CALIFORNIA STATE BOARD OF OPTOMETRY

Board Meeting

Friday, December 2, 2011

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

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

Alexander Kim, MBA
Member

Kenneth Lawenda, OD
Member

Fred Naranjo, MBA
Member

Edward J. Rendon, MA
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, December 2, 2011
Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699
(714) 870-7226

9:00 a.m.
FULL BOARD OPEN SESSION
Call to Order - Establishment of a Quorum

1. President's Report

2. Approval of the September 16, 2011 Board Meeting Minutes

3. Executive Officer's Report

4. Legislation and Regulation
   A. Report of November 18, 2011 Committee Meeting
   B. Regulation Update
      1. Status of California Code of Regulations (CCR) §1575. Disciplinary Guidelines
      2. Discussion of Comments Received During the 45-day Comment Period of CCR §1525.1. Fingerprint Requirements, 1513. Registered Name Only, and 1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern
   C. Discussion and Consideration of Pending Legislation that May Impact the Practice of Optometry or the Functions of the Board of Optometry
   D. Discussion and Consideration of Legislative Proposals for 2012 Legislative Session
   E. Discussion Pertaining to American Board of Optometry (ABO) Board Certification Program
   F. Discussion and Possible Action Pertaining to Final Administration of Therapeutic Pharmaceutical Agents Didactic Course
   G. 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
   H. Discussion and Possible Action to Amend CCR § 1568 TPA Certification Requirements Pertaining to Optometrists Licensed in Another State

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

6. Discussion and Possible Action Pertaining to the National Practitioners Data Bank Continuous Query

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.

7. **Public Affairs**
   A. **Report of October 18, 2011 Public Affairs Committee Meeting**
   B. **Review and Possible Approval of Outreach Materials - Pamphlets**
      1. **Cosmetic Contact Lenses**
      2. **Focus on Your Eyes: What to Expect from Your Optometrist**
      3. **Focus on Consumer Protection**
   C. **Adopting Social Media**
   D. **Other**

8. **Examination/Licensing Programs Report**
   A. **CAS to ATS Conversion**
   B. **Continuing Education Program**
   C. **Statistics and Performance Measures**
   D. **Other**

9. **Enforcement Program Report**
   A. **Data Clean-up Project**
   B. **Enforcement Training**
   C. **Expert Witnesses**
   D. **Probation Program**
   E. **Statistics/Performance Measures**
   F. **Other**

10. **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)]

11. **Suggestions for Future Agenda Items**

FULL BOARD CLOSED SESSION

12. **The Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters**

FULL BOARD OPEN SESSION

13. **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.

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: December 2, 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. Update on Glaucoma Certification Courses from the California Schools and Colleges of Optometry

C. Other

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:** December 2, 2011

From: Dr. Lee Goldstein, O.D.
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 September 16, 2011 Board Meeting.

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

Meeting Minutes

Friday, September 16, 2011
Department of Consumer Affairs
1625 North Market Boulevard
First Floor Hearing Room S-102
Sacramento, Ca 95834

Draft

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 Leiva, Policy Analyst
Jessica Sieferman, Probation Monitor
Lydia Bracco, Fingerprint Coordinator
Cheree Kimball, Enforcement Analyst
Dillon Christensen, Enforcement Technician
Brianna Miller, Enforcement Analyst
Jeff Robinson, Licensing Analyst
Michael Santiago, Senior Staff Counsel
Anahita Crawford, Deputy Attorney General

Guest List
On File

Friday
10:00 a.m.
FULL BOARD OPEN SESSION
Call to Order – Establishment of a Quorum
Board President, Lee Goldstein, O.D. called the meeting to order at 10:00 a.m. Dr. Goldstein called roll and a quorum was established.

Board member, Fred Naranjo left the meeting at 4:00 p.m.

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

   Dr. Goldstein explained that the meeting is being webcasted. The video will be made available on the Board's website.

   Dr. Goldstein stated his intent to move up agenda item 10 when everyone, who wishes to speak on the legislation items, is present.

   Dr. Goldstein announced that he is still participating in the Department of Consumer Affairs (DCA) Director and Board Committee Chair monthly conference calls, which take place on the second Tuesday of every month. Dr. Alejandro Arredondo participated in the July meeting in Dr. Goldstein's

absence. Topics of discussion have included the hiring freeze, BreEZe project updates and board member matters such as quorum, vacancy and appointment issues.

He also announced his participation as moderator in the President's Counsel of the California Optometric Association over the last weekend. Dr. Kenneth Lawenda was present as well. Discussions at these meetings generally involve the direction the profession of optometry should be going and recommendations for achieving those goals.

Dr. Goldstein invited members and staff to comment or report on an item. There were no comments or reports.

1. Approval of Board Meeting Minutes

Board members were asked to review and approve the draft minutes from the following meetings.

A. June 21, 2011

Donna Burke moved to accept the minutes as amended. Kenneth 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**		
Mr. Naranjo	**X**		
Dr. Lawenda	**X**		
Mr. Kim	**X**		
Ms. Burke	**X**		

2. Executive Officer's Report

Executive Officer , Mona Maggio reported on the following:

A. Staff Introduction

Ms. Maggio commended staff for doing excellent work. She introduced each staff member individually and provided a brief description of each member's duties.

B. Budget Update

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

Ms. Maggio welcomed Wilbert Rumbaoa and Cynthia Dines.

Mr. Rumbaoa summarized what occurred in fiscal year (FY) 2010/2011. The Board began last FY with $1,652.353. Actual expenditures totaled $1,356,967 which left a reversion of $258,340. This means the Board reverted approximately 15 percent of the budget. The actual revenue collected was approximately $1,648,345. He stated that the Board's funding is solvent.

Mr. Rumbaoa provided a preview of this fiscal year (FY 2011/2012). The budget for this FY 11/12 is $1,568,000. The amount changed from last years budget due to adjustments made from past approved budget change proposals (BCP), miscellaneous personnel and budget adjustments done throughout the year, and services that the Department of Consumer Affairs (DCA) and the state provide. The estimated revenue for this year is $1,657,000.

Dr. Arredondo inquired and Mr. Rumbaoa and Cynthia Dines clarified the distributed costs and budgets role. Budgets has two roles in the process (performing the administrative functions and

working for the board as needed/requested). The services provided for the Board are the DCA distributed costs.

Dr. Goldstein asked and Ms. Dines explained that the funds are not DCA's funds. DCA transmits the funds to the Treasurer's Office.

Board member, Monica Johnson questioned what the workforce cap would be. Mr. Rumbaoa answered that the workforce cap is basically the mandated 5% reduction (statewide) to the workforce. Ms. Dines added that the budgets were reduced last year to allow for this reduction.

Ms. Dines explained that there is about a 5% deduction to the Board's budget that is a result of last year's executive related to a hiring freeze. If the department's reduction plan (which has already been submitted to the Department of Finance) is approved, it will allow DCA to hire without having to go through an exemption freeze process.

Mr. Rumbaoa provided an overview of the Board's expenditures. Personal Services utilizes approximately 52% of the budget. Enforcement utilizes approximately 19% of the budget. Ms. Dines added that the Enforcement percentage does not include staff. This figure represents only enforcement line items in the budget (Attorney General, Office of Administrative Law, etc.). It is not an allocated cost and the Board's actual percentage could be higher if counting staff costs.

Mr. Rumbaoa provided an overview of the projected revenue. Renewal fees account for approximately 90% of the Board's revenue.

Dr. Goldstein questioned and Ms. Dines explained that the monies collected for enforcement cost recovery cases are reimbursements counted as credit towards expenditures. The budget figure provided is actually higher because it is assumed the Board has some level of reimbursements coming in.

Mr. Rumbaoa provided an analysis of the fund condition. The fund condition is actually a point-in-time template in which he enters the expenditures and revenue figures and (based on budget letters or various other information received throughout the year) projects the status of the fund and how many months of reserve can be expected.

Dr. Goldstein asked and Mr. Rumbaoa and Ms. Dines confirmed that the decrease in the months of money reserved is due to the monies loaned to the state. She added that for purposes of a fee increase, budgets has to consider that the money is in the Board's fund when they help determine a level of fee increase. A fee increase cannot be carried out until a general fund loan is paid back. The Department of Finance supports and works with agency on negotiating quick repayment when needed.

C. BreEZe Update

Presented by Sean O'Connor, BreEZe Business Project Manager

Sean O'Connor provided a BreEZe Project update. The BreEZe Project is a licensing and enforcement database that will completely support all of the Board's licensing and enforcement functions. The several databases which staff currently utilizes are outdated (developed in the 1980's and early 1990's). The BreEZe project is an updated system in which the department's boards and bureaus will gain a tremendous amount of functionality.

Mr. O'Connor provided and explanation of the procurement process and cost of the project. The Department of Consumer Affairs (DCA) had two bidders who submitted final proposals. Out of these two bidders, only one was compliant in that all of the qualifications were met allowing DCA to open the cost for the business solution. It was expected that the cost would be around $27 million. However, when the cost for the solution was opened, it came to $49 million. Rather

than abandon the project, DCA invoked a clause in the government code called “government code 6611”, which enables negotiations with the vendor to attempt to reduce the cost. The cost was successfully reduced from $49 million to $38.6 million without having to give up any functionality in the licensing and enforcement database.

Although there are some questions (from the Governor’s office) tied to budget change proposals (BCP’s) that have not yet been signed, the contract is ready for the Director’s signature. It is anticipated that implementation will take place prior to June 2013.

Mr. O’Connor commended and thanked probation monitor, Jessica Sieferman for her outstanding assistance with the BreEZe project.

The floor was opened for questions/comments.

Board member, Alejandro Arredondo, O.D. asked how the BreEZe system will cut down licensing time. Mr. O’Connor explained some of the main benefits as follows:

- The ability to submit applications online will essentially force licensees seeking renewal, to complete all of the information needed before submitting their renewal application. This will greatly reduce the number of incomplete applications for renewal and licensure,
- The ability for optometrists to check their status online (what’s received, missing etc.) will reduce the number of phone calls allowing staff to utilize their time more efficiently,
- The database will have optical care recognition (OCR) technology. This means the database will have the intelligence to auto populate values scanned into the system, saving staff entry time.

Board member, Alexander Kim inquired (with the ongoing movement of technology going to mobile resources such as smart phones) if the vendor has any plans to develop mobile applications for the system. Mr. O’Connor responded by stating that the original scope of the project had mobile capability (for situations such as staff performing inspections out in the field). The Department of Finance and the Legislature wanted the department to control costs on this project and directed the mobile functionality to be pulled. Mr. O’Connor added that it should be relatively easy to expand the database into mobile functionality at a later time since per the direction of the Department of Finance and Legislature.

Board member, Donna Burke questioned privacy considerations incorporated into the project. Mr. O’Connor explained that there are statewide technology privacy letters that the California Technology Agency puts out. These letters are explicitly referenced in the database requirements. Users must comply with the privacy requirements just as they would with any other existing database system. Additionally, a third party is used for credit card payment transactions. This means that no credit card information is stored in the system.

Ms. Maggio commended Mr. O’Connor. She added that she continually attempts to recruit him to our Board. She also thanked him for recommending Policy Analyst, Andrea Leiva to us.

D. Board Office Relocation
Presented by Ken Brown, Project Manager

Project Manager, Ken Brown was called out and Ms. Maggio reported in his absence. She reported that staff moved to a new building/office since the previous Board Meeting. Ms. Maggio expressed her gratitude to the Bureau of Security and Investigative services for temporarily housing some of our staff members (both during the move and previously). Additionally, she expressed her gratitude to Mr. Brown for overseeing the entire move process, facilitating all of the details, and largely removing responsibility from any staff members in the office. Staff now has an office with room for growth.

Ms. Maggio announced that last fiscal year she put aside $125,000.00 into the Architectural Revolving Fund. A substantial amount of this money is left over (in the fund) due to reutilization of many of our office materials and accessing used materials from the Property Reutilization Center. Ms. Maggio estimates about $40,000 left in the fund, which will either be used for any additional materials needed for the Board or it will return to the reserve fund.

E. Other

Ms. Maggio reported that there are currently three professional member vacancies and four members are serving in their grace periods. The Governor's office is in conversation with individuals who have applied for positions with the Board.

She explained that the Board has personnel authority for 14 positions. Currently the Board is comprised of ten full time staff, one half-time staff, and one seasonal clerk. The Board has two vacancies, one staff services manager (SSMI) 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 Management Services Technician (MST) and a limited term student position to assist with the unpacking of boxes and perform one time organizational projects.

3. Examination/Licensing Programs Report

A. California Law and Regulations Examination (CLRE)

Ms. Leiva reported that candidates for licensure continue to perform well on the California Law and Regulations Examination (CLRE) and staff have received very few complaints. Many candidates are pleased with Psychological Services LLC (PSI) flexibility in scheduling and are encouraged to contact the board if they have any questions regarding the examination study guide and study materials. The Board will be holding seven workshops in order to develop the 2011-2012 CLRE. Ms. Leiva reported that currently 90 percent of candidates pass the CLRE.

Ms. Leiva provided statistics for the Board and opened the floor to comments and questions.

Dr. Goldstein asked why the percentages don't add to 100 percent.

Ms. Leiva explained that regarding versions 2 and 3 she believes it is due to no-shows. No-shows are reflected as part of the candidate count based on the way the information is pulled from the statistics pool. Ms. Leiva stated that she would research this matter with PSI for a more accurate response.

B. CAS to ATS Conversion

Licensing Analyst, Jeff Robinson reported that he and Fingerprint Coordinator, Lydia Bracco worked with staff of the Applications Services Unit on receipt of fingerprint clearances and rejections for several weeks before conversions were successfully implemented on June 15, 2011. He explained this was necessary due to the inception of California Code of Regulations (CCR) sections 1525 and 1525.1 in 2010 which requires all licensees to obtain Federal Bureau of Investigation (FBI) clearances.

Fingerprints submitted by new applicants are reviewed by the California State Department of Justice (DOJ) and the FBI. Upon completion of the review, the information is then imported from the DOJ and FBI directly into the applicant's/licensee's Applicant Tracking System (ATS) file. This process has now been made available to those who were licensed prior to January 1, 1998, and those whose record of being fingerprinted no longer exists after it was learned that many of these and other electronic records had not been converted from the Consumer Affairs' System (CAS) to ATS in 2007 when ATS was first implemented.

Mr. Robinson reported that the Board now receives fingerprint information as swiftly for the licensees as for new applicants.

C. *Accreditation Council on Optometric Education Report of Actions*
There was no report and no discussion on this topic.

D. *Outreach to California Schools and Colleges of Optometry*
Mr. Robinson announced that Board staff has been corresponding with the two accredited California schools/colleges of optometry and Western University of Health Sciences' College of Optometry regarding staff's 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. All of the colleges are on board with this plan but exact dates have yet to be determined.

E. *Continuing Education Program*
Mr. Robinson reported that the Board's continuing optometric education (CE) program continues to function at a high rate.

F. *Statistics and Performance Measures*
Mr. Robinson provided Board members with statistical charts/data.

G. *Other*
National Center of Clinical Testing in Optometry (NCCTO)

Mr. Robinson announced that the National Board of Examiners in Optometry's (NBEO) National Center of Clinical Testing in Optometry (NCCTO) has opened for testing in Charlotte, North Carolina. Mr. Robinson reported that the NCCTO has added an injection skills portion to the exam which the Board does not recognize since California's optometry practice act does not allow for the use of injections by licensed optometrists. The Injection Skills Exam (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 and will receive an official NBEO score for the ISE. This score will not be calculated into the overall Part III score and will not be reflected in CSE pass-fail decisions. ISE scores will be included on Candidates' NBEO score report.

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

4. 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
Mr. Robinson reported on this agenda item. Staff requests that the Board members review, discuss, and make any edits necessary to the proposed changes to California Code of Regulations (CCR) Section 1536. An approval of the draft language is necessary to begin a rulemaking.

Mr. Robinson provided an overview on the background of this item. Prior to optometrists being allowed to receive therapeutic pharmaceutical agent (TPA) certification upon graduation, all of the Board's licensees were diagnostic pharmaceutical agent (DPA) certified and were required to complete 40 hours of CE per renewal period in order to renew their license. Up to 20 of those hours may be earned through correspondence courses. 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 who are required to complete 50 hours of CE per renewal period, but are still only allowed 20 hours of correspondence CE.

Board staff recommends that since the CE requirement has been increase to 50 hours for TPA certified optometrists, that TPA certified optometrists should also be permitted to complete half of their CE online as are DPA certified optometrists.

Dr. Goldstein opened the floor to questions and comments.

Board member, Kenneth Lawenda, O.D. asked for the history of why optometrists were limited to just 20 correspondence credits in the first place.

Mr. Robinson explained that this was established before he worked for the Board and therefore does not know.

Dr. Goldstein stated that he believes the requirement came about because most CE was in attained person as online education was in its infancy and 20 hours seemed like a good number at that time. He added that there is a wealth of excellent education available online which makes it questionable whether 25 hours should be considered the right number.

Ms. Johnson stated an opposite view on this matter. She declared that 50% seems quite high because although the quality of online education may be high, there is a lot to be said about being in class and participating. She added that it may be useful to take a look at the standard in other states and how the percentages are allocated.

Ms. Leiva responded that the online option is only one option. Optometrists also permitted to earn self study credits by teaching a CE course, writing a CE article, attending a full day board meeting, and completing a course in cardiopulmonary resuscitation (CPR).

Dr. Goldstein opened the floor to further discussion of this topic.

Executive Vice President for the California Academy of Eye Physicians and Surgeons (CAEPS), Craig Kliger, M.D. stated that what he believes ultimately determines the quality of the education is the quality of the course. So if any particular type of course has been determined to have a certain amount of credit granted by a crediting agency, those courses should be considered to have educational value regardless of how the education is received.

Ms. Leiva announced that she provided proposed language which (if approved) changes the correspondence hours from 20 to 25. If the language is not approved it will affect not only the online courses, but the teaching, writing articles and all of the other options as well.

Board Member, Alexander Kim conferred with Ms. Johnson that the personal interaction component is important and should be kept. He also questioned Mr. Robinson about the potential for cost savings by utilizing online education.

Mr. Robinson confirmed the cost savings. He added an example of rural optometrist in Northern California. They're often unable to find CE course close to where they reside and therefore incur travel costs (i.e. commercial airline, gasoline for driving their car, hotel cost, etc.). By taking courses online, these optometrists save substantially.

Dr. Goldstein continued this agenda item for the purpose of gathering for information.

Monica Johnson moved to continue this item to the next Board meeting to obtain more information and become better able to deal appropriately with the subject. Alejandro Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

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

5. Review and Possible Approval of the Revised Records Retention Schedule
Lydia Bracco reported on this item.

She explained that although the Board approved the records retention schedule at the last meeting, some changes have been made to the schedule due to a policy with DCA and their electronic records retention. She stated that we need to have the Board approve this once more.

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. It was discovered this morning that language needs to be added to the categories that states: "and similar type of closure" due the Consumer Affairs Systems (CAS) database closure codes.

Kenneth Lawenda moved to accept the retention schedule. Alexander Kim seconded. The Board voted unanimously (7 – 0) to pass the motion.

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

6. Review and Possible Approval of Revised Board Member Administrative Procedures Handbook
Brianna Miller provided an overview.

Ms. Miller reported that given the new edition of the Bagley-Keene Open Meeting Act which was distributed in January 2011, the Board updated the Board of Optometry's Administrative Procedures Manual to reflect those changes. Additionally staff made their own changes. Ms. Miller provided Board Members with a copy of the Procedure Manual and stated the changes that were made.

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.

Ms. Miller stated that should the Board vote to approve the updated Procedures Manual, she will take it to the department's publications team, where it will become a handy notebook for Board Members to take to meetings and prepare for meetings.

Dr. Goldstein announced that he discovered some language in the manual that doesn't make sense to him and should be made clearer. He advised that Ms. Miller send everyone an electronic copy and

have everyone make their own edit suggestions. Dr. Goldstein suggested that with this information, Ms. Miller could put together a composite and then discuss the first draft with Mona and him and have a final version at the next meeting.

7. Enforcement Program Report

A. Data Clean-up Project

Jessica Sieferman reported briefly that many errors were discovered in the CAS database. Therefore the enforcement staff are preparing to clean up all of its data in the 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. Now that the revised retention schedule is adopted, staff will use this information to identify only the necessary data needed to convert to BreEZE.

B. NCIT and Enforcement Academy

Ms. Sieferman announced that she and Ms. 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. She Sieferman added that Cheree Kimball has already completed the Advanced CLEAR training. And 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. National Practitioners Data Bank Audit

Mr. Christensen reported that 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 the 26 Respondent's were not reported to the NPDB. This was corrected effective August 23, 2011.

D. Expert Witnesses

Ms. Bracco explained that effective November 10, 2010, all of the boards and bureaus, when using consulting services were required to enter into formal consulting services contracts, and when working with people needed for case review. This slipped through the cracks and did not happen by November 10, 2010. She reported that staff is now contracting as required. Staff has commitments from five optometrists and Ms. Bracco has written four contracts. She's awaiting submittal of documents from one optometrist. The four written contracts have been sent to DCA's contracts unit and are being reviewed by an analyst. This process takes approximately 30 – 60 days for approval.

Ms. Maggio clarified that Board staff did not allow the contract requirement to "slip through the crack" rather the department wasn't enforcing it. Due to payment methods that were not "across the board", Ms. Maggio doesn't believe the department even realized that the Board of Optometry wasn't in compliance.

E. Enforcement Survey

Ms. Sieferman reported that 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. This new survey has replaced the previously used generic enforcement survey. It is postcard sized and will be sent out with the closing letters. No additional postage is required to mail the surveys back to the Board. DCA enters the completed survey results onto Optometry's survey monkey account. She added that Enforcement Unit staff has placed the identical survey link on their email signature blocks. The Enforcement Unit has been given a user ID and password to monitor its own survey results.

F. *Fingerprint Program*

Ms. Bracco provided an update of the fingerprint program. Ms. Bracco 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 the Renewal Notice, sent automatically to licensees, was not the same as what's written on the website.

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.

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.

Board members inquired and Ms. Bracco explained the course of action in these cases. Various scenarios were discussed by Board Members and staff.

G. *Probation Program*

Ms. Sieferman stated (using the four petitioners from the last meeting as an example), that one of the common arguments of the probationers is that they were not aware of the requirements set upon them. She explained that while she agrees that the probationers are responsible for abiding by the terms of their probation, she also believes it's upon Board staff to make their requirements and due dates clear to them from the start. Therefore, Ms. Sieferman 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.

She continued explaining that 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. 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.

She announced that 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.

Ms. Sieferman added that the California Laws and Regulations Examination (CLRE) was administered to five probationers since the Board voted to add passing the CLRE as a standard probation condition. 40% have passed the exam.

Dr. Goldstein sought clarification that once a probationer fails the CLRE he/she cannot take the exam again for six months but can practice in the interim. Ms. Sieferman suggested that if language is changed in the Disciplinary Guidelines, they can be required to cease practice until they pass the examination.

Ms. Sieferman provided probation statistics for the Board.

H. *Statistics/Performance Measures*

Ms. Kimball provided an Enforcement Statistical Overview prepared by her. She also provided Performance Measures, prepared by DCA.

I. *Unlicensed Activity*

Ms. Miller provided an overview of unlicensed activity. In response to public requests for information, the 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.

J. *Other*

Dr. Goldstein opened the floor to comments/questions. There were none.

8. Rulemaking Calendar

Ms. Leiva provided an overview of the following rulemaking calendar items:

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

Board members, staff and staff counsel discussed the draft language for the Uniform Standards Related to Substance Abuse.

Monica Johnson moved to approve language as amended and modified. Donna Burke seconded. The Board voted unanimously (6-0) to pass the motion.

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

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

Board members, staff and staff counsel discussed the comments received pertaining to CCR, Title 16, §1513, §1514 and § 1525.1.

Monica Johnson moved to continue this discussion to the next Meeting. Kenneth Lawenda seconded. The Board voted unanimously (6-0) to pass the motion.

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

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

In the past couple of years, three students have been unable to obtain Therapeutic Pharmaceutical Agent (TPA) certification because they did not pass the Treatment and Management of Ocular Disease (TMOD) component of the examination. Thus, these individuals received Diagnostic Pharmaceutical Agent (DPA) certification which is the most basic, and does not allow licensees to fully exercise the scope of practice available today.

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 TPA certified. Specifically, the requirement in question is whether new graduates have to take and pass the TMOD in order to be certified by the Board.

Board members, staff and staff counsel discussed the draft language for CCR §1531.

9. Legislation

To prevent any perceived conflict of interest, Dr. Lawenda recused himself from discussion of this agenda item.

A. Discussion of Amendments to Assembly Bill 778 since the July 21, 2011 Board Meeting, and Consideration of Possible Board Action

Ms. Leiva provided an overview of Assembly Bill (AB) 778. Board staff provided language of AB 778 as it was amended on June 21, 2011. Staff would like the Board to review this language and suggest any possible changes.

Ms. Johnson, Ms. Leiva, and Dr. Goldstein discussed the status of AB 778. This bill is currently a two year bill. It will begin discussion in Legislature again in January 2012. Therefore, this is the time make any changes and come to agreement. The author of the bill has asked to meet with the State Board of Optometry meet with the author to consider other possible amendments to this bill.

Dr. Goldstein opened the floor for discussion of this item.

Representative for Lenscrafters, Kathryn Austin Scott stated that Eyexam of California is the Knox-Keene plan that employs approximately 400 optometrists to serve their plan members. She confirmed that AB 778 is a two year bill and cannot be acted upon between now and when the Legislature reconvenes. It is not required to reconvene until June 2012.

Ms. Scott provided an overview of the amendments to and goal. It is not explicit in statute whether a knox-Keene plan can have a relationship with a registered dispensing optician (RDO). So the goal is to codify this model and provide the Board with the regulatory framework in which

to address any concerns about this environment. AB 778 would prohibit an RDO from engaging in conduct that would influence or interfere with the clinical decisions or sale of eyewear with an optometrist at an Eyexam (for example). It also prohibits the specialized plan from having a quota related to eyewear. It further protects patient records and has language that would encourage the Department of Managed Health Care (DMHC) and the Board of Optometry to share documents. She provided for Board members edification exactly how DMHC does regulate the Knox-Keene plan.

She explained that the Board is looking at the consumer perspective. Lenscrafters requests the following of the Board:

a) Look at consumer complaints. DMHC rigorously investigates any concerns or questions. They perform a through audit of any complaints and concerns. Lenscrafters would like the Board to regard this information from Lenscrafter's perspective.

b) Look at this model from a consumer perspective. Ms. Scott provided an example of herself. She stated she visits several different opportunities (Kaiser, private optometry, etc.). Lenscrafters wants to make certain that a policy is placed from the perspective of how the Board regulates optometry in all environments.

Representative for Luxottica, Wally Lovejoy introduced himself and announced that he is also Chairman of the Board of Directors for Eyexam of California. He stated that he wants to make certain the Board understands how seriously Luxottica considers their compliance with California laws and the laws of other states where Luxottica does business. He believes they have a long history of quality of care for the members of Eyexam of California. He wishes to provide that history for the Board's edification perhaps via a special committee (quality assurance committee led by doctors who establish protocols). He added that they have treated millions of patients and served millions of members and they are not aware of any complaints. If there have been a handful of complaints he believes they were thoroughly investigated and resolved before rising to the level of coming to the Board.

Board member, Fred Naranjo asked Mr. Lovejoy to explain how many participating California licensed optometrists does Luxottica currently have. Mr. Naranjo explained that as a Board member it is his number one responsibility to protect the public. However, as a public member it is also his responsibility to help ensure that the public has a fair representation and access to quality and convenient eye care. Therefore, he asked that Mr. Lovejoy explain the retail side of Luxottica (number of doctors, days open, etc.).

Dr. Goldstein, Mr. Lovejoy and Ms. Scott discussed this and other RDO business models.

Deputy Attorney General, Sherry Ledakis for the Attorney General's Office commented. She announced that she has been working on the Lenscrafter's Federal litigation for almost ten years and all of the issues are almost resolved. If the laws are upheld, the Attorney General's Office has entered into a stipulation with Cole National Luxottica that prior to any type of action being taken by the Attorney General, someone from their office will meet with representatives of Luxottica to determine if there is any common ground or any stipulation that might be entered into.

Ms. Ledakis continued with the concerns of the Attorney General's (AG's) Office. She explained that CCR 1514 permits optometrists to be on the premises of a mercantile establishment; however, there are significant safety regulations involved (i.e. the optometrist(s) must own the establishment completely). Ms. Ledakis suggested that if Lenscrafters is serious about protecting the public, that they might seek legislation that would allow optometrists to be completely independent of commercial practices.

She added that if AB 778 is passed, the likely outcome would be that more optometrists would be working in large chain stores. These large chain stores do not exist in small, poor communities because these poor areas do not have the economic ability to support a Lenscrafters store. Independent doctors will not be able to compete with a Lenscrafters or Pearl Vision.

Ms. Ledakis stated that there exists a plethora of evidence of harm that can come to patients by being treated at an optical store. Even the district court judge who ruled in Lenscrafter's favor stated that the District Attorney's Office presented him with hundreds of pages of evidence of poor quality eye care in chain stores. However, it was his opinion that there were less restrictive alternatives than that Business & Professions (B&P) Code 2556 and 655.

She noted that the question in the People vs. Cole Case was - does the Knox-Keene Act (which allows people who are not optometrists to own an optometric office) alleviate optometrists and opticians from having to comply with the remaining provisions of B&P Code? The California Supreme Court clearly stated that any optometrist who works for a Knox-Keene plan must abide by all of the other B&P Code sections (specifically 655 and 2556).

She added that the AG's expert witness testified that the large chain stores provide poor quality of care at higher prices but the public doesn't know whether they've received quality care or not. They're not aware of how many procedures need to be included in a thorough examination. Ms. Ledakis explained that although Lenscrafters has requested the Board's directive in what's required of a thorough exam, this would infringe on the expertise of the doctors, as not all patients require the exact same set of procedures.

Ms. Ledakis noted that the Board's job is to protect patient health and welfare which if far more important then convenience. Especially since the large chain stores are not located in the smaller areas.

Ms. Scott argued that she can't see rural doctors being put out of business by AB 778 becoming law. She stated that Lenscrafters is in almost all 50 states with far less regulation then the DMHC in those states.

The California Optometric Association's (COA's) Director of Government and External Affairs, Kristine Schultz announced that there have been severe problems (i.e. sharing of member records, quotas, issues of poor quality). She acknowledged the positive discussions with Lenscrafters. She acknowledged that Lenscrafters has changed their business model over the years. Nevertheless, there are still concerns about the types of companies that can become established in California under revised law. There are also concerns that the current laws put in place to protect consumers haven't been doing a good job of protecting consumers. Ms. Schultz stated that the goal is to come up with better language working with both the AG's Office and the sponsors of the bill.

Dr. Goldstein opened the floor for comment.

Ms. Johnson and Dr. Goldstein discussed the Board's role in this agenda item. Dr. Goldstein clarified that the Board has been requested (in writing) by the author to participate. The Board is willing to participate at the appropriate place. He explained that the Board has a legal action involved in this item. If the Board enters into discussion with the author, legal counsel should be present at that time.

Ms. Johnson and Mr. Kim requested to have a legislative meeting scheduled for this item. Board members discussed details regarding this meeting.

Dr. Kliger stated that the CAEPS is optimistic that some solution will be found.

Donna Burke moved to transfer this agenda item to the Legislative Committee. Alejandro Arredondo seconded. The Board voted (6 – Aye; 0 – No; 1 – Abstention) to pass the motion.

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

B. Urgency Bill for Expert Consultants by the Senate Business, Professions & Economic Development Committee

Ms. Leiva provided an update on SB 541 regarding expert consultant for the Board's law exam and enforcement issues. The legislation is moving along nicely. It will not exempt staff from the contracting process but will shorten the time involved.

10. 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

Ms. Maggio introduced this agenda item. She explained that staff's been working on this off and on for about three years, most readily in the last two weeks. After discussion with legal counsel it's been determined that staff needs to meet with the COA since §3070 was initially their legislation.

Monica Johnson moved to continue this agenda item to the next Board meeting. Kenneth 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**		
Mr. Naranjo	**X**		
Dr. Lawenda	**X**		
Mr. Kim	**X**		
Ms. Burke	**X**		

11. Public Comment for Items Not on the Agenda

Dr. Goldstein opened the floor to discussion of items not on the agenda. There was no discussion.

12. Suggestions for Future Agenda Items

- The continuation of the 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.

- The continuation of the 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.

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

Administrative Law Judge (ALJ), Linda Cabatic presided over the hearing.
Board members heard the following petitions:

A. Dr. James Stuart Herzman, O.D., License Number OPT 10935

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.

B. Dr. Lisa Elizabeth Breen, O.D., License Number OPT 14075
Agency Case Number: CC 2008-215

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

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

B. Dr. Lisa Elizabeth Breen, O.D., License Number OPT 14075
Agency Case Number: CC 2008-215

FULL BOARD OPEN SESSION

16. Adjournment

Kenneth Lawenda moved to adjourn the meeting. Alexander Kim seconded. The Board voted unanimously (6-0) to pass the motion.

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

Monica Johnson, Board Secretary

Date

Agenda Item 3, Executive Officer's Report

The Executive Officer's Report will be delivered to members at the Board Meeting. The Budget Office is working in mid-year revisions and the budget office staff was unable to provide budget reports in time for mailing of meeting packets.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members **Date:** December 2, 2011

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

Subject: Agenda Item 4 – Legislation and Regulation

A. Report of November 18, 2011 Committee Meeting:
Andrea Leiva, Policy Analyst

Below is a summary of what was discussed at the November 18, 2011 Legislation and Regulation Committee Meeting. The committee is composed of Dr. Goldstein and Dr. Arredondo:

1. **California Code of Regulations (CCR) section 1575 Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

   An update was provided on the status of this regulation (see below).

2. **CCR sections 1513 Registered Name Only and 1514 Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern**

   The comments received during the 45-day comment period pertaining to this regulatory package were discussed, as well as staff's proposed responses to these comments. All the proposed responses were considered and approved to be provided to the rest of the Board members (see below). The modified text in order to address some of the concerns of the commentor was also approved and ready for final approval to begin the 15-day comment period.

3. **Assembly Bill 778, LensCrafters**

   The committee went through the bill, as amended June 21, 2011, and discussed potential concerns presented by Board staff. (See below for further discussion topics.)

4. **Temporary Practice – Potential Legislative Proposal**

   The need to define temporary practice was discussed and the committee approved proposed legislative language (see below).

5. **Retired License Status and Volunteer Designation**

   The need to create a retired license status was discussed and proposed legislative language was approved so that it could be further discussed at the Dec. 2, 2011 meeting (see below). Draft language for the related issue on volunteer designations is attached. This language was not

provided at the Committee Meeting, the discussion that was held On November 18, 2011 only pertained to the concept of such a license status. The Committee asked staff to bring draft language to the Board Meeting for discussion and direction to staff.

6. Potential Omnibus Bills

Non-controversial amendments were discussed related to the licensing provisions in the optometry practice act, which will be discussed below. All proposals were approved, except the addition of a provision allowing an expired/delinquent license to be renewed as inactive. If a licensee has a delinquent license they have not renewed within three years time, the license must be restored pursuant to BPC section 3147.6. After this occurs, the license can then be renewed as inactive.

7. American Board of Optometry (ABO) Board Certification Program

An update regarding ABO certification was provided and the committee decided to recommend to the Board that this issue should continue to be “watched” because it still needs to develop further. The committee supports continued competency, but at this time, will not mandate it for the Board’s purposes. Board staff recommended that a workgroup be developed in order to explore this issue further and the committee consented, with the condition that the workgroup focus only on collecting information, and not making any decisions or participating in development.

8. Final Administration of Therapeutic Pharmaceutical Agents (TPA) Didactic Course

Staff updated the committee that the TPA course will no longer be offered after July 8-18, 2012. A few California optometrists who are not TPA certified have shown interest in the course, but are concerned that this is the last offering. Staff requested guidance on how to deal with optometrists who decide to becoming TPA certified after the last offering of this course. The committee decided to recommend that staff contact the 700 optometrists in California who are not TPA certified via mail and e-mail to encourage them to take the course. None of the schools are interested in providing this course anymore due to waning interest, it is no longer cost effective, and the fact that all licensed, practicing optometrists are already TPA certified. Thus, any future requests after 2012 will have to be handled on a case-by-case basis.

B. Regulation Update:
Andrea Leiva, Policy Analyst

1. Status of California Code of Regulations (CCR) §1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
The Board approved proposed regulatory language at its September 16, 2011 meeting. The proposed regulatory language was noticed on the Board's website and mailed to interested parties on October 21, 2011, initiating the 45-day public comment period. The comment period began on October 21, 2011 and will end on December 6, 2011. A regulatory hearing is being held on December 6, 2011.

2. Discussion of Comments Received During the 45-day Comment Period of CCR §1525.1. Fingerprint Requirements, §1513. Registered Name Only, and §1514. Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern

Action Requested: Staff first requests that the Board review and fully consider the comments received pertaining to this rulemaking package. 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 has provided proposed responses for review.

Staff also 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.

Lastly, staff further requests 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 doe not receive any adverse comments directed at the Modified Text.

Background: The Board approved proposed regulatory language at its April 11, 2011 meeting. The proposed regulatory language was noticed on the Board's website and mailed to interested parties on May 27, 2011 initiating the 45-day public comment period. The comment period began on May 27, 2011 and ended on July 11, 2011. A regulatory hearing was held on July 11, 2011, in which there were no attendees or additional comments received. One comment was received via e-mail from Craig Steinberg, OD, JD pertaining to CCR §1513 and §1514.

At its September 16, 2011 meeting, the Board partially reviewed the comment received during the 45-day comment period. The Board voted to discuss the comment received further at its next public meeting on December 2, 2011. The deadline to submit the final rulemaking to the Office of Administrative Law (OAL) is May 27, 2012 .

Staff prepared proposed responses to the comments received by Dr. Steinberg at the September 16, 2011, which are being provided again below, with some minor edits. Staff also prepared proposed modified text which possibly addresses the concerns in the comments received by Dr. Steinberg (Attachment 1). In order to thoroughly review the comments received, staff brought the above documents to the November 18, 2011 Legislation and Regulation Committee Meeting for a preliminary discussion regarding the proposed responses and modified text. The committee made some minor edits and agreed that the modified text and proposed responses should be accepted by the Board in order to begin the 15-day comment period for the modified text.

CCR §1513
Issue
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 using a nickname, using a new married name, or using a completely different name because their name is too long, or ethnic (e.g., Nguyen Anh-Hong Hoang).

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 the optometrist by the nickname they use, when they are registered with the Board with another name, 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.

In addition, when this occurs, a consumer assumes that the optometrist is unlicensed and submits a complaint for unlicensed practice in addition to their original complaint.

From 1936 to 1982, CCR §1513 read that an optometrist could not use, in connection with his practice, any name other than the one for 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 made to allow for the possibility of slight variations in a licensee's registered name in advertising. Unfortunately, this change is not working for consumer protection purposes and must be addressed.

<u>Comments Received During the 45-day Comment Period and Proposed Responses from Staff</u>

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. Consumers need to be able to identify their optometrists if they choose to look them up on the Board website. Also, it is only logical to assume that the "most prominent and well-meaning" optometrists will be quick to comply because as health care practitioners, they too share the Board's mandate to increase consumer protection.

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. It is a consumer right to be able to easily look-up an optometrist based on the information provided in an advertisement. Education is the first line of defense against fraud and deception and helps consumers make well-informed decisions before they choose an optometrist to examine their eyes. Further, if the licensee had been compliant with CCR §1513 in the first place, then they would not have to pay thousands of dollars to recreate expensive signs and stationary. All licensees are expected, as professional health practitioners and business owners, to be in compliance with all laws before even considering investing on any sort of advertising.

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 (Attachment 2) to possibly alleviate this problem in a way that will benefit licensees, consumers and Board.

The proposed Modified Text provides two options for the optometrist: 1) use their name as registered with the Board, or 2) or use their name of preference (without too much deviation from the name registered with the Board, of course) and their license number.

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 Recommended 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, would not create a bureaucratic nightmare and is not making anything a criminal act. In fact, this regulation will eliminate bureaucratic nightmares and allow the Board and licensees to run in a more efficient manner. As a state licensing agency, whose 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 being provided today may even add some flexibility and understanding for licensees.

CCR §1514

Issue

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.

Comments Received During the 45-day Comment Period and Proposed Responses from Staff

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 not 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. The purposes of the changes is to inform the public regarding the location of the optometrist treating them. Modified Text (Attachment 3) is being provided to address this issue as it was intended.

Attachments

1. Original comments received by Dr. Steinberg pertaining to §1513 and §1514
2. §1513 Proposed Modified Text
3. §1514 Proposed Modified Text

Agenda Item 4B, Attachment 1

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.

Craig S. Steinberg, O.D., J.D.
craig@odlawyer.com
www.odlawyer.com
(818) 348-7949 Voice
(818) 879-7950 Fax

This e-mail and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you receive this email in error please immediately notify me at (818) 348-7949 and permanently delete the original copy and any copy of any e-mail, and any printout thereof. To ensure compliance with Treasury Department regulations, you are advised that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein. Notwithstanding the Uniform Electronic Transactions Act or any other law of similar substance or effect, absent an express statement to the contrary, this email message, its contents, any attachments hereto are not intended to represent an offer or acceptance to enter into a contract and are not intended to bind the sender, any of the senders clients, or any other person or entity.

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~~, registered with the Board, unless such advertisement contains their license or registration number.

Note: Authority cited: Sections 137, 651 and 3025, Business and Professions Code. Reference: Sections 651 and ~~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 that is definite and apart, designating that the rented space is occupied by an optometrist or optometrists.

(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.

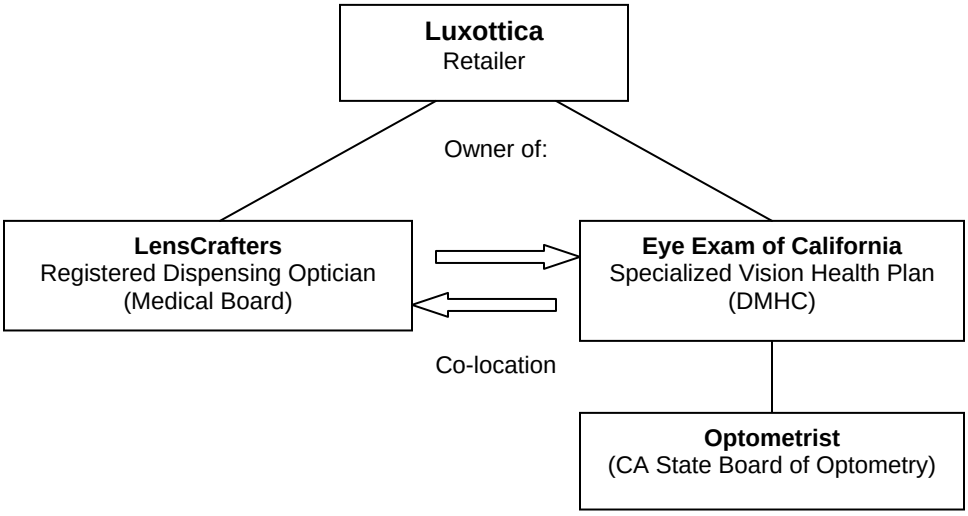
Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 651 and 3025, Business and Professions Code.

C. Discussion and Consideration of Pending Legislation that May Impact the Practice of Optometry or the Functions of the Board of Optometry:
Andrea Leiva, Policy Analyst

Assembly Bill (AB) 778, LensCrafters:

Action Requested: Staff would like the Board members to discuss this pending legislation in order to identify any additional concerns with the bill. No action will be taken on the bill by the legislature until around June 2012. Dr. Goldstein, Mona Maggio, Executive Officer, and Board staff are scheduled to meet with the author of the bill, Assemblymember Toni Atkins, on January 18, 2012. Staff recommends that the Legislation and Regulation Committee should meet after the meeting with Assemblymember Atkins, in order to develop proposed amendments to the bill.

Business Model:



Staff Concerns with 6/21/11 Version of Bill:

1. **Health and Safety Code Section (H&S) 1380 – Pages 3 - 8**

   - There needs to be a more timely way of doing an audit on Knox-Keene plans. The current process is cumbersome and will not allow any agency to take action to resolve the any problems, unless it is an egregious issue.

   - The Board would like to be more involved in such audits, since it involves optometrists.

2. **H&S Section 1395.3 – Page 8, Lines 11-24**

   - Goes around Business and Professions Code (BPC) Sections 655 and 2556 while litigation continues.
   -

3. **H&S Section 1395.4(a)(1) – Page 8, Line 36: use of the word "eyewear"**

   - The term "eyewear" in this legislation is not defined. LensCrafters, in addition to selling frames and lenses, also sells contact lenses. Does the term "eyewear" include contact lenses? In order to address this concern, the definition in Business and Professions Code (BPC) Section 2541 is strongly recommended.

4. **H&S Section 1395.4(b) – Page 9, Line 4: use of the word "unhindered"**

   - The word "unhindered" is too vague. The dictionary definition of this word reads: not slowed or blocked, or interfered with. Possible replacements include:
     "affected";
     "under his or her exclusive control and will not be affected by…"; or
     "free from any involvement with a person unlicensed to practice optometry, specifically…"

   - How will it be proven that the optometrists' clinical decisions will be "unhindered" by the plan and its affiliates? Will a survey be provided to patients in order to determine how much pressure was placed upon them by their optometrist to purchase glasses/contacts/ sunglasses by an objective organization? Will there be anonymous surveys taken by employed/contracting optometrists that will be provided to the state board for review?

     This provision, as written, is difficult to enforce and will harm patients due to the potential abuse by opticians and optometrists. In the case of optometrists, there is a fear of repercussion because they may not be following the retail company's mission to make profits.

5. **H&S Section 1395.4(b) – Page 9, Line 5: use of the word "affiliate"**

   - The word "affiliate" is too vague. The dictionary definition of this word reads: A person, organization, or establishment associated with another as a subordinate, subsidiary, or member.

     Since Luxottica owns both LensCrafters and EyeExam of California, these two entities are "affiliates." EyeExam of California is the employer of the optometrists, thus, the way this provision is currently written is contradictory. If this provision was true, then that would mean that EyeExam of California would have no control over their employed/contracted optometrists, and that does not make sense.

6. **H&S Section 1395.4(c) – Page 9, Line 7: use of the phrase "shall not be <u>required</u> by the plan…"**

   - Although this provision does not require the optometrist to sell the eyewear, does this mean that the plan will be allowed to strongly encourage sale of the eyewear? How will this be prevented so that patients will not be harmed by over prescribing?

7. **H&S Section 1395.4(d) – Page 9, Lines 11-13: use of the phrase "shall not receive any compensation from the sale of eyewear by a registered dispensing optician affiliated with the specialized vision care plan."**

   - What about other "affiliates" of the plan? This only specifically lists registered dispensing opticians. Why?

8. **H&S Section 1395.4(e) – Page 9, Lines 14-15: use of the word "notwithstanding"**

   The use of this term is questionable in the bill and appears to be an exception dependant on the protocols established by the plan. All the other provisions are clear and state that the optometrist <u>will not</u> be required to do certain tasks and their clinical judgment <u>will not</u> be interfered with.

9. **H&S Section 1395.4(e) – Page 9, Line 16: restriction of quota requirement**

- What about bonuses, gifts, days off as compensation, under the table competitions, or other motivational sales tactics? This provision, as written, is difficult to enforce and will harm patients due to the potential for abuse by opticians and optometrists. How will it be proven that this is not occurring?

- What about the possibility of scheduled appointment times? Setting of appointment times could be construed as a quota, e.g., an appointments every 15 minutes.

- This section only addresses the use of set time periods to increase sales. What about other sales tactics that may involve the optometrist as a tool?

10. H&S Section 1395.4(e) – Page 9, Line 17: use of the word "practitioner"

- Not consistent with the rest of the legislation. The word used should be "optometrist."

Additional Concerns/Notes:

- How will all the added provisions in this bill be regulated? A possible solution is for the Board to regulate Registered Dispensing Opticians instead of the Medical Board.

Attachments:

1. Assembly Bill AB 778 – 6/21/11 version

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.

(d) 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. 4.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

D. Discussion and Consideration of Legislative Proposals for 2012 Legislative Session:
Andrea Leiva, Policy Analyst

Temporary Practice

Action Requested: Staff has prepared proposed language to amend BPC §3070 to possibly address the issues described below (Attachment 1). Board staff requests that the Board members review this issue, and approve the proposed language, and move to sponsor legislation in order to define temporary practice.

Background: This issue has been brought to the Board several times in the past few years, without resolution. It is still a matter of discussion whether to address temporary practice issues in the legislative arena, or through the regulatory process.

Business and Professions Code (BPC) §3070 requires optometrists to notify the Board of every practice location. Additionally, BPC §3075 requires optometrists to post evidence of licensure at every practice location (Attachment 1). BPC §3070 (b)(1-4) establish exemptions to this rule for optometrists working in certain, defined "temporary practice" settings. "Temporary practice" is currently not defined and pursuant to BPC §3070 (e), it is the Board's responsibility to define it.

Subsection (b)(5) already has its own definition for temporary practice, but this section only applies to situations when an optometrist is ill or on temporary leave, such as vacation. Many optometrists believe that the definition for (b)(5) applies to subsections (b)(1-4), but this is not the intent.

Initially, staff believed that the requirement to define temporary practice signified defining each subsection in (b)(1-4). But, upon further investigation and discussion in 2009 with the previous Director of Government and External Affairs from the California Optometric Association (COA), subsections (b)(1-4) are completely exempt from the notification requirement. Assembly Bill 986 (Eng, Chapter 276, 2007), sponsored by the COA, created these exemptions because it had become very difficult for optometrists to notify the Board of every practice location. Back then, and to the current day, it takes up to five weeks to obtain a Statement of Licensure (SOL). This is not conducive to a new trend of practice that involves licensees practicing at multiple locations, or an on-call basis.

Further, despite the exemptions in BPC §3070 (b)(1-5), there continues to be confusion among optometrists on how they must notify the Board of their practice location. This issue must be addressed for consumer safety purposes.

Issue: Since the last discussion regarding temporary practice in 2009, many more issues have surfaced pertaining to this matter.

1) The practice of optometry is changing. Optometrists are now contracting with multiple health organizations to provide their services, and may not have a principal place of practice where consumers can follow-up if they have questions, a complaint, or need to obtain a prescription or patient records. BPC §3070.1 only addresses the practice optometry in health facilities.

2) Probationers and their legal advisors are interpreting BPC §3070(b)(5) to mean that they can practice at multiple locations, seven calendar days during a 30-day period and 84 days during a calendar year. This is incorrect. The time period in this exception applies to <u>all</u> temporary places of practice that fall into this category, not each one separately. Also, the probationers are doing fill-in work as contracted employees, not for a sick or vacationing optometrists in a temporary capacity.

3) The exemptions, §3070(b)(1)-(2) are all locations that employ optometrists permanently, and through contract work. Optometrists working in these location should be required to notify the Board. §3070(b)(3)-(4) are typically not locations in which an optometrist will work for more than a few days, and most likely only one day.

4) “Temporary Practice” continues to need a definition.

5) California Code of Regulations (CCR) §1506 is confusing. Currently, the requirements in the regulation are not clear because they do not explicitly show the requirement for SOLs.

6) The BreEZe project will make it much easier for licensees to obtain SOLs. BreEZe will have the ability to allow optometrists to have a personal log-in where they can manage their licensure e.g., change their own address, add practice locations (if authorized), pay for licenses online, possible automatic generation of printable SOL

Attachments:

1. Proposed Language for BPC 3070

PROPOSED LEGISLATIVE LANGUAGE

DRAFT 2

The initial changes to the proposed language are shown in underline for new text and strikeout for deleted text.

Draft 2 changes proposed by the November 18, 2011 Legislation and Regulation Committee are shown by double underline for new text and underline with strikeout for deleted text.

3070. NOTICE OF ADDRESS FOR PRACTICE OF OPTOMETRY; STATEMENT OF LICENSURE; EXEMPTIONS

(a) Before engaging in the practice of optometry, each licensed optometrist shall notify the B~~b~~oard in writing of the address or addresses where he or she is to engage~~, or intends to engage,~~ in the practice of optometry and, also, of any changes in his or her place of practice. A Statement of Licensure shall be obtained from the Board for all practice locations other than an optometrist's principal place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

(b) A licensed optometrist is not required to provide the notification described in subdivision (a) if he or she engages in the temporary practice of optometry. Temporary practice ~~shall be defined as follows:~~ is defined as the practice of optometry at any location other than the optometrist's principal place of practice. Such practice is limited to a total period of five calendar days during a 30 day period, not to exceed 36 days within a calendar year. This limit shall apply to all practice locations where the optometrist is engaging in temporary practice, not each location individually. ~~in any of the following settings:~~

~~(1) A facility licensed by the State Department of Public Health.~~

~~(2) A public institution, including, but not limited to, a school, a community college, and federal, state, and local penal and correctional facilities.~~

~~(3) A mobile unit that is operated by a governmental agency or by a nonprofit or charitable organization.~~

~~(4) The home of a patient who is not ambulatory.~~

~~(1) The practice of optometry at a practice location where the optometrist is not employed as a regularly scheduled employee or in a contracted arrangement.~~

~~2) The practice of optometry at the practice location of another optometrist or other setting where optometric services are provided, that has been reported to the Board pursuant to this section, only if the optometrist at such location is ill or on temporary leave.~~

If the time period of the temporary practice must be extended for any reason, an application for Statement of Licensure must be submitted to the Board pursuant to California Code of Regulations section 1506.

Optometrists on probation or who are being disciplined by the Board for any reason must follow the notification requirements pursuant to California Code of Regulations section 1575.

~~The exceptions under this section are limited to a total period of three calendar days during a 30-day period, and 36 days within a calendar year. This limit shall apply to all temporary practice locations, not each location individually.~~

~~(5) The practice location of another optometrist that has been reported to the board pursuant to this section if the other optometrist is ill or on a temporary leave or for any other reason approved by the board. The exception under this paragraph is limited to a total period at all temporary practice locations of seven calendar days during a 30-day period and 84 days during a calendar year.~~

(c) Notwithstanding Section 3075, an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall carry and present upon demand evidence of his or her licensure but shall not be required to post his or her current license or other evidence of current license status issued by the board.

(d) In addition to the information required by Section 3076, a receipt issued to a patient by an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall contain the address of the optometrist's primary practice location and the temporary practice location where the services were provided.

~~(e) "Temporary practice" shall be defined by the board for purposes of this section.~~

D. Discussion and Consideration of Legislative Proposals for 2012 Legislative Session continued:
Mona Maggio, Executive Officer

Retired License Status

Background: The Board of Optometry (Board) receives numerous inquiries and requests from licensees regarding a retired license for optometrists retiring from practice. Currently, the Board does not have a retired license status available to its licensees. If a licensee retires from practice he or she can do one of the following:

1. Request that the license be placed on inactive status and pay a biennial renewal fee of $425. By definition, an inactive license means that a licensee may not engage in practice and is exempt from continuing education requirements. An optometrist may reactivate the license to an active status by paying the license renewal fee, if due, and delinquent fees, if any, and submitting proof of completion of continuing education (CE) hours specific to the license type. DPA 40 hours & TPA 50 hours, as defined in Business and Professions Code section 3147, Renewal of Expired Certificates.

2. Allow the license to expire. Allowing a license to expire means that the licensee has decided not to pay the renewal fee and complete the required number of CE hours for the license type. A license that is in delinquent status for three years will be cancelled. During the time the license is in a delinquent status, the license may be renewed to an active status by following the process identified in #1 above. Licenses that become cancelled cannot be renewed. The optometrist must comply with the requirements for reinstate as defined in BPC section 3147.6, Restoration of Certificate Following Failure to Renew Within Specified Period.

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

- Renewing with an inactive status requires paying an inactive renewal fee every two years when the optometrist does not intend to ever practice again; and,
- If a licensee allows the license to expire, the licensee look-up tool on the Board's website labels the license status as "Delinquent" until the license is cancelled after three years, at which time the license status is "Cancelled.

Prior Legislation: In February 2008, Assembly Bill No. 2848 was introduced by Assembly Member Ed Hernandez during the California Legislature 2007-2008 Regular Session to add Section 3151 to the Business and Professions Code, relating to optometrists, to create a retired license status for optometrists. The bill died on the Senate inactive file.

An analysis prepared by the Senate Committee on Business, Professions and Economic Development (SCBPED) recommended two amendments that should be considered for a proposed bill:

1. License renewal. Clarify that the retired license is not required to be renewed by adding: "The holder of a retired license shall not be required to renew that license."
2. Reinstatement to active license status. The bill proposed in 2008 did not define a means for a retired license to return to active status.

Discussion: In 2010, staff brought to this the Board's Legislation and Regulation Committee a proposal modeled after retired license status language for California licensed pharmacists, architects, professional engineers and land surveyors. The Board of Behavioral Sciences sponsored AB 2191 to create a retired license status for its licensees. That law became effective January 1, 2011. The Board asked staff to review the proposed language submitted in 2008 and amend that bill with the recommendations from the SCBPED.

The retired license proposal is modeled after the proposed language in AB 2848 and language from other boards under the Department of Consumer Affairs who offer a retired license.

Action Requested: Staff requests that the Board discuss the proposed language and appropriate fee for a retired license, if acceptable, and move to sponsor legislation for a retired license status for California optometrists. Additionally, should the Board consider a "grandfathering" period for those optometrists whose license status is already deemed "Cancelled?" Board staff would have to investigate how this could be implemented without someone reactivating a license that was once "Cancelled." Business and Professions Code Section 3147 and 3147.6 would both need to be amended to included provisions for "Retired License."

Attachments:

1. Proposed Language
2. Fee Schedule
3. February 22, 2008 Assembly Bill No. 2848, Introduced by Assembly Member Hernandez
4. Complete Bill History
5. July 9, 2008 Senate Rules Committee Analysis
6. June 16, 2008 Senate Committee on Business, Professions & Economic Development
7. May 14, 2008 Assembly Committee on Appropriations Analysis
8. April 29, 2008 Assembly Committee on Business and Professions
9. Business and Professions Code section 3147, Renewal of Expired Certificates.
10. 3147.6, Restoration of Certificate Following Failure to Renew Within Specified Period.

BOARD OF OPTOMETRY
PROPOSED LEGISLATIVE LANGUAGE

Section 1. Section 3151 is added to the Business and Professions Code to read:

3151. (a) The Board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to an optometrist who holds a license that is current and active or capable of being renewed or restored and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.
(b) A licensee who has been issued a retired license is exempt from continuing education requirements and payment of the biennial renewal fee. ~~if the licensee has applied to the board for a retired license.~~ The holder of a retired license shall not be required to renew that license.
(c) The holder of a retired license may not engage in the practice of optometry.
(d) An optometrist holding a retired license shall be permitted to use the titles "retired optometrist" or "optometrist, retired."
(e) The holder of retired license issued for less than three years, may reactivate the license to active status if he/she meets the provisions of Business and Professions Code section 3147.
(f) The holder of a retired license issued more than three years, may reactive the license to active status if he/she meets the provisions of Business and Professions Code section 3147.6.

~~The board shall establish by regulation the process by which a retired license may be returned to an active status.~~

SEC. 2 No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for the crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

§3152. FEE SCHEDULE

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

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars ($275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars ($500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars ($75).

(d) The fee for a branch office license shall not exceed seventy-five dollars ($75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars ($25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars ($25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars ($50).

(h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars ($50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars ($50).

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

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

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

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

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

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

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

(q) The fee for a retired license shall not exceed twenty –five dollars ($25).

(r) The fee for a retired license with volunteer designation shall not exceed fifty dollars ($50)

Added Stats 1937 ch 423. Amended Stats 1945 ch 288 § 1; Stats 1954 ch 2 § 1; Stats 1955 ch 1602 § 9, ch 1623 § 3; Stats 1961 ch 366 § 9, operative October 1, 1961; Stats 1962 ch 2 § 1; Stats 1968 ch 1088 § 6; Stats 1971 ch 1791 § 13; Stats 1976 ch 602 § 2, effective August 27, 1976; Stats 1992 ch 645 § 2 (AB 2566); Stats 1996 ch 328 § 3 (AB 2771). Amended Stats 2005 ch 393 § 47 (AB 488), effective January 1, 2006; Stats 2007 ch 276 § 5 (AB 986), effective January 1, 2008; Stats 2008 ch 179 § 7 (SB 1498),

AMENDED IN SENATE JUNE 24, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2848

Introduced by Assembly Member Hernandez

February 22, 2008

An act to add Section 3151 to the Business and Professions Code, relating to optometrists.

LEGISLATIVE COUNSEL'S DIGEST

AB 2848, as amended, Hernandez. Optometrists: retired licenses.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry and makes a violation of the act a crime. Existing law requires the board to adopt regulations requiring licensees to complete continuing education as a condition of license renewal, as specified. Existing law also conditions the renewal of a license on payment of a specified renewal fee.

This bill would exempt a licensee from continuing education requirements and payment of the renewal fee if he or she applies to the board for a retired license. The bill would *specify that the holder of a retired license is not required to renew that license, and would* prohibit the holder of a retired license from engaging in the practice of optometry. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program. *The bill would also require the State Board of Optometry to establish reinstatement procedures for retired licenses.*

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:

SECTION 1. Section 3151 is added to the Business and Professions Code, to read:

3151. A licensee is exempt from continuing education requirements and payment of the renewal fee if the licensee has applied to the board for a retired license. *The holder of a retired license shall not be required to renew that license.* The holder of a retired license may not engage in the practice of optometry. *The board shall establish by regulation the process by which a retired license may be returned to an active status.*

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2848
AUTHOR : Hernandez
TOPIC : Optometrists: retired licenses.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2008
Nov. 30 Died on Senate inactive file.
July 10 Read second time. To third reading. To inactive file on motion of Senator Perata.
July 7 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
June 24 Read second time, amended, and re-referred to Com. on APPR.
June 23 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.).
May 29 Referred to Com. on B., P. & E.D.
May 22 In Senate. Read first time. To Com. on RLS. for assignment.
May 22 Read third time, passed, and to Senate. (Ayes 76. Noes 0. Page 5273.)
May 19 Read second time. To Consent Calendar.
May 15 From committee: Do pass. To Consent Calendar. (May 14).
Apr. 29 From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 10. Noes 0.) (April 29).
Apr. 22 Re-referred to Com. on B. & P.
Apr. 21 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
Apr. 1 In committee: Hearing postponed by committee.
Mar. 13 Referred to Coms. on B. & P. and PUB. S.
Feb. 25 Read first time.
Feb. 24 From printer. May be heard in committee March 25.
Feb. 22 Introduced. To print.

BILL ANALYSIS

|SENATE RULES COMMITTEE | AB 2848|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 651-1520 Fax: (916) |327-4478

THIRD READING

Bill No: AB 2848
Author: Hernandez (D), et al
Amended: 6/24/08 in Senate
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 9-0, 6/16/08
AYES: Ridley-Thomas, Aanestad, Calderon, Corbett, Denham, Florez, Harman, Simitian, Yee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 76-0, 5/22/08 - See last page for vote

SUBJECT : Optometrists: retired licenses

SOURCE : Board of Optometry

DIGEST : This bill creates a retired optometrist license, exempts an optometrist with a retired license from continuing education requirements and renewal fees, and prohibits practicing optometry under a retired license.

ANALYSIS :

Existing law:

1. Regulates the practice of optometry through the licensing and regulation of some 6,500 optometrists by the Board of Optometry (Board), within the Department of Consumer Affairs (DCA).

CONTINUED

pharmacist whose license is not revoked, and who applies to the Board of Pharmacy and pays a $30 fee. The retired license is not required to be renewed, and the retired licensee may not engage in licensed practice. To return a retired pharmacist license to active status, the retired pharmacist must pass the examination that is required for initial licensure.

Architects, engineers and land surveyors also may be issued retired licenses upon application to their respective licensing board and payment of a fee. Retired licenses do not have to be renewed, and the retired licensee must pass an examination to return to active status.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 7/9/08)

Board of Optometry (source)
California Optometric Association

ARGUMENTS IN SUPPORT : According to the author:

"Currently, there is no opportunity for optometrists to apply for and receive a retired license. When an optometrist retires he or she can choose to continue paying their fees and fulfilling their continuing education requirements to keep their license current or they can decide to not jump through the hoops necessary to maintain a license. If they choose the latter option their license becomes delinquent and ultimately gets cancelled. This cancellation causes two main problems: 1) It causes a public perception problem for the retiring doctor; 2) If the [optometrist] decides they want to return to practicing, their preceding delinquency and cancellation causes bureaucratic impediments to returning to active status.

"By allowing optometrists to apply for and receive a retired license, as proposed in AB 2848, we permit optometrists to maintain a license that they worked hard to obtain and truly value and we make a possible conversion from retirement to active status a smoother transition."

CONTINUED

BILL ANALYSIS

|SENATE RULES COMMITTEE | AB 2848|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 651-1520 Fax: (916) |327-4478

THIRD READING

Bill No: AB 2848
Author: Hernandez (D), et al
Amended: 6/24/08 in Senate
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 9-0, 6/16/08
AYES: Ridley-Thomas, Aanestad, Calderon, Corbett, Denham, Florez, Harman, Simitian, Yee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 76-0, 5/22/08 - See last page for vote

SUBJECT : Optometrists: retired licenses

SOURCE : Board of Optometry

DIGEST : This bill creates a retired optometrist license, exempts an optometrist with a retired license from continuing education requirements and renewal fees, and prohibits practicing optometry under a retired license.

ANALYSIS :

Existing law:

1. Regulates the practice of optometry through the licensing and regulation of some 6,500 optometrists by the Board of Optometry (Board), within the Department of Consumer Affairs (DCA).

CONTINUED

2. Provides that a license or certificate issued by the Board shall expire unless renewed as prescribed by the Board:

   A. Requires the Board to adopt regulations requiring licensees to complete continuing education as a condition of license renewal, as specified.

   B. Further conditions license renewal upon payment of a specified renewal fee.

This bill:

1. Authorizes a licensed optometrist to apply to the Board for a retired license.

2. Exempts the holder of a retired license from continuing education requirements and payment of the renewal fee. Specifies the holder of a retired license is not required to renew that license.

3. Prohibits the holder of a retired license from engaging in the practice of optometry.

4. Requires the Board to establish regulations governing the process by which a retired license may be returned to active status.

Background

The Medical Board of California allows a physician and surgeon to apply for a similar retired license. A retired licensee is exempt from paying the renewal fee and continuing education requirements, but may not engage in medical or podiatric practice.

A respiratory care therapist may request the Respiratory Care Board to place his or her license on a retired status. The licensee is not required to renew the license or to pay a renewal fee, is prohibited from practice and subject to discipline if he or she engages in practice.

The Board of Pharmacy may issue a retired license to a

CONTINUED

pharmacist whose license is not revoked, and who applies to the Board of Pharmacy and pays a $30 fee. The retired license is not required to be renewed, and the retired licensee may not engage in licensed practice. To return a retired pharmacist license to active status, the retired pharmacist must pass the examination that is required for initial licensure.

Architects, engineers and land surveyors also may be issued retired licenses upon application to their respective licensing board and payment of a fee. Retired licenses do not have to be renewed, and the retired licensee must pass an examination to return to active status.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 7/9/08)

Board of Optometry (source)
California Optometric Association

ARGUMENTS IN SUPPORT : According to the author:

"Currently, there is no opportunity for optometrists to apply for and receive a retired license. When an optometrist retires he or she can choose to continue paying their fees and fulfilling their continuing education requirements to keep their license current or they can decide to not jump through the hoops necessary to maintain a license. If they choose the latter option their license becomes delinquent and ultimately gets cancelled. This cancellation causes two main problems: 1) It causes a public perception problem for the retiring doctor; 2) If the [optometrist] decides they want to return to practicing, their preceding delinquency and cancellation causes bureaucratic impediments to returning to active status.

"By allowing optometrists to apply for and receive a retired license, as proposed in AB 2848, we permit optometrists to maintain a license that they worked hard to obtain and truly value and we make a possible conversion from retirement to active status a smoother transition."

CONTINUED

ASSEMBLY FLOOR :
AYES: Adams, Aghazarian, Anderson, Arambula, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Furutani, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Strickland, Swanson, Torrico, Tran, Villines, Walters, Wolk, Bass
NO VOTE RECORDED: Dymally, Karnette, Nunez, Soto

JJA:mw 7/9/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

Date of Hearing: May 14, 2008

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mark Leno, Chair

AB 2848 (Hernandez) - As Amended: April 21, 2008

Policy Committee: Business and Professions
Vote: 10 - 0

Urgency: No State Mandated Local Program: Yes
Reimbursable: No

SUMMARY

This bill creates a retired optometrist license. Under this bill a retiring optometrist may receive a retired license that exempts him or her from continuing education requirements and paying license renewal fees. This bill as prohibits the retired license holder from practicing optometry.

FISCAL EFFECT

Costs associated with issuing retired licenses are minor and absorbable within existing resources.

COMMENTS

1) Purpose . According to the author, this bill is intended to make it easier for retired optometrists to re-enter the profession should they choose to do so. Under current law, a retired optometrist who decides to return to his or her practice may have difficulty receiving a new license because their old one was cancelled. Having a retired license, should make that process easier.

2) Background . Physicians, surgeons and attorneys have similar retired licenses available to them. Both the Medical Board of California and the State Bar have developed procedures for transferring a practitioner with a retired license back to an active status. This bill, however, does not require the development of those procedures for retired optometrists.

Analysis Prepared by : Julie Salley-Gray / APPR. /
(916) 319-2081

Date of Hearing: April 29, 2008

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Mike Eng, Chair
AB 2848 (Hernandez) - As Amended: April 21, 2008

SUBJECT : Optometrists: retired licenses.

SUMMARY : Allows optometrists to apply for a retired license.

Specifically, this bill :

1) Allows a licensee to apply to the State Board of Optometry (Board) for a retired license.

2) Exempts the holder of a retired license from continuing education requirements and payment of the renewal fee.

3)Prohibits the holder of a retired license from engaging in the practice of optometry.

EXISTING LAW

1) Provides for the licensure and regulation of optometrists by the Board and makes a violation of the act a crime.

2) Requires the Board to adopt regulations requiring licensees to complete continuing education as a condition of license renewal, as specified.

3) Conditions the renewal of a license on payment of a specified renewal fee.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill . According to the author's office, "Currently, there is no opportunity for optometrists to apply for and receive a retired license. When an optometrist retires he/she can choose to continue paying their fees and fulfilling their continuing education requirements to keep their license current or they can decide not to jump through the hoops necessary to maintain a license. If they choose the latter option their license becomes delinquent and ultimately gets cancelled. This cancellation causes two main problems:

1) It causes a public perception problem for the retiring doctor; and
2) If the O.D. decides they want to return to practicing, their preceding delinquency and cancellation causes bureaucratic impediments to returning to active status.

"By allowing optometrists to apply for and receive a retired license, as proposed in AB 2848, we permit optometrists to maintain a license that they worked hard to obtain and truly value and we make a possible conversion from retirement to active status a smoother transition."

Background . The Medical Board of California (MBC) allows a physician and surgeon to apply for a similar retirement license. A retired licensee is exempt from paying the renewal fee and continuing education requirements, but may not engage in medical or podiatric practice.

The State Bar (Bar) has an "inactive" license category. This status is similar to a retirement license, in that a licensee may not provide legal services, but it does require payment of an annual inactive license fee. There are no continuing educational requirements associated with this license status; in fact, otherwise actively licensed members may become inactive involuntarily if they lapse in their continuing education requirements. Both the MBC and the Bar have procedures to transfer from retirement or inactive, respectively, to full practice status.

REGISTERED SUPPORT / OPPOSITION :

Support

California Optometric Association
California Board of Optometry

Opposition

None on file.

Analysis Prepared by : Sarah Huchel / B. & P. / (916) 319-3301

Retired License With Volunteer Service Designation Status
Mona Maggio, Executive Officer

Background: The Board has recently received requests for creation of a "volunteer service" license category to allow optometrists who want to provide optometric services without compensation at health fairs, vision screenings and public service eye programs. All requests are based on these services being offered by retired optometrists. The Medical Board of California does offer a volunteer service designation. This designation is for retired physicians and surgeons (MDs) who posses a valid, current license and wish to go into retirement. The MDs complete an application, certify that all continuing education requirements have been met and certify that they wish to provide voluntary, unpaid services only. The MDs pay no renewal license fee; however, a $25 mandatory fee is collected and deposited in the Physician Loan Repayment Program account under the Office of Statewide Health Planning and Development (OSHPD). Recently licensed MDs are also encouraged to practice in underserved locations in California by authorizing a plan of repayment of their medical school loans (under agreement with OSHPD) in exchange for their service in a designated medically underserved area for a minimum of three years.

Action Requested: The Committee recommended that staff bring draft language for a volunteer license status to the December meeting for the Board's review and discussion. Since this license status is related to the retired license the Committee recommended that the retired license and volunteer license be combined into one bill.

Attachments:
1. Draft language
2. Voluntary Service – The Medical Board of California
3. Correspondence from Licensees

Section 1. Section 3151.1 is added to the Business and Professions Code to read:

3151.1 (a) The Board shall issue, upon application and payment of the fee fixed by this chapter, a license with retired volunteer service designation to an optometrist who holds a retired license or a license that is current and active or capable of being renewed or restored and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The applicant shall certify on the application that he/she has completed the required number of continuing education (CE) hours.

(c) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(d) The holder of the license with volunteer service designation shall submit a biennial renewal application, with fee fixed by this chapter and certify on each renewal that the required number of CE hours were completed and certify that the sole purpose of the license with volunteer service designation is to provide voluntary, unpaid service.

WELCOME TO
THE MEDICAL BOARD OF CALIFORNIA
Department of Consumer Affairs

Home » Licensee » **Voluntary Service**

Voluntary Service

The initial or renewal license fee will be waived for a physician and surgeon who resides in California and certifies to the Medical Board of California that the initial or renewal license is for the sole purpose of providing voluntary, unpaid service. However, California Business and Professions Code section 2436.5 requires all licensees to pay a mandatory fee of $25 at time of issuance or renewal of a physician's and surgeon's license to the Physician Loan Repayment Program. The Physician Loan Repayment Program encourages recently licensed physicians to practice in underserved locations in California by authorizing a plan of repayment of their medical school loans in exchange for their service in a designated medically underserved area for a minimum of three years.

A voluntary service physician licensee whose initial and/or renewal license fee has been waived pursuant to Business and Professions Code sections 2083 and 2442 must comply with the continuing medical education (CME) requirements.

To receive a fee exemption, a licensee must apply for the status change before the expiration date of the license. If the license is current no fee is required.

If the license is in a delinquent status, a payment of all accrued renewal fees, delinquent fee, the $25 mandatory fee, and penalty fee must be submitted with the application.

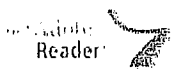
To apply for an initial California physician's and surgeon's license and voluntary service, you must complete the initial application for a California physician's and surgeon's license and the voluntary service application.

Note: For initial licensure the required initial application and fingerprint fees must be paid; only the license fee will be waived.

For further information, please contact the Consumer Information Unit at (800) 633-2322 or (916) 263-2382.

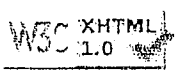
- Voluntary Service Physician Application for Waiver from Payment of Initial or Renewal License Fees - *Fill-In*
- Initial Physician's and Surgeon's Licensing Process
- Business and Professions Code section 2083
- Business and Professions Code section 2442

This web site contains PDF documents that require the most current version of Adobe Reader to view.
To download click on the icon below.



Conditions of Use | Privacy Policy

Copyright © 2010 State of California



MEDICAL BOARD OF CALIFORNIA LICENSE LOOKUP SYSTEM

License Information:

The following information is maintained by the Medical Board of California. For more information, click on the blue tabs above.

License:	AFE 15842 Licensee is in a fee-exempt status. A fee-exempt license has been issued due to the licensee being in a disabled, retired, military or voluntary service license status.
License Type:	Fee Exempt Physician and Surgeon
Name:	WILLIAM L LAGES, M.D.
Address of Record:	215 NAVARRA DRIVE SCOTTS VALLEY, CA 95066
Address of Record County:	SANTA CRUZ
License Status:	**License Renewed & Current** Licensee meets requirements for the practice of medicine in California. **License In Voluntary Service** License is in voluntary service status with no payment allowed for medical services.
Public Record Action(s):	No Public Record Actions available
Original Issue Date:	June 30, 1954
Expiration Date:	April 30, 2012
School Name:	UNIVERSITY OF CALIFORNIA SAN FRANCISCO SCHOOL OF MEDICINE
Year Graduated:	1953

Survey Information:

The following information is self-reported by the licensee and has not been verified by the Board.

Activities In Medicine:	PATIENT CARE - NO HOURS RESEARCH - NO HOURS TEACHING - NO HOURS ADMINISTRATION - NO HOURS OTHER - 1 TO 9 HOURS
Primary Practice Location Zip Code:	Not identified
Board Certification(s):	RHEUMATOLOGY Visit ABMS to verify
Primary Practice Area(s):	RHEUMATOLOGY
Secondary Practice Area(s):	PSYCHIATRY
Post Graduate Training Years:	5 YEARS
Ethnic Background:	Declined to Disclose
Foreign Language(s):	Declined to Disclose
Gender:	Male

Public Record Action(s):

Please select the Public Record Documents tab to view the public document database. If information is posted in the Administrative Disciplinary Actions, Court Order, Administrative Citation Issued, or License Issued with Public Letter of Reprimand categories below, documents may be available for review. To find out what information is and is not available, please click here.

Administrative Disciplinary Actions:

The Medical Board's public disclosure screens are updated periodically as new information becomes available. Please contact the Central File Room at (916) 263-2525 or at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, to obtain a copy of public documents at a minimal charge.

No Administrative Disciplinary Actions found.

Court Order:

This information would be provided if a physician's practice has been temporarily restricted or suspended pursuant to a court order. Please contact the Central File Room at (916) 263-2525 or at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, to obtain a copy of the public documents.

MEDICAL BOARD OF CALIFORNIA
Licensing Program

- If you reside in California and provide only voluntary, unpaid services, meet the requirements below and want to apply for a waiver of the initial license or renewal fee, complete the application below.
- If you are renewing at the same time as you apply for voluntary service status, you must submit the $25 mandatory fee for the Physician Loan Repayment Program with the application.
- If the medical license is delinquent, a payment of all accrued renewal fees, delinquent fee, the $25 mandatory fee, and penalty fee must be submitted with the application. If the license is current, no fee is required.
- Make certified checks, cashier's checks, money orders, or personal checks payable to the Medical Board of California.
- It is important to remember that a licensee who is in voluntary service status must comply with the continuing medical education (CME) requirements.
- Note: Applicants for initial licensure must pay the initial application, and fingerprint processing fees and complete the "Physician's and Surgeon's License Application" in addition to this Voluntary Service Physician Application.

VOLUNTARY SERVICE PHYSICIAN APPLICATION FOR WAIVER FROM PAYMENT OF INITIAL LICENSE OR RENEWAL FEE *Please print or type.* *Illegible applications will be returned.*	FOR OFFICE USE ONLY Fee paid: _____ Receipt #: _____ Date cashiered: _____ Cashier's intl.: _____ Date approved: _____ Date denied: _____ Enforcement approval: ____Yes ____No Date: _____
Name (first, middle, last):	
Address of record (Current public/mailing address. This is the address that will be displayed on the Medical Board's Web site. If using a PO Box, you must also provide a confidential street address.)	
Confidential street address:	
Telephone: ( ) Fax: ( )	E-mail:
California medical license number:	

Section 2083 of the Business and Professions Code:

(a) Except as provided in subdivision (b), each application for a certificate shall be accompanied by the fee required by this chapter and shall be filed with the Division of Licensing.
(b) The license fee shall be waived for a physician and surgeon residing in California who certifies to the Medical Board of California that the issuance of the license or the renewal of the license is for the sole purpose of providing voluntary, unpaid service.

Section 2442 of the Business and Professions Code: The renewal fee shall be waived for a physician and surgeon residing in California who certifies to the Medical Board of California that license renewal is for the sole purpose of providing voluntary, unpaid service.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application, including supporting documents, is true and correct and that I am licensed to practice in the State of California.

_____ _____
Applicant's Signature Date

BOTH PAGES OF THIS FORM MUST BE COMPLETED.

7A-110 (Revised 03/11)

FINANCIAL INTEREST

If you have no financial interest to report, check the box to the right. Sign and date the statement below.	☐	No

Please list the name(s) and address(es) of each health-related facility in which you or your immediate family have a financial interest. Sign and date the statement below.

California's Financial Interest Disclosure law (Business and Professions Code section 2426) requires you to disclose any financial interest that you or your immediate family have in specified health-related facilities located in or outside the State of California. "Immediate family" means a spouse, child or parent of a licensee, and a spouse of a child of a licensee.

Financial interest includes any type of ownership interest including share or stock ownership, limited partnership interest, debt, loan, lease, compensation, remuneration, general or limited partnership interest, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment of money or anything else of value to a licensee or the licensee's immediate family from a health-related facility.

Health-related facility means any facility providing clinical laboratory services, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, diagnostic imaging, or outpatient surgery centers. Diagnostic imaging includes all X-ray, computed axial tomography, magnetic resonance imaging, nuclear medicine, positron emission tomography, mammography and ultrasound goods and services.

A financial interest does not include the ownership of corporate investment securities, including shares, bonds, or other debt instruments that (1) are purchased from a licensed securities broker on terms available to the general public through a licensed securities exchange or NASDAQ, (2) do not base any profit distributions or other transfers of value on the licensee's referral of patients, (3) do not have a separate class or accounting for any persons or licensees who may make patient referrals to the corporation, and (4) are in a corporation that has total gross assets exceeding $100,000,000.

Health-related facility name(s)	Facility's address

I certify under penalty of perjury under the laws of the State of California that I read and understand the enclosed information defining financial interest and that I have disclosed on this application the names of those health-related facilities in which I or my family have a financial interest, or I do not have any financial interest to disclose.

Applicant's signature_____ Date_____

I certify under penalty of perjury under the laws of the State of California that I read and understand the continuing medical education (CME) requirements, have completed and can document no less than 50 hours of approved CME for the two-year period immediately preceding the expiration date of my license, or I hold a CME waiver from the Medical Board of California.

Applicant's signature_____ Date_____

All items in this application are mandatory; none is voluntary. This information is requested by the Licensing Program of the Medical Board of California. Failure to provide any of the requested information will result in this application being rejected as incomplete. The information provided will be used to determine your eligibility for waiver of renewal fees, under section 2442 of the Business and Professions Code. The Licensing Program chief is the custodian of records. Access to records by the individual to whom they pertain may be obtained under the Information Practices Act by contacting the custodian of records at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815. Information in this application may be transferred to other governmental and law enforcement agencies.

2083. (a) Except as provided in subdivision (b), each application for a certificate shall be accompanied by the fee required by this chapter and shall be filed with the Division of Licensing.

(b) The license fee shall be waived for a physician and surgeon residing in California who certifies to the Medical Board of California that the issuance of the license or the renewal of the license is for the sole purpose of providing voluntary, unpaid service.

2442. The renewal fee shall be waived for a physician and surgeon residing in California who certifies to the Medical Board of California that license renewal is for the sole purpose of providing voluntary, unpaid service.

UNIVERSITY OF CALIFORNIA, LOS ANGELES

UCLA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

October 11, 2011

BRADLEY R. STRAATSMA, M.D., J.D.
JULES STEIN EYE INSTITUTE
DEPARTMENT OF OPHTHALMOLOGY
DAVID GEFFEN SCHOOL OF MEDICINE AT UCLA
100 STEIN PLAZA
LOS ANGELES, CALIFORNIA 90095-7000

PHONE: (310) 825-5051
FAX: (310) 206-4293
E-MAIL: straatsma@jsei.ucla.edu

Lee Goldstein, O.D., M.P.A.
President, California Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

Dear Dr. Goldstein:

The Department of Ophthalmology and the Jules Stein Eye Institute at the University of California, Los Angeles (UCLA) have benefited from the skilled participation of retired optometrists who serve without compensation as examiners in the Jules Stein Eye Institute's Affiliates Preschool Vision Screening Program. For a number of years, these optometrists have taken part in the regular scheduled sessions of the preschool screening program at schools and public venues throughout the Los Angeles area.

Recognizing the public service performed by retired optometrists, this letter is written to recommend that the California Board of Optometry establish a category of license that permits continued licensure without payment of a fee for optometrists who:

1. Have retired from professional practice and compensated professional employment,
2. Participate without compensation as volunteers in public service eye care programs, and
3. Fulfill the continuing education requirements established by the California Board of Optometry.

Your consideration of this recommendation is greatly appreciated.

Sincerely yours,

Bradley R. Straatsma

Bradley R. Straatsma, M.D., J.D.
Professor and Chairman Emeritus, Department of Ophthalmology
Director Emeritus, Jules Stein Eye Institute
David Geffen School of Medicine at UCLA

Cc: Jule Lamm, O.D.

RECEIVED
SEP 2011

September 24, 2011

TO: Members of the State Board of Optometry
Board of Directors of the California Optometric Association
Sen. Ed Hernandez

In talking to Jule Lamm, O.D. last week at a volunteer program at UCLA's Jules Stein Eye Institute, we both wondered why the Board of Optometry does not have a classification of "Volunteer" license. Usually when optometrists retire they go "inactive" or "delinquent"" status.

My brother is a retired M D and the Medical Board has this classification of Voluntary Service.

These retired optometrists are needed for many programs and they have years of experience.

I do not know who is responsible for the process of setting this up, State Board of Optometry, a resolution from the California Optometric Association or with the passage of a law.

There are many venues out there who need volunteer optometrists on a permanent and temporary basis.

At the present time I volunteer at the MEND poverty center i8n Pacoima and the Jules Stein Eye Institute at UCLA. Plus through the years many other venues including dozens of trips to Mexico with LIGA.

And also a volunteer officer with the COA, AOA, LACOS and VSP (CVS).

So let's do it.

Thanks for your time and interest.

Sincerely yours

Adolphus W Lages, O.D.
Optlages@yahoo.com
213-248-4198
Enclosures 2

Jule D. Lamm, O.D.
212 16th Street
Santa Monica, Ca 90402
(310) 394 2324
julelamm@yahoo.com

October 7, 2011

Mona Maggio Executive
Board of Optometry

I would like to suggest that the Board of Optometry establish a licensing arrangement for Optometrists to practice as volunteers without compensation.

We have a great need for volunteer Optometrists, and I feel that this would encourage retired practitioners to volunteer.

We really need your help,

Jule D. Lamm, O.D.

D. Discussion and Consideration of Legislative Proposals for 2012 Legislative Session continued:
Andrea Leiva, Policy Analyst

Potential Omnibus Bill Statutes

Action Requested: The changes below are minor, non-controversial and for clarity and clean-up purposes only. Staff would like to request that the Board members review, make any edits necessary and approve the proposed statutory changes. If approved, these proposed amendments will be submitted to the Business, Professions and Economic Development Committee by December 12, 2011, so that they may be included in the omnibus bills when they are introduced in early January 2012.

BPC 3057.5 - Eligibility of Graduates from Foreign Universities
Notwithstanding any other provision of this chapter, the board shall permit a ~~person~~ graduate of a foreign university who meets all of the following requirements to take the examinations for a certificate of registration as an optometrist:
(a) Is over the age of 18 years.
(b) Is not subject to denial of a certificate under Section 480.
(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

BPC 3147.6 – Restoration of Certificate Following Failure to Renew Within a Specific Time Period
Except as otherwise provided by Section 114, a license that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists that, if the license were restored, would justify its revocation or suspension, provided all of the following conditions are met:
(a) The holder of the expired license is not subject to denial of a license under Section 480.
(b) The holder of the expired license applies in writing for its restoration on a form prescribed by the board.
(c) The holder of the expired license pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time.
(d) The holder of the expired license submits proof of completion of the required number of hours of continuing education for the last two years.
~~(d)~~(e) The holder of the expired license satisfactorily passes both of the following examinations:
(1) The National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board.
(2) The board's jurisprudence examination.
~~(d)~~(f) After taking and satisfactorily passing the examinations identified in subdivision ~~(d)~~(e), the holder of the expired license pays a restoration fee equal to the sum of the license renewal fee in effect on the last regular renewal date for licenses and any delinquency fees prescribed by the board.

BPC 3147.7 – Applicability of Provisions to Out-of-State Licensees
The provisions of Section 3147.6 shall not apply to a person holding a license that has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds an active license from another state and meets all of the following conditions:
(a) Is not subject to denial of a license under Section 480.
(b) Applies in writing for restoration of the license on a form prescribed by the board.
(c) Pays all accrued and unpaid renewal fees and any delinquency fees prescribed by the board.
(d) Submits proof of completion of the required number of hours of continuing education for the last two years.
(e) Takes and satisfactorily passes the board's jurisprudent examination.
(f) Submit a letter of verification of current license status from the Board of Optometry of the state they are actively practicing in.

E. Discussion Pertaining to American Board of Optometry (ABO) Board Certification Program
Andrea Leiva, Policy Analyst

Action Requested: None.

Background:
The ABO has developed a computer-based Board Certification Examination to assess the ongoing competence of optometrists state-wide so that they can become ABO Board Certified. The first administration took place in June 2011, with sixteen California licensed optometrists passing the examination. The next ABO examination is scheduled for November 28 – December 11, 2011 at Prometric Test Centers worldwide.

The process to maintain ABO Board Certification is based on the model developed by the American Board of Medical Specialties. ABO believes that patterning optometry's process after that of medicine offers the ability to withstand the scrutiny of the accreditation process and successfully demonstrates competence to the public with integrity. ABO Requirements are as follows:

1) Possession of a valid therapeutic license;
2) Continuing education and Self-Assessment Modules (SAMs);
3) Passing of a validated computer-based patient assessment and management examination; and
4) Performance in Practice Modules (PPMs)

The ABO is currently in litigation with the American Optometric Society (AOS). The AOS claims that the ABO's use of the phrases "board certified" and "board certification" misleads and confuses the public. Staff is following the issue to provide future updates to the Board.

Issues Discussed at the November 18, 2011 Legislation and Regulation Meeting:
1) Will the Board acknowledge ABO Board Certifications like the Centers for Medicare & Medicaid Services (CMS)?

2) Should the Board consider working with the Office of Professional Examination Services (OPES) to conduct an analysis of the ABO examination to ensure it is psychometrically sound and tests for the knowledge, skills, and abilities of California licensed optometrists? If the Board is interested in using the ABO module to determine continued competence, it is possible that the legislature will question whether or not the Board participated in its development, or if the Board ensured that the examination determines continued competence.

3) The CMS has qualified ABO for the purposes of the 2011 Physician Quality Reporting System (PQRS) Maintenance of Certification (MOC) Program Incentive.

In this program, optometrists have the opportunity to earn the PQRS incentive, and an additional incentive of 0.5%, by participating in additional activities of a qualified MOC program, including a practice assessment module. See Attachments below for more details.

Legislation and Regulation Committee Recommendations to the Board:
The committee recommends to the Board that this issue should continue to be "watched" because it still needs to develop further. The committee supports continued competency, but at this time, will not mandate it for the Board's purposes. Board staff recommended that a workgroup be developed in order to explore this issue further and the committee consented, with the condition that the workgroup focus only on collecting information, and not making any decisions or participating in development.

Attachments
1. ABO Press Release re: ABO qualification to serve as a maintenance of certification program
2. Description of Maintenance of Certification Program from Centers for Medicare and Medicaid Services
3. Maintenance of Certification Program Incentive Guidance

243 N. Lindbergh Boulevard
Suite 312
St. Louis, Missouri 63141
Phone: (314) 983-4244
www.abopt.org

FOR IMMEDIATE RELEASE

Contact: Jeffrey L. Weaver, O.D.
(314) 983-4244
JLWeaver@ABOpt.org

American Board of Optometry "Fully Qualified" by Centers for Medicare & Medicaid Services

ST. LOUIS, Mo., September 22, 2011 — The Centers for Medicare & Medicaid Services (CMS) announced that the American Board of Optometry (ABO) has qualified for purposes of the 2011 Physician Quality Reporting System (PQRS) Maintenance of Certification (MOC) Program Incentive. The ABO successfully completed the vetting process to ensure that the ABO MOC program meets the requirements for participation in this incentive.

In this program, physicians will have the opportunity to earn the PQRS incentive, and an additional incentive of 0.5%, by participating in additional activities of a qualified MOC program including a practice assessment module.

The ABO qualified for the program along with five boards of the American Board of Medical Specialties and one podiatry board. Those fully qualified boards include:

- American Board of Allergy and Immunology
- American Board of Dermatology
- American Board of Neurological Surgery
- American Board of Nuclear Medicine
- American Board of Optometry
- American Board of Podiatric Orthopedics and Primary Podiatric Medicine
- American Board of Radiology

Additional details are available on the CMS MOC Program Incentive site **(**https://www.cms.gov/PQRS/23_Maintenance_of_Certification_Program_Incentive.asp**).**

About the American Board Optometry (ABO)
The American Board of Optometry was founded in 2009 by the American Academy of Optometry, American Optometric Association, American Optometric Student Association and the Association of Schools and Colleges of Optometry. For more information, please visit ***www.americanboardofoptometry.org****.*

###

The Physician Quality Reporting System
Maintenance of Certification Program Incentive
Requirements of Self-Nomination for 2011

In accordance with section 1848(m) (7) of the Act ("Additional Incentive Payment"), CMS is introducing a new Maintenance of Certification Program Incentive. Beginning in January 2011, physicians who are incentive eligible for the Physician Quality Reporting System, or "Physician Quality Reporting", (formerly known as the Physician Quality Reporting Initiative, or PQRI) can receive an additional 0.5% incentive payment when Maintenance of Certification Program Incentive requirements have also been met.

In order to qualify for the additional 0.5% incentive payment, the physician will need to complete the following:

- Satisfactorily submit data, without regard to method, on quality measures under Physician Quality Reporting, for a 12-month reporting period either as an individual physician or as a member of a selected group practice.

AND

- More frequently than is required to qualify for or maintain board certification:
    - Participate in a Maintenance of Certification Program and
    - Successfully complete a qualified Maintenance of Certification Program practice assessment.

As defined in section 1848(m) (7) of the Act, a ""Maintenance of Certification Program" is a continuous assessment program that advances quality and the lifelong learning and self-assessment of board certified specialty physicians by focusing on the competencies of patient care, medical knowledge, practice-based learning, interpersonal and communication skills and professionalism. Such a program shall require a physician to do the following:

- Maintain a valid, unrestricted medical license in the United States;
- Participate in educational and self-assessment programs that require an assessment of what was learned;
- Demonstrate through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge and clinical judgment to provide quality care in their respective specialty; and
- Successfully complete a qualified Maintenance of Certification program practice assessment.

A "qualified Maintenance of Certification program practice assessment," as defined in section 1848(m)(7) of the Act is one that includes an initial assessment that demonstrates the physician's use of evidence-based medicine; a survey of patient experience with care; and implementation of a quality improvement intervention to address a practice weakness identified in the initial assessment. The practice assessment must also require the practice to reassess performance improvement after the intervention.

The phrase "more frequently" may be interpreted differently by different Maintenance of Certification Programs. CMS is looking to see an attestation from a Maintenance of Certification Program entity that both the Maintenance of Certification Program itself and the practice assessment are completed once more by a physician than is required by a specific Maintenance of Certification Program.

Maintenance of Certification Program entities wishing to enable their members to be eligible for the additional incentive will need to complete the self-nomination process by January 31, 2011. Maintenance of Certification Program entities will need to be approved for participation by CMS. Qualified Maintenance of Certification Program entities will then be able to submit on the physicians' behalf. For consideration, Maintenance of Certification Program entities will need to submit the following:

- Detailed information regarding the Maintenance of Certification Program with reference to the statutory requirements Indicate the organization sponsoring the Maintenance of Certification Program, and whether the Maintenance of Certification Program is sponsored by an American Board of Medical Specialties (ABMS). If not an ABMS board, indicate whether the program is substantially equivalent to the ABMS Maintenance of Certification Program process
- The frequency of a cycle of Maintenance of Certification for the specific Maintenance of Certification Program of the sponsoring organization; including what constitutes "more frequently" for both the Maintenance of Certification Program itself and the practice assessment for the specific Maintenance of Certification Program of the sponsoring organization
- What was, is, or will be the first year of availability of the Maintenance of Certification Program practice assessment for completion by a physician
- What data is collected under the patient experience of care survey and how this information would be provided to CMS
- How the Maintenance of Certification program monitors that a physician has implemented a quality improvement process for their practice
- Describe the methods, and data used under the Maintenance of Certification Program, and provide a list of all measures used in the Maintenance of Certification Program for 2010 and to be used for 2011, including the title and descriptions of each measure, the owner of the measure, whether the measure is NQF endorsed, and a link to a website containing the detailed specifications of the measures, or an electronic file containing the detailed specifications of the measures

All information listed below must be submitted to CMS by a qualified Maintenance of Certification Program entity by March 31, 2012. The Maintenance of Certification Program entities will assess and submit, in a secure format, for the physician(s) the following:

- The eligible physician's name, who would like to participate in the Maintenance of Certification Program Incentive for 2011
- The individual National Provider Identifier (NPI); not group (NPI)
- The applicable Tax Identification Number(s) or Social Security Number (SSN) used to bill and receive Medicare reimbursement
- Attestation from the board that the information provided to CMS is accurate and complete
- Maintenance of Certification Program entity has signed documentation from physician(s) that he/she wishes to have the information released to CMS
- Information from the experience of care (patient satisfaction) survey
- The physician(s) successfully completed a qualified Maintenance of Certification Program practice assessment for the year
- Information certifying the physician(s) participated in a Maintenance of Certification Program for a year, "more frequently" than is required to qualify for or maintain board certification status, including the year the physician met the board certification requirements for the Maintenance of Certification Program, and the year the physician(s) participated in the Maintenance of Certification Program "more frequently" than is required to maintain or qualify for board certification
- Information certifying the physician(s) completed the Maintenance of Certification Program practice assessment <u>one additional time more</u> than is required to qualify for or maintain board certification, including the year of the original Maintenance of Certification Program practice assessment or that a Maintenance of Certification Program practice assessment is not required for the physician(s), and the year of the additional Maintenance of Certification Program practice assessment completion

We anticipate that a list of conditionally qualified Maintenance of Certification Program entities will be posted by the spring of 2011 on the Physician Quality Reporting System section of the CMS website (www.cms.gov). We anticipate completing the qualification process by mid-2011 and will post the final list of Qualified Maintenance of Certification Program entities on the Physician Quality Reporting System section of the CMS website (www.cms.gov) at that time.

Physician(s) desiring to be considered for the 2011 Maintenance of Certification Program Incentive should review the documents referenced above for the qualified Maintenance of Certification Program entities. The Maintenance of Certification Program Incentive is applicable for physicians participating in the Physician Quality Reporting System via individual and group practice

reporting (Group Practice Reporting Option I or II).Physician(s) will need to work with their selected Maintenance of Certification Program entity to ensure successful completion of the Maintenance of Certification Program Incentive participation requirements.

The Maintenance of Certification Program incentive payment will be paid at the same time as the Physician Quality Reporting incentive payment for 2011 for those physician(s) that qualify. It will be a separately identifiable payment on the Physician Quality Reporting feedback report for 2011. The 2011 Physician Quality Reporting will calculate the Maintenance of Certification Program incentive payment of 0.5% based on allowed Medicare Part B PFS charges for covered professional services furnished between January 1, 2011 and December 31, 2011. Physician(s) cannot receive more than one additional 0.5% incentive even if they complete a Maintenance of Certification Program in more than one specialty. The Maintenance of Certification Program incentive will not be awarded to physician(s) who have not qualified for the Physician Quality Reporting incentive.

The system shall determine incentive payments for group practices participating in the GPRO I or GPRO II who had group practice members who were found incentive eligible for the Maintenance of Certification Program incentive payment. If the group practice satisfactorily reported Physician Quality Reporting, the group practice shall receive an additional 0.5% incentive payment based on the allowed charges attributed to the group practice members who were found eligible for the Maintenance of Certification Program Incentive payment.

Please refer to www.cms.gov for more information regarding the Maintenance of Certification Program.

Maintenance of Certification Program self-nomination letters should be sent to:

2011 Physician Quality Reporting System Maintenance of Certification Program Incentive Self-Nomination
Centers for Medicare & Medicaid Services
Office of Clinical Standards and Quality
Quality Measurement & Health Assessment Group
7500 Security Boulevard
Mail Stop S3-02-01
Baltimore, MD 21244-1850

The letter must be received no later than 5 p.m. E.S.T. on January 31, 2011.

Physician Quality Reporting System Maintenance of Certification Program Incentive Guidance

In accordance with section 1848(m) (7) of the Social Security Act ("Additional Incentive Payment"), CMS is implementing a new Maintenance of Certification Program Incentive under the Physician Quality Reporting System. Effective for calendar year (CY) 2011, physicians who meet specified requirements may have their applicable Physician Quality Reporting System quality percent for 2011 increased by 0.5% (i.e., the Maintenance of Certification Program Incentive). Specific details about this additional incentive is available on the Physician Quality Reporting System website at http://www.cms.gov/pqri, as well as in the CY 2011 Medicare Physician Fee Schedule Proposed Rule and Final Rule with comment period (775 FR 52487 and 75 FR 73170) and at 42 C.F.R. § 414.90.

In order to qualify for the additional 0.5% incentive for 2011, the physician will need to complete the following:

- Satisfactorily submit data on quality measures under Physician Quality Reporting System, for a 12-month reporting period either as an individual physician or as part of a group practice under one of the Physician Quality Reporting System group practice reporting options.

AND

- More frequently than is required to qualify for or maintain board certification status:
    - Participate in a Maintenance of Certification Program for a year, and
    - Successfully complete a qualified Maintenance of Certification Program practice assessment for such year.

As discussed in the CY 2011 Medicare Physician Fee Schedule final rule with comment period (74 FR 73541-73546), entities sponsoring Maintenance of Certification Programs are required to undergo a self-nomination process and submit to CMS specified information, including the frequency of a cycle of Maintenance of Certification Program for the specific Maintenance of Certification Program of the sponsoring organization, as well as what constitutes "more frequently" for both the Maintenance of Certification Program itself and the Maintenance of Certification Program practice assessment. In addition, sponsoring entities must provide information certifying that the physician has participated in a Maintenance of Certification Program for a year, and met the "more frequently" requirement for the Maintenance of Certification Program and practice assessment.

Boards/sponsoring entities that have differing tiers of participating physicians (that is, a portion of physicians are not required to participate in a Maintenance of Certification Program for board certification, while others either have the option of participating or are required to participate in a Maintenance of Certification Program for board certification) should explain and indicate in their self-nomination letter how these differing tiers of physicians would meet the "more frequently" requirement with regard to the Maintenance of Certification Program and practice assessment. All self-nomination letters must be received at CMS by no later than 5 P.M. on January 31st, 2011 for potential consideration in the Maintenance of Certification Program Incentive. Additional details on what to include in the self-nomination letter are indicated within the CY 2011 Medicare Physician Fee Schedule Final Rule with

comment period (75 FR 73170) as well as on the Physician Quality Reporting System website at http://www.cms.gov/pqri.

Under section 1848(m) (7)(C)(i) of the Social Security Act, a "Maintenance of Certification Program" means a continuous assessment program that advances quality and the lifelong learning and self-assessment of board certified specialty physicians by focusing on the competencies of patient care, medical knowledge, practice-based learning, interpersonal and communication skills and professionalism. Such a program shall include and require a physician to do the following, which we refer to below as Parts I-IV:

I. Maintain a valid, unrestricted medical license in the United States;
II. Participate in educational and self-assessment programs that require an assessment of what was learned;
III. Demonstrate through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge and clinical judgment to provide quality care in their respective specialty; and
IV. Successfully complete a qualified Maintenance of Certification program practice assessment.

"More frequently" Requirement for Participation in a Maintenance of Certification Program

As described in the CY 2011 Medicare Physician Fee Schedule Final Rule with comment period (75 FR 73542), CMS has applied the "more frequent" participation requirement to Parts II-IV of the Maintenance of Certification Program definition. CMS has left the "more frequent" definition at the discretion of the boards/sponsoring programs but has stated that we do not believe the "more frequent" requirement applies to Part I, since a physician cannot become licensed "more frequently" than required.

In response to requests for additional guidance and clarification about the "more frequently" requirement, we have provided examples of what could potentially constitute "more frequent" participation below. If a physician is not required to participate in a Maintenance of Certification Program to qualify for or maintain board certification status, their participation in a Maintenance of Certification Program would constitute "more frequent" participation.

Part I – Maintain a valid, unrestricted medical license in the United States

As discussed in the CY 2011 Medicare Physician Fee Schedule final rule with comment period (75 FR 73542), CMS does not believe that the "more frequently" requirement applies to the Maintenance of Certification Program licensure component, given that a physician cannot be licensed "more frequently" than is required.

Part II – Participate in educational and self-assessment programs that require an assessment of what was learned

With regard to possible examples of the second component of a Maintenance of Certification Program (Part II – educational and self-assessment programs), CMS believes that continuing medical education (CME) would constitute "educational and self-assessment programs" under a Maintenance of Certification Program. The definition of CME varies across Maintenance of Certification Programs;

however, we believe that CME is broad and would constitute many types of educational activities such as educational sessions, literature review with required question and answers, etc. With regard to meeting the "more frequently" requirement for Part II, we believe that a physician would need to exceed the required level of the educational and self-assessment program under the Maintenance of Certification Program. For example, if the standard for the educational and self-assessment program under a physician's Maintenance of Certification Program is 6 CME credits a year, more frequent participation could involve completion of 8 CME credits in a year. This is strictly an example of how this requirement could be met, differing boards/sponsoring organizations may require other types of educational and self-assessment programs.

Part III – Demonstrate through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge and clinical judgment to provide quality care in their respective specialty

CMS has interpreted the "more frequently" requirement as applying to the Part III (secure examination) requirement of a Maintenance of Certification Program, but we did not require a specified way the "more frequently" requirement must be met or require an exact instance or level of completion for this activity. We note that CMS did not require, nor does it expect, a physician to take the examination every year to meet the "more frequently" requirement, but we are allowing individual boards to verify that their eligible professionals have met the appropriate Maintenance of Certification Program and "more frequently" requirements. Exam intervals can vary across Maintenance of Certification Programs cycles, and CMS does not expect all boards/sponsoring organizations to have the same standards for meeting the "more frequently" requirement. An example of more frequent participation for Part III would be if the standard for a physician's Maintenance of Certification Program is a secure exam every 7 years, more frequent participation could be defined as taking an examination every 6 years. Depending upon where the physician is in their cycle of completion, satisfying the "more frequently" requirement with regard to Part III participation may involve attestation from the physician that they will take the exam at the attested time (before the date of their required test to maintain their active certification).

The "more frequently" requirement could also be satisfied for Part III with regard to the prerequisites, if applicable, that must be met prior to taking the exam, such as the completion of articles, literature review, etc. In this circumstance, if a physician completed the prerequisites ahead of the required schedule under the particular program, this could constitute "more frequent" participation for Part III in a Maintenance of Certification Program. For example, if a physician must complete 10 cycles of article review over a 10 year period prior to taking the secured exam and he or she completes two such cycles in one year, which would allow the physician to take the exam sooner, then this could constitute "more frequent" participation for Part III.

Part IV – Successfully complete a qualified Maintenance of Certification Program practice assessment

The Part IV (practice assessment) requirement of a Maintenance of Certification Program is defined under section 1848(m)(7)(C)(ii) of the Social Security Act. As defined, a Maintenance of Certification Program practice assessment means an assessment of a physician's practice that: (a) includes an initial

assessment of an eligible professional's practice that is designed to demonstrate the physician's use of evidence based medicine, (b) includes a survey of patient experience with care, and (c) requires a physician to implement a quality improvement intervention to address a practice weakness identified in the initial assessment and then to remeasure to assess performance improvement after such intervention. As stated in the CY 2011 Medicare Physician Fee schedule rule with comment period (75 FR 73542), "For physicians who are not required to participate in a Maintenance of Certification Program to maintain board certification, 'more often' would be more than 0, and therefore only once. For physicians, however, who are otherwise required by the specialty board to participate in a Maintenance of Certification Program to maintain their board certification status, these physicians would need to complete the Maintenance of Certification Program practice assessment a second time in order to qualify for the additional incentive payment. If a Maintenance of Certification Program practice assessment were required more than once during a particular cycle, the eligible professional would be required to complete the Maintenance of Certification Program practice assessment a third time in order to qualify for the additional incentive."

The guidance and examples provided within this document do not cover all possibilities of meeting the "more frequently" requirement. For additional information, please contact the QualityNet Help Desk at: 1-866-288-8912 or via email at: Qnetsupport@sdps.org.

"Maintenance of Certification Program Guidance" is not a legal document. Official Medicare Program legal guidance is contained in the relevant statutes, regulations, and rulings. The information in this document was correct as of January 2011. For more information about the additional Maintenance of Certification Program Incentive or to get updated versions of this document, visit https://www.cms.gov/pqri.

F. Discussion and Possible Action Pertaining to Final Administration of Therapeutic Pharmaceutical Agents Didactic Course
Jeff Robinson, Licensing Analyst

Renewed interest of a number of California-licensed optometrists who have not received therapeutic pharmaceutical agent (TPA) certification, along with the fact that California schools/colleges of optometry no longer provide a TPA Didactic Course, have influenced staff to recommend to the Board and California's schools/colleges of optometry the possibility of once again providing the TPA Didactic Course to the approximately 700 currently-licensed or recently expired licensees we have listed without TPA certification.

Presently, California Business and Professions Code § 3041.3(a), (b), and (b)(1) indicate that an optometrist be a graduate of an accredited California school/college of optometry, complete a didactic course provided by one, and licensed as an optometrist in California. Because the California schools/college of optometry no longer provide that course, staff has had to handle interested optometrists on a case-by-case basis, accepting the completion of TPA Didactic Courses provided by schools/colleges of optometry (e.g., Nova Southeastern) located outside the State of California.

It is the opinion of staff that the Board may want to address this matter by either reviewing and discussing the possible revision of the "Acts Constituting the Practice of Optometry" or, the possibility of asking the California schools/colleges to once again provide another TPA Didactic Course or, allow staff to continue to operate as it has been.

G. 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
Jeff Robinson, Licensing Analyst

Since the discussion of this subject matter at the September 16, 2011, Board meeting, staff has reviewed the continuing optometric education (CE) requirements of the other 49 US states and the District of Columbia.

It was discovered that, of the five (5) states considered to have the largest concentration of licensed optometrists outside of the State of California (New York, Illinois, Texas, Pennsylvania, and Florida), two of the states allow one quarter of the CE they require through the completion of Internet or correspondence courses (independent study), two of them do not accept that form of CE, and only one allows the completion of 50% of CE courses earned in that context. In addition, the three states that require the same total number of CE hours as California in a similar time frame; Maine, New Hampshire, and Ohio, either allow the same amount of independent study hours or none at all.

Based upon these findings, it appears that the Board can and should accept whatever method of completion of CE they deem to be suitable for California's licensed optometrists.

H. Discussion and Possible Action to Amend CCR § 1568 TPA Certification Requirements Pertaining to Optometrists Licensed in Another State.
Jeff Robinson, Licensing Analyst

After further review of this item, it was found by staff that no amendments are necessary. Staff can continue to follow already established procedures as usual.

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:** December 2, 2011

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

Subject: **Agenda Item 5 – 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 jointly serve as a reference tool for Board Members.

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

In conjunction with the Administrative Procedures Manual, an instructional handbook was presented in September 2011's Board Meeting. The objective of this handbook is to provide a referential guide to various materials that will be introduced in meetings.

Directive was given to amend this manual in order to make it a comprehensive handbook that details Board functioning and meeting requirements for incumbent Board Members. As such, the manual has been expanded with sections that detail basic information such as training, meeting requirements, and guides to various procedural practices.

Should these items be approved, the Administrative Procedures Manual and Board Member handbook will be combined into one collaborative handbook that will offer both a generalization of practices as well as a guide to Board procedures and the authority which governs them.

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

TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION 1

Overview 1
Board Responsibilities 1
Definitions 2
General Rules of Conduct 3

CHAPTER 2. BOARD MEETING PROCEDURES 3

Frequency of Meetings 3
Board Member Attendance at Board Meetings 4
Public Attendance at Board Meetings 4
Closed Sessions at Board Meetings 4
Closed Sessions Procedural Requirements 5
Quorum 5
Agenda Items 5
Notice of Meetings 5
Notice of Meetings to be Posted on Internet 6
Special Meetings 6
Record of Meetings 6
Tape Recording 6
Meeting by Teleconferencing 6
Use of Electronic Devices During Meetings 7
Meeting Rules 7

CHAPTER 3. TRAVEL & SALARY POLICIES & PROCEDURES 7

Travel Approval 7
Travel Arrangements 7
Out-of-State Travel 7
Travel Claims 8
Salary Per Diem 8

CHAPTER 4. SELECTION OF OFFICERS & COMMITTEES 9

Officers of the Board 9
Election of Officers 9
Officer Vacancies 9
Committee Appointments 9
Attendance of Committeee Meetings 10

CHAPTER 5. BOARD ADMINISTRATION & STAFF 11

Appointment of Executive Officer 11
Board Administration 11
Legal Counsel 11
Board Budget 11
Press Releases 12
Strategic Planning 12
Legislation 12
Communications With Other Organizations & Individuals 12
Executive Officer Evaluation 12
Board Staff 12
Business Cards 13

CHAPTER 6. OTHER POLICIES & PROCEDURES 13

BOARD MEMBER ORIENTATION 13
MATERIALS PROVIDED TO INCOMING BOARD MEMBERS 13
BOARD MEMBER ETHICS TRAINING 13
BOARD MEMBER DISCIPLINARY ACTIONS 14
REMOVAL OF BOARD MEMBERS 14
RESIGNATION OF BOARD MEMBERS 14
CONFLICT OF INTEREST 14
CONTACT WITH CANDIDATES, APPLICANTS, AND LICENSEES 14
GIFTS FROM CANDIDATES 15
REQUEST FOR RECORDS ACCESS 15
EX PARTE COMMUNICATION 15

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 Member 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 sections 12950.1 and 11146.1)

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.

Board Member Handbook

Introduction:

The purpose of this handbook is to provide guidance to future and incumbent Board Members regarding the general processes involved with their position on the Board of Optometry (Board). As a Board Member, you are typically asked to create and review policy and administrative changes, make disciplinary decisions, and preside over regular and special meetings.

In addition to the Bagley-Keene Open Meeting Act and the attached Administrative Procedures Manual, which provide public meeting laws, this handbook serves as a referential guide to help you understand further meeting requirements and Board procedures.

Mission Statement:

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.

Vision Statement:

The Board of Optometry's vision is to be the leading health care profession board that continuously provides consumers and optometrists with effective, collaborative, and proactive services.

Values Statement:

The Board of Optometry values:

Integrity

Competence **A**ccountability **R**esponsiveness **E**fficiency

TABLE OF CONTENTS

GETTING STARTED AS A BOARD MEMBER **1**
TRAINING REQUIREMENTS 1
BOARD OF OPTOMETRY'S ESSENTIAL FUNCTIONS 1
INTERACTIONS WITH BOARD STAFF 1
THE EXECUTIVE OFFICER 2
MEETINGS **2**
ATTENDANCE AT BOARD MEETINGS 2
QUORUM 2
GENERAL RULES OF CONDUCT 2
MEETING REQUIREMENTS 3
MAKING A MOTION 4
REVIEWING DISCIPLINARY DECISIONS **5**
DECIDING TO ADOPT OR NONADOPT A PROPOSED DECISION 5
REVIEWING THE RECORD AND PREPARING TO DISCUSS AND RENDER A DECISION AFTER NONADOPTION 6
VARIOUS BOARD PROCESSES **7**
OVERVIEW OF CALIFORNIA'S LEGISLATIVE PROCESS 7
POSITIONS ON LEGISLATION 8
LEGISLATIVE DIAGRAM 10
OVERVIEW OF REGULATIONS 11
"THE RULEMAKING PROCESS" DIAGRAM 13
"OAL REVIEW" DIAGRAM 14
COMPLAINT AND DISCIPLINARY PROCESS 15
LICENSES AND CERTIFICATIONS TABLE 17

Getting Started as a Board Member

The following information serves to inform Board Members of mandatory training requirements as well as the Board of Optometry's (Board) essential functions. Newly appointed members are also advised in this section on how to engage with Board staff and of their relationship with the Executive Officer.

Training Requirements

Within one year of assuming office, newly appointed members shall complete the following training:

1. Board Member Orientation, which is provided by the Department of Consumer Affairs
2. Ethics Training Course, which shall be completed within the first 6 months of office
3. Sexual harassment prevention, within the first six months of office

Additional training:

1. Members shall attend an ethics training course every two years

Upon assuming office, members will also receive a copy of the Bagley-Keene Open Meeting Act, which lists public meeting laws that provide the guidelines for Board Meetings. The 2011 version of this Act can also be found at the following:

http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Board of Optometry's Essential Functions

The Board's essential functions are comprised of licensing, examinations, legal and regulatory, and enforcement. As such, the following provide a brief understanding of staff procedures to uphold each function.

1. Licensing: Staff is responsible for such tasks as evaluating applications for initial licensure, license renewals, providing certifications (see page 16 this list), issuing Fictitious Name Permits, monitoring continuing education, and providing license verifications to consumers and customer service to licensees accordingly.
2. Examinations: Staff regulates the law and licensing exams, which are necessary to ensure proficiency to practice. Staff also develops examination procedures.
3. Legal and Regulatory: Administrative staff is responsible for implementing administrative changes, primarily by revising or introducing regulations and statutes.
4. Enforcement: Staff is responsible for ensuring consumer protection predominantly by processing consumer complaints, monitoring probationers, and providing customer service to licensees and consumers by providing information related to Board law.

Interactions with Board Staff

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.

The Executive Officer

The Executive Officer serves at the pleasure of the Board Members as a whole. As such, your role as a Board Member is to direct the Executive Officer to implement program administration, budget, strategic planning, and coordination of meetings.

Meetings

All Healing Arts Boards under the Department of Consumer Affairs, including the Board of Optometry, must meet in accordance with the provisions set forth by the Bagley-Keene Open Meeting Act and the Brown Act. A copy of the Bagley-Keene Open Meeting Act should be provided to each newly appointed Board Member (see web address on page 1).

For more information on Administrative Procedures, you may reference the attached Administrative Procedure Manual.

Attendance at Board Meetings

The Board's policy is such that Members 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.

Quorum

In order to conduct a full Board Meeting, there needs to be a quorum of six board members. Either having members in attendance or attending the meeting via teleconference can accomplish this.

General Rules of Conduct

The following rules of conduct are taken from the attached Administrative Procedures Manual to detail expectations of your conduct as a Member. Be mindful that the Board is comprised of both public and professional members with the intention that, together, you can protect the public and regulate the profession of Optometry.

- 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 and 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.

Meeting Requirements

Pursuant to Government Code Section, 11121.9, the following are requirements for the various meetings that you, as a Board Member, may attend.

Open Meeting Requirements:

Regularly scheduled meetings generally occur throughout the year and address the usual business of the Board. There are no restrictions on the purposes for which a regularly scheduled meeting may be held.

The Board is required to give at least 10 calendar days for written notice of each Board Meeting to be held.

The meeting notice must include the agenda, which may have a brief description of the item. Note that no changes can be made to the agenda unless the notice is amended accordingly. If this occurs, it must be posted for 10 calendar days prior to the meeting. More information about notice requirements can be found in the Administrative Procedures Manual.

Committee Meeting Requirements:

Notice requirements are mandatory for committee meetings if the committee consists of three or more persons. Those committees with fewer members do not need to submit meeting notices.

Should the committee post notice for a meeting, it must match the requirements for open meetings wherein the notice must be posted on the Internet at least 10 calendar days prior to the meeting and be provided to interested parties upon request.

Special Meeting Requirements:

Though the purposes and instructions for special meetings are found in Government Code Section 11125.4, one such reason is in the instance that a 10-day notice period to the public would impose a hardship to the Board. However, should this occur, the Board must provide notice of the meeting to each member and those persons who have requested notice of board meetings. This notice needs to specify the time, place and purpose of this special meeting.

At the commencement of this meeting, the Board must make a finding (in the open session) that providing a 10-day notice of the meeting poses a substantial hardship or that immediate action is required to protect public interest. This finding must then be adopted by two-thirds vote of members present or by a unanimous vote if less than the two-thirds of members are present. Failure to do so terminates the meeting.

Closed Session Requirements:

Closed Sessions may take place in the following instances:

1. Personnel matters (i.e. appointments, employment, performance evaluations, etc.)
2. To conduct administrative disciplinary proceedings
3. Examination matters, such as when the Board administers or approves an exam
4. Pending litigation
5. In response to confidential audit reports
6. When matters discussed would be an invasion of privacy if conducted in open session
7. As a response to a threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment.

Should a closed session take place, the Board must disclose in the open meeting a general statement about the closed session items (i.e. by mentioning it on the agenda). Additionally, all closed sessions must take place in a regularly scheduled or special meeting.

All material discussed in closed sessions must remain confidential. When such a session takes place, a staff person will be present to record and make available to members the discussion topics and decisions made.

Making a Motion

A Board Member should make a motion to introduce a new piece of business or to propose a decision or action. All motions must reflect the content of the meeting's agenda – the Board cannot act on business that is not listed on the agenda.

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 is 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.

Reviewing Disciplinary Decisions

As previously mentioned under the purposes for a closed-session meeting, you will be asked to make a disciplinary decision based on a hearing that has taken place with an Administrative Law Judge. To learn more about the complaint and disciplinary process, you may consult with the overview provided on page 14 of this handbook.

Deciding to Adopt or Non-adopt 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 non-adopt 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 non-adoption far exceed the severity of the offense and the probability is high that respondent will be successful.

B. Factors for non-adopting 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 Non-adoption

Should you, as a Member, choose to non-adopt 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.

Background Information of Various Board Processes

As a member, you may be asked to review material which you are not closely acquainted with. Therefore, you may wish to reference the following guides to attain a comprehensive understanding of items brought forth in Board Meetings.

This section provides a guide to the Legislative Process, Regulatory Process, Complaint and Disciplinary Process, and the various licenses and certifications provided by the Board.

Overview of California's Legislative Process

For a graphic overview of California's legislative process, see the attached diagram on page 10.

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. Should the Board take an idea to legislation, it will act as its sponsor.

Next, in order to move the idea toward legislation the Board must attain a Senator or Assembly Member to author it 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. Additionally, during these

hearings, a Board representative (Board Chair, Executive Officer, and/or staffer) may be called upon to testify in favor of the bill.

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 and the Board may enforce it as statute once it becomes effective. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

Positions on Legislation

As a regulatory body, the Board can issue its own legislative proposals or take a position on a current piece of legislation.

At Board Meetings, staff may present current legislation that is of potential interest to the Board, and/or which may directly impact the Board and the practice of optometry. When the Board attains research on legislation, it can take a position on the matter.

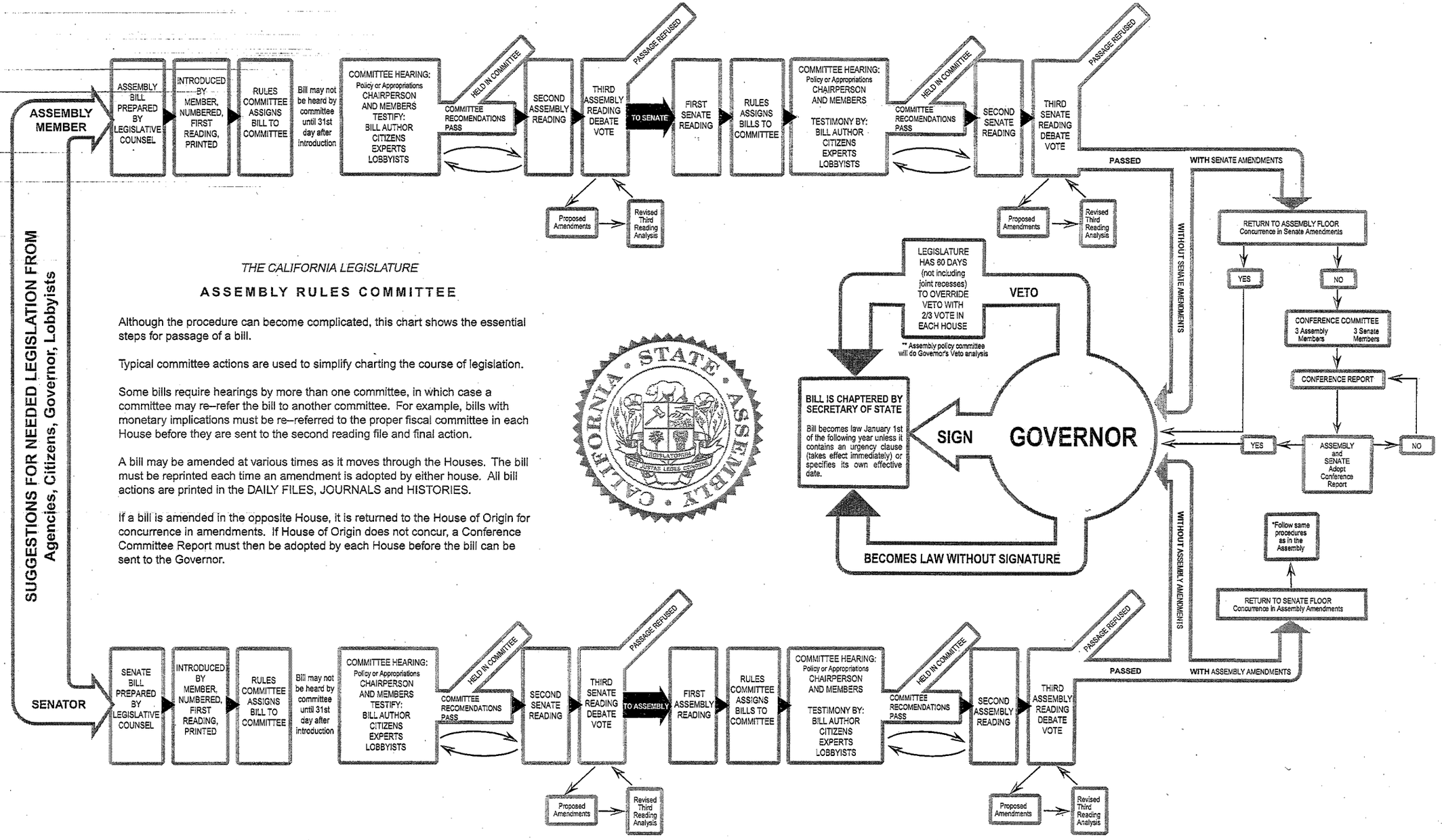
Possible positions include:

> Neutral: If a bill poses no problems or concerns to the Board, or its provisions fall outside of the Board's jurisdiction, the Board may opt to remain neutral. Should the Board take this stance, it cannot testify against the bill.
>
> Neutral if Amended: The Board may take this position if there are minor problems with the bill but, providing they are amended, the intent of the legislation does not impede with Board processes.
>
> Support: This position may be taken if the Board supports the legislation and has no recommended changes.
>
> Oppose: The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.

Oppose Unless Amended: The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

THE LIFE CYCLE OF LEGISLATION

From Idea into Law



Overview of Regulations

Regulations are administratively enforceable. They, along with statutes, govern the Board and comprise the Board's Practice Act. Succinctly, regulations interpret or make specific laws that are enforced or administered by the Board.

Should the Board wish to implement an administrative change, it may do so via statute or regulation. There are pros and cons to each of these routes. However, should the Board decide to implement a regulatory (also referred to as rulemaking) change or introduce a new regulation, it must follow direct procedures.

In order to prepare a rulemaking action, the Board 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, the Board creates 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 Board may proceed further with the proposed regulation. During this time the Board 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 Board must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, the Board 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 Board.

Additionally, if the Board 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 Board 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 Board 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.

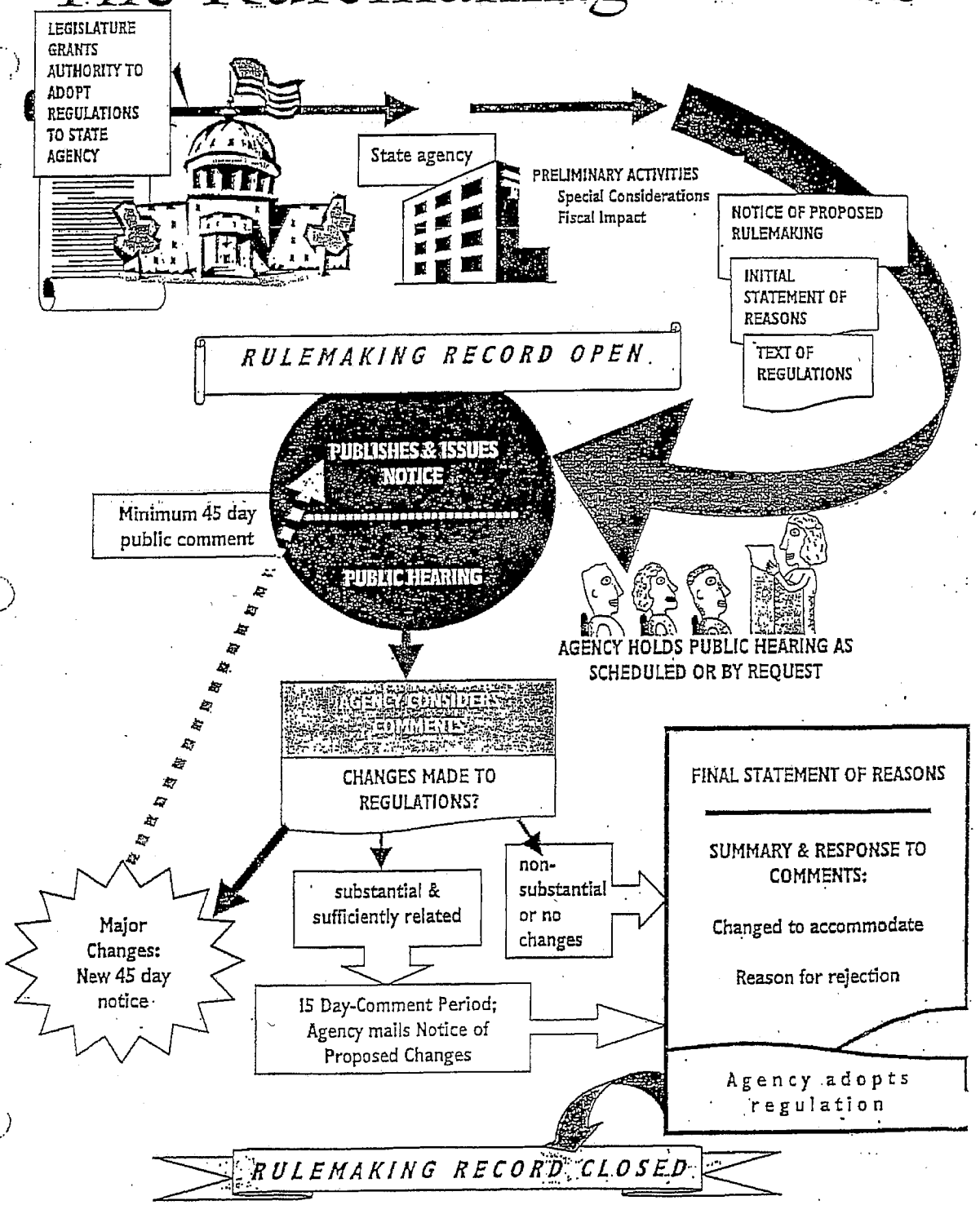
During its review, OAL must determine if the rulemaking action satisfies the standards set forth by APA. These standards are: necessity, authority, consistency, clarity, nonduplication, and reference. It must also have satisfied all procedural requirements governed by the APA.

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 Board, 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 Board may appeal to the governor.

Diagrams on pages 13 and 14 provide graphical overview of the rulemaking process.

The Rulemaking Process

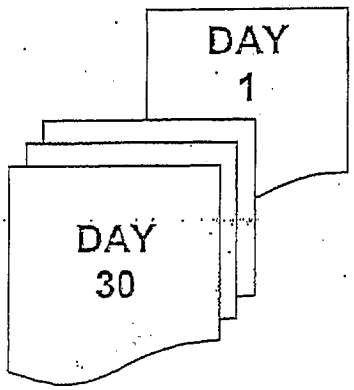


000017

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?

YES

OAL Files regulation with Secretary of State

Usually effective in 30 days

→ Regulation printed in California Code of Regulations

NO

OAL returns regulation to agency

→ Publishes disapproval in Notice Register and California Code of Regulations Decisions

Agency revises text; does 15-day notice; & resubmits to OAL w/in 120 days

New Public Notice

OR

Appeals to the Governor

000018

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.

Licenses and Certification

The following chart provides an overview of the various licenses and certifications that the Board issues to its licensees.

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:** December 2, 2011

From: Jessica Sieferman
Probation Monitor/Enforcement Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 6 – Discussion and Possible Action Pertaining to the National Practitioners Data Bank Continuous Query**

This agenda item will be discussed at a future Board meeting, as it requires additional research from staff.

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:** December 2, 2011

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

Subject: Agenda Item 7 – Public Affairs

A. Public Affairs Committee Meeting

The Public Affairs Committee (Committee) held its first meeting on October 18, 2011. Attendees at this meeting were Alexander Kim (via teleconference), Mona Maggio, Brianna Miller, and Russ Heimerich and June Vargas, who are Public Affairs Office representatives under the Department of Consumer Affairs.

The Committee began its discussion with an overview of the Board of Optometry's (Board) history of outreach and current outreach goals. Primarily, it was decided that the Board will continue its outreach efforts toward licensees, but pay considerable focus toward increasing outreach with the public.

Issues for which outreach may be performed were discussed, as well. The Board plans to introduce itself as a regulatory agency to third-year students at Western University. Additionally, it was discussed that the Board may target various optometry clubs at the undergraduate and/or graduate levels. The Board could even extend this outreach to high schools and community colleges by providing information which encourages the profession of optometry. Stimulating interest in the profession can increase the licensing population and, potentially, diversify the profession.

Outreach to the public was also discussed at length during this meeting. In addition to the Board adopting social media, the Board discussed the pursuance of Unlicensed Activity in regards to the profession. We can encourage the public to utilize the "Look Up a Licensed Optometrist" feature on the website and for consumers to readily notify the Board of any individuals who are practicing optometry without a license. As it was discussed, this may be true in the case of "Clinicas" and "Botanicas" throughout the State.

Other avenues for which the Board can reach the public include utilizing Hollywood contacts established by various Board Members to tout some of the Board's issues (i.e. unlicensed sale of cosmetic contact lenses). Additionally, the Department of Consumer Affairs can aid the Board in any opinion-editorial pieces that we wish to distribute, as well as media and publications.

Along these lines, it was determined that the Board will halt our annual Halloween Press Conference for a year so that the issue becomes "fresh" again. In the meantime, however, we may wish to bring media attention to "unconventional" unlicensed distributors of cosmetic contact lenses (e.g. gas stations) by contacting these dispensers and notifying them of the law. Accordingly, the Board is seeking to contact a California convenience store association and encourage their members to stop selling lenses.

B. Review and Possible Approval of Outreach Materials - Pamphlets

The following informational pamphlets were established to inform the public about matters relating to the practice of optometry. Should the Board vote to approve their distribution, they will be posted on the website and distributed to various optometrists across the State.

1. Cosmetic Contact Lenses: This pamphlet was assembled to notify the public about the health risks that purchasing cosmetic contact lenses without a prescription from an unlicensed vendor can pose. The Board also hopes to garner attention to the matter by licensees to promote our enforcement efforts. As such, the pamphlet asks that consumers and licensees notify the Board of vendors who are selling these lenses accordingly.
2. What to Expect at an Eye Examination: Some consumers are not frequent visitors to an optometrist and this pamphlet was developed to give them an idea of what to expect when they do get their eyes examined. Text in this pamphlet includes an overview of various eye-care providers, tests that a consumer might expect at an exam, as well as prescription requirements.
3. Focus on Consumer Protection: This pamphlet introduces the public to the Board as a consumer protection agency and offers a variety of services which the Board can provide, including the various types of certifications issued to optometrists and how a consumer may file a complaint. This pamphlet also offers Frequently Asked Questions as an informational guide to consumers.

C. Adopting Social Media

Pursuant to the Public Affairs Committee meeting held in October, the Board has worked with the Department's Public Affairs Office to establish social media as a means for outreach. Accordingly, the Board has been set up with a Twitter account and Facebook page by which we can notify the public and our licensees of various administrative updates, news about optometry, campaign such consumer related issues as unlicensed activity, and post references to frequently asked questions. In order to garner further attention to these pages, the Board notified its email subscriber list of their inception as well as posted links on the homepage of the website.

Attachments:

1) Cosmetic Contact Lenses pamphlet
2) Focus on Your Eyes: What to Expect at an Eye Examination pamphlet
3) Focus on Consumer Protection pamphlet

REPORT VIOLATORS

If you are aware of any business or individual selling cosmetic contact lenses without a license, please report the person or business to the California State Board of Optometry. The Board will investigate the matter. Fines for selling contact lenses without a license can range from $1,000 to $2,500 per incident.

CALIFORNIA STATE BOARD OF
OPTOMETRY

2450 Del Paso Road, Suite 105
Sacramento, CA 95834

www.optometry.ca.gov
(916) 575-7170
(866) 585-2666

11-169_0P

COSMETIC CONTACTS

CHANGE THE LOOK OF YOUR EYES SAFELY AND LEGALLY

Cosmetic contact lenses are a fun way to temporarily change your eye color to match an outfit or a mood. Cosmetic contacts can give you tiger eyes, bloodshot eyes, or other effects to make a Halloween costume scarier.

However, the real scare comes from buying cosmetic contacts without a prescription from an unlicensed dealer. You could end up with an eye infection, scratched cornea, impaired vision – or worse.

In California, cosmetic contacts, just like contacts to correct your vision, must be prescribed by a licensed optometrist or ophthalmologist. You must buy your lenses only from licensed optometrist or ophthalmologist or from a licensed contact lens dispenser.

You may find cosmetic contacts for sale at flea markets, beauty salons, or accessory stores, but that doesn't mean the sales are legal.

Selling cosmetic contact lenses without a State license is against the law.

WHAT ARE COSMETIC CONTACT LENSES?

Cosmetic contact lenses can be plano (zero-powered) lenses, meaning they have no prescriptive power, or they can be vision-correction lenses with added cosmetic touches. Both kinds are regulated medical devices under the U.S. Food and Drug Administration.

What if you just want zero-powered cosmetic contacts to wear once or twice?
You still need an eye exam and a prescription from an eye doctor, to be sure the lenses will fit you properly. The doctor or his or her assistant will show you how to handle and clean the lenses.

WHAT ABOUT ONLINE SALES?

Out-of-state companies that sell contacts on the Internet to California residents also must be licensed. These companies must verify your prescription with your eye doctor.

HOW DO YOU KNOW IF A COMPANY OR YOUR DOCTOR IS LICENSED?

VERIFY THE LICENSE

Optometrists are licensed by the Optometry Board. Verify their license online at www.optometry.com.

Ophthalmologists (medical doctors who specialize in care and treatment of eyes) are licensed by the Medical Board of California. Contact lens dispensers, who fill prescriptions for contact lenses, are also licensed by the Medical Board of California.

Verify these licenses online at www.mbc.ca.gov. Click on the "Consumers" tab and scroll down to "Verify Licensure/Registration For." Out-of-state contact lens dispensers are also listed.

REGULAR CHECK-UPS PROTECT YOUR VISION

The California State Board of Optometry believes that routine eye exams are crucial for you to maintain good eye health.

According to recent studies:

- 2.3 million Americans 40 and older have glaucoma.
- 3.6 million are visually impaired.
- Nearly 1 in 3 people may have an astigmatism, which accounts for blurry vision.

Some eye problems, including glaucoma, have few warning signs and no pain. Regular visits to an eye care professional (optometrist or ophthalmologist) can help ensure that any eye problems are found and treated early.

CALIFORNIA STATE BOARD OF
OPTOMETRY

2450 Del Paso Road, Suite 105
Sacramento, CA 95834

www.optometry.ca.gov
(916) 575-7170
(866) 585-2666

11-168_OP

FOCUS ON YOUR EYES

WHAT TO EXPECT AT AN EYE EXAMINATION

EYE CARE PROVIDERS – THE FOUR O'S

Optometrists provide primary vision care. They conduct examinations to determine the overall health of the eyes and screen for disease such as glaucoma, cataracts, macular degeneration, hypertensive retinopathy, and diabetic retinopathy. They also prescribe corrective lenses (glasses and contact lenses) as needed. Some Optometrists with additional certifications can prescribe medications to treat common eye diseases such as red eye and conjunctivitis, even glaucoma. The Board of Optometry licenses and regulates these eye car professionals. Optometrists may use the letters O.D. after their names.

Ophthalmologists are medical doctors who perform eye surgeries for problems such as cataracts, glaucoma, and macular degeneration. Ophthalmologists can also treat eye diseases and prescribe corrective lenses. The Medical Board of California licenses ophthalmologists. They may use the letters M.D. after their names.

Opticians are individuals and businesses that fill prescriptions for eyeglasses and contact lenses. They
are regulated by the Medical Board of California.

Optometric assistants take a patient's history and perform some simple vision tests, including automated tests and those that take digital images of the eye. They may also fit prescription lenses and administer certain topical medications under the supervision of an optometrist or ophthalmologist. Optometric assistants are not licensed or regulated.

WHAT TO EXPECT DURING YOUR EYE EXAM

Optometrists and ophthalmologists use a variety of tests to evaluate the health of your eyes. The tests may include:

- Visual acuity and distance tests, for which you may be asked to read an eye chart.
- Color vision testing.
- Retinoscopy and various refraction tests, which can determine a glasses or contact lens prescription.
- Slit-lamp examinations, which evaluate the health of your eyes.
- Extraocular muscle testing to measure your eye movement.
- Visual field tests.
- Glaucoma tests.

Your optometrist or ophthalmologist may use eye drops to dilate your eyes before the exam. This is done to conduct a more comprehensive examination. Note that you may want to bring sunglasses and arrange a ride home from the optometrist because dilation can cause blurriness and sensitivity to light.

WHAT TO EXPECT AFTER YOUR EXAM

After your eye exam, your doctor will explain what he or she found. If an abnormality is detected, he or she will discuss treatment options.

Your doctor may also schedule a follow-up exam for you. If you need a prescription, he or she will give it to you after your exam and review your options for filling it.

WHAT YOUR PRESCRIPTION INCLUDES

Under Federal regulations, optometrists must give each patient a copy of his or her prescription immediately after an eye exam or contact lens fitting process.

MAINTAINING GOOD EYE CARE IS NOT JUST FOR ADULTS

Nearly 25 percent of school-aged children have vision problems, which can cause them to struggle in school. Undetected and untreated vision problems can leave a child with permanent vision damage later in life.

Children should have their first comprehensive eye examination before they enter school.

The California State Board of Optometry is a consumer protection agency that licenses and regulates optometrists and the optometry profession. If you have questions about an optometrist, or would like to file a complaint, please contact the Board.

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170
(888) 585-2666 (toll free)

MISSION 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.

CALIFORNIA STATE BOARD OF OPTOMETRY

2450 Del Paso Road, Suite 105
Sacramento, CA 95834

www.optometry.ca.gov
(916) 575-7170
(866) 585-2666

11-170_OP

CALIFORNIA STATE BOARD OF OPTOMETRY

FOCUS ON CONSUMER PROTECTION

When considering an optometrist, you may want to contact the Board of Optometry to ensure that the person you selected holds an active license and to find out whether he or she has been disciplined by the Board. Call (916) 575-7170. Visit www.optometry.ca.gov

The Board also issues the following certifications in addition to the optometry license:

- **Therapeutic Pharmaceutical Agents (TPA)**
  A TPA certification allows an optometrist to treat certain conditions of the human eye with therapeutic pharmaceutical agents and to perform certain other procedures.
- **Lacrimal Irrigation and Dilation (TPL)**
  An optometrist certified as TPL may perform lacrimal irrigation and dilation procedures on patients 12 years and older, in addition to TPA services.
- **Glaucoma Certification (TPG)**
  With TPG, the optometrist is also certified to diagnose and treat primary open-angle glaucoma in patients over 18 in addition to TPA services.
- **TPA with Lacrimal and Glaucoma (TLG)**
  An optometrist who is TLG certified may also per form the services of the other three certifications.

Optometrists must meet specific requirements to be eligible for these certifications. It some instances, the optometrist must consult with an ophthalmologist (a medical doctor who specializes in eye diseases) in connection with treating the patient.

Details on the laws and regulations related to the practice of optometry are available on the Board's Web site, www.optometry.ca.gov/lawsregs/laws.pdf.

TIPS FOR CONSUMERS

PRESCRIPTIONS

Optometrists must give patients a copy of their prescription for glasses or contacts after the exam or contact lens fitting.

EXPIRED PRESCRIPTIONS

An expired eyeglass prescription may be refilled only if your glasses are lost or broken. If you need a prescription refilled, the Board recommends that you return to your eye doctor for an exam, even if you don't think your prescription has changed.

MEDICAL RECORDS

You have the right to obtain a copy of your medical records from your optometrist. Once you submit your request in writing, the records must be provided within 15 days. The doctor may charge a fee to cover the cost of copying the documents.

ADDITIONAL FEES FOR CONTACT LENS WEARERS

Some doctors charge an additional fee for a contact lens fitting and evaluation. Ask about fees and office policies before making an appointment.

REIMBURSEMENTS

The Board does not have the authority to require an optometrist to reimburse your for costs or services, nor can the Board dictate to the optometrist the fees that he or she charges. If you wish to pursue reimbursement through Small Claims Court, you may contact the Board for an informational packet.

COMPLAINTS ABOUT OPTOMETRISTS

You should contact the Board if you wish to file a complaint against an optometrist. The Board is responsible for investigating complaints and disciplining optometrists who violate the law.

Complaints against optometrists can include the following:

- Gross negligence, incompetence, and unprofessional conduct.
- Failure to provide appropriate medical care.
- Dishonesty, including filing fraudulent insurance, Medicare, or Medi-Cal claims.
- Sexual misconduct.
- Drug or alcohol abuse.
- Conviction of certain crimes.
- Unsanitary working conditions.

If the allegations are proven to be true, the optometrist could face license revocation, suspension, or probation.

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:** December 2, 2011

From: Jeff Robinson
Licensing Analyst **Telephone:** (916) 575-7170

Subject: Agenda Item 8 – Examination/Licensing Programs Report

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

Board staff has been informed that the CAS to ATS conversion is still in process but should be completed before the end of the calendar year.

B. Continuing Education Program
Jeff Robinson, Licensing Analyst

Board staff has received many inquiries regarding UCB's online lectures and demonstrations (BOLD) glaucoma courses as to whether they would receive full CE credit for completing them but have been given assurances that they would. Other inquiries have included questions concerning COPE-approved courses and whether they fall under the category of TPA-related. It appears that COPE's course categories like Neuro-Optometry (which is listed as a related systemic disease category) sometimes confuse the individual taking it as to whether it can be interpreted as a course that is in the diagnosis, treatment, and management of ocular disease. It has been the practice of Board staff to answer these types of questions with, *"Does the description of the course indicate that the diagnosis, treatment, and management of ocular disease will be covered? If not, the course may not meet the requirements necessary for approval in that area."*

C. Statistics and Performance Measures
Jeff Robinson, Licensing Analyst

See attachment (Licensing Program Statistical Overview).

D. Other: Outreach to California Schools and Colleges of Optometry
Jeff Robinson, Licensing Analyst

Board staff is still in the process of reserving meeting dates and times with the University of California, Berkeley, School of Optometry (UCB), the Southern California College of Optometry, and the Western University of Health Sciences' College of Optometry. Our projected meeting dates are expected to take place in the 2012 spring quarter (March – May).

Licensing Program Statistical Overview

License Type	07/2011	08/2011	09/2011	10/2011	11/2011
OPTOMETRIST					
Applications Received	**17**	**15**	**30**	**12**	**8**
Applications Pending	**325***	**340***	**278***	**290***	**298***
Licenses Issued	**70**	**29**	**17**	**7**	**5**
STATEMENTS OF LICENSURE					
Applications Received	**22**	**22**	**20**	**15**	**8**
Applications Pending	**37***	**33***	**35***	**30***	**12***
Licenses Issued	**10**	**6**	**0**	**6**	**27**
BRANCH OFFICE					
Applications Received	**9**	**4**	**2**	**4**	**3**
Applications Pending					**10**
Licenses Issued	**8**	**6**	**0**	**9**	**12**
FICTITIOUS NAME PERMITS					
Applications Received	**9**	**9**	**0**	**0**	**0**
Applications Pending					**30#**
Permits Issued	**13**	**14#**	**5**	**12**	**2**

*****Number includes applications submitted prior to 11/10 that are/were still pending information from the applicant and/or are in the process of being transferred to CAS or are now invalid

#Number includes a total of all applications pending since 09/11

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:** December 2, 2011

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

Subject: **Agenda Item 9 – Enforcement Program Report**

A. Data Clean-up Program Report
Dillon Christensen, Enforcement Technician

The Enforcement Staff has purged old case files per the retention schedule approved by the Board on September 16, 2011. Currently the remaining closed cases and Disciplinary Records are being sorted through to be re-filed and corrected in the CAS system to facilitate a smooth conversion to BreEZe.

B. Enforcement Academy / Regulatory Investigative Techniques Training
Dillon Christensen, Enforcement Technician

Dillon attended DCA's Enforcement Academy September 19-23, 2011. The Academy provides a detailed overview of the enforcement process as it relates to Administrative law and is essential to the development of any DCA enforcement staff. Dillon also completed Regulatory Investigative Techniques Training during the week of October 24-28, 2011 at the Sacramento Regional Public Safety Training Center. The training offers a step by step investigative process that helps the investigator to remain logical and objective from initial complaint through court testimony.

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

The Board received 10 applications for Expert Witness/Consultant. Staff has written and gained approval for four contracts. The Board's Executive Officer has determined that this is in line with the board's needs. One application is being held until next year due to the doctor's personal commitments. The other five applications will be held until the board requires additional consultants. Staff has sent thank you letters to the optometrist's who submitted applications, but will not receive contracts this year.

The new consultants selected by the Board are from throughout the state, have many years working in the field, and are all very accomplished optometrists. All are very enthusiastic to work with the Board and staff is confident their diverse expertise will provide appropriate guidance for Board staff.

Most contracts have terms through September 2012, with one exception. The Board's most experienced consultant has a term through October of 2013.

Enforcement staff may now send cases to the Expert Witnesses/Consultants for review. There are 10 cases needing review.

D. Probation Program

Jessica Sieferman, Probation Monitor/Enforcement Analyst

Jessica Sieferman continues to monitor all active probationers while on maternity leave. Ms. Sieferman has access to the Enforcement Unit's main hard drive, data base, and email while at home and has limited communication with probationers to email. In the event a probationer must speak to someone, Mona Maggio and Cheree Kimball are both able to field their calls. Should the board get a new probationer in the next few months, Cheree Kimball will be sending out their pre-orientation packets and conducting their orientation interviews.

Two probationers have taken the California Laws and Regulations Exam since the Board's last meeting. The current pass rate for first time test takers is 33%. There is a six month waiting period between tests; one probationer has taken the test for the second time and passed.

Probation Program Statistics:

Below are the statistics for the Probation Program as of November 30, 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

E. Statistics/Performance Measures

Cheree Kimball, Enforcement Analyst

Please see the Enforcement Statistical Overview, prepared by Cheree Kimball, in **Attachment #1**. The Performance Measures, prepared by DCA, are in **Attachment #2**.

Enforcement Statistical Overview

Fiscal Year	2008/2009	2009/2010	2010/2011	2011/2012*
Complaints				
Complaints Received	**227**	**194**	**259**	**96**
Complaints Pending	**130**	**62**	**96****	**111**
Complaints Closed	**182**	**262**	**226**	**66**
Subsequent Arrest Reports Received	**31**	**21**	**21**	**9**
Cases Referred to Division of Investigation (DOI)	**0**	**3**	**38**	**16**
Cases Pending at DOI	**3**	**2**	**20**	**33**
Cases Referred to Expert	**4**	**14**	**6**	**0**
Cases referred to the Office of the Attorney General (AG)	**3**	**10**	**8**	**2**
Cases Pending at the AGs Office		**13**	**13**	**9**
** Case reopened				
Citations Issued	**5**	**5**	**2**	**1**
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**	**2**
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**	**2**
Unprofessional Conduct	**0**	**1**	**0**	**0**
Probation Violation	**0**	**2**	**4**	**0**
Other			**0**	**0**

*Through October 31, 2011

Department of Consumer Affairs

California State Board of Optometry

Performance Measures

Q1 Report *(July - September 2011)*

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

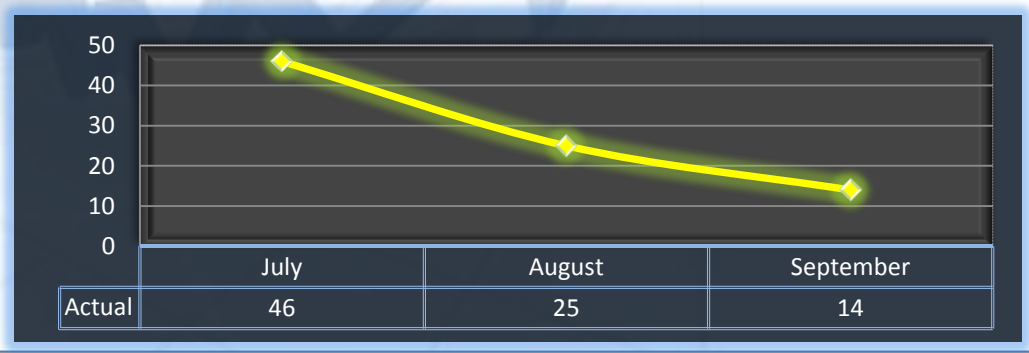
Volume

Number of complaints and convictions received.

Q1 Total: 85

Complaints: 76 Convictions: 9

Q1 Monthly Average: 28



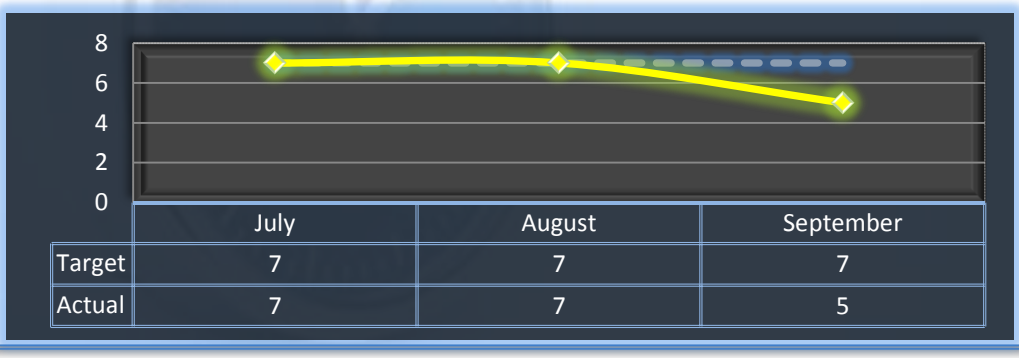
	July	August	September
Actual	46	25	14

Intake

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

Target: 7 Days

Q1 Average: 7 Days



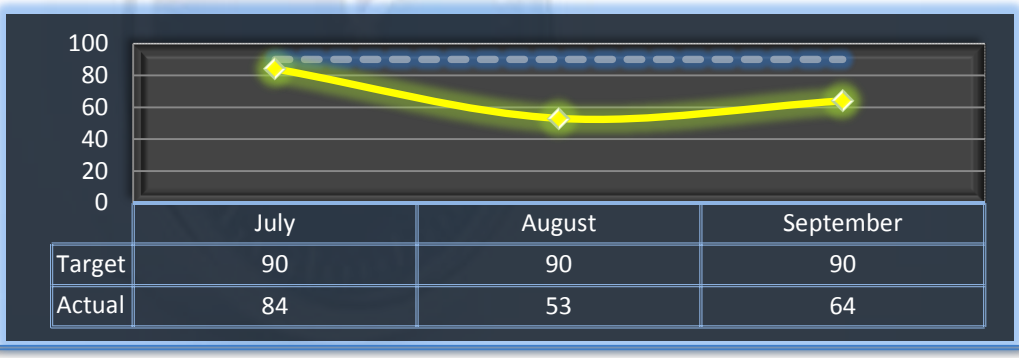
	July	August	September
Target	7	7	7
Actual	7	7	5

Intake & Investigation

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

Target: 90 Days

Q1 Average: 71 Days



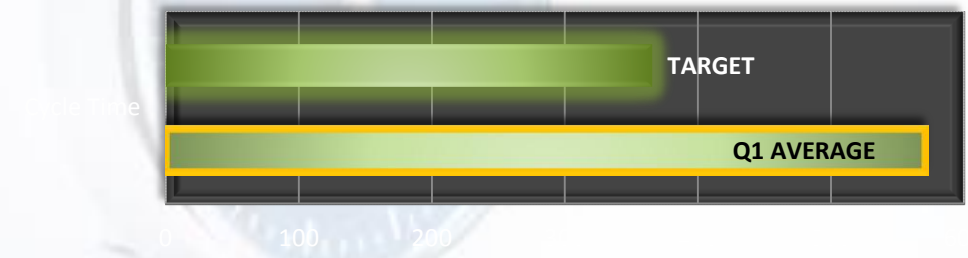
	July	August	September
Target	90	90	90
Actual	84	53	64

Formal Discipline

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

Target: 365 Days

Q1 Average: 570 Days

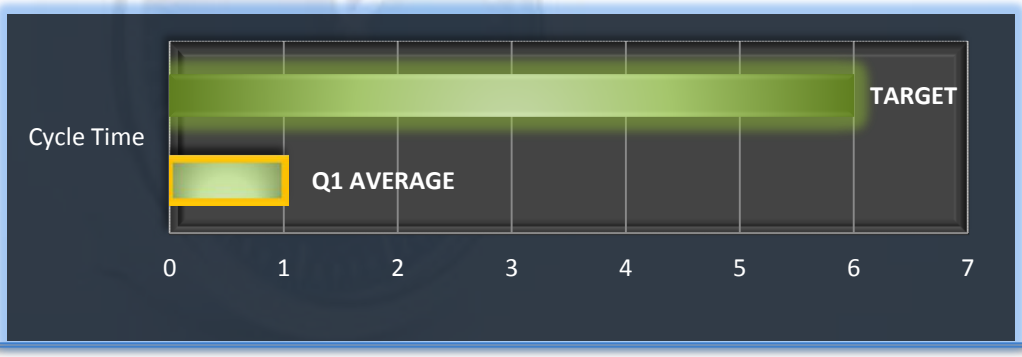


Probation Intake

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

Target: 6 Days

Q1 Average: 1 Day

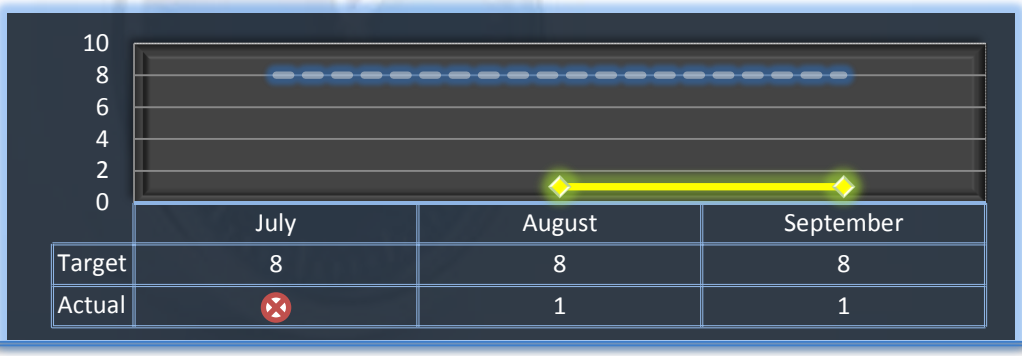


Probation Violation Response

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

Target: 8 Days

Q1 Average: 1 Day



	July	August	September
Target	8	8	8
Actual		1	1

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:** December 2, 2011

From: Dr. Lee Goldstein, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 10– 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:** December 2, 2011

From: Dr. Lee Goldstein, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 11– Suggestions for Future Agenda Items**

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

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:** December 2, 2011

From: Enforcement Unit **Telephone:** (916) 575-7178

Subject: **Agenda Item 12: Full Board Closed Session**

FULL BOARD CLOSED SESSION

The Board will meet in closed session for discussion and possible action on disciplinary matters.

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: December 2, 2011

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

Telephone: (916) 575-7170

Subject: **Agenda Item 13 - Adjournment**