that exceeds three thousand dollars ($3,000) must be reported to the Board by an insurer or licensee. These will result in an enforcement investigation.

To begin an investigation, the Board's enforcement staff determines jurisdiction over a complaint case. If jurisdiction has been established, enforcement staff begins its investigation by requesting permission to review the patient's medical file (if this is pertinent to the complaint) and notifies the optometrist that a complaint has been made.

Enforcement staff determines if a violation of the Optometry Practice Act has occurred by verifying facts to validate a complaint allegation. This is generally done by gathering statements, patient records, billings, insurance claims, etc. The Board may also submit the case to the Division of Investigation (DOI) for further investigation as DOI investigators are given authority of peace officers by the Business and Professions Code while engaged in their duties. Therefore, these investigators are authorized more investigative privileges than Board staff.

The Board may also seek the aid of an expert witness when the enforcement team needs an expert opinion to determine if the licensee in question breached the standard of care.

If it is determined by enforcement staff, expert opinion, DOI, etc. that the subject's acts constitute a violation of law, the completed investigative report, is submitted to the California Office of the Attorney General. The assigned Deputy Attorney General will review the case to determine if the evidence supports filing of an accusation against the subject for a violation of the law. If it is determined appropriate, an accusation is prepared and served upon the subject, and he or she is given the opportunity to request a hearing to contest the charges.

Acts subject to disciplinary action – such as revocation, suspension, or probationary status of a license – include but are not limited to:

- Unprofessional conduct;
- Gross negligence;
- Sexual misconduct;
- Conviction of a substantially related crime;
- Substance abuse; and
- Insurance fraud.

After the Board files an accusation, the case may be resolved by a stipulated settlement: a written agreement between parties to which the person is charged admits to certain violations and agrees that a particular disciplinary order may be imposed.

Stipulations are subject to adoption by the Board. If a stipulated settlement cannot be negotiated, the Board holds a hearing before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last anywhere from one day to several months, depending on the complexity of the case and the defense. During the hearing, both sides may call expert witnesses

to support their views. After both sides have argued their case, the judge issues a proposed decision. This written proposal is submitted to the Board for adoption as its decision in the matter.

If the Board does not adopt the proposed decision, Board members obtain a transcript of the hearing, review the decision and decide the matter based upon the administrative record. If dissatisfied with the Board's decision, the respondent may petition for reconsideration or he or she may contest it by filing a writ of mandate in the appropriate superior court.

Deciding to Adopt or Nonadopt a Proposed Decision

Upon being presented with a proposed disciplinary decision from an Administrative Law Judge (ALJ), you, as a Board Member, are asked to either adopt or nonadopt the action. Accordingly, consider the following when making your decision:

A. Factors for adopting an ALJ's proposed decision:
    1. The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
    2. The law and standards of practice are interpreted correctly.
    3. In those cases in which witness credibility is crucial to the decision, the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
    4. The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
    5. If probation is granted, the terms and conditions of probation provide the necessary public protection.
    6. The costs of proceeding with nonadoption far exceed the severity of the offense and the probability is high that respondent will be successful.

B. Factors for nonadopting an ALJ's proposed decision:
    1. The proposed decision reflects the ALJ clearly abused his/her discretion.
    2. The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
    3. The witness's credibility is crucial to the decision and the findings of fact include a determination based substantially on a witness' credibility; but, the determination <u>does not</u> identify specific evidence of the observed demeanor, manner, or attitude, of the witness that supports the credibility determination.
    4. The ALJ made an error in interpreting the licensing law and/or regulations.
    5. The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially less than is appropriate to protect the public.

Reviewing the Record and Preparing to Discuss and Render a Decision after Nonadoption

Should a Member choose to nonadopt a proposed decision by the administrative law judge (ALJ), he or she must review the factual and legal findings to render a determination. The following suggestions are intended to assist in reviewing the case record:

A. Reviewing the Administrative Record

1. The Accusation:
   - Make note of the code sections charged and brief description of the sections (e.g. B&P 3110(b) – gross negligence; B&P 3110 (d) – incompetence).
   - Read the facts that are alleged as they stand to prove or disprove the code violations. The burden to prove the violations by "clear and convincing evidence to a reasonable certainty" rests on the Board.
2. The Proposed Decision:
   - Factual Findings. Review the factual findings and determine if they and/or testimony prove violations. Note that expert testimony may be necessary to prove the violations.
   - Legal conclusions (determination of issues). Determine if any proven facts constitute a violation of the code section.
   - Order. Review the order and determine if the penalty is appropriate per the violations found and if it is consistent with the Disciplinary Guidelines. If not, determine if there is a basis for which the record deviated from the guidelines.
3. The Transcript
   - Sufficiency of the Evidence. You must determine if the evidence introduced is clear and convincing to a reasonable certainty to prove *each* factual allegation.
   - Lay Witnesses. You must determine if the testimony provided by witnesses prove factual allegations. In doing so, bear in mind the ALJ's credibility findings.
   - Expert Witnesses. Which expert's testimony was given the most weight by the ALJ? If you do not agree with the ALJ's findings, you must determine which evidence in the record supports your own conclusion.

B. Preparing for an Oral Argument Hearing

1. Review written arguments and determine if the burden of proof has been met.
   - The Deputy Attorney General's (DAG) argument will contend the facts are clearly proven and constitute a violation of the law.
   - The Respondent's argument will likely focus on the weaknesses of the Board's case and strength of the Respondent's case. It will force you to answer if (a) facts are proven, (b) the law was violated, and (c) the penalty is appropriate.
2. Review the proposed decision

- Note in the proposed decision where you agree and disagree with the ALJ in regards to factual findings, the legal conclusion, and proposed penalty. Also note the specific evidential findings which support your own conclusions.

3. Summary and Conclusion

- Remember, that if you maintain your focus on the code sections alleged to have been violated and the facts that were alleged to have occurred, your decision should be made more easily and this will help your decision withstand judicial scrutiny.

Making a Motion

A Board Member should make a motion to introduce a new piece of business or to propose a decision or action.

Upon making a motion, it is important to remember to speak slowly and clearly; bear in mind that the motion is being recorded. Members who opt to second the motion must remember to repeat the motion in question. Additionally, it is important to remember that once a motion has been made, it is inappropriate to make a second motion until the initial one has been resolved.

The basic process of a motion is as follows:

1. An agenda item has been thoroughly discussed and reviewed. If it a new piece of business, see step 2.
2. The Board President opens a forum for a member to make a motion to adopt or reject the discussed item.
3. A Member makes a motion before the Board.
4. Another Member seconds this motion.
5. The Board President puts forth the motion to a vote.
6. If it is a voice vote, those in favor of the motion say “aye” and those opposed say “no”.
7. If it is a rising vote, those in favor of the motion will rise from their seats.
8. Upon completion of the voting, the President will announce the result of the vote (e.g. “the ayes have it and the motion is adopted” or “the no’s have it and the motion fails”).

The adjournment of each meeting is done via motion, seconded motion, and majority vote.

Licenses and Certification

TYPE	DESCRIPTION	Authority
Optometric License (OPT)	License to practice optometry in California at designated "principal place of practice." May be owner or an employee/independent contractor at the location.	B&P 3040
Statement of Licensure (SOL)	Required for every location where a licensee is employed or works as an independent contractor in addition to principal place of practice as designated by OPT license.	CCR 1506(d).
Branch Office License (BOL)	Required for each optometric practice owned by a licensed optometrist that is in addition to principal place of practice as designated by OPT license.	B&P 3077
Fictitious Name Permit (FNP)	Required if a fictitious name is used in conjunction with the practice of optometry.	B&P 3078 and CCR 1518
Therapeutic Pharmaceutical Agents (TPA) Certification	Required for optometrists who wish to treat patients with pharmaceutical agents as authorized by this category. To become TPA certified, an optometrist must meet one of seven category requirements.	B&P 3041.3 and CCR 1568
Glaucoma Certification	Effective January 8, 2011. In order to be certified to diagnose and treat Glaucoma, an optometrist must already be TPA certified.	B&P 3041(f)(5) and CCR 1571
Lacrimal Irrigation and Dilation Certification	Effective January 1, 2011. To be certified to perform these tasks, an optometrist must already be TPA certified.	B&P 3041(e)(6) and B&P 3041.3

Memo

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

To: Board Members **Date:** September 16, 2011

From: Enforcement Staff **Telephone:** (916) 575-7170

Subject: **Agenda Item 8 – Enforcement Program Report**

A. Data Clean-up Program Report
Jessica Sieferman, Probation Monitor/Enforcement Analyst

The Enforcement Staff is preparing to clean up all of its data in the current CAS system in order to make the conversion to BreEZe as simple as possible. This project includes correcting action codes, Disciplinary Orders, Cost Recovery amounts, etc. Once the revised retention schedule is adopted, staff will use this to identify only the necessary data needed to convert to BreEZe.

B. NCIT and Enforcement Academy
Jessica Sieferman, Probation Monitor/Enforcement Analyst

Jessica Sieferman and Lydia Bracco attended the three-day Advanced Investigative Training by the Council for Licensing, Enforcement, and Regulation (CLEAR) August 2-4, 2011. This interactive training covered topics such as advanced interviewing techniques, investigative analysis, and report development. Cheree Kimball has already completed the Advanced CLEAR training. Dillon Christensen will attend DCA's Enforcement Academy September 19-23, 2011 and Regulatory Investigative Techniques by American River College October 17-21, 2011.

C. NPDB Audit
Dillon Christensen, Enforcement Technician

Recently, the Board's Enforcement Unit has been part of an audit by the National Practitioner's Databank (NPDB) for compliance in reporting standards. Enforcement was asked to provide a listing of all reportable actions from 2006-2009 to cross reference with those reports currently in the databank. During the three year audit period, two out of the 26 Respondent's were not reported to NPDB. This was corrected effective August 23, 2011.

D. Expert Witnesses
Lydia Bracco, Fingerprint Coordinator/Enforcement Analyst

Effective November 10, 2010, the Department of Consumer Affairs (DCA) notified all boards and bureaus that, when using consulting services, they must enter into formal consulting services contracts following all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code (**Attachment 1**).

Staff has commitments from five optometrists and has written four contracts. We are awaiting submittal of documents from one optometrist. The contracts have been sent to DCA's contracts unit and are being reviewed by an analyst. The process takes approximately 30 – 60 days for approval.

E. Enforcement Survey

Jessica Sieferman, Probation Monitor/Enforcement Analyst

As part of the Consumer Protection Enforcement Initiative, DCA created an enforcement specific survey to be sent to all complainants once the enforcement unit closes a case. These surveys are postcard sized and require no additional postage to be mailed back to DCA (**Attachment 2**). DCA enters completed survey results onto Optometry's survey monkey account. The Enforcement Unit has placed the identical survey link on their email signature blocks. This survey has replaced the previously used generic enforcement survey (**Attachment 3)**. The Enforcement Unit has been given a user ID and password to monitor its own survey results. The survey results are in (**Attachment 4)**, and will be presented at all future board meetings.

F. Fingerprint Program

Lydia Bracco, Fingerprint Coordinator/Enforcement Analyst

Staff is changing the language on the Board of Optometry's website under Fingerprint Requirement for License Renewal so all language used referring to the renewal process is identical. It was found that the wording used on our Renewal Notice, sent automatically to licensees, was not the same as what is written on the website.

The new language reads:
Regulations require the submission of fingerprints upon license renewal. Due to a change in the regulations, fingerprints are now checked by the Department of Justice (DOJ) **and** the Federal Bureau of Investigation (FBI). Prior to 2007, background checks were only processed through DOJ. If your license was issued prior to April 1, 2007 and you were fingerprinted by the Board, you are still required to submit fingerprints. Live Scan is required for California residents and a Manual Fingerprint Card is required for non-California residents.

The Board began inserting neon green fingerprint requirement notices into renewal notice envelopes in May 2011. The notices remind optometrists renewing their licenses that they may need to provide proof of fingerprint compliance.

On June 15th, 2011the Office of Information Services (OIS) started testing the transfer of records from CAS (Consumer Affairs System) into ATS (Applicant Tracking System). Shortly after, most of the records were transferred. This process was done because staff had no way to track licensee's compliance with the fingerprint requirements. Currently, when a licensee has their fingerprint scan completed, the record is sent to DOJ and FBI and after clearance, it is sent to OIS and is downloaded to each licensee's record.

Since the fingerprint regulations were adopted in June 2010, the Board has received more than 40 Subsequent Arrest Reports (SAR). The majority of those were for DUI/drug arrests.

G. Probation Program

Jessica Sieferman, Probation Monitor/Enforcement Analyst

In addition to the compliance interviews scheduled bi-annually with each probationer, Jessica Sieferman has created a pre-orientation packet for every new probationer. Prior to the effective date of their order, each probationer now receives their pre-orientation packet outlining all due dates, probation expectations, instructions for drug testing (if applicable), etc.

During the orientation meeting, held on or near the effective date, each probation condition is read verbatim and then discussed thoroughly to ensure understanding. After all questions have been

answered, the probationer then initials each condition. Often times, action items are assigned to both the probationer and Ms. Sieferman to ensure everything that cannot be completed at the orientation will be completed soon.

After the orientation, all notes taken by Ms. Sieferman are sent to the probationer to promote transparency, accountability, and understanding of what took place during the interview. The probationer then signs the Probation Orientation Acknowledgement stating that each condition was reviewed and he/she fully understands each condition.

Phamatech, the Board's drug testing vendor, continues to work cooperatively with the probationers and Ms. Sieferman. In addition, Phamatech continues to secure testing sites throughout the country, making travel possible for all probationers.

The California Laws and Regulations Examination (CLRE) has been administered to five probationers since the Board voted to add passing the CLRE as a standard probation condition. 40% has passed the exam.

Probation Program Statistics:
Below are the statistics for the Probation Program as of September 12, 2011:

Probation Data	As of 3/14/11*	Completed	New	Total	% of Total
Male	27	2	0	25	89
Female	5	2	0	3	11
Pending AG	1	0	1	2	7
Active	16	0	0	13	46
Tolled	6	0	0	6	21
Surrendered	8	0	1	9	32
Total:	**32**	**4**		**28**	**100%**

*last reported data to the Board

H. Statistics/Performance Measures

Cheree Kimball, Enforcement Analyst

Please see the Enforcement Statistical Overview, prepared by Cheree Kimball, in **Attachment #5**. The Performance Measures, prepared by DCA, are in **Attachment #6**.

I. Unlicensed Activity

Brianna Miller, Enforcement Analyst

In response to public requests, the California State Board of Optometry (Board) is developing a pamphlet to educate consumers about the health risks involved with purchasing cosmetic contact lenses without a prescription from an unlicensed dispenser. The Board seeks to publish the pamphlet and distribute it to interested parties.

The distribution of this educational pamphlet will promote consumer eye health and increase awareness of the Board's enforcement efforts toward the unlawful sale of cosmetic contact lenses.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
OFFICE OF ADMINISTRATIVE AND INFORMATION SERVICES-
BUSINESS SERVICES OFFICE
1625 North Market Blvd, Suite S-103
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MEMORANDUM

DATE	November 10, 2010
TO	ALL BOARDS, BUREAUS, PROGRAMS, DIVISIONS, OFFICES
FROM	Judy Masuda, Business Services Officer
SUBJECT	**CONTRACTS FOR SUBJECT MATTER EXPERT CONSULTANTS**

Purpose

This memorandum announces changes to existing processes related to acquiring the services of a Subject Matter Expert Consultant (Expert Consultant).

Definition

An Expert Consultant is defined as an individual, business firm, or corporation whose services are retained for any one of the following services:

- Provide an expert opinion in an enforcement matter from the initial review through testifying at a hearing;
- Evaluate applications for applicant licensure;
- Evaluate curriculum content and other requirements for school or program approval;
- Develop (but not proctor) professional licensing exams.

New requirement

All Expert Consultants shall enter into a formal consulting services contract that will follow all guidelines, procedures, and rules governed by the:

- State Contracting Manual (SCM) and
- the California Public Contract Code.

This change may impact the time required for boards, bureaus, and programs to secure Expert Consultant services through the required contracting process.

Transition	The DCA recognizes this potential impact. To facilitate this transition, the Business Services Office will schedule a meeting with your office to better understand your Expert Consultant processes and business requirements. The Business Services Office will use the information gathered at the meeting to prioritize and develop a rollout plan for each board. The rollout plan will allow the boards, bureaus, and programs to plan, adjust resources to adhere to these changes, and minimize the impact to your licensing and enforcement efforts.
Questions	If you have any questions, please contact: Mike Melliza, Contract Operations Manager Department of Consumer Affairs Business Services Office- Non-IT Contracts Unit Email: michael.melliza@dca.ca.gov Phone: (916) 574-7292
Attachment 1, Expert Consultant Authority	Public Contract Code Sections 10335.5, 10340, 10371, 10410, 10411; Government Code Section 19130, 19131; State Contracting Manual Chapter 7.10

Attachment 1
Expert Consultant Authority

AUTHORITY PERTAINING TO CONTRACTING FOR CONSULTING SERVICES CONTRACTS

The following sections of California law require state agencies to meet certain conditions before entering into a consulting services contract, also referred to as a personal services contract. These sections of law also contain exemptions to these requirements that may or may not apply to all consulting services contracts executed by DCA. Also, some boards have exemptions from these requirements in their practice acts.

Public Contract Code section 10335.5

(a) "Consulting services contract," as used in this article, means services that do all of the of the following:

(1) Are of an advisory nature.

(2) Provide a recommended course of action or personal expertise.

(3) Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and program management or innovation.

(4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

(5) The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) "Consulting services contract" does not include any of the following:

(1) Contracts between a state agency and the federal government.

(2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consultant services contracts are exempt from the advertising and bidding requirements of this article:

(1) Contract that are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.

(2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.

(3) Contracts solely for the purpose of obtaining expert witnesses for litigation.

(4) Contract for legal defense, legal advice, or legal services.

(5) Contracts in an amount of less than five thousand dollars ($5,000).

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code. (Emphasis added.)

Public Contract Code section 10340

(a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.
(b) Three competitive bids or proposals are not required in any of the following cases:

***

(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations. (Emphasis added.)

***

Public Contract Code 10371

The following provisions shall apply to all consulting services contracts:
(a) Each state agency shall, regardless of the fiscal amount involved, use available private resource only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.
(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars ($12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars ($12,500) approved by the department.
(c) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars ($5,000) or more, prepare a detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.
(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For purposes of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

***

Government Code section 19130

The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

***

(b) Personal services contracting also shall be permissible when **any of the following conditions can be met:**

***

(3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

***

(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

***

(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(Emphasis added)

Government Code section 19131

Any state agency proposing to execute a contract pursuant to subdivision (a) of Section 19130 shall notify the State Personnel Board of its intention. All organizations that represent state employees who perform the type of work to be contracted, and any person or organization which has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Departments or agencies submitting proposed contracts shall retain and provide all data and other information relevant to the contracts and necessary for a specific application of the standards set forth in subdivision (a) of Section 19130. Any employee organization may request, within 10 days notification, the State Personnel Board to review any contract proposed or executed pursuant to subdivision (a) of Section 19130. The review shall be conducted in accordance with subdivision (b) of Section 10337 of the Public Contract Code. Upon such a request, the State Personnel Board shall review the contract for compliance with the standards specified in subdivision (a) of Section 19130. (Emphasis added.)

AUTHORITY PERTAINING TO PROHIBITIONS AGAINST CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES INCLUDING THOSE EXEMPT FROM CIVIL SERVICE

Public Contract Code section 10410

The Public Contract Code (PCC) mandates that “no officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.”

Public Contract Code section 10411

The PCC also requires an employee to wait a period of twelve months before he or she contracts with his or her prior employer. Specifically, PCC 10411 forbids a former state employee, for a “period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation.”

A. *Current State Employees* (PCC § 10410)

1. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency unless the employment, activity, or enterprise is required as a condition of regular state employment.

2. No officer or employee shall contract on that person's own behalf as an independent contractor with any state agency to provide goods or services.

B. *Former State Employees* (PCC § 10411)

1. For the two-year period from the date of leaving state employment, no former state officer or employee may enter into a contract in which that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2. For the twelve-month period from the date of leaving state employment, no former state officer or employee may enter into a contract with any state agency if that person was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to that person leaving state service. This does not apply to contracts with former employees as an expert witness, or continuation of attorney services the former employee was involved with prior to leaving state service.

Agenda Item 8(E), Attachment 2

Consumer Satisfaction Survey

1. Complaint Number:.....
   Board/Bureau:.....

2. How did you contact our Board / Bureau:
   Phone | In Person | Mail | E-mail | Website (Circle response)

3. How satisfied were you with the time it took for us to resolve your complaint?

   ☐ Very Satisfied ☐ Somewhat Satisfied ☐ Neutral ☐ Somewhat Dissatisfied ☐ Very Dissatisfied

4. How satisfied were you with the explanation you were provided regarding the outcome of your complaint?

   ☐ Very Satisfied ☐ Somewhat Satisfied ☐ Neutral ☐ Somewhat Dissatisfied ☐ Very Dissatisfied

5. Overall, how satisfied were you with the way in which we handled your complaint?

   ☐ Very Satisfied ☐ Somewhat Satisfied ☐ Neutral ☐ Somewhat Dissatisfied ☐ Very Dissatisfied

6. Would you contact us again for a similar situation?

   ☐ Definitely ☐ Probably ☐ Maybe ☐ Probably Not ☐ Absolutely Not

7. Would you recommend us to a friend or family member experiencing a similar situation?

   ☐ Definitely ☐ Probably ☐ Maybe ☐ Probably Not ☐ Absolutely Not

Thank you

for taking the time to fill out this satisfaction survey. If you'd prefer to complete our more comprehensive online survey, instead of this postcard, it can be found here at: www.surveymonkey.com/consumeraffairs

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

Your Opinion Counts!

Consumer Satisfaction Survey >>

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 379 SACRAMENTO, CA
POSTAGE WILL BE PAID BY ADDRESSEE

State of California
Department of Consumer Affairs
C/O Strategic Planning Development
1625 N. Market Blvd. Ste. N-112
Sacramento, CA 95834-9911

STATE BOARD OF OPTOMETRY
2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Customer Satisfaction Survey – Enforcement

The California State Board of Optometry (Board) continually strives to provide the best possible customer service. Please help us by taking a few minutes to complete our brief customer satisfaction survey. Your participation is greatly appreciated.

Please note: All response are anonymous and no attempt will be made to identify participants.

Please respond to the following questions regarding your initial contact with the Board.

1) Are you a(n):

☐ Applicant
☐ Licensee
☐ Consumer

2) Based on your initial contact with the Board, please rate the following:

	Excellent	Good	Fair	Poor	Unacceptable	N/A
Staff Courteous/Helpful	☐	☐	☐	☐	☐	☐
Staff Knowledgeable	☐	☐	☐	☐	☐	☐
Staff Accessibility	☐	☐	☐	☐	☐	☐
Staff Responsiveness	☐	☐	☐	☐	☐	☐
Overall Satisfaction	☐	☐	☐	☐	☐	☐

3) During your initial contact with the Board, were you transferred to the appropriate individual in the Enforcement Unit?

☐ Yes
☐ No

Other (please specify)

Please respond to the following questions regarding your interaction with the Board's Enforcement Unit.

1) On average, how many times do you contact the Board's Enforcement Unit per month?

☐ 0-1 times
☐ 2-3 times
☐ 4-5 times
☐ 6 or more times

2) What was your purpose for contacting the Enforcement Unit? Choose all that apply.

☐ Disciplinary History

☐ Laws and Regulations
☐ Request to File a Complaint
☐ Pending Complaint
☐ Probation
☐ Other

If other, please explain; or, use this space to provide additional comments:

3) Based on your contact with the Board's Enforcement Unit, please rate the following:

	Excellent	Good	Fair	Poor	Unacceptable	N/A
Staff Courteous/Helpful	☐	☐	☐	☐	☐	☐
Staff Knowledgeable	☐	☐	☐	☐	☐	☐
Staff Accessibility	☐	☐	☐	☐	☐	☐
Staff Responsiveness	☐	☐	☐	☐	☐	☐
Overall Satisfaction	☐	☐	☐	☐	☐	☐

4) Prior to contacting the Board's Enforcement Unit, did you visit the Board's Web site at www.optometry.ca.gov?

☐ Yes
☐ No

Helpful Pages/Suggestions/General Web site Comments:

5) Did you receive the service you needed as a result of your contact with the Board's Enforcement Unit?

☐ Yes
☐ No

If no, please explain.

Please mail to:

California State Board of Optometry
Attn: Customer Satisfaction Survey
2420 Del Paso Road, Suite 255
Sacramento, CA 95834

OR

Please fax to:

916-575-7292

Thank you for taking the time to give us your feedback! We appreciate your participation.

If you are interested in being added to the Board's interested parties email list to stay up to date on the Board's actions, please provide your email below:

_____

Agenda Item 8(E), Attachment 4

Consumer Satisfaction Survey Edit

Design Survey Collect Responses Analyze Results

View Summary
Browse Responses
Filter Responses
Crosstab Responses
Download Responses
Share Responses

Default Report + Add Report

Response Summary

Active Filter: My New Filter

Total: 1,337

Filtered: 1

Edit

Unapply

Show this Page Only

PAGE: DCA COMPLAINT PROCESS SURVEY

1. Complaint number?

Download

	Response Count
Show Responses	1
answered question	1
skipped question	0

2. Which DCA Board or Bureau did you file your complaint with?

Create Chart Download

	Response Percent	Response Count
Accountancy, Board of	0.0%	0
Acupuncture Board	0.0%	0
Arbitration Certification Program	0.0%	0
Architects Board, California	0.0%	0
Automotive Repair, Bureau of	0.0%	0
Barbering and Cosmetology, Board of	0.0%	0
Behavioral Sciences, Board of	0.0%	0
California Athletic Commission	0.0%	0
Cemetery and Funeral Bureau	0.0%	0
Complaint Resolution Program	0.0%	0
answered question		1
skipped question		0

2. Which DCA Board or Bureau did you file your complaint with?	Create Chart	Download
Contractors State License Board	0.0%	0
Court Reporters Board	0.0%	0
Dental Hygiene Committee of California	0.0%	0
Dental Board of California	0.0%	0
Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, Bureau of	0.0%	0
Engineers & Land Surveyors, Board of Professional	0.0%	0
Geologists and Geophysicists Engineers and Land Surveyors, Board for Professional	0.0%	0
Guide Dogs for the Blind, Board of	0.0%	0
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board.	0.0%	0
Landscape Architects Technical Committee	0.0%	0
Medical Board of California	0.0%	0
Midwifery Program	0.0%	0
Naturopathic Medicine Committee	0.0%	0
Occupational Therapy, California Board of	0.0%	0
Optometry, Board of	100.0%	1
Osteopathic Medical Board of California	0.0%	0
Pharmacy, Board of	0.0%	0
Physical Therapy Board of California	0.0%	0
Physician Assistant Committee	0.0%	0
Podiatric Medicine, Board of	0.0%	0
Private Postsecondary Education, Bureau for	0.0%	0
Professional Fiduciaries Bureau	0.0%	0
Psychology, Board of	0.0%	0
Registered Nursing, Board of	0.0%	0
Registered Dispensing Optician Program	0.0%	0
Respiratory Care Board	0.0%	0
Security and Investigative Services, Bureau of	0.0%	0
Structural Pest Control Board	0.0%	0
Telephone Medical Advice Services Bureau	0.0%	0
	answered question	1
	skipped question	0

2. Which DCA Board or Bureau did you file your complaint with?	Create Chart	Download
Veterinary Medical Board and Registered Veterinary Technician Examining Committee	0.0%	0
Vocational Nursing and Psychiatric Technicians, Board of	0.0%	0
	answered question	1
	skipped question	0

Show this Page Only

PAGE: BAR PROGRAM QUESTIONS

1. Was our representative courteous?

	Response Percent	Response Count
No, Strongly Disagree	0.0%	0
Somewhat Disagree	0.0%	0
Neutral	0.0%	0
Somewhat Agree	0.0%	0
Yes, Strongly Agree	0.0%	0
	answered question	0
	skipped question	1

2. Do you feel that the representative who handled your complaint understood your problem?

	Response Percent	Response Count
No, Strongly Disagree	0.0%	0
Somewhat Disagree	0.0%	0
Neutral	0.0%	0
Somewhat Agree	0.0%	0
Yes, Strongly Agree	0.0%	0
	answered question	0
	skipped question	1

3. Were you made aware that your complaint was closed?

	answered question	0
	skipped question	1

3. Were you made aware that your complaint was closed?

	Response Percent	Response Count
No, Strongly Disagree	0.0%	0
Somewhat Disagree	0.0%	0
Neutral	0.0%	0
Somewhat Agree	0.0%	0
Yes, Strongly Agree	0.0%	0
	answered question	0
	skipped question	1

4. Did our representative deal with your problem in a fair and reasonable manner?

	Response Percent	Response Count
No, Strongly Disagree	0.0%	0
Somewhat Disagree	0.0%	0
Neutral	0.0%	0
Somewhat Agree	0.0%	0
Yes, Strongly Agree	0.0%	0
	answered question	0
	skipped question	1

Show this Page Only

PAGE: 4

1. If you were less than satisfied with the final outcome of your case, what was your primary reason for filing a complaint with us? (Please check the one that most represents your situation.)

	Response Percent	Response Count
1. Seeking reimbursement from the architect	0.0%	0
2. Fee dispute	0.0%	0
3. Business ethics	0.0%	0
4. Labor relations/wages	0.0%	0
5. Criminal activities	0.0%	0
	answered question	0
	skipped question	1

1. If you were less than satisfied with the final outcome of your case, what was your primary reason for filing a complaint with us? (Please check the one that most represents your situation.)

6. Copyright infringement	0.0%	0
7. Other	0.0%	0
	(please specify)	0
	answered question	0
	skipped question	1

Show this Page Only

PAGE: CONTACT TYPE

1. How did you contact our Board/Bureau?

Create Chart Download

	Response Percent	Response Count
Web site	0.0%	0
Regular mail	100.0%	1
E-mail	0.0%	0
Phone	0.0%	0
In-person	0.0%	0
	answered question	1
	skipped question	0

Show this Page Only

PAGE: CONTACT THROUGH WEB SITE

1. How satisfied were you with the format and navigation of our Web site?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

2. How satisfied were you with information pertaining to your complaint available on our Web site?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

Show this Page Only

PAGE: REGULAR MAIL OR E-MAIL CONTACT

1. How satisfied were you with the time it took to respond to your initial correspondence?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

2. How satisfied were you with our response to your initial correspondence?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

Show this Page Only

PAGE: TELEPHONE OR IN-PERSON CONTACT

1. How satisfied were you with the time it took to speak to a representative of our Board/Bureau?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

2. How satisfied were you with our representative's ability to address your complaint?

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	0.0%	0
	answered question	0
	skipped question	1

Show this Page Only

PAGE: COMPLAINT PROCESS EVALUATION

1. How satisfied were you with the time it took for us to resolve your complaint? Create Chart Download

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
	answered question	1
	skipped question	0

1. How satisfied were you with the time it took for us to resolve your complaint? Create Chart Download

Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	100.0%	1
Very dissatisfied	0.0%	0
	answered question	1
	skipped question	0

2. How satisfied were you with the explanation you were provided regarding the outcome of your complaint? Create Chart Download

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	100.0%	1
	answered question	1
	skipped question	0

3. Overall, how satisfied were you with the way in which we handled your complaint? Create Chart Download

	Response Percent	Response Count
Very satisfied	0.0%	0
Somewhat satisfied	0.0%	0
Neither satisfied nor dissatisfied	0.0%	0
Somewhat dissatisfied	0.0%	0
Very dissatisfied	100.0%	1
	answered question	1
	skipped question	0

4. Would you contact us again for a similar situation? Create Chart Download

	Response Percent	Response Count
	answered question	1
	skipped question	0

4. Would you contact us again for a similar situation?	Create Chart	Download
Definitely	0.0%	0
Probably	0.0%	0
Maybe	0.0%	0
Probably not	100.0%	1
Absolutely not	0.0%	0
	answered question	1
	skipped question	0

5. Would you recommend us to a friend or family member experiencing a similar situation?	Create Chart	Download
	Response Percent	Response Count
Definitely	0.0%	0
Probably	0.0%	0
Maybe	0.0%	0
Probably not	100.0%	1
Absolutely not	0.0%	0
	answered question	1
	skipped question	0

6. Thank you for taking the time to complete this survey. Your opinion matters to us and will help us improve our enforcement processes. Please add any comments you wish to provide:		Download
		Response Count
	Show Responses	1
	answered question	1
	skipped question	0

Enforcement Statistical Overview

Fiscal Year	2008/2009	2009/2010	2010/2011	2011/2012*
Complaints				
Complaints Received	**227**	**194**	**259**	**71**
Complaints Pending	**130**	**62**	**96****	**126**
Complaints Closed	**182**	**262**	**226**	**41**
Subsequent Arrest Reports Received	**31**	**21**	**21**	**6**
Cases Referred to Division of Investigation (DOI)	**0**	**3**	**38**	**12**
Cases Pending at DOI	**3**	**2**	**20**	**31**
Cases Referred to Expert	**4**	**14**	**6**	**0**
Cases referred to the Office of the Attorney General (AG)	**3**	**10**	**8**	**1**
Cases Pending at the AGs Office		**13**	**13**	**11**
** Case reopened				
Citations Issued	**5**	**5**	**2**	**0**
Accusations Filed	**4**	**9**	**8**	**0**
Statement of Issues Filed	**0**	**1**	**0**	**0**
Interim Suspension Orders (PC 23)	**0**	**1**	**0**	**0**
Notice of Warnings Issued	**18**	**0**	**0**	**0**
Disciplinary Decision Outcomes				
Revoked	**0**	**0**	**4**	**0**
Revoked, Stayed, Suspension & Probation	**0**	**1**	**0**	**0**
Probation Revoked	**0**	**0**	**0**	**0**
Revoked, Stayed & Probation	**4**	**4**	**4**	**1**
Surrender of License	**0**	**1**	**1**	**0**
License Issued on Probation	**0**	**0**	**0**	**0**
Public Reprimand	**0**	**0**	**0**	**0**
Other Decision		**0**	**0**	**0**
Decisions by Violation Type				
Fraud	**2**	**0**	**0**	**0**
Gross Negligence/Incompetence	**1**	**1**	**1**	**0**
Sexual Misconduct	**0**	**0**	**0**	**0**
Personal Conduct (Alcohol/Substance Abuse)	**1**	**2**	**4**	**1**
Unprofessional Conduct	**0**	**1**	**0**	**0**
Probation Violation	**0**	**2**	**4**	**0**
Other			**0**	**0**

*Through August 31, 2011

Agenda Item 8(H), Attachment 6

Department of Consumer Affairs

California State Board of Optometry

Performance Measures

Annual Report *(2010 – 2011 Fiscal Year)*

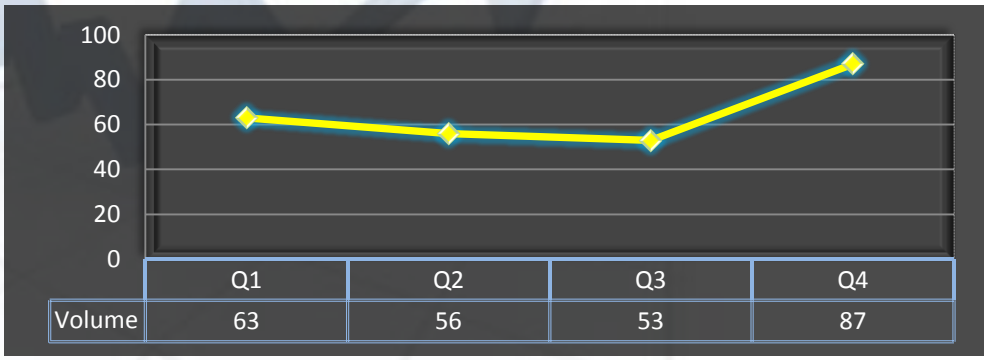
To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures are posted publicly on a quarterly basis.

This annual report represents the culmination of the first four quarters worth of data.

Volume

Number of complaints and convictions received.

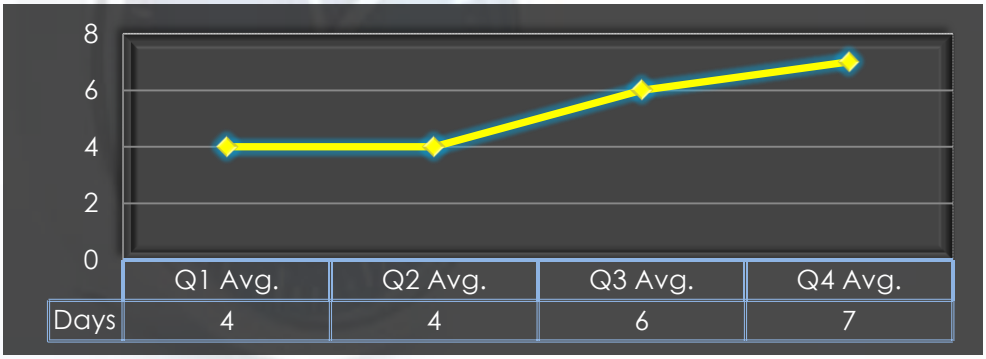
The Board had an annual total of 259 this fiscal year.



Intake

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

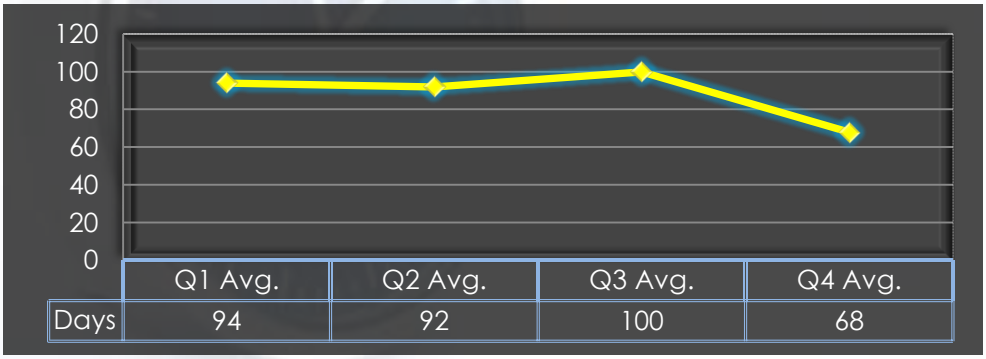
The Board has set a target of 7 days for this measure.



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.

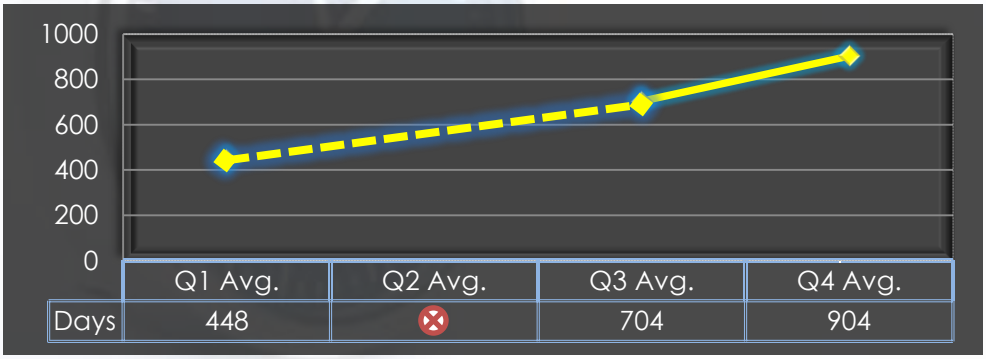
The Board has set a target of 90 days for this measure.



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)

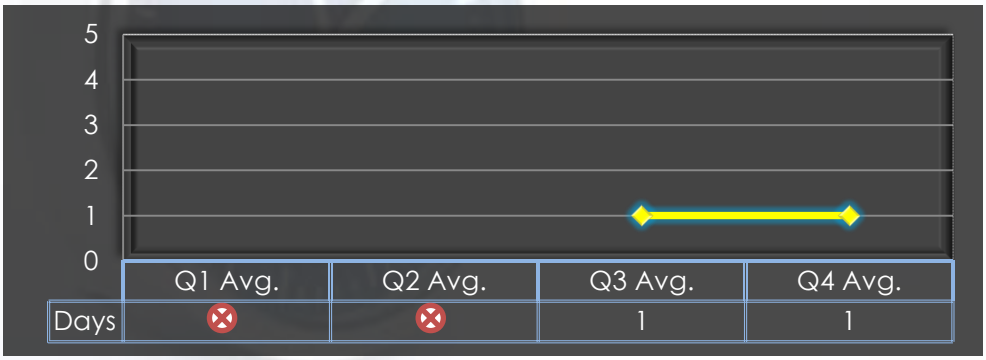
The Board has set a target of 365 days for this measure.



Probation Intake

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

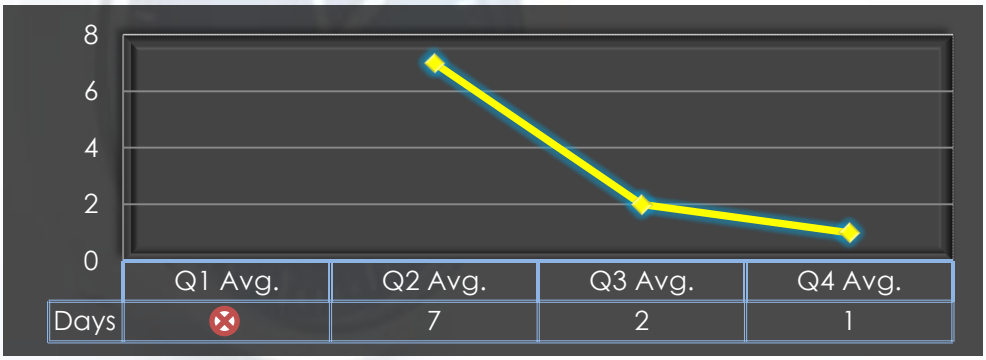
The Board has set a target of 6 days for this measure.



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.

The Board has set a target of 8 days for this measure.



CALIFORNIA STATE BOARD OF OPTOMETRY

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

Memo

To: Board Members **Date:** September 16, 2011

From: Andrea Leiva, Policy Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 9– Rulemaking Calendar**

A. Discussion and Action to Approve Draft Language for CCR §1575. Uniform Standards Related to Substance Abuse (SB 1441) and Disciplinary Guidelines

Action Requested:
Staff requests that the Board review, make any edits necessary and make a motion to approve CCR §1575 and the proposed revisions to the Uniform Standards and Disciplinary Guidelines (See Attachment 1) in order to begin the rulemaking process.

Background:
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.

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.

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. In addition, specific conditions were added to better protect the health, safety, and welfare of the public.

Issue/Discussion:
Updates made to the Disciplinary Guidelines and Uniform Standards Document since the April 11, 2011 Board Meeting:

- Added to Uniform Standard 12 - Petition for Reinstatement the requirement of payment in full of cost recovery if ordered as part of a disciplinary order;
- Added Model Probation Orders;
- Re-named Standard Term and Condition 9 - Take and Pass Licensure Examination to Take and Pass California Laws and Regulations Examination;

- Added Standard Term and Condition 16 – Sale or Closure of an Office and/or Practice;
- Added requirements for Criminal Court Orders and Other Board or Regulatory Orders under Standard Term and Condition 1 – Obey All Laws;
- Added to Standard Term and Condition 4 – Probation Monitoring Costs a probation monitoring fee of $100;
- Added Optional Condition 18 – Participate in Group Support Meeting;
- Added a definition for "float capacity" for Optional Condition 25 – Employment Limitations; and
- Re-named and added an audit requirement to Optional Condition 31 – Monitor Billing System & Audit.

B. Consideration of Comments Submitted during the 45-day Comment Period Pertaining to the Proposed Rulemaking, CCR §1513. Registered Name Only, §1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern and §1525.1. Fingerprint Requirements

Action Requested:
Staff requests that the Board review and fully consider the comments received pertaining to CCR, Title 16, §1513, §1514 and §1525.1. The comments were received during the 45-day comment period, which began on May 27, 2011 and ended on July 11, 2011. A proper response will show adequate consideration of the comments and will thoroughly describe why the comments are being accepted or rejected pursuant to Government Code Section 11346.9, subdivision (a)(5).

Staff requests that the Board review, make any edits necessary and approve the proposed revisions to the language in order to distribute the Modified Text and allow for a 15-day comment period in order to allow the public to address the Modified Text.

Staff would also like to request that the Board make a motion to delegate to the Executive Officer the authority to adopt the Modified Text at the expiration of the 15-day comment period, provided the Board does not receive any adverse comments directed to the Modified Text.

Issues/Discussion:
Craig Steinberg, OD, JD submitted comments (See Attachment 2 for the full comments) pertaining only to CCR §1513 and §1514. A summary of the problem and proposed responses to the comments are provided below:

CCR §1513
The way that the regulation is currently written is too broad. It makes it difficult for consumers and Board staff to identify optometrists, specifically when a complaint is filed. Although the current regulation states that all signs, cards, stationary or other advertising must clearly and prominently identify the individual optometrist or optometrists, the question still remains – What does clearly and prominently really mean? Upon review of various optometrist websites, signage and advertising, it was found that it has become a common practice for optometrists to alter their names, without notifying the Board, by either shortening them (e.g., Stephen to Steve), using a nickname, or using a completely different name because their name is too long, or ethnic (e.g., Nguyen Anh-Hong Hoang).

If an optometrist's registered name is John H. Doe but he is going by Johnny Doe, then it is possible that this is a violation of CCR §1513. The rationale behind this is as follows:

A consumer wants to file a complaint against Johnny Doe. Consumers can search for licensees on the Board's "License Look Up" search tool online. If they were unable to find their optometrist's license number or address, they can look him or her up by name. If they look up Johnny Doe, then they will not find anyone by that name, because there is no such name on file with the Board. This presents a consumer protection issue.

From 1936 to 1982, CCR §1513 read that an optometrist could not use, in connection with his practice, any name other than the one under which he is licensed to practice. It also required that signs, cards, stationary or other advertising had to clearly identify the individual optometrist(s), and had to be free of any ambiguity or possibility of misinterpretation. In 1983, the regulation was amended to read as it does today.

Board staff understands that the 1983 change was to allow for the possibility of slight variations from a licensee's registered name in advertising. Unfortunately, this change is not working for consumer protection purposes and must be addressed.

Comment 1: What is to be achieved by creating another regulation that even the most prominent and well-meaning optometrists are likely to be in violation of?

Staff Recommended Response: The Board should reject this comment because this is not a new regulation. A form of this regulation has always existed in the optometry practice since 1936. Thus, it has always been the intent of the Board to restrict optometrists from practicing optometry under a false or assumed name.

Comment 2: This proposal would "mean doctors who never use their middle name or middle initial, for instance, or those who have long foreign middle names or hyphenated names, would have to change every single advertisement, business card, stationary, and, importantly, office signs to include a name they do not use and are not generally known by (e.g., WYDEVEN ANTHONY JOHN VANDE). This would cost many thousands of dollars to recreate sometimes very expensive signs and stationary for no real purpose.

Staff Recommended Response: The Board should accept this comment in part. There is a purpose for the proposed amendments to CCR §1513, and that is to protect consumers. But the Board does sympathize with licensees who have difficult names that may not be considered "attractive" when it comes to advertising one's practice.

As the proposed changes are currently written, Dr. Steinberg is correct in his interpretation that the way an optometrist's name is registered with the Board is the way that they would have to use it in all signs, cards, stationary or other advertising and office signs etc. Board staff has prepared Modified Text to possibly alleviate this problem in a way that will benefit licensees, consumers and Board staff (See attachment 3 for Modified Text).

Comment 3: Indeed, the rule could be construed to also preclude the addition of professional or academic designation. Would doctors be violating this regulation by including F.A.A.O after their name?

Staff Recommend Response: The Board should reject this comment because it is an incorrect assumption. Currently, there is nothing in law restricting optometrists from adding professional or academic designations to their names. Situations like this are dealt with on a case by case basis.

Comment 4: Every doctor is already required to display his or her license or Statement of Licensure in the office where patients can see it. That is sufficient to inform the public.

Staff Recommended Response: The Board should reject this comment because the posting of a license or Statement of Licensure (SOL) is not related to advertising, which is the subject of this regulation.

Comment 5: This proposal is intrusive and will create a bureaucratic nightmare for all involved (Board/enforcement; Licensees/compliance). Making it a criminal act or unprofessional conduct to put one's middle initial on their business card instead of their full middle name is ludicrous.

Staff Recommended Response: The Board should reject this comment because it is incorrect. This regulation is not intrusive and would no create a bureaucratic nightmare. As a state licensing agency, who's primary objective is to protect the public, it is only logical that it be possible to easily identify optometrists if a disciplinary action is warranted. Also, as a consumer right, people should be able to use an optometrist's name, license number or address to learn more about who's treating them. The current regulation does not allow this. Clarifying what's required will make this regulation easier to enforce on the Board's end, and the Modified Text (Attachment 3) being provided today may even add some flexibility and understanding for licensees.

CCR §1514

The existing regulation 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 to the public that the optometrist is separate and distinct from the other occupants. Upon the Board's investigation of 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.

Comment 1: The proposed amendments to subsection (c) changes the wording of the regulation, and in so doing appears to make signs and advertising compulsory. Under the new language, it appears to be a violation of the rule to <u>not</u> advertise.

Staff Recommendation: The Board should accept this comment. The Board's intent with the proposed changes is not meant to make signs and advertising compulsory. Modified Text (Attachment 4) is being provided to address this issue as it was intended.

C. Discussion and Action to Approve Draft Language for CCR §1531. Licensure Examination Pertaining to TMOD Portion of the National Board of Examiners in Optometry Licensing Examination

<u>Action Requested:</u>

Staff would like to request that the Board review, make any edits necessary and approve the proposed language for CCR §1531 in order to begin a rulemaking.

<u>Issue/Discussion:</u>

Dr. Tony Carnevali, O.D., F.A.A.O. from the Southern California College of Optometry has requested that the Board clarify what is required to become Therapeutic Pharmaceutical Agents (TPA) certified. Specifically, the requirement in question is whether new graduates have to take and pass the TMOD component administered by the NBEO in order to be TPA certified by the Board.

In the past couple of years, three students have been unable to obtain TPA certification because they did not pass the TMOD. Thus, these individuals received Diagnostic Pharmaceutical Agents (DPA) certification while they waited to re-take the TMOD exam. This category of licensure is the most basic, and does not allow licensees to fully exercise the scope of practice available today. Not having the minimum certification of TPA is a great, professional disadvantage for new optometrists.

Since 1996, the Board has been requiring that in order apply for TPA certification, candidates for licensure must meet the following requirements pursuant to CCR §1568:

1. Graduate from an accredited school or college of optometry which provides:
    a. Certification that the applicant is competent in the diagnosis, treatment, and management of ocular, systemic disease.

   b. Certification that the applicant has completed 10 hours of experience with an ophthalmologist.
2. Pass parts I, II and III, including the TMOD component, of the NBEO examination;
3. Pass the California Laws and Regulations Examination administered by the Board; and
4. Obtain a California optometrist license.

The following allows the Board to require that the TMOD component must be taken and passed for TPA certification:

- CCR §1567 defines "TMOD" as:

  > …the acronym for the "Treatment and Management of Ocular Disease" examination administered by the National Board of Examiners in Optometry. <u>Passage of this examination is mandatory for certain TPA certification applicants."</u>

- Pursuant to BPC §3041.3, optometrists who graduated on or after January 1, 1996 must pass the NBEO examination, as determine by the State Board.

To further increase clarity that the TMOD is required to obtain TPA certification, staff has prepared draft, regulatory language in order to address this issue (See Attachment 5).

Staff has also identified additional regulations that must also be changed for clarity purposes regarding the TMOD and will be brought to the next Board meeting for discussion.

<u>Attachments</u>

1. Amended Uniform Standards and Disciplinary Guidelines
2. 1513 & 1514 Comments received during 14-day comment period
3. 1513 Modified Text
4. 1514 Modified Text
5. 1531 Draft Proposed Language

California State Board of Optometry

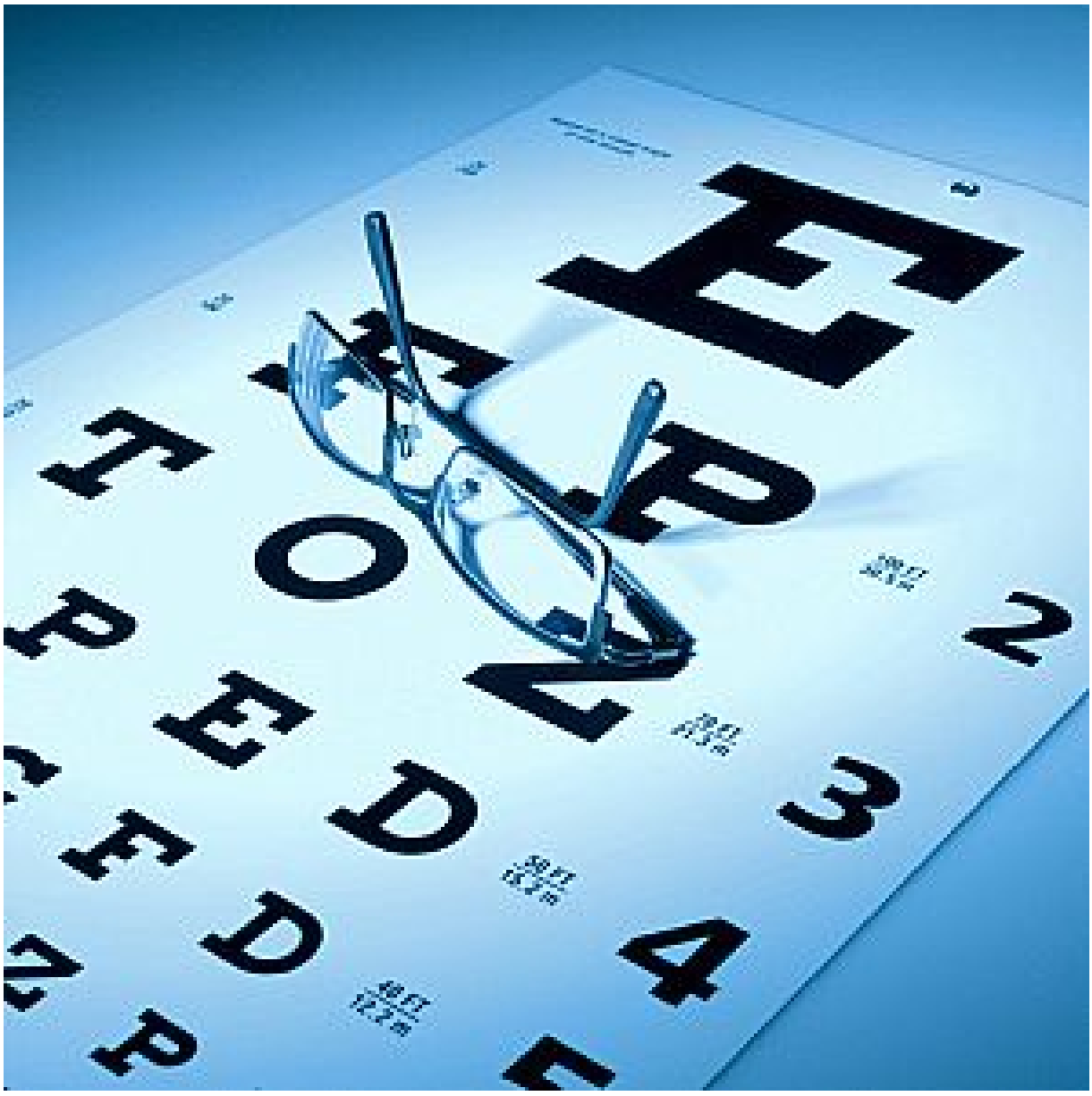
Uniform Standards Related to Substance Abuse and

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 mandate 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 violations of the Optometry Practice Act.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys from the Office of the Attorney General, licensees, Board staff 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 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 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 Board will work 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 an optometrist.

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. (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 (e.g., theft, embezzlement, fraud).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. 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 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 disciplin~~ary~~e ~~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 office~~s~~ 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 125.3.

~~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

§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 consider the Disciplinary Guidelines"(DG-~~3~~ 4, ~~5-99~~ 4-2011) 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, 315.2, 315.4, 480,3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, ~~11400.21~~ 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 an optometrist's license is placed on probation due, in part, to substance abuse. 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 return to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope, pattern of use, and history of drug/alcohol 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:

Level	Segment of Probation/Diversion	Minimum Range of Number of Random Tests
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 and each year thereafter.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or suspects that a licensee has committed a violation of the Board's testing program or committed a Major Violation, as identified in Uniform Standard 10, the Board 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 the 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

The 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 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 no 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. The Board 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 with the Board 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 must 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 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:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- 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 had 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 WHAT 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 any 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 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 TESTING

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 practice.

Thereafter, the Board will 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 will engage in the following, 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 of a major violations 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 practice.
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 licensee or public.

Consequences of 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. Sustained compliance with current recovery program;
2. 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. Sustained compliance with the terms of the disciplinary order, if applicable;
2. Successful completion of recovery program, if required;
3. 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. Ability to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.

PROBATIONARY TERMS AND CONDITIONS

MODEL DISCIPLINARY ORDERS

Revocation-Single Cause
Certificate No. (Ex.: 12345) issued to ~~r~~Respondent (Ex: John Smith. O.D.) is revoked. Cost Recovery in the amount of (Ex: 5,000) is due within 90 days of the effective date of this Decision or within a Board approved payment plan.

Revocation - Multiple Causes
Certificate No. ____issued to ~~r~~Respondent _____ is revoked pursuant to Determination of Issues (Ex: II. and III) separately and for all of them. Cost Recovery (if any) in the amount of (Ex: 5,000) is due within 90 days of the effective date of this Decision or within a Board approved payment plan.

Suspension - Single Cause
Certificate No. __ issued to ~~r~~Respondent _____ is suspended for a period of (Ex: 30-days/one year).

Suspension - Multiple Causes (run concurrently)
Certificate No. issued to ~~r~~Respondent _____ 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 ~~r~~Respondent _____ 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 ~~r~~Respondent is placed on probation for (Ex: three) years upon the following terms and conditions:

MODEL PROBATIONARY ORDERS

The following introductory language is to be included in decisions that place the respondent's license on probation.

IT IS HEREBY ORDERED that (INSERT APPROPRIATE LICENSE CATEGORY) Number (INSERT LICENSE NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT LICENSE CATEGORY) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for applicants, and for petitioners for reinstatement who are issued a license that is placed on probation.

Applicants who are placed on probation:
The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions:

Reinstatement of licensure with conditions of probation:
The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions:

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

STANDARD TERMS AND 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 8, Cost Recovery, does not apply.

1. Obey all laws ~~[26]~~
2. Submit 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 California Laws and Regulations ~~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]~~
16. Sale or Closure of an Office and/or Practice

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, 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.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS
Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided 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. 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:

- 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 ~~the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.~~ the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear 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 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 may 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. The fee for probation monitoring shall start at a minimum of $100 per month.

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

_____
this submission.

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

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

5. FUNCTION AS AN OPTOMETRIST

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

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

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 Accusation 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 Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent. The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

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.

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 CALIFORNIA LAWS AND REGULATIONS ~~Re~~ **EXAMINATION**

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

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

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

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

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

~~Respondent shall not practice optometry until respondent has passed the required examination and has been so notified by the Board in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation. NOTE: The condition precedent option is particularly recommended in cases where respondent has been found to be grossly negligent or inefficient.~~
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 the California Laws and Regulations Examination (CLRE). 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. 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.

~~13.~~ 10. COMMUNITY SERVICES~~- Free Services~~
Within ~~60~~ 30 days of the effective date of this decision, ~~r~~Respondent shall submit to the ~~b~~Board, for its prior approval, a community service program in which ~~r~~Respondent ~~shall~~ provides free non-optometric or professional optometric services on a regular basis to a community 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. Type of community service shall be at the Board's discretion depending on the violation. Such services shall begin no later than 15 days after respondent is notified of the approved program.

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.

~~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 outside of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

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

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 any 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 ~~r~~Respondent violates any term of the probation in any respect, the Board, after giving ~~r~~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 ~~r~~Respondent during probation, the Board shall have continuing jurisdiction ~~until the matter is final,~~ and the period of probation shall be extended until the matter is final. 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.

~~29~~15. COMPLETION OF PROBATION

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

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

STANDARD ALCOHOL/DRUG CONDITIONS

The following standards are in addition to standards 1-15 and apply to every licensee who is on probation for substance abuse, pursuant to SB1441 Uniform Standards.

~~8.~~17. ~~Drugs & Abstain~~ Abstention From Use of Controlled Substances/Alcohol
~~9. Drugs - Exception for Personal Illness~~
~~11. Alcohol -Abstain From Use~~
~~12.~~18. Biological Fluid Testing

~~8.~~ **17.** ~~Drugs & Abstain~~ **ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL** 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.

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 optometric 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.~~18. 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 in Uniform Standards for Substance Abuse #4 (see page 7).

Respondent shall 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 reinstate 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.

OPTIONAL CONDITIONS

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

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

19. PARTICIPATE IN GROUP SUPPORT MEETING

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. The facilitator for the 12-step recovery meeting must meet the qualification requirements pursuant to Uniform Standard #5.

20. 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 Optometric 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 notice described above shall be approved by the Board within 30 days of the effective date of this decision.

~~23. Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment~~
~~Within 15 days of the effective date of this decision, respondent shall submit the name, business address and business telephone number of three persons who are professionally qualified to provide counseling and treatment for drug, alcohol or other chemical abuse appropriate to the case. Thereafter the Board through its staff shall select one of these persons to provide the~~

~~necessary counseling and treatment. Within 30 days of written notification of this selection to the respondent the respondent shall, in consultation with this counselor and treating professional, prepare and submit to the Board for its approval, a counseling and treatment program all costs of which shall be paid by the respondent. Respondent shall successfully complete this counseling and treatment program as a condition of probation.~~

21. 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 sign a release allowing the program to release to the Board all information the Board deems relevant.

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 may be used in administrative discipline.

~~20.~~ **22. WORKSITE MONITOR~~ING~~**

Within 30 days of the effective date of this decision, ~~r~~Respondent shall submit to the Board for its prior approval a plan of practice in which ~~r~~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 ~~r~~Respondent.

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

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

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

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

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

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

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

Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:

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

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

~~(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.

23. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid un-restricted Board-issued license. "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 engaging in practice.

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.~~ 24. 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 **pertaining to the practice of Optometry**: (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.

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.~~ **25.** ~~Actual~~ **SUSPENSION**

As part of probation, ~~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.

26. EMPLOYMENT LIMITATIONS

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

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

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

For purposes of this condition, "float" capacity is defined as any work at multiple locations, when there is insufficient time to notify the Board prior to beginning work, when the optometrist must travel or any other situation considered a "float" capacity by the Board.

~~17.~~ **27. PSYCHOTHERAPY OR COUNSELING PROGRAM**

Within 60 days of the effective date of this decision, ~~r~~Respondent shall submit to the Board for its prior approval the name and qualifications of a

psychotherapist of ~~r~~Respondent's choice. Upon approval, ~~r~~Respondent shall undergo and continue treatment, at ~~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 ~~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 ~~r~~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~~**28.** ~~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 and will be at Respondent's cost.

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.~~29. 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, ~~r~~Respondent shall undergo a medical evaluation, at ~~r~~Respondent 's cost, by a Board-appointed physician who shall furnish a medical report to the Board or its designee.

If ~~r~~Respondent is required by the Board or its designee to undergo medical treatment, ~~r~~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 ~~r~~Respondent's choice. Upon approval of the treating physician, ~~r~~Respondent shall undergo and continue medical treatment, at ~~r~~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 ~~r~~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.~~ 30. MEDICAL TREATMENT

Within 60 days of the effective date of this decision, ~~r~~Respondent shall submit to the Board for its prior approval the name and qualifications of a physician of ~~r~~Respondent's choice. Upon approval, ~~r~~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 ~~r~~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~~.

31. 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 _____.

32. MONITOR BILLING SYSTEM & AUDIT

Within 30 days of the effective date of this decision, respondent shall obtain the services of an independent billing system to monitor and document the dates and times of client visits. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent's cooperation with this system. The cost of the service shall be borne by respondent.

THIRD PARTY BILLING SYSTEM AUDIT REQUIRED:

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 Monitoring Billing System in this 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.

~~10.~~33. LENS PRESCRIPTIONS - MAINTAIN RECORDS

Respondent shall maintain a record of all lens prescriptions dispensed or administered by ~~r~~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.~~34. RESTRICTED PRACTICE~~ INCOMPETENCE~~

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

~~24.~~35. RESTRICTION ~~AS TO~~ ON BRANCH OFFICES

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

~~25.~~36. RESTRICTIONS ~~AS TO~~ ON ADVERTISEMENTS

During the entire period of probation, the ~~r~~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.

37. TAKE AND PASS NBEO EXAM

Respondent shall take and pass part(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.

38. CONTINUING EDUCATION

Within 90 days of the effective date of this Decision, Respondent shall submit to the Board for its prior approval an educational program or course to be in areas of ____ (Eg., practice management, retinal disease, drug/alcohol addiction). The education program or course(s) shall consist of a minimum of four (4) hours for each practice area.

This program or course shall be in addition to the Continuing Optometric Education requirements for renewal, and shall be obtained with all costs being paid by the Respondent. Following 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 approved by the Board.

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 chapters:

- Probationary Terms and Condition – Standard Terms and Conditions;
- Standard Alcohol/Drug Conditions; and
- Optional Conditions

Examples are given for illustrative purposes, but no attempt is made to list 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:

1-16. Standard Conditions
~~1.~~ 33. Lens Prescription- Maintain ~~r~~Records ~~of prescription for review [10]~~

If Warranted:

~~2. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~3. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
~~4. If warranted,~~ 24. Remedial Education ~~course [14]~~
~~5. If warranted, Community service [13]~~
38. Continuing Education

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:

1-16. Standard Conditions
~~1.~~ 33. Maintain ~~r~~Records ~~of prescription for review [10]~~

If Warranted:

~~2. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~3. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
~~4. If warranted,~~ 24. Remedial Education ~~course [14]~~
~~5. If warranted, Community service [13]~~
38. Continuing Education

Excessive Prescribing or Treatment~~s~~ (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:

1-16. Standard Conditions
33. Lens Prescriptions – Maintain Records
38. Continuing Education

If Warranted:

~~1.~~ 24. Remedial Education ~~course [14]~~
~~2. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~3. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
~~4. If warranted,~~ 34. Restricted ~~p~~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]~~

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:

1-16. Standard Conditions
~~3. If warranted,~~ 28. ~~Psychiatric or psychological~~ Mental Health ~~e~~Evaluation ~~[16][17]~~

If Warranted:

25. Suspension
~~1. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
~~2. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
27. Psychotherapy or Counseling Program
~~4. If warranted~~, 29. Medical ~~e~~Evaluation ~~[18][19]~~
30. 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:

1-16. Standard Conditions
~~1. Re-examination [15]~~
~~2.~~ 24. Remedial Education ~~course [14]~~
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

If Warranted:

23. Direct Supervision
~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]
26. Employment Limitations
~~3. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
31. Restitution
36. Restrictions on Advertisements
37. Take and Pass NBEO Exam

Failure to Refer Patient (B&P Code sec. ~~3109~~ 3110(y); 3041)

Maximum Discipline: Revocation and Cost Recovery

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

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

Required:

1-16. Standard Conditions

~~1. Re-examination [15]~~
38. Continuing Education

If Warranted:

~~2.~~ 24. Remedial Education ~~course [14]~~
~~3. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
26. 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:

1-16. Standard Conditions
~~1. Reexamination [15]~~
~~2.~~ 24. Remedial Education ~~course [14]~~

If Warranted:

~~3. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
37. 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:

1-16. Standard Conditions
~~1. Reexamination [15]~~
38. Continuing Education

If Warranted:

~~2.~~ 24. Remedial Education ~~course [14]~~
~~3. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[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:

1-16. Standard Conditions
22. Worksite Monitor
38. Continuing Education

If Warranted:

23. Direct Supervision
24. Remedial Education
25. 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:

1-16. Standard Conditions
~~1. Reexamination [15]~~
38. Continuing Education

If Warranted:

~~2.~~ 24. Remedial Education ~~course [14]~~
~~3. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[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:

1-16. Standard Conditions
~~1. Reexamination [15]~~
~~2.~~ 24. Remedial Education ~~course [14]~~
32. Monitor Billing System & Audit

If Warranted:

~~2. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]
~~3. If warranted, Community service [13]~~
22. Worksite Monitor
23. Direct Supervision
26. Employment Limitations
31. Restitution
36. Restrictions on Advertisements
38. Continuing Education

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); 3110(i))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

22. Worksite Monitor
25. Suspension
36. Restrictions on Advertisements
38. Continuing Education

~~**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:

1-16. Standard Conditions
17-18. Standard Alcohol/Drug Conditions
~~1. Reexamination [15]~~
~~2. Abstain from drugs [8, 9]~~
~~3. Biological fluid testing [12]~~

If Warranted:

~~4.~~ 21. ~~Drug or~~ Alcohol and Drug ~~Counseling and~~ Treatment ~~[23]~~
~~5. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~6. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
22. Direct Supervision
~~7. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
29. Medical Health Evaluation
30. Medical Treatment
38. Continuing Education

~~**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:

1-16. Standard Conditions
~~2. Re-examination [15]~~

If Warranted:

~~3. If warranted,~~ 35. Restrictions on ~~number of~~ ~~b~~Branch ~~o~~Offices ~~[24]~~

~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]

~~5 If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

~~6. If warranted,~~ 34. Restricted ~~p~~Practice ~~[22]~~

26. Employment Limitations

38. Continuing Education

Accept~~ance~~ing ~~of Unlawful~~ Employment By Unlicensed Person (B&P Code sec. 310~~3~~9)

Maximum Discipline: Revocation and Cost Recovery

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

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

Required:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3.~~ 25. 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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3. If warranted,~~ 35. Restrictions on ~~number of~~ ~~b~~Branch ~~o~~Offices ~~[24]~~

~~4. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~]

~~5 If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

~~6. If warranted,~~ 34. Restricted ~~p~~Practice ~~[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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

~~4. If warranted,~~ 36. 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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

If Warranted:

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

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

~~4. If warranted,~~ 36. 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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

If Warranted:

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

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

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

36. 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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

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

36. 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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

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

~~5 If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

~~6. If warranted,~~ 34. Restricted practice ~~[22]~~

Unlawful Referrals (B&P Code sec. 650; 650.01)

Maximum Discipline: Revocation and Cost Recovery

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

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

Required:

1-16. Standard Conditions

If Warranted:

~~1.~~ 38. Continuing Education ~~course [14]~~

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

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

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

~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

~~6. If warranted,~~ 34. Restricted practice ~~[22]~~

36. Restrictions on Advertisements

Employ~~ment~~ing ~~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:

1-16. Standard Conditions

~~1.~~ 38. Continuing Education ~~course [14]~~

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

If Warranted:

~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~

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

~~5 If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
~~6. If warranted,~~ 34. Restricted practice ~~[22]~~
36. 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:

1-16. Standard Conditions

If Warranted:

~~1.~~ 24. Remedial Education ~~course [14]~~
~~2. If warranted, Reexamination [15]~~
~~3. If warranted,~~ 25. Suspension of 30 days or more ~~[7]~~
~~4. If warranted, Community service [13]~~
~~5. If warranted,~~ 22. Worksite Monitor~~ing~~ ~~[20]~~
~~6. If warranted,~~ 34. Restricted practice ~~[22]~~
~~7. If drug related and warranted (see conditions for drug abuse)~~ 17-18. Standard Alcohol/ Drug Conditions
~~8. If related to sexual misconduct and warranted (see conditions for sexual misconduct)~~
38. Continuing Education

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:

1-16. Standard Conditions
38. Continuing Education

If Warranted:

36. 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:

1-16. Standard Conditions

If Warranted:

~~1. If warranted.~~ 24. Remedial Education ~~c~~Course for corporate principals involved [~~14~~]

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

~~3. If warranted,~~ 25. 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.~~ 22. Worksite Monitor~~ing~~ ~~[20]~~

~~6. If warranted,~~ 34. Restricted practice ~~[22]~~

31. Restitution

36. Restrictions on Advertisements

38. Continuing Education

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions.

38. Continuing Education

If Warranted:

22. Worksite Monitor

23. Direct Supervision

25. Suspension

32. Monitor 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:

1-16. Standard Conditions

If Warranted:

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

31. Restitution

32. Monitor Billing System & Audit

34. Restricted Practice
35. Restrictions on Branch Offices
36. Restrictions on Advertisements
38. Continuing Education

Unprofessional Conduct (B&P code sec. 3110)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 5 years probation

Required:

1-16. Standard Conditions
22. Worksite Monitor
24. Remedial Education

If Warranted:

23. Direct Supervision
25. Suspension
26. Employment Limitations
38. Continuing Education

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:

1-16. Standard Conditions
24. Remedial Education

If Warranted:

22. Worksite Monitor
23. Direct Supervision
25. Suspension
26. Employment Limitations
31. Restitution
32. Monitor Billing System & Audit
36. Restrictions on Advertisements
38. Continuing Education

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

If Required:

1-16. Standard Conditions
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension

26. Employment Limitations

If Warranted:

37. 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:

1-16. Standard Conditions

If Warranted:

17-18. Standard Alcohol/ Drug Conditions
21. Alcohol or Drug Treatment
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
31. Restitution
32. Monitor Billing System & Audit
33. Lens Prescription – Maintain Records
36. Restrictions on Advertisements
37. Take and Pass NBEO Exam
38. Continuing Education

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:

1-16. Standard Conditions

If Warranted:

17-18. Standard Alcohol/ Drug Conditions
21. Alcohol or Drug Treatment
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
32. Monitor Billing System & Audit
33. Lens Prescription – Maintain Records
37. Take and Pass NBEO Exam
38. Continuing Education

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:
1-16. Standard Conditions
If Warranted:
22. Worksite Monitor
24. Remedial Education
25. Suspension
26. Employment Limitations
38. Continuing Education

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:
1-16. Standard Conditions
24. Remedial Education
25. Suspension
If Warranted:
22. Worksite Monitor
23. Direct Supervision
38. Continuing Education

Failure to Maintain Adequate Records(B&P Code sec. 3110 (q))
Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation
Required:
1-16. Standard Conditions
If Warranted:
22. Worksite Monitor
24. Remedial Education
25. Suspension
32. Monitor Billing System & Audit
38. Continuing Education

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:
1-16. Standard Conditions
22. Worksite Monitor
25. Suspension
If Warranted
38. Continuing Education

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:

1-16. Standard Conditions

If Warranted:

22. Worksite Monitor
24. Remedial Education
25. Suspension
26. Employment Limitations
38. Continuing Education

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:

1-16. Standard Conditions

If Warranted:

24. Remedial Education
38. Continuing 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:

1-16. Standard Conditions

If Warranted:

22. Worksite Monitor
24. Remedial Education
25. Suspension
26. Employment Limitations
38. Continuing Education

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Agenda Item 9B, Attachment 2

Leiva, Andrea@DCA

From: Craig Steinberg, OD, JD [aosboard@odlawyer.com]
Sent: Sunday, June 05, 2011 9:10 PM
To: Leiva, Andrea@DCA
Cc: Maggio, Mona@DCA
Subject: Comments on Proposed Changes to Regulations
Follow Up Flag: Follow up
Flag Status: Red

Dear Andrea and Mona,

I would like to offer a few comments on two proposed changes to the California Code of Regulations which are scheduled for hearing on July 11, 2011. Unfortunately, I cannot be there that day, so I ask that you make my comments here a part of the record and ensure that the Board is provided a copy.

Section 1513

This change in the regulation would require all signs, cards, stationary, and advertising to "clearly and prominently identify that individual optometrist or optometrists as listed on their registration or certification."

Apart from the fact that "prominently" is vague and uncertain, this is a nonsensical proposal that clearly has not been very well thought out. It means doctors who NEVER use their middle name or middle initial, for instance, or those who have long foreign middle names or hyphenated names, to change every single advertisement, business card, stationary, and, importantly, office sign to include a name they do not use and are not generally known by. It means I cannot, for instance, say "Dr. Steinberg, Optometrist," or "Dr. Craig Steinberg, Optometrist," or "Craig Steinberg, O.D." on my business cards! Those would all be illegal because my middle name (not initial) is "S." Every "James" that puts "Jim" on his business card, or "Robert" that goes by "Bob" would be committing a misdemeanor and could be subject to state board discipline for unprofessional conduct. Are you serious?

Are you aware that even several members of the current State Board would be in violation of this rule today? Several of you are listed without your complete names as listed with the State Board. For instance, looking at the web site for Dr. Lawenda's office shows that only one of the four doctors listed would be in compliance with the new regulation. In fact, Dr. Lawenda (and each of the other doctors in the office) is currently in violation of Bus. & Prof. Code s 3098 and are each subject to revocation or suspension of their licenses. What is to be achieved by creating another regulation that even the most prominent and well-meaning optometrists are likely to be in violation of?

Indeed, the rule could be construed to also preclude the addition of a professional or academic designation, because that designation is not listed on the registration or certification. Accordingly, I would be violating the law by saying "Craig S Steinberg, O.D., J.D." because that is not listed on my registration or certification. Would doctors be violating this regulation by including F.A.A.O. after their name?

This change serves no meaningful purpose other than to create a very high likelihood of inadvertent violation of the rule by doctors with no intention of doing so, increasing the burden of the State Board to enforce a rule that has no meaningful relationship to the competent practice of optometry, and causing MANY doctors to incur costs of MANY thousands of dollars to recreate sometimes VERY expensive signs, reprint every page of stationary and business cards, etc., for no real purpose. Consider a name like, WYDEVEN ANTHONY JOHN VANDE. Does he REALLY have to put that entire name on every single advertisement, business card, stationary, office sign, and the like? How about ESTHER MALIA HIROMI NAKAGAWARA? HELENA HUYEN PHUONG NGUYEN? There are, of course, many others.

This cannot possibly be the least intrusive means of achieving whatever the Board's goal or purpose is. It instead appears to be nothing but creating a bureaucratic nightmare for everyone involved, from the Board having to enforce it, to the doctors having to comply with it. Every doctor is already required to display his or her license or Statement of Licensure in the office where patients can see it. That is itself sufficient to inform the public. Making it a criminal act (misdemeanor!) or unprofessional conduct to put your middle initial instead of your middle name on your business card is ludicrous!

Section 1514

Subsection (c) changes the wording of the regulation, and in so doing appears to make signs and advertising compulsory. Under the new language, it appears to be a violation of the rules to NOT advertise. Whereas the current rule provides that "All signs, advertising, and display shall…," the new rule would say, "The practice shall contain signs and advertising that display the practice as separate and distinct…." The distinction between these two is grammatically significant. In the former, you are not required to have signs or advertising, but if you do, then they must display the practice as separate and distinct. In the latter, you are required to have signs and advertising that display the practice as separate and distinct.

Is it the intent of the Board to require every office that rents office space from a "commercial concern" *to be required to advertise?* What constitutes advertising? What would be sufficient? And how does one convey that the office is "separate and distinct" from that of other occupants? It appears you're opening a can of worms with this change that appears to be being made solely for the sake of change.

I believe the change to the wording has the possibly unintended consequence of creating an instruction that all practices to which it applies must advertise. It would be more appropriate to say, "If the practice contains signs or advertises, those signs and advertising shall ensure that the practice is represented as separate and distinct…." I ask that the Board sit back and carefully read the proposed language and ensure that it is doing what they want, and not creating unintended consequences that, like section 1513, will lead to confusion and inadvertent violations.

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BOARD OF OPTOMETRY

MODIFIED TEXT

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Amend sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1513. REGISTERED NAME ONLY AND USE OF LICENSE NUMBER IN ADVERTISEMENTS

All signs, cards, stationery or other advertising must clearly and prominently identify the individual optometrist or optometrists. ~~as listed on their registration or certification.~~ and shall include their license or registration number in the advertisement unless such advertisement contains the following specific information:

(a) The full name of the licensee as registered with the Board and the designation of "optometrist" prominently displayed in connection therewith.

Note: Authority cited: Sections 137, 651 and 3025, Business and Professions Code. Reference: Sections 651 and 3098 ~~3125~~ ~~3078~~, Business and Professions Code.

BOARD OF OPTOMETRY

MODIFIED TEXT

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Amend sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§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 and shall have a sign of designation indicating that the space is definite and apart from other occupants of the premises.

(c) ~~The practice shall contain~~ ~~All~~ All signs,~~,~~ ~~and~~ advertising and, ~~, and~~ ~~that~~ display shall likewise be ~~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.

Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 651 and 3025, Business and Professions Code.

Board of Optometry

Proposed Language

DRAFT 1

§ 1531. Licensure Examination.

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

(a) Examination developed by the National Board of Examiners in Optometry (NBEO) and approved by the Board. Licensure shall be contingent on the passage of each of the following parts:

~~Section~~ Part I - Applied Basic Science written cognitive examination ~~approved by the Board and developed by the National Board of Examiners in Optometry (NBEO)~~.

~~Section~~ Part II - Patient Assessment and Management (PAM) examination, including the ~~/~~ Treatment and Management of Ocular Disease(TMOD) component ~~examination developed by the NBEO~~.

~~Section~~ Part III - Clinical Skills Examination ~~developed by the NBEO~~.

~~Section IV~~ (b) California Laws and Regulations Examination developed and administered by the Board or its contractor.

~~(b)~~ (c) 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.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
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To: Board Members **Date:** September 16, 2011

From: Andrea Leiva
Policy Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 10– Legislation**

A. Discussion of Amendments to Assembly Bill (AB) 778 since the June 21, 2011 Board Meeting, and Consideration of Possible Board Action

Action Requested:
Board staff would like the Board to review the language of AB 778 as it was amended on June 21, 2011, and suggest any possible changes, if any.

Background:
This bill, sponsored by LensCrafters, would authorize a registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation to do the following:

1. own a *specialized** health care service plan that provides *or arranges for the provision of* vision care services,
2. share profits with the *specialized* health care service plan,
3. contract for specified business services with the *specialized* health care service plan, and
4. jointly advertise vision care services with the *specialized* health care service plan.

This bill would require the director of the Department of Managed Health Care to provide to a health care service plan and to the executive officer of the State Board of Optometry or the Medical Board of California a copy of information relating to the quality of care of any licensed optometrist or optician contained in any survey report that, in the judgment of the director, indicates incompetent or negligent treatment, as specified.

The bill would prohibit those persons or entities from engaging in conduct that would influence or interfere with the clinical decisions of an optometrist, as specified, *and would set forth provisions that apply to medical records*. A willful violation of these provision would be a crime under the Knox-Keene Act.

***Italicized language is new as of June 21, 2011.**

Issue/Discussion:
LensCrafters and Assembly Member Toni Atkins, author of AB 778, requested to meet with the Board President and Board staff prior to this meeting in order to discuss this legislation. Staff thought it best to meet with the authors after, once the full Board had a chance to deliberate on the next steps to take.

Board staff continues to recommend that the Board oppose this legislation. The Board is still in pending litigation with LensCrafters and will continue to support the Attorney General's opposition to this proposed legislation until the litigation is resolved.

This bill is currently a 2 year bill and will be revisited at the start of the legislative session in January 2012.

B. Urgency Bill for Expert Consultants by the Senate Business, Professions & Economic Development Committee

Action Requested:
No action requested.

Update:
This bill is currently on the Governor's desk, awaiting a signature. Since this is an urgency bill, it will go into effect once the Governor signs it. There have been no concerns with this bill and it is supported by a majority of the Boards and Bureaus in the Department of Consumer Affairs. The Board wrote a letter to the Governor on September 8, 2011 requesting his signature.

If this bill goes through, it will be much faster for the Board to obtain expert consultants.

Background:
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, instead, we have paid expert consultants and SMEs via invoice for services.

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 contact. 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:
2. Expert Witnesses for Enforcement Issues:

Attachments

1. AB 778 Language as amended June 21, 2011
2. SB 541 Expert Consultant Language as enrolled on September 8, 2011
3. June 16, 2011 Board of Optometry Opposition Letter
4. June 19, 2011 Luxottica Letter to Board of Optometry
5. July 25, 2011 Letter from Assemblymember Toni Atkins to Board of Optometry
6. August 11, 2011 Second Letter from Luxottica to Board of Optometry
7. August 16, 2011 Board of Optometry Letter to Assemblymember Toni Atkins

AMENDED IN SENATE JUNE 21, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

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 1395.3 and 1395.4 to~~ *amend Section 1380 of, and to add Sections 1395.3, 1395.4, and 1395.45 to,* the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 778, as amended, Atkins. Health care service 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.

This bill would authorize a registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a

nonoptometric corporation to own a *specialized* health care service plan that provides *or arranges for the provision of* vision care services, share profits with the *specialized* health care service plan, contract for specified business services with the *specialized* health care service plan, and jointly advertise vision care services with the *specialized* health care service plan. The bill would prohibit those persons or entities from engaging in conduct ~~designed to~~ *that would* influence or interfere with the clinical decisions of an optometrist, as specified, *and would set forth provisions that apply to medical records*. Because a willful violation of ~~that provision~~ *these provisions* would be a crime under the Knox-Keene Act, the bill would impose a state-mandated local program.

Existing law requires the Department of Managed Health Care to conduct periodic onsite medical surveys of the health delivery system of each health care service plan. Survey results are publicly reported and subject to public inspection. Existing law requires the Director of the Department of Managed Health Care to notify a health care service plan of any deficiencies found by a survey.

This bill would require the director to provide to a health care service plan and to the executive officer of the State Board of Optometry or the Medical Board of California a copy of information relating to the quality of care of any licensed optometrist or optician contained in any survey report that, in the judgment of the director, indicates incompetent or negligent treatment, as specified.

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. 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.

(b) To ensure that quality care and coverage are provided to enrollees, a health care service plan, including a specialized health care service plan, is required to do all of the following:

(1) Establish a department-approved quality assurance program to ensure that enrollees are continuously provided the appropriate level of services covered by the health care service plan.

(2) Ensure that a separation of fiscal and administrative management from medical services exists within the health care service plan.

(3) Periodically submit information to the department to demonstrate delivery of quality care, accessibility of services to enrollees, and prompt resolution of complaints.

(4) Establish procedures meeting specified requirements for reviewing the utilization of services and facilities.

(5) Participate in comprehensive medical and financial audits conducted by the department.

(c) Existing law prohibits an optometrist from engaging in certain business relationships with a registered optical dispenser.

(d) Existing law allows a health care service plan to hire and contract with licensed professionals and to engage in a business relationship with any entity. However, existing law is unclear about the relationships between *specialized* health care service plans that provide ~~vision~~ *or arrange for the provision of vision care* services and optical companies.

(e) Providing statutory clarity regarding permissible business relationships between a *specialized* health care service plan providing ~~vision~~ *or arranging for the provision of vision care* services and optical companies will provide certainty and allow regulating entities to ensure that health care service plans are engaged in appropriate business relationships.

SEC. 2. Section 1380 of the Health and Safety Code is amended to read:

1380. (a) The department shall conduct periodically an onsite medical survey of the health delivery system of each plan. The survey shall include a review of the procedures for obtaining health services, the procedures for regulating utilization, peer review mechanisms, internal procedures for assuring quality of care, and the overall performance of the plan in providing health care benefits and meeting the health needs of the subscribers and enrollees.

(b) The survey shall be conducted by a panel of qualified health professionals experienced in evaluating the delivery of prepaid health care. The department shall be authorized to contract with professional organizations or outside personnel to conduct medical surveys and these contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These organizations or personnel shall have demonstrated the ability to objectively evaluate the delivery of health care by plans or health maintenance organizations.

(c) Surveys performed pursuant to this section shall be conducted as often as deemed necessary by the director to assure the protection of subscribers and enrollees, but not less frequently than once every three years. Nothing in this section shall be construed to require the survey team to visit each clinic, hospital office, or facility of the plan. To avoid duplication, the director shall employ, but is not bound by, the following:

(1) For hospital-based health care service plans, to the extent necessary to satisfy the requirements of this section, the findings of inspections conducted pursuant to Section 1279.

(2) For health care service plans contracting with the State Department of Health Services pursuant to the Waxman-Duffy Prepaid Health Plan Act, the findings of reviews conducted pursuant to Section 14456 of the Welfare and Institutions Code.

(3) To the extent feasible, reviews of providers conducted by professional standards review organizations, and surveys and audits conducted by other governmental entities.

(d) Nothing in this section shall be construed to require the medical survey team to review peer review proceedings and records conducted and compiled under Section 1370 or medical records. However, the director shall be authorized to require onsite review of these peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to subscribers and enrollees. Where medical record review is authorized, the survey team shall insure that the confidentiality of physician-patient relationship is safeguarded in accordance with existing law and neither the survey team nor the director or the director's staff may be compelled to disclose this information except in accordance with the physician-patient relationship. The director shall ensure that the confidentiality of

the peer review proceedings and records is maintained. The disclosure of the peer review proceedings and records to the director or the medical survey team shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1.

(e) The procedures and standards utilized by the survey team shall be made available to the plans prior to the conducting of medical surveys.

(f) During the survey the members of the survey team shall examine the complaint files kept by the plan pursuant to Section 1368. The survey report issued pursuant to subdivision (i) shall include a discussion of the plan's record for handling complaints.

(g) During the survey the members of the survey team shall offer such advice and assistance to the plan as deemed appropriate.

(h) (1) Survey results shall be publicly reported by the director as quickly as possible but no later than 180 days following the completion of the survey unless the director determines, in his or her discretion, that additional time is reasonably necessary to fully and fairly report the survey results. The director shall provide the plan with an overview of survey findings and notify the plan of deficiencies found by the survey team at least 90 days prior to the release of the public report.

(2) Reports on all surveys, deficiencies, and correction plans shall be open to public inspection except that no surveys, deficiencies, or correction plans shall be made public unless the plan has had an opportunity to review the report and file a response within 45 days of the date that the department provided the report to the plan. After reviewing the plan's response, the director shall issue a final report that excludes any survey information and legal findings and conclusions determined by the director to be in error, describes compliance efforts, identifies deficiencies that have been corrected by the plan by the time of the director's receipt of the plan's 45-day response, and describes remedial actions for deficiencies requiring longer periods to the remedy required by the director or proposed by the plan.

(3) The final report shall not include a description of "acceptable" or of "compliance" for any uncorrected deficiency.

(4) Upon making the final report available to the public, a single copy of a summary of the final report's findings shall be made available free of charge by the department to members of the

public, upon request. Additional copies of the summary may be provided at the department's cost. The summary shall include a discussion of compliance efforts, corrected deficiencies, and proposed remedial actions.

(5) If requested by the plan, the director shall append the plan's response to the final report issued pursuant to paragraph (2), and shall append to the summary issued pursuant to paragraph (4) a brief statement provided by the plan summarizing its response to the report. The plan may modify its response or statement at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the final report will be made available to the public. The plan may file an addendum to its response or statement at any time after the final report has been made available to the public. The addendum to the response or statement shall also be made available to the public.

(6) Any information determined by the director to be confidential pursuant to statutes relating to the disclosure of records, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall not be made public.

(i) (1) The director shall give the plan a reasonable time to correct deficiencies. Failure on the part of the plan to comply to the director's satisfaction shall constitute cause for disciplinary action against the plan.

(2) No later than 18 months following release of the final report required by subdivision (h), the department shall conduct a follow-up review to determine and report on the status of the plan's efforts to correct deficiencies. The department's follow-up report shall identify any deficiencies reported pursuant to subdivision (h) that have not been corrected to the satisfaction of the director.

(3) If requested by the plan, the director shall append the plan's response to the follow-up report issued pursuant to paragraph (2). The plan may modify its response at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the follow-up report will be made available to the public. The plan may file an addendum to its response at any time after the follow-up report has been made available to the public. The

addendum to the response or statement shall also be made available to the public.

(j) The director shall provide to the plan and to the executive officer of the Board of Dental Examiners a copy of information relating to the quality of care of any licensed dental provider contained in any report described in subdivisions (h) and (i) that, in the judgment of the director, indicates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. Any confidential information provided by the director shall not be made public pursuant to this subdivision. Notwithstanding any other provision of law, the disclosure of this information to the plan and to the executive officer shall not operate as a waiver of confidentiality. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Managed Health Care, the Director of the Department of Managed Health Care, the Board of Dental Examiners, or any officer, agent, employee, consultant, or contractor of the state or the department or the board for the release of any false or unauthorized information pursuant to this section, unless the release of that information is made with knowledge and malice.

(k) The director shall provide to the plan and to the executive officer of the State Board of Optometry or the Medical Board of California a copy of information relating to the quality of care of any licensed optometrist or optician contained in any report described in subdivisions (h) and (i) that, in the judgment of the director, indicates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. Any confidential information provided by the director shall not be made public pursuant to this subdivision. Notwithstanding any other provision of law, the disclosure of this information to the plan and to the executive officer shall not operate as a waiver of confidentiality. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Managed Health Care, the Director of the Department of Managed Health Care, the State Board of Optometry, the Medical Board of California, or any officer, agent, employee, consultant, or contractor of the state or the department or the boards for the

release of any false or unauthorized information pursuant to this section, unless the release of that information is made with knowledge and malice.

~~(k)~~

(l) Nothing in this section shall be construed as affecting the director's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390) of this chapter.

~~SEC. 2.~~

SEC. 3. Section 1395.3 is added to the Health and Safety Code, to read:

1395.3. Notwithstanding any other provision of law, a registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a nonoptometric corporation may do all of the following:

(a) Own a *specialized* health care service plan that provides *or arranges for the provision of* vision care services and share its profits.

(b) Contract for business services with, lease office space or equipment to or from, or share office space with, a *specialized* health care service plan that provides *or arranges for the provision of* vision care services.

(c) Jointly advertise vision care services with a *specialized* health care service plan that provides *or arranges for the provision of* vision care services.

~~SEC. 3.~~

SEC. 4. Section 1395.4 is added to the Health and Safety Code, to read:

1395.4. (a) A registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a nonoptometric corporation shall not engage in conduct ~~designed to~~ *that would* influence or interfere with the clinical decisions of an optometrist employed by, or who has contracted with, a specialized vision care ~~service~~ plan for fiscal or administrative reasons~~.~~*, including, but not limited to, the following:*

(1) Holding an optometrist responsible for the sale of, or requiring an optometrist to sell, the eyewear of a registered dispensing optician affiliated with the specialized vision care plan.

(2) Providing compensation to an optometrist for the sale of the eyewear of a registered dispensing optician affiliated with the specialized vision care plan.

~~(b) Pursuant to subdivision (g) of Section 1367, the~~

(b) The clinical decisions of an optometrist who is employed by, or who has contracted with, a specialized vision care ~~service~~ plan shall be unhindered by fiscal and administrative management. *of the plan and any affiliate of the plan.*

(c) An optometrist who has contracted with, or is employed by, a specialized vision care plan shall not be required by the plan to sell the eyewear of a registered dispensing optician affiliated with the specialized vision care plan.

(d) An optometrist who has contracted with, or is employed by, a specialized vision care plan shall not receive any compensation from the sale of eyewear by a registered dispensing optician affiliated with the specialized vision care plan.

(e) Notwithstanding any protocol established by a specialized vision care plan to meet patient and network access requirements, the specialized vision care plan may not set fixed quotas for the number of patients that a practitioner must treat in a particular time period.

(f) Any violation of this section shall subject the specialized vision care plan to the penalties that apply to health care service plans under this article.

(g) For purposes of this section, a "specialized vision care plan" shall mean a specialized health care service plan that provides or arranges for the provision of vision care services and that operates pursuant to Section 1395.3.

SEC. 5. Section 1395.45 is added to the Health and Safety Code, to read:

1395.45. (a) A specialized vision care plan affiliated with a registered dispensing optician shall not provide the registered dispensing optician with a copy of the patient record of any patient, except as permitted by applicable law.

(b) A specialized vision care plan affiliated with a registered dispensing optician shall, following receipt of the written authorization of a patient to release medical records, provide to a requesting optometrist formerly employed by the specialized vision care plan a copy of the medical record of the patient within 15 days of the request.

(c) A specialized vision care plan in violation of this section shall be subject to the fines and penalties set forth in Sections 56.35 and 56.36 of the Civil Code.

1 *(d) For purposes of this section, a "specialized vision care plan"*
2 *shall mean a specialized health care service plan that provides or*
3 *arranges for the provision of vision care services and that operates*
4 *pursuant to Section 1395.3.*
5 ~~SEC. 4.~~
6 *SEC. 6.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

O

Passed the Senate September 6, 2011

_____

Secretary of the Senate

Passed the Assembly August 25, 2011

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2011, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to add Section 40 to the Business and Professions Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, Price. Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

(d) Nothing in this section shall be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

Approved _____, 2011

_____

Governor

STATE AND CONSUMER SERVICES AGENCY EDMUND G. BROWN JR., GOVERNOR

STATE BOARD OF OPTOMETRY
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CALIFORNIA STATE BOARD OF OPTOMETRY

June 16, 2011

The Honorable Curren Price, Chair
Senate Business, Professions and Economic Development
State Capitol, Room 2057
Sacramento, CA 95814

RE: AB 778 - OPPOSE

Dear Senator Price:

The Board of Optometry (hereafter "Board") opposes Assembly Bill 778, sponsored by LensCrafters. This bill authorizes optical companies and dispensers to own Knox-Keene licensed health care service plans (HMOs) that provide optometric vision care inside optical dispensing stores, a practice that has been prohibited by existing Business and Professions Code (BPC) sections 655 and 2556 for decades. The bill would essentially provide an exemption to the BPC provisions for optical companies and dispensers who own or establish such Knox-Keene plans. Optical dispensers who cannot afford to create Knox-Keene plans, which are expensive to establish, would still be required to fully comply with the BPC restrictions. Profit-sharing between optical goods sellers and optometrists would also be permissible under the bill as well as advertising the services of optometrists in optical stores. Although the bill would also prohibit the optical dispenser from engaging in conduct designed to influence or interfere with the clinical decisions of optometrists, this is only a restatement of current law, which LensCrafters has violated in the past and to this day. AB 778 does not add any consumer protections that current vision care statutes and regulations don't already provide.

Although the Board understands LensCrafters' stated intent is to codify their current business practice of the "co-location model" (having optometrists co-located with optical dispensers in one place), the legality of this model has been litigated in the courts for nearly a decade, where the California Attorney General has asserted that LensCrafters is not complying with consumer protection laws. The evidence before the courts reveals that optometrists working inside of optical chain stores may not be providing the attention and care that each patient needs. Optometrists in these settings may skip important medical aspects of an eye exam that can detect serious eye and medical conditions, such as glaucoma, diabetes, hypertension, brain tumors, and multiple sclerosis, because the optical chain stores limit the amount of time an optometrist can spend with a patient, or examinations are too closely scheduled together by non-optometric staff. In LensCrafters' case they also: 1) place quotas on the number of medical procedures that optometrists must perform regardless of patient need; 2) require optometrists to write a minimum of 2-4 prescriptions for every patient regardless of patient need; 3) use optometrists' position of trust to influence patients to purchase more eyewear; 4) require optometrists to prescribe only the store's proprietary products whether or not they are the best products for the patient; and 5) tie optometrists' salaries to the amount of eyewear sales at the store. Moreover, patient confidentiality is not preserved, as patient records are shared with store employees so they can sell more eyewear. Instead of changing their business practices to comply with the current consumer protection laws, LensCrafters seeks to change the law in a manner that does not protect consumers, but will preserve their business practices for their own profitability.

Furthermore, the bill 1) places patient health and safety at risk; 2) permits a retail establishment to dictate the activities of professionals; 3) allows access to confidential patient records by the optical store staff, which may inappropriately be used to develop marketing strategies; and 4) violates the doctor-patient trust relationship to increase sales for optical stores.

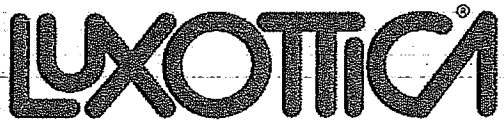
LensCrafters claims that this bill is for the convenience of consumers by providing a one-stop experience, and that consumers won't be able to tell the difference. That kind of reasoning is exactly why the Board opposes this bill. As a consumer protection agency, the Board is here to educate patients about who is giving them their eye examination and what drives clinical decision-making. If this bill becomes law,

patients will not be getting the appropriate care they need. All optometrists take an ethical oath to place patient safety above their own considerations of financial gain, but when optometrists are being pressured, even in subtle ways, by their retail store employer to increase profits, a patient's health can be compromised. An optometrist's main concern should be their patient's well being, not losing their job because they are being forced to meet sales quotas or commissions, and skimp on appropriate clinical evaluations.

Thank you for your consideration. If further information is needed, please contact Andrea Leiva, Policy Analyst at (916) 575-7182.

Sincerely,

MONA MAGGIO
Executive Officer



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June 19, 2011

Dr. Lee Goldstein, O.D., M.P.A, Chair
California Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834

Re: AB 778

Dear Dr. Goldstein,

I understand that Board Members have been asked to discuss and possibly take a position on Assembly Bill (AB) 778. To facilitate such discussions, the Board has been given a Memo that purports to address how AB 778 will affect current law and what the California Attorney General's office asserts are "findings" and "undisputed facts" of importance to the Board's consideration of AB 778. Because the mission of the Board of Optometry is to serve the public's interest, I write to point out fundamental misstatements and inaccuracies in the publicly available Memo that could unduly interfere with full and accurate consideration of AB 778 and the benefits it could offer to the public.

I respectfully request consideration of the information addressed in this letter. Rather than responding to each and every point made in the Memo, this letter will address the 3 key misimpressions that the Memo invites. It will also set forth, as point 4, a more complete description of AB 778 and the benefits it can afford California consumers and optometrists.

1. <u>It Is Not Accurate to Say Optical Companies Have Been Violating the Law</u>

The Memo at page 2 states that various provisions of California law (Business & Professions Code sections 655 and 2556) are being violated by large optical companies such as LensCrafters and Pearle Vision, Inc. This is inaccurate and extremely misleading. ***No court has ever found LensCrafters or Pearle Vision to be in violation of sections 655 and 2556.*** To the contrary, it is the confusion that these existing laws have created with respect to the co-location of vision service Knox-Keene plans with optical companies that prompted AB 778 in the first place.

Since at least 1986, numerous optical companies, such as LensCrafters, have associated with Knox-Keene health care service plans which employ or contract with optometrists. Other optical companies who have at some point since 1986 affiliated with Knox-Keene plans include Pearle Vision, National Vision, Sterling Optical, and Site for Sore Eyes. The Memo suggests that these optical

companies intentionally violated the law when they co-located with affiliated Knox-Keene plans. This is not true. Numerous California agencies during the same time period, including the Department of Managed Health Care (DMHC), the Department of Corporations, the Medical Board, and the Board of Optometry, viewed these arrangements as lawful. ***Not only have these state agencies known about such relationships, they have continued to license, register and renew these businesses with these co-location arrangements for over 20 years.***

AB 778 seeks to clarify law so that consumers can continue to be served with a variety of options for optical care. It does not, as the Memo suggests, seek to continue or foster unlawful conduct.

2. No Court, Nor the Attorney General, Has Made the "Findings" referenced in the Memo

The Memo cites various "findings" by the Attorney General purportedly to support an argument that the co-location permitted by AB 778 will be harmful to consumers. Those "findings" are taken from a document submitted by the Attorney General in the *NAOO v. Harris* action purporting to set forth "undisputed facts." ***The court submission on which the Memo relies, however, contains neither "findings" nor "undisputed" facts.*** The Attorney General did not conduct a study or investigation to develop such "findings." More strikingly, the trial court, after reviewing all the evidence submitted in the case, rejected what is being described as "findings" and ***repeatedly held that there was "no evidence"*** in the record of any harm to consumers when optical stores are permitted to co-locate with optometrists employed by Knox-Keene plans. One cannot rely on the "findings" in the Memo as accurate or complete statements of the facts.

For example, government officials in California testified that the quality of care was not lessened when optometrists co-locate with optical chains under the Knox-Keene model. One of the Attorney General's own witnesses, David Thornton, who spent 30 years at the California Medical Board and was Chief of Enforcement, testified that he had seen ***"a distinct lack of patient harm"*** resulting from the proscribed relationships between optometrists and opticians under the Knox-Keene model, and he even questioned "why we regulate this particular industry [the prescription eyewear business] to begin with."

The California Department of Consumer Affairs (DCA) likewise found in its 1982 report "Commercial Practice Restrictions in Optometry" that there is "no evidence that examination quality is worse when optometrists are corporate employees . . . ." (DCA's 1982 report "Commercial Practice Restrictions in Optometry"). As the DCA noted, "[t]he State . . . takes the extreme measure of literally banning a form of practice with clearly demonstrated and major economic benefits to consumers, and with probable health-related advantages as well . . . ." The DCA thus recommended eliminating the laws that are challenged in the *NAOO* action, concluding that "[i]n sum, the web of corporate practice regulations works unevenly and inconsistently; rests on premises which are unproven, demonstrably false, or are contradicted by evidence of how corporations operate in fields other than optometry; avoids known consumer abuses; and operates effectively in only one consistent way — stifling competition."

It was on the basis of this evidence that the trial court repeatedly concluded that ***"there is no evidence that the quality of eye care varies by practice setting."*** *NAOO,* 463 F. Supp. 2d 1116, 1136 (E.D. Cal. 2006). The trial court's determinations of "no harm" have never been overturned and remain valid to this day.

This same evidence demonstrates the inaccuracy of the statement in the Memo that optical chains can "get away with providing lower quality eye exams, and high priced eyewear" because patients "are not knowledgeable enough" to know whether they received a quality eye exam. ***The independent, unbiased government agencies studying this issue determined that consumers do not receive lower quality exams in the co-located model.*** Indeed, the FTC's findings were based on the investigations of individuals who were trained and instructed about what constituted a quality eye exam.

Finally, although the Memo describes purported practices that allegedly interfered with the ability of optometrists to exercise their professional judgment, that assertion was contested and, importantly, ***rejected*** by the trial court when it determined that there is "no evidence which links the complained of practices to actual harm to the public's health." *Id.* Moreover, as discussed below, AB 778 contains specific provisions that prohibit the practices set forth in the Memo to the extent there are any lingering concerns that those practices will take place if AB 778 is enacted.

3. <u>The Memo Contains Numerous Factual Inaccuracies About Optical Companies and the Impact They and AB 778 Will Have on the State of California</u>

It is important that the Board's policy consideration of AB 778 be based on facts and so I must highlight several inaccuracies in the Memo.

- **Our organization is deeply concerned about the comments made by the board staff related to the quality of care provided by optometrists who practice in co-located environments.**

  It is disturbing that statements related to the quality of an eye exam are made without evidence, particularly by a regulatory body. There has never been an investigation by the Board of Optometry that found the level and quality of service has harmed patients at co-located facilities. Additionally, the optometrists working in co-located facilities meet and exceed the standards for optometric care, and many have graduated from California based schools.

  Furthermore, the actual evidence before the trial court demonstrated otherwise. The Federal Trade Commission (FTC) conducted a series of studies between 1980 and 1989 of markets that permit co-location of optometrists and optical chains and those that do not, and determined that "the record is quite clear" that "[t]here is no difference in the average quality of care available to consumers" between those markets. 54 Fed. Reg. at 10290-91.

- The memo also points out that doctors must accept walk-ins. **Accessibility to eye exams is critical to consumer eye health.** The location and extended hours of operation for a typical optometric office in a co-located model and the fact that they DO accept walk-ins, should be applauded by the Board. The Board's concern is patient protection and access to care. The accessibility afforded by this model means more patients receive quality eye exams.

- There are assertions in the Memo that a co-location model requires quotas and financial incentives. These assertions are made based on years old allegations by the Attorney General's office that the court did not substantiate during those cases. Furthermore, AB 778 specifically addresses and ensures that conduct such as quotas and financial incentives are prohibited.

- The Memo suggests in several places that if optical companies are permitted to co-locate under the Knox-Keene model pursuant to AB 778 that the impact will be "fewer private optometrists and fewer opportunities for employment for optometrists" and that "[j]obs will be lost no matter what."

  AB 778 preserves the *status quo* under which optical companies have been co-located with Knox-Keene plans for the past three decades. There has been no adverse affect on the optometric market during that time period, and there will be no adverse affect if the Knox-Keene model continues. In fact, after more than 25 years of co-located facilities operating in California, private optometric offices still account for roughly 90 percent of the optometrists in practice. Any suggestion to the contrary is based on a fundamental misconception of AB 778.

- The Memo states on page 5 that "LensCrafters operates stores in Canada where they do not have optometrists located on the same premises." That is false. Under the laws of all ten provinces in Canada, an optical store is permitted to sublease space directly to an optometrist — a manner of co-location prohibited by California. LensCrafters therefore subleases space to optometrists at all of its stores in the Canadian provinces in which it operates.

- The Memo represents on page 7 that "Pearle Vision, Inc. has recently been sued for exerting control over optometrists in three Texas lawsuits." There were lawsuits filed several years ago, not recently, but those suits have long-since been dismissed. In Texas, unlike in California, optical companies are free to sublease space to optometrists next to optical stores. The lawsuits had nothing to do with the clinical judgment of optometrists in treating patients in the subleased space. Rather, the suits deal with a provision in sublease agreements between Pearle and individual optometrists regarding the hours of operation for the particular locations. None of these suits resulted in any finding of improper conduct.

- The Memo states on page 2 that Pearle Vision, Inc. is currently "clearly violating" California law. Please note that Pearle Vision has not operated in California for several years, much less in clear violation of the law.

4. AB 778 Benefits Consumers and Optometrists

AB 778 seeks to preserve the co-location model under which quality eye care and eyewear have been offered to California consumers for the last 25 years. ***During that period, including the period where lawsuits have been progressing, numerous state agencies, including the Board of Optometry, have provided oversight at various levels and none have ignored the health and well-being of Californians*** year after year since 1986 when co-located optical chains and Knox-Keene plans first came into existence. Instead, since 1986, managed healthcare in California has matured, and the state has found effective ways to ensure quality care at affordable prices, that protects a doctor's clinical judgment. Additionally, the co-location model employs and contracts with hundreds of doctors and associates that are providing quality care to thousands of patients.

The Board of Optometry's first concern is with the protection of the consumer as well as the consumer's access to optometry services. The convenience of the co-location model has made optometry services accessible to millions. There are hundreds of incidences where the convenience and accessibility of the model has caught or prevented life threatening diseases in patients that might not otherwise see an eye doctor. The convenient hours and accessible locations allow families and individuals to see an optometrist when and where it is convenient for them. This level of access is important to detecting eye disease, as well as other potentially life threatening issues.

AB 778 also benefits optometrists. We understand many of our doctors prefer the option of being employed versus opening and managing their own practice. In the materials provided to the Board, the various models are discussed. A key comment in the materials highlights that private optometry is becoming less attractive to practitioners. The co-location models have been providing an employment option that allows optometrists to practice optometry without the up-front capital costs and risk of opening their own office. The flexibility of practicing in an HMO setting is not unique to optometry and has become an attractive choice to many doctors and medical practitioners across disciplines. AB 778 protects this increasingly attractive employment option for optometrists while further protecting a doctor from financial influence by the eyewear company in a co-located setting.

Healthcare in California has changed significantly over the past 30 years, and AB 778 reflects those changes. Healthcare plans play a vital role in the integration of healthcare services on all levels. As we see health reform move forward, it will be critical for California to preserve and embrace the relationships between health plans and providers. The co-location model has a long history of providing this integration to patients to meet their eye care and eyewear needs. The access that has been available and provided to millions of Californians through this model will help demonstrate how California will meet the challenge of healthcare reform for the millions of new enrollees.

We are sensitive to the concerns of the Board related to the relationship of the doctor to the retail location. We have proposed the attached amendments to address these concerns and would like to discuss these in full at the Board meeting. To summarize, these amendments:

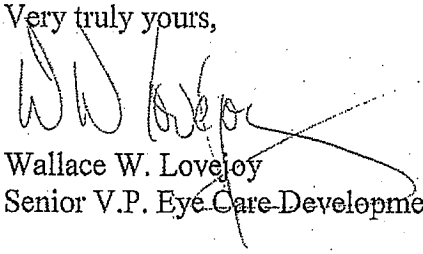
- Prevent quotas that require a doctor to see a certain number of patients.
- Prevent any financial relationships between retail and the doctor.
- Continue to protect patient records.
- Increase communication between the DMHC and the Board of Optometry.

It is critical to patient care and doctor relations to preserve the clinical judgment of all optometrists employed or contracted under the co-location model. We welcome the opportunity to discuss these amendments with the Board and to address these important issues.

AB 778 as amended will increase doctor protections in a co-located model, preserve optometry services to millions of consumers and continue to provide a choice to optometrists who do not choose to practice in a private practice environment.

We look forward to discussions at the Board meeting on June 21st and to answer any questions related to AB 778.

Very truly yours,



Wallace W. Lovejoy
Senior V.P. Eye Care Development

Cc: Members of the Board of Optometry
Mona Maggio, Executive Office
Andrea Leiva
Michael Santiago, Attorney
Assembly Member Toni Atkins
Senator Curren Price, Senate Business, Professions, and Economic Development

Agenda Item 10, Attachment 5

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Assembly
California Legislature

TONI ATKINS
ASSEMBLYMEMBER, SEVENTY-SIXTH DISTRICT
MAJORITY WHIP

COMMITTEES
VICE CHAIR, HOUSING AND COMMUNITY DEVELOPMENT
GOVERNMENTAL ORGANIZATION
HEALTH
JUDICIARY
VETERANS AFFAIRS

SELECT COMMITTEES
CHAIR, SELECT COMMITTEE ON HOMELESSNESS
BIOTECHNOLOGY
SAN DIEGO TRADE, TOURISM, AND JOB CREATION
HEALTHCARE, WORKFORCE AND ACCESS TO CARE
PORTS
AEROSPACE

July 25, 2011

Dr. Lee Goldstein, O.D., M.P.A., Chair
California Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834

Re: AB 778

Dear Dr. Goldstein,

I am writing concerning the letter I understand was sent to Senator Price on June 16, 2011 from the Board of Optometry regarding a bill I authored, Assembly Bill 778. For the following reasons, I respectfully request that the Board withdraw the letter.

At my request, AB 778 has now been converted to a two-year bill. I proposed the extended time on the bill after hearing from the Attorney General that she believed the bill was premature given the pendency of litigation to resolve the constitutionality of existing laws, Business & Professions Code sections 655 and 2556. With this new, two-year time frame, all interested parties, including the Board of Optometry, will have time to consider all of the relevant information regarding the strength of the bill. This would include amendments that have recently been proposed that I understand were not before the Board when its letter was drafted.

The letter contains numerous inaccuracies that I would think the Board would want to correct before further dissemination. There are, for example, statements about cases purportedly brought by the Attorney General that do not appear accurate. The letter also asserts that LensCrafters engages in particular business practices that have not been substantiated by any court and about which LensCrafters vehemently disputes. I understand that the Board learned about these inaccuracies directly on June 21 from a representative of LensCrafters, and also received a letter dated June 19 from the LensCrafters representative explaining why such assertions in the Board's letter were inaccurate. I hope the Board would fully consider this material and take these inaccuracies seriously as it moves forward.

More time will also avoid the confusion and procedural issues that I understand surrounded the submission of the Board's June 16 letter and the Board's first discussion on the topic at the Board hearing on June 21. Given the questions that have been raised regarding the inaccuracies, the recent amendments and two year

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MEMORANDUM

TO: Kathryn Scott

CC: Joe Neville
Wally Lovejoy
Patrick Phelan

FROM: Lori Schechter
Rebekah Kaufman

DATE: June 24, 2011

FILE: 58534/4

RE: False or Misleading Statements in the Board of Optometry Letter dated June 16, 2011

At my client's request, I prepared this analysis based upon my knowledge of LensCrafters and EYEXAM, and of relevant cases that have been filed in California. What follows is a list of statements in the Board of Optometry's Letter to Senator Price of June 16 that are false or misleading, and an explanation of why such statements are false or misleading.

Statement from the Letter (page 1; paragraph 1)

"This bill authorizes optical companies and dispensers to own Knox-Keene licensed health care service plans (HMOs) that provide optometric vision care inside optical dispensing stores, a practice that has been prohibited by existing Business and Professions Code (BPC) sections 655 and 2556 for decades."

Why this Statement is False or Misleading

- This statement is false because this "practice" has ***not*** been prohibited by existing law. ***No court*** has determined that this practice violates sections 655 and 2556.

- Numerous state agencies have licensed, registered and renewed this practice, ***with full knowledge of this practice***, for multiple optical companies ***for decades***. The statement as written suggests that these state agencies — the Department of Managed Health Care, the Department of Corporations, the Medical Board and the Board of Optometry, itself — sanctioned widespread violations of California laws for decades.

- Although ***multiple*** optical companies have engaged in this practice for over 20 years, the Attorney General sued ***only one*** such company, Pearle Vision, with a legal claim that this practice is prohibited by sections 655 and 2556. The Attorney General resolved this one case, without obtaining any ruling from the court that this practice did, in fact, violate sections 655 and 2556, and without any requirement that this company cease engaging in this practice. That the Attorney General ***may some day*** choose to file additional lawsuits against other optical companies with legal claims

status of the bill, I believe it would be prudent to withdraw the letter at this time. That would allow the Board a full opportunity to consider the strength of the bill, the recently filed amendments, and any further materials that the Board may wish to review to ensure the accuracy of letters the Board submits to Members of the California Legislature. I believe the Board has an obligation to be very thoughtful about statements it makes and information it provides to the public. Understanding the longer timeline provided I hope the Board will reconsider its letter and its position.

I authored AB 778 to provide certainty to a model that has been operating for over two decades. Millions of patients have received quality eye exams that they may not have received if it weren't for the accessibility and convenience of the co-location model. This model should continue in California. I look forward to discussing the board's concerns so that we can address them in this bill.

Sincerely,

TONI ATKINS
Assemblymember, 76th District

cc: Mona Maggio, Executive Office Board of Optometry
Senator Curren Price, Senate Business, Professions, and Economic Development

that this practice violates sections 655 and 2556 does not save the misleading statement in this sentence.

Statement from the Letter (page 1, paragraph 1)

"Although the bill would also prohibit the optical dispenser from engaging in conduct designed to influence or interfere with the clinical decisions of optometrists, this is only a restatement of current law, which LensCrafters has violated in the past and to this day."

Why this Statement is False or Misleading

- For the reasons articulated above, it is false to say that LensCrafters has violated current law in the past and to this day. No court, has ever found (a) that LensCrafters has violated current law, or (b) that LensCrafters has engaged in conduct designed to influence or interfere with the clinical decisions of optometrists.

- The Attorney General has never filed a lawsuit against LensCrafters claiming that (a) LensCrafters has violated current law or that (b) LensCrafters has engaged in conduct designed to influence or interfere with the clinical decisions of optometrists.

- The false and misleading statements in this sentence demean the value that should be ascribed to a company that seeks to support a new bill that would continue the consumer protection benefits of existing law by "prohibit[ing] the optical dispenser from engaging in conduct designed to influence or interfere with the clinical decisions of optometrists."

Statement from the Letter (page 1; paragraph 1)

"AB 778 does not add any consumer protections that current vision care statutes and regulations don't already provide."

Why this Statement is False or Misleading

- This is a false statement. Recent amendments that have been added to AB778 expressly prohibit behaviors that are not expressly prohibited in current law. While most may believe current law prohibits such behaviors, including express prohibitions in the law is, in fact, a value added for consumer protection. Those specific prohibitions include:

    - "Holding an optometrist responsible for the sale of, or requiring an optometrist to sell the eyewear of a registered dispensing optician affiliated with the plan"

    - "Providing compensation to an optometrist for the sale of the eyewear of the registered dispensing optician affiliated with the plan"

- Providing to "an optometrist contracted with or employed by the plan . . . any compensation from the sale of eyewear by the registered dispensing optician affiliated with the plan"

- Setting "fixed quotas for the number of patients that a practitioner must see in a particular time period"

Statement from the Letter (page 1; paragraph 2)

"Although the Board understands LensCrafters' stated intent is to codify their current business practice of the 'co-location model' (having optometrists co-located with optical dispensers in one place), the legality of this model has been litigated in the courts for nearly a decade, where the California Attorney General has asserted that LensCrafters is not complying with consumer protection laws."

Why this Statement is False or Misleading

- This statement is misleading because the California Attorney General has never brought a lawsuit against LensCrafters challenging the legality of LensCrafters' "co-location model" or asserting that LensCrafters is not complying with consumer protection laws.

- As noted above, the only lawsuit by the Attorney General challenging the legality of the "co-location model" was the suit the Attorney General filed against Pearle Vision. The Attorney General resolved this one case over 5 years ago without obtaining any ruling from the court that co-location did, in fact, violate the law, and without any requirement that Pearle Vision cease engaging in this practice.

Statement from the Letter (page 1; paragraph 2)

"The evidence before the courts reveals that optometrists working inside of optical chain stores may not be providing the attention and care that each patient needs."

Why this Statement is False or Misleading

- This statement is misleading because it implies that there were several courts that reviewed evidence. That is false.

- This statement purports to characterize the evidence in a manner at odds with how the court actually described the evidence. The court's ruling found that patient care and the attention given by optometrists working inside of optical chain stores was of the same quality as that given by private dispensing optometrists.

Statement from the Letter (page 1; paragraph 2)

"Optometrists in these settings may skip important medical aspects of an eye exam that can detect serious eye and medical conditions, such as glaucoma, diabetes, hypertension, brain tumors, and multiple sclerosis, because the optical chain stores limit the amount of time an

optometrist can spend with a patient, or examinations are too closely scheduled together by non-optometric staff."

Why this Statement is False or Misleading

- This statement is misleading because it implies that EYEXAM and/or LensCrafters have limited the amount of time that an optometrist can spend with a patient or the thoroughness of the exam. This is false. EYEXAM optometrists have ***never*** been limited in the amount of time they can spend with a patient or in the thoroughness of the exam, even if a complete and thorough examination required the optometrist to continue the exam beyond the time scheduled for the next exam.

Statement from the Letter (page 1; paragraph 2)

"In LensCrafters' case they also: 1) place quotas on the number of medical procedures that optometrists must perform regardless of patient need; 2) require optometrists to write a minimum of 2-4 prescriptions for every patient regardless of patient need; 3) use optometrists' position of trust to influence patients to purchase more eyewear; 4) require optometrists to prescribe only the store's proprietary products whether or not they are the best products for the patient; and 5) tie optometrists' salaries to the amount of eyewear sales at the store.

Why this Statement is False or Misleading

- This statement is false. For instance, LensCrafters has ***never*** placed quotas on the number of medical procedures that optometrists must perform regardless of patient need, and EYEXAM has clinical quality of care protocols approved by the Quality Assurance Committee, including the Medical Director, and reviewed and audited by the DMHC to ensure that patients receive appropriate care. LensCrafters has ***never*** required optometrists to write a minimum number of 2-4 prescriptions for every patient, and EYEXAM has clinical protocols to ensure that patients get the prescriptions appropriate to their needs as determined by the optometrist based upon his or her clinical professional judgment. LensCrafters and EYEXAM have ***never*** required optometrists to prescribe only the store's proprietary products whether or not they are the best products for the patient, and neither has ***ever*** tied optometrists' salaries to the amount of eyewear sales at the store. The implication that LensCrafters' uses optometrists' position of trust to influence patients to purchase more eyewear is thus grossly inaccurate and highly misleading.

Statement from the Letter (page 1; paragraph 2)

"Moreover, patient confidentiality is not preserved, as patient records are shared with store employees so they can sell more eyewear."

Why this Statement is False or Misleading

- This statement is false. Patient medical records have ***never*** been shared with LensCrafters' store employees so they can sell more eyewear. Patient records were

only shared consistent with privacy laws and solely when necessary to serve the needs of a patient.

Statement from the Letter (page 1; paragraph 2)

"Instead of changing their business practices to comply with current consumer protection laws, LensCrafters seeks to change the law in a manner that does not protect consumers, but will preserve their business practices for their own profitability."

Why this Statement is False or Misleading

- This statement is patently false and defamatory, and LensCrafters vehemently objects to the implication that AB 778 does not protect consumers and that such protections are not a priority for LensCrafters. LensCrafters fully supports each of the amendments to AB 778 that have been included to alleviate any consumer-protection concerns, and has expressly welcomed revisions and comments from the Board of Optometry and COA that would address any lingering concerns.

Statement from the Letter (page 1; paragraph 3)

"Furthermore, the bill 1) places patient health and safety at risk; 2) permits a retail establishment to dictate the activities of professionals; 3) allows access to confidential patient records by the optical store staff, which may inappropriately be used to develop marketing strategies; and 4) violates the doctor-patient trust relationship to increase sales for optical stores."

Why this Statement is False or Misleading

- This conclusory and declaratory statement is false. Based on the absence of any procedures followed by the Board of Optometry in preparing this letter, it is not clear on what basis the Board can assert these unsupported assertions.

- The bill does not include any language or policy that would:

  - place patient health and safety at risk
  - permit a retail establishment to dictate the activities of professionals
  - allow access to confidential patient records by the optical store staff
  - violate the doctor-patient trust relationship to increase sales for optical stores.

Statement from the Letter (page 1 and 2; paragraph 4)

"LensCrafters claims that this bill is for the convenience of consumers by providing a one-stop experience, and that consumers won't be able to tell the difference. That kind of reasoning is exactly why the Board opposes this bill. As a consumer protection agency, the Board is here to educate patients about who is giving them their eye examination and what

drives clinical decision-making. If this bill becomes law, patients will not be getting the appropriate care they need."

Why this Statement is False or Misleading

- The first sentence regarding what "LensCrafters claims" is a false statement. LensCrafters did not claim that "consumers won't be able to tell the difference."

- The first sentence is also misleading. LensCrafters has publicly stated that AB 778 will maintain the status quo. That is far different from what the statement implies when it combines the assertion that "consumers won't be able to tell the difference" with the conclusion that "[i]f this bill becomes law, patients will not be getting the appropriate care they need." It erroneously suggests that LensCrafters hopes that consumers won't be able to tell that they are not getting the appropriate care they need.

- The second sentence regarding the "kind of reasoning" that explains "why the Board opposes this bill" is a false statement. Since "the Board" did not take a formal position opposing the bill, it is false to suggest the reasons that led the Board to take its position.

Statement from the Letter (page 2; paragraph 4)

"An optometrist's main concern should be their patient's well being, not losing their job because they are being forced to meet sales quotas or commissions, and skimp on appropriate clinical evaluations."

Why this Statement is False or Misleading

- This statement is misleading because the language of AB 778 expressly prohibits an optometrist from being forced to meet sales quotas or commissions, or from skimping on appropriate clinical evaluations.

Conclusion

The false and misleading statements identified above exemplify how inappropriate it is to let a letter like this stand. The Board of Optometry did not engaged in a full formal decision-making process. The discussion was rushed and board members were not given a chance to carefully review the materials provided in a timely manner. Furthermore, the statements made in the letter suggest the board reviewed the model carefully and made specific determinations about the services provided. The board did not examine exactly what practices LensCrafters has engaged in over decades of service in the State, as is suggested by the letter.

The Board is tasked with serving the needs of the public. This letter makes inaccurate and misleading statements about the nature and quality of services provided in the co-location model. This type of information will not help improve the dialogue about AB 778, a bill that

will increase regulation and oversight in co-location models. The Board of Optometry must reconsider the information about the bill and their letter as the bill moves forward.

August 11, 2011

Dr. Lee Goldstein, O.D., M.P.A, Chair
California Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834

Re: AB 778 Position letter

Dear Dr. Goldstein,

We have reviewed the Board's letter to Senator Price dated June 16, 2011 opposing AB 778. As you know, the first time we saw the letter was at the Board meeting on June 21. In addition to the testimony and comments we presented at that meeting, which were based on the publically available information as of June 20, we have significant concerns about the reasoning for the Board's position as stated in the letter, as well as the many incorrect statements in this letter that are presented as facts. We also are troubled by the process by which the letter was created by staff and sent to Sen. Price before public comment and review by the Board. We respectfully request that the Board reconsider its comments and withdraw the letter. We are prepared to work with the Board of Optometry to evaluate whether any additional statutory changes may be necessary to allow the Board to implement its functions and responsibilities.

To our knowledge, and based on the reports of the Department of Consumer Affairs to the legislature, there is no pattern of complaints to the Board about eye care or optometric issues at co-located Knox-Keene plan offices. Nor is there any reason to believe that the public health, safety and welfare is not adequately regulated by the Board. In the 25-year history of the co-location arrangement between EYEXAM of California ("EYEXAM") and LensCrafters, we are not aware of a single instance where the Board has determined that the policies and procedures of EYEXAM violated California law, hindered the delivery of quality optometric care or otherwise put the public at risk. Nor are we aware of any finding by the Board of Optometry, Medical Board or the Department of Managed Health Care that LensCrafters has violated California law or interfered with the professional judgment of any optometrist employed by or contracting with EYEXAM or any other Knox-Keene licensed health care service plans.

Despite this excellent record, the Board's letter to Sen. Price attacks the long-standing, consumer-friendly and high quality co-location arrangement between EYEXAM and LensCrafters based on a number of statements of law and alleged fact that are simply wrong. To begin, the Board's claim that ownership of a vision care plan by an optical company is prohibited by sections 655 and 2556 of the Business & Profession Code is incorrect. The law is currently silent about this relationship. While optometrists are not permitted to work for an optical dispenser, the law makes clear that an optometrist may be employed by or contract with a Knox-Keene plan. Ownership of a Knox-Keene plan by an optical company has been accepted as legal for over 2 decades (and is the model used by VSP as well as EYEXAM). No legal suits related to this model have resulted in any finding or ruling of illegality and all legal suits related to this model have been settled with no significant change to the model. AB 778 was

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introduced to address the legal ambiguity that arose as a result of the lack of specificity about the ownership structure that has been used and accepted since 1986. This bill would further strengthen the regulation of the co-location model, which has served the public well for over 25 years in California.

The most critical concern is the description of our business model. The provision of services to patients seen in our EYEXAM facilities has been regulated carefully by the DMHC for decades. We would be happy to review the history and substance of those audits with the Board upon your request. The doctors who work for EYEXAM provide a comprehensive exam pursuant to quality standards set by doctors (not by LensCrafters) using quality equipment to ensure accuracy in these exams and subject to regular quality assurance committee audits. Appointment times are set using professional standards and doctors are never discouraged by anyone (including LensCrafters associates or EYEXAM managers) from taking the time needed to provide a thorough exam. In fact, they take whatever time is necessary to service the needs of each patient. We invite board members to visit any location and compare the care provided with any other model in California to ensure that patients are receiving the highest standard of care. The statements in the board's letter related to the care provided in a co-location model were apparently based on statements made by a disgruntled former employee in a legal matter from ten years ago. These allegations were never proven to be true. More importantly, as stated in our June 19th letter to the board, no division or branch of our company (including EYEXAM and LensCrafters) requires quotas for doctors, requires doctors to write a minimum number of prescriptions, or abuses the trust of our patients to promote eyewear sales. If there was ever evidence that an associate of the company had attempted to improperly influence the professional judgment of an optometrist employed by or contracting with EYEXAM of CA, that associate would be subject to corrective action, up to and including termination of employment. To state otherwise would be wrong.

When the legislative sub-committee for the Board discussed AB 778, staff was instructed to discuss how this bill could be strengthened to ensure a doctor's clinical decision making was protected under the model and how the Board of Optometry could further work with the Medical Board and the DMHC to enforce the provisions of the bill. Unfortunately, those conversations never occurred. The current version of the bill further details the prohibitions and protections to protect the public and preserve the best clinical decision-making by a licensee. We are open to discussions with the Board related to any concerns about how best to do that. **AB 778 will provide the Board with a framework to regulate the co-location model.** Additionally, some have suggested that in California there may be other models to provide co-located eye care and eyewear to Californians that we are prepared to work with the Board to evaluate, although we are not aware of any other viable options.

In closing, our company has been available to work with the Board for decades. At no time has the Board lodged a formal complaint against our company. The Board has never shown a pattern of patient safety concerns, nor have they shown a pattern of interference with clinical decision making in the co-location model. The concerns in the Board's letter are not based on concerns that the Board has discussed or pursued in previous board actions. If the Board has concerns about the impact of the co-location model, AB 778 as amended would allow the Board to regulate and enforce against these concerns, specifically any concerns related to clinical decision making and consumer protections.

LUXOTTICA

Lastly and most importantly, on behalf of the company and our doctors, we take great exception to the statements related to the quality of care provided in our facilities. We have provided quality care to millions of patients in California. The co-location model is closely regulated to ensure that quality of care provided to patients, which is not done as regularly for private optometry. Years of audits by DMHC show that the level of services provided meet or exceed industry standards. The board has no basis for its statement that patients will not be receiving the appropriate care they need under this model. This statement is misleading, irresponsible and must be corrected. We, again, respectfully request that the Board reconsider its comments and withdraw the letter.

We continue to be open to conversations with the board about AB 778. We would like to discuss the Board's letter with you, if possible on August 17th or 18th. Furthermore, we invite board members to visit our locations to see the level of care provided. AB 778 is designed to codify doctor and patient protections, while providing a framework for regulating the co-locations model. This should be in line with the mission and goals of the Board of Optometry.

I look forward to talking soon. Please contact me personally at (513) 765-6340 or wlovejoy@luxotticaretail.com.

Sincerely,

Wallace W. Lovejoy
Senior VP, Eye Care Development

Cc: Members of the Board of Optometry
Mona Maggio, Executive Office
Andrea Leiva
Michael Santiago, Attorney
Assembly Member Toni Atkins
Senator Curren Price, Senate Business, Professions, and Economic Development
Kathryn Scott, legislative representative for Luxottica

Agenda Item 10, Attachment 7

CALIFORNIA STATE BOARD OF OPTOMETRY

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

August 16, 2011

The Honorable Toni Atkins
California State Assembly
State Capitol
10th & L Streets
Sacramento, CA 95814

RE: AB 778

Dear Assembly Member Atkins:

This letter is written to clarify the June 16, 2011 letter previously sent to the Chair of the Senate Business, Professions and Economic Development Committee, and signed by Mona Maggio, Executive Officer of the California State Board of Optometry. Certain comments were made about LensCrafters in this letter; however, in no way does the Board represent that any court of law has adjudicated that in fact, LensCrafters has violated sections 655 or 2556 of the Business and Professions Code.

Thank you for your consideration.

Mona C. Maggio
Executive Officer

cc: Senate Business, Professions & Economic Committee
Senate Minority Consultants
Board of Optometry
Michael Santiago

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members **Date:** September 16, 2011

From: Andrea Leiva
Policy Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 11– Discussion and Possible Action to Amend Business and Professions Code (BPC) §3070, Notice of Address for Practice of Optometry; Exemptions, §3075, Posting of License; Fee for Evidence of Licensure and CCR §1506 Certificates Posting**

This agenda item will be discussed at a future board meeting.

Memo

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

To: Board Members **Date:** September 16, 2011

From: Dr. Lee Goldstein, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 12– 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:

Memo

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

To: Board Members **Date:** September 16, 2011

From: Dr. Lee Goldstein, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 13– Suggestions for Future Agenda Items**

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

Memo

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

To: Board Members **Date:** September 16, 2011

From: Jessica Sieferman
Probation Monitor **Telephone:** (916) 575-7178

Subject: **Agenda Item 14A – Petition for Reduction of Penalty and Early Termination of Probation**

Dr. James Stuart Herzman, O.D did not file a Petition for Reduction of Penalty and Early Termination of Probation in time for this Board meeting.

Memo

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

To: Board Members **Date:** September 16, 2011

From: Jessica Sieferman
Probation Monitor **Telephone:** (916) 575-7178

Subject: **Agenda Item 14B – Petition for Reduction of Penalty and Early Termination of Probation**

The State Board of Optometry is being asked to consider the following Petitions:

Reduction of Penalty or Early Termination of Probation of:

Dr. Lisa Breen, O. D.

The Board is asked to grant or deny the petition after considering the facts presented at the hearing.

Deputy Attorney General, Anahita Crawford, will represent the interest of the public's health, safety and welfare, provide the petitioner's license history, as well as help the Board obtain the information it needs to evaluate the petition to reduce penalties or terminate probation.

The Board Members may ask questions, which should be simple and to the point and directed toward rehabilitation and assessing ability to practice safely, either with or without conditions. As stated in the California Code of Regulations (CCR), Section 1516, the criteria for determining whether a petitioner has shown rehabilitation is as follows:

CCR§ 1516. **Criteria for rehabilitation**

(a) When considering the denial of a certificate of registration under Section 480 of the Code, the Board, in evaluating the
rehabilitation of the applicant and his/her present eligibility for a certificate of registration, will consider the following criteria:
(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
(5) Evidence, if any, of rehabilitation submitted by the applicant.
(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:
(1) Nature and severity of the act(s) or offense(s).
(2) Total criminal record.
(3) The time that has elapsed since commission of the act(s) or offense(s)
(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
(6) Evidence, if any, of rehabilitation submitted by the licensee.
(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

An Administrative Law Judge will sit with the Board and preside over the hearing to maintain order, determine admissibility of documents, assist the Board during closed session and write the Board's decision.

If the Board decides to deny the Petition, it must state its reasons for doing so.

Behind Dr. Breen's Petition is the Probation Compliance Report, summarizing Dr. Breen's compliance throughout her first year of probation. Following the Probation Compliance Report is a copy of the Stipulated Settlement and Disciplinary Order.

State of California Department of Consumer Affairs

Board of Optometry
2420 Del Paso Road, Suite 255
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www.optometry.ca.gov

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PETITION FOR REDUCTION OF PENALTY OR EARLY TERMINATION OF PROBATION

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
Lisa	Elizabeth	Breen	14075 TLG
2. ADDRESS (NUMBER) (STREET)			DATE OF BIRTH
6670 Ambrosia Ln. #512			11-27-79
(CITY) (STATE) (ZIP CODE)			TELEPHONE
Carlsbad, CA 92011			(510)710-0392

3. PHYSICAL DESCRIPTION (HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
5'4"	115	Blue	Blonde

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED

NAME OF SCHOOL: UC Berkeley School of Optometry

ADDRESS (NUMBER) (STREET): 397 Minor Hall

(CITY) (STATE) (ZIP CODE): Berkeley, CA 94720

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? ☐ YES ☒ NO

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license. Not Applicable

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
None			

7. Are you or have you ever been addicted to the use of narcotics or alcohol? ☒YES ☐NO

8. Are you or have you ever suffered from a contagious disease? ☐YES ☒NO

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? ☒YES ☐NO

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) ☒YES ☐NO

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) ☐YES ☒NO

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? ☒YES ☐NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.

18. List all optometric literature you have studied during the last year.

19. List all continuing education courses you have completed since your license was disciplined.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 7/11/2011 Signature [illegible]

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

Petition for Early Termination of Probation - Lisa Elizabeth Breen, O.D.

Statement of Explanation (Addendum to Petition)

"Yes" Answer to Question 7: "Are you or have you ever been addicted to the use of narcotics or alcohol?"

I am an alcoholic with over five years of sobriety and an active member of Alcoholics Anonymous for these last five years.

"Yes" Answer to Question 9: "Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction?"

After my April 15, 2006 arrest, I stopped drinking, took a seven month leave of absence from optometry school, and embarked on a program of alcohol abuse treatment under the care of a physician. I attended 90 AA meetings in 90 days, obtained an AA sponsor, and after the 90 days, continued to attend four to five AA meetings per week. I continued to see the physician every other week and to see a counselor for therapy once or twice a week.

After moving back to southern California upon finishing optometry school, I continued to attend AA meetings one to three times per week. Due to my move, I located a new sponsor in southern California.

Pursuant to the Board's order granting my probationary license, I attended and have almost completed a six month alcohol treatment program (completion expected July 29, 2011), I have attended twice monthly psychotherapy sessions, have regularly tested for alcohol and drugs with no positive tests, and have abstained from alcohol and drugs.

"Yes" Answer to Question 10: "Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance?"

I have two arrests which led to convictions, both known to the Board, both of which were the basis for the disciplinary matter which led to the granting of a probationary license. On December 18, 2004, I was stopped on suspicion of drunk driving, leading to a plea of no contest to "wet reckless" (a violation of Vehicle Code §23103 per §23103.5) on April 27, 2005. On April 15, 2006, I was arrested on suspicion of drunk driving, which led to a conviction on August 23, 2006 for drunk driving.

"Yes" Answer to Question 12: "Have you ever had disciplinary action taken against your optometric license in this state or any other state?"

I only have a license in the state of California. My license, once issued, has not been disciplined, however, the license was issued on a probationary basis after a Statement of Issues matter. Out of an abundance of caution I am responding "yes" to the question.

Question 13: Date of Disciplinary Action and Explanation of the Disciplinary Action

On October 7, 2009, the Board issued a letter denying my application for a license, based upon two drunk-driving-related convictions on my criminal record from 2005 and 2006 that I disclosed on my license application. In response to the denial letter, I filed a letter requesting a hearing. On May 4, 2010, the Board issued a Statement of Issues opening a formal disciplinary matter regarding the denial of my license. On about July 9, 2010, I reached a stipulated settlement with the Board for the issuance of a probationary license. On August 4, 2010, the Board adopted the stipulated settlement as its order, with an effective date of September 3, 2010.

Question 14: Why I Feel the Disciplinary Period Should Be Reduced

First, I humbly submit that the Board has fulfilled its public protection mission with my first year of probation, and respectfully suggest that a second and third year of probation are not necessary to protect the public. Although I have been on probation for one year only, I am in the sixth year of my rehabilitation from my 2006 arrest. At all times I have been honest, forthcoming and cooperative with the Board. I believe that the Board has sufficient information, based upon my rehabilitation prior to licensure and my track record since licensure, to determine that I am ready to practice on an unencumbered license.

I am seeking this relief to address financial hardships and time constraints caused by continuing compliance with Board probation. Compliance with all the terms of probation has cost about $1,200.00 per month on average, and time commitments have made it difficult to grow my practice beyond three days per week. Each testing event (they occur about seven to eight times per month), for example, takes about one to three hours with travel time and testing. If I were not on probation, I could devote more time to participating in community projects with my Rotary Club and do more community outreach projects. I could devote time to be of service to Alcoholics Anonymous as a sponsor to others (which I have done before).

I would like to do service work in the Latino community in Escondido. Since I have to be near a testing facility, I am limited in how far I can travel. Also, for example, last April I was asked by my Rotary Club to be a facilitator at a Rotary leadership conference for high school students in Idyllwild, but I had to decline because there was no drug testing site nearby.

I have also agreed to a request by my probation monitor Jessica Sieferman to speak at California optometry schools about my experience so that future doctors are aware of the licensing problems that can arise due to alcohol and drugs.

Question 15: Activities and Occupation since the Date of the Disciplinary Action

Since September 2010 I have been continuously employed by Dr. Michael Cooper, O.D., at his office at 251 E. Fourth Avenue, Escondido, CA 92025, (760) 745-5412. This is a private practice, with 80 percent of the practice in eyeglasses and 20 percent focusing on medical conditions (dry eyes, infections, allergies, diabetes, etc.). My present work schedule is Monday 7:40 a.m. – 5:30 p.m., Tuesday 7:40 a.m. – 6:30 p.m., and Wednesday 7:40 a.m. – 5:30 p.m.

Question 16: Rehabilitative or Corrective Actions since the Date of Discipline

Since my license was granted, I have attended psychotherapy with Dr. Karen Helrich, PhD, twice monthly, I have almost completed the six month outpatient alcohol and drug abuse program at Palomar Family Counseling Services (expected completion date July 29, 2011), I have maintained sobriety and I have fulfilled all other conditions of my probation.

I regularly attend Alcoholics Anonymous meetings and regularly contact my AA sponsor, Joy Howard. I have a service commitment at my home AA group, the Monday Night Second Street meeting in Encinitas, where I am currently a greeter to newcomers. I am also serving on the H&I committee twice per month at the McDonald Center with women who are trying to get sober.

Question 17: Post-Graduate Refresher Courses

I have not taken any post-graduate refresher courses, however, I just graduated from the University of California Berkeley School of Optometry on May 23, 2009.

Question 18: Optometric Literature Studied

Please see the list of Optometric Literature Reviewed attached as **Exhibit 1.**

Question 19: Continuing Education Courses Completed since Discipline

Certificates for continuing education are attached collectively as **Exhibit 2**:

Older Drivers and Vision-Related Crashes, 2 hours, 10/21/10
Laboratory Testing for the Primary Care Optometrist, 2 hours, 11/11/10
AMD Update and OCT Basics, 2 hours, 1/20/11
Riboflavin Cornel Cross-Linking for Keratoconus …, 2 hours, 6/23/11
New Treatments in Keratoconus & Collagen Cross-linking, 1 hour
CE@Home, 7/13/11, 1 hour

Question 20: Letters of Recommendation

Letters of recommendation are collectively attached as **Exhibit 3** from the following individuals:

Dr. Michael J. Cooper, O.D., my employer
Amanda L. Hawley, M.A., a lifelong friend
Joy Howard, my Alcoholics Anonymous sponsor
Denise Petty, MS, IMF, from Palomar Family Counseling Services, Inc.

EXHIBIT LIST

Exhibit No.	Description
1	Optometric Literature Reviewed, Dr. Lisa Breen
2	Continuing Education Certificates (6 pages)
3	Letters of Reference: Cooper, Hawley (2 pages), Howard, Petty

Optometric Literature Reviewed

1. Wood, Sarah D. "Normal Pupil Findings can give a false sense of security in a presumed cranial nerve III palsy patient: A unique case report." Optometry Journal of the American Optometric Association. Vol 81, Issue 10. Oct 2010. 505-509.
2. Gerber, Gary. "Building a successgul practice is a team sport." Optometry Journal of the American Optometric Association . Vol 82, Issue 1. Jan 2011. 55-57.
3. Edeline, Lu, et al. "Steroid induced ocular hypertension with loteprednol etabonate 0.2% - A case report." Optometry Journal of American Optometric Association. Vol 82, Issue 7. July 2011. 413-420.
4. Bhakta P., Hase S. "Using Corneal Collagen Cross-Linking in the Treatment of Keratoconus." Optometry Journal of American Optometric Association. Vol 82, Issue 6. June 2011. 370.
5. Patel P., Reed K "Atypical Case of EKC Complicated by Ocular Allergy Due to Medications." Optometry Journal of American Optometric Association. Vol 82. Issue 6. June 2011. 372-373
6. Edmondson, W. et al. "2011 Anti-Allergy Drop Comfort and Cost." Optometry Journal of American Optometric Association. Vol 86. Issue 6. June 2011. 386
7. Aldridge, Chuck. "11th Annual Dry Eye Report: How to Establish a Dry Eye Center. Creating a dry eye center is simple, inexpensive and rewarding. The key is your attention to improving care." Review of Optometry. Jan 2011
8. Mastrota, K. "Stem Cells: A Visionary Approach. Stem cell transplantation offers new possibilities to address otherwise untreatable blindness secondary to corneal, glaucomatous, and retinal disease. Review of Optometry. June 2011
9. Bowling, E. "Generics: Friend or Foe? " Review of Optometry. March 2011.
10. Gundel R., Rodio-Vivadelli J. "Piggyback Lens Systems for Keratoconus." Contact Lens Spectrum. Sept 2006.

SAN DIEGO COUNTY OPTOMETRIC SOCIETY

3945 First Av e • San Diego • California 92103
TEL/FAX (619) 295-7326
EMAIL sdcos@sdcos.org

This is to confirm attendance at the **2-Hour Continuing Education** seminar on **October 21, 2010** at the Hilton Mission Valley Hotel in San Diego, California.

LECTURER: Melvin Douglas Shipp, OD, MPH, DrPH

COURSE TITLE: Older Drivers and Vision-Related Crashes

*Some sessions may be used for different categories. Doctors may not attend one lecture and count it toward two categories.

ATTENDEE: Lisa E Breen

ADDRESS: _____

_____

_____

PHONE: _____ LICENSE# 14075 T

SOCIAL SECURITY# 552-87-6645

TIME IN: 7:00 p.m.

TIME OUT: 9:00 p.m.

San Diego County Optometric Society Continuing Education Validation

SAN DIEGO COUNTY OPTOMETRIC SOCIETY

3945 First Avenue • San Diego • California 92103
TEL/FAX (619) 295-7326
EMAIL sdcos@sdcos.org

This is to confirm attendance at the **2-Hour Continuing Education** seminar on **November 11, 2010** at the Hilton Mission Valley Hotel in San Diego, California.

LECTURER: Harue J. Marsden, O.D., M.S., F.A.A.O.

COURSE TITLE: Laboratory Testing for the Primary Care Optometrist

*Some sessions may be used for different categories. Doctors may not attend one lecture and count it toward two categories.

ATTENDEE: Lisa E Breen

ADDRESS: _____

_____

_____

PHONE: _____ LICENSE# 14075 T

SOCIAL SECURITY# 552-87-6649

TIME IN: 7:00 p.m.

TIME OUT: 9:00 p.m.

San Diego County
Optometric Society
Continuing Education
Validation

SAN
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SOCIETY

3945 First Avenue • San Diego • California 92103
TEL/FAX (619) 295-7326
EMAIL sdcos@sdcos.org

This is to confirm attendance at the 2-Hour Continuing Education seminar at the Handlery Hotel and Resort in San Diego, California.
Keep this for your personal records

COURSE TITLE: **AMD Update and OCT Basics**

CREDIT HOURS: **Two**

SPEAKER: **Paul E. Tornambe, M.D., F.A.C.S.**

DATE/TIME: **Thursday, January 20, 2011 7:00 p.m. - 9:00 p.m.**

NAME OF
ATTENDEE (PRINT):

Lisa Brun

SIGNATURE:

LICENSE(S):

14075

**San Diego County
Optometric Society
Continuing Education
Validation**

SAN
DIEGO
COUNTY
OPTOMETRIC
SOCIETY

3945 First Avenue • San Diego • California 92103
TEL/FAX (619) 295-7326
EMAIL sdcos@sdcos.org

This is to confirm attendance at the 2-Hour Continuing Education seminar at the Handlery Hotel and Resort in San Diego, California.
Keep this for your personal records

COURSE TITLE: **Riboflavin Corneal Cross-Linking for Keratoconus and Post-Lasik Ectasia. Femtosecond Lasers and the Future of Eye Surgery and Diagnostics**

CREDIT HOURS: **Two**

SPEAKER: **David J. Schanzlin, MD**

DATE/TIME: **Thursday, June 23, 2011 7:00 p.m. - 9:00 p.m.**

San Diego County
Optometric Society
Continuing Education
Validation

NAME OF
ATTENDEE (PRINT):

Lisa E Green

ADDRESS OF
ATTENDEE (PRINT):

SIGNATURE:

STATE LICENSE(S):

14075 T

Certificate of Attendance

This Is To Certify That

Lisa Breen

Has Attended and Completed:
New Treatments in Keratoconus & Collagen Cross-linking
1.0 CE Unit: 23052-AS

Event I.D. #101121

Clearview
Eye and Laser Medical Center

Medical Director
Sandy T. Feldman M.D., M.S.

CE Questions

5/18/11

1. As the population ages, the prevalence of Age-related macular degeneration (AMD) is expected to:
   a. Increase
   b. Decrease
   c. Stay the same

2. In the original AREDS study, high dose anti-oxidants plus zinc were shown to:
   a. Decrease the risk of developing AMD by approximately 25% in all AMD patients
   b. Decrease the risk of developing AMD by approximately 25% in patients with intermediate or worse AMD
   c. Decrease the risk of developing AMD by approximately 25% in patients with early to mild AMD
   d. Not help at all

3. Which of the following supplements has been shown to be beneficial in several studies for the progression of AMD?
   a. Lutein
   b. Zeaxanthin
   c. Omega-3 fatty acids
   d. All of the above

4. The mainstay of treatment for exudative AMD is:
   a. Serial anti-VEGF agents injections
   b. Transpupil thermotherapy (TTT)
   c. Intravitreal triamcinolone (IVT)
   d. Photodynamic therapy (PDT)

5. Which was the first FDA approved anti-VEGF agent for the treatment of neovascular AMD?
   a. Avastin
   b. Lucentis
   c. Macugen
   d. Lovastatin

6. Which agent is **NOT** FDA approved the treatment of neovascular AMD, but is widely used off-label?
   a. Avastin
   b. Lucentis
   c. Macugen
   d. Lovastatin

7. Which gene seems to play the **MOST** important role in AMD?
   a. Complement factor H (CFH)
   b. Complement factor B(CFB)
   c. ARMS 2
   d. TIMP3

8. Which is a commercially available instrument for assessing the macular pigment optical density (MPOD) in a patient?
   a. Quantifeye by ZeaVision
   b. Macuscope by Marco
   c. Optical Coherence Topographer (OCT)
   d. A and B

9. The Preferential Hyperacuity Perimeter (PHP) by Reichert Technologies is a unit designed to:
   a. Check for MPOD
   b. Detect metamorphopsia from CMVM earlier than with standard Amsler grid testing
   c. Help stratify one's risk for AMD progression based on genetics
   d. Treat AMD through a series of intravitreal injections

10. New treatments for AMD in the pipeline include all of the following **except**:
   a. Anti VEGF eye drops
   b. Oral fenretininde
   c. Macular translocation surgery
   d. Copaxone injections weekly

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The member price for each article is $15. Articles are posted at the beginning of February, April, June, August, October, and December. *Submit your answers for the April article by May 31st!*

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2415 K Street, Sacramento, CA 95816

Fax: (916) 448-1423 Email: education@coavision.org

Transcripts will be mailed out after the submission deadline.

CE@Home may/june 2011 issue

Name: Lisa Breen

License Number: 14075 T

Email Address: breen.lisa@gmail.com

☒ Check here if you prefer to receive your transcript via email.

Optometrists

Kenneth R. Manell, O.D.
Michael J. Cooper, O.D.

www.drsmanellandcooper.com

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

July 11, 2011

To the California Board of Optometry

Since joining our practice, Dr. Lisa Breen has been a valuable asset to our office. She is a thorough, competent, and conscientious optometrist who always puts the welfare of her patients first and foremost while performing examinations and prescribing treatments. She is well liked by the staff and patients. As a new optometrist, Dr. Breen has been diligently growing her practice despite limited time and resources.

She is a very responsible, level-headed individual who takes pride in her work and contributes her optometric skills and compassion to the community. I trust both her judgement and integrity in all situations. I believe her patients are very well served and she poses no risk to public safety.

If you have further questions, you may contact me at (760) 745-5412.

Sincerely,

Dr. Michael J. Cooper, O.D.

Member
American Optometric Association

251 E. 4th Avenue
Escondido, CA 92025-4901
(760) 745-5412
FAX: (760) 745-2752

Amanda L. Hawley, M.A.
1817 Blackhawk Avenue
Oceanside, CA 92056
(760) 207-3996

July 10, 2011

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

Attention: Members of the California Board of Optometry

I write this letter to you and your colleagues of the California Board of Optometry on behalf of, Lisa Breen, who is petitioning for early termination of the probationary status of her licensure to practice optometry in the State of California. I am fully aware of the statute of limitation and disciplinary order concerning her probationary license. It is my privilege to be a witness to her genuine character, innate passion to serve others, and moral judgment. I have also witnessed her dedication to fulfill the boards' requirements of her probation.

Lisa Breen has been a close friend of mine for over twenty years. We first met in fifth grade and have fostered a relationship based on genuine love, admiration, and friendship ever since. Lisa and I have been a part of each others lives through many highs and lows life has provided. Nine years ago, as I watched my mother wither away from her pancreatic cancer diagnosis, Lisa provided me with an infinite amount of support. Lisa was also there two years ago, when life was brought back into my life with the birth of my daughter. I have grown-up with Lisa and as she has supported me, I have supported her. She is the most genuinely caring, compassionate, and dedicated person I have ever had the privilege of knowing.

Her caring nature and enormous heart has not only been a benefit to me, but to others as well. Throughout the many years I have known Lisa she has always been giving of her time to several charities, foundations and causes. In high school, as Vice President of the Spanish Club, she rallied the club to organize the collection and distribution of food, clothing and blankets to impoverished families in Tijuana. As an undergraduate at University of Southern California, Lisa spent every Saturday morning volunteering in the Emergency Room at USC Medical Center. She participated in fundraisers for the CASA Foundation to support foster youth; as well as, one benefiting physically challenged athletes. While attending UC Berkeley School of Optometry, she managed to find the time to participate in a program which provided free eye exams to destitute people in the Berkeley community. Lisa continues her service to her community by recently participating in the Relay for Life, benefiting Breast Cancer Research; as well as, dedicating time to being trained to work in a community Hospice. I know Lisa, and she did not do this volunteer work because she was asked or because she was rewarded for it.

She did them because she believes in her role in humanity and the importance of helping others.

Being such a caring and giving person to others has proven to be bittersweet for Lisa, as she had forgotten to take care of herself. No one can go through life without bumps and bruises, but Lisa had made the mistake of bandaging hers with alcohol. Her two misdemeanor DUI's were the manifestation of those bandages coming apart. She was no longer able to mask her bumps and bruises life had given and was faced head on with the bitter reality, which she has in no means taken lightly.

As a high school guidance counselor who has personally facilitated drug and alcohol education groups to at-risk youth, I am fully aware of the role alcohol can play in people's lives and the steps necessary to make life-long changes. I have seen these steps taken by Lisa. Completely cutting consumption of alcohol out of her life was the first step and has provided raw clarity to her. Many hours of counseling has allowed her to face personal issues leading to her use of alcohol and uncharacteristic behaviors. As a sanction by the courts she has completed 20 days of community service, 18 months of alcohol awareness program, group counseling, alcohol education classes, costly fines and 3 years probation which have all been fulfilled. Beyond her mandated sanctions, Lisa has dedicated herself to the Alcoholic Anonymous Program (AA) and continues to maintain a supportive relationship with her AA sponsor and attends meetings in order to ensure her connection to the AA community. She has been able to utilize her experience to connect and support others. I have seen an enormous growth in her maturity, humility and responsibility. As a counseling professional and personal confidant, I am confident that Lisa has learned from her uncharacteristic actions, and has developed the insight and strategies necessary to handle any future bumps and bruises life offers.

In life we are given challenges to develop character and show our growth. Personally, I like to believe that what we make of those challenges is the true testament of character. Lisa has had an extremely large challenge to face and has done so with complete responsibility, meaningful insight and true determination. I write with genuine respect and appreciation for this licensing hearing process. I have witnessed Lisa overcome these obstacles to emerge as a more whole person fully prepared to serve her patients, community, and self in truth of who she is. It is my hope that the board is able to look beyond past actions to see the genuine, dedicated, compassionate and remorseful person behind them.

Thank you,

Amanda L. Hawley

Amanda L. Hawley, M.A.

Joy Howard, R.N., B.S.N.
6516 Onda Place
Carlsbad, CA 92009
(760) 331-7015

July 08, 2011

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

To whom it may concern:

I have known Lisa Breen since August of 2009 when she asked me to be her AA sponsor. Since that time, she has completed the 12-steps of recovery and is looking forward to working with others as a sponsor. Lisa currently has a service commitment at a weekly meeting. She also attends meetings, calls and meets with me on a regular basis. I find her to be very willing to follow suggestions and actively participate in her recovery.

On a more personal level, I have seen a lot of growth in Lisa in the last year and a half. When I first met her she was kind of "going through the motions" and resentful of what was being asked of her. Now I'm seeing someone who is doing what is suggested because she wants to stay sober. She accepts the consequences of her actions and is doing what is necessary to build a foundation for lifelong recovery. She seems happier, more confident and has made significant personal growth.

I have sponsored many people over the years but have never worked with anyone as willing or sincere as she. Clearly there is no guarantee any of us will stay sober. Her actions so far, however, have shown me that she is willing to do what is necessary.

I sincerely hope you will consider her request for licensure. It has been privilege to work with Lisa. She has expressed the desire to pass along her experience to others, especially young professionals like herself, through sponsorship and service. Thank you for your consideration on her behalf. Please contact me if you have any questions.

Sincerely,

Joy Howard, RN, BSN

Joy Howard, R.N.,B.S.N.

Denise Petty, MS, IMF
Palomar Family Counseling Services, Inc.
1002 E. Grand
Escondido, CA 92025
760-741-2660

July 8, 2011

To the Members of the Board of Optometry,

Lisa Breen has been regularly attending the Outpatient Program I facilitate at the Palomar Family Counseling Service center for almost six months now. She presents her thoughts during the group sessions and demonstrates dedication and perseverance toward maintaining sobriety throughout her lifetime.

Lisa has developed a strong set of recovery skills that she would like to share in the community. One area where Lisa will be an asset is with the Hispanic community in Escondido. Lisa is bilingual and would like to volunteer her time to educate this population about the dangers of drugs and alcohol as well as provide hope and encouragement for those seeking treatment.

Lisa would also like to volunteer her time with the program, Mother's Against Drunk Driving (MADD). She will always be remorseful for having endangered others by her decision to drink and drive, but looks forward to being of service with this organization as well.

I am confident that Lisa has developed a program of recovery that will allow her to maintain sobriety as well as enable her to be an asset to the community.

Should you have any questions, please feel free to contact me.

Thank you.

Sincerely,

Denise Petty, MS, IMF

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **LISA ELIZABETH BREEN** **6670 Ambrosia Lane, #512** **Carlsbad, CA 92011** Respondent.	Case No. CC 2008-215

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 3, 2010.

It is so ORDERED August 4, 2010.

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
DIANE DE KERVOR
Deputy Attorney General
State Bar No. 174721
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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **LISA ELIZABETH BREEN** **6670 Ambrosia Lane, #512** **Carlsbad, CA 92011** Respondent.	Case No. CC 2008-215 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the State Board of Optometry of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Statement of Issues.

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Diane de Kervor, Deputy Attorney General.

2. Respondent Lisa Elizabeth Breen (Respondent) is represented in this proceeding by attorney Fredrick M. Ray, whose address is 770 The City Drive, Suite 8100, Orange, CA 92868-6927.

3. On or about May 23, 2009, Respondent filed an application, dated May 23, 2009, with the State Board of Optometry to obtain an optometry license.

JURISDICTION

4. Statement of Issues No. CC 2008-215 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on May 4, 2010. Respondent timely filed her Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. CC 2008-215 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. CC 2008-215. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. CC 2008-215.

9. Respondent agrees that her optometry license is subject to denial and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that an optometry license will be issued to Respondent Lisa Elizabeth Breen and automatically revoked. The revocation will be stayed and the Respondent placed on three (3) years probation on the following terms and conditions.

1. **OBEY ALL LAWS.** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California. Respondent shall notify the Board in writing within three days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

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

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

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

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

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

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

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

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

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

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

If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be

able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

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

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

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

6. **NOTICE TO EMPLOYER.** 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.

If Respondent is employed by or through a registry, Respondent shall also make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement of Issues in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators. 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.

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

9. **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.

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

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

12. **WORK SCHEDULES.** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, 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 Optometry license.

13. **BIOLOGICAL FLUID TESTING.** BIOLOGICAL FLUID TESTING Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Collection and testing costs range from $60.00 to $200.00 each. The length of time shall be for the entire probation period.

Respondent shall be required to make daily contact, to determine if he/she is required to submit a specimen for testing, each day, 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, while at the work site, Respondent understands that 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.

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

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

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the fi ling 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.

15. **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 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.

16. **PSYCHOTHERAPY.** Within 60 days of the effective date of this decision, Respondent shall submit to the board for its prior approval the name and qualifications of a psychotherapist of Respondent's choice. Said psychotherapist must have a valid California license with no history of discipline. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until the board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the board. The board may require Respondent to undergo psychiatric or psychological evaluations by a board-appointed psychiatrist or psychologist. Respondent must attend psychotherapy for a minimum of six months, twice per month.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Fredrick M. Ray. I understand the stipulation and the effect it will have on my optometry license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 7/9/2010

LISA ELIZABETH BREEN
Respondent

I have read and fully discussed with Respondent Lisa Elizabeth Breen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/9/10

Fredrick M. Ray
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 7/13/2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

SD2009804937

Exhibit A

Statement of Issues No. CC 2008-215

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Supervising Deputy Attorney General
DIANE DE KERVOR
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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **LISA ELIZABETH BREEN** **6670 Ambrosia Lane, #512** **Carlsbad, CA 92011** Respondent.	Case No. CC 2008-215 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

2. On or about May 23, 2009, the State Board of Optometry, Department of Consumer Affairs received an application for licensure as an optometrist from Lisa Elizabeth Breen (Respondent). On or about May 23, 2009, Lisa Elizabeth Breen certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 7, 2009.

STATUTORY AUTHORITY

3. This Statement of Issues is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3027 of the Business and Professions Code ("Code") provides that the Board shall appoint an executive officer who shall carry out all of the administrative duties as provided in the chapter and as delegated to her by the Board.

5. Sections 3024 and 3044 of the Code provide that the Board may refuse to grant an applicant an optometrist's certificate of registration when an applicant fails to comply with any rule or regulation adopted by the Board and further provides that an application for examination may be denied on any of the grounds listed in Section 480 of the Code.

6. Sections 3056 and 3057 of the Code provide that the Board may issue a license to practice optometry to a person who is not subject to denial based on any of the grounds listed in section 480.

7. Section 3091(a) provides, in relevant part, that the board may deny an optometrist license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license.

8. Section 3110 of the Code states:

> The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
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> (a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.
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> . . . .
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> (k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.
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> (l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public,

or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

9. Section 475 (a) of the Code states, in pertinent part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

. . . .

(2) Conviction of a crime.

10. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

11. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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~~12. Section 493 of the Code states:~~

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

REGULATIONS

13. California Code of Regulations, title 16, section 1516 states:

(a) When considering the denial of a certificate of registration under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a certificate of registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee. (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code. (6) Evidence, if any, of rehabilitation submitted by the licensee. (c)

When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

14. California Code of Regulations, title 16, section 1517 states:

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code (Sections 525 et seq. of the Code).

(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540 et seq. of the Code).

(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code).

FIRST CAUSE FOR DENIAL OF APPLICATION

(April 27, 2005 Criminal Conviction for Reckless Driving – Driving Under the Influence of Alcohol – on December 18, 2004)

15. Respondent's application is subject to denial under Code sections 3110(a), 3110(k) and 480(a) in that on or about April 27, 2005, in a criminal proceeding entitled *People v. Lisa Elizabeth Breen* in Alameda Superior Court, Case Number 505540, Respondent was convicted by plea of no contest to a violation of Vehicle Code section 23103(Reckless Driving), pursuant to section 23103.5, a misdemeanor. The facts supporting this conviction are that on December 18, 2004, Respondent was arrested for driving under the influence of alcohol. On or about April 27, 2005, Respondent was sentenced to two years probation, one day in jail, an $826.00 fine, and a driving while intoxicated school.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(August 23, 2006 Criminal Conviction for Driving Under the Influence of Alcohol on April 15, 2006)

16. Respondent's application is subject to denial under Code sections 3110(a), 3110(k) and 480(a) in that on or about August 23, 2006, in a criminal proceeding entitled *People v. Lisa Elizabeth Breen* in Alameda Superior Court, Case Number 518622, Respondent was convicted by plea of no contest to a violation of Vehicle Code section 23152 (Driving Under the Influence of Alcohol) a misdemeanor. The facts supporting this conviction are that on April 15, 2006, Respondent was arrested for driving under the influence of alcohol. On or about August 23, 2006, Respondent was sentenced to 10 days in jail (work program granted as alternative), $1458.00 in fines and restitution, a driving under the influence class, and 3 years probation.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Use of Alcohol in Injurious Manner)

17. Respondent's application is subject to denial under section 3110(l) in that she used alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to her and the public and that the use impairs her ability to conduct with safety to the public the practice authorized by the license. This use of alcohol in an injurious manner led to the conviction of two misdemeanors involving the use of alcohol, as described in paragraphs 15 and 16 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Denying the application of Lisa Elizabeth Breen for licensure as an optometrist;
2. Taking such other and further action as deemed necessary and proper.

DATED: April 27, 2010

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SD2009804937

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members **Date:** September 16, 2011

From: Enforcement Staff **Telephone:** (916) 575-7170

Subject: **Agenda Item 15 – Full Board Closed Session**

FULL BOARD CLOSED SESSION

Pursuant to Government Code Section 11126(c)(3), the Board will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters.

Memo

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

To: Board Members

Date: September 16, 2011

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

Telephone: (916) 575-7170

Subject: **Agenda Item 16 - Adjournment**