



CALIFORNIA STATE BOARD OF
OPTOMETRY

Board Meeting

Wednesday, March 6, 2013

Teleconference



MEMBERS OF THE BOARD

Alejandro Arredondo, OD, President
Monica Johnson, JD, Vice President
Alexander Kim, MBA, Secretary
Donna Burke
Madhu Chawla, OD
Fred Dubick, OD, MBA, FAO
Glenn Kawaguchi, OD
William Kysella, Jr.
Kenneth Lawenda, OD



CALIFORNIA STATE BOARD OF
OPTOMETRY
BOARD MEETING AGENDA

Wednesday, March 6, 2013

9:00 a.m. – 11:00 a.m.

(or until conclusion of business)

California State Board of Optometry
 2450 Del Paso Road, Suite 105
 Sacramento, CA 95834
 (916) 575-7170 (directions only)

And Via Teleconference at the Following Locations:

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

3301 E. Main St., Ste. 1006
 Ventura, CA 93003

1919 S. State College Blvd.
 Anaheim, CA 9285

140 C Tower St.
 Beaconsfield, Quebec
 H9W 6B2

6035 Belleau Wood Ln.
 Sacramento, CA 95822

3808 Riverside Dr., Ste. 100
 Burbank, CA 91505

Kaiser/Dept. of Optometry
 5601 De Soto Ave.
 Woodland Hills, CA 91367

ORDER OF ITEMS SUBJECT TO CHANGE

FULL BOARD OPEN SESSION

1. Call to Order – Roll Call – Establish a Quorum
2. Sunset Review Report: Discussion of Questions/Comments from the Sunset Review Committee and Approval of Responses to Questions/Comments
3. Discussion and Possible Action Pertaining to California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
4. 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)]
5. Suggestions for Future Agenda Items
6. Adjournment

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.

***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, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.*

***NOTICE:** The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 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.*

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

To: Board Members

Date: March 6, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

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

Dr. Alejandro Arredondo, OD, Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Alejandro Arredondo, OD, Board President, Professional Member

Monica Johnson, JD, Board Vice President, Public Member

Alexander Kim, MBA, Board Secretary, Public Member

Donna Burke, Public Member

Madhu Chawla, OD, Professional Member

Fred Dubick, OD, MBA, FAOO, Professional Member

Glenn Kawaguchi, OD, Professional Member

William Kysella, Public Member

Kenneth Lawenda, OD, Professional Member

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To: Board Members **Date:** March 6, 2013

From: Mona Maggio and Andrea Leiva **Telephone:** (916) 575-7170
Executive Officer Policy Analyst

Subject: **Agenda Item 2 – Sunset Review Report: Discussion of Questions/Comments from the Sunset Review Committee and Approval of Responses to Questions/Comments**

Background:

The Board received a total of seven sunset issues that require a response to the Senate Committee on Business, Professions and Economic Development (Committee). Of the seven, the Board is being asked to address four (#1, #4, #5 and #6) at the Board's Sunset Review hearing on Monday, March 11, 2013. Dr. Arredondo, Ms. Burke, Ms. Maggio and Ms. Leiva will be presenting before the committee. The following is an outline of how the Board will be reviewed.

- 1) Dr. Arredondo and Ms. Burke will provide a short overview of the Board (5 minutes);
- 2) Ms. Maggio and Ms. Leiva will respond to issues, problem areas, questions, and staff recommendations (20 minutes);
- 3) Public Comment (15 minutes);
- 4) Comments by Professional Individuals, Groups or Associations (15 minutes); and
- 5) Any closing comments by the Board (5 minutes).

The hearing may need to continue on March 12, 2013. In the event the Board has to present on the second day, Ms. Burke will be available to step in for Dr. Arredondo.

Staff has completed draft responses to all issues for the Board's consideration. Upon the Board's approval, staff must finalize the responses and submit a final copy to the Committee.

Senate Bill 304 (Price) has been introduced and proposes to extend the Board's Sunset date from January 1, 2014 to January 1, 2018. Staff anticipates the Board's Sunset date will be extended.

Action Requested:

- 1) Staff requests that the members review, make edits, if any, and approve the Board's draft Sunset Issue responses.
- 2) Staff requests that the members direct staff to finalize the draft Sunset Issue responses and submit them to the legislature by the hearing date.

BOARD OF OPTOMETRY
RESPONSES TO
CURRENT SUNSET REVIEW ISSUES
MARCH 11, 2013

The following are areas of concern for the Board to consider along with background information regarding the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and are asked to respond to both the issues identified and the recommendations of the Committee staff.

OCCUPATIONAL ANALYSIS

ISSUE #1: What is the status of the occupational analysis for optometric assistants?

Background: During the 2002 Sunset Review hearing, the JLSRC recommended that the Board conduct an occupational analysis for optometric assistants to identify the tasks they will perform, and the attendant training and skill level required. The JLSRC also requested that regulations clarifying the level of training and supervision of Optometric Assistants be promulgated.

The Board indicated that they submitted a BCP in 2003 to obtain spending authority to conduct an occupational analysis, but it was denied. Despite this, the Executive Officer presented proposed regulatory language and the Board voted to approve it. Unfortunately, due to issues with the timing of the proposed rulemaking package, the regulations were not enacted.

The Board indicated that in 2009, it conducted an occupational analysis for the Board's California Laws and Regulations Examination and the National Board of Examiners in Optometry Examination included data related to the knowledge that an optometrist must have pertaining to what tasks an optometric assistant can perform.

The Committee maintains the recommendation made by the JLSRC in 2002. Despite the occupational analysis for the national and state examinations in 2009, the Committee agrees that a specific occupational analysis for optometric assistants is necessary.

Staff Recommendation: *In line with the recommendations made during the 2002 Sunset Review hearing, the Committee recommends that the Board take immediate action to conduct the occupational analysis.*

Board Response: The Board agrees with the Committee's recommendation and has already started working to obtain the funds necessary to conduct the occupational analysis. On January 25, 2013, the Board met with the Department of Consumer Affairs' Office of Professional Examination Services (OPES) to discuss the history of this issue, the project objectives and expected outcomes of an occupational analysis for optometric assistants, the project plan (i.e., start dates, major events), and

projected costs. The total projected OPES costs are \$40,882.00. The Board's projected costs are \$25,828.92 . The total cost to the Board will be \$66,710.92.

The Board will work with DCA to draft a BCP to pay for the occupational analysis. If the proposal is approved, work will begin in Fiscal Year 2014-2015. OPES' proposed completion date is June 30, 2015. At that time, the Board will review the results and OPES' recommendations and determine next steps. Possible outcomes include developing regulations to implement the analysis' recommendations, or the need to create a certification process under the Board's oversight for optometric assistants. The latter outcome would require legislation and a permanent Staff Services Analyst.

ENFORCEMENT

ISSUE #2: Should the Board check the Health Integrity and Protection Databank (HIPDB) and the National Practitioner Databank (NPDB)?

Background: There are two national databanks related to disciplinary actions:

1. **NPDB:** In 1987 Congress passed Public Law (PL) 100-93, § 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, authorizing the Government to collect information concerning sanctions taken by State licensing authorities against all health care practitioners and entities. Congress later passed the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, to add "any negative action or finding by such authority, organization, or entity regarding the practitioner or entity." Title IV is intended to improve the quality of health care by encouraging State licensing boards, hospitals, professional societies, and other health care organizations to identify and discipline those who engage in unprofessional behavior; to report medical malpractice payments; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. Adverse actions can involve licensure, clinical privileges, professional society membership, and exclusions from Medicare and Medicaid.
2. **HIPDB:** The Secretary of Health and Human Services, acting through the Office of Inspector General and the U.S. Attorney General, was directed by the Health Insurance Portability and Accountability Act of 1996 to create the HIPDB to combat fraud and abuse in health insurance and health care delivery. The HIPDB is a national data collection program for the reporting and disclosure of certain final adverse actions taken against health care practitioners, providers, and suppliers. The HIPDB collects information regarding licensure and certification actions, exclusions from participation in Federal and State health care programs, health care-related criminal convictions and civil judgments, and other adjudicated actions or decisions as specified in regulation.

In its recent report, the Board indicated that it does not check HIPDB and NPDB prior to issuing or renewing a license. The Board indicated the following reasons for not checking the databanks:

1. **Cost:** "In order to initiate and maintain continuous queries when issuing and renewing licenses, the Board would need to raise the licensing fee. It is estimated that it would cost \$6.50 per licensee per year."

2. **Staffing:** “It is estimated that the Board would need an additional full time, limited term staff person to manually enter licensees and applicants into the databanks.”

The Committee is concerned with the protection of the public and the effective operation of the profession. As such, it is imperative that methods, such as utilizing the NPDB and HIPDB, be employed to thoroughly examine a potential licensee’s professional background and criminal history.

Staff Recommendation: *The Board should work with DCA to ensure that they are provided the funds to apply for the NPDB and HIPDB.*

Board Response: The Board agrees with the Committee’s recommendation and will work with DCA’s Budget’s Office to determine the best method in obtaining the necessary resources. This may include drafting additional BCPs for funds and staffing, or increasing licensing fees via legislation or the regulatory process.

ISSUE #3: What has led to the time lag in cases referred to the Attorney General?

Background: According to the Board’s recent report to the Committee, the Board’s performance targets/expectations for its enforcement cases have extended considerably beyond the target time frames.

Despite the target of 90 days, for fiscal year 2010-2011, the average time required to complete the intake and investigation was 89 days. For fiscal year 2011-2012, the average time required to complete the intake and investigation was 184 days.

Despite the target of 365 days for 2010-2011, the average time required to complete the entire enforcement process for cases resulting in formal discipline was 685 days. For the 2011-2012 fiscal year, the average number of days was 879.

The Board noted that the enforcement unit recently created internal timelines for each phase of a complaint and participated in a training course with emphasis on effective time management. They indicate that the Board continues to request additional enforcement staff to help manage the caseload, but their requests “...continue to be denied by [DCA].”

The Committee is encouraged by the recent efforts of the Board, but remains concerned that the Board’s target timeframes are still being exceeded by a significant quantity. The Committee is also concerned with the potential harm to the public that may be incurred if an unscrupulous licensee continues to practice during a lengthy disciplinary case review by the Attorney General.

Staff Recommendation: *The Committee recommends that the Board specify what additional measures can be taken to expedite processing of enforcement cases.*

Board Response:

When the Board takes disciplinary action in an enforcement case, the investigation has typically gone through a number of specific phases before that final disciplinary action is complete. While Board staff is directly responsible for the internal or “desk” investigation of any enforcement case, cases involving

disciplinary action have typically been investigated in the field by sworn peace officers working for DCA's Division of Investigation (DOI), often must be evaluated by an Expert Witness, and, finally, are referred to the Office of the Attorney General for assignment to a Deputy Attorney General (DAG) for the legal pleading and the final disciplinary action. The Board may have goals for the processing of the disciplinary actions, but DOI and the DAGs have their own time frames that they work with. For example, a DOI investigator is expected to complete an investigation within one year from the date it is assigned to them, and a DAG is expected to have a draft pleading to the Board within 90 days from the date the case is assigned to them. Just these two time frames bring an investigation well over the Board's goal of 365 days and still doesn't include the time required for desk investigation, Expert Witness review, or the time between the receipt of a draft pleading and the effective date of a final decision, a time frame that includes filing of the pleading, waiting for a Notice of Defense, settlement negotiations, possibly a hearing, review and adoption by the Board, and the thirty days between a decision's order of adoption and the effective date of that decision.

Board staff is exploring options for educating these outside agencies in regards to Optometry law and practices in an effort to reduce the amount of time spent doing background research and learning about the practice of Optometry. Board staff has also implemented the practice of contacting a DOI investigator or DAG upon case assignment to discuss the case, the work that needs to be done on the case, and the options for resolving the case as quickly as possible. This has the added benefit of being able to directly educate the assigned staff on the issues specific to the investigation at hand.

The Board's case load and the number of cases that the Board takes to disciplinary action are smaller than the case loads of larger Boards, providing a statistical disadvantage wherein one or two abnormally lengthy investigations are not sufficiently balanced by a number of more expedient investigations. While Board staff makes every effort to work cases as expeditiously as possible; investigations can require the assistance of offices and staff outside of the Board's control. The internal timelines that were recently created provide Board staff with a guide for follow up with agencies we cannot otherwise control. This follow up allows Board staff to become familiar with the outside staff working with the Board's case and allows Board staff to further express the urgency of the investigation.

Board staff continually reassesses the priority of an investigation and expedite those cases that provide a direct threat to the health and safety of the California consumer. The Board seeks Interim Suspension Orders (ISO's) and PC23 Orders where appropriate to more quickly restrict the license of potentially dangerous licensees. The Board actively pursues stipulated settlements in disciplinary cases whenever possible in order to shorten the length of time before a final decision is effective, as well as reduce the cost to the Board of pursuing the disciplinary action.

As was explained on page 58 of the Board's Sunset Review Report, the Enforcement Statistics reported included an almost 40% increase in case volume, as well as the repercussions of a technical challenge the Board faced during the implementation of a licensee mandate to submit to fingerprinting. When Board staff discovered the technical issue, there were a number of fingerprint results that had

been held up and not received by the Board. Some of these fingerprint results included conviction histories that needed to be investigated. Board staff made the decision to use the date that the fingerprint results were released to the Board by the Department of Justice (DOJ) rather than the more recent date after the results were received by Board staff. This allowed for more technically accurate statistics, but significantly elevated the case processing times shown in the statistics. Further, the processing of these fingerprint results took priority and the cooperation of all enforcement staff, limiting the ability of enforcement staff to prioritize the follow up of investigations that were in the process of being worked by DOI or the DAG.

Finally, the Board is working towards some key changes that will help keep investigation timelines shorter. Board staff has obtained additional Expert Witnesses and is working to recruit more. Previously, the Board had a limited pool of Expert Witnesses, which could cause delays in the receipt of Expert Witness reviews. An increased pool of Experts allows the Board to receive reviews more quickly by reducing the need to send multiple cases to a single Expert. The Board has also filled all of its open positions in the Enforcement Unit, allowing the unit to operate at full capacity for the first time since the 2010/2011 fiscal year. While the new employees are still in the training process, improvements are already being seen in case statistics. Finally, the Board is in the process of developing requirements for the BreEZe database that are specific to the Board's business processes. This is one of the final steps before the BreEZe team can begin the data transfer from DCA's current systems to BreEZe. BreEZe is anticipated to reduce case investigation timeframes by allowing case information to be transmitted electronically to and from DOI and the Board's Expert Witnesses, as well as to Board Members when a Board Vote is needed on a disciplinary matter. The ability to transmit this information electronically instead of making copies and putting it in the mail will save the Board time and money, as well as decrease an investigation's timeframe. The Board expects to be using the BreEZe system in fiscal year 2013/2014.

ISSUE #4: Should the Board be granted the authority to inspect an optometrist's practice location?

Background: The Board's enforcement unit is charged with investigating and ensuring compliance of the laws and regulations regarding optometry. However, these laws and regulations do not include the authority to audit and inspect an optometrist's practice location.

Currently, if an inspection is required, the Board must enlist the assistance of the Division of Investigation, who as peace officers, have inspection authority. These investigators may enter an optometric office and require the inspection of the premises including patient records, financial and billing information, infection control procedures, etc. However, the investigators often are not aware of the specifics in regards to optometric offices, and may overlook important information, critical to the investigation. The Board of Pharmacy, Board of Barbering and Cosmetology, Board of Respiratory Care, Dental Board, and the Board of Physical Therapy are several of the health boards within DCA that have the authority to inspect the facilities in which their licensees practice. These inspections are to ensure the compliance of the laws and regulations of these boards, which in turn, protect California consumers.

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

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

The Committee is committed to public safety and enforcement of the profession. As such, the Committee agrees that the Board's enforcement unit should be granted the authority to inspect an optometrist's practice location. However, the Committee also notes the Board's inability to carry out its current enforcement duties due to budget constraints and a lack of staff.

Staff Recommendation: *The Committee requests that the Board provide a plan for increasing the workload of its enforcement officers considering the existing budget and staffing constraints.*

Board Response: In order for the Board to successfully implement inspection authority in a way that would benefit public safety, the Board would need to request a new position. The new position would have to be an inspector classification, and the candidate would need to be an optometrist. The current staff at the Board is not qualified to perform inspection duties because they are not optometrists and are needed to perform the job duties they currently have. If current staff were to attempt to take on this increased workload, it would cause a negative ripple effect on all enforcement activities because current duties would be neglected. For example, enforcement processing timelines would increase which would result in less public protection. Also, since they are not specialists in practice related issues like an actual optometrist, it would be a waste of resources because they would not be as effective as an optometrist. The Board of Pharmacy uses pharmacists in their investigation program, and the Board would most benefit from following the same model. The Board will need to submit a BCP to obtain the inspector position and spending authority, or an augmentation to our budget line to contract with an optometrist to conduct inspections.

In the meantime, the Board plans to continue handling cases that require an investigator the same way they have been handled in the past. That involves enforcement staff conducting a desk investigation and identifying the types of violations that require an inspection. Then, Board staff requests that investigator be sent into the field from the Department of Investigation (DOI). If DOI needs an optometrist to develop an investigative plan, one of the Board's experts will be called upon to assist. The Board will also meet with other healing arts boards that currently have inspection authority to learn about and evaluate their programs. Based on the information collected from other programs, the Board will develop its BCP and strengthen the justification for the need to obtain inspection authority for the profession of optometry.

STAFFING

ISSUE #5: Why was the Board’s budget change proposal (BCP) denied?

Background: The Optometry Act provides authority for the Board to regulate the profession of optometry. The Board is charged with protecting its licensees and the consumers of optometric services. Included in the Board’s basic authority is the ability for the Board to approve or deny licenses, take enforcement actions, pursue legislation, and conduct administrative duties.

In its recent report to the Committee, the Board indicated that there have been various constraints that have affected its ability to carry out its mandates. Specifically, the following deficiencies were noted:

1. No participation in national organizations such as the ARBO and the COA.
2. Inability to process licenses and fictitious name permits in a timely manner.
3. Inefficiency processing and renewing applications.
4. The Board does not check NPDB and HIPDB prior to issuing or renewing licenses.
5. CE audits have not been consistently conducted.
6. Performance targets for the enforcement program are not being met.
7. No workforce development data has been collected.
8. The Board is barely meeting its mandatory reporting requirements. During the last four fiscal years, the Board only received a total of eight reports (BPC § 801(a), 802, and 803)

The Board reported that these deficiencies are directly related to a lack of staff that would be responsible for completing these salient tasks. Since 2010, the Board has lost almost all the much needed positions it gained throughout the years (six positions total) due to expiration of limited term positions, DCA policy changes, and directives from the State and Consumer Services Agency and Governor. The current management and staff structure does not provide for ongoing review of processes to identify areas for process improvements and staff development. The Board noted in their recent report: “The Board is mandated to use its resources on the licensure, examination, and regulation of the profession of optometry. This also includes educating and protecting consumers. Without sufficient staff, funds and resources, this may result in the Board failing to meet its mandate, and inadequately giving California consumers the protection they deserve...with a limited staff and a growing profession, there are concerns as to whether staff can continue its current pace.”

The composition of the Board’s staff since 2002 is noted in the chart below.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total Authorized Staff Positions	7	7	7	7	7	7	8	9	13	14	10.4
Total Staff	6	6	6	6	6	6	7	8	11	16*	11.4**
Managers	0	0	0	0	0	0	0	0	0	1	0
AEO	0	0	0	0	0	0	0	0	0	0	0
EO	1	1	1	1	1	1	1	1	1	1	1

* This figure includes authorized position approved through BCPs but not filled, and two positions paid from blanket funds.

** This figure includes one position paid from blanket funds.

The Committee is concerned about the Board's ability to regulate the profession as they have limited staff which prevents them from performing essential tasks that will help ensure consumer protection.

Staff Recommendation: *The Board should inform the Committee of its plan to continue carrying out its various duties if no additional staff is allocated for the Board. The Board may want to explore the possibility of hiring temporary or part-time staff to assist with completing critical tasks.*

Board Response: The Board agrees with the Committee's recommendation to hire temporary or part-time staff to assist in the completion of critical tasks. Unfortunately, the Board has already explored this possibility and the Board's budget does not have sufficient funding for re-direction of resources that would support the hiring of temporary or part-time permanent staff.

In an effort to continue carrying out the Board's various duties without additional staff the Board plans to take the following actions:

- Allow key staff to work 10 to 20 hours overtime per month for compensated time off to attempt to keep up with workload demands.
- Review duties in all units and reassign if possible.
- Conduct workload study of current employee duties to assist in the BCP process. The Board needs to determine the amount of employees needed in order for the program to function at its maximum capacity.
- Continue to assist the BreEZe development and implementation efforts. The goal of BreEZe is to streamline all licensing processes and assist with consumer complaints. The Board does want to note that for the next six to eight months while staff is pulled to assist with this project, there will be a delay in the processing and issuing of licenses and permits.
- Continue to utilize internal processing timelines in the enforcement unit for the processing and managing of complaints from receipt to investigation and discipline.
- Develop internal processing timelines similar to the enforcement unit for the licensing unit.
- Revise applications and forms to improve efficiency and reduce processing times. For example, the Board's database fields were matched to the fields on the forms and applications for easier data entry.
- Continue to work with AARP who provides support staff through their grant program.
- Continue to provide volunteer opportunities to high school seniors for fulfillment of their senior community service project. Students complete clerical tasks for the Board.
- Continue to maintain seasonal staff, that have resulted to be a great asset to the Board.
- Participate in the legislative process and provide input on bills that have a fiscal impact on the Board. This includes funding and staffing needed to the Board's budget in order to implement the mandates of the bill.

The Board also plans to continue working with the DCA Budget Office to find the best way to obtain resources. However, there are policies provided that the Board, under the umbrella of DCA, must adhere to with regards to requests for additional staff through the BCP process. Specifically, in the last two years, the Department of Finance issued Budget Letter 11-18 and 12-15. These budget policy letters restricted budget change proposals to only those requests meeting the following criteria:

Requests for New Positions—The Administration’s policy is to continue to contain the growth in authorized positions. Requests for new positions generally will be limited to redirections of existing positions. When requesting new positions, departments are required to clearly establish the long and short-term benefits to be gained by increasing personnel as opposed to other possible alternatives (e.g., automation, workload readjustments). Other alternatives that have been considered must also be identified and analyzed. BCPs requesting new positions must effectively justify why a redirection is not possible. If new positions are approved, positions will be budgeted at the mid-step, unless evidence is provided justifying a higher level for hard-to-fill classifications or based on the department’s hiring practices. Finance must approve the establishment of any position above mid-step of the respective salary range.

Staff is currently drafting BCPs for consideration in April/May 2013, which will include requests for staff resources and budget augmentation.

LICENSE PORTABILITY

ISSUE #6: License portability for military personnel and their spouses.

First Lady Michelle Obama and Dr. Jill Biden launched the Joining Forces campaign in order to assist military veterans and their spouses in accessing the workforce. In response to this campaign, Governors in over 20 states signed pro-military spouse license portability laws. Additionally, on January 24, 2011, U.S. President Barack Obama presented “Strengthening Our Military Families: Meeting America’s Commitment,” a document urging agencies to support and improve the lives of military families.

As a result of the Joining Forces campaign and the President’s directive, the Department of Transportation and the Department of Defense issued a joint report to highlight the impact of state occupational licensing requirements on the careers of military spouses, who frequently move across state lines. Released in February 2012, the report, “Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines” revealed that approximately 35% of military spouses work in professions that require state licenses or certification and that military spouses are ten times more likely to have moved to another state in the last year compared to their civilian counterparts. In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40% of those respondents who have moved indicated that ‘easier state-to-state transfer of certification’ would have helped them.”

As a result of the survey, the Department of Transportation and the Department of Defense issued several recommendations, including the authorization of temporary licenses for military spouses if the applicant met state requirements. The report's recommendation specified:

Temporary licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications and additional fees. In developing expedited approaches that save military spouses time and money, DOD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.

Several bills have been presented to the Legislature across the past few years that deal with providing expedited licenses to military veterans and spouses, exempting active duty military personnel from continuing education requirements and licensing fees. In 2012, AB 1904 (Block, Chapter 399, Statutes of 2012) was signed and requires a Board under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California.

As part of the 2012-2013 Budget Package, the California Legislature directed the DCA to prepare a report on the implementation of BPC § 35 relating to military experience and licensure. The law indicates:

It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in their code shall provide for methods of evaluation education, training and experience obtained in the armed services, if applicable to the requirements of the business, occupation or profession regulated... Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. (BPC §35)

The DCA provided a list of boards that accept military experience and those who do not. The California Board of Optometry was included in the list of boards that do not have specific statutes or regulations authorizing the acceptance of military experience towards licensure.

The Committee is supportive of the Federal and State efforts to assist licensed military personnel and their family members enjoy better license portability. The Committee encourages licensing boards to examine their ability to exempt licensees from CE and licensing fee requirements during duty as well as waiving any licensing fees that have accrued upon the end of their duty term. The Committee is also supportive of standards for granting temporary licenses or expediting the licensing process for military spouses.

Staff Recommendation: *The Board should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The Board should also consider waiving the fees for reinstating the license of an active duty military licensee.*

Board Response: The Board agrees with the Committee and is also supportive of the Federal and State efforts to assist licensed military personnel and their family members. The Board currently complies with BPC § 114 and 115, which requires the Board to reinstate the license of an optometrist

without examination or penalty, who's license expired while he or she was on active duty in the California National Guard or the United States Armed Forces. In addition, California Code of Regulations (CCR) section 1536(i)(1) requires the Board to exempt licensees in the regular armed forces of the United States from continuing education requirements.

The Board is already complying with BPC §115.5 and has posted on its website information educating licensees about this option. This information was also sent to the Board's interested parties e-mail list and posted on the Board's Facebook and Twitter pages. While these applicants will still need to meet the requirements for licensure and ensure that the application is completed correctly, their applications for licensure will be processed before other pending applicants.

The Board is planning to discuss at its May 10, 2013 Board meeting the implementation of BPC § 114.3 added by Assembly Bill 1588 (Atkins, Chapter 742), which waives renewal requirements for licensees on active duty. A waiver process for qualified licensees will need to be created as well as a process for licensees who are discharged and returning from active duty. The Board may need to require additional requirements, but that must be done through the regulatory process.

**Continued Regulation of the Profession by the
Current Members of the Board**

ISSUE #7: Should the current Board continue to license and regulate ODS?

Background: The health and safety of consumers is protected by well-regulated professions. The Board is charged with protecting the consumer from unprofessional and unsafe licensees.

Staff Recommendation: *The Committee recommends that ODS continue to be regulated by the current Board and be renewed again in four years.*

2450 Del Paso Road, Suite 105
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www.optometry.ca.gov

To: Board Members

Date: March 6, 2013

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7170

Subject: **Agenda Item 3 – Discussion and Possible Action Pertaining to California Code of Regulations (CCR) section 1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

This regulation was approved by the Office of Administrative Law without issue on February 27, 2013 and it will become effective on April 1, 2013. This agenda item was a place holder in the event there was an issue with this rulemaking package. A full update will be provided at the Board's May 10, 2013 meeting.

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To: Board Members

Date: March 6, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 4 – 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)].

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To: Board Members

Date: March 6, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 5 – Suggestions for Future Agenda Items**

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

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To: Board Members

Date: March 6, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 6 – Adjournment
