CALIFORNIA STATE BOARD OF OPTOMETRY

Board Meeting

Friday, August 16, 2013

Department of Consumer Affairs
Sacramento, CA

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

MEMBERS OF THE BOARD
Alejandro Arredondo, OD, President
Monica Johnson, ESQ, Vice President
Alexander Kim, MBA, Secretary
Donna Burke
Madhu Chawla, OD
Fred Dubick, OD, MBA, FAAO
Glenn Kawaguchi, OD
William Kysella, Jr.
Kenneth Lawenda, OD

CALIFORNIA STATE BOARD OF OPTOMETRY

QUARTERLY BOARD MEETING AGENDA

Friday, August 16, 2013
9:00 a.m. – 5:00 p.m.

(or until conclusion of business)

Department of Consumer Affairs
1625 North Market Boulevard, First Floor Hearing Room
Sacramento, CA 95834
(916) 575-7170

ORDER OF ITEMS SUBJECT TO CHANGE

FULL BOARD OPEN SESSION

1. **Call to Order and Establishment of a Quorum**

2. **Welcome – President's Report**

3. **Continuing Education (CE)**
   A. Presentation from the Association of Regulatory Boards of Optometry (ARBO), OE Tracker Program, Benefits for Licensees and Member Boards
      Presentation by Sierra Rice, ARBO Program Coordinator
   B. Discussion and Possible Action to Amend California Code of Regulations Section 1536 to include Medical Coursework as Acceptable CE for Optometrists
   C. Discussion and Possible Action to Approve Request for CE Extension/Exemption Form

FULL BOARD CLOSED SESSION

4. **Pursuant to Government Code Section 11126(e), the Board Will Meet in Closed Session for Discussion and Possible Action on – Nat'l Ass'n of Optometrists & Opticians v. Harris, 133 S. Ct. 1241 (2013) Pending Litigation.**

FULL BOARD OPEN SESSION

5. **Approval of Board Meeting Minutes**
   A. May 10, 2013

6. **Executive Officer's Report**
   A. Budget Report- Wilbert Rumbaoa, Department of Consumer Affairs (DCA) Budget Office
   B. Examination Development Overview - Bob Holmgren, Office of Professional Examination Services
   C. BreEZe Overview and Status - Amy Cox O'Farrell, Deputy Director, DCA, Office of Information Services
   D. Enforcement Program and Consumer Protection Initiative - Michael Gomez, DCA, Deputy Director, Division of Investigation and Enforcement Programs

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.

E. Enforcement Program – Statistics and Update
F. Examination and Licensing Program – Statistics and Update
G. Strategic Planning Update

7. Discussion and Possible Action on Regulations Affecting the Board of Optometry
A. SB 1111 Provisions
B. Fees for Retired License Statuses

8. Discussion and Possible Action to Approve Guidelines for Closing an Optometric Practice

9. Discussion and Possible Action to Approve the Board's Probation Monitoring Plan

10. Discussion and Possible Action on Legislation Affecting the Board of Optometry
A. Assembly Bill 186 (Maienschein) Professions and vocations: military spouses: temporary licenses
B. Assembly Bill 213 (Logue) Licensure and certification requirements: military experience
C. Assembly Bill 258 (Chávez) State agencies: veterans
D. Assembly Bill 480 (Calderon) Service contracts
E. Assembly Bill 512 (Rendon) Healing arts: licensure exemption
F. Assembly Bill 1057 (Medina) Professions and vocations: licenses: military service
G. Senate Bill 305 (Price) Healing arts: boards: optometry board sunset bill
H. Senate Bill 430 (Wright) Pupil health: vision appraisal: binocular function
I. Senate Bill 492 (Hernandez) Optometrist: practice: licensure
J. Senate Bill 723 (Correa) Veterans
K. Senate Bill 724 (Emmerson) Liability: charitable vision screenings
L. Senate Bill 809 (DeSaulnier & Steinberg) Controlled substances: reporting
M. Senate Bill 821 (Senate BP & CP Committee) Healing Arts: Omnibus

11. 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)]

12. Suggestions for Future Agenda Items

13. Petitions for Reduction of Early Termination of Probation
A. Dr. Susanne Anderson, O.D., OPT 6613
B. Dr. Jeffery Hall, O.D., OPT 6242

FULL BOARD CLOSED SESSION

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

FULL BOARD OPEN SESSION

15. 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, 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.

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:** August 16, 2013

From: Alejandro Arredondo O.D.
Board President **Telephone:** (916) 575-7170

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

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

Alejandro Arredondo, O.D., Board President, Professional Member

Monica Johnson, ESQ, Board Vice President, Public Member

Alexander Kim, MBA, Board Secretary, Public Member

Donna Burke, Public Member

Madhu Chawla, O.D., Professional Member

Fred Dubick, O.D., MBA, FAAO, Professional Member

Glenn Kawaguchi, O.D., Professional Member

William Kysella, Jr., Public Member

Kenneth Lawenda, O.D., Professional Member

Memo

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To: Board Members **Date:** August 16, 2013

From: Alejandro Arredondo, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 2 – Welcome – President's Report**

Welcome by President Alejandro Arredondo, O.D.

A. Association of Regulatory Board of Optometry
Annual Meeting June 23- 25, 2013

B. Full Accreditation of Western University of Health Sciences, College of Optometry

C. Department of Consumer Affairs
Christine J. Lally, Deputy Director, Board & Bureau Relations

D. Other

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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To: Board Members **Date:** August 16, 2013

From: Alejandro Arredondo, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 3 – Continuing Education (CE)**
Presentation from the Association of Regulatory Boards of Optometry (ARBO)
OE Tracker

Today, Sierra Rice, ARBO Program Coordinator and Dr. Richard Orgain OE TRACKER Committee Chair from Tennessee, will provide a presentation on OE Tracker, the benefits to licensing boards and licensees.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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To: Board Members **Date:** August 16, 2013

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

Subject: **Agenda Item 3 – B. Discussion and Possible Action to Amend California Code of Regulations Section 1536 to include Medical Coursework as Acceptable CE for Optometrists**

Presented by Jeff Robinson, Licensing Analyst

Over the years the California State Board of Optometry (Board) staff has received numerous inquiries from its licensed optometrists seeking answers as to why the American Medical Association's (AMA) Continuing Medical Education (CME) courses are not given the same recognition by the Board as are the American Optometric Association (AOA), the American Academy of Optometry (AAO), the Optometric Extension Program (OEP), or the Association of Regulatory Boards of Optometry's (ARBO's) Council on Optometric Practitioner Education (COPE).

They contend that, although the AMA's membership consists of medical physicians (MDs, DOs), many of them are ophthalmologists who are afforded CME courses that are specific to the eye care profession. California-licensed optometrists often attend these and other courses that could contribute to the advancement of professional skill and knowledge in the practice of optometry but are unable to receive continuing optometric education (CE) credit for completing them because the provider has not been approved as meeting the required standards of the Board which may change in the future if California Senate Bill 492 (Hernandez), the act to amend Business and Professions Code sections 3041, 3041.1, and 3110, is passed and becomes law.

Where the review and approval of continuing education is concerned, the AMA is not unlike COPE in addressing the educational needs of its eye care professionals. But the AMA, like COPE, accredits the continuing education courses it provides for its members and does not typically seek the approval of another accrediting body. This has proven to be problematic for those optometrists seeking to attend an ophthalmological course they feel would be beneficial for them and/or their patients.

Fellow State Boards of Optometry like New York and Pennsylvania accept AMA courses while many other state boards will accept CME or other ophthalmological courses that have been submitted to, reviewed and approved by them. Therefore, Board staff would like to request the Board's members to allow its CE Committee to reexamine California Code of Regulations (CCR) section 1536(e) and grant them the opportunity to discuss possible amendments to the regulation before a full Board at a later date.

Memo

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To: Board Members **Date:** August 16, 2013

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

Subject: **Agenda Item 3 – C. – Discussion and Possible Action to Approve Request for CE Extension/Exemption Form**

Presented by Jeff Robinson, Licensing Analyst

Action Requested: Board staff would appreciate the Board member's review, discussion of, and approval of the attached draft proposals.

Background: When an optometrist licensee has had difficulty in meeting their continuing optometric education (CE) requirement due to an unforeseen circumstance, it has been Board staff's practice to allow the licensee to submit a letter requesting an extension or exemption from the requirement as is allowed in California Code of Regulations (CCR) section 1536(i)(1-3). Board staff has come to the conclusion that the completion and submission of a form might best serve it and help streamline the process and enable it to keep a better record of those who are granted extensions or exemptions.

Attachment 1 – *Request for Continuing Optometric Education Exemption/Extension*
Attachment 2 – *Verification of Disability or Medical Condition Request for Continuing Optometric Education Exemption/Extension*

STATE BOARD OF OPTOMETRY
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P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

REQUEST FOR CONTINUING OPTOMETRIC EDUCATION EXEMPTION/EXTENSION

For Office Use Only:
Date Received _____

Date Approved _____Denied_____

Date of Audit (if applicable) _____

Enforcement Approval ☐ Yes ☐ No Date: _____

This form must be received by the Board at least sixty (60) days prior to the expiration date of the license

PLEASE READ THOROUGHLY THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS FORM. Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

(Please type or print clearly)

Part 1 to be completed by applicant/licensee

*NAME: Last First Middle

BUSINESS TELEPHONE: E-MAIL ADDRESS:

ADDRESS OF RECORD: Number, Street, Suite/Room City State Zip Code

OPTOMETRIST LICENSE NUMBER: RENEWAL PERIOD REQUESTING EXEMPTION/EXTENSION FOR:

_____/_____/_____ TO _____/_____/_____

REASON FOR EXEMPTION/EXTENSION (Check √ one box ONLY):

☐ **Health** (Complete Part 2) ☐ **Health-Family** (Complete Part 2) ☐ **Other Unavoidable Circumstances** (submit proof)

Part 2 to be completed by licensee to explain medical condition, disability or other unavoidable circumstances. Please attach extra sheets if necessary.

1. Provide a detailed description of the disability or medical condition and an explanation as to how the disability or medical condition limits your ability to complete 40 (50 if TPA, TPL, TPG, or TLG certified) hours of continuing optometric education over a two-year period through classroom/seminar attendance or self-study (please attach additional sheets if necessary).
2. Attach completed *"Verification of Disability or Medical Condition"* form.
3. What type of accommodation are you requesting?

   ☐ **Exemption from Continuing Optometric Education Requirements** – By checking this box you are certifying that during this licensing period you were prevented from completing your continuing optometric education requirements due to: (a) total physical and/or mental disability; (b) total physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.

   ☐ **Request to Complete All Continuing Optometric Education Hours Through Self-Study Courses** – By checking this box you are certifying that during this licensing period you were prevented from completing your continuing optometric education requirements due to: (a) a physical and/or mental disability; (b) a physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.

   ☐ **Request for Extension to Complete All Continuing Optometric Education Hours** – By checking this box you are certifying that during this licensing period you were unable to complete your continuing optometric education requirements due to: (s) a physical and/or mental disability; (b) a physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.
4. Explain how another accommodation would allow you to comply with the continuing optometric education requirements.

_____

_____

_____

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments is true and correct.

_____ _____

Date ***Signature of Licensee***

EXEMPTIONS FROM THE CE REQUIREMENT

Notification of Collection of Personal Information: The Board of Optometry (Board) collects the personal information requested on this form for the purpose of determining eligibility for a "good cause" exemption/reasonable accommodation of the Board's continuing optometric education (CE) requirements. The submission of personal information such as name, optometrist license number and medical history is mandatory. The Board cannot process your request for CE exemption/reasonable accommodation unless you provide all of the requested personal information on this form.

California Code of Regulations (CCR) Section 1536(i)(1-2) – Continuing Optometric Education; Purpose and Requirements: (i) The following licensees shall be exempt from the requirements of this section:

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

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

The Board will notify the licensee as to whether their request for exemption/extension was granted. If the request is deemed to be satisfactory and approved, the licensee will be informed of the exemption or the extension expiration date. If the request is denied the licensee is responsible for completing the full amount of CE required for license renewal.

Requesting an Exemption/Extension

To request a CE exemption/extension, please complete and submit a *"Request for Continuing Optometric Education/Extension"* form. Sufficient proof of a disability, medical condition, or other unavoidable circumstances must be sent along with the form. The completion and submission of a *"Verification of Disability or Medical Condition"* form or a written statement from your physician or psychologist are acceptable from those claiming a disability or medical condition. The form or written statement must include the physician or psychologist's name, title, principal place of practice address, telephone number, professional license number, and their original signature.

Renewal Application for Licensed Optometrist

Regardless of whether or not your request is approved, you must complete and submit a renewal application for licensed optometrist and a renewal fee before your request is completed.

If you have questions concerning this matter please contact the Board at (916) 575-7170 or optometry@dca.ca.gov.

STATE BOARD OF OPTOMETRY
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VERIFICATION OF DISABILITY OR MEDICAL CONDITION REQUEST FOR CONTINUING OPTOMETRIC EDUCATION EXEMPTION/EXTENSION

For Office Use Only:
Date Received _____

Date Approved _____Denied_____

Date of Audit (if applicable) _____

Enforcement Approval ☐ Yes ☐ No Date: _____

This form must be received by the Board at least sixty (60) days prior to the expiration date of the license

PLEASE READ THOROUGHLY THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS FORM. Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

(Please type or print clearly)

Part 1 to be completed by applicant/licensee

*NAME: Last First Middle

BUSINESS TELEPHONE: E-MAIL ADDRESS:

ADDRESS OF RECORD: Number, Street, Suite/Room City State Zip Code

OPTOMETRIST LICENSE NUMBER: RENEWAL PERIOD REQUESTING EXEMPTION/EXTENSION FOR:

_____/_____/_____ TO _____/_____/_____

REASON FOR EXEMPTION/EXTENSION (Check √ one box ONLY):

☐ **Health** (Complete Part 2) ☐ **Health-Family** (Complete Part 2) ☐ **Other Unavoidable Circumstances** (submit proof)

Part 2 to be completed by licensee to explain medical condition, disability or other unavoidable circumstances. Please attach extra sheets if necessary.

1. Provide a detailed description of the disability or medical condition and an explanation as to how the disability or medical condition limits the patient's ability to complete 40 (50 if TPA, TPL, TPG, or TLG certified) hours of continuing optometric education over a two-year period through classroom/seminar attendance or self-study (please attach additional sheets if necessary).

2. Approximate date disability/medical condition began: _____Disability/medical condition is ☐ Temporary ☐ Permanent

   If temporary, approximate date licensee will be able to resume his/her continuing optometric education: _____

3. Is licensee limited in working in his/her licensed capacity? ☐ Yes ☐ No
   If "Yes," please explain limitations: _____

Attending Physician's/Psychologist's Name License Number Business Telephone

Attending Physician's/Psychologist's Address City State Zip Code

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments is true and correct.

_____ _____
Date ***Signature of Licensee***

_____ _____
Date ***Signature of Physician/Psychologist***

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Memo

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www.optometry.ca.gov

To: Board Members **Date:** August 16, 2013,

From: Alejandro Arredondo, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 4 – FULL BOARD CLOSED SESSION**

Pursuant to Government Code Section 11126(e), the Board will meet in closed session for discussion and possible action on – Nat'l Assn'n of Optometrists & Opticians v. Harris, 133S. Ct. 1241 (2013) Pending Litigation.

Memo

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To: Board Members **Date:** August 16, 2013

From: Krista Eklund
Office Technician **Telephone:** (916) 575-7170

Subject: **Agenda Item 5 – Approval of Board Meeting Minutes**

A. May 10, 2013

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

Friday, May 10, 2013 **DRAFT**

Western University of Health Sciences, College of Optometry
Health Education Center (HEC Building), 2nd Floor, Vision Sciences Lab 2205

309 E. Second Street
Pomona, CA 91766

Members Present		**Staff Present**
Alex Arredondo, O.D, Board President		Mona Maggio, Executive Officer
Monica Johnson, JD, Vice President, Public Member		Andrea Leiva, Policy Analyst
Alex Kim, MBA, Board Secretary, Public Member		Jessica Sieferman, Enforcement Lead
Ken Lawenda, O.D, Professional Member		Michael Santiago, Legal Counsel
Madhu Chawla, O.D, Professional Member		
Donna Burke, Public Member		
William Kysella, Public Member		
Fred Dubick, O.D, MBA, FAAO, Professional Member		Guest List
Glenn Kawaguchi, O.D, Professional Member		On File

9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Board President, Alex Arredondo, O.D called roll and a quorum was established. The meeting was called to order at 9:16 a.m.

2. Welcome – President's Report

Dr. Arredondo welcomed everyone in attendance and provided a report of recent Board related events.

Dr. Arredondo attended graduations at the Western University of Health Sciences, College of Optometry. Public member, Donna Burke attended graduations at the University of California, Berkeley, School of Optometry.

Dr. Arredondo congratulated public member, Alex Kim who was recently appointed the Community Affairs Manager for Southern California Gas Company.

Future Board meeting dates were set as follows:

- *August 16, 2013* – Sacramento
- *October 25, 2013* – Sacramento – Specifically for Strategic Planning – Only emergency matters would be placed on this meeting agenda
- *November 1, 2013* – Berkeley
- *January 10, 2014* – Southern California

Ms. Burke and Ms. Maggio met with Mayor Kevin Johnson's staff member, Symia Stigler, regarding Vision to Learn and how the Board might partner with him.

This year is the Board Centennial and it was discussed how staff might recognize the Board as a consumer protection agency for 100 years. Ideas included adding a banner to the website. Ms. Leiva has already contacted the DCA publications office to create a design. Other thoughts were a Board resolution from the legislature/governor's office and recognizing the oldest living O.D with a certificate.

3. Approval of Board Meeting Minutes

The Board was asked to approve the minutes for the following Board meetings:

A. December 14, 2012 – Donna Burke moved to approve as amended the December 14, 2012 minutes. Alex Kim seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mrs. Johnson	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

B. **March 6, 2013 -** Donna Burke moved to approve the March 6, 2013 minutes. Dr. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mrs. Johnson	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

4. Executive Officer's Report

Executive Officer, Mona Maggio reported on the following:

A. Budget

Overview

The Board is a Special Fund California state government agency, which means it supports its operations entirely through fees, and does not receive any funds from the state General Fund. Although categorized as a Special Fund agency, the Board's budget is incorporated into the Governor's budget. The Board's expenditures are attributed to three major categories: Personnel, Operating Expenses and Equipment (OE&E), and Enforcement.

2012/2013 Budget

It is projected that after expenditures, the Board will leave an unencumbered balance of $142,889, a surplus of 8.44%. Any surplus funds are reverted to the Board's reserve fund. The Board's fund condition has a 6.1 months reserve.

B. Personnel

The Board's organization consists of 10.4 authorized positions and 3 temporary staff positions. A request to hire a Youth Aid (high school student) to perform basic clerical support for the licensing program will be submitted for consideration. If approved, the Youth Aid will work for approximately six weeks during the summer.

Jessica Sieferman was promoted to an Associate Governmental program Analyst (Enforcement Lead) effective April 30, 2013.

C. Sunset Report

The Board's Sunset Hearing was held on March 11, 2013 before the Senate Business, Professions and Economic Committee, Chaired by Senator Curran Price, and Co-Chair Assembly member Richard Gordon. Dr. Arredondo, Ms. Donna Burke and Ms. Maggio presented the Board's report. The Committee thanked the Board for its work, its service, and efforts in upholding its mandate to protect the public. They also expressed appreciation that the responses to the Committee's questions were clear, concise and thorough. The Board is awaiting the final report with actions to be completed by the next Sunset Hearing or sooner if directed by the Committee.

D. BreEZe Update

The BreEZe system will allow licensees to apply for, renew, pay and track their licensing requests online. Additionally, it will dramatically increase the capabilities for the DCA boards, bureaus, and oversight programs to isolate unscrupulous practitioners.

The Board's initial BreEZe implementation date was January 2012. However, due to several ongoing problems with the Release 1 phase, the date has been continuously pushed. It is estimated that the new implementation date for Release 2 (which is the Board's release) is in 2014.

The BreEZe team has initiated the Data Conversion process. This process is comprised of three parts: Data Mapping, Data Conversion, and Data Verification. In addition, the User Acceptance Testing (UAT) will commence shortly. Due to limited Board staff, the licensing process will be severely hindered during the Data Conversion and UAT processes. Unless the Board is granted temporary "fill-in" staff, all licenses will be delayed.

Ms. Burke inquired if DCA or the Board can issue a press release to communicate to licensees and the public that the issuance of licenses will be delayed due to the transition to BreEZe.

Reichel Everhart, DCA Deputy Director for Board and Bureau Relations responded that it is a possibility and that she will check with the DCA Executive Team.

E. Examination and Licensing Programs

Ms. Maggio provided the Board with licensing statistics which were prepared by Licensing Analyst, Jeff Robinson.

F. Enforcement Program

Ms. Maggio provided an overview of the new Disciplinary Guidelines (DGs), the data clean up project, and the data banks (a report prepared by Enforcement Analyst, Ms. Sieferman).

The DGs were designed for use by Administrative Law Judges, attorneys from the Office of the Attorney General, licensees, Board staff and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board.

The three phase "Clean Up" project is set to be completed by June 30, 2013, in time for the fourth quarter Performance Measures.

The Senate Business, Professions and Economic Committee expressed its concern with the protection of the public and the effective operation of the profession. The Committee recommended that the Board work with the Department of Consumer Affairs (DCA) to ensure they are provided funds to apply for the National Practitioners Date Bank (NPDB) and the Healthcare Integrity & Protection Data Bank (HIPDB). Ms. Sieferman is working with NPDB staff to determine the necessary process and will provide an update on the feasibility of the continuous query at the August 2013 Board meeting.

The Board inquired whether legislation could be enacted to have the licensees pay for the use of the NPDB. The fee could be in the initial optometrist license fee, or during the renewal period. It was decided that this possibility be considered at a Legislation and Regulation Committee Meeting.

G. Strategic Planning

On March 13, 2013, Ms. Maggio and Policy Analyst, Andrea Leiva met with Shelly Menzel and Terrie Meduri with DCA SOLID Training Solutions to discuss the development of the Board Strategic Plan. It was agreed to create a five year plan for the period of 2014-2018. The Board session is scheduled for October 25, 2013.

H. Other

Board members were provided statistical charts/tables/records regarding the Board's fund condition, expenditure report, BreEze, licensing statistics, and enforcement statistics.

5. Discussion and Possible Action on Regulations Affecting the Board of Optometry

Ms. Leiva reported on the following regulations affecting the Board:

A. SB 1111 Regulations and April 30, 2013 Committee Meeting

On April 30, 2013, the SB 1111 Regulations Committee met in Los Angeles to discuss nine enforcement related regulations that were created by the DCA to streamline enforcement and disciplinary processes. The nine regulations came from the DCA sponsored SB 1111 (Negrete McLeod), which was a component of the Consumer Protection Enforcement Initiative (CPEI).

Since DCA continues to be scrutinized in news articles, annual reports, and audits identifying various program issues, deficiencies, and shortcomings, the DCA continues its efforts to address the root causes of these problems. DCA has attempted to implement the CPEI and train staff, streamline business operations, and improve coordination and communication between various governmental entities. These efforts have been met with modest success.

As one of its efforts to meet its goal to implement portions of the CPEI, DCA identified nine provisions from SB 1111 that could be implemented via regulation by the healing arts boards. Many of them are modeled after laws that are currently in effect and utilized by the Medical Board, the Dental Board, the Board of Psychology, and Pharmacy Board to name a few.

The Committee's review of the nine regulations resulted in recommendations which were presented to the Board. After much discussion, the following actions were taken:

The Board voted to adopt Provisions 5 – Failure to provide documents and failure to comply with court order, Provision 6 – Psychological or medical evaluation of applicant, and Provision 8 – Failure to provide information or cooperate in an investigation. These provisions were deemed necessary to streamline the enforcement process.

Monica Johnson made the motion. Dr. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mrs. Johnson	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

The Board voted to reject Provision 1 – Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license as recommended by the Committee. It was decided that this provision prevented the Board from weighing in on disciplinary decisions and that since the Board does not receive that many of these kinds of settlements; they should be heard by the Board.

Bill Kysella made the motion. Dr. Madhu Chawla seconded. The Board voted (5-4) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mrs. Johnson		**X**	
Mr. Kim		**X**	
Dr. Lawenda		**X**	
Dr. Chawla	**X**		
Mrs. Burke		**X**	
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

The Board did not discuss Provision 4 – Confidentiality agreements regarding settlements (gag clauses) because the provision is already in law.

The following provisions were tabled for further discussion at the Board's August 16, 2013 Board meeting:

Provision 2 – Revocation for sexual misconduct;
Provision 3 – Denial of application for registered sex offender;
Provision 7 – Sexual misconduct defined in regulation; and
Provision 9 – Failure to provide information or cooperate in an investigation.

Monica Johnson made the motion. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mrs. Johnson	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		

Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

The members also requested that a DCA representative attend the Board's August meeting to provide further justification as to why the un-adopted provisions are needed. Ms. Everhart responded that she will have Michael Gomez, DCA Deputy Director, Division of Investigation and Enforcement Programs attend the meeting to provide further information regarding the SB 1111 regulations.

Public Member, Monica Johnson left for the day at the conclusion of this agenda item.

B. California Code of Regulations (CCR) §1575 Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

This regulation updated the Board's Disciplinary Guidelines, which had not been updated since 1999, and adds the Uniform Standards Related to Substance Abuse pursuant to Senate Bill 1441. This regulation was approved by the Office of Administrative Law (OAL) and became effective April 1, 2013.

The Board's enforcement staff has already started utilizing the updated Guidelines. Also, Board staff worked with DCA's Office of Publications, Design and Editing (PDE) to make the Guidelines into a booklet. The Members were each provided a booklet.

C. CCR §1508, §1508.1, §1508.2, and §1508.3 Sponsored Free Health Care Events

These regulations have been approved by the OAL. They are currently in law and ready to be implemented. These regulations exempt out-of-state optometrists from licensure solely for the purpose of participating in sponsored free health care events. These regulations establish a process for this to take place, which includes application and registration requirements, disciplinary requirements, and recordkeeping requirements.

The Remote Area Medical (RAM) Volunteer Corps conducted an eight-day health event in Los Angeles County, which provided $2.9 million in free services to over 14,000 low-income individuals during the event. Although the event was extremely successful, RAM experienced a shortage of volunteer medical, dental and vision providers because of restrictions in state laws which prohibit volunteer out-of-state licensed medical personnel from providing short-term services. As a result, thousands of residents needing services were turned away.

To prevent future shortages at sponsored free health-care events, Assembly Bill (AB) 2699 was introduced to permit health-care providers licensed in other states the ability to practice in California for a limited time.

Board staff is currently working to implement these regulations. Information about the process and the applications will be posted on the Board's website in the next few weeks. Staff will be ready to process these requests starting June 1, 2013.

D. CCR 1524 Fees for Retired License Statuses

Board sponsored legislation, SB 1215 (Emerson), created two retired license statuses and became effective January 1, 2013. The first retired license is for optometrists who are at retirement age and ready to retire and stop working. The second is for optometrists who are at retirement age, ready to retire, but want to provide their services in a volunteer capacity only.

At its December 14, 2012 Meeting, the Board voted to initiate a rulemaking to establish the retired license status fees ($25 for retired license and $50 for retired volunteer). The rulemaking action was printed in the California Regulatory Notice Register on March 1, 2013, and the 45-day comment period for the public began on March 1, 2013 and ended on April 15, 2013. The hearing was on the same date. No comments were received from the public.

Staff is requesting that the Board direct staff to continue with the rulemaking package for CCR § 1524 which establishes the fees for the retired license statuses.

Donna Burke moved to approve and adopt the proposed language and direct staff to continue with the rulemaking process. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

Ms. Maggio requested to interject information before moving on. She explained that not all of the Members have completed the Board Member Orientation Training (BMOT) and therefore, may not be aware of the process of how regulations go through after they have been approved by the Board.

Ms. Maggio provided a brief overview of the regulatory rulemaking process. After a rulemaking package is approved by the Board, it is first sent to the DCA Legislation/Regulations Unit for review. If there are questions, Board staff is contacted. If any changes need to be made, the package is returned to the Board. It then goes to Legal, from Legal to the Director, from the Director to Department of Finance, and from the Department of Finance it is sent to the Consumer Services Agency Secretary (which is the direct link to the Governor). Because the Board and/or Committee must demonstrate that it had thorough discussion on all of the items, the minutes are included in the regulatory package.

Ms. Maggio explained that this process is why staff sometimes brings discussions back to the Board. If there has not been sufficient discussion, the packet will be rejected and staff asked to bring it back to the Board for further discussion.

6. Discussion and Possible Action on Legislation Affecting the Board of Optometry

Ms. Leiva reported that the following bills which, as currently written, affect the Board's functions and the practice of optometry. Staff requests that the Board discuss each bill and determine if they would like to establish a formal position on each bill.

Ms. Leiva provided the Members with an analysis for each bill. Additionally, she provided a legislative calendar with the deadlines included. She explained that the legislative process follows the deadlines. If a deadline is missed, the bill either does not move forward or it becomes a two-year bill. Ms. Leiva added the legislature is in a two-year legislative cycle which means if the bills do not pass one of the committees, they will have the opportunity to continue on next year rather then dying and having to start over.

A. Assembly Bill 186 (Maienschein) Military

Currently in law, the Board is required to expedite the issuance of the license of the spouse of someone serving in the military. This bill will take it a step further and require the Board to issue a temporary license to an applicant in the process of obtaining and expedited license pursuant to Business and Professions Code (BPC) § 115.5 that holds an optometrist license in another jurisdiction and who supplies satisfactory evidence of being married to, or in a domestic partnership or legal union with, and active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

Ms. Leiva explained that the author's intent is to enable military spouses to become employed as soon as possible. A few studies were conducted which estimates that 26% of military spouses have difficulty securing employment due to frequent relocation with their spouse. Currently, there is a lot of federal effort to assist military personnel and their families.

According to the analysis provided, there exist concerns with this bill for the following reasons:

- A temporary license would be issued before it has been confirmed that the applicant has met all of the requirements for licensure, making this a potential consumer issue,
- There is no funding (for any board) to have temporary licensure implemented,
- It takes a minimum of $20,000 to implement a new license status,
- The need for the bill is not clear since the Board is already expediting licensure for military spouses and utilizing all of the checks and balances.

Ms. Leiva provided support and opposition information for the Board to review. She asked the Board to take a position (support, opposed, neutral).

Board Members and staff discussed the consumer protection issue this bill might create, and the length of time it currently takes to expedite an out-of-state military applicant who meets all of the requirements. They discussed what the Board might do (procedurally) in the event a temporary 12 month license is issued and subsequently, it is discovered that the licensee is not in good standing in his/her state (process for nullifying the license). Other issues discussed included, how this bill would affect current staff processing times, whether or not the bill is necessary, the need for more time to evaluate whether or not the Board's current system of expediting is working, the reasons behind why three organizations are opposed to the bill, and whether to take a position now or to just watch the bill.

Ken Lawenda moved to watch the bill and not take a position. Alex Arredondo seconded. The Board voted 7 Aye; 1 No; and 0 Abstention to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke		**X**	
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

B. Assembly Bill 213 (Logue) Military – Veterans Health Care Workforce Act of 2013

Ms. Leiva reported that Assembly Bill (AB) 213 requires DCA boards (who have national organizations that develop their licensing examination) to have the national organizations establish

a process whereby they can evaluate military experience so that it may be applied to licensure and expedite the licensure process.

Bill Kysella moved to take no position and watch the bill. Donna Burke seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick			
Dr. Kawaguchi	**X**		

Dr. Arredondo noted for the record that Dr. Dubick stepped outside and was unable to participate in this vote.

C. Assembly Bill 258 (Chavez) Veterans

Ms. Leiva explained that the objective of this bill is to have every state agency which asks if the person is a veteran (on any written form, publication or internet website) to request that information in the following manner: Have you ever served in the US Military? The authors of the bill want this to be a specific standard question.

Ken Lawenda moved to not take a position and watch the bill. Alex Kim seconded. The Board voted unanimous (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

D. Assembly Bill 480 (Calderon) Service Contracts

The purpose of this bill is to include optical products within the definition of service contracts so that a wider range of products commonly purchased by consumers may be protected against damage or loss.

Bill Kysella moved to take no position and watch the bill. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		

Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

E. Assembly Bill 512 (Rendon) Licensure Exemption

Ms. Leiva reported that AB 512 is related to sponsored free health care events. The provisions in law that implemented the sponsored free health care event are set to sunset on January 1, 2014 and the program needs more time to demonstrate its success. This bill deletes the January 1, 2014 date of repeal, and instead allows the exemption to operate until January 1, 2018.

Bill Kysella moved to take no position and to watch this bill. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

F. Assembly Bill 1003 (Maienschein) Professional Corporations – Healing Arts Practitioners

Ms. Leiva explained that discussion is not necessary at this time. This bill is already a two-year bill. AB 1003 has been merged with AB 1000. Even after the merge, the bill expands who may be employed by a professional corporation that provides health services. Originally, only specific health practitioners could be employed, but this bill would allow anyone licensed under the B&P Code, the Chiropractic Act, or the Osteopathic Act. Other professions licensed under the B&P Code include Accountants, Barbers and Cosmetologists, Security Guards, Contractors, and Architects, to name a few. It should be considered if all these professional services should be permitted to be owned by all kinds of professionals and under the same professional corporation.

Bill Kysella moved to take no position and watch this bill. Fred Dubick seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

G. Assembly Bill 1057 (Medina) Military

Ms. Leiva reported that AB 1057 (similar to AB 186) would require each board, commencing January 1, 2015, to inquire in every application for licensure if the applicant is

serving in, or has previously served in, the military.

Bill Kysella moved to take no position and watch this bill. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

H. Senate Bill 305 (Price) Healing Arts Boards

SB 305 is the Board's sunset bill. This bill:

- extends the board's sunset date and makes changes to the Practice Acts for Osteopathic Physicians and Surgeons, Naturopathic Doctors, and Respiratory Care Doctors,
- Extends the operation of the Optometry Board's provisions until January 1, 2018, and provides that the repeal of these provisions subjects the Board to review by the appropriate policy committees of the Legislature,
- Authorizes DCA boards to request and receive, from a local or state agency, certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation, and would authorize a local or state agency to provide those records to the Board upon request.

Ken Lawenda moved to approve the recommendations. Glenn Kawaguchi seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

I. Senate Bill 430 (Wright) Pupil Health

Ms. Leiva reported that SB 430 would require that upon enrollment in elementary school, and until the child has completed eighth grade, the child's health vision is to be appraised by the school nurse, or other authorized person. This is not a comprehensive exam but rather another screening test.

Ms. Shultz added that the COA is opposing this bill. The vision screenings that occur right now are insufficient and do not catch a lot of problems children have. It is the COA's position that children should receive a comprehensive eye examination prior to entering elementary school.

Bill Kysella moved to support the bill if amended to include comprehensive eye exams prior to entering school. Nobody seconded. The motion died.

Ken Lawenda moved to oppose the bill unless amended to include comprehensive eye exams prior to entering school. Madhu Chawla seconded. The Board voted 7-Aye; 1-No; 0-Abstention to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella		**X**	
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

J. Senate Bill 492 (Hernandez) Optometrist: Practice: Licensure

Director of Government Affairs, California Optometric Association (COA), Kristine Shultz reported on SB 492 and asked for the Board's support of this bill. The goals of the bill are:

- to: redefine the practice of optometry to better match the training and the authority that has been granted in other states for many years,
- Streamline the practice act,
- Allow optometrist to treat diabetes, hypertension, and high cholesterol under protocol of a physician.

Ms. Shultz reported that the bill is needed because of a shortage of health care providers. Additionally, in 2014 there will be 3-5 million new individuals with health insurance added to the health care system. The COA believes that optometrists can do a great job in dealing with this provider gap. COA staff has been meeting with the California Medical Association who is in opposition of this bill. The California Academy of Eye Physicians and Surgeons is not in opposition at this time because COA has been negotiating in good faith. Ms. Shultz opened the floor to questions.

Ms. Burke asked about the concerns of the Blind Children's Center. Ms. Shutlz explained that their concerns were with the original text of the bill because it allowed optometrist to teat all conditions and use medications without limitation. Their concern was that it allowed to broad a scope of practice. The Blind Children's Center is not opposed to the bill as amended. Ms. Shultz provided the Board with the current version of the bill.

Dr. Chawla inquired about the Medical Board's opposition. Ms. Shultz assured that COA will continue having further discussions with the Medical Board.

Drs. Kawaguchi and Arredondo questioned how this might impact malpractice liability insurance for optometry. Ms. Shultz responded that many other states have expanded their scope of practice and have not experienced an increase in malpractice insurance. Kentucky, specifically, has a very broad scope of practice and their optometrists are allowed to perform laser surgery in many instances.

Dr. Lawenda referred to crossed-out text regarding drug schedules and what optometrists can and cannot prescribe. He asked if there was an issue regarding the different drug schedules.

Ms. Shultz explained that the cross-outs and underlines are language that has not yet been fully settled in negotiations.

Mrs. Burke and Ms. Shultz briefly discussed future meeting plans with the Academy of Eye Physicians and Surgeons.

Dr. Kawaguchi and Ms. Maggio discussed requesting additional staffing for the Board's office.

Dr. Lawenda, Ms. Leiva and Ms. Shultz discussed some of the modified text regarding training and education. They discussed "education and training" versus "scope of practice" language, standard of care that does not need to be stated in law, and assurance of clinical experience for optometrist and public safety.

Ms. Leiva referred to SB 809 (CURES bill) which requires optometrists to obtain DEA (Drug Enforcement Agency) numbers in order to prescribe scheduled drugs. She asked if there will be a provision added informing optometrists that they must obtain this. Ms. Shultz assured that the authority necessary to obtain DEA numbers will be in place.

Dr. Lawenda and Ms. Shultz discussed support or opposition from the other optometry schools, insurance companies and insurance reimbursement for optometrists versus ophthalmologists. Letters from the Southern California College of Optometry (SCCO) and the University of California, Berkeley School of Optometry should be received by the next analysis. COA is meeting with health plans, the Exchange, and the Department of Managed Health Care and working behind the scenes to ensure that doctors of optometry can play an expanded role in health care reform.

Ms. Sieferman and Ms. Shultz discussed standard of care in referrals. Ms. Sieferman explained that when and how to refer patients is not always clear and there is very little law that addresses this issue and how the revised language with standard of care may impact this issue.

Ron Black with Advanced Eye Care stated that there has been a great reluctance with managed care plans to include optometrists on their panels. He advised that as the optometrist scope of practice expands it will no longer be sufficient to be covered under a vision plan. Optometrists would need to be providers and would need inclusion in the managed health care plans.

Dr. Dubick disclosed for the record that he is the President of the California Optometric Association as well as a Board member and colleague, and the COA is the supporting entity of this SB 492. Dr. Dubick stated that part of what the bill attempts to do is protect the public so that they get the benefits of future technologies, future drugs, future procedures and are not locked into this point in time. He urged the State Board of Optometry to support the bill.

Mrs. Burke and Dr. Lawenda shared alternate opinions regarding moving forward. Dr. Lawenda referred to what is happening across the country with the Obama health care plan and advised that supporting this bill passes the message on, that this is the direction that our future is headed in. Mrs. Burke warned that if the Board supports the bill now, then the general public assumes the Board has answered all of the questions. However, since it is still in negotiations, it is unknown what the final product will be and if there will be repercussions adversely impacting the public.

Ms. Shultz expressed understanding regarding the reluctance to move forward early on, but assured the Board that although there may be some "small changes around the edges", throughout the legislative process, this bill (as written now) presents a very thorough and specific direction about where it is going.

Mr. Kysella stated that he is all for expanding the scope of practice and filing heath care voids, but is hesitant in taking a position because of what is unknown at this point.

Dr. Dubick argued that specific language about when and how to refer patients are not regulation for other health care professionals. The basic way the medical profession functions is through independent judgment, standards of care, ethics, and malpractice ramifications. When outside of one's comfort zone a referral is made regardless of the type of profession.

Board Members and staff discussed taking a position of support versus remaining neutral (not taking a position). Ms. Maggio added that staff is in support of the bill but there are some issues to work out.

Ms. Maggio suggested taking the position of support with amendments. Members, staff and Ms. Shultz discussed this option and how it should best be stated.

Donna Burke moved to take a neutral position. There was no second and the motion died.

Bill Kysella moved to not take a position and to send a letter to the chair of the committee supporting the expansion of the scope of practice in the direction of current proposed legislation. Donna Burke seconded. The Board voted 2-Aye; 6-No; 0-Abstension and the motion did not pass.

Member	Aye	No	Abstention
Dr. Arredondo		X	
Mr. Kim		X	
Dr. Lawenda		X	
Dr. Chawla		X	
Mrs. Burke	X		
Mr. Kysella	X		
Dr. Dubick		X	
Dr. Kawaguchi		X	

Ken Lawenda moved to support if amended. Dr. Chawla seconded. The Board voted 7-Ayes; 1-No; 0-Abstentions to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Lawenda	X		
Dr. Chawla	X		
Mrs. Burke		X	
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

K. Senate Bill 532 (De Leon) Military

Ms. Leiva explained that she does not believe this bill needs further discussion, as it is a spot bill for a very minor change of adding a comma. This is a two-year bill and Ms. Leiva recommended watching the bill to see if it changes.

Bill Kysella moved to watch the bill. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

L. Senate Bill 723 (Correa) Veterans

Ms. Leiva reported that SB 723 asks the DCA to work with the Employment Development Department to present a report to the Legislature containing best practices for establishing the credentialing of Veterans, by using their documents in military education experience.

Fred Dubick moved to watch the bill. Bill Kysella seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

M. Senate Bill 724 (Emmerson) Charitable Vision Screenings

Ms. Leiva explained that according to current law, certain facilities that donate edible food, are granted immunity from any damage or injury resulting from the consumption of donated food. SB 724 adds provisions to limit the liability of a non-profit charitable organization, or participating licensed optometrist, ophthalmologist or volunteer working with a nonprofit organization for damage or injury resulting from the provision of a vision screening. Ms. Burke questioned if it is a benefit for consumers (even those who cannot afford to visit an optometrist) to obtain donated glasses (which is not their actual prescription) because it is based off of a vision screening and looking through a box containing differing powers of glasses. Is this fair to these consumers, even though it is a temporary solution?

Board members, Ms. Shultz and staff discussed this issue at length. The discussion included concerns, studies, departure from the standard of care, policy change, low income community, vouchers for school children for eye services, malpractice and federal law. COA will support the bill only if amended to remove the reference to used eye wear.

Ken Lawenda moved to approve if amended to remove the reference to used eye wear. Fred Dubick seconded. The Board voted 6-Aye; 2-Abstention to pass the motion.

Member	Aye	No	Abstention

Dr. Arredondo			**X**
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke			**X**
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

N. Senate Bill 809 (DeSaulnier & Steinberg) Controlled Substances: Reporting
Ms. Leiva reported that SB 809 (sponsored by Kamala Harris) creates funding for the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances. All practitioners who prescribe scheduled drugs will have their fees raised by $3.19 and $4.93 to support the database.

Bill Kysella moved to watch the bill. Fred Dubick Seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Lawenda	**X**		
Dr. Chawla	**X**		
Mrs. Burke	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

7. 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)]

8. Suggestions for Future Agenda Items
Ms. Maggio suggested a two-day meeting in August. The Board has three hearings and many presentations. Additionally, The Association of Regulatory Boards in Optometry (ARBO) would like to present information regarding OE Tracker. All of the Members expressed favor for a long one-day meeting.

Ms. Maggio announced that the next meeting will be solely strategic planning and the meeting is scheduled for November 1, 2013. She also asked the Board to keep in mind that staff will be out of the office much of the time working on BreEZe.

Dr. Arredondo requested a discussion on eye exams at schools. He explained that kids are obtaining eye exams at schools, in trailers with equipment and obtaining glasses. While he does not have a problem with screenings, this sounds like eye examinations. Dr. Kawaguchi requested a linking discussion of school eye exams with comprehensive eye exams for children.

Ms. Leiva asked for the creation of a small committee to assist with legislative items since the Board cannot always meet to deal with legislative issues that have deadlines. She added that Ms. Johnson

suggested at a prior meeting that holding Board meetings following the legislative calendar so the Board can be involved in the legislative process.

Dr. Lawenda asked for a monthly legislation report with updates and information on bills the Board is supporting.

Mrs. Burke suggested a two-Member review committee. Members requested that Dr. Arredondo and Ms. Johnson comprise the new review committee.

9. Disciplinary Process – Conflict of Interest, When to Recuse

This presentation did not take place and was moved to a future meeting.

10. Petitions for Reduction of Early Termination of Probation
A. Dr. Susanne Anderson, O.D., OPT 6613
B. Dr. Svetlana Fisher, O.D., OPT 9936

FULL BOARD CLOSED SESSION

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

FULL BOARD OPEN SESSION

12. Adjournment

Ken Lawenda moved to adjourn. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Lawenda	X		
Dr. Chawla	X		
Mrs. Burke	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

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:** August 16, 2013

From: Mona Maggio
Executive Officer **Telephone:** (916) 575-7170

Subject: **Agenda Item 6– Executive Officer's Report**

A. 2013/2014 Budget Overview

Presentation by Wilbert Rumbaoa, Budget Analyst
,Department of Consumer Affairs (DCA) Budget Office

The Board of Optometry (Board) is a Special Fund California state government agency, which means it supports its operations entirely through fees. The Board's licensees pay renewal and application fees that fund operations, including complaint investigation, and licensing examination administration. Renewal fees represent the vast majority of revenue. Application fees and other forms of income (i.e., interest, fines, etc.) make up the remaining balance of the Board's revenues. The Board does not receive any funds from the state General Fund (GF).

Although categorized as a Special Fund agency, the Board's budget is incorporated into the Governor's budget. Upon approval of the Governor's budget, the Board is permitted to spend its funds. Any increase to the Board's spending authority is requested through the Budget Change Proposal (BCP) process. BCPs are typically sought for additional staff, to increase in a position's time base (half time to full time), or funding for a position that was established without funds or to increase spending authority for a special project such as an occupational analysis. BCP requests are prepared a year in advance.

The Board's expenditures are attributed to three major categories: Personnel, Operating Expenses and Equipment (OE&E), and Enforcement. Personnel expenses include salaries and wages, employee benefits, and board member per diem. Operating Expenses and Equipment (OE&E) includes items such as supplies, postage, examination development, travel, and departmental pro rata (e.g. office rent, IT and data services). Enforcement expenses are comprised of costs associated with the formal disciplinary process and complaint investigations.

The Board's budget for fiscal year 2012-2013 was $1,693,603. The year end report reveals expenditures as of June 30, 2012 as $1,433,044, or 85% of the budget. The fiscal year end surplus is $213,803 or 12.6%. The analysis of the Board's fund condition reveals 7.8 months reserve in FY 2012-13 and 7.3 months FY 2013-14.

The Board's budget for fiscal year 2013-2014 is $1,841,000. This amount is subject to change based on Governor's directives, budget letters and adjustments to the budget. Because of the increase in rent, and the costs of the implementation of BreEZe, the Board will have to watch it's spending very closely to ensure it does not overspend.

In response to California's budget shortfalls, loans from special fund agencies to the GF have been part of the solution. In 2010/2011 the Board loaned the GF 1 million dollars. In order to be repaid, the Board would have to request repayment and show a need for the funds to be repaid.

Attachments
1. FY 2012-13 Budget Report Expenditure Projection (Final)
2. Analysis of Fund Condition

B. Examination Development Overview

Presentation by Bob Holmgren, Ph.D. Supervising Personnel Selection Consultant
Office of Professional Examination Services

The Office of Professional Examination Services (OPES) provides professional psychometric expertise in examination development and validation services to DCA's regulatory entities through Intra- Agency Contract (IAC) agreements. Other services are provided for DCA entities through their pro rata funds. OPES performs all aspects of the examination validation process, including occupational analyses, examination development, test scoring and statistical analyses, and audits. OPES follows the highest technical and professional standards in the industry and is committed to ensuring that examinations for licensure are psychometrically sound, job-related, and legally defensible.

OPES provides oversight for DCA's master contract for computer-based testing administration, and a Quality Assurance Program to ensure that the computer-based testing vendor is providing the level of examination security to meet contract requirements.

C. BreEZe Overview and Status

Presentation by Any Cox-O'Farrell, Deputy Director, DCA, Office of Information Services

BreEZe will replace the existing Consumer Affairs System (CAS), Applicant Tracking System (ATS), and multiple "workaround" systems with an integrated, industry-proven system for use by the DCA organizations.

The goal is for BreEZe to provide all DCA organizations with an enterprise system that supports all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. BreEZe will be web-enabled to allow application, renewal, and payment processing via the Internet for applicants and licensees. Furthermore, BreEZe will allow the public to file complaints and lookup licensee information and complaint status through the Internet. As part of the BreEZe implementation, interfaces to electronically share data with internal and external systems will be established; existing data will be converted and migrated into BreEZe; user training will be conducted; and system documentation will be created.

The Board of Optometry is in Phase II of implementation.

D. Enforcement Program and Consumer Protection Enforcement Initiative (CPEI)

Presentation by Michael Gomez, Deputy Director, DCA,
Division of Investigation and Enforcement Programs

Deputy Director Gomez will provide an overview of the Enforcement Program, CPEI, DOI

E. Enforcement Program Statistics and Update

Prepared by Jessica Sieferman, Enforcement Lead

The Enforcement Unit's primary mission is consumer protection and seeks to obtain compliance at the lowest level possible. The majority of the cases received by the Board are closed without action after obtaining compliance and educating optometrists, referred to another agency, or closed because no violation is found.

As demonstrated by the attached chart (Attachment 3), on average, complaints that result in Disciplinary Action taken against a licensee consist of less than 3% of the total volume of complaints received each fiscal year. Further, Disciplinary Actions resulting from allegations of Incompetence and/or Gross Negligence, on average, consist of less than 1% of the total volume of complaints received each fiscal year.

The Enforcement Unit encourages applicants and optometrists to contact us to discuss their concerns. While we cannot give legal advice or interpretation, we can provide guidance to applicable laws they may want to consider.

Enforcement Statistics and Performance Measures

Please see Attachments 4 and 5

F. Examination and Licensing Program Statistics and Update

Prepared by Jessica Sieferman, Enforcement Lead and Jeff Robinson, Licensing Program Analyst

New Schools

With the recent accreditations of the Western University of Health Sciences College of Optometry, the Midwestern University – Arizona College of Optometry, and the University of the Incarnate Word Rosenberg School of Optometry, a rise in the issuance of California optometrist licenses is expected now and into the future. Thus far, we have issued approximately 28 optometrist licenses for graduates of those schools/colleges.

Statistics

In the past, Board staff has reported licensing statistics based on data obtained from reports created by the Board's Applicant Tracking System (ATS). After a concern was raised regarding the accuracy of the licensing statistics during the previous Board meeting, Board staff began researching probable causes for inconsistent data.

Board staff has discovered multiple flaws in the ATS reports and the data from which it pulls. These flaws involve multiple people from different units entering inconsistent data since ATS' creation. In addition, the Fictitious Name Permits (FNPs) and Branch Office Licenses (BOLs) are issued only in the Consumer Affairs System (CAS), whereas the Optometric Licenses (OPTs) and Statement of Licensures (SOLs) are issued through ATS and transferred to CAS. Neither ATS nor CAS was designed to track cycle times for issuing a license.

In an attempt to capture more accurate statistics, Board staff has spent numerous weeks creating AdHoc Reports based on the date application and fees were received and when licenses were issued. The statistics below provides an estimate of our licensing statistics through June 18, 2013. Board staff will provide an updated version during the Board meeting.

In order to ensure complete accuracy, as of July 1, 2013 Board staff is manually tracking all license applications. This will hopefully be alleviated with BreEZe implementation.

OPTS	10.11	11.12	12.13
Received	273	273	310
Issued	225	246	178
Closed*			
Pending	153	180	312
Avg. Cycle Time (Days)	**143**	**145**	**149**

BOLS	10.11	11.12	12.13
Received	65	62	45
Issued	46	54	33
Closed*			
Pending	41	49	61
Avg. Cycle Time (Days)	**109**	**96**	**90**

SOLS	10.11	11.12	12.13
Received	228	255	227
Issued	233	209	281
Closed*			
Pending			
Avg. Cycle Time (Days)	**43**	**57**	**43**

FNPS	10.11	11.12	12.13
Received	155	160	147
Issued	103	126	125
Closed*			
Pending	99	133	155
Avg. Cycle Time (Days)	**106**	**119**	**125**

*Closed includes all applications that were denied, abandoned, withdrawn, expired etc.

Performance Based Budgeting

On May 31, 2013, the Department of Consumer Affairs (DCA), through SOLID Training Solutions (SOLID), requested each Board and Bureau to provide Licensing Performance Targets for the 2013-14 fiscal year (Attachment 6). As stated in the attached email, SOLID recommended targets based on DCA's Licensing for Job Creation initiative in 2010.

However, upon review of the report and the specific data from which the report was created, it was determined that the report was flawed, thus inaccurately reflecting the Board's performance. In addition, SOLID had requested Board staff differentiate complete vs. incomplete applications. However, while all OPT applications are incomplete (additional information will always be needed before the OPT license is issued), there are no mechanisms in place for tracking SOL, BOL, and FNP deficiency letters. Some applications may have been complete at time of receipt, and some may have needed more information. Therefore, Board staff was unable to provide the requested differentiation.

After additional research, the Licensing Unit set their target cycle time target to 108 days for ALL license types. With that said, the Licensing Unit is in the progress of setting more specific target goals for EACH license type.

G. Strategic Planning Update

Prepared by Andrea Leiva, Policy Analyst

On March 13, 2013, Mona Maggio and Andrea Leiva met with Shelly Menzel and Terrie Meduri with the DCA, SOLID Training Solutions to discuss the development of the Board Strategic Plan. We agreed to create a 5 year strategic plan for the period of 2014 – 2018. A preliminary schedule of the Optometry Strategic Plan Schedule has been drafted and is attached. The Board session is scheduled for October 25, 2013.

Attachment 6

BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2012-13 EXPENDITURE PROJECTION

August 3, 2013

OBJECT DESCRIPTION	FY 2011-12 ACTUAL EXPENDITURES (MONTH 13)	FY 2011-12 PRIOR YEAR EXPENDITURES	FY 2012-13 BUDGET STONE 2012-13	FY 2012-13 CURRENT YEAR EXPENDITURES FM 13	FY 2012-13 PERCENT SPENT	FY 2012-13 PROJECTIONS TO YEAR END	FY 2012-13 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	336,482		**409,233**	351,486	86%	**351,486**	57,747
Statutory Exempt (EO)	80,473		**81,732**	77,956	95%	**77,956**	3,776
Temp Help Reg (Seasonals)	44,410		**3,628**	25,118	692%	**25,118**	(21,490)
Temp Help (Exam Proctors)							0
Board Member Per Diem	4,300		**7,353**	6,800	92%	**6,800**	553
Committee Members (DEC)							0
Overtime				841		**841**	(841)
Staff Benefits	188,222		**257,621**	194,426	75%	**194,426**	63,195
TOTALS, PERSONNEL SVC	653,887	0	**759,567**	**656,627**	**86%**	**656,627**	102,940
OPERATING EXPENSE AND EQUIPMENT							
General Expense	14,900		**14,763**	8,019	54%	**8,019**	6,744
Fingerprint Report	8,779		**5,306**	5,860	110%	**5,860**	(554)
Minor Equipment	311		**5,050**	10,408	206%	**10,408**	(5,358)
Printing	9,560		**11,621**	8,140	70%	**8,140**	3,481
Communications	5,136		**5,615**	5,425	97%	**5,425**	190
Postage	14,879		**14,650**	14,075	96%	**14,075**	575
Insurance			**0**				0
Travel In State	26,743		**13,987**	20,833	149%	**20,833**	(6,846)
Travel, Out-of-State			**0**				0
Training	1,790		**1,099**	737	67%	**737**	362
Facilities Operations	80,305		**58,676**	105,595	180%	**105,595**	(46,919)
Utilities			**0**				0
C & P Services - Interdept.	1,712		**2,943**	79	3%	**79**	2,864
C & P Services - External	21,608		**12,000**	10,094	84%	**10,094**	1,906
DEPARTMENTAL SERVICES:							
OIS Pro Rata	96,935		**128,852**	119,375	93%	**119,375**	9,477
Admin Pro Rata	96,936		**101,475**	94,224	93%	**94,224**	7,251
Interagency Services	0		**146**	0	0%	**0**	146
IA w/ OER	27,720		**0**	24,264		**24,264**	(24,264)
DOI-Pro Rata	3,267		**4,111**	4,111	100%	**4,111**	0
Public Affairs Pro Rata	6,525		**5,810**	5,097	88%	**5,097**	713
CCED Pro Rata	6,878		**7,146**	6,748	94%	**6,748**	398
INTERAGENCY SERVICES:							0
Consolidated Data Centers	791		**14,509**	769	5%	**769**	13,740
DP Maintenance & Supply	115		**1,009**	4,435	440%	**4,435**	(3,426)
Central Admin Svc-Pro Rata	77,237		**80,753**	80,753	100%	**80,753**	0
EXAM EXPENSES:							0
Exam Supplies			**0**				0
Exam Freight	0		**484**	0	0%	**0**	484
Exam Site Rental							0
C/P Svcs-External Expert Administrative	1,050			8		**8**	(8)
C/P Svcs-External Expert Examiners	0		**25,703**	0	0%	**0**	25,703
C/P Svcs-External Subject Matter	16,429			12,323		**12,323**	(12,323)
ENFORCEMENT:							0
Attorney General	108,693		**229,055**	148,591	65%	**148,591**	80,464
Office Admin. Hearings	36,324		**37,930**	13,079	34%	**13,079**	24,851
Court Reporters	2,296			1,488		**1,488**	(1,488)
Evidence/Witness Fees	2,178		**35,921**	3,800	11%	**3,800**	32,121
DOI - Investigations			**121,422**	120,843	100%	**120,843**	579
Major Equipment			**0**			**0**	0
Special Items of Expense							0
Other (Vehicle Operations)							0
TOTALS, OE&E	669,097	0	**940,036**	829,173	88%	829,173	110,863
TOTAL EXPENSE	1,322,984	0	**1,699,603**	1,485,800	175%	**1,485,800**	213,803
Reimb. - State Optometry Fund	(2,400)			(5,488)			0
Sched. Reimb. - Fingerprints	(9,115)		**(6,000)**	(7,252)	121%	**(6,000)**	0
Sched. Reimb. - Other	(4,505)			(4,800)			0
Unsched. Reimb. - Investigative Cost Recover	(35,033)			(35,167)			0
Unsch - DOI ICR Administrative Case				(49)			0
Unsched. Reimb. - ICR - Prob Monitor	(1,247)						0
NET APPROPRIATION	1,270,684	0	**1,693,603**	1,433,044	85%	**1,479,800**	**213,803**
						SURPLUS/(DEFICIT):	**12.6%**

0763 - State Board of Optometry
Analysis of Fund Condition

Prepared 8/8/13

(Dollars in Thousands)

Governor's Budget 2013-14

NOTE: $1 Million Dollar General Fund Repayment Outstanding

	Actual 2011-12	Actual 2012-13	CY 2013-14	Governor's Budget BY 2014-15	BY + 1 2015-16
BEGINNING BALANCE	$ 1,514	$ 961	$ 1,201	$ 1,140	$ 1,050
Prior Year Adjustment	$ 6	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 1,520	$ 961	$ 1,201	$ 1,140	$ 1,050
REVENUES AND TRANSFERS					
Revenues:					
125600 Other regulatory fees	$ 26	$ 27	$ 29	$ 29	$ 29
125700 Other regulatory licenses and permits	$ 140	$ 153	$ 149	$ 149	$ 149
125800 Renewal fees	$ 1,534	$ 1,538	$ 1,592	$ 1,592	$ 1,592
125900 Delinquent fees	$ 9	$ 10	$ 10	$ 10	$ 10
141200 Sales of documents	$ -	$ -	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ 2	$ 3	$ 3	$ 3	$ 3
150300 Income from surplus money investments	$ 4	$ 4	$ 3	$ 3	$ 3
160400 Sale of fixed assets	$ -	$ -	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 1	$ 1	$ 1	$ 1	$ 1
161400 Miscellaneous revenues	$ 1	$ 1	$ 1	$ 1	$ 1
Totals, Revenues	$ 1,717	$ 1,737	$ 1,788	$ 1,788	$ 1,788
Transfers to Other Funds					
GF loan per item 1110-001-0763 BA of 2011	$ -1,000	$ -	$ -	$ -	$ -
Totals, Revenues and Transfers	$ 717	$ 1,737	$ 1,788	$ 1,788	$ 1,788
Totals, Resources	$ 2,237	$ 2,698	$ 2,989	$ 2,928	$ 2,838
EXPENDITURES					
Disbursements:					
0840 State Controller (State Operations)	$ 2	$ 2	$ -	$ -	$ -
8880 Financial Information System for CA (State Operations)	$ 4	$ 9	$ 8	$ -	$ -
1110 Program Expenditures (State Operations)	$ 1,270	$ 1,486	$ 1,841	$ 1,878	$ 1,916
Total Disbursements	$ 1,276	$ 1,497	$ 1,849	$ 1,878	$ 1,916
FUND BALANCE					
Reserve for economic uncertainties	$ 961	$ 1,201	$ 1,140	$ 1,050	$ 922
Months in Reserve	7.7	7.8	7.3	6.6	5.7

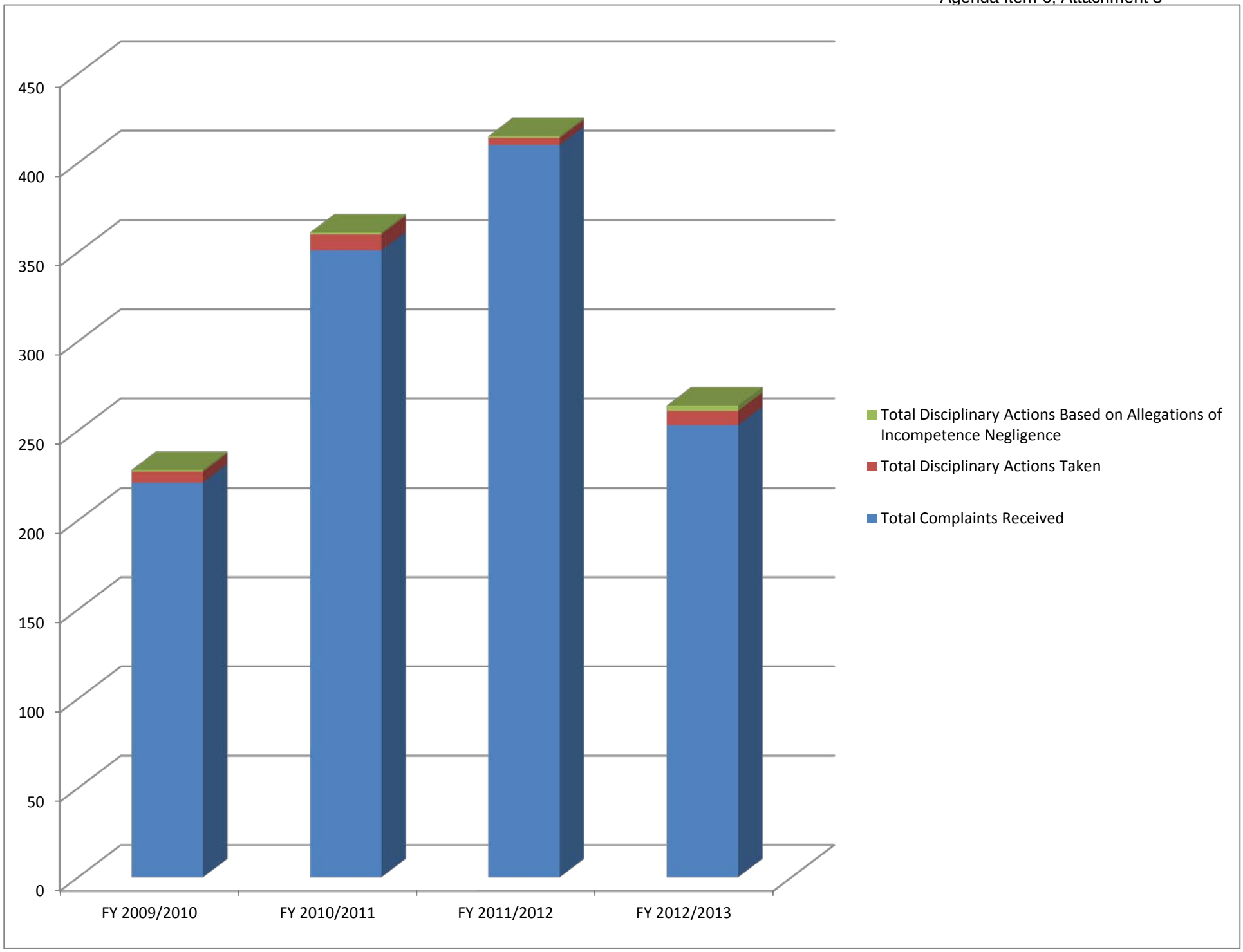
NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES INTEREST RATE AT .30%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.

D. FISCAL YEAR 2012-13 BASED ON PRELIMINARY REPORTS.


450
400
350
300
250
200
150
100
50
0
FY 2009/2010
FY 2010/2011
FY 2011/2012
FY 2012/2013
Total Disciplinary Actions Based on Allegations of Incompetence Negligence
Total Disciplinary Actions Taken
Total Complaints Received

Enforcement Statistical Overview

Fiscal Year	2009/2010	2010/2011	2011/2012	2012/2013
Complaints				
Complaints Received	**197**	**295**	**318**	**199**
Complaints Pending	**66**	**134**	**171**	**131**
Complaints Closed	**264**	**227**	**281**	**279**
Subsequent Arrest Reports Received	**24**	**56**	**91**	**54**
Cases Referred to Division of Investigation (DOI)	**3**	**38**	**29**	**26**
Cases Pending at DOI	**2**	**19**	**26**	**26**
Cases Referred to Expert	**14**	**6**	**25**	**3**
Cases referred to the Office of the Attorney General (AG)	**6**	**9**	**14**	**15**
Cases Pending at the AGs Office	**14**	**13**	**17**	**22**
Citations Issued	**5**	**2**	**1**	**3**
Accusations Filed	**6**	**9**	**1**	**18**
Statement of Issues Filed	**1**	**0**	**0**	**1**
Interim Suspension Orders (PC 23)	**1**	**0**	**0**	**0**
Notice of Warnings Issued	**0**	**0**	**0**	**0**
Disciplinary Decision Outcomes**				
Revoked	**0**	**4**	**1**	**2**
Revoked, Stayed, Suspension & Probation	**1**	**0**	**0**	**0**
Probation Revoked	**0**	**0**	**0**	**0**
Revoked, Stayed & Probation	**4**	**4**	**2**	**4**
Surrender of License	**1**	**1**	**1**	**2**
License Issued on Probation	**0**	**0**	**0**	**0**
Public Reprimand	**0**	**0**	**0**	**0**
Other Decision	**0**	**0**	**0**	**0**
Decisions by Violation Type				
Fraud	**0**	**0**	**0**	**2**
Gross Negligence/Incompetence	**1**	**1**	**1**	**3**
Sexual Misconduct	**0**	**0**	**0**	**0**
Personal Conduct (Alcohol/Substance Abuse)	**2**	**4**	**3**	**1**
Unprofessional Conduct	**1**	**0**	**0**	**0**
Probation Violation	**2**	**4**	**0**	**2**
Other		**0**	**0**	**0**

*July 1, 2012 through June 30, 2013

** Subject to change after data cleanup completion

Department of Consumer Affairs

California State Board of Optometry

Performance Measures

Q4 Report *(April - June 2013)*

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.

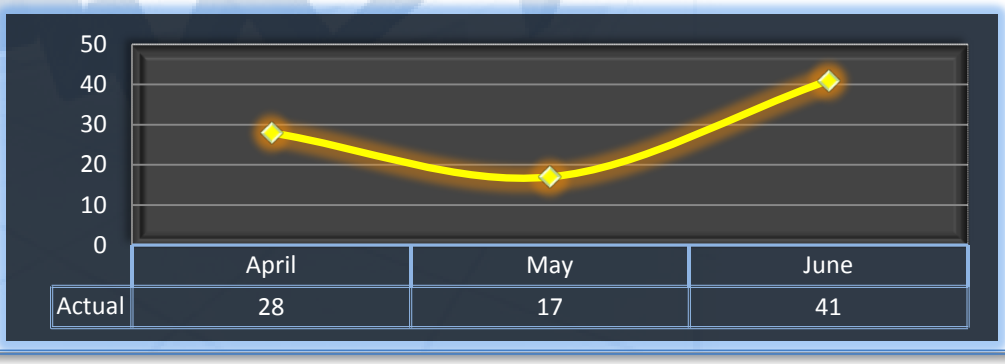
Volume

Number of complaints and convictions received.

Q4 Total: 86

Complaints: 72 Convictions: 14

Q4 Monthly Average: 29



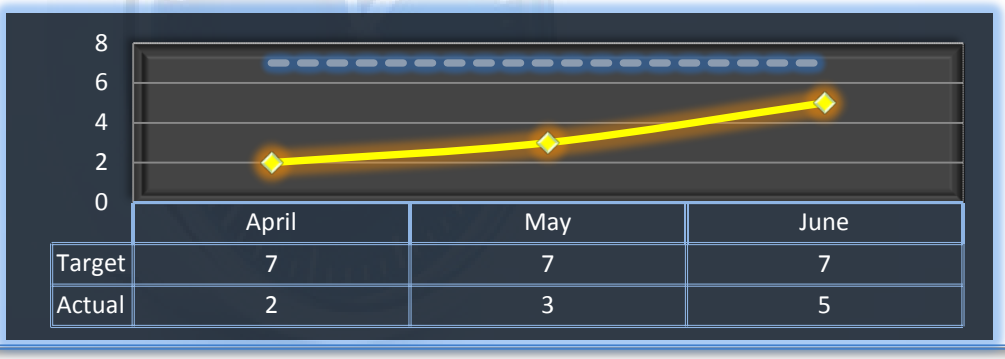
	April	May	June
Actual	28	17	41

Intake

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

Target: 7 Days

Q4 Average: 3 Days



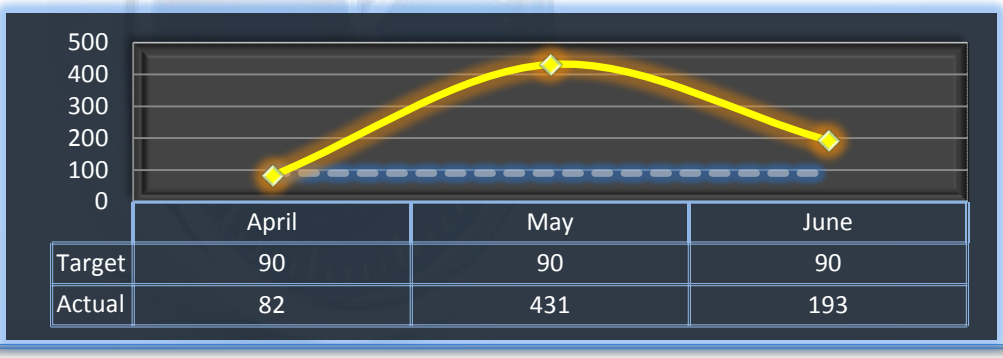
	April	May	June
Target	7	7	7
Actual	2	3	5

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

Q4 Average: 193 Days



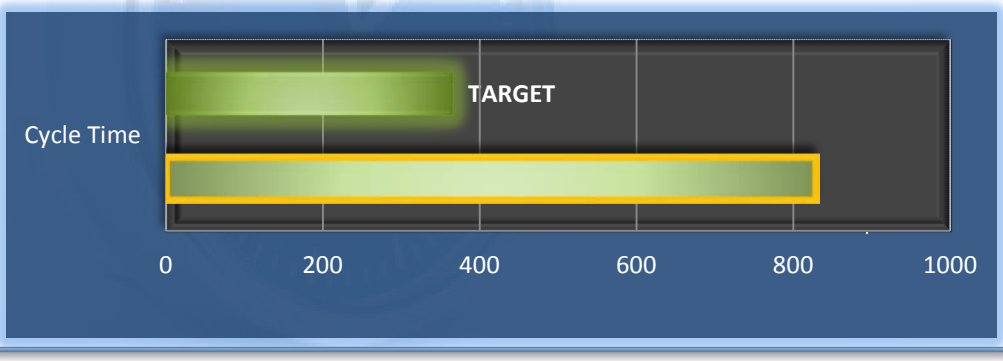
	April	May	June
Target	90	90	90
Actual	82	431	193

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

Q4 Average: 827 Days

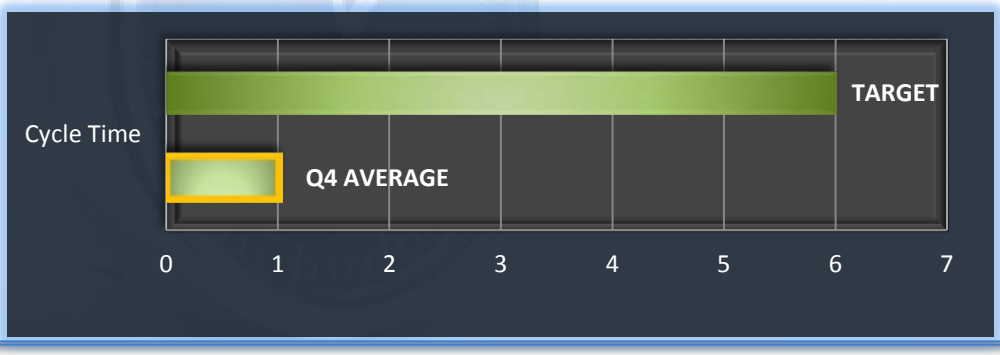


Probation Intake

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

Target: 6 Days

Q4 Average: 1 Days



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

Q4 Average: N/A

The Board did not report any probation violations this quarter.

STATE BOARD OF OPTOMETRY
STRATEGIC PLAN QUARTERLY REPORT
August 8, 2013
(Last updated: March 2, 2012)

GOAL 1 – LICENSING: Provide applicants and licensees a fast, accurate and cost effective process for obtaining and maintaining licensure registration and certifications required to practice optometry in the State of California.	
GOALS	**STATUS/ COMPLETION DATE**
Develop and implement procedures for routine continuing education audits.	Development of procedures completed. Establishing a routine for the audits is still a work in progress. Challenges include: 1) Lack of clarification on CE requirements fulfilled by courses; 2) Options for licensees not practicing due to illness; 3) Lack of employment; 4) Living out-of-state; 5) Non-responsive licensees; 6) Staff workload.
Establish and clarify categories of licensure via legislation.	The Board is following SB 492 (Hernandez), which could create an "advanced practice" certification. Completed: 1) 2012 Retired License Statuses; 2) 2012 Defined temporary practice; 3) 2012 Omnibus bill to clarify §3057.5 Eligibility of graduates from foreign universities; 4) 2011 Practice of Optometry in Health Facilities; 5) 2011 Omnibus bill to clarify and strengthen license reinstatement requirements.
Implement online license renewals.	Completion Date: 2014 One of the components of the BreEZe project is implementing online license renewals. Staff is providing their expertise and working closely with the BreEZe team and DCA to ensure all the Board's needs are met.
Establish an appropriate address of record, including a requirement for a valid e-mail address, for Board communications and consumer protection.	Completed. All applications and forms now have an area where applicants and licensees can enter their e-mail address. These addresses are added to the Board's tracking systems and utilized by staff for quick communication. The Board's e-mail interested parties list has grown from 850 to 2,400 and counting.

Establish methods to deal more effectively with exceptions to the current licensure process.	Completion Date: 2014 The new BreEZe system will assist in alleviating exceptions. Examples of exceptions include: 1) Incorrect 30 day grace period for fictitious name permit renewals. 2) Requests to waive delinquency fees.
Update forms to be more consistent, clear and user friendly.	Completion Date: June 2014 Completed: 1) 2012 - Statement of License Branch Office License Fictitious Name Permit Replace Lost or Stolen License Principal Place of Practice Address Notification for New Licensee Name Change Address Change 2) 2011 - Glaucoma Certification Application and Preceptorship Documentation Form
Improve efficiency in processing applications.	Completed: June 2013. This goal is always ongoing to stay up to date with law or departmental procedure changes. Tactics Used: 1) Working with BreEZe team. 2) Supporting DCA job creation initiative by constantly looking for ways to streamline licensing procedures, i.e., e-mail communication with applicants. 3) Running statistical reports to track processing times. 4) Improving communication among licensing staff with monthly meetings to discuss issues. 5) Cleaning licensing data to ensure errors are not transferred into BreEZe. 6) Updating Fact Sheets.
Review current accreditations and affirm and apply the accreditation process for new schools of optometry and clinics.	Completion Date: 2014 Planning to invite University of the Incarnate Word School of Optometry (San Antonio, TX), and Midwestern University Arizona College of Optometry (Glendale, AZ).to a Board meeting one accreditation process complete. Will update CCR §1570 to add newly accredited schools. Monitoring Accreditation Council on Optometric Education to ensue all schools and colleges currently accredited continue to be accredited. Completed: 1) Western University of Health Sciences College of Optometry (Pomona, CA)

GOAL 2 – EXAMINATIONS: Provide a fair, valid and legally defensible licensing exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in the State of California.	
Successfully implement computer based testing for California Laws and Regulations Examination (CLRE).	Completed on April 1, 2010
Perform ongoing exam development and validation workshops CLRE.	Always Ongoing
Expand subject matter expert pool.	Always Ongoing. The Board has about 60 experts at this time and counting. Recruitment strategies: 1) Post workshops on website. 2) Send multiple e-mail blasts with workshop dates and information two to four months prior to start of workshops to interested parties list, schools and colleges of optometry, and California Optometric Associations state-wide. 3) Mail out invitations to 500 optometrists; specifically the graduating classes of 2000-2011. Must capture entry-level practice.
Outreach to schools and colleges regarding exam information.	Always Ongoing Tactics: 1) Laws/Regulations link on the Board's website updated when changes in law are made. 2) Offer students opportunity to speak with staff if have questions. 3) Provide information during Board's yearly presentation to schools and colleges of optometry.

GOAL 3 – LEGAL AND REGULATORY: Establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost effective practices.	
Pursue legislation necessary to implement strategic goals and objectives.	Always ongoing. Nothing pending at this time.
Pursue changes to California Code of Regulations to implement new laws affecting optometry.	Always ongoing. Pending: 1) Retired Licenses Status Fees 2) SB 1111 Regulations Recently Completed: 1) 2013 Disciplinary Guidelines and Uniform Standards. 2) 2013 Authorization for out-of-state optometrists to participate in sponsored free health care events.

Monitor and participate in all legislation that affects the practice of optometry, including new technologies and emerging trends.	Always Ongoing Pending: 1) SB 492
Successfully participate in Sunset Review process and extend the Board's sunset date.	Completion Date: January 1, 2014 Waiting for the Governor to sign SB 305 which extends the Board's sunset date to January 1, 2018. The Board already submitted its report to the legislature on November 1, 2012 and successfully passed its hearing in March 2013.
Establish process for assessing continuing competency of optometrists.	Ongoing Tactics: 1) Review current continuing education requirements. 2) Considerations - Should optometrists be required to re-examine after a certain amount of years in practice? Every 5 years, every 10 years? 3) Possibly work with other state Boards to participate in development of a process. 4) The Board will maintain a "watch" position on the issue until there are further developments.
GOAL 4 – ENFORCEMENT: Protect the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of optometry in the State of California.	
Participate in the development and implementation of DCA's new enforcement model.	Completed 1) 2011 - Probation Monitoring Workgroup created a training program for DCA probation monitors and a Probation Monitoring Manual. Also, a forum for DCA probation monitors to share best practices was created. 2) Ongoing - In accordance with the Consumer Protection Enforcement Initiative, monthly statistical reports are issued to DCA detailing complaint case activity.
Train and augment enforcement staff on the implementation of the entire enforcement process.	Completed All staff attended DCA Enforcement Academy and National Certified Investigator/Inspector Training. Ongoing Activities: 1) Weekly meetings to discuss enforcement processes and cases. 2) Participation in the Enforcement Users Group to discuss monitoring of statistics and case tracking.

Develop and implement training program and retain subject matter experts.	Recruitment Completed. Posted recruitment link on the Board's website and in newsletters as needed. Expert Witness Handbook still in development. Completion Date: 2014
Explore feasibility of gaining site inspection authority.	Unknown While the authority could have been added in the Board's sunset bill this year, the Board decided that the issue needs to be brought before the Board for further discussion. More research was requested and a possible committee.
Explore further options for preventing unlicensed practice of optometry.	Always Ongoing Ongoing Activities: 1) Educational letters sent to businesses suspected of selling cosmetic contact lenses without a license requesting evidence of licensure or registration to dispense, and that they cease the sale of the lenses if they did not have a license. 2) Investigating complaints from licensees and the public.
GOAL 5 – EDUCATION AND OUTREACH: Proactively educate, inform and engage consumers, licensees, optometry students and other stakeholders on the practice of optometry and the laws and regulations which govern it.	
Publish summaries of disciplinary actions.	Completed Staff posts disciplinary actions as soon as they become public on its website. Disciplinary actions are also printed in the Board's biannual newsletter.
Develop and disseminate a "Your State Board Starter Kit for New Optometrists."	Completion: TBD Pending development.
Continue the program for outreach to optometry students in California.	Always Ongoing Staff presents information about the Board to third and fourth year students at all the schools and colleges of optometry each year.

Continue outreach to licensed optometrists at optometric events.	Always Ongoing Tactics: 1) Research possibility of attending California Optometric Association (COA) Society meetings to answer questions. 2) Continue to attend the Monterey Symposium. 3) Continue to request permission to attend ARBO meetings. This year, the meeting was in San Diego and the Executive Officer was able to attend. 4) Continue participating at COA's Key Person day each year and House of Delegates.
Expand involvement in consumer outreach and health fairs.	Ongoing Work with the DCA Outreach Unit, Department of Health Services and COA societies to identify possible events for participation.
Develop regular PR opportunities that highlight timely and pertinent optometric information.	Ongoing Completed: 1) 2010 and 2011 – Held press conference to create awareness about the dangers of using cosmetic contact lenses without a prescription at a local Halloween store. Received coverage from four Sacramento news stations. 2) March 4, 2011 –Cosmetic contact lens outreach at the Northern California Consumer Protection Committee's roundtable discussion. 3) Fall 2011 – The Board launched Facebook and Twitter pages and posts regularly. 4) DCA has offered to work with staff in the development of YouTube videos in order to share information with consumers in a more relevant manner. 5) Board Public Affairs Committee composed of members Donna Burke and Alexander Kim.
Develop and disseminate new publications and forms in multiple languages. **Staff responsible: Andrea, All staff**	Always Ongoing Completed: 1) Newsletter printed bi-annually. 2) 2012 – With the assistance of the Department's Office of Publications, Design & Editing (PDE) staff updated the following publications: Cosmetic Contact Lenses Focus on Consumer Protection Focus on Your Eyes

Continue to leverage the Board website as a source of education and outreach to consumers and licensees.	Ongoing Contact updates on the Board's website to find the best way to provide information to consumers and licensees. No major changes have been made this year. 2012 - Board website was re-designed to be more user friendly.
Develop and foster partnership with health care advocates and stakeholders.	Always Ongoing Continue relationships with the following organizations: 1. California Optometric Association 2. Department of Health Services 3. California Medical Board 4. Northern California District Attorneys 5. Office of Senator Ed Hernandez 6. California Academy of Eye Physicians and Surgeons 7. Office of the Attorney General 8. Department of Managed Healthcare 9. Assembly and Senate Business and Professions, and Health Committees 10. The Department of Consumer Affairs 11. The American Optometric Association 12. The Office of Administrative Law 13. The California Medical Association 14. The Center for Public Interest Law 15. Citizen's Advocacy Group 16. Association of Regulatory Board of Optometry 17. All Schools and Colleges of Optometry
Proactively participate in DCA's disaster recovery efforts.	Always Ongoing. Documents updated yearly. Completed: 1) 2011 – Continuity Plan

GOAL 6 – ORGANIZATIONAL EFFECTIVENESS: Develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve Board's provision of programs and services.	
Identify staff training needs and establish corresponding training plan.	Always Ongoing Staff is proactive to obtain the training needed.
Solidify the Board's national presence as a regulator of optometry.	Always Ongoing Continue to request permission to attend national optometric meetings held by ARBO, AOA, COA and others.

Implement new Board member orientation and training program.	Completed Orientation and training information was incorporated into the Administrative Procedures Manual.
Update and revise Administrative Procedures Manual.	Completed
Continually update and disseminate California Laws and Regulations Related to the Practice of Optometry.	Completed. Revised every two years. Recent Revision Dates: 1) 2013 2) 2011
Develop and implement an online customer satisfaction survey.	Completed
Continue to hold Board meetings in geographically diverse areas of state and invite local stakeholders.	Always Ongoing Work with schools and colleges to hold meetings.

CALIFORNIA STATE BOARD OF OPTOMETRY

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Memo

To: Board Members **Date:** August 16, 2013

From: Andrea Leiva
Policy Analyst **Telephone:** (916) 575-7182

Subject: **Agenda Item 7 – Discussion and Possible Action on Regulations Affecting the Board of Optometry**

A. SB 1111 Provisions

Action Requested: It is requested that the Board consider provisions 2, 3, 7, and 9 to determine which regulations to adopt. The Board must then direct staff to begin the regulatory process for all approved provisions.

Background: At its May 10, 2013 meeting, the Board adopted provisions 5, 6, and 8, and rejected provision 1 as recommended by the SB 1111 Regulations Committee. The Board requested additional information on the following (*Note* - Shaded boxes are not up for discussion):

PROVISION	BOARD ACTION ON MAY 10, 2013
(1) Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license	Rejected
(2) Revocation for sexual misconduct: Require an Administrative Law Judge who has issued a decision finding that a licensee engaged in an act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. (CCR 1575) **Committee Recommendation:** Only implement for registered sex offenders. The rest should be left to the Board's discretion and current law is effective to deal with these kinds of issues. The regulation is too extreme because some cases are more egregious than others and all should not be applied the same punishment. The committee members are not comfortable with the zero-tolerance aspect. The Board should be permitted to weigh in with thoughtful deliberation.	It was requested that more information be provided by DCA before a decision is made.

(3) Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. **Committee Recommendation:** Do not implement this provision. The Board should retain its discretion and what is currently in law is effective to deal with these kinds of issues. The Board does not deal with a large quantity of registered sex offenders. The Board has authority to deny applications and revoke licenses for registered sex offenders which allows for discretion. The regulation is contradictory. It asks for zero tolerance, but then exempts certain registered sex offenders.	It was requested that more information be provided by DCA before a decision is made.
(4) Confidentiality agreements regarding settlements (Gag Clauses): Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.	None. Implemented for all boards by AB 2570 (Leno, Chapter 561, Statutes of 2012).
(5) Failure to provide documents and failure to comply with court order	Adopted. Ready to begin rulemaking.
(6) Psychological or medical evaluation of applicant	Adopted. Ready to begin rulemaking.
(7) Sexual misconduct: Currently defined in BPC Section 726. Define in regulation that sexual misconduct is unprofessional misconduct. **Committee Recommendation:** The committee recommends not implementing this provision. What is currently in law is effective to deal with these kinds of issues. BPC 3110 (m) and 726 already deal with sexual misconduct.	It was requested that more information be provided by DCA before a decision is made.
(8) Failure to provide information or cooperate in an investigation	Adopted. Ready to begin rulemaking.
(9) Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. **Committee Recommendation:** Delete the language pertaining to arrests, add clarifying language that any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government of the United State military should be related to the practice of optometry, and discuss with the Board if the language pertaining to	While it was decided to keep the arrest and misdemeanors language, the Board requested that more information be provided by DCA before a final decision is made.

misdemeanors should be kept in the regulation. The language pertaining to arrests is too broad. Every state has a different definition of what warrants disciplinary action so what's in the regulation is too broad. The Board should only be concerned with disciplinary actions related to the practice of optometry. There are over 100 misdemeanors and some should not be reported to the Board because they are not relevant to an optometrist's professional practice or demeanor. Licensees are required to report biennially on their renewal form if they have committed a crime or been disciplined in any jurisdiction of the United States. The Board will learn about these occurrences no matter what if an optometrist forgets to report.	

Attachments:

1) Proposed Language for provisions 2, 3, 7, and 9
2) Rationale for provisions 2, 3, 7, and 9
3) Chart of DCA entities that have SB 1111 provisions in currently law or have implemented via regulation

B. Fees for Retired License Statuses

Action Requested: None. This is an update.

Update: At its December 14, 2012 meeting, the Board voted to initiate a rulemaking to establish the retired license status fees. The rulemaking action was printed in the California Regulatory Notice Register on March 1, 2013, and the 45-day comment period for the public started on March 1, 2013 and ended on April 15, 2013. The hearing was on the same date. No comments were received from the public. On May 10, 2013, the Board voted to continue with the rulemaking package. The package is currently being reviewed by the Department of Consumer Affairs. The Board has until May 1, 2014 to complete this rulemaking package.

Attachments: None

Board of Optometry
SB 1111 Regulations Committee
Proposed Language

Key:
Black text –current law not up for discussion
Blue italicized text – original SB 1111 language proposed by DCA
Blue underlined italicized text– amendments by SB 1111 Regulations Committee
~~*Red strikethrough italicized text – deletions by SB 1111 Regulations Committee*~~

Provision (2) Revocation for sexual misconduct: Require an Administrative Law Judge who has issued a decision finding that a licensee engaged in an act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

1575. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall comply with the "Uniform Standards Related to Substance Abuse" (Uniform Standards) and consider the "Disciplinary Guidelines" (DG-4, 5-2012) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance-abusing licensee.

(a) Subject to subdivision (b), deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance-abusing licensee shall apply.

Notwithstanding the disciplinary guidelines, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any ~~*acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense,*~~ *offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.*

~~*As used in this section, the term "sex offense" shall mean any of the following:*~~

~~*(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act;*~~

~~*(b) Any offense defined in Sections 243.4(a)-(d), 261.5, 313.1, 647(a), (b), and (d) of the Penal Code or a finding that a person committed such an act;*~~

~~*(c) Any attempt to commit any of the offenses specified in this section; and*~~

~~*(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.*~~

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Section*s 480, 729,* 3090*, 3091 and 3110*, Business and Professions Code; and Sections 11400.20, ~~11400.21~~ and 11425.50(e), Government Code.

Key:
Blue italicized text – original SB 1111 language proposed by DCA
Blue underlined italicized text– amendments by SB 1111 Regulations Committee
~~*Red strikethrough italicized text – deletions by SB 1111 Regulations Committee*~~

Provision (3) Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

1575.1. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) Any individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided; however, that nothing in this paragraph shall prohibit the Board from exercising its discretion to deny or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 3090, Business and Professions Code. Reference: Sections 480, 3025, 3056, 3110, and 3120, Business and Professions Code

Key:
Black text - Approved at May 10, 2013 meeting - not up for discussion
Blue italicized text – original SB 1111 language proposed by DCA
Blue underlined italicized text– amendments by SB 1111 Regulations Committee
~~*Red strikethrough italicized text – deletions by SB 1111 Regulations Committee*~~

Provision (7) Sexual misconduct: Currently defined in BPC Section 726. Define in regulation that sexual misconduct is unprofessional misconduct.

Provision (9) Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.

1575.2. Unprofessional Conduct.

In addition to the conduct described in Section 3110 of the Code, "unprofessional conduct" also includes, but is not limited to the following:

(a) Failure to cooperate and participate in any Board investigation pending against the licensee. This includes, but is not limited to, failure to respond to a Board request for information or evidence within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the information within this time period for good cause. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

~~*(b) The commission of any act of sexual abuse or misconduct.*~~

(c) Failure to report to the Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

~~*(2) The arrest of the licensee.*~~

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military that is related to the practice of optometry.

(d) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the Board.

NOTE: Authority cited: Section 3090 and 3110, Business and Professions Code. Reference: Sections 480, 3010.1, 3010.5, 3024, and 3025, Business and Professions Code.

Department of Consumer Affairs (DCA)
SB 1111 Proposed Changes through Regulations

RATIONALE - PROVISIONS 2, 3, 7, and 9

Background

The SB 1111 regulations were created by the Department of Consumer Affairs (DCA) to streamline enforcement and disciplinary processes. The specific goal of the nine regulations is to reduce the average enforcement completion timelines from three years or more to between 12 and 18 months. The Board of Optometry has authority to implement all the regulations if they choose to.

The regulations came from the DCA sponsored Senate Bill 1111 (Negrete McLeod), which was a component of the Consumer Protection Enforcement Initiative (CPEI). The bill, which failed in the legislature in 2010, and the CPEI were a direct result of a 2008 incident with the Board of Registered Nursing which garnered various media outlets reporting that DCA was continuing to license various practitioners despite having committed serious criminal acts, having been convicted, and having been incarcerated. Licensees were allegedly renewing their licenses, identified as licenses “In Good Standing”, and, in some cases, continuing to practice their profession without any restrictions or disciplinary actions. DCA responded by directing all healing arts boards to seek the regulatory changes necessary to require all new applicants to be fingerprinted, as well as any existing licensee who has never been fingerprinted (Fingerprint regulations became effective June 21, 2010 for the Board of Optometry).

Since DCA continues to be scrutinized in news articles, annual reports, and audits, which identify various program issues, deficiencies, and shortcomings, DCA continues its efforts to address the root causes of these problems. DCA has attempted to implement the CPEI, add and train staff, streamline business operations, and improve coordination and communication between various governmental entities. These efforts have been met with modest success.

As one of its efforts to meet its goal to implement portions of the CPEI, DCA identified nine provisions from Senate Bill 1111 that could be implemented via regulation by the healing arts boards. Many of them are modeled after laws that are currently in effect and utilized by the Medical Board, the Dental Board, the Board of Psychology, and Pharmacy Board to name a few.

Provision (2)

(2) Revocation for sexual misconduct: Require an Administrative Law Judge who has issued a decision finding that a licensee engaged in an act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

Background:

Currently, when an Accusation is filed against a licensee stating that they engaged in an act of sexual contact with a patient, or that they have committed or were convicted of sexual misconduct, the Board will recommend the minimum penalty for those acts, which is revocation. An Administrative Law Judge will then review the case and make the final determination in a proposed decision whether to revoke the license or take another appropriate action. The Administrative Law Judge is not mandated to revoke a license for these acts. In the event that

an Administrative Law Judge does not revoke a license for these acts and the Board strongly believes the license should be revoked, the Board has authority to non-adopt the Administrative Law Judge's decision and successfully pursue revocation of the license.

Problem, Rationale for Change:
The purpose of this provision is to remove the Board and the Administrative Law Judge's discretion when determining if a license should be revoked and not be stayed for sexual misconduct. This would establish a zero-tolerance policy on these types of acts resulting in what can be argued to be enhanced consumer protection. This provision is preventative and would reduce the amount of time the Board spends on these cases because there would only be one outcome for sexual misconduct. It is important to note that these kinds of violations encompass a variety of situations with patients of all ages, so some cases may be more egregious than others. The Board must consider the appropriateness of applying the same punishment to every situation.

This section is similar to language which currently exists for physicians (BPC Section 2246), for psychologists (BPC Section 2960.1), for respiratory care therapists (BPC Section 3752.7), for marriage and family therapists (BPC Section 4982.26), and for clinical social workers (BPC Section 4992.33).

Recommendation:
It is recommended that if the Board would like to make this change, it may be implemented through regulation as part of the Board's disciplinary guidelines.

Provision (3)

(3) Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

Background:
Currently, the Board has authority to deny the application for licensure of a registered sex offender and revoke the license of a licensee who is a registered sex offender, but it is not mandatory. The applicant and licensee must go through the regular disciplinary process before the license can be revoked.

Problem, Rationale for Change:
This language is for preventative purposes and aside from a few exemptions, would make it mandatory that the Board deny the application for licensure of a registered sex offender and revoke the license of a licensee who is required to register as a sex offender. This section is similar to language which currently exists for physicians (BPC Section 2221(d) and Section 2232), for dentists (BPC Section 1687), for physical therapists (BPC Section 2660.5) and for psychologists (BPC Section 2964.3).

Recommendation:
If the Board chooses to make this change, it is recommended to amend the regulations pertaining to applicant requirements and disciplinary guidelines.

Provisions (7)

(7) Sexual misconduct: Currently defined in BPC Section 726. Define in regulation that sexual misconduct is unprofessional misconduct.

Background:
BPC section 726 defines the commission of any act of sexual abuse, misconduct, or relations with a patient, client or, customer as unprofessional conduct and grounds for disciplinary action.

BPC section 3110(m) allows the Board to take action against a licensee and revoke a license if they commit or solicit an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

In the Board's Disciplinary Guidelines, the minimum discipline recommended for sexual misconduct is revocation.

None of the above specifically defines sexual misconduct as unprofessional conduct.

Problem/Rationale for Change:
Some acts of sexual misconduct may not be considered crimes, but when it comes to licensees, it can be argued that they should be. The possibility that an act of sexual misconduct will not be unprofessional conduct will result in no discipline on the licensee, and that should be prevented. Acts of sexual misconduct reflect poorly on a licensee's common sense and professional judgment, which are essential to the practice of optometry, and tend to undermine the public's confidence in and respect for the optometric profession (Griffiths v. Super. Court, 96 Cal. App. 4th 757 (2002)).

One of the Board's responsibilities as a consumer protection agency is to proactively look for ways to prevent consumer harm before it happens. Specifically stating that sexual misconduct is unprofessional conduct will ensure that any acts of sexual misconduct will affect the license.

Recommendation
If the Board chooses to make these amendments, it is recommended they be made via regulation.

Provisions (9)

(9) Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.

Background:
Currently, licensees are not required to self report any felony indictment or charge or any felony or misdemeanor conviction against them. Likewise, the Board has no authority to discipline licensees who fail to report such occurrences. Existing law for physicians and surgeons, osteopathic physician and surgeons, and doctors of podiatric medicine requires them to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

Problem, Rationale for Change:
Since current optometric law does not allow for timely reporting of a felony indictment or charge of any felony or misdemeanor conviction, requiring a licensee to self report these occurrences will enable the Board to more quickly investigate the underlying allegations and offenses and act accordingly to provide better consumer protection.

Recommendation:
If the Board chooses to make this change, it is recommended to define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.

DCA ENTITY SB 1111 (Enforcement) Regulation - Completed
As of 4.5.2013

Entity	Status										
Submitted	Division of Legislative and Policy Review (LPR)										
		1	2	3	4	5	6	7	8	9	
Behavioral Sciences	Effective 7.1.2013	Y	Y	Y	Y	Y			Y	Y	
Dental Board	Effective 3.9.2012			Y	Y	Y	Y	Y		Y	
Occupational Therapy Board	Effective 9.28.2012	Y	Y		Y	Y	Y		Y	Y	EO for 820
Physical Therapy Board	Effective 8.16.2012	Y		Y	Y	Y			Y	Y	
Physician Assistant Committee	Effective 11.5.2011	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Psychology Board	Effective 8.22.2012	Y	Y		Y	Y	Y		Y	Y	EO for 820
Respiratory Care Board	Effective 6.24.2012		Y		Y						
Speech-Language	Effective 7.1.2013	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Vocational Nursing/Psychiatric Technicians Board	Effective 6.3.2012	Y		Y	Y	Y	Y		Y	Y	
Pharmacy Board	Pending			Y	Y	Y					
Board of Optometry	Pending	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Medical Board		Y	Y	Y	Y	Y	Y	Y	Y	Y	

1 – Delegation to EO
2 – Revocation for Sexual Misconduct
3 – Denials for Registered Sex Offenders
4 – Confidentiality Agreements (All – AB 2570)
5 – Failure to Provide Documents/Comply with Court Order
6 – Psychological/Medical Evaluation of Applicants
7 – Sexual Misconduct
8 – Failure to Cooperate with an Investigation
9 – Failure to Report an Arrest/Conviction

Notes:

Other Boards who didn't implement certain provisions as indicated in the chart may already have the provisions in current law.

Key
Red – Pending
Black – In law already
Blue – in law due to SB 1111 provisions

Memo

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To: Board Members **Date:** August 16, 2013

From: Jessica Sieferman
Enforcement Lead **Telephone:** (916) 575-7184

Subject: **Agenda Item 8. Discussion and Possible Action to Approve Guidelines for Closing an Optometric Practice**

Requested Action: Please review and approve the Practice and Education Committee (Committee) language as official guidance from the Board.

Background:
Over the past year, the Board of Optometry's (Board) Enforcement Program has seen an increase in consumer complaints regarding optometrists closing their practice without any form of patient notification. Some complaints involve patients who were in the middle of treatment only to discover their optometrist can no longer be found. Other patients returned to the office to pick up the glasses or contacts they had purchased only to find the optometrist's office closed. Other complaints involve patients trying to obtain their medical records, but they were unable to do so because their optometrist had either been evicted from the premises or retired.

In addition, the Board's Enforcement Program has received an increase number of phone calls from families of optometrists who have passed away and requested guidance on who can help facilitate patient care and record transfer.

While the Board has attempted to educate Optometrists about this in the past (Attachment 1), further outreach is needed. The law requires that medical records be accessible to patients, but it does not specifically address how that should be handled by an Optometrist when a practice is closed. Without statutory or regulatory changes, the Board can only post recommendations for its licensees. This can serve as a valuable resource for Optometrists who frequently turn to the Board for information on practice management techniques.

To help address this issue, the Committee assisted staff in drafting language to be posted on our website, published in our newsletter and used in future outreach events (Attachment 2). The Committee Members did not believe new legislation was required, as the Enforcement Program has successfully taken action against optometrists who have abandoned their practice.

Closing Your Practice's Doors? Don't Forget About the Patient Records

If you are planning on closing your practice, whether it is temporary or permanent, your patients' records continue to be your responsibility. Patient records are sensitive information and cannot be kept in a garage or simply shredded. By law, a person has the right to have access to complete information respecting his or her condition and care provided (Business and Professions Code (BPC) Section 123100). Also, an optometrist must retain a patient's records for a minimum of seven years from the date he or she completes treatment of the patient. For a minor, the patient's record must be retained for a minimum of seven years from the date he or she completes treatment of the patient and at least until the patient reaches 19 years of age (BPC Section 3007).

If you are selling the practice and transferring your fictitious name permit to the new owner, the acquisition of the ownership includes the active patient records and prescription files of the practice
(BPC Section 1518).

In order to obtain patient records, a patient or patient's representative must provide a request in writing, specifying the records to be copied, together with a fee to defray the cost of copying that will not exceed:

* One page = $.25 per page
* Microfilm = $.50 per page
* Any additional clerical costs incurred in making the records available.

Copies must be provided to the individual within 15 days of receiving the written request. In all circumstances, patients must be notified as to where their records will be kept! Failure to do so may result in a disciplinary action by the Board (BPC Sections 123110 and 123120).

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Closing Your Optometric Practice

The following provides guidance to optometrists regarding the closure of or departure from an optometric practice.

It is the Board's position that due care should be exercised when closing or departing from an optometric practice, whether it is temporary or permanent. Not only does this ensure a smooth transition from the current optometrist to the new optometrist, but it also reduces the liability of "patient abandonment." Therefore, to ensure this occurs with a minimum of disruption in continuity of care, the optometrist terminating the optometrist-patient relationship should notify patients sufficiently in advance.

It is the patient's decision from whom to receive optometric care. Therefore, it is the responsibility of all optometrists and other parties who may be involved to ensure that:

- Patients are notified of changes in the optometric practice. This is best done from a letter to patients by the optometrist explaining the change, including the final date of practice. To inform inactive patients or those who have moved away, the board also recommends placing an advertisement in a local newspaper.

- Patients are advised as to where their medical records will be stored including how they may access them. To facilitate the transfer of medical records to the new optometrist, an authorization form should be included in the letter.

- Patients secure another optometrist. If the practice is being taken over by another optometrist or another can be recommended, the patients can be referred to that optometrist.

A Fictitious Name Permit (FNP) is NOT transferable if an optometric practice is purchased by another optometrist. The former owner should submit a written notice to cancel the FNP, and the new owner must submit a FNP application. Both documents should be mailed together to ensure the name will be available to the new owner.

An optometrist who purchases an optometric practice may use the practice name or names of the former optometrist for up to two years providing:

(1) The acquisition of the ownership in the practice of the predecessor optometrist or optometrists includes permission to use his/her or their names.
(2) The acquisition of the ownership includes the active patient records and prescription files of the practice.
(3) In any signs, professional cards, envelopes, billheads, letterheads, or advertising of any nature, the name or names of the successor optometrist or optometrists shall appear first and be followed by the term "succeeding," "successor to," or "formerly" and then the name or names of the predecessor optometrist or optometrists which shall not appear in letters larger than the letters in the name or names of the successor optometrist or optometrists.

Abrupt Closure Due to Death

In the unfortunate event that an optometrist dies, the Board recommends that the family of the deceased, or their representative, contact other optometrists in the area or the local optometric society to facilitate patient record transfers.

It is recommended that any optometrist receiving records from a deceased optometrist's practice send notification to the patients to ensure continuity of care.

The Optometry Practice Act does not allow unlicensed individuals to perform the services of an optometrist, including owning and operating an optometric practice (BPC Sections 3040 & 3109).

Memo

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To: Board Members **Date:** August 16, 2013

From: Jessica Sieferman
Enforcement Lead **Telephone:** (916) 575-7184

Subject: **Agenda Item 9 – Discussion and Possible Action to Approve the Board's Probation Monitoring Plan**

Action Requested: Staff requests that the Board consider the Practice and Education Committee's recommendations on the Proposed Monitoring Plan (Plan). It is further requested that, upon review and possible approval, the Board directs staff to implement the Plan whenever the "Worksite Monitor" condition is imposed in Disciplinary Decision and Orders.

Background: Part of the "Worksite Monitor" condition in the Board's new Disciplinary Guidelines (for non-substance abusing licensees) requires the Board to propose a worksite monitoring plan (Attachment 1). The worksite monitor can either agree with the proposed plan or submit a revised worksite monitoring plan for Board approval.

On March 8, 2013 and July 12, 2013, the Practice and Education Committee members provided assistance in drafting the Plan (Attachment 2). This Plan was drafted using the previous Probation Monitoring Guidelines, comments from the Committee and documents from the Medical Board.

The Plan outlines the protocols for monitoring the optometrist's worksite which includes site visits and worksite monitor reports. In addition, the Plan provides requirements that may be applied depending on the violation cited in the Decision.

The Committee is comprised of:

- Madhu Chawla, OD, Professional Member, Committee Chair
- Alejandro Arredondo, OD, Professional Member, Board President
- Fred Dubick, OD, MBA, FAAO, Professional Member

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WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

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

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

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

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

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation dependent on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

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

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

MONITORING PLAN

This Monitoring Plan (Plan) outlines the written protocols for monitoring the optometrist's worksite. The Plan details the expectations for conducting a monitoring visit of the optometrist's practice, randomly selecting and reviewing charts (if applicable), and reporting findings to the Probation Monitor.

If this Plan is accepted, the Worksite Monitor shall sign the Worksite Monitor Agreement.

Initial and Subsequent Site Visits:

Prior to the initial site visit, the Monitor should review the Board's Accusation and Disciplinary Decision, Worksite Monitor's Roles and Responsibilities, and sign the Worksite Monitor Agreement. In addition, the Monitor should review the "Worksite Monitor Pre-Visit Information" form that was completed by the probationer.

The Monitor will make an initial site audit at the beginning of the monitoring program and on an annual basis thereafter during the normal business hours (unless otherwise indicated below). The initial site audit involves an inspection of the optometrist's place of practice. After the initial site audit has been concluded, the Monitor will prepare a summary report of his/her findings and submit to the Board's Probation Monitor.

Subsequent visits to the optometrist's practice location will be made for the purpose of randomly selecting and reviewing charts, inspecting the sanitation and orderliness of the office, and/or meeting with the optometrist to discuss cases or other practice related issues. For infection control related issues, the Monitor will conduct six site visits during the first six months, three of which shall be unannounced. Thereafter, the monitor will conduct a minimum of four site visits every twelve months until the end of probation. For all other practice related issues, the Monitor shall conduct a minimum of twelve visits (each visit lasting up to a full day) per year for the entire term of probation.

If the optometrist has more than one practice location, the Monitor will make an initial site audit at each practice and make subsequent visits to each location.

The Monitor shall use the Site Evaluation Sheet when conducting each site visit.

Monitor Reports

The Monitor will submit a written report once each quarter to the Board's Probation Monitor summarizing the monthly site visits (using the site evaluation sheet) and review of patient records (if applicable). The reports shall be written on the Monitor's letterhead and bear the original signature of the Monitor.

The reports from the Monitor must contain at a minimum, the following:

1. the Probationer's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Probationer had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;

9. any change in behavior and/or personal habits;
10. assessment of the Probationer's ability to practice safely;
11. recommendation dependant on Probationer's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

In addition, the reports shall describe any identified problems or deficiencies in the quality of patient care, medical record keeping, billing practices, or other practice related issues.

The Monitor reports are due to the Board's Probation Monitor ***within 7 calendar days after the end of the preceding quarter.*** The quarterly reporting periods and due dates are as follows:

Reporting Time Period	Due No Later Than
January 1 to March 31 (Quarter I)	April 7th
April 1 to June 30 (Quarter II)	July 7th
July 1 to September 30 (Quarter III)	October 7th
October 1 to December 31 (Quarter IV)	January 7th

Additional Plan Requirements (If indicated):

☐ Infection Control

In addition to the Site Visit Evaluation sheet, the Monitor shall use the Infection Control Guidelines Checklist provided by the Board during each site visit.

☐ Staff Interview

The Monitor shall interview staff to determine what services are offered in the office and/or how patient referrals are being handled. The Monitor may re-interview staff at any site visit.

☐ Patient Record Review[1]

☐ Professional Services – Competency Chart Review

☐ Billing Chart Review

The Monitor shall review a minimum of 10% of the optometrist's patient records or 15 records (whichever is greater) in an eight hour day, at a minimum of twelve times per year. The Monitor will determine the method of random chart selection. This responsibility shall not be delegated to either the optometrist or the optometrist's staff. The random selection of charts should include charts that correlate to the patient care issues or other issues identified in the Board's Accusation and Decision which resulted in the optometrist being placed on probation. The optometrist is required to make all charts available for immediate inspection and copying by the Monitor at all times during business hours. The Monitor will immediately notify the Board's Probation Monitor if the optometrist fails or refuses to make the records available for inspection and/or copying.

If the optometrist is required to maintain patient records of all lens prescriptions dispensed or administered to patients, the Monitor will compare the patient records being audited to the entries in the file to ensure that all lens prescriptions are in the file, the optometrist conducted a comprehensive examination prior to prescribing and dispensing the lenses, and the visual impairment was medically indicated.

[1] The Patient Record Review does not need to be completed during office hours.

If the optometrist was placed on probation due, in part, to the optometrist failing to release the prescription to the patient when required, the Monitor shall look for verification that each patient received their prescription.

☐ Patient Examination Evaluation

During the site visits, the Monitor shall observe all patients examinations during that day. The Monitor shall use the Patient Examination Evaluation Checklist provided by the Board. After the examinations, the Monitor shall review the patient records to ensure the examination was adequately and accurately documented.

If the Monitor observes the optometrist providing services beyond the scope of the optometrist's license, the Monitor shall instruct the optometrist to stop and inform the Board in writing within 24 hours from the time of occurrence.

☐ Mental or Physical Evaluation

During the site visits, the Monitor shall observe the optometrist for possible mental or physical impairments. Of the minimum 12 visits per year, half of the visits shall be unannounced.

Attachments to this Plan

1. Worksite Monitor Roles and Responsibilities
2. Worksite Monitor Agreement
3. Worksite Monitor Pre-Visit Information
4. Worksite Monitor Site Visit Evaluation Sheet
5. Infection Control Guidelines Checklist
6. Professional Services – Competency Chart Review
7. Billing Chart Review
8. Patient Examination Evaluation Checklist

Worksite Monitor Roles and Responsibilities

Roles

The role of the Worksite Monitor (Monitor) is to ensure, to the extent possible, that the optometrist on probation will conduct his/her practice with safety to the public and in a competent manner. The Monitor is responsible for reporting to the Board any identified problems or deficiencies in the quality of the optometrist's patient care, billing practices, medical record keeping, and/or professional conduct. The Monitor also fulfills the role of an educator and advisor to the optometrist, with the goal of assisting the optometrist to improve clinical skills and gain insight into practices that led to the disciplinary action, so that learning and rehabilitation will occur.

Monitors are expected to render fair, objective, reliable, and unbiased reports to the Board's Probation Monitor. In order to do this, the Monitor cannot have any *prior or current* business, personal, or other relationship with the optometrist on probation.

The Monitor conducts an *initial* site audit with subsequent audits annually; if required, chart files are reviewed on a monthly basis at the optometrist's place of practice(s). A summary report is prepared quarterly and sent to the Board's Probation Monitor.

The Monitor will be required to: 1) complete an Agreement with the Board; 2) review the Pre-visit Information Sheet; 3) conduct an initial site audit with annual audits thereafter; 4) conduct chart reviews (if required) once a month; and 5) prepare quarterly reports.

Responsibilities

The Monitor's responsibilities include:

1. Reviewing all background information including the Accusation and Decision pertaining to the optometrist on probation.
2. Monitoring the optometrist for his/her entire probation period (unless otherwise stated in the Order) according to the Board's requirements.
3. Adhering to all HIPPA regulations and guidelines with respect to patient privacy.
4. Working together with the optometrist to ensure the Monitoring Plan is being followed as outlined.
5. Telephoning the optometrist as needed to discuss the results or concerns from the monthly chart reviews (if applicable).
6. Completing and providing written quarterly reports to the Board's Probation Monitor in accordance to the Monitoring Plan.
7. Communicating regularly with the Board regarding the optometrist's progression and any concerns he/she may have.

Worksite Monitor Agreement

I, _____, O.D. /OMD, agree to serve as a worksite monitor for _____, O.D.

_____1. I have received, reviewed, and understand the materials provided to me describing the worksite monitor roles and responsibilities. Any questions regarding my obligations as a worksite monitor have been discussed with and fully addressed by the California State Board of Optometry (Board) Probation Monitor. I clearly understand the role of a Monitor and what is expected of me.

_____2. I have received and have read a copy of the Board's Accusation and Decision filed against Dr. _____, O.D. The Board charged Dr. _____, O.D. with (insert violation cited such as gross negligence or repeated negligent acts or incompetence, etc.) because he/she failed to (insert explanation from the summary paragraphs which describe the omission or departure.)

OR (to be used with Proposed Decisions)

_____2. I have received and have read a copy of the Board's Accusation and Decision filed against Dr. _____, O.D. The Board found Dr. _____, O.D. was (insert violation(s) the ALJ identified as ones confirmed or proven such as gross negligence or repeated negligent acts or incompetence, etc.) because he/she failed to (insert explanation/findings that were proven or confirmed during the hearing – DO NOT INCLUDE THOSE FINDINGS OR VIOLATIONS THAT WERE NOT PROVEN.)

_____3. (If applicable) I understand that, as the approved worksite monitor, I am required to randomly select patient charts on a monthly basis for review. I understand that I must review a minimum of 10% of the optometrist's patient records or 15 records (whichever is greater) in an eight hour day, at a minimum of twelve times per year.

_____4. Should Dr. _____'s optometric practice change in either the location(s) or the volume of patients being seen, this agreement may be amended. If I believe an amendment is indicated, I can submit a proposed revision to the Board's Probation Monitor for approval. I do understand that any changes to the Monitoring Plan must be approved by the Board.

_____5. I agree to conduct an initial site audit at Dr. _____'s place of practice and subsequent site audits annually. I understand that if Dr. _____ has multiple locations, I am to conduct a site audit at each location. I will prepare a written report to the Board's Probation Monitor of my findings.

_____6. I agree to submit written reports quarterly to the Board's Probation Monitor regarding my review of Dr. _____'s practice. I understand that the failure to submit quarterly reports in a timely manner may result in the Dr. _____ being charged with a violation of probation.

_____7. I have no prior or current business, personal or other relationship with Dr. _____ that could reasonably be expected to compromise my ability to render fair and unbiased reports to the Board.

_____8. I understand that Dr. _____, O.D. is responsible for all costs associated with the monitoring of his/her practice, and that these costs are not set by the Board. I am not being compensated for my services by any form of bartering arrangement.

_____9. If I am no longer able or willing to continue to monitor Dr. _____,'s practice, I agree to immediately notify both Dr. _____ and the Board's Probation Monitor by telephone at (916) 575-7184 and submit a written explanation by email or regular mail within 5 business days.

_____10. If I am unable to contact or meet with Dr. _____, O.D. in order to fulfill my obligations as a worksite monitor, I will notify the Board's Probation Monitor at (916) 575-7184 within two weeks of my failed attempts to contact Dr. _____ O.D.

_____11. I have reviewed the Monitoring Plan and agree to monitor Dr. _____, O.D. as specified.

I understand that my reports will be available for inspection and review by the Board staff or the Attorney General's Office at any time. I agree that my report and findings shall not be privileged in any way to these agencies and/or their designees.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on _____, 20___.

_____ _____

Monitor (Print Name) Signature

Worksite Monitor Pre-Visit Information
(To be completed by Probationer)

Instructions: Please complete all sections below. If you have more than one practice location, please submit a separate form for each location. If you change your practice location, you must submit a new form.

Name		
List name exactly as it appears on your current license/registration.		
Last	Middle I.	First

Practice Address			**Home Phone Number**
Number	Street	State	
			Mobile Phone Number

Business Name	**Office Phone Number**	**Fax Number**

Email Address	**Malpractice Insurance Provider**

Office Hours			
Monday	-	Friday	-
Tuesday	-	Saturday	-
Wednesday	-	Sunday	-
Thursday	-	Number of Hours Present at this location:	

Patient Volume
Average number of patients seen *per month:*

Office Staff
Number of Optometrists in the practice: _____ License No:_____ _____ _____
Number of Assistants in the practice:
Number of other support staff:
Do you instruct office personnel on: Communicating with patients? ☐ Yes ☐ No Cleaning and sterilization? ☐ Yes ☐ No Patient billing and coding? ☐ Yes ☐ No

Practice Policies
What procedure is employed in your practice for handling patient referrals to appropriate physicians?
What procedure is employed in your practice for ensuring the patient receives his/her prescription(s)?
How are patients' records stored?
Do you prescribe codeine with compounds and/or hydrocodone with compounds? ☐ Yes ☐ No If yes, what is your DEA #?

Preferred Times for Site Visits			
Site Visits will be conducted by the Worksite Monitor. The Monitor may be in your office for a minimum of four hours per visit. Please indicate three options for your preferred time(s) for the site visits (some visits may be unannounced).			
Monday	-	Friday	-
Tuesday	-	Saturday	-
Wednesday	-	Sunday	-
Thursday	-		

Worksite Monitor Site Visit Evaluation Sheet

Date:
Probationer Name:
Practice Site Location:

Site Visit Date:
Length of Site Visit:

Practice Assessment and Evaluation
Observe the following areas and provide an assessment on: • General practice/office hygiene and organization • Waiting room/area • Exam rooms • Office policies • Office safety • Business office area • Patient education materials • Method used for scheduling patient appointments • Average time allowed in schedule for (a) new patients, (b) return/follow-up visits, and (c) complete examination
Practice Structure
Assess the following areas of practice and provide a summary of how each are handled: • Telephone, fax, or email (if applicable) messages • Maintaining security/confidentiality of medical data • Ensuring messages are routed to optometrist timely • Communication with other optometrists, ophthalmologists, or other physicians • Method for documenting patient referrals • Method of ensuring referrals are completed timely • Emergency and urgent messages
Maintenance of Medical Records
Observe and provide a description of the following: • The method used for charting/medical record keeping • Storage of data electronically or through the use of an electronic health record • The system on how records are stored or filed • How long medical records are stored • Identification of records to ensure attention to drug allergies or other major medical concern
License and Notice Posting
Describe where each license/notice is posted in the office (if applicable): • Optometrist License & renewal indication • Branch Office License • Statement of Licensure • Fictitious Name Permit • Consumer Notice
Ophthalmic Equipment
Observe and provide an assessment on the following equipment: • Retinoscope • Keratometer/ophthalmometer or equivalent • Ophthalmoscope • Tonometer • Biomicroscope • Phoroptor • Visual Acuity Device/Method • Other appropriate equipment necessary
Prescriptions
Verify the following information is on Rx pad: • Provider's name, address, telephone number, license number, and signature • Issue and expiration date • Patient's name

Worksite Monitor
Infection Control Guidelines Checklist

These guidelines are pursuant to California Code of Regulations, §1520. The Worksite Monitor is directed to go through each section and verify the optometrist on probation and the staff, which includes assistants, are complying with all the applicable Standard Precautions.

Standard Precautions combine the major features of Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucus membranes may contain transmissible infectious agents. All contact with these substances is treated as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis, and other transmissible infectious agents. Standard Precautions are also intended to protect patients by ensuring that optometric staff do not carry infectious agents to patients on their hands or via equipment used when providing optometric services. Standard Precautions must be used in the care of all patients, regardless of suspected or confirmed infection status, and in all settings wherein optometric services are provided. Standard Precautions include:

Proper Hand Hygiene		
Hand Washing Facility		
The office has a hand washing facility that is entirely within the confines of the premises or space occupied by the office and not elsewhere, and is for the exclusive use of the optometrist or optometrists practicing in the office and his/her or their assistants and patients and is not be used by other persons.	☐ YES	☐ NO
The hand washing facility, at a minimum, has the following:		
A wash basin or sink with hot and cold running water which complies with Title24, California Administrative Code, Part 5 (commencing with Section P100).	☐ YES	☐ NO
Liquid hand washing detergent in a dispensing device.	☐ YES	☐ NO
Single service sanitary towels in a dispensing device or a sanitary hot-air blower hand drying apparatus.	☐ YES	☐ NO
The hand washing facilities is maintained in a condition of cleanliness and good repair.	☐ YES	☐ NO
Hand Hygiene		
The optometrists and staff maintain at all times a high standard of cleanliness and personal hygiene in order to ensure proper patient care.	☐ YES	☐ NO
The optometrists and staff avoid unnecessary touching of face, nose, and surfaces in close proximity to the patient to prevent both contamination of clean hands from environmental surfaces and transmission of pathogens from contaminated hands to surfaces, when providing optometric services.	☐ YES	☐ NO
When hands are visibly soiled, hands are washed with soap and water for a 20-second scrub and 10-second rinse or an antimicrobial hand wash. If hands are not visibly soiled, an acceptable alternative of hand decontamination is with an alcohol-based hand rub (except in cases of spores, as described below).	☐ YES	☐ NO
Hands are washed or decontaminated as follows:		
Before having direct contact with any patient, immediately after a procedure (such as eye examinations or other procedures involving contact with tears), and in between patients.	☐ YES	☐ NO
After removing gloves, ensure that hands will not carry potential infectious material that might have penetrated through unrecognized cuts or lacerations in the gloves, or that could contaminate the hands during glove removal.	☐ YES	☐ NO
Artificial fingernails or extenders are not worn when duties include direct contact with patients at high risk for infection and associated adverse outcomes.	☐ YES	☐ NO
After each patient session ends, hands are washed with soap and water or an antimicrobial hand wash if contact with spores (including but not limited to C.difficileorBacillus anthracis) is likely to have occurred. The physical action of washing and rinsing hands in such circumstances is required because alcohols, chlorhexidine, iodophors, and other antiseptic agents have poor activity against spores.	☐ YES	☐ NO
If an optometrist or staff member has exudative lesions or weeping dermatitis of the hand, direct patient care and the handling of patient care equipment by the person with the condition is stopped until the condition resolves.	☐ YES	☐ NO
Use of Personal Protective Equipment		

The optometrists and staff routinely use gloves to prevent skin exposure when anticipating direct contact with blood or body fluids, mucous membranes, nonintact skin, and other potentially infectious material or surfaces soiled with such fluids.	☐ YES	☐ NO
The optometrists and staff discard gloves after contact with each patient to prevent transmission of infectious material.	☐ YES	☐ NO
The optometrists and staff change gloves if patient interaction involves touching portable computer keyboards or other mobile equipment that is transported from room to room.	☐ YES	☐ NO
The optometrists and staff do not reuse gloves.	☐ YES	☐ NO
The optometrists and staff wear masks, gloves and protective eye wear in situations where blood, respiratory secretions, or contaminated fluids may be sprayed or splashed into the eyes of an optometrist or staff member.	☐ YES	☐ NO
The optometrists and staff wear masks, gloves and protective eye wear when the optometrist, staff or patient is known or suspected to have a pathogen, which can be transmitted by airborne, contact or droplet routes.	☐ YES	☐ NO
If an optometrist or staff member is infected with a pulmonary or other disease that is transmitted by airborne, contact or droplet routes, then that optometrist or staff member wears a mask, gloves and protective eyewear to protect the patient.	☐ YES	☐ NO
Protective eyewear is washed and disinfected between each patient or when visibly soiled.	☐ YES	☐ NO
Handling of Sharp Instruments		
Precautions are taken in order to prevent injuries caused by needles, scalpels, and other sharp instruments or devices when:		
Performing procedures, including but not limited to venipuncture	☐ YES	☐ NO
Cleaning used instruments	☐ YES	☐ NO
Disposing of used needles	☐ YES	☐ NO
Handling sharp instruments after procedures	☐ YES	☐ NO
To prevent needle stick injuries, optometrists and staff are instructed in the proper handling of needles, including but not limited to when needles must not be recapped, or purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand.	☐ YES	☐ NO
Optometrists and staff are instructed to place disposable syringes and needles, scalpel blades and other sharp items in puncture resistant containers following their use. Puncture resistant containers shall be provided and shall be located as close as practical to the area where needles and syringes are in use.	☐ YES	☐ NO
Pursuant to Cal/OSHA's Bloodborne Pathogens Standard, Title 8, Cal. Code Regs., Section 5193, employers governed by this rule establish, maintain, review and update at least annually and whenever necessary their Exposure Control Plan to reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens, and establish and maintain a Sharps Injury Log. This rule applies to all employers with employees who have occupational exposure to blood or other potentially infectious materials.	☐ YES	☐ NO
Optometrists and staff shall adhere to all federal and state requirements for handling of sharp instruments (including but not limited to the Medical Waste Management Act, California Health and Safety Code sections 117600-118360).	☐ YES	☐ NO
Disinfection Requirements		
Germicides and/or disinfectants are used in order to eliminate most of all pathogenic microorganisms from inanimate objects, such as medical devices or equipment. Optional: If there are questions on how to disinfect a particular medical device, the office may contact the manufacturer of the product.	☐ YES	☐ NO
Contact lenses and carrying cases used in trial and follow-up fittings are handled in the following manner:		
Trial contact lenses are discarded (inapplicable to rigid gas permeable and non-disposable hydrogel trial contact lenses).	☐ YES	☐ NO
Disinfecting between each fitting is done by one of the following regimens:		
U.S. Food and Drug Administration (FDA) approved chemical disinfection system appropriate for the contact lens type.	☐ YES	☐ NO

Heat disinfection.	☐ YES	☐ NO
When using eye drops, optometrists and assistants do not permit the bottle tip to come into direct contact with the patient's tears or conjunctiva. If the tip touches the patient, the bottle is discarded.	☐ YES	☐ NO
Optometrists and staff follow employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient contact, and degree of soiling.	☐ YES	☐ NO
Optometrists and staff clean and disinfect surfaces that are likely to be contaminated with pathogens, especially those in close proximity to the patient and frequently touched surfaces in the patient care environment.	☐ YES	☐ NO
Optometrists and staff comply with all minimum standards for infection control practices issued by local, state, and federal governmental agencies in response to emergency health and safety situations.	☐ YES	☐ NO

PROFESSIONAL COMPETENCY CHART REVIEW

RECORD #																				
Patient Age																				
MEDICAL HISTORY FORM																				
Collected																				
EXAMINATION RECORD																				
Case History																				
Chief Complaint																				
Ocular Health History																				
General Health History																				
Objective																				
Entering VA																				
Manifest Refraction																				
Best Corrected VA																				
Ocular Motility																				
Binocular Test																				
Pupil Reactions																				
Ophthalmoscopy																				
Slit Lamp Biomicroscopy																				
Tonometry																				
Visual Fields																				
Assessment																				
Diagnosis																				
Plan																				
Treatment																				
Chart Notes																				
Legible																				
Examiner Identification																				
Continuity of Care																				
Specialist Referral Indicated?																				
Appropriate Referral made?																				

BILLING CHART REVIEW **BILLING METHOD USED:** _____. RECORD #																				
EXAMINATION RECORD																				
Legible																				
No visible whiteout or erasers																				
INVOICE																				
Services match medical record																				
Billing																				
Correct Coding																				
Correct Service Date																				
Materials																				
Billed for correct materials																				
Patient received materials*																				
Lab records match billed materials																				

*"P" for "pending" may be used for materials that are ordered, but have not been delivered. During the next audit review, the auditor must verify any previously pending materials to ensure they were delivered.

Patient Examination Evaluation Checklist

Case History		
Date of patient's last eye examination is captured.	☐YES	☐ NO
The patient's ocular and visual health history is discussed	☐YES	☐ NO
The patient's family medical and ocular history is discussed.	☐YES	☐ NO
The patient's general health status (e.g., medications or existing chronic or acute conditions) is discussed	☐ YES	☐ NO
Examination		
Examination focuses on the problem or complaint presented by the patient	☐YES	☐NO

Refractive status was captured by doing the following:

- ☐ Monocular entering visual acuity with habitual correction.
- ☐ Manifest or Subjective Refraction.
- ☐ Monocular Best Corrected Visual Acuities (BCVA).

Binocular Status was captured by doing any of the following, as appropriate:

- ☐ Cover test (objective)
- ☐ Phorias and/or fixation
- ☐ Near Point of Convergence, (NPC)
- ☐ Stereopsis
- ☐ Fusional ranges and vergence testing
- ☐ Level /grade of binocularity
- ☐ Fixation disparity (subjective)
- ☐ Prism reflex test
- ☐ Hirshberg/Angle Kappa

Ocular health status was captured by doing any of the following, as appropriate:

- ☐ Direct and/or indirect opthalmoscopy (Complete Dilated Fundus Examinations)
- ☐ Neurological integrity – pupillary reflexes and extraocular muscle (motility) evaluations
- ☐ External examination/biomicroscopy
- ☐ Intraocular pressure/tonometry
- ☐ Visual fields screening

Diagnosis and Treatment Plan		
Communicated diagnosis with patient	☐YES	☐ NO
Explained treatment plan to patient	☐YES	☐ NO
If medications were prescribed, the patient was told the strength, dosage, quantity and instructions for use.	☐ YES	☐NO
If medically indicated, patient received proper referral timely. Conditions for referral may include: vision loss, ocular discomfort or pain, double vision, diplopia, swollen lids, red eyes, ocular foreign body sensation, flashes or floaters, pain in or around eyes, etc ,	☐ YES	☐NO

Dilated Fundus Examinations*

Dilated Fundus examinations (DFEs) may be appropriate when certain signs, symptoms or pre-existing systemic and ocular conditions are present such as:

- Diabetes mellitus
- High myopia
- Transient or sudden loss of vision
- Flashes and/or floaters
- Any instance deemed necessary within professionally recognized standard of care

Optometrists who are not certified and authorized to use Diagnostic Pharmaceutical Agents (DPAs) are required to coordinate the referral of the patient to an optometrist or an ophthalmologist that is qualified to use DPAs.

*If the Dilated Fundus Examination was not completed, please provide an explanation below,

_____

_____

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:** August 16, 2013

From: Andrea Leiva
Policy Analyst **Telephone:** (916) 575-7182

Subject: **Agenda Item 10 – Discussion and Possible Action on Legislation Affecting the Board of Optometry**

Action Requested: The following bills, as currently written, affect the Board's functions and the practice of optometry. Staff requests that the Board review each bill and consider establishing a formal position. Possible Board positions include: support, oppose, neutral, no action, etc. September 13, 2013 is the last day for each house to pass bills. October 13, 2013 is the last day for the Governor to sign or veto bills passed by the Legislature on or before September 13 and in the Governor's possession after September 13. The most current language and analysis are attached for each bill.

A. Assembly Bill 186 (Maienschein) Professions and vocations: military spouses: temporary licenses

Last Amended: June 24, 2013

Summary: This bill requires all licensing entities under the Department of Consumer Affairs (DCA) to provide military spouses and domestic partners, who hold a valid professional license in another state, an 18 month provisional license to practice in California.

Status: Two year bill

Recommended Position: Watch

B. Assembly Bill 213 (Logue) Licensure and certification requirements: military experience

Last Amended: April 18, 2013

Summary: This bill requires, by January 1, 2015, the Department of Public Health (DPH) and healing arts boards within the Department of Consumer Affairs (DCA boards) to undertake activities intended to facilitate the transition of military veterans to civilian careers as health care professionals.

Status: Two year bill

Recommended Position: Watch

C. Assembly Bill 258 (Chávez) State agencies: veterans

Last Amended: April 23, 2013

Summary: This bill requires, on or after July 1, 2014, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

Status: Third reading in Senate Appropriations Committee.

Staff Comments: Adding this question to the Board's forms will not be a significant workload or cost.

Recommended Position: Watch.

D. Assembly Bill 480 (Calderon) Service contracts

Last Amended: June 25, 2013

Summary: This bill defines "service contract" to also include "optical products," as defined, thereby requiring a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, and making administrators and sellers of those contracts subject to registration and regulation by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau). Specifies that "service contract" shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

Status: Third reading in Senate Appropriations Committee.

Staff Comments: Last year, a similar bill, AB 1926 (Solorio), was held in the Senate Appropriations Committee suspense file and died there.

Recommended Position: Watch

E. Assembly Bill 512 (Rendon) Healing arts: licensure exemption

Last Amended: February 20, 2013

Summary: This bill extends the sunset date, from January 2014, to January 2018, on existing law permitting qualified, out-of-state health care practitioners to volunteer their services on a limited basis at health care events designed to provide free services for underinsured and uninsured individuals in California.

Status: Passed Senate and ordered to Assembly for concurrence.

Staff Comments: The Board has implemented the regulations; effective April 15, 2013.

Recommended Position: Watch.

F. Assembly Bill 1057 (Medina) Professions and vocations: licenses: military service

Last Amended: June 3, 2013

Summary: This bill requires licensing boards within the Department of Consumer Affairs (DCA), beginning January 1, 2015, to ask on every application for licensure if the applicant is serving in, or has previously served in, the military.

Status: Third reading in Senate Appropriations Committee.

Staff Comments: Costs would be minor and absorbable within existing resources to implement this bill. This bill accommodates for BreEZe, which is a huge consideration for the Board.

Recommended Position: Watch

G. Senate Bill 305 (Price) Healing arts: boards: optometry board sunset bill

Last Amended: August 5, 2013

Summary: Extends until January 1, 2018 the sunset dates for the provisions establishing the Naturopathic Medicine Committee (NMC), the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (SLPHADB), The Board of Occupational Therapy (BOT), the Physical Therapy Board of California (PTB), the Board of Optometry (OB), and the Respiratory Care Board of California (RCB) which are regulated by the Department of Consumer Affairs (DCA); extends the term of the executive officers of the PTB, SLPHADB, RCB, and the OB; specifies that any board, committee or bureau regulated by DCA is authorized to receive specified criminal records needed to complete an application for licensure; exempts certain individuals performing pulmonary tests in specified hospitals in Los Angeles County from certain licensure requirements; and subjects specified boards to review by the appropriate legislative policy committees, as specified.

Status: Assembly Appropriations Committee

Staff Comments: This Board has also had similar issues obtaining records from local agencies. Staff has sent Board approved support letters to both houses already.

Recommended Position: Continued support. The next step is to send a letter to the Governor requesting his signature if the bill passes the Assembly.

H. Senate Bill 430 (Wright) Pupil health: vision appraisal; binocular function

Last Amended: August 5, 2013

Summary: Requires, as of September 1, 2014, all pupils to have a vision exam by an optometrist or ophthalmologist before first enrolling in a California school, and every three years thereafter until the eighth grade.

Status: Assembly Health Committee. Hearing date – August 13, 2013.

Staff Comments: With the Board's approval, a letter with a position of "oppose unless amended" was sent to the author. The Board recommended that the bill be amended to require comprehensive eye examinations, not just vision appraisals with an added binocular function test. The author made the amendments recommended by the Board and the Board's position was changed to "support."

Recommended Position: Continued support.

I. Senate Bill 492 (Hernandez) Optometrist: practice: licensure

Last Amended: August 5, 2013

Summary: This bill would include the provision of habilitative optometric services within the scope of practice of optometry. The bill would expand the scope of practice of optometrists who are certified to use therapeutic pharmaceutical agents by, among other things, authorizing those optometrists to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration for use in treating the eye conditions covered by these provisions. The bill would also expand the ability of an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat certain diseases, as provided. The bill would require the board to grant a certificate to an optometrist for the use of advanced procedures, which include the administration of certain immunizations, if the optometrist meets certain educational requirements.

This bill would expand this requirement to include diagnosing other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's scope of practice. This bill would delete obsolete provisions and make conforming changes.

Status: Two year bill

Staff Comments: With the Board's approval, a letter with a position of "support if amended" was sent to the author. On July 29, 2013, the Department of Consumer Affairs opposed the May 8, 2013 version of this bill.

Recommended Position: Watch. Because this is a two year bill and will not be heard again until this time next year, it is best to watch the bill. This bill will probably be amended again as the author works with stakeholders to determine how to best expand the scope of optometrists. The Board is one of those stakeholders and will continue to provide input and participate in the process.

J. Senate Bill 723 (Correa) Veterans

Last Amended: April 23, 2013

Summary: This bill requires the Employment Development Department (EDD) and the Department of Consumer Affairs (DCA), on or before January 1, 2015, to jointly present a report to the Legislature containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.

Status: Assembly Appropriations suspense file. The suspense file is a holding place for bills which carry appropriations over $50,000 or more.

Staff Comments: This bill will most likely be implemented by DCA and the Board will assist.

Recommended Position: Watch.

K. Senate Bill 724 (Emmerson) Liability: charitable vision screenings

This bill was approved by the Governor on July 11, 2013. It will become effective January 1, 2014

Summary: Provides qualified immunity from liability for damage or injury to a nonprofit charitable organization that provides vision screenings and, if applicable, donated or recycled glasses, as well as participating licensed optometrists, ophthalmologists, or trained volunteers who work with such nonprofit charitable organizations to provide charitable vision screenings under appropriate conditions.

L. Senate Bill 809 (DeSaulnier & Steinberg) Controlled substances: reporting

Last Amended: August 5, 2013

Summary: Creates a dedicated fund to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP) by the Department of Justice (DOJ).

Status: Assembly Business, Professions and Consumer Protection Committee. Hearing date - August 13, 2013.

Staff Comments: Optometrists that are Therapeutic Pharmaceutical Agents (TPA) certified are permitted to prescribe codeine and hydrocodone with compounds, a schedule III drug, for a maximum of three days for specified conditions. If a TPA certified optometrist chooses to prescribe codeine and hydrocodone, then they must obtain a DEA registration. To gain access to the CURES database, an optometrist must have a DEA registration. At this time, the Board does not have a tracking mechanism to determine which TPA certified optometrists have DEA registrations. As a result, all TPA certified optometrists will be affected by the CURES fee attached to optometrist renewal fees. As of May 2013, that is a total of 6,877 licensees. The bill does permit the health boards to determine if the proposed fee of $6 should be lowered if it is found that a lower fee will provide sufficient monies to fund CURES.

Recommended Position: Support

M. Senate Bill 829 (Senate BP & CP Committee) Healing arts: omnibus

Last Amended: August 5, 2013

Summary: Clarifies that in the context of optometry, preferred name for a license is "optometrist license" and the preferred name for certifications is "optometrist certification(s)."

Status: Assembly Appropriations Committee

Staff Comments: This proposal was submitted by the Board earlier this year and was deemed non-controversial, one of the criteria to be included in the omnibus bill.

Recommended Position: Support

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 186

Introduced by Assembly Member Maienschein
(Principal coauthor: Assembly Member Hagman)
(Coauthors: Assembly Members Chávez, Dahle, Donnelly, Beth Gaines, *Garcia,* Grove, Harkey, Olsen, ~~and~~ Patterson, *and V. Manuel Pérez*)
(Coauthors: Senators Fuller and Huff)

January 28, 2013

An act to ~~amend~~ *add* Section ~~115.5 of~~ *115.6 to* the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 186, as amended, Maienschein. Professions and vocations: military spouses: temporary licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Existing law requires that the licensing fees imposed by certain boards within the department be deposited in funds that are continuously

appropriated. Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

This bill would, in addition to the expedited licensure provisions described above, establish a temporary licensure process for an applicant who holds a current license in another jurisdiction, as specified, and who supplies satisfactory evidence of being married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders. The bill would require the temporary license to expire 12 months after issuance, upon issuance of the expedited license, or upon denial of the application for expedited licensure by the board, whichever occurs first.

~~This bill would require a board within the department to issue a temporary license to an applicant who qualifies for, and requests, expedited licensure pursuant to the above-described provision if he or she meets specified requirements, except as provided. The bill would require the temporary license to expire 12 months after issuance, upon issuance of the expedited license, or upon denial of the application for expedited licensure by the board, whichever occurs first. The bill would authorize a board to conduct an investigation of an applicant for purposes of denying or revoking a temporary license, and would authorize a criminal background check as part of that investigation. The~~

This bill would require an applicant seeking a temporary license to submit an application to the board that includes a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, as specified. The bill would also require the application to include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing. *The bill would authorize a board to conduct an investigation of an applicant for purposes of denying or revoking a temporary license and would authorize a criminal background check as part of that investigation. The bill would require an applicant, upon request by a board, to furnish a full set of fingerprints for purposes of conducting the criminal background check.*

This bill would prohibit a temporary license from being provided to any applicant who has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license at the time the act was committed. The bill would provide that a violation of the above-described provision may be grounds for the denial or revocation of a temporary license. The bill would further prohibit a temporary license from being provided to any applicant who has been disciplined by a licensing entity in another jurisdiction, or is the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction. ~~The bill would require an applicant, upon request by a board, to furnish a full set of fingerprints for purposes of conducting a criminal background check.~~

This bill would authorize the immediate termination of any temporary license to practice medicine upon a finding that the temporary licenseholder failed to meet any of the requirements described above or provided substantively inaccurate information that would affect his or her eligibility for temporary licensure. The bill would, upon termination of the license, require the board to issue a notice of termination requiring the temporary licenseholder to immediately cease the practice of medicine upon receipt.

This bill would exclude from these provisions a board that has established a temporary licensing process before January 1, 2014.

Because the bill would authorize the expenditure of continuously appropriated funds for a new purpose, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 115.6 is added to the Business and Professions Code, to read:

115.6. (a) A board within the department shall, after appropriate investigation, issue a temporary license to an applicant if he or she meets the requirements set forth in subdivision (c). The temporary license shall expire 12 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board, whichever occurs first.

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

(1) The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) The applicant shall hold a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a temporary license from the board.

(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of his or her knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A board may adopt regulations necessary to administer this section.

(e) A temporary license issued pursuant to this section for the practice of medicine may be immediately terminated upon a finding

that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect his or her eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary licenseholder to immediately cease the practice of medicine upon receipt.

(f) This section shall not apply to a board that has established a temporary licensing process before January 1, 2014.

~~SECTION 1. Section 115.5 of the Business and Professions Code is amended to read:~~

~~115.5. (a) Except as provided in subdivision (d), a board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:~~

~~(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.~~

~~(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.~~

~~(b) (1) A board shall, after appropriate investigation, issue a temporary license to an applicant who is eligible for, and requests, expedited licensure pursuant to subdivision (a) if the applicant meets the requirements described in paragraph (3). The temporary license shall expire 12 months after issuance, upon issuance of the expedited license, or upon denial of the application for expedited licensure by the board, whichever occurs first.~~

~~(2) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this subdivision. This investigation may include a criminal background check.~~

~~(3) (A) An applicant seeking a temporary license issued pursuant to this subdivision shall submit an application to the board which shall include a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of his or her knowledge. The application shall also include written verification from the applicant's original licensing~~

~~jurisdiction stating that the applicant's license is in good standing in that jurisdiction.~~

~~(B) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this subparagraph may be grounds for the denial or revocation of a temporary license issued by the board.~~

~~(C) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.~~

~~(D) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.~~

~~(c)~~

~~A board may adopt regulations necessary to administer this section.~~

~~(d) This section shall not apply to a board that has established a temporary licensing process before January 1, 2014.~~

O

BILL ANALYSIS

Hearing Date:July 1, 2013	Bill No:AB 186

SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT
Senator Ted W. Lieu, Chair

Bill No: AB 186 Author: Maienschein
As Amended: June 24, 2013Fiscal: Yes

SUBJECT: Professions and vocations: military spouses: temporary licenses.

SUMMARY: Requires all licensing entities under the Department of Consumer Affairs (DCA) to provide military spouses and domestic partners, who hold a valid professional license in another state, an 18 month provisional license to practice in California.

Existing law:

1) Provides for the licensure and regulation of various professions and vocations by boards within the DCA.

2) Defines "license" as a license, certificate, registration or other means to engage in a business or profession regulated by the Business and Professions Code (BPC). (BPC § 23.7)

3) Defines "board" as a board, bureau, commission, committee, department, division, examining committee, program or agency within the DCA. (BPC § 22)

4) Defines "military service" as federal service after October 1, 1940, where a military member is on active duty with any branch of service as well as training or education under the supervision of the United States preliminary to induction into the military service.
(BPC § 10460 (c))

5) Defines "active service" or "active duty" as the period during which a person in military service is absent from duty on account

of sickness, wounds, leave, or other lawful cause. (BPC § 10460 (c))

6) Specifies that a board within DCA shall expedite the licensure process for an applicant who meets both of the following requirements: (BPC § 155.5)

a) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

b) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

This bill:

1) Requires the boards within DCA to issue a 12-month temporary license to an applicant who is a military spouse or domestic partner while the license application is being processed, if:

a) The applicant supplies satisfactory evidence that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders;

b) The applicant holds a current license in another state, district or territory of the United States in the profession or vocation for which he or she seeks a license from the board;

c) The applicant submits an affidavit attesting that the information submitted in the application is accurate;

d) The applicant submits written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing;

e) The applicant, upon the board's request, submits fingerprints for a background check;

f) The applicant has not committed any act in any jurisdiction that constitutes grounds for the denial, suspension, or revocation of the professional license by the board under the

Business and Professions Code (BPC) at the time the act was committed; and,

g) The applicant was not disciplined by a licensing entity in

another jurisdiction and is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

2) Specifies that a board within DCA may adopt necessary regulations to enact this legislation.

3) Indicates that any temporary license for the practice of medicine may be immediately terminated if it is found that the individual violated any requirements or provided inaccurate information that would affect their eligibility for licensure.

4) Permits the boards within DCA to issue a notice to cease the practice of medicine immediately upon receipt of the notification of the termination of the temporary license.

5) Specifies that the provisions of the bill shall not apply to a board within DCA that has established a temporary licensing process before January 1, 2014.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis dated April 22, 2013, if the BreEZe system is fully implemented prior to the completion of the regulations for the new provisional license type, the cost to DCA would be under $100,000. However if there are delays in the implementation of BreEZe, one-time costs to DCA would be approximately $500,000.

COMMENTS:

1. Purpose. This bill is sponsored by the Author. According to the Author, "The wait time for expedited licenses can be very long, and spouses can't even begin seeking employment until their license has been approved. A December article in USAA Magazine described the process as taking many months even after all appropriate documentation has been submitted, fees being paid, and tests taken to receive the license. The unemployment rate amongst military spouses is estimated to be about 26% which is three times the national average."

2. Background. According to a 2005 study conducted by the RAND

National Defense Research Institute, the majority of military spouses are less likely to be employed, more likely to be seeking work and earn less than comparable civilian spouses. Military spouses versus civilian spouses are more likely to live in metropolitan areas. Moreover, they are more likely to have graduated from high school and to have some college education. These facts would ostensibly increase their employability. However, due to "military lifestyle" which includes frequent moves, deployments and long hours that keep service members from assisting with parenting, employment opportunities for spouses are negatively

impacted.

Current data suggests:

68% of married military members report that their spouse's ability to maintain a career impacts their decision to remain in the military.

67% of military spouses report that they want or need to work.

The annual percent of the military spouse population that moves across state lines is14.5%, compared to 11% for civilian spouses.

As much as 34% of military spouses in the labor force are required to be fully licensed.

19% of employed spouses experience challenges maintaining their licenses.

1. United States Department of Defense (DOD) and Department of the Treasury (DOT) Report. On January 24, 2011, United States 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 President's directive, the United States DOT and the United States DOD 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.

The report also listed jobs military spouses commonly accepted and revealed how licensing requirements impacted employment opportunities: "Teaching is the most common occupation among military spouses, followed by child care services, and nursing. While many of the common occupations among military spouses are not licensed, some of the most popular professions, including teaching and nursing, do require licensure. 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 United States DOT and DOD 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."

2. Military Spouses Employment Partnership. On June 29, 2011, the Military Spouse Employment Partnership (MSEP) was launched at the Chamber of Commerce in Washington, D.C. The MSEP program is an expansion of the Army Spouse Employment Partnership program and is focused on helping military spouses from all branches of the military attain financial security and achieve educational and employment goals.

Through a website, the MSEP creates a gateway for military spouses and corporate and non-profit organizations to interact. The MSEP has been the latest development in an effort backed by President Barack Obama's administration to do more to help military families. In May of 2012, 34 companies joined the MSEP and pledged to recruit, hire, promote and retain military spouses in portable careers.

3. Expedited Licensure for Military Spouses. In 2012, AB 1904 (Block, Chapter 399, Statutes of 2012) was passed. This bill required all licensing entities under the DCA to issue an expedited license to the spouse or domestic partner of a military member on active duty,

beginning January 1, 2013. To date, there is no available data on how many expedited licenses have been granted by the DCA licensing entities to military spouses or domestic partners.

4. Arguments in Support. The American Legion-Department of California, AMVETS- Department of California, California State Commanders Veterans Council, VFW- Department of California and Vietnam Veterans of America- California State Council wrote a joint letter of support for the bill. In it they indicate, "We support this bill because it will help qualified military spouses to be employed in their licensed field of expertise quickly under a provisional license rather than having to wait to get a job until they get through the process of obtaining a California license if they already are licensed in another state."

Brigadier General Vincent A. Coglianese writes, "The White House Joining Forces initiative has called attention to the barriers currently preventing military spouses from maintaining employment

on a normal progression path regardless of relocation. Consequently, the majority of military spouses are less likely to be employed, more likely to be seeking work and earn less than comparable civilian spouses, despite possessing more education and employable skills than the average population. One often-faced barrier is the lack of broad-based reciprocity among the states for recognizing professional licenses or certificates held by military spouses. This bill, by requiring boards?to issue a temporary license to the spouse of a service member, would help address this barrier."

The Commander, Navy Region Southwest supports the bill and writes, "On behalf of Navy installations in California, I am writing in support of AB 186. The ability of a military spouse to continue their professional life is an important part of maintaining households during periods of long deployments, and is especially needed for military families based in higher cost urban areas such as southern California."

The National Military Family Association , the California Association for Health Services at Home and the San Diego Military Advisory Council also support the bill. They believe that the lack of broad-based reciprocity among the states to recognize professional licenses or certificates creates a significant barrier to employment. With each government ordered move, military spouses incur high costs for recertification and delays before they are able to work. They believe that provisional licenses will permit military spouses to become employed quickly, financially benefiting

the family and the state of California.

The Department of Defense states, "We appreciate any concern for protecting the public and would not want a spouse to be licensed when they are not qualified or would pose a danger to those they served. The spouses we are referring to in this bill are all licensed in another state. We understand that the reason for licensing is to safeguard the public, and we believe (as several other states believe) that providing a temporary license to a military spouse who is already licensed in another state and who has had experience in that licensed occupation presents little risk to the public."

5. Support if Amended. The Board of Behavioral Sciences (BBS) submitted a letter reflecting their support if amended position. In it they state, "The BBS supports the intent of this bill to assist spouses of military members to quickly obtain employment. However, the Board respectfully requests three additional amendments in order to ensure consumer protection is upheld:
   An amendment to require that the temporary license applicant provide a transcript to the licensing board;

An amendment requiring the temporary license applicant to pass the Board's California Law and Ethics examination prior to the issuance of the temporary license; and,

An amendment allowing delayed implementation to accommodate DCA's transition to the new BreEZe database system."

The California Board of Accountancy (CBA) also supports the bill if amended. In their letter they write, "The CBA supports the military and their families; however, it would like to request an amendment to clarify that an individual's license must be current, active and unrestricted with the authority to practice the identified profession in the state that issued the individual's license."

The Medical Board of California indicates, "The Board is supportive of this bill if it is amended to include language that would allow for termination of the temporary license if it is found that the individual issued the temporary license violated any requirements in the bill or provided substantive inaccurate information that would affect their eligibility for licensure. The Board has requested this amendment in order to ensure consumer protection and

has been working with the author's office to draft language that will address the Board's concerns, which the author's office has agreed to take. Once this language is amended into the bill, the Board will be supportive of AB 186." (Note: The Author has taken the amendments suggested by the MBC)

1. Oppose Unless Amended. The American Association for Marriage and Family Therapy- California Division opposes the bill unless the following three amendments are taken:

   Require either a 12-hour course in California Law and Ethics or successful completion of a state-administered California Law and Ethics exam prior to the issuance of the license;

   Require that the licensee provide proof that their license is active and in good standing prior to the issuance of the license; and,

   Require that the licensure requirements of the applicant's home state be substantially equivalent to those of California.

The Board for Professional Engineers, Land Surveyors and Geologists opposes the bill unless amended. In their letter they write, "The Board voted to oppose AB 186 unless amended because it would not be able to comply with the proposed law in all cases. Most engineers coming to California with a current license in another state can be

issued a California license through comity in a matter of weeks. Civil, Geotechnical and Structural engineers, Land Surveyors and Geologists coming to California must take and pass California exams specific to their discipline before they can be issued a license, which would also include a provisional license. The California examinations cover seismic issues specific to California, consequently, the Board would be negligent if it issued a license to someone who may not be familiar with the terrain, soils, and seismic issues of this State. Fortunately these five disciplines can practice, and therefore work, in California under the responsible charge of another licensee who can review their work and sign and stamp plans, but they cannot be issued a license until they have passed the state specific examination."

The California Architects Board opposes the bill unless amended. They write, "Although the Board unequivocally supports members of our nation's Armed Forces and initiatives that address the challenges facing military families, it cannot waive the California Supplemental Examination requirement (CSE). The CSE is a critical

licensure requirement which all licensees in our state must complete, demonstrating competence in California's seismic, accessibility, energy and legal requirements. The Board cannot waive the CSE requirement and simultaneously meet its mandate to protect the health, safety and welfare of the public."

1. Arguments in Opposition. The Board of Chiropractic Examiners (BCE) opposes the bill. They contend, "The Board fears that issuing a license to applicants prior to completing the full background check and license verification would put the public at risk of potential harm. Affidavits do not ensure that the information included in the application is truthful. Additionally, the mandate to issue temporary licenses in this bill conflicts with the Chiropractic Initiative Act. The Act defines the educational requirements, fees, and conditions under which the BCE may issue a license to practice chiropractic. Lastly, the Act prohibits the BCE from reciprocating licenses with states that do not have similar requirements and do not reciprocate licenses with California. The Act was created through an initiative measure in 1922 and can only be changed through a ballot initiative. Therefore, the BCE is unable to comply with the provisions in this bill."

   The Contractors State License Board (CSLB) also opposes the bill. In their letter they write, "The Board respectively requests an amendment to provide an exemption from the bill's provisions. ..CSLB supports the goal of assisting military families. However, as required by recent legislation, CSLB expedites applications for military spouses and does not believe its licensing process is so long as to require the need for a temporary license. Additionally, as there is no exam requirement for the temporary license, these individuals will have the ability to contract but will not be

required to be familiar with California law or building code requirements with which they need to comply. We believe this may put California consumers at risk."

2. Policy Issues for Consideration. The goal and spirit of this legislation is to promote expedited licensure for military spouses and domestic partners. As illustrated in the background section of this analysis, the need for this action has been well studied and documented. Further, there is a federal effort to encourage state licensing entities to adopt policies that will assist in expediting the licensure process for military spouses. In response, the California Legislature passed AB 1904 in 2012. Despite this, AB 186 attempts to promote even more timely expedition of licenses by the DCA licensing entities by granting an immediate provisional license for a military spouse to practice in California.

Despite this measure's laudable efforts, it is equally important to note that the expediting of licensure should not result in compromised consumer protection or limit the authority of the licensing entities to exercise discretion when issuing licenses. Specifically, as noted in the United States DOT and DOD recommendations, "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." Further, this bill raises concerns about the ability of the DCA licensing entities to carry out the bill's mandates. Notably, as indicated in the opposition letters submitted by several licensing boards, this bill raises questions about consumer protection as necessary background checks and verification of California specific coursework, examinations and training requirements would be waived if a provisional license was immediately granted to a military spouse or domestic partner. Lastly, this bill may be premature as there has not been adequate time to study the results of the new expedited licensure requirements that went into effect on January 1, 2013.

SUPPORT AND OPPOSITION:
Support:

American Legion- Department of California
AMVETS- Department of California
Brigadier General Vincent A. Coglianese
California Architects Board
California Association for Health Services at Home
California State Commanders Veterans Council
Commander, Navy Region Southwest
National Military Family Association
San Diego Military Advisory Council

United States Department of Defense
VFW- Department of California
Vietnam Veterans of America- California State Council

Support if Amended:

Board of Behavioral Sciences
California Board of Accountancy
Medical Board of California

Oppose Unless Amended:

American Association for Marriage and Family Therapy- California Division
Board for Professional Engineers, Land Surveyors and Geologists
California Architects Board

Oppose:

Board of Chiropractic Examiners
Contractors State License Board

Consultant:Le Ondra Clark, Ph.D.

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 213

Introduced by Assembly Member Logue
(Principal coauthor: Assembly Member Pan)
(Coauthors: Assembly Members Conway, Beth Gaines, Harkey, Jones, Morrell, Nestande, and Wilk)

January 31, 2013

An act to add Section 712 to the Business and Professions Code, and to add Section 131136 to the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 213, as amended, Logue. Healing arts: licensure and certification requirements: military experience.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Existing law requires the rules and regulations of these healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board. Under existing law, specified other healing arts professions and vocations are licensed or certified and regulated by the State Department of Public Health. In some instances, a board with the Department of Consumer Affairs or the State Department of Public

Health approves schools offering educational course credit for meeting licensing or certification qualifications and requirements.

This bill would require the State Department of Public Health, upon the presentation of evidence by an applicant for licensure or certification, to accept education, training, and practical experience completed by an applicant in military service toward the qualifications and requirements to receive a license or certificate for specified professions and vocations if that education, training, or experience is equivalent to the standards of the department. If a board within the Department of Consumer Affairs or the State Department of Public Health accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the bill would, not later than January 1, 2015, require those schools seeking accreditation or approval to have procedures in place to evaluate an applicant's military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification, as specified.

Under existing law, the Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans. Under existing law, the Chancellor of the California State University and the Chancellor of the California Community Colleges have specified powers and duties relating to statewide health education programs.

With respect to complying with the bill's requirements and obtaining specified funds to support compliance with these provisions, this bill would require the Department of Veterans Affairs, the Chancellor of the California State University, and the Chancellor of the California Community Colleges to provide technical assistance to the healing arts boards within the Department of Consumer Affairs, the State Department of Public Health, and to the schools offering, or seeking to offer, educational course credit for meeting licensing qualifications and requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Veterans Health Care Workforce Act of 2013.
3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

(1) Lack of health care providers continues to be a significant barrier to access to health care services in medically underserved urban and rural areas of California.

(2) Veterans of the United States Armed Forces and the California National Guard gain invaluable education, training, and practical experience through their military service.

(3) According to the federal Department of Defense, as of June 2011, one million veterans were unemployed nationally and the jobless rate for post-9/11 veterans was 13.3 percent, with young male veterans 18 to 24 years of age experiencing an unemployment rate of 21.9 percent.

(4) According to the federal Department of Defense, during the 2011 federal fiscal year, 8,854 enlisted service members with medical classifications separated from active duty.

(5) According to the federal Department of Defense, during the 2011 federal fiscal year, 16,777 service members who separated from active duty listed California as their state of residence.

(6) It is critical, both to veterans seeking to transition to civilian health care professions and to patients living in underserved urban and rural areas of California, that the Legislature ensures that veteran applicants for licensure by healing arts boards within the Department of Consumer Affairs or the State Department of Public Health are expedited through the qualifications and requirements process.

(b) It is the intent of the Legislature to ensure that boards within the Department of Consumer Affairs and the State Department of Public Health and schools offering educational course credit for meeting licensing qualifications and requirements fully and expeditiously recognize and provide credit for an applicant's military education, training, and practical experience.

SEC. 3. Section 712 is added to the Business and Professions Code, to read:

712. (a) Not later than January 1, 2015, if a board under this division accredits or otherwise approves schools offering educational course credit for meeting licensing qualifications and requirements, the board shall require a school seeking accreditation or approval to submit to the board proof that the school has procedures in place to evaluate, upon presentation of satisfactory evidence by the applicant, the applicant's military education, training, and practical experience toward the completion of an

educational program that would qualify a person to apply for licensure if the school determines that the education, training, or practical experience is equivalent to the standards of the board. A board that requires a school to be accredited by a national organization shall not impose requirements on the school that conflict with the standards of the national organization.

(b) With respect to ~~complying~~ *compliance* with the requirements of this section, including the determination of equivalency between the education, training, or practical experience of an applicant and the board's standards, and obtaining state, federal, or private funds to support compliance with this section, the Department of Veterans Affairs, the Chancellor of the California State University, and the Chancellor of the California Community Colleges shall provide technical assistance to the boards under this division and to the schools under this section.

(c) Nothing in this section shall interfere with an educational, certification, or licensing requirement or standard set by a licensing entity or certification board or other appropriate healing arts regulatory agency or entity, to practice health care in the state.

SEC. 4. Section 131136 is added to the Health and Safety Code, to read:

131136. (a) Notwithstanding any other provision of law, the department shall, upon the presentation of satisfactory evidence by an applicant for licensure or certification in one of the professions described in subdivision (b), accept the education, training, and practical experience completed by the applicant as a member of the United States Armed Forces or Military Reserves of the United States, the national guard of any state, the military reserves of any state, or the naval militia of any state, toward the qualifications and requirements for licensure or certification by the department if the department determines that the education, training, or practical experience is equivalent to the standards of the department.

(b) The following professions are subject to this section:

(1) Medical laboratory technician as described in Section 1260.3 of the Business and Professions Code.

(2) Clinical laboratory scientist as described in Section 1261 of the Business and Professions Code.

(3) Radiologic technologist as described in Chapter 6 (commencing with Section 114840) of Part 9 of Division 104.

(4) Nuclear medicine technologist as described in Chapter 4 (commencing with Section 107150) of Part 1 of Division 104.

(5) Certified nurse assistant as described in Article 9 (commencing with Section 1337) of Chapter 2 of Division 2.

(6) Certified home health aide as described in Section 1736.1.

(7) Certified hemodialysis technician as described in Section 1247.61 of the Business and Professions Code.

(8) Nursing home administrator as described in Section 1416.2.

(c) Not later than January 1, 2015, if the department accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the department shall require a school seeking accreditation or approval to submit to the board proof that the school has procedures in place to fully accept an applicant's military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification if the school determines that the education, training, or practical experience is equivalent to the standards of the department. If the department requires a school to be accredited by a national organization, the requirement of the department shall not, in any way, conflict with standards set by the national organization.

(d) With respect to complying with the requirements of this section including the determination of equivalency between the education, training, or practical experience of an applicant and the department's standards, and obtaining state, federal, or private funds to support compliance with this section, the Department of Veterans Affairs, the Chancellor of the California State University, and the Chancellor of the California Community Colleges shall provide technical assistance to the department, to the State Public Health Officer, and to the schools described in this section.

(e) Nothing in this section shall interfere with an educational, certification, or licensing requirement or standard set by a licensing entity or certification board or other appropriate healing arts regulatory agency or entity, to practice health care in California.

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BILL ANALYSIS

AB 213
Page 1

Date of Hearing: May 15, 2013

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mike Gatto, Chair

AB 213 (Logue) - As Amended: April 18, 2013

Policy Committee: Business, Professions and Consumer Affairs Vote: 13-0
Veterans Affairs 8-0

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

SUMMARY

This bill requires, by January 1, 2015, the Department of Public Health (DPH) and healing arts boards within the Department of Consumer Affairs (DCA boards) to undertake activities intended to facilitate the transition of military veterans to civilian careers as health care professionals. Specifically, this bill:

1) Requires DPH to accept education, training, and practical experience completed in the military, as specified, toward licensure or certification, if DPH determines the education, training, or experience is equivalent to DPH's standards.

2) Applies to the following professions regulated by DPH: a) medical laboratory technicians; b) clinical laboratory scientists; c) radiologic technologists; d) nuclear medicine technologists;
e) certified nurse assistants; f) certified home health aides; g) certified hemodialysis technicians; and h) nursing home administrators.

3) Requires DPH and DCA boards, that accredit or approve schools offering course credit for licensure requirements, to require schools seeking accreditation or approval to submit proof of the school's procedures to evaluate an applicant's military education, training, and experience toward completion of an education program that would qualify the applicant for licensure if the school determines that the education, training or practice experience is equivalent to the DPH or DCA board's standard, as specified.

4) Requires the Department of Veterans Affairs (DVA), California State University (CSU) and California Community Colleges (CCC) to provide technical assistance to DPH and DCA for determining equivalency between education, training, and experience of an applicant and DPH or DCS board standards, and for obtaining state, federal, or private funds for implementation.

FISCAL EFFECT

1) One-time and ongoing costs, to DPH and DCA boards, to review existing military and school programs for equivalency, develop a process to ensure compliance by schools, and review compliance. Initial costs are in the range of $500,000 to DPH and $100,000 to DCA boards, with ongoing costs decreasing but remaining significant.

2) Minor, absorbable costs to DVA, CSU and CCC, to provide technical assistance to DPH and DCA.

3) State costs could be offset if private or federal funds are available for implementation.

COMMENTS

1) Rationale . According to the author, this bill facilitate the transition of veterans with healthcare education, training, and practical experience into civilian employment as healthcare professionals.

2) Background . Because of similarities in training and experience compared to their civilian counterparts, individuals with military training and experience in health care may be well-positioned to meet the state's health care needs upon their separation from service. Both DCA and DPH were required to submit a report to the Legislature in October 2012 detailing how professional licensure programs under their respective jurisdictions address military experience. The results suggest that while DCA boards generally have sufficient authority to accept military service towards licensure, DPH may not.

3) Related Legislation . AB 704 (Blumenfield) requires the Emergency Medical Services Authority (EMSA) to develop and adopt regulations to accept education, training, and practical experience completed by an applicant with military experience

toward the qualifications and requirements for EMT-I certification, EMT-II certification, or EMT-P licensure, as specified. AB 704 passed out of the Assembly and is pending in the Senate.

AB 705 (Blumenfield) requires the Board of Registered Nursing to adopt regulations that identify military coursework, training, and experience equivalent or transferable to coursework required for licensure by the board. AB 705 is pending on this committee's Suspense File.
AB 1057 (Medina) requires all DCA boards (not just the healing arts boards) to ask each applicant for licensure about military experience. AB 1057 passed out of the Assembly and is pending in the Senate.

4) Previous Legislation . AB 1976 (Logue) of 2012 was substantially similar to this bill. AB 1976 was held in this committee.

AB 1932 (Cook) of 2012 would have required DCA boards to issue a written report to DVA by January 1, 2014 detailing the methods for evaluating the education, training, and experience obtained by applicants in military service and whether that education, training, and experience is applicable to the boards' requirements for licensure. AB 1932 passed out of the Assembly but was never referred out of Senate Rules Committee.

Analysis Prepared by : Debra Roth / APPR. / (916) 319-2081

AMENDED IN ASSEMBLY APRIL 23, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 258

Introduced by Assembly Member Chávez

February 7, 2013

An act to add Section 11019.11 to the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 258, as amended, Chávez. State agencies: veterans.

Existing law provides for the governance and regulation of state agencies, as defined. Existing law provides certain benefits and protections for members of the Armed Forces of the United States.

This bill would require, *on or after July 1, 2014,* every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11019.11 is added to the Government Code, to read:

11019.11. (a) Every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, shall request that information only in the following format: "Have you ever served in the *United States* military?"

(b) This section shall apply only to a written form or written publication that is newly printed on or after ~~January~~ *July* 1, 2014.

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BILL ANALYSIS

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

AB 258

THIRD READING

Bill No: AB 258
Author: Chávez (R)
Amended: 4/23/13 in Assembly
Vote: 21

SENATE VETERANS AFFAIRS COMMITTEE : 7-0, 6/11/13
AYES: Hueso, Knight, Block, Correa, Lieu, Nielsen, Roth
NO VOTE RECORDED: Vacancy

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 78-0, 4/29/13 - See last page for vote

SUBJECT : State agencies: veterans

SOURCE : Author

DIGEST : This bill requires, on or after July 1, 2014, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

ANALYSIS : Existing law does not specify whether or how a state agency should request to know if someone communicating with that agency is in the military or is a veteran.

This bill:

1. Mandates that every state agency that inquires whether a person is a veteran must request that information only in the

CONTINUED

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following format: "Have you ever served in the United States military?"

2. Specifies that this section applies only to a written form or written publication that is newly printed on or after July 1, 2014.

Background

In 2011, the most recent data available from the U.S. Department of Veterans Affairs, California veterans received an average compensation and pension amount of $1,929. This was less than the national average of $2,104. Increasing the participation rate for California veterans would benefit the veterans and the economy of the state.

According to the author's office, when residents are asked if they are a veteran many will incorrectly answer in the negative. The problem seems to be that the term "veteran" often has connotative meanings can that restrict its practical application. In the minds of many, "veteran" refers to older men, who served in the military during World War Two, Korea or Vietnam, wearing an American Legion or VFW uniform cap - and not to younger persons, particularly women, who have served in the military in the last two decades, or who may not have served in combat. Many younger and/or female veterans more readily self-identify as "prior military" or a similar term.

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

SUPPORT : (Verified 6/28/13)

AFSCME, AFL-CIO
American Association of University Women - California
California Association of County Veterans Service Officers
Housing California

ARGUMENTS IN SUPPORT : According to the author:

Currently California residents are simply asked, "Are you a veteran?" Although a very simple question, many veterans believe they are not true veterans because they have never served in combat or, most commonly, because they are women.

CONTINUED

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In 2011 the California Research Bureau [CRB] conducted a survey on women, 63 of the 843 respondents (7.4%), marked that they were not a veteran then included comments such as, "I

served in the Air Force," additionally the women stated "I thought veteran benefits were only for men.

Furthermore, when the CRB held the ICV (Interagency Council on Veterans) meetings in December 2011, and Jan. and Feb. 2012 both women in the services repeatedly stated that the, "Are you a veteran?" question was insufficient for identifying female veterans and men who had not served in combat.

Veterans who do not identify themselves can lose out on many Federal Benefits for which they are entitled. Such benefits include the GI Bill, disability compensation and pension, access to free or reduced cost medical care, vocational rehab, unemployment benefits, veteran home loans, burial benefits, and survivor benefits.

ASSEMBLY FLOOR : 78-0, 4/29/13
AYES: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Torres, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez
NO VOTE RECORDED: Atkins, Vacancy

AL:k 7/1/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 480

Introduced by Assembly Member Ian Calderon

February 19, 2013

An act to amend Section 9855 of the Business and Professions Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 480, as amended, Ian Calderon. Service contracts.

Existing law, the Electronic and Appliance Repair Dealer Registration Law, regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances, and makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefore subject to specified criminal penalties.

This bill would include in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the bureau and other requirements of the act. By expanding the definition of service contract, the bill would expand the scope of a crime and, thus, would impose a state-mandated local program. *The bill would provide that a contract in which a consumer agrees to pay a provider of vision care*

services for a discount on optical products or contact lenses for a specified duration is not included in the definition of service contract. The bill would also define optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.

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 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of an electronic set or appliance, as defined by this chapter, and their accessories or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, optical products, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. "Service contract" ~~does~~ *shall* not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services. *"Service contract" shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.*

(b) "Service contract administrator" or "administrator" means a person who performs or arranges the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or

arranges any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract unless all service contracts under which the service contract administrator is obligated to perform are insured under a service contract reimbursement insurance policy.

(c) (1) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(2) "Service contract seller" or "seller" also means a third party, including an obligor, who is not the seller, manufacturer, or repairer of the product. However, a third party shall not be an obligor on a service contract unless the obligor obtains a service contract reimbursement insurance policy for all service contracts under which the third party is obligated under the terms of a service contract.

(3) "Service contract seller" or "seller" shall not include the following:

(A) A bank or bank holding company, or the subsidiary or affiliate of either, or a financial institution, licensed under state or federal law, selling or offering to sell a service contract unless that entity is financially and legally obligated under the terms of a service contract.

(B) An electrical device manufacturer or electrical contractor who constructs, installs, or services electrical devices, which include any unit of an electrical system intended to carry electrical energy as part of a building's electrical system, including raceways, conductors, invertors, conduit, wires, switches, or other similar devices.

(d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

(e) "Service contractor" means a service contract administrator or a service contract seller.

(f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

(h) "Optical products" means prescription and nonprescription eyewear. "Optical products" shall not include contact lenses of any kind.

(i) The terms "consumer goods," "manufacturer," "retail seller," "retailer," and "sale" shall have the same meanings ascribed to them in Section 1791 of the Civil Code.

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.

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BILL ANALYSIS

SENATE RULES COMMITTEE
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AB 480

THIRD READING

Bill No: AB 480
Author: Ian Calderon (D)
Amended: 6/25/13 in Senate
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 10-0, 6/17/13
AYES: Lieu, Emmerson, Block, Corbett, Galgiani, Hernandez, Hill, Padilla, Wyland, Yee

SENATE APPROPRIATIONS COMMITTEE : 6-0, 7/1/13
AYES: De León, Walters, Gaines, Hill, Lara, Steinberg
NO VOTE RECORDED: Padilla

ASSEMBLY FLOOR : 76-1, 5/28/13 - See last page for vote

SUBJECT : Service contracts

SOURCE : NEWAsurion

DIGEST : This bill defines "service contract" to also include "optical products," as defined, thereby requiring a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, and making administrators and sellers of those contracts subject to registration and regulation by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau). Specifies that "service contract" shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

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ANALYSIS :

Existing law:

1. Regulates service contract sellers, service contract administrators, and electronic service dealers by the Bureau.

2. Defines certain terms for purposes of the service contract law, including "service contract," "service contract administrator" or "administrator," "service contract seller" or "seller," and "obligor."

3. Makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau under the Electronic and Appliance Repair Dealer Registration Law.

4. Provides that unless lawfully transacting business as an insurance agent, a service contract administrator or third-party seller, who does not have a service contract reimbursement insurance policy covering all of the service contracts sold, shall be deemed to be the unlawful transaction of the business of insurance and subject to specified criminal penalties.

This bill:

1. Includes optical products in the definition of "service contract" thereby requiring a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, and thus making administrators and sellers of those contracts subject to registration and regulation by the Bureau.

2. Specifies that "service contract" shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

3. Defines "optical products" to mean prescription and

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nonprescription eyewear and shall not include contact lenses of any kind.

Background

Service contacts . Service contracts (also referred to as protection plans, extended warranties or maintenance agreements) cover a broad range of products which are collectively governed by the provisions of BPC Section 9801 et seq.
Service contracts are bought separately from the product and last for a specific period of time. Similar to insurance policies, these contracts assure consumers that should something go wrong with a product their investment is protected at a fraction of the cost of out-of-pocket repair work.

Those providing service contracts must register with the Bureau and comply with both the laws and regulations regarding service contracts and service contract sellers. Service contracts are also subject to regulation pursuant to the Song-Beverly Warranty Act which is intended to protect consumers who purchase goods covered by service contracts and extended warranties by requiring that certain provisions be included in the contracts and by obligating the service contract sellers to adhere to certain standards when providing such contracts or warranties.

History of the regulation of service contracts in California . In 1998, SB 2075 (Polanco, Chapter 1075) required the DCA to conduct an in-depth study of the evolving marketplace related to home service contracts and to include recommendations regarding regulation of home service contracts. On August 31, 1999, the DCA released its report titled, The Service Contract Industry in California - Market Trends and Policy Issues (Service Contract Report). The following background information regarding the regulation of service contracts is extracted from that report:

> The Bureau was given regulatory responsibility regarding "service contracts" in 1994, with the passage of the Service Contractor Registration Act. The reason for this was that many of these service contracts provided for the maintenance, repair and/or replacement of electronics and appliances by service dealers that Bureau already regulated. The main force behind California's regulation of service contracts was the occurrence of defaulting on contracts by service contract providers. In the early

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> 1990s, consumer complaints about defaults by service contract companies increased considerably. A number of service contract companies simply went out of business or moved out of state, leaving consumers without the protection for which they paid. Consumers also complained that contracts sold to them simply duplicated repair services already covered by the manufacturer's warranty.

By duplicating coverage, service contract providers were charging consumers extra money for services that were already included in their purchases, since manufacturers' warranties are included in the purchase prices of products.

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

According to the Senate Appropriations Committee:

Increased licensing and enforcement workload requiring 1.5 positions and $102,000 in 2014-15, 2.3 positions and $167,000 in 2015-16, and 2.9 positions and $231,000 ongoing (Electronic and Appliance Repair Fund).

Estimated registration fee revenues of $109,000 in 2014-15, and $218,000 ongoing (Electronic and Appliance Repair Fund). This estimate assumes 2,900 new licenses will be issued as a result of this bill, each paying a registration fee of $75 annually.

SUPPORT : (Verified 7/1/13)

NEWAsurion (source)
California Retailers Association

ARGUMENTS IN SUPPORT : According to the author's office, this bill adds "optical products" to the current definition of service contracts (also known as extended warranties, protection plans, and service agreements) so that retailers and manufacturers can sell service contracts for prescription and nonprescription eyewear. Additionally, it subjects the administrators and sellers of such contracts to the Electronic and Appliance Repair Dealer Registration Law and requires them to register with the Bureau.

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The bill's sponsor, NEWAsurion, states that service contracts provide a low cost means of protecting investments in such products and have become extremely important to consumers. Optical products, however, are excluded from the list of products covered under the definition of service contracts. Consequently, service contracts insuring optical products cannot be sold in California even though every other state in the nation authorizes their sale. The sponsor further argues, "The fact that one in three consumers of optical products nationwide chooses to buy coverage indicates strong consumer demand for optical service contracts, and underscores the need to permit

the sale of optical service contracts in California. AB 480 would solve this arbitrary limitation by expanding the definition of service contracts to include "optical products," thereby authorizing the sale of optical service contracts in California." The sponsor contends that this bill will not only benefit businesses offering this service, but also provide consumers greater protection by allowing a wider range of in-demand products entering the marketplace to be insured against damage or loss.

The California Retailers Association (CRA) indicates that by adding "optical products" to the definition of a service contract, this bill will allow consumers access to replacement, maintenance and repair services for their prescription and non-prescription eyewear. Retailers who wish to offer this type of service contract will be required to register annually with the Bureau. CRA believes that the additional annual license fee revenue will more than offset any state costs that may result from this bill.

ASSEMBLY FLOOR : 76-1, 5/28/13
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams,

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Yamada, John A. Pérez
NOES: Donnelly
NO VOTE RECORDED: Holden, Patterson, Vacancy

MW:ej 7/2/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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ASSEMBLY BILL No. 512

Introduced by Assembly Member Rendon

February 20, 2013

An act to amend Section 901 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 512, as introduced, Rendon. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

Existing law provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. Existing law also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing

board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

This bill would delete the January 1, 2014, date of repeal, and instead allow the exemption to operate until January 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 901 of the Business and Professions Code is amended to read:

901. (a) For purposes of this section, the following provisions apply:

(1) "Board" means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) "Health care practitioner" means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) "Sponsoring entity" means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) "Uninsured or underinsured person" means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she does all of the following:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (d).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to

comply with this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that

his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall

not affect other provisions or applications that can be given effect without the invalid provision or application.

(*l*) This section shall remain in effect only until January 1, ~~2014,~~ *2018*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014,~~ *2018*, deletes or extends that date.

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BILL ANALYSIS

SENATE RULES COMMITTEE
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AB 512

THIRD READING

Bill No: AB 512
Author: Rendon (D)
Amended: As introduced
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 10-0, 6/10/13
AYES: Lieu, Emmerson, Block, Corbett, Galgiani, Hernandez, Hill, Padilla, Wyland, Yee

SENATE APPROPRIATIONS COMMITTEE : 7-0, 6/24/13
AYES: De León, Walters, Gaines, Hill, Lara, Padilla, Steinberg

ASSEMBLY FLOOR : 74-0, 4/25/13 - See last page for vote

SUBJECT : Healing arts: licensure exemption

SOURCE : Los Angeles County Board of Supervisors

DIGEST : This bill extends the sunset date, from January 2014, to January 2018, on existing law permitting qualified, out-of-state health care practitioners to volunteer their services on a limited basis at health care events designed to provide free services for underinsured and uninsured individuals in California.

ANALYSIS :

Existing law:

1. Provides that a physician and surgeon or osteopathic physician

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and surgeon who practices or attempts to practice medicine in California, without a license or certificate is guilty of a public offense punishable by a fine and/or imprisonment.

2. Makes it unlawful for any person to practice as a dentist, nurse, optometrist, dental hygienist, physician assistant or vocational nurse without a valid license, certificate or registration issued by the regulatory boards that regulate these professionals.

3. Requires the Board of Chiropractic Examiners, upon receipt of a specified fee, to issue a license to any person licensed to practice chiropractic in another state, provided that the other state had the same general requirements as California at the time the license was issued and that the other state grants reciprocal registration.

4. Provides that, in a state of emergency, a health care practitioner licensed in another state that offers or provides health care for which the health care practitioner is licensed is exempt from licensure.

5. Establishes reciprocity eligibility requirements for certain health care practitioners who are licensed in other states, including physicians, surgeons, nurses and dentists.

6. Exempts from state licensure, until January 1, 2014, health care practitioners who are licensed or certified in other states and who provide health care services on a voluntary basis to uninsured or underinsured persons in California.

This bill exempts from state licensure, until January 1, 2018, health care practitioners who are licensed or certified in other states and who provide health care services on a voluntary basis to uninsured or underinsured persons in California.

Background

Prior to the passage of AB 2699 (Bass, Chapter 270, Statutes of 2010), health care practitioners, including physician and surgeons, osteopathic physicians, dentists, physician assistants, nurses and dental hygienists were required to be licensed in California in order to practice in the state for any length of time and in any setting. The only exemptions included health care practitioners who provided care during a state of

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emergency upon request by the Director of Emergency Medical Services Authority, or if a physician and surgeon who was

practicing in another state had been invited by the United States Olympic Committee (Committee) to provide medical services during in-state events sanctioned by the Committee.

In 2010, AB 2699 established that health care professionals who were licensed or certified outside of California were permitted to provide health care services to underinsured and uninsured Californians at health care events. These professionals could only provide these services for up to 10 days. In addition, the law included a number of provisions to ensure patient safety.

Free health clinics . Since the passage of AB 2699, there have been several events held across the state. The Remote Area Medical (RAM) Volunteer Corps is a non-profit organization that has staged hundreds of medical clinics both in the United States and worldwide. Over the past four years, RAM conducted health events in Los Angeles County where volunteer health care practitioners, such as doctors, nurses, dentists, chiropractors and optometrists provided various medical services to over 19,000 uninsured and underinsured residents of the county. Additionally, more than 7,000 people received free medical, vision and dental care during the four day CareNow clinic event held at the Los Angeles Memorial Coliseum.

Department of Consumer Affairs healing arts boards . Many healing arts boards have promulgated regulations to support the enactment of AB 2699. For example, the Medical Board of California completed its regulations in 2012 and has one application in process for an out-of-state physician and surgeon volunteer. The Dental Board of California has six volunteer dentists approved, and the Board of Optometry and the Acupuncture Board are working on their own regulations. Across the healing arts boards that regulate health care practitioners, there have been no complaints from consumers or other health care practitioners and no disciplinary action taken against practitioners for care provided to patients during a sponsored health care event.

Comments

According to the author's office, there are more than two million uninsured people in Los Angeles County, and even after

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the Affordable Care Act's implementation, one million individuals in Los Angeles County are estimated to remain uninsured. Many individuals rely on government or non-profit sponsored health events to receive medical screenings, services and treatment. For example, more than 4,900 people received free medical, vision and dental care during the four day CareNow clinic event held at the Los Angeles Memorial Coliseum. The law

that allows these health events to use out-of-state medical professionals is due to expire at the beginning of January 2014. This bill is necessary because it extends the sunset on existing law that allows qualified, out-of-state practitioners to volunteer their services on a limited basis for health care events from January 2014 to January 2018. These free health events are needed to enable thousands of uninsured and underinsured Californians to get the care they desperately need.

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

According to the Senate Appropriations Committee:

Likely one-time costs between $40,000 and $75,000 for the adoption of regulations by the Acupuncture Board (Acupuncture Fund).

Likely one-time costs between $40,000 and $75,000 for the adoption of regulations by the Osteopathic Medical Board (Osteopathic Medical Board of California Contingent Fund).

Likely one-time costs between $40,000 and $75,000 for the adoption of regulations by the Naturopathic Medical Committee (Naturopathic Doctors Fund).

Minor ongoing costs to various licensing boards (various funds). The boards that have adopted regulations to implement the existing exemption have had only a few applications to participate. Extending this program is not likely to result in significant ongoing workload to the various licensing boards.

SUPPORT : (Verified 6/24/13)

Los Angeles County Board of Supervisors (source)
Association of California Healthcare Districts

CONTINUED

California State Board of Pharmacy
Medical Board of California

OPPOSITION : (Verified 6/24/13)

American Nurses Association\California
California Nurses Association

ARGUMENTS IN SUPPORT : The bill's sponsor, the Los Angeles County Board of Supervisors, states, "Since it has taken a significant amount of time for the healing arts boards to promulgate the regulations to allow out-of-state practitioners

to volunteer their services, current law has not had sufficient time to work, thus the need for the four year extension... There are more than two million uninsured persons in Los Angeles County. Even with the beginning of health care reform implementation in January 2014, there will still remain a residually uninsured population who will continue to benefit from health sponsored events, such as the Care Harbor Health Events in Los Angeles. An extension of the sunset date will continue to provide access to needed health care and dental services to uninsured and underinsured persons."

The Medical Board of California states, "The Board has already promulgated regulations to implement existing law, and believes the sunset date should be extended to allow more individuals to volunteer health care services at sponsored free health care events in California. The bill will help to ensure that these health care events have enough providers to serve more uninsured and underinsured consumers in California, which furthers the Board's mission of promoting access to care."

The California State Board of Pharmacy notes, "The Board appreciates the efforts to ensure Californians can receive needed and necessary health care services during states of emergency and at sponsored health care events.

The Association of California Healthcare Districts writes, "The majority of California's health care districts are located in rural areas and many have limited access to qualified individuals who provide health care services. Although districts do not directly employ physicians, presenting districts' communities with access to qualified physicians will only increase access to health care services during times of

CONTINUED

need, as proposed in this measure."

ARGUMENTS IN OPPOSITION : The California Nurses Association writes, "The law raises serious patient safety concerns and creates lower standards of care for un and underinsured patients. Without California licensure, out-of-state healing arts boards do not have any authority to regulate or enforce discipline against an out-of-state practitioner who harms a patient, or otherwise violates our state's laws. Under this bill, if a patient is harmed or injured by an out-of-state practitioner, the state could terminate that practitioner's authorization to provide care in California, but the only recourse available to the patient would be to sue." They also note, "As BPC Section 901's enabling legislation moved through the Legislature in 2010, we raised questions regarding the recruitment process for these free health care events, and the necessity to recruit practitioners from other states. These

questions remain relevant as we look toward the full implementation of the Affordable Care Act. Despite its good intentions, this law limits patient protections, and creates a lesser standard of care for underinsured and uninsured patients."

The American Nurses Association\California note, "Over the last several years, both the Legislature and Administration have focused on improving patient protection by reforming the way that the state investigates complaints and enforces discipline against healing arts practitioners. This law undermines those efforts, as California practitioners are held to standards designed to protect patients that would not apply to any of the out-of-state practitioners."

ASSEMBLY FLOOR : 74-0, 4/25/13
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nestande, Olsen, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Torres, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, John A.

CONTINUED

Pérez
NO VOTE RECORDED: Gomez, Lowenthal, Nazarian, Pan, Yamada, Vacancy

MW:ej 6/25/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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AMENDED IN SENATE JUNE 3, 2013

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 1057

Introduced by Assembly Member Medina

February 22, 2013

An act to add Section 114.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1057, as amended, Medina. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a licensee or registrant whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces to, upon application, reinstate his or her license without penalty and without examination, if certain requirements are satisfied, unless the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, as specified.

This bill would require each board, commencing January 1, 2015, to inquire in every application for licensure if the ~~applicant~~ *individual applying for licensure* is serving in, or has previously served in, the military.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 114.5 is added to the Business and Professions Code, to read:

114.5. Commencing January 1, 2015, each board shall inquire in every application for licensure if the ~~applicant~~ *individual applying for licensure* is serving in, or has previously served in, the military.

O

BILL ANALYSIS

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

AB 1057

THIRD READING

Bill No: AB 1057
Author: Medina (D)
Amended: 6/3/13 in Senate
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV.COMMITTEE : 10-0, 6/10/13
AYES: Lieu, Emmerson, Block, Corbett, Galgiani, Hernandez, Hill, Padilla, Wyland, Yee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 77-0, 4/29/13 - See last page for vote

SUBJECT : Professions and vocations: licenses: military service

SOURCE : Author

DIGEST : This bill requires licensing boards within the Department of Consumer Affairs (DCA), beginning January 1, 2015, to ask on every application for licensure if the applicant is serving in, or has previously served in, the military.

ANALYSIS :

Existing law:

1. Provides for the licensure and regulation of certain businesses, occupations, and professions by specified boards within DCA created under the Business and Professions Code

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(BPC).

2. Requires these boards to adopt rules and regulations to provide methods of evaluating education, training, and experience obtained in the armed services of the United States, if applicable to the requirements of the business, occupation, or profession regulated, and to specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Requires these boards to consult with the Department of Veterans Affairs (CalVet) and the California Military Department (CMD) before adopting these rules and regulations.

3. Provides that any licensee or registrant of any board, commission, or bureau within DCA whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the U.S. Armed Forces, may, upon application, reinstate his/her license or registration without examination or penalty, provided certain requirements are satisfied.

4. Provides that every board within DCA shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the U.S. Armed Forces or the California National Guard if all requirements are met.

5. Requires DCA boards to expedite the licensure process for an applicant who supplies evidence that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the U.S. Armed Forces who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current license in another state, district, or territory of the U.S. in the profession or vocation for which he/she seeks a license from a board.

This bill requires boards at DCA, beginning January 1, 2015, to ask on every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

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Background

Veterans in California . California is home to over 1.8 million

veterans, representing 8.3% of the total U.S. veteran population. 72% of the veteran population is 50 years of age or above, and the number of veterans 85 years of age or older is projected to increase 20% between 2010 and 2019. CalVet anticipates receiving an additional 35,000-40,000 discharged members of the armed services each year for the next several years - more than any other state. According to CalVet, historically, the largest demand for benefits and services for veterans occurs immediately after discharge and again as the veteran population ages and requires greater access to medical facilities and long-term care services.

According to a January 2013 memorandum prepared by the Senate Office of Research (SOR), titled "Employment Opportunities for (Semi-Skilled or Unskilled) Veterans," California does not provide a coordinated, integrated system that streamlines employment-related services to veterans. According to SOR, veterans find many services fragmented and without a single point of entry. SOR also examined the need to facilitate veterans who want to receive licensure or certification (academic) credit for military education, training, and experience.

DCA Report on military experience and licensure . As part of the 2012-13 Budget package, the Legislature directed the DCA to prepare a report on the implementation of BPC Section 35 relating to military experience and licensure. The DCA was specifically asked to provide a list of boards that accept military experience and a description of the statutes and regulations that authorize the acceptance of military experience towards licensure. The DCA was also asked to provide a list of boards that do not accept military experience and an explanation as to why they do not.

In October 2012, DCA released its "Report to the California State Legislature: Acceptance of Military Experience & Education Towards Licensure." According to the Report, nine of DCA's licensing programs have specific provisions in their statutes and regulations that authorize the acceptance of military experience or education towards licensure. Those programs include the Bureau of Automotive Repair, Board of

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Barbering and Cosmetology, Board for Professional Engineers, Land Surveyors, and Geologists, Board of Pharmacy, Physical Therapy Board of California, Board of Registered Nursing, Respiratory Care Board, Bureau of Security and Investigative Services and Board of Vocational Nursing and Psychiatric Technicians. Many more programs also have broad discretion in approving credit earned in the military towards licensure.

In the Report, DCA outlined the top three priority vocational areas, as identified by the CMD, based on the large number of veterans who possess skills in these areas when leaving the military. Specifically:

Security (Bureau of Security and Investigative Services (BSIS)) . BSIS has implemented the "Veterans Come First" program, which helps veterans apply their military experience and training towards part or all of the qualification requirements for licensure. Through this program, BSIS has already assisted nearly 400 veteran applicants obtain licensure. As part of the program, BSIS has expedited applications from veterans, provided veterans with direct phone and email contact information for a BSIS staff person, assigned staff to work one-on-one with applicants from the military who have complex or complicated applications with large amounts of information and experience to review and trained staff to analyze "Certificate of Release or Discharge from Active Duty" Papers (DD-214s) and Military Transcripts.

Construction (Contractors' State License Board (CSLB)) . CSLB met with CMD and is developing a program to assist eligible veterans to gain licensure. CSLB's objectives are to partner with the CMD to identify the specific job classifications in the military that would meet California's minimum standards for licensure, expedite the application process for veterans, provide veterans with direct email access to CSLB employees who have been specifically trained in military job ranges and military classifications and to create a website dedicated to providing members of the military with information on how they can become a licensed contractor.

Automotive Repair (Bureau of Automotive Repair (BAR)) . BAR has also met with CMD and is currently working on modifying its applications to include a statement regarding the ability

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of veterans to apply military experience and training towards, providing similar information on its website and coordinating with the CMD to determine possible military job classifications that relate to the automotive repair industry in order to simplify the acceptance of military experience towards licensure. BAR also reports that diesel-powered vehicles have recently been included in the state's SmogCheck Program and smog inspections will be focused on interpreting data obtained from vehicles' on-board diagnostic systems so veterans with technical experience in related areas like diesel-powered vehicles will help meet the need for skilled technicians in these specialized automotive fields.

Bureau of State Audits (BSA) . BSA, per a request approved in

March of this year by the Joint Legislative Audit Committee, is currently conducting a comprehensive audit of the Employment Development Department's (EDD) effectiveness in providing employment assistance and job training programs to veterans. This includes determining if EDD has identified best practices for translating military training and experience into comparable civilian job skills and determining if EDD's strategic plan considers the unique needs of veterans.

Governor's Executive Order (EO) B-9-11 . In August, 2011, Governor Brown issued EO B-9-11 creating the California Interagency Council on Veterans to improve how veterans' services are coordinated across local, state and federal government. The EO stated that more than 30,000 veterans return to California each year after leaving the U.S. Armed Services and many of these veterans face hardships while transitioning back into civilian life. The EO also stated that the unemployment rate for Gulf War II veterans is 42% higher than it is for non-veterans and approximately 25% of Gulf War II veterans have a disability that is connected to their military service, compared with approximately 13% of all veterans.

Executive Office of the President Report . A report issued by the Executive Office of the President in February of this year, "The Fast Track to Civilian Employment: Streamlining Credentialing and Licensing for Service Members, Veterans and Their Spouses," outlined the unique challenges that confront service members, military spouses and veterans in establishing their qualifications for civilian employment, and outlines the measures that the Administration and states have taken, and

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still need to take, to ensure that the skills and abilities of these individuals can be applied to meet employer needs while providing good, meaningful jobs for our military families.

According to the Report, since February 2012, 17 states have passed spousal licensing legislation, bringing the overall total to 28 states with military spouse licensure measures in place and an additional 15 states have active spouse licensure bills. The Report stated that through collaboration with state legislators and regulators, the Department of Defense (DOD) has worked towards state adoption of best practice options that can expedite the transfer of military spouse licenses that are in good standing and are substantially equivalent: licensure through endorsement; temporary licensure; and expedited processes for issuing licenses. The report also stated that the DOD Military Credentialing and Licensing Task Force (Task Force), established in 2012 at the direction of President Obama, has identified and created opportunities for service members to earn civilian occupational credentials and licenses. The Task

Force has focused its efforts on well-paying industries and occupations that have a high demand for skilled workers, including: manufacturing, information technology, transportation and logistics, health care and emergency medical services. The Task Force has also worked with states and institutions to streamline licensing for service members and veterans, specifically targeting the occupations of bus and truck drivers, emergency medical technicians, paramedics, and licensed practical nurses. According to the Report, a total of 34 states have already passed laws to waive the driving skills test for veterans with a record of safely operating vehicles similar to the trucks and buses for which a commercial driving license is required, and similar legislation is pending in the District of Columbia and nine other states.

The Report also highlighted a number of best practices that states and industry can adopt to streamline the certification and licensing for service members and veterans.

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

SUPPORT : (per Senate Business, Professions and Economic Development Committee analysis of 6/10/13 -- unable to reverify at time of writing)

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Board of Behavioral Sciences

ARGUMENTS IN SUPPORT : According to the author's office, DCA has 36 licensing programs, and each has a different policy to address the acceptance of military education and experience towards initial licensure. The author's office states that 24 programs accept military education and experience, five programs offer general reciprocity for out-of-state applicants, two programs do not have education or experience requirements that would preclude a veteran from applying, two boards do not accept military education and experience, and three programs do not issue licenses.

There is concern that despite existing provisions that facilitate the licensure of veterans and active military members, the majority of license applications do not ask applicants if they serve or have previously served in the military. The author's office states that this situation results in some applicants having to proactively inform a licensing board if he/she is an active military member who may be exempt from license renewal fees or continuing education requirements, or if the individual is a veteran eligible to apply military credit towards initial licensure, as provided for

under existing law.

The author's office further states that DCA's licensing programs do not currently track licensure approvals or denials of applicants with military service and that given the recent amount of attention devoted to assisting military families and veterans with obtaining professional licensure, it may be helpful for DCA to gather accurate data on how many applicants serve, or have served in the military in order to better assist those applicants.

ASSEMBLY FLOOR : 77-0, 4/29/13
AYES: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin,

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Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Torres, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez
NO VOTE RECORDED: Atkins, Bradford, Vacancy

MW:k 6/26/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 14, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL No. 305

Introduced by Senator ~~Price~~ *Lieu*
(Principal coauthor: Assembly Member Gordon)

February 15, 2013

An act to amend Sections 1000, 2450, 2450.3, 2530.2, 2531, 2531.75, 2533, 2570.19, ~~2602, 2607.5,~~ 3010.5, 3014.6, 3685, 3686, 3710, 3716, and 3765 of, and to add Section 144.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 305, as amended, ~~Price~~ *Lieu*. Healing arts: boards.

(1) Existing law requires specified regulatory boards within the Department of Consumer Affairs to require an applicant for licensure to furnish to the board a full set of fingerprints in order to conduct a criminal history record check.

This bill would additionally authorize those boards to request and receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and would authorize a local or state agency to provide those records to the board upon request.

(2) The Chiropractic Act, enacted by an initiative measure, provides for the licensure and regulation of chiropractors in this state by the State Board of Chiropractic Examiners. Existing law specifies that the law governing chiropractors is found in the act.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature as if these provisions were scheduled to be repealed on January 1, 2018. This bill would also make nonsubstantive changes to conform with the Governor's Reorganization Plan No. 2.

(3) Existing law, the Osteopathic Act, provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature. The bill would require that the review be performed as if these provisions were scheduled to be repealed as of January 1, 2018.

(4) Existing law, the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, provides for the licensure and regulation of speech-language pathologists, audiologists, and hearing aid dispensers by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. The act authorizes the board to appoint an executive officer. Existing law repeals these provisions on January 1, 2014, and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

The Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act also authorizes the board to refuse to issue, or issue subject to terms and conditions, a license on specified grounds, including, among others, securing a license by fraud or deceit.

This bill would additionally authorize the board to refuse to issue, or issue subject to terms and conditions, a license for a violation of a term or condition of a probationary order of a license issued by the board, as provided.

(5) Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of occupational therapists, as defined, by the California Board of Occupational Therapy. Existing law repeals those provisions on January 1, 2014, and subjects the board to review

by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

~~(6) Existing law, the Physical Therapy Practice Act, provides for the licensure and regulation of physical therapists by the Physical Therapy Board of California. The act authorizes the board to appoint an executive officer. Existing law repeals these provisions on January 1, 2014.~~

~~This bill would extend the operation of these provisions until January 1, 2018.~~

~~(7)~~

(6) Existing law, the Naturopathic Doctors Act, until January 1, 2014, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law also specifies that the repeal of the committee subjects it to review by the appropriate policy committees of the Legislature.

This bill would extend the operation of these provisions until January 1, 2018, and make conforming changes.

~~(8)~~

(7) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. The Respiratory Care Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Each of those acts authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2014, and subjects the boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the boards to review by the appropriate policy committees of the Legislature.

~~(9)~~

(8) The Respiratory Care Act also prohibits a person from engaging in the practice of respiratory care unless he or she is a licensed respiratory care practitioner. However, the act does not prohibit specified acts, including, among others, the performance of respiratory care services in case of an emergency or self-care by a patient.

This bill would additionally authorize the performance of pulmonary function testing by persons who are currently employed by Los Angeles

County hospitals and have performed pulmonary function testing for at least 15 years.

This bill would make legislative findings and declarations as to the necessity of a special statute for the persons described above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 144.5 is added to the Business and Professions Code, to read:

144.5. Notwithstanding any other law, a board described in Section 144 may request, and is authorized to receive, from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. A local or state agency may provide those records to the board upon request.

SEC. 2. Section 1000 of the Business and Professions Code is amended to read:

1000. (a) The law governing practitioners of chiropractic is found in an initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith," adopted by the electors November 7, 1922.

(b) The State Board of Chiropractic Examiners is within the Department of Consumer Affairs.

(c) Notwithstanding any other law, the powers and duties of the State Board of Chiropractic Examiners, as set forth in this article and under the act creating the board, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.

SEC. 3. Section 2450 of the Business and Professions Code is amended to read:

2450. There is a Board of Osteopathic Examiners of the State of California, established by the Osteopathic Act, which shall be known as the Osteopathic Medical Board of California which

enforces this chapter relating to persons holding or applying for physician's and surgeon's certificates issued by the Osteopathic Medical Board of California under the Osteopathic Act.

Persons who elect to practice using the term of suffix "M.D.," as provided in Section 2275, shall not be subject to this article, and the Medical Board of California shall enforce the provisions of this chapter relating to persons who made the election.

Notwithstanding any other law, the powers and duties of the Osteopathic Medical Board of California, as set forth in this article and under the Osteopathic Act, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.

SEC. 4. Section 2450.3 of the Business and Professions Code is amended to read:

2450.3. There is within the jurisdiction of the Osteopathic Medical Board of California a Naturopathic Medicine Committee authorized under the Naturopathic Doctors Act (Chapter 8.2 (commencing with Section 3610)). This section shall become inoperative on January 1, 2018, and, as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other provision of law, the repeal of this section renders the Naturopathic Medicine Committee subject to review by the appropriate policy committees of the Legislature.

SEC. 5. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

(3) Conducting hearing screenings.

(4) Performing suctioning in connection with the scope of practice described in paragraphs (1) and (2), after compliance with a medical facility's training protocols on suctioning procedures.

(e) (1) Instrumental procedures referred to in subdivision (d) are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy.

(2) Nothing in this subdivision shall be construed as a diagnosis. Any observation of an abnormality shall be referred to a physician and surgeon.

(f) A licensed speech-language pathologist shall not perform a flexible fiber optic nasendoscopic procedure unless he or she has received written verification from an otolaryngologist certified by the American Board of Otolaryngology that the speech-language pathologist has performed a minimum of 25 flexible fiber optic nasendoscopic procedures and is competent to perform these procedures. The speech-language pathologist shall have this written verification on file and readily available for inspection upon request by the board. A speech-language pathologist shall pass a flexible fiber optic nasendoscopic instrument only under the direct authorization of an otolaryngologist certified by the American Board of Otolaryngology and the supervision of a physician and surgeon.

(g) A licensed speech-language pathologist shall only perform flexible endoscopic procedures described in subdivision (e) in a setting that requires the facility to have protocols for emergency

medical backup procedures, including a physician and surgeon or other appropriate medical professionals being readily available.

(h) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(i) (1) "Speech-language pathology assistant" means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible for the extent, kind, and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold a valid and current license issued by the board, a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing, or other credential authorizing service in language, speech, and hearing issued by the Commission on Teacher Credentialing that is not issued on the basis of an emergency permit or waiver of requirements. For purposes of this paragraph, a "clear" credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher Credentialing. Nothing in this section referring to credentialed supervising speech-language pathologists expands existing exemptions from licensing pursuant to Section 2530.5.

(j) An "audiologist" is one who practices audiology.

(k) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof,

auditory training, and speech reading, and the selling of hearing aids.

(*l*) A "dispensing audiologist" is a person who is authorized to sell hearing aids pursuant to his or her audiology license.

(m) "Audiology aide" means any person meeting the minimum requirements established by the board. An audiology aid may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. The board may by regulation exempt certain functions performed by an industrial audiology aide from supervision provided that his or her employer has established a set of procedures or protocols that the aide shall follow in performing these functions.

(n) "Medical board" means the Medical Board of California.

(o) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(p) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not simultaneously supervise more than two audiologists for purposes of cerumen removal.

SEC. 6. Section 2531 of the Business and Professions Code is amended to read:

2531. (a) There is in the Department of Consumer Affairs the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in which the enforcement and administration of this chapter are vested. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall consist of nine members, three of whom shall be public members.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 7. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 8. Section 2533 of the Business and Professions Code is amended to read:

2533. The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The record of the conviction shall be conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) (1) The use or administering to himself or herself of any controlled ~~substance; (2) the~~ *substance*.

(2) The use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in a manner as to be dangerous or injurious to the licensee, to any other person, or

to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology or audiology ~~safely; (3) more~~ *safely.*

(3) More than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this ~~section; or (4) any~~ *section.*

(4) Any combination of paragraph (1), (2), or ~~(3). The~~ *(3). The* record of the conviction shall be conclusive evidence of unprofessional conduct.

(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

(f) Incompetence, gross negligence, or repeated negligent acts.

(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.

(h) Use by a hearing aid dispenser of the term “doctor” or “physician” or “clinic” or “audiologist,” or any derivation thereof, except as authorized by law.

(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

(j) Any cause that would be grounds for denial of an application for a license.

(k) Violation of Section 1689.6 or 1793.02 of the Civil Code.

(*l*) Violation of a term or condition of a probationary order of a license issued by the board pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

(b) The members of the board shall consist of the following:

(1) Three occupational therapists who shall have practiced occupational therapy for five years.

(2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.

(3) Three public members who shall not be licentiates of the board, of any other board under this division, or of any board referred to in Section 1000 or 3600.

(c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board. The Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

(d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.

(e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to, or have a household member who is, an occupational therapist or an occupational therapy assistant, and may not have had, within two years of the appointment, a substantial financial interest in a person regulated by the board.

(f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.

(g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its

business is concluded. Special meetings of the board may be held at any time and place designated by the board.

(h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(i) Members of the board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.

(j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.

(k) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

~~SEC. 10. Section 2602 of the Business and Professions Code is amended to read:~~

~~2602. The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter.~~

~~This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

~~SEC. 11. Section 2607.5 of the Business and Professions Code is amended to read:~~

~~2607.5. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.~~

~~(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~SEC. 12.~~

SEC. 10. Section 3010.5 of the Business and Professions Code is amended to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

~~SEC. 13.~~

SEC. 11. Section 3014.6 of the Business and Professions Code is amended to read:

3014.6. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 14.~~

SEC. 12. Section 3685 of the Business and Professions Code is amended to read:

3685. Notwithstanding any other law, the repeal of this chapter renders the committee subject to review by the appropriate policy committees of the Legislature.

~~SEC. 15.~~

SEC. 13. Section 3686 of the Business and Professions Code is amended to read:

3686. This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 16.~~

SEC. 14. Section 3710 of the Business and Professions Code is amended to read:

3710. (a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

~~SEC. 17.~~

SEC. 15. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 18.~~

SEC. 16. Section 3765 of the Business and Professions Code is amended to read:

3765. This act does not prohibit any of the following activities:

(a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their ~~speciality~~ *specialty*.

(e) Respiratory care services in case of an emergency. "Emergency," as used in this subdivision, includes an epidemic or public disaster.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

(h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Public Health of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the board.

(i) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

~~SEC. 19.~~

SEC. 17. The Legislature finds and declares that a special law, as set forth in Section 18 of this act, is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

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BILL ANALYSIS

SB 305
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Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
Richard S. Gordon, Chair
SB 305 (Price) - As Amended: June 19, 2013

SENATE VOTE : 37-0

SUBJECT : Healing arts: boards.

SUMMARY : Extends until January 1, 2018 the sunset dates for the provisions establishing the Naturopathic Medicine Committee (NMC), the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (SLPHADB), The Board of Occupational Therapy (BOT), the Physical Therapy Board of California (PTB), the Board of Optometry (OB), and the Respiratory Care Board of California (RCB) which are regulated by the Department of Consumer Affairs (DCA); extends the term of the executive officers of the PTB, SLPHADB, RCB, and the OB; specifies that any board, committee or bureau regulated by DCA is authorized to receive specified criminal records needed to complete an application for licensure; exempts certain individuals performing pulmonary tests in specified hospitals in Los Angeles County from certain licensure requirements; and subjects specified boards to review by the appropriate legislative policy committees, as specified. Specifically, this bill :

1) Specifies that any board under DCA is authorized to receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and further specifies that a local or state agency may provide those records upon request.

2) Requires that the powers and duties of the Board of Chiropractic Examiners (BCE) is subject to review by the appropriate policy committees of the Legislature, and further requires that the review of the BCE be performed as if the provisions of the BCE were scheduled to be repealed as of January 1, 2018.

3) Requires that the powers and duties of the Osteopathic Medical Board (OMB) be subject to review by the appropriate policy

committees of the Legislature, and further requires that the review of the OMB be performed as if the provisions of the OMB were scheduled to be repealed as of January 1, 2018.

4) Extends until January 1, 2018, the provisions establishing the NMC.

5) Extends until January 1, 2018 the provisions establishing the SLPAHADB and subjects the SLPAHADB to review by the appropriate policy committees of the Legislature.

6) Extends until January 1, 2018 the authority of the SLPAHADB to appoint an executive officer.

7) Specifies that the SLPAHADB may refuse to issue, suspend, revoke, or impose terms and conditions upon the license of any licensee for the violation of a term or condition of a probationary order of a license issued by the SLPAHADB as specified.

8) Extends until January 1, 2018, the provisions establishing the BOT and subjects the BOT to review by the appropriate policy committees of the Legislature.

9) Extends until January 1, 2018, the provisions establishing the PTB.

10) Extends until January 1, 2018, the authority of the PTB to appoint an executive officer.

11) Extends until January 1, 2018 the provisions establishing the OB and subjects the OB to review by the appropriate policy committees of the Legislature.

12) Extends until January 1, 2018, the authority of the OB to appoint an executive officer.

13) Extends until January 1, 2018, the provisions establishing the RCB and subjects the RCB to review by the appropriate policy committees of the Legislature.

14) Allows the performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years to operate as respiratory care therapists

without licensure, as specified.

15) Makes finding and declarations pertaining to the special law necessary to because of the unique circumstances relating to persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

16) Makes other technical and clarifying provisions.

EXISTING LAW

1) Requires a board, bureau or program within DCA to require an applicant for licensure to furnish a full set of fingerprints in order to conduct a criminal history record check. (Business and Professions Code (BPC) Section 144)

2) Authorizes the BCE, as established, to license chiropractors. (BPC 1000 et seq.)

3) Provides for the licensure and regulation of osteopathic physicians and surgeons by the OMB. (BPC 2450)

4) Establishes the NMC within the OMB of California and repeals the provisions pertaining to the NMC on January 1, 2014. (BPC2450.3)

5) Specifies that the repeal of the NMC is subject to review by the appropriate policy committee of the Legislature. (BPC2450.3)

6) Establishes the SLPAHADB within DCA and provides the SLPAHADB with licensing, regulatory and disciplinary functions and repeals those provisions January 1, 2014. (BCP 2531)

7) Authorizes the SLPAHADB to employ an executive officer as specified, and repeals that authority on January 1, 2014. (BPC 2531.75)

8) Establishes the Occupational Therapy Practice Act and provides the BOT with licensing, regulatory and disciplinary functions as specified and repeals those provisions on January 1, 2014. (BPC 2570 et seq.)

9) Establishes the Physical Therapy Practice Act and provides the

PTB with licensing, regulatory and disciplinary functions as specified and repeals those provisions on January 1, 2014. (BPC 2600 et seq.)

10) Authorizes the PTB to employ an executive officer as specified, and repeals that authority on January 1, 2014. (BPC 2607.5)

11) Establishes the Optometry Practice Act and provides the OB with licensure and regulation of optometrists as specified, and repeals those provisions on January 1, 2014. (BPC 3000 et seq.)

12) Authorizes the OB to employ an executive officer as specified, and repeals that authority on January 1, 2014. (BPC 2607.5)

13) Establishes the RCB and provides it with licensing, regulating and disciplinary functions as specified and repeals those provisions on January 1, 2014. (BPC 3710; 3710.1)

14) Authorizes the RCB to employ an executive officer as specified, and repeals that authority on January 1, 2014. (BPC 2607.5)

15) Specifies that activities not covered by the Respiratory Care Act are as follows:

a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs;

b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter;

c) The respiratory care practitioner performing advances in the art and techniques of respiratory care learned through formal or specialized training;

d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty;

e) Respiratory care services in case of an emergency, which includes an epidemic or public disaster;

f) Persons engaging in cardiopulmonary research;

g) Formally trained licensees and staff of child day care

facilities administering inhaled medication to a child as specified; or,

h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Health Services of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the RCB. (BPC3765)

FISCAL EFFECT : Unknown

COMMENTS :

1) Purpose of this bill . This bill is one of four "sunset bills" to extend the operational authority of a variety of boards, bureaus and committees regulated by DCA. This bill extends the sunset date until January 1, 2018 for the continuing operation of the NMC, the RCB, the SLPAHADB, the PTB, the BOT, and the OB which are all scheduled to be repealed on January 1, 2014. In addition, this bill extends the terms of the executive officers of the RCB, the PTB, the SLPAHADB, and the BOT. This bill also requires the BCE and the OMB to be subject to a review by the appropriate policy committees of the Legislature in 2018. Finally, this bill provides a licensure exemption for certain individuals performing specified pulmonary function testing and clarifies the authority of the boards, bureaus, and committees regulated by DCA to obtain certain records from a local or state agency. This bill is author sponsored.

2) Author's statement . According to the author, "Unless legislation is carried this year to extend the sunset dates for the [NMC], the [RCB], the [BOT], the [PTB], the SLPAHADB and the [OB], they will be repealed on January 1, 2014. Because they were created via initiative act, the [OMB] and the [BCE] do not have a sunset date. This bill will specify

that as of January 1, 2018, these two boards will be reviewed consistent with other healing arts boards under the DCA that are subject to a 4 year sunset review period.

This bill will exempt certain employees from going through the laborious process of becoming certified respiratory therapists when they have been safely and reliably performing services for over 15 years. This bill specifies that any board under the [DCA] is authorized to receive certified records from a local or state agency of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or

licensee investigation. Also specifies that a local or state agency is authorized to provide those records to the board upon receipt of such a request."

3) Oversight Hearings and Sunset Review of Licensing Boards of DCA . In March 2013, the Assembly Business, Professions and Consumer Protection Committee and the Senate Business Professions, and Economic Development (BPED) Committee conducted a joint-oversight hearing to review 14 regulatory boards within DCA. The Committees began its review of these licensing agencies in March and conducted three days of hearings. This bill, like the accompanying sunset bills, is intended to implement legislative changes as recommended in the background reports authored by the Senate BPED Committee for all of the agencies reviewed by the Committees this year.

4) Sunset review process . The sunset review process provides a formal opportunity and mechanism for the DCA, the Legislature, the boards and bureaus, interested parties and stakeholders to discuss the performance of the boards, bureaus and committees and make recommendations for improvements. This is performed on a standard four-year cycle and was mandated by SB 2036 (McCorquodale, Chapter 908, Statutes of 1994). The legislation pertaining to this bill is based on specific issues raised and addressed in the reports released by the BPED committee.

5) Board of Chiropractic Examiners . The BCE is responsible for regulating the practice of licensed chiropractors in California. The BCE was created through an initiative measure approved on November 7, 1922. Through its enforcement program, the BCE disciplines licensees who violate the laws and regulations governing the practice of chiropractic. In FY

2010/11, the BCE had a license base of 13,810 active and 1272 inactive licenses. The BCE also oversees 19 chiropractic schools and colleges located throughout the United States and Canada.

Although there were several issues raised during the sunset review hearing regarding the BCE including, reciprocity for out-of-state licensees, complying with the Administrative Procedures Act (APA) and ensuring that BCE is tracking and maintaining accurate consumer satisfaction survey data, the only issue that could not be addressed administratively is the requirement that the BCE be reviewed by the appropriate policy committees of the Legislature in four years. This bill requires the BCE to be reviewed by the appropriate committee of the Legislature to ensure that BCE continues its mission to regulate licensed chiropractors and address any administrative

issues that were raised during the sunset hearing that merit further review.

6) Osteopathic Medical Board . The OMB was established in 1922 when the Osteopathic Initiative Act (Act) was passed by electorate. In 1962, another initiative was passed providing the Legislature the authority to amend the Act. To date, the only restriction on the Legislature's power is that it may not fully repeal the Act unless the number of licensed osteopathic physicians (DOs) falls below 40. In 2002, the OMB volunteered to be included under the umbrella of the DCA. As one of the regulatory entities within the DCA, the OMB is charged with the licensing and regulation of DOs. The Board's statutes and regulations set forth the requirements for licensure and provide the OMB the authority to discipline a licensee.

During the sunset review hearing, there were several issues raised by the Committees to be addressed by the OMB, including the OMB's operating without a Code of Ethics, licensure portability procedures for service members, posting meeting materials to the OMB's Web site, and other programmatic issues. The only issue that could not be addressed administratively is the requirement that the OMB be reviewed by the appropriate policy committee of the Legislature in four years. This bill requires the OMB to be reviewed by the appropriate committees of the Legislature to ensure the OMB continues its mission to regulate licensed DOs and address any administrative issues that were raised during the sunset hearing that merit further review.

7) Naturopathic Medicine Committee . The Bureau of Naturopathic Medicine was established by the Legislature under DCA, and began licensing NDs in January 2005. The Bureau became the NMC under the OMB in October 2009. The NMC is designed as a resource for California consumers who choose NDs for their healthcare. Currently, there are approximately 437 active NDs licensed in California.

During the sunset review hearing, there were several issues raised by the Committee to be addressed by the NMC including, the NMC's staffing issues, licensure portability procedures for service members, and posting meeting materials to the NMC's Web site. The only issue that could not be addressed administratively is the requirement that the NMC be reviewed by the appropriate policy committees of the Legislature again in four years, and extends the sunset date until January 1, 2018. This bill requires the NMC to be reviewed by the appropriate committees of the Legislature to ensure the NMC continues its mission to regulate NDs and address any

administrative issues that were raised during the sunset hearing that merit further review.

8) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board . The SLPAHADB regulates the professions of speech-language pathology, audiology, and hearing aid dispensing. Each profession is separate and distinct, and has its own scope of practice and licensing requirements. AB 1535 (Jones) (Chapter 309, Statues of 2009), merged the Hearing Aid Dispensers Bureau and the Speech-Language Pathology and Audiology Board into the current board.

The current law which authorizes the SLPAHADB to license and regulate speech-language pathologists, audiologist, dispensing audiologists, hearing aid dispenser, speech-language pathology assistants, and speech-language pathology/audiology aides is set to expire on January 1, 2014. In order to maintain regulation of the professions currently operating under the jurisdiction of the SLPAHADB, this bill extends the provisions of law until January 1, 2018, and subjects it to review by the appropriate policy committees of the Legislature. In addition, this bill extends the SLPHADB's authority to appoint an executive officer until January 1, 2018.

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9) California Board of Occupational Therapy . The BOT was established by SB 1046 (Murray), (Chapter 697, Statutes of 2000). The BOT became operational in 2001 and remains responsible for the licensure and regulation of occupational therapists and occupational therapy assistants in California. The occupational therapy profession in California was regulated by a title act dating back to 1977 that prohibited individuals from using the professional titles "occupational therapist" and "occupational therapy assistant" without appropriate professional training.

During the sunset review hearing, there were several issues raised to be addressed by the BOT, including publishing citations, licensure portability procedures for service members, and poor consumer satisfaction. The only issue that could not be addressed administratively is the requirement that the BOT be reviewed by the appropriate policy committees of the Legislature. In order to maintain regulation of the professions currently operating under the jurisdiction of the BOT, this bill extends the sunset date for the BOT until January 1, 2018, and subjects it to a review of the appropriate policy committees of the Legislature.

10) Physical Therapy Board of California . The Physical Therapy

Practice Act was established in 1953. A "practice act" safeguards the public by regulating a defined scope of practice vs. a "title act" which merely restricts action to revoking a title with no restriction of practice. A PT may evaluate, plan treatment, instruct and consult, but may not diagnose. There are currently 26,000 licensed PTs in California.

During the sunset review hearing, there were several issues raised by the Committee to be addressed by the PTBC. In order to effectively address the specific issues of the PTB raised during the sunset review process, SB 198 (Price) of 2013 was introduced to reorganize, revise, recast and update the Physical Therapy Practice Act. SB 198 will be heard by the Assembly, Business Professions and Consumer Protection.

This bill specifically addresses the sunset of the PTB only. In order to maintain the current regulation of the Act, this bill extends the provisions of law pertaining to the operation of the PTB until January 1, 2018, and subjects it to a new review of the appropriate policy committees of the

Legislature. In addition, this bill extends the provision allowing the PTBC to appoint an executive officer until January 1, 2018.

11) California State Board of Optometry . The OB is responsible for the regulatory oversight of approximately 9,000 optometrists, the largest population of optometrists in the United States. On March 20, 1903, California became the third state to pass a law recognizing the profession of optometry, and regulating its practice. In 1913, a new Optometry Practice Act was enacted creating the Board, defining its duties and powers, and prescribing a penalty for a violation of the Act.

During the sunset review hearing, there were several issues raised by the Committees to be addressed by the OB, including license portability issues for service members. In order to maintain regulation of the OB, this bill extends the provisions of law pertaining to the operation of the OB until January 1, 2018, and subjects it to a new review of the appropriate policy committees of the Legislature. In addition, this bill extends the provision allowing the OB to appoint an executive officer until January 1, 2018.

12) Respiratory Care Board . The RCB was originally established as the Respiratory Care Examining Committee, which was created by the Legislature in 1982 to protect individuals from the unqualified practice of respiratory care. The RCB

regulates a single category of health care workers - respiratory care practitioners (RCPs). RCPs are specialized health care workers who practice under the supervision of medical directors and are involved in the prevention, diagnosis, treatment, management, and rehabilitation of problems affecting the heart and lungs and other disorders, as well as providing diagnostic, educational, and rehabilitation services. RCPs provide treatment for patients who have breathing difficulties and c dependent upon life support and cannot breathe on their own. RCPs treat patients with acute and chronic diseases, including Chronic Obstructive Pulmonary Disease, trauma victims, and surgery patients.

During the sunset review process, there were several important issues raised to address concerns pertaining to the RCB and its licensees, including the ability to obtain local agency

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records regarding criminal history reports, pulmonary function technologists and the extension of the laws pertaining to the RCB. This bill attempts to address those issues by allowing specified access to background information as consistent with other entities regulated by DCA, and further allows a certain group of pulmonary function technologists in Los Angeles County to be except from the licensure requirements of RCPs.

13) Exemption from licensure requirements for Pulmonary Function Technologists . When the RCB was instituted, several unlicensed individuals, including those who solely performed pulmonary function tests were grandfathered and issued a license as a RCP. However, the requirement to be grandfathered was not communicated to certain individuals performing pulmonary function testing who were employed at certain Los Angeles County safety-net hospitals. As a result, these employees continued to practice for several years without knowledge that their practice was illegal. In the late 1990's the RCB was made aware of the issue and it was reviewed during the 2002 sunset review of the RCB. At that time, the Joint Legislative and Sunset Review Committee asked the RCB to examine the issue of unlicensed professionals who were performing pulmonary function tests. The RCB attempted to seek legislation to exempt certain pulmonary function testing from being regulated. However, the RCB was unable to obtain the appropriate approval to pursue legislation.

In an effort to find a solution that has been overlooked for a number of years, this bill would exempt these skilled professionals who have performed pulmonary function testing for over 15 years, and should have previously been a part of the grandfathering provisions, from the current licensure

requirements of the RCB. In addition, the RCB agreed to continue examining the issue of regulating all unlicensed professionals in its 2013 strategic plan. This bill exempts those very specific individuals from licensure requirements in order to continue providing respiratory care services and pulmonary function testing by specified individuals who are currently employed at Los Angeles County Hospitals.

The current law which authorizes the RCB to license and regulate RCPs is set to repeal on January 1, 2014. In order to maintain regulation of the professions currently operating under the jurisdiction of the RCB, this bill extends these provisions of law until January 1, 2018, RCB and subjects it

to a new review of the appropriate policy committees of the Legislature. In addition, this bill extends the RCB's authority to appoint an executive officer until January 1, 2018.

14) Obtaining Local Agency Records . It is customary for most boards and bureaus to obtain complete arrest, conviction and other related documentation as part of an applicant's or licensee's disciplinary investigation. As such, boards rely on various authorities and local law enforcement agencies to provide documentation. There have been instances where some entities have been refused access to records due to clear lack of authority to obtain records without approval by the individual in question. This situation can cause delays in investigations and can even potentially prevent the appropriate disciplinary action. This bill provides additional clarity for such boards within DCA to obtain the appropriate records needed for licensure or disciplinary investigation.

15) Related legislation . SB 198 (Price) of 2013 reorganizes, revises, recasts and updates the Physical Therapy Practice Act. This bill is pending in the Assembly Business, Professions and Consumer Protection Committee.

SB 304 (Price) of 2013 makes various changes to the Medical Practice Act and to the Medical Board of California. This bill is pending in the Assembly Business, Professions and Consumer Protection Committee.

SB 306 (Price) of 2013 would have extended until January 1, 2018, the provisions establishing the State Board of Chiropractic Examiners, Speech Language Pathology and Audiology and Hearing Aid Dispensers Board the Physical Therapy Board of California and the California Board of Occupational Therapy and extends the terms of the executive

officers of the Physical Therapy Board of California and the Speech Language Pathology and Audiology and Hearing Aid Dispensers Board. This bill was amended to address an unrelated topic and its provisions were added to this bill. SB 307 (Price) of 2013 extends, until January 1, 2018, the term of the Veterinary Medicine Board, which provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of

veterinary medicine by the Veterinary Medical Board. This bill was held on the Senate Floor.

SB 308 (Price) 2013 extends, until January 1, 2018, the term of the Interior Design Law and specifies that a certified interior use a written contract when contracting to provide interior design services to a client. It also extends, until January 1, 2018, the State Board of Guide Dogs for the Blind and extends an arbitration procedure for the purpose of resolving disputes between a guide dog user and a licensed guide dog school. This bill extends until January 1, 2018, the State Board of Barbering and Cosmetology and requires a school to be approved by the board before it is approved by the Bureau for Private Postsecondary Education. Finally, this bill would also authorize the board to revoke, suspend, or deny its approval of a school on specified grounds. This bill is pending in the Assembly Business, Professions and Consumer Protection Committee.

SB 309 (Price) of 2013 extends the term of the State Athletic Commission, which is responsible for licensing and regulating boxing, kickboxing, and martial arts matches and is required to appoint an executive officer until January 1, 2018. This bill is pending in the Assembly Arts, Entertainment, Sports, Tourism and Internet Media Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Naturopathic Doctors Association
California Optometric Association
California State Board of Optometry
National Board of Examiners in Optometry
Naturopathic Medicine Committee
Osteopathic Physicians and Surgeons of California
Physical Therapy Board of California
SEIU California

Opposition

None on file.

Analysis Prepared by : Elissa Silva / B.,P. & C.P. / (916) 319-3301

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL No. 430

Introduced by Senator Wright
(Coauthor: Senator Hancock)
(Coauthors: Assembly Members Mitchell and John A. Pérez)

February 21, 2013

An act to amend, repeal, and add Section 49455 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 430, as amended, Wright. Pupil health: vision examination: binocular function.

Existing law requires, upon first enrollment in a California school district of a child at a California elementary school, and at least every 3rd year thereafter until the child has completed the 8th grade, the child's vision to be appraised by the school nurse or other authorized person, as specified. Existing law requires this appraisal to include tests for visual acuity and color vision.

This bill would instead, before first enrollment of a pupil at a California private or public elementary school, including a charter school, and at least every 3rd year thereafter until the pupil has completed the 8th grade, require the pupil's vision to be examined by ~~an optometrist~~ *a physician, optometrist,* or ophthalmologist, *consistent with the most current standard, policy, or guideline adopted by certain entities,* except as specified, and require the examination to also include

a test for binocular function and refraction and eye health evaluations. The bill would provide that the binocular function examination need not begin until the pupil has reached the 3rd grade and would require the parent or guardian of the pupil to provide results of the examination to the school. The bill would prohibit a school from denying admission to a ~~child~~ *pupil* or taking any other adverse action against a ~~child~~ *pupil* because of ~~a~~ *his or her* parent's or guardian's failure to obtain a vision examination for the ~~child.~~ *pupil. The bill would, if the results of the vision examination are not provided to the school, require the pupil's vision to be appraised at certain times by the school nurse or other authorized person, as specified, require the appraisal to include tests for visual acuity and color vision, and provide that a school district is not prohibited from requiring or authorizing a school nurse or other authorized person, as specified, to evaluate a pupil's vision for visual acuity, color vision, or binocular function.* The bill would make these provisions operative on July 1, 2014.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 49455 of the Education Code is amended to read:

49455. (a) Upon first enrollment in a California school district of a pupil at a California elementary school, and at least every third year thereafter until the pupil has completed the eighth grade, the pupil's vision shall be appraised by the school nurse or other authorized person under Section 49452. This appraisal shall include tests for visual acuity and color vision; however, color vision shall be appraised once and only on male pupils, and the results of the appraisal shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade. Gross external observation of the pupil's eyes, visual performance, and perception shall be done by the school nurse and the classroom teacher. The appraisal may be waived, if the pupil's parents so desire, by their presenting of a certificate from a physician and surgeon, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or an optometrist

setting out the results of a determination of the pupil's vision, including visual acuity and color vision.

(b) This section shall not apply to a pupil whose parents or guardian file with the principal of the school in which the pupil is enrolling, a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

(c) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 49455 is added to the Education Code, to read:

49455. (a) Before first enrollment of a pupil at a California private or public elementary school, including a charter school, and at least every third year thereafter until the ~~child~~ *pupil* has completed the eighth grade, the pupil's vision shall be examined by ~~an optometrist~~ *a physician, optometrist,* or ophthalmologist. *This examination shall be consistent with the most current standard, policy, or guideline adopted by the American Academy of Pediatrics, the American Academy of Opthalmology, or the American Optometric Association.* This examination shall include tests for visual acuity, binocular function, and color vision, and refraction and eye health evaluations; however, color vision shall be examined once and only on male pupils, and the parent or guardian of the pupil shall provide results of the examination to the school. The color vision examination need not begin until the male pupil has reached the first grade. The binocular function examination need not begin until the pupil has reached the third grade.

(b) This section shall not apply to a pupil whose parents or guardian file with the principal of the school in which the pupil is enrolling, a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

(c) (1) If a pupil is ineligible for Medicaid, Children's Health Insurance Program coverage, or exchange subsidies under the federal Patient Protection and Affordable Care Act (Public Law 111-148), or any other health care service, the private or public

school shall refer the pupil to the county health department or other appropriate community resources able to perform a vision examination pursuant to subdivision (a).

(2) A school shall not deny admission to a ~~child~~ *pupil* or take any other adverse action against a ~~child~~ *pupil* because of ~~a~~ *his or her* parent's or guardian's failure to obtain the examination pursuant to subdivision (a).

(d) If the results of the examination conducted pursuant to subdivision (a) are not provided to the school, then, upon first enrollment in a California school district of a pupil at a California elementary school, and at least every third year thereafter until the pupil has completed the eighth grade, the pupil's vision shall be appraised by the school nurse or other authorized person under Section 49452. This appraisal shall include tests for visual acuity and color vision; however, color vision shall be appraised once and only on male pupils, and the results of the appraisal shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade. Gross external observation of the pupil's eyes, visual performance, and perception shall be done by the school nurse and classroom teacher. A school district is not prohibited from requiring or authorizing a school nurse or other authorized person under Section 49452 to evaluate a pupil's vision for visual acuity, color vision, or binocular function.

~~(d)~~

(e) For purposes of this section, "binocular function examination" means, at a minimum, the evaluation of accommodative ability, sensory and motor fusion, and ocular motility.

~~(e)~~

(f) This section shall become operative on July 1, 2014.

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BILL ANALYSIS

SB 430
Page 1

Date of Hearing: June 26, 2013

ASSEMBLY COMMITTEE ON EDUCATION
Joan Buchanan, Chair
SB 430 (Wright) - As Amended: June 18, 2013

[Note: This bill is double referred to the Committee on Health and will be heard by that committee as it relates to issues under its jurisdiction.]
SENATE VOTE : 38-0

SUBJECT : Pupil health: vision appraisal: binocular function.

SUMMARY : Requires, as of September 1, 2014, all pupils to have a vision exam by an optometrist or ophthalmologist before first enrolling in a California school, and every three years thereafter until the eighth grade. Specifically, this bill :

1) Requires, as of September 1, 2014, school districts to notify parents that they have two weeks at the beginning of a school year to supply evidence that the pupil has had a vision exam, as specified.

2) Requires, as of September 1, 2014, all pupils to be examined by an optometrist or ophthalmologist before first enrollment in a California school, and at least every third year thereafter until the pupil has completed the eighth grade.

3) Specifies that the vision exam shall include tests for visual acuity, binocular function, color vision, refraction and eye health evaluations.

4) Specifies that color vision shall be appraised once on male pupils and before the male pupil has reached the first grade.

5) Specifies the binocular function exam need not begin until the pupil has reached the third grade.

6) Requires the parent or guardian to provide the results of the examination to the school district.

7) Specifies that if a pupil is ineligible for Medicaid, Children's Health Insurance Program coverage, or exchange subsidies under the federal Patient Protection and Affordable

Care Act, or any other health care service, the county office of education or the school district shall refer the pupil to the county health department or other appropriate community resources able to perform a vision exam.

8) Specifies that if a pupil is unable to obtain a vision exam through the referral, the school may waive the vision examination requirement.

9) Defines "binocular function exam" to mean at a minimum, the evaluation of accommodative ability, sensory and motor fusion and ocular motility.

EXISTING LAW requires:

1) Upon first enrollment in an elementary school, and at least every third year thereafter until the child has completed grade 8, the vision of students to be appraised by the school nurse or other authorized person; specifies the evaluation must include tests for visual acuity and color vision, however, color vision is to be appraised once and only on male students; specifies that gross external observation of the child's eyes, visual performance, and perception are to be done by the school nurse and the classroom teacher; and, specifies the evaluation may be waived if the parents present a certificate from a physician and surgeon, a physician assistant or an optometrist. (Education Code 49455)

2) School districts to provide for the testing of the sight and hearing of each student enrolled in the district; and, specifies the test is to be given only by duly qualified supervisors of health employed by the district; certificated employees of the district or county office of education who possess the qualifications prescribed by the Commission on Teacher Credentialing; contract with an agency duly authorized to perform those services by the county superintendent of schools, under guidelines established by the State Board of Education; or, accredited schools or colleges or optometry, osteopathic medicine, or medicine. (Education Code 49452)

FISCAL EFFECT : According to the Senate Appropriations Committee, this bill could result in a significant new mandate on local educational agencies (LEAs), whereby the state may have to reimburse LEAs for every screening exam performed in compliance with this bill, and any related staffing or training

costs.

COMMENTS : This bill requires, as of September 1, 2014, all pupils to have a vision exam by an optometrist or ophthalmologist before first enrolling in a California school, and every three years thereafter until the 8th grade. As an example, this means that upon enrollment in kindergarten, 3rd grade and 6th grade, a pupil will be required to show evidence of an eye exam. This is a total of three eye exams before the 8th grade. The bill also specifies that color vision shall be tested in male pupils before the 1st grade and the binocular function exam need not begin until the 3rd grade. Current law specifies that color vision examination shall not begin until the 1st grade, but this measure specifies it shall be tested before the 1st grade. To correct this drafting error, committee staff recommends the bill be amended to specify that color vision examination shall not begin until 1st grade. Further committee staff recommends the start date for this requirement begin July 1, 2014 to better align with different school calendars.

Vision Exam Requirement for Enrollment : While the bill requires parents to provide evidence that the pupil has received a vision exam within two weeks of enrollment in school, it is unclear whether the district can prohibit enrollment if the documentation is not received. Typically, pupils are prohibited from enrollment in schools if they do not receive appropriate immunizations (or sign a waiver), and this was put into place in order to protect the general public health of pupils and to avoid a public health infection outbreak. To clarify that pupils will not be prohibited from enrollment for failing to complete the eye exam, committee staff recommends the bill be amended to specify that a school may not deny admission to a child or take any other adverse action against a child because of the child's parent or guardian did not obtain the exam required. With the inclusion of this provision, it is no longer necessary to authorize a school district to waive the vision exam requirement for pupils who are unable to obtain a vision exam through the referral to the county health department. Committee staff recommends this waiver be deleted from the bill.

Committee staff recommends the bill be amended to separate this new requirement for a vision exam by an optometrist or ophthalmologist from the immunization requirements and instead

create a new code section that specifies the new vision exam requirements.

The bill specifies that the governing board of the school district should notify parents of this requirement. It is

unclear whether charter schools are included in this requirement. Staff recommends that the bill be amended to clarify that school districts, county offices of education and charter schools are included in the requirement for pupils to receive a vision exam prior to enrollment.

According to the author, current vision testing in schools is limited to using the eye chart for acuity one eye at a time, from 20 feet away. While this is important in identifying children who may need glasses, it does not address how well the two eyes work together while reading. About 20% of children have problems seeing at a reading distance. Existing law provides for vision appraisal of a child by the school nurse or other authorized person at entry into a California school district, and at least every third year thereafter until the child has completed the eighth grade. The evaluation includes tests for visual acuity and color vision (for boys only, and only once). The eye chart is used for vision screening to determine whether a full eye examination is required, in a pass/fail mode. This test cannot address the problem of how well the eyes are able to converge on a page in a book that is close to the face. While there are optional procedures in the screening manual that could uncover eye coordination problems such as convergence, these are rarely used. Emerging data and practice in the field of vision shows that reading speed and fluency are impacted by poor eye coordination. In a study with normal children, when the eyes were temporarily made less coordinated, reading speed declined significantly. In other studies with school children, reading fluency improved when eye coordination improved. SB 430 would bring California into the modern era, where it is acknowledged that convergence insufficiency (a technical term for one type of eye coordination problem) can impact reading and learning.

What are other States doing ? According to the author, other States are ahead of California. Three states - Arkansas, Illinois and Kentucky, already require binocular vision assessment either during school screenings or via a complete eye examination.

Committee Amendments :

1) Move the requirement for an eye exam to a separate code section separate from the immunization requirements.
2) Specify that color vision examination shall not begin until 1st grade.
3) Specify that a school may not deny admission to a child or take any other adverse action against a child because of the child's parent or guardian did not obtain the exam required.

4) Delete the provisions authorizing a school district to waive the requirement if a pupil is not able to obtain a vision exam through the referral to the county health department.
5) Specify that the provisions in the bill commence on July 1, 2014, to better align the implementation of this requirement with the start of the school year.
6) Clarify that school districts, county offices of education and charter schools are included in the requirement for pupils to receive a vision exam prior to enrollment.

Previous Legislation : AB 1095 (Wright) from 2001, which was held in the Senate Appropriations Committee's suspense file, would have required every child to undergo a comprehensive eye examination by an optometrist or ophthalmologist within 90 days of entering the first grade.

AB 1096 (Wright) from 2001, which died on the Senate Floor's inactive file, would have established a three-year pilot program to provide comprehensive eye examinations for poor readers.

SB 606 (Vasconcellos) from 2001, which was held in Assembly Appropriations Committee's suspense file, would have required the existing student eye examination, conducted upon enrollment and every third year thereafter through 8th grade, to include screening for binocular function, ocular alignment, ocular motility, and near visual acuity.

REGISTERED SUPPORT / OPPOSITION :

Support

California State Board of Optometry
California Teachers Association

Opposition

American Academy of Pediatrics, California
California Immunization Coalition

Analysis Prepared by : Chelsea Kelley / ED. / (916) 319-2087

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL No. 492

Introduced by Senator Hernandez

February 21, 2013

An act to amend Sections ~~3041 and 3041.1~~ *3041, 3041.1, and 3110* of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. Optometrist: practice: licensure.

The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. Any violation of the act is a crime.

~~This bill would add the provision of habilitative optometric services to the definition of the practice of optometry. The bill would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided. The bill would also delete limitations on certain kinds of diagnostic tests an optometrist can order and would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests, as provided.~~

This bill would include the provision of habilitative optometric services within the scope of practice of optometry. The bill would expand the scope of practice of optometrists who are certified to use therapeutic pharmaceutical agents by, among other things, authorizing those optometrists to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration for use in treating the eye conditions covered by these provisions. The bill would also expand the ability of an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat certain diseases, as provided. The bill would require the board to grant a certificate to an optometrist for the use of advanced procedures, which include the administration of certain immunizations, if the optometrist meets certain educational requirements.

Existing law requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.

This bill would expand this requirement to include diagnosing other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's scope of practice.

This bill would delete obsolete provisions and make conforming changes.

Because this bill would change the definition of a crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular ~~inflammation,~~ *inflammation* nonsurgical in ~~cause~~ *cause,* except when comanaged with the treating physician and surgeon.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes. *Treatment for purposes of this subparagraph includes, but is not limited to, the use of mechanical lipid extraction of meibomian glands using nonsurgical techniques.*

(F) Ocular ~~pain,~~ *pain* nonsurgical in ~~cause~~ *cause,* except when comanaged with the treating physician and surgeon.

(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision ~~(j).~~ *(l).*

(H) Eyelid disorders, including hypotrichosis and blepharitis.

(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration for use in treating eye conditions set forth in this chapter, including codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the ~~United States~~ *federal* Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of ~~these agents~~ *controlled substances* shall be limited to three days.

(d) In any case that an optometrist consults with a physician and surgeon, the optometrist and the physician and surgeon shall both maintain a written record in the patient's file of the information provided to the physician and surgeon, the physician and surgeon's response, and any other relevant information. Upon the request of the optometrist or physician and surgeon and with the patient's consent, a copy of the record shall be furnished to the requesting party.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Corneal scraping with cultures.

(2) Debridement of corneal epithelia.

(3) Mechanical epilation.

(4) Venipuncture for testing patients suspected of having diabetes.

(5) Suture removal, upon notification of the treating physician and ~~surgeon .~~ *surgeon or optometrist.*

(6) Treatment or removal of sebaceous cysts by expression.

~~(7) Administration of oral fluorescein .~~

~~(8)~~

(7) Use of an auto-injector to counter anaphylaxis.

~~(9)~~

(8) Ordering of appropriate laboratory and diagnostic imaging tests for conditions authorized to be treated pursuant to this section.

~~(10)~~

(9) A clinical laboratory test or examination classified as waived under ~~CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.~~ *the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a) (CLIA). These laboratory tests are required to be performed in compliance with both CLIA and all clinical laboratory licensing requirements in Chapter 3 (commencing with Section 1200), and any ancillary personnel utilized shall be in compliance with those same requirements.*

~~(11)~~

(10) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

~~(12)~~

(11) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

~~(13)~~

(12) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a ~~scalpel .~~ *scalpel.* Corneal foreign bodies shall be nonperforating, be no

deeper than the midstroma, and require no surgical repair upon removal.

~~(14)~~

(13) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist *or lacrimal irrigation and dilation certified optometrist* as confirmed by the ophthalmologist *or lacrimal irrigation and dilation certified optometrist*. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, ~~shall be~~ *is* exempt from the certification requirement contained in this paragraph.

~~(15) Administration of immunizations for influenza, Herpes Zoster Virus, and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency.~~

~~(16)~~

(14) In addition to diagnosing and treating conditions of the visual system pursuant to this section, testing for ~~and, diagnoses~~ *and diagnosis* of diabetes mellitus, hypertension, and hypercholesterolemia.

(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision ~~(j)~~, *(l)*, in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

~~(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:~~

~~(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.~~

~~(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.~~

~~(4)~~

(3) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.

~~(5)~~

(4) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph ~~(2), (3), or (4),~~ *(2) or (3),* submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.

(g) The board shall grant a certificate to an optometrist certified pursuant to subdivision (f) for the use of advanced procedures, as described in subdivision (h), after the optometrist meets the following applicable requirement:

(1) For licensees who graduated from an accredited school of optometry that includes satisfactory curriculum on advanced procedures, as determined by the board, on or after May 1, 2016, submission of proof of graduation from that institution.

(2) For licensees who graduated from an accredited school before May 1, 2016, submission of proof of completion of a 32-hour course that includes clinical training in advanced procedures and is approved the board.

(h) For the purposes of this chapter, "advanced procedures' means any of the following:

(1) Therapeutic lasers used for posterior capsulotomy secondary to cataract surgery.

(2) Therapeutic lasers appropriate for treatment of glaucoma and peripheral iridotomy for the prophylactic treatment of angle closure glaucoma.

(3) Excision, scraping, and biopsy, or any combination of those, of superficial lesions of the eyelid and adnexa.

(4) Cauterization or suture repairs of the eyelid and conjunctiva.

(5) Injections for the treatment of conditions of the eye and adnexa described in paragraph (1) of subdivision (b), excluding intraorbital injections and injections administered for cosmetic effect.

(6) Administration of immunizations for influenza, Herpes Zoster Virus, and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) for persons three years of age or older.

(7) Any noninvasive technology authorized by the board for the treatment of conditions described in paragraph (1) of subdivision (b).

~~(g)~~

(i) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

~~(h) The~~

(j) Except as authorized by this section, the practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. ~~"Surgery" does not include those procedures specified in subdivision (e).~~ Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

~~(i)~~

(k) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.

~~(j)~~

(l) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

~~(k)~~

(m) For purposes of this chapter, "adnexa" means ocular adnexa.

~~(l)~~

(n) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 2. Section 3041.1 of the Business and Professions Code is amended to read:

3041.1. With respect to the practices set forth in Section 3041, optometrists diagnosing or treating eye disease or diagnosing other diseases shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. An optometrist shall consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition occurs that is beyond the optometrist's scope of practice.

SEC. 3. Section 3110 of the Business and Professions Code is amended to read:

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care

professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(*l*) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician ~~in either of the following circumstances:~~ *if an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.*

~~(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.~~

~~(2) As required by subdivision (c) of Section 3041.~~

SEC. 4. It is the intent of the Legislature that the Office of Statewide Health Planning and Development, under the Health Workforce Pilot Projects Program, designate a pilot project intended to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.

~~SEC. 3.~~

SEC. 5. 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.

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BILL ANALYSIS

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

SB 492

THIRD READING

Bill No: SB 492
Author: Hernandez (D)
Amended: 5/8/13
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEVELOP. COMM. : 8-0, 4/29/13
AYES: Price, Block, Corbett, Galgiani, Hernandez, Hill, Padilla, Yee
NO VOTE RECORDED: Emmerson, Wyland

SENATE APPROPRIATIONS COMMITTEE : 7-0, 5/23/13
AYES: De León, Walters, Gaines, Hill, Lara, Padilla, Steinberg

SUBJECT : Optometrists: practice: licensure

SOURCE : Author

DIGEST : This bill permits an optometrist to diagnose, treat and manage additional conditions with ocular manifestations; directs the California Board of Optometry to establish educational and examination requirements; and permits optometrists to perform vaccinations and surgical and non-surgical primary care procedures.

ANALYSIS : Existing law defines the practice of optometry; and specifies that an optometrist who is certified to use therapeutic pharmaceutical agents (TPAs) may also diagnose and treat specified conditions, use TPAs, and order specified diagnostic tests.

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This bill:

1. Adds the provision of habilitative optometric services to the definition of the practice of optometry.

2. Allows an optometrist who is TPA certified to treat the lacrimal gland, lacrimal drainage system and the sclera in patients under 12 years of age.

3. Allows an optometrist to treat ocular inflammation and pain, nonsurgical in cause except when comanaged with the patient's treating physician and surgeon.

4. Permits optometrists to treat eye lid disorders, including hypotrichosis and blepharitis.

5. Allows an optometrist to use all TPAs approved by the Food and Drug Administration (FDA) for use in treating eye conditions including codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act and the U.S. Controlled Substances Act. Limits the use of these agents to three days.

6. Requires, in any case that an optometrist consults with a physician and surgeon, the optometrist and the physician and surgeon to both maintain a written record in the patient's file of the information provided to the physician and surgeon, the physician and surgeon's response, and any other relevant information. Upon the request of the optometrist or physician and surgeon and with the patient's consent, a copy of the record shall be furnished to the requesting party.

7. Removes the requirement for optometrists to only utilize specific TPAs.

8. Allows TPA-certified optometrists to remove sutures, upon notification of the treating physician and surgeon.

9. Removes the restriction that optometrists can only administer oral fluorescein to patients suspected as having diabetic retinopathy.

10. Deletes the list of specific tests optometrists are permitted to order and permits optometrists to order any laboratory and

CONTINUED

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diagnostic imaging tests for conditions authorized to be treated pursuant to this bill.

11. Authorizes an optometrist to perform a clinical laboratory test or exam classified as waived under CLIA (Clinical Laboratory Improvement Amendments) and designated as waived in #10 above necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized.

12. Adds the provision that optometrists can administer immunizations for influenza, Herpes Zoster Virus, and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency.

13. Permits optometrists to test for and diagnose diabetes mellitus, hypertension and hypercholesterolemia.

14. Specifies that an optometrist diagnosing or treating eye disease or diagnosing other diseases shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.

15. Requires an optometrist to consult with and refer to a physician and surgeon or other appropriate health care provider if a situation/condition occurs that is beyond the optometrist's scope of practice.

16. Allows an optometrist to consult with and refer to a physician and surgeon or appropriate health care provider if a situation or condition occurs that is beyond the optometrist's education and training.

Background

Shortage of optometrists . According to a report prepared by the Center for the Health Professions at the University of California San Francisco, the number of optometrist licenses in California has declined, but the number of licensees with a secondary practice location has increased. According to the California Board of Optometry, there are approximately 9,000 optometrists in California, the largest population of optometrists in the United States. These optometrists are

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generally concentrated in coastal counties, the Bay Area and counties in the Sacramento region. Several counties have no licensed optometrists with an address of record in those counties, and a number of other counties have ratios that indicate there is approximately one optometrist for every 10,000 people.

Optometrists' education, training and scope . After completion

of an undergraduate degree, optometrists complete four years of an accredited optometry college after which they are awarded the Doctor of Optometry degree. Some optometrists also undertake an optional one year non-surgical residency program to enhance their experience in a particular area. Students graduate with 2,500-3,000 patient encounters; these include a mix of post-surgical, medical and routine visits.

Optometrists are trained to diagnose mild to severe eye problems such as serious eye infections, inflammations of the eye, trauma, foreign bodies and glaucoma. They also examine the eye for vision prescription and corrective lenses. Optometrists may apply for certification to administer TPA; to perform lacrimal irrigation and dilation; and to diagnose and treat primary open angle glaucoma.

Ophthalmologists' education, training and scope . After obtaining an undergraduate degree, ophthalmologists complete four years at an accredited medical school and earn a Medical Degree. This is followed by a one year internship and a three or four year surgical residency. Many ophthalmologists pursue additional fellowship training in specialized areas such as retina, glaucoma or cornea. Ophthalmologists may become certified by the American Board of Ophthalmology, which requires, serving as primary surgeon or first assistant to the primary surgeon on a minimum of 364 eye surgeries.

The central focus of ophthalmology is surgery and management of complex eye diseases. An ophthalmologist specializes in the refractive, medical and surgical care of the eyes and visual system and in the prevention of disease and injury.

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

According to the Senate Appropriations Committee:

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One-time costs of about $950,000 over two years to revise regulations and certify additional optometrists to use therapeutic pharmaceutical agents by the California Board of Optometry (State Optometry Fund).

Ongoing costs of about $350,000 for certifications and enforcement activities (State Optometry Fund).

Increased fee revenues of about $80,000 over the first two years and about $10,000 per year thereafter for additional certifications (State Optometry Fund).

Indeterminate impact on state health care programs, such as the California Public Employees' Retirement System and Medi-Cal.

SUPPORT : (Verified 5/24/13)

Bay Area Council
Blue Shield of California
California Hospital Association
California Optometric Association
California Pharmacists Association/California Society of Health-System Pharmacists
Californians for Patient Care
United Nurses Associations of California/Union of Health Care Professionals
Vision Service Plan
Western University of Health Sciences

OPPOSITION : (Verified 5/24/13)

American College of Emergency Physicians- California Chapter
Blind Children's Center
California Academy of Eye Physicians & Surgeons
California Academy of Family Physicians
California Association for Medical Laboratory Technology
California Medical Association
California Society of Anesthesiologists
California Society of Plastic Surgeons
Canvasback Missions Inc.
Here4Them
Lighthouse for Christ Mission Eye Center

CONTINUED

Osteopathic Physicians & Surgeons of California
Union of American Physicians and Dentists

ARGUMENTS IN SUPPORT : According to the author's office, this bill is intended to allow optometrists to practice to the full extent of their education and training in order to expand access to the health care delivery system for the millions of Californians who will have new access to coverage through the implementation of the federal Patient Protection and Affordable Care Act (ACA). This bill allows optometrists to diagnose, treat and manage specific eye disorders and common diseases such as diabetes, hypertension and hyperlipidemia; expands the drugs optometrists can prescribe; and permits optometrists to administer immunizations and to perform surgical and non-surgical procedures.

Blue Shield of California states, "Expanding the range of services that these practitioners are able to provide will

improve access and quality of care as they are well trained and highly educated professionals that are already providing integral health services."

Californians for Patient Care note, "It is widely noted that there are not enough trained medical professionals to appropriately care for the influx of new patients. We believe it is important that qualified, educated and trained optometrists be allowed to practice to the extent of their licenses to best serve California's patient population throughout the state."

The California Optometric Association believes that this bill, "addresses the health care provider gap by expanding the scope of practice of optometry. Optometrists are positioned and prepared to be part of the solution to meeting the additional health care needs upon enactment of the ACA in 2014."

The United Nurses Associations of California/ Union of Health Care Professionals indicate, "SB 492 would allow optometrists to practice to the full extent of their education and training in order to expand access to the health care delivery system for the millions of Californians who will have new access to coverage through implementation of the federal ACA."

ARGUMENTS IN OPPOSITION : The California Medical Association

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(CMA) outline several concerns. Included is the provision of primary care services that optometrists would be permitted to do if the bill passed. CMA believes that this is "?beyond the existing scope of practice related to visual disorders and could result in serious harm to patients." They also note that optometrists "?do not have the training and experience necessary to provide comprehensive primary care. In addition, SB 492 would allow optometrists to practice medicine without being subject to the Medical Practice Act. Currently, optometrists are licensed by the Board of Optometry. Under SB 492, the scope of practice for optometrists would be expanded to the point where they would be practicing as ophthalmologists, who are required to have a medical license, without being subject to the controls and oversight of the Medical Practice Act."

The California Association for Medical Laboratory Technology notes, "While we recognize the ability of optometrists to perform certain waived tests limited to their scope of practice, we have concerns about the broad range of testing contained in this bill. Of greater concern is whether or not optometrists receive the proper education and training to perform as a laboratory director."

The California Academy of Eye Physicians & Surgeons is concerned about the expanded scope of practice for optometrists permitted by this bill. Specifically, they are concerned about the provisions that would allow optometrists to conduct eye surgeries and prescribe medications by all routes with no additional training.

The Union of American Physicians and Dentists states that "SB 492 rolls out an uncertain health care delivery system with patients subject to unintended consequences of the bill. Medical supervision over optometrists is critical to safe patient outcomes. SB 492 raises serious patient safety concerns in allowing optometrists to prescribe medication and perform surgical procedures without and medical supervision."

The Lighthouse for Christ Mission Eye Center and the Canvasback Missions, Inc. states, "The bill would give optometrists greatly increased privileges, including the ability to treat any disease that might have a "manifestation" in the eye without additional specific training requirements. The Board of Optometry, whose members have no experience doing surgery or treating the added

CONTINUED

diseases would be allowed to decide those training requirements."

The California Society of Anesthesiologists argues, "SB 492 would allow the diagnosis and initiation of treatment of any condition with ocular manifestation. This is a broad and unclear authorization that has not attained scientific consensus. It is not a sufficient basis to authorize comprehensive primary care. Also, by granting full drug prescribing authority to optometrists, the bill would add a new category of authorized controlled substance prescribers at a time when more controls are being sought over excessive prescribing."

MW:d 5/24/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED

AMENDED IN SENATE APRIL 23, 2013

SENATE BILL No. 723

Introduced by Senator Correa
(Coauthors: Senators Leno and Lieu)

February 22, 2013

An act to add Section 325.51 to the Unemployment Insurance Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 723, as amended, Correa. Veterans.

Existing law requires the Employment Development Department, in consultation and coordination with veterans' organizations and veteran service providers, to research the needs of veterans throughout the state and develop a profile of veterans' employment and training needs and to seek federal funding for those purposes.

This bill would require the Employment Development Department and the Department of Consumer Affairs, on or before January 1, 2015, jointly to present a report to the Legislature ~~addressing specified matters relating to military training programs and state credentialing programs~~ *containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 325.51 is added to the Unemployment~~
2 ~~Insurance Code, to read:~~

~~325.51. The~~

SECTION 1. *Section 325.51 is added to the Unemployment Insurance Code, immediately following Section 325.5, to read:*

325.51. *The* Employment Development Department and the Department of Consumer Affairs, on or before January 1, 2015, jointly shall present a report to the Legislature containing ~~all of the following:~~

~~(a) Best~~ *best* practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.

~~(b) Military occupational specialties within all branches of the United States Armed Forces that readily transfer to high-demand civilian jobs.~~

~~(c) The departments' past and current efforts to collaborate with key public and private sector stakeholders to address the gaps between military training programs and state credentialing programs with respect to at least five specific vocations or professions that are credentialed or licensed by the Department of Consumer Affairs.~~

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BILL ANALYSIS

SB 723
Page 1

Date of Hearing: July 3, 2013

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mike Gatto, Chair

SB 723 (Correa) - As Amended: April 23, 2013

Policy Committee: Labor and Employment Vote: 7-0
Veterans Affairs 8-0

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

SUMMARY

This bill requires the Employment Development Department (EDD) and the Department of Consumer Affairs (DCA), on or before January 1, 2015, to jointly present a report to the Legislature containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.

FISCAL EFFECT

Minor, absorbable costs to EDD and DCA to complete this report.

COMMENTS

1) Purpose . According to the California Research Bureau's report: Overview of Veterans in California (March 2013), California has approximately 1.9 million veterans. Of these, about 185,000 (or 9.7%) are women. Almost one million are over the age of 60 (52.3%). Most live in Southern California counties, and are heavily clustered in Los Angeles (323,431 in 2012), San Diego (222,348 in 2012) and Orange counties (132,529 in 2012).

According to the author, "The recession has taken a tremendous toll on the economy and returning veterans are competing with age cohort peer, many of whom enter the weakened job market with the advantage of freshly earned college degrees. To make things worse, the withdrawal of troops from Iraq and Afghanistan and ongoing troop reduction in each military branch make it increasingly difficult for young service

members to reenlist, forcing more of them into the uneven competition for scarce civilian jobs. While the unemployment rate among individuals who are not veterans in about nine percent, the unemployment rate for Post-9/11 veterans is 12 percent. Among the youngest veterans, those aged 18-24 who comprise 12.5 percent of the Post-9/11 veteran population, the unemployment situation is even more dire. Nationally more than 30 percent of these men and women are unemployed."

This bill requires EDD and DCA, on or before January 1, 2015, to jointly present a report to the Legislature containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.

2) Pending state audit report on employment opportunities for veterans . The State Auditor (SA) is currently conducting an audit that "will provide independently developed and verified information related to EDD's efforts to assist veterans in finding employment and will include, but not be limited to, identifying the roles and responsibilities of various federal, state, and local agencies in providing employment assistance and job training to veterans."

The scope of the audit also includes a review of EDD's effectiveness in providing assistance and job training programs to veterans, including a review of specific programs such as one-stop career centers and the veterans employment related assistance program. The audit is expected to be completed in the fall of 2013.

3) Related legislation . AB 1268 (Perez), pending in the Senate Labor and Industrial Relations Committee, establishes the Veterans Workforce Development and Employment Office (Office) within the Labor and Workforce Development Agency for the purpose of coordinating veterans' workforce services.

Analysis Prepared by : Kimberly Rodriguez / APPR. / (916) 319-2081

Senate Bill No. 724

CHAPTER 68

An act to add Section 1714.26 to the Civil Code, relating to liability.

[Approved by Governor July 11, 2013. Filed with Secretary of State July 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 724, Emmerson. Liability: charitable vision screenings.

Existing law provides immunity to a food facility that donates edible food for any damage or injury resulting from the consumption of the donated food, and to any nonprofit charitable organization or food bank that receives and distributes edible food for any injury or death due to the food, except as specified.

This bill would limit the liability of a nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening and, if applicable, the provision of donated or recycled eyeglasses, if specified conditions are met. The bill would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.

The people of the State of California do enact as follows:

SECTION 1. Section 1714.26 is added to the Civil Code, to read:

1714.26. (a) Except for damage or injury resulting from gross negligence or a willful act, there is no liability for any damage or injury on the part of a nonprofit charitable organization that provides vision screenings and, if applicable, provides donated or recycled eyeglasses, or a participating licensed optometrist, ophthalmologist, or trained volunteer who works with such a nonprofit charitable organization in the performance of vision screenings, if all of the following conditions are met:

(1) The vision screening is provided to address ocular health concerns and, if applicable, to provide a temporary solution in the form of donated or recycled eyeglasses until the patient can get a full examination and eyeglasses.

(2) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist.

(3) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist.

(4) Each vision screening is supervised by an attending licensed optometrist or ophthalmologist.

(5) The eyeglass prescription determinations and ocular health recommendations are provided by an attending licensed optometrist or ophthalmologist.

(6) A written prescription is not provided to the patient.

(7) The eyeglasses provided to the patients are a close or approximate match, within tolerances allowed by the attending licensed optometrist or ophthalmologist, to the prescription determined during the vision screening.

(8) The vision screening and eyeglasses are provided without a charge.

(9) The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses.

(10) The nonprofit charitable organization provides procedural, risk management, and quality control training, as applicable, to the participating optometrist, ophthalmologist, or volunteer who provides the vision screening or eyeglasses.

(b) The limitation of liability provided in subdivision (a) is not applicable if an action is brought by an officer of a state or local government pursuant to state or local law.

(c) The limitation of liability provided in subdivision (a) is not applicable if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes any of the following types of misconduct:

(1) A crime of violence.

(2) A hate crime.

(3) An act involving a sexual offense.

(4) An act involving misconduct in violation of federal or state civil rights laws.

(5) An act performed while the defendant was under the influence of drugs or alcohol.

(d) For the purposes of this section:

(1) “Nonprofit charitable organization” means an organization exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(2) “Vision screening” means a test or examination of an individual using a portion of the usual examination procedures in a comprehensive eye examination and refraction, that are selected or directed by an attending licensed optometrist or ophthalmologist, and are within the guidelines of the nonprofit charitable organization.

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BILL ANALYSIS

SB 724
Page 1

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON JUDICIARY
Bob Wieckowski, Chair
SB 724 (Emmerson) - As Amended: April 29, 2013

Proposed Consent

SENATE VOTE : 37-0

SUBJECT : Liability: Charitable vision Screenings

KEY ISSUE : Should nonprofit organizations and participating optometrists, ophthalmologists and trained volunteers be afforded qualified immunity when providing charitable vision screenings and RECYCLED eyeglass distribution?

FISCAL EFFECT : As currently in print this bill is keyed non-fiscal.

SYNOPSIS

This non-controversial bill seeks to provide qualified immunity from liability for damage or injury, except for injury resulting from gross negligence or a willful act, to a nonprofit charitable organization that provides vision screenings and, if applicable, donated or recycled glasses, as well as participating licensed optometrists, ophthalmologists, or trained volunteers who work with such nonprofit charitable organizations to provide charitable vision screenings under appropriate conditions. A broad host of groups support this bill and there is no known opposition.

SUMMARY : Seeks to provide qualified immunity from liability for damage or injury to a nonprofit charitable organization that provides vision screenings and, if applicable, donated or recycled glasses, as well as participating licensed optometrists, ophthalmologists, or trained volunteers who work with such nonprofit charitable organizations to provide charitable vision screenings under appropriate conditions. Specifically, this bill :

1) Provides immunity from liability for a nonprofit organization, or a licensed optometrist, ophthalmologist, or trained volunteer working with such a nonprofit organization in the

performance of vision screenings, where all of the following qualifications are met:

a) The vision screening is provided to address ocular health concerns and, if applicable;
b) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist;
c) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist;
d) Each vision screening is supervised by an attending licensed optometrist or ophthalmologist;
e) The eyeglass prescription determinations and ocular health recommendations are provided by an attending licensed optometrist or ophthalmologist;
f) A written prescription is not provided to the patient;
g) The eyeglasses provided to the patients are a close match to the prescription determined during the vision screening;
h) The vision screening and eyeglasses are provided without a charge;
i) The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses; and
j) The nonprofit charitable organization provides procedural, risk management, and quality control training, as applicable, to the participating optometrist, ophthalmologist, or volunteer who provides the vision screening or eyeglasses.

2) Withholds immunity from liability if an action is brought by an officer of a state or local government pursuant to state or local law.

3) Withholds immunity from liability if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist or volunteer includes any of the following types of misconduct:

a) A crime of violence;
b) A hate crime;
c) An act involving a sexual offense;
d) An act involving misconduct in violation of federal or state civil rights laws;
e) An act performed while the defendant was under the influence of drugs or alcohol.

4) Defines "nonprofit charitable organization" as an organization exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.

5) Defines "vision screening" as a test or examination of an individual using a portion of the usual examination procedures in a comprehensive eye examination and refraction, that are selected or directed by an attending licensed optometrist or ophthalmologist, and are within the guidelines of the nonprofit charitable organization.

EXISTING LAW :

1) Provides food facilities donating food to a nonprofit charitable organization or food bank with similar limited liability for damage or injury resulting from consumption of the donated food. (Civil Code Section 1714.25.)

2) Grants immunity from liability to a director or executive officer of a nonprofit public benefit corporation for damages-other than those resulting from reckless or wanton misconduct or gross or intentional negligence-if the act or omission was done in good faith and within the scope of the officer's duty. If the damages are not covered by a liability insurance policy, the volunteer director or executive officer is not liable if it can be established that all reasonable efforts were made in good faith to obtain available liability insurance. (Corporations Code Section 5239.)

3) Provides similar qualified immunity to unpaid directors and officers of mutual benefit and nonprofit religious corporations. (Corporations Code Section 5047.5.)

4) Provides a federal limitation on liability for volunteers of nonprofit organizations and governmental entities. (Volunteer Protection Act of 1997, 42 U.S.C. Section 14500 et seq.)

5) States legislative intent to create an environment in which philanthropy and volunteerism in the health care field and the vast benefits to California citizens arising therefrom can be encouraged. (Health & Safety Code Section 101983.)

6) Protects from civil liability persons who, in good faith and not for compensation, render emergency medical or nonmedical care at the scene of an emergency. (California's "Good Samaritan" law. Health & Safety Code Section 1799.102.)

7) Protects private nonprofits, their members and their employees who administer flu vaccines under a governmental immunization program from civil liability for any injury caused in the administration of vaccines, so long as the injury was not caused by gross negligence or willful misconduct. (Health & Safety Code Section 120392.3.)

8) Provides protection from civil liability to private businesses and nonprofit organizations that, voluntarily and without expectation or receipt of compensation, donate resources during a state of war, a state of emergency, or to an emergency medical training services program. (Gov. Code Section 8655.5)

COMMENTS : This non-controversial bill seeks to reasonably reassure nonprofit charitable organizations and participating licensed optometrists, ophthalmologists, and volunteers that they can comfortably participate in charitable vision screenings and eyeglass donation programs to those in need without fear of possible lawsuits.

According to the author:

> There is a significant need in California for vision screenings for those who cannot afford or have limited access to eye care. To address this need, nonprofit charitable organizations offer free vision screenings throughout the state to provide a temporary solution to the visually impaired until a more permanent solution is available.
>
> These nonprofit organizations rely on licensed optometrists, ophthalmologists, and other volunteers to provide vision screenings and eyeglass fittings. While the Federal Volunteer Protection Act grants immunity from

> liability for individuals providing volunteer services for government or nonprofit entities, current law does not address the criteria used for vision screenings or the associated distribution of eyeglasses.
>
> SB 724 would provide qualified immunity to a nonprofit charitable organization, or a participating licensed optometrist, ophthalmologist, or trained volunteer who

works with the nonprofit entity, for vision screenings or the associated distribution of donated or recycled eyeglasses. By specifying the criteria for limitation of liability, it will help encourage optometrists, ophthalmologists, and volunteers to offer their services at free vision screenings, thereby increasing access to care for Californians in need.

Rational Basis Test Appears Easily Met Here : In holding that under state and federal equal protection provisions a statute may single out a class for distinctive treatment only if such classification bears a rational relation to the purposes of the legislation, the California Supreme Court has cited United States Supreme Court holdings that "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstances shall be treated alike.' [Citations omitted.] Thus, when a statute provides that one class shall receive different treatment from another, our constitutional provisions demand more 'than nondiscriminatory application within the class . . . establish[ed] . . . . [They] also [impose] a requirement of some rationality in the nature of the class singled out.'" (Brown v. Merlo (1973) 8 Cal.3d 855, 862-63.)

By limiting the recoverable damages of those who receive charitable vision screenings and donated eyeglasses, this bill creates a classification of individuals who do not have the same protection against damage and injury resulting from the negligent conduct of the nonprofit organization, optometrist, ophthalmologist, or volunteer. In effect, the rational basis standard outlined above requires that the establishment of this classification and limitations on its potential for recovery be reasonably related to a legitimate government interest. There are many arguable bases for providing qualified immunity for vision screening volunteerism. First, for example, vision screening services and donated glasses are typically not

provided by emergency service hospitals where people of limited means may otherwise go for medical services. As a result, there is a strong need to provide vision screening and glasses to individuals who would not otherwise have access to these services. Second, philanthropic support for these services clearly should be encouraged so that these services are available to these individuals. Third, philanthropy of this nature pays for necessary expenditures that otherwise would have to be paid by patients or by the government.

Legislative Policy to Encourage Philanthropy and Volunteerism Also Furthered by This Measure : The Brown Court noted above

further held that "[i]n determining the scope of the class singled out for special burdens or benefits, a court cannot confine its view to the terms of the specific statute under attack, but must judge the enactment's operation against the background of other legislative, administrative and judicial directives which govern the legal rights of similarly situated persons. As the United States Supreme Court recognized long ago: 'The question of constitutional validity is not to be determined by artificial standards [confining review "within the four corners" of a statute]. What is required is that state action, whether through one agency or another, or through one enactment or more than one, shall be consistent with the restrictions of the Federal Constitution.' [Citations.]" (Brown v. Merlo, supra, 8 Cal.3d at 862.)

Existing state law provides a legislative directive to create an environment in which philanthropy and volunteerism in the health care field and the benefits arising from it for the citizens of California can be encouraged. (Health & Saf. Code Section 101983.) In addition, this bill is modeled after a federal legislative directive, the Volunteer Protection Act (VPA), which provides limitation on liability for nonprofit volunteers. As under the VPA, this bill would provide a qualified immunity from liability for volunteers acting within the scope of the volunteers' responsibilities in the nonprofit organization, were properly licensed or authorized by the appropriate authorities, and the harm was not caused by willful misconduct or gross negligence. (See, 42 U.S.C. Section 14503(a).)

In addition to conforming to the provisions of the VPA, this bill would require the nonprofit organization to adhere to risk management procedures, including mandatory training for volunteers. (See, 42 U.S.C. Section 14503(d).) Further, the

immunity would not apply if an action were brought by a state or local government officer. Nor would the immunity apply if the volunteer's conduct constituted a crime of violence, a hate crime, a sexual offense, misconduct in violation of federal or state civil rights laws, or situations where the volunteer was under the influence of alcohol or drugs at the time of the misconduct. (See, 42 U.S.C. § 14503(d)(3), (f).)

ARGUMENTS IN SUPPORT : In support of the bill, the California Lions Friends In Sight notes that their organization currently conducts approximately thirty vision screenings per year, helping approximately 8,000 patients. The organization also states that this bill "would provide general guidelines of conducting a vision screening and would enable licensed optometrist[s], ophthalmologist[s] and assisting trained volunteers to provide no-cost services to those who cannot

afford eye care or eyeglasses."

The Civil Justice Association of California (CJAC) states, "[t]he bill is narrowly drafted and limits this protection to only those cases where the screening and provision of eyeglasses (if needed) are a temporary solution, the screening is supervised by a licensed optometrist or ophthalmologist, the patient is aware he or she needs a full examination and the services are provided free of charge." It further points out that "federal law has recognized that communities suffer from the withdrawal of nonprofits and their volunteers due to liability concerns and that it is in the interest of the country to have liability reform for volunteers (42 U.S.C.A. Section 14501 et seq.). Therefore, under federal law volunteers acting in the performance of services for a nonprofit organization or governmental entity are protected from lawsuits unless they acted willfully, recklessly or with gross negligence (42 U.S.C.A. Section 14502). This bill is consistent with federal law and furthers the important policy of encouraging the provision of charitable, much-needed social services without fearing costly lawsuits."

In addition, the California Association of Nonprofits writes, "[SB 724] strikes the right balance between encouraging volunteerism and the involvement of charitable organizations by limiting liability for services performed within appropriate procedural protocol, and ensuring that people receiving free vision care are protected from instances of negligence or misconduct. We feel this is the right balance to allow

nonprofits to serve our communities and to encourage community members to seek and receive these services. It is important to note that the Federal Volunteer Protection Act does grant immunity from liability for individuals providing volunteer services for government or nonprofit entities as long as the volunteer does not commit an act or omission that constitutes gross negligence. However, current law does not address the criteria used for vision screenings or the distribution of used or recycled eyeglasses. By specifying this criteria for immunity, it will help encourage licensed optometrists, ophthalmologists, and volunteers to offer their services at vision screenings, thereby increasing access to care for Californians in need."

The State Board of Optometry supports the portion of the bill that provides qualified immunity from damages or injury liability, noting that SB 724 "would limit the liability of a nonprofit charitable organization and its participating eye care professionals or volunteers, for any damage or injury resulting from vision screenings and the donation of recycled glasses.

This bill would assist in the regulation of this much needed service for underserved populations and encourage optometrists and ophthalmologists to volunteer more."

However, the Board expresses concern with the language in the bill referring to the donation of eyeglasses without a prescription that are a "close or approximate match." The Board states that "[u]nderserved consumers, regardless of their circumstances, should receive eye wear that has their true prescription because the reality is that what may be considered a 'temporary' solution by the sponsor may be the only solution for many of these consumers." In light of such reservations, the author is working with the Board in discussions about this issue.

RELATED LEGISLATION : AB 836 (Skinner): Among other things, this bill incentivizes retired dentists to provide free care for dentally underserved populations by effectively reducing the number of CE hours required for license renewal from 50 to 30. The sponsor of this bill, the California Dental Association (CDA), argues that access to dental care has been hampered by state budget cuts, requiring more people to rely on charity services. CDA hosts several of these free clinics, which rely on volunteer dentists. This bill would encourage active retired dentists to maintain their licensure in order to offer their

services for free. Awaiting consideration in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Lions Friends In Sight (sponsor)
California Association of Nonprofits
Civil Justice Association of California

Opposition

None on file

Analysis Prepared by : Drew Liebert and Alex Nowinski / JUD. / (916) 319-2334

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE MAY 1, 2013

SENATE BILL No. 809

Introduced by Senators DeSaulnier and Steinberg
(Coauthors: Senators Hancock, Lieu, Pavley, and Price)
(Coauthor: Assembly Member Blumenfield)

February 22, 2013

An act to add Sections ~~805.8~~ *208, 209,* and 2196.8 to the Business and Professions Code, and to amend Sections 11164.1, 11165, and 11165.1 of, and to add Section 11165.4 to, the Health and Safety Code, relating to controlled ~~substances, and declaring the urgency thereof, to take effect immediately.~~ *substances.*

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as amended, DeSaulnier. Controlled substances: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would require ~~the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine to charge practitioners under their supervision who are authorized to prescribe, order, administer, furnish, or dispense controlled substances a fee of up to 1.16% of the renewal fee that the licensee was subject to as of July 1, 2013,~~ *an annual fee of $6 to be assessed on specified licensees, including licensees authorized to prescribe, order, administer, furnish, or dispense controlled substances, and require the regulating agency of each of those licensees to bill and collect that fee at the time of license renewal. The bill would authorize the Department of Consumer Affairs to reduce, by regulation, that fee to the reasonable cost of operating and maintaining CURES for the purpose of regulating those licensees, if the reasonable regulatory cost is less than $6 per licensee. The bill would require* the proceeds of ~~which would~~ *the fee to* be deposited into the CURES Fund for *the* support of CURES, as specified. ~~This bill would also require the California State Board of Pharmacy to charge wholesalers, nonresident wholesalers, and veterinary food-animal drug retailers under their supervision a fee of up to 1.16% of the renewal fee that the wholesaler, nonresident wholesaler, or veterinary food-animal drug retailer was subject to as of July 1, 2013, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified. The bill would require each of these fees to be due and payable at the time the license is renewed and require the fee to be submitted with the renewal fee.~~ The bill would also permit specified insurers, health care service plans, ~~and~~ qualified manufacturers, *and other donors* to voluntarily contribute to the CURES Fund, as described.

(2) Existing law requires the Medical Board of California to periodically develop and disseminate information and educational materials regarding various subjects, including pain management techniques, to each licensed physician and surgeon and to each general acute care hospital in California.

This bill would additionally require the board to periodically develop and disseminate to each licensed physician and surgeon and to each general acute care hospital in California information and educational materials relating to the assessment of a patient's risk of abusing or diverting controlled substances and information relating to CURES.

(3) Existing law permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care. Existing law also authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

This bill would ~~require licensed health care practitioners,~~ *require, by January 1, 2016, or upon receipt of a federal Drug Enforcement Administration registration, whichever occurs later, health care practitioners authorized to prescribe, order, administer, furnish, or dispense controlled substances,* as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under ~~his or her care, and, upon the happening of specified events, to be strongly encouraged to access and consult that information prior to prescribing or dispensing Schedule II, Schedule III, or Schedule IV controlled substances.~~ *their care. The bill would require the Department of Justice, in conjunction with the Department of Consumer Affairs and certain licensing boards, to, among other things, develop a streamlined application and approval process to provide access to the CURES database for licensed health care practitioners and pharmacists.* The bill would make other related and conforming changes.

~~(4) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~⅔~~ *majority*. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Controlled Substance Utilization Review and Evaluation System (CURES) is a valuable preventive, investigative, and educational tool for health care providers, ~~regulatory boards,~~ *regulatory agencies,* educational researchers, and law enforcement. Recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support ~~the~~ CURES *and its* Prescription Drug Monitoring Program (PDMP). The *CURES* PDMP is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate diversion of prescription drugs. Without a dedicated funding source, the CURES PDMP is not sustainable.

(b) Each year CURES responds to more than 800,000 requests from practitioners and pharmacists regarding all of the following:

(1) Helping identify and deter drug abuse and diversion of prescription drugs through accurate and rapid tracking of Schedule II, Schedule III, and Schedule IV controlled substances.

(2) Helping practitioners make ~~better~~ prescribing decisions.

(3) Helping reduce misuse, abuse, and trafficking of those drugs.

(c) Schedule II, Schedule III, and Schedule IV controlled substances have had deleterious effects on private and public interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death. It is the intent of the Legislature to work with stakeholders to fully fund the operation of CURES which seeks to mitigate those deleterious effects and serve as a tool for ensuring safe patient care, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.

(d) The following goals are critical to increase the effectiveness and functionality of CURES:

(1) Upgrading the *CURES* PDMP so that it is capable of accepting real-time updates and is accessible in real-time, 24 hours a day, seven days a week.

(2) Upgrading ~~all prescription drug monitoring programs~~ *the CURES PDMP* in California so that ~~they are~~ *it is* capable of

operating in conjunction with all national prescription drug monitoring programs.

(3) Providing subscribers to prescription drug monitoring programs access to information relating to controlled substances dispensed in California, including those dispensed through the United States Department of Veterans Affairs, the Indian Health Service, the Department of Defense, and any other entity with authority to dispense controlled substances in California.

(4) Upgrading the *CURES* PDMP so that it is capable of accepting *the reporting of* electronic ~~prescriptions,~~ *prescription data*, thereby enabling more reliable, complete, and timely prescription monitoring.

~~SEC. 2. Section 805.8 is added to the Business and Professions Code, to read:~~

~~805.8. (a) (1) In addition to the fees charged for licensure, certification, and renewal, at the time those fees are charged, the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine shall charge each licensee authorized pursuant to Section 11150 of the Health and Safety Code to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances a fee of up to 1.16 percent of the renewal fee that the licensee was subject to as of July 1, 2013, to be assessed annually. This fee shall be due and payable at the time the licensee renews his or her license and shall be submitted with the licensee's renewal fee. In no case shall this fee exceed the reasonable costs associated with operating and maintaining CURES for the purpose of regulating prescribers and dispensers of controlled substances licensed or certificated by these boards.~~

~~(2) In addition to the fees charged for licensure, certification, and renewal, at the time those fees are charged, the California State Board of Pharmacy shall charge wholesalers and nonresident wholesalers of dangerous drugs, licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9, a fee of up to 1.16 percent of the renewal fee that the wholesaler or nonresident~~

~~wholesaler was subject to as of July 1, 2013, to be assessed annually. This fee shall be due and payable at the time the wholesaler or nonresident wholesaler renews its license and shall be submitted with the wholesaler's or nonresident wholesaler's renewal fee. In no case shall this fee exceed the reasonable costs associated with operating and maintaining CURES for the purpose of regulating wholesalers and nonresident wholesalers of dangerous drugs licensed or certificated by that board.~~

~~(3) In addition to the fees charged for licensure, certification, and renewal, at the time those fees are charged, the California State Board of Pharmacy shall charge veterinary food-animal drug retailers, licensed pursuant to Article 15 (commencing with Section 4196) of Chapter 9, a fee of up to 1.16 percent of the renewal fee that the drug retailer was subject to as of July 1, 2013, to be assessed annually. This fee shall be due and payable at the time the drug retailer renews its license and shall be submitted with the drug retailers' renewal fee. In no case shall this fee exceed the reasonable costs associated with operating and maintaining CURES for the purpose of regulating veterinary food-animal drug retailers licensed or certificated by that board.~~

~~(b) The funds collected pursuant to subdivision (a) shall be deposited in the CURES accounts, which are hereby created, within the Contingent Fund of the Medical Board of California, the State Dentistry Fund, the Pharmacy Board Contingent Fund, the Veterinary Medical Board Contingent Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, the Osteopathic Medical Board of California Contingent Fund, the Optometry Fund, and the Board of Podiatric Medicine Fund. Moneys in the CURES accounts of each of those funds shall, upon appropriation by the Legislature, be available to the Department of Justice solely for operating and maintaining CURES for the purposes of regulating prescribers and dispensers of controlled substances. All moneys received by the Department of Justice pursuant to this section shall be deposited in the CURES Fund described in Section 11165 of the Health and Safety Code.~~

SEC. 2. Section 208 is added to the Business and Professions Code, to read:

208. (a) A CURES fee of six dollars ($6) shall be assessed annually on each of the licensees specified in subdivision (b) to pay the reasonable costs associated with operating and maintaining

CURES for the purpose of regulating those licensees. The fee assessed pursuant to this subdivision shall be billed and collected by the regulating agency of each licensee at the time of the licensee's license renewal. If the reasonable regulatory cost of operating and maintaining CURES is less than six dollars ($6) per licensee, the Department of Consumer Affairs may, by regulation, reduce the fee established by this section to the reasonable regulatory cost.

(b) (1) Licensees authorized pursuant to Section 11150 of the Health and Safety Code to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances or pharmacists licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2.

(2) Wholesalers and nonresident wholesalers of dangerous drugs licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2.

(3) Nongovernmental clinics licensed pursuant to Article 13 (commencing with Section 4180) and Article 14 (commencing with Section 4190) of Chapter 9 of Division 2.

(4) Nongovernmental pharmacies licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2.

(c) The funds collected pursuant to subdivision (a) shall be deposited in the CURES Fund, which is hereby created within the State Treasury. Moneys in the CURES Fund shall, upon appropriation by the Legislature, be available to the Department of Consumer Affairs to reimburse the Department of Justice for costs to operate and maintain CURES for the purposes of regulating the licensees specified in subdivision (b).

(d) The Department of Consumer Affairs shall contract with the Department of Justice on behalf of the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Board of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board, the State Board of Optometry, and the California Board of Podiatric Medicine to operate and maintain CURES for the purposes of regulating the licensees specified in subdivision (b).

SEC. 3. Section 209 is added to the Business and Professions Code, to read:

209. The Department of Justice, in conjunction with the Department of Consumer Affairs and the boards and committees identified in subdivision (d) of Section 208, shall do all of the following:

(a) Identify and implement a streamlined application and approval process to provide access to the CURES Prescription Drug Monitoring Program (PDMP) database for licensed health care practitioners eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances and for pharmacists. Every reasonable effort shall be made to implement a streamlined application and approval process that a licensed health care practitioner or pharmacist can complete at the time that he or she is applying for licensure or renewing his or her license.

(b) Identify necessary procedures to enable licensed health care practitioners and pharmacists with access to the CURES PDMP to delegate their authority to order reports from the CURES PDMP.

(c) Develop a procedure to enable health care practitioners who do not have a federal Drug Enforcement Administration (DEA) number to opt out of applying for access to the CURES PDMP.

~~SEC. 3.~~

SEC. 4. Section 2196.8 is added to the Business and Professions Code, to read:

2196.8. The board shall periodically develop and disseminate information and educational material regarding assessing a patient's risk of abusing or diverting controlled substances and information relating to the Controlled Substance Utilization Review and Evaluation System (CURES), described in Section 11165 of the Health and Safety Code, to each licensed physician and surgeon and to each general acute care hospital in this state. The board shall consult with the State Department of ~~Health Care Services~~ *Public Health, the boards and committees specified in subdivision (d) of Section 208,* and the Department of Justice in developing the materials to be distributed pursuant to this section.

~~SEC. 4.~~

SEC. 5. Section 11164.1 of the Health and Safety Code is amended to read:

11164.1. (a) ~~(1)~~ Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be

dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

~~(2)~~

(b) All prescriptions for Schedule ~~II and~~ *II,* Schedule ~~III~~ *III, and Schedule IV* controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision ~~(c)~~ *(d)* of Section 11165.

~~(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.~~

~~(c) This section shall become operative on January 1, 2005.~~

~~SEC. 5.~~

SEC. 6. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in ~~the CURES accounts within the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, the Osteopathic Medical Board of California Contingent Fund, the Veterinary Medical Board Contingent Fund, the Optometry Fund, the Board of Podiatric Medicine Fund, and~~ the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

~~(b) The reporting of Schedule III and Schedule IV controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds for the Department of Justice for the purpose of funding CURES.~~

~~(c)~~

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES. ~~Grant funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, the Osteopathic Medical Board of California Contingent Fund, the Veterinary Medical Board Contingent Fund, the Optometry Fund, or the Board of Podiatric Medicine Fund, for the purpose of funding CURES.~~

~~(d)~~

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party. The Department of Justice ~~may~~ *shall* establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, *disclosure,* and security of the information within CURES, consistent with this subdivision.

~~(e)~~

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, ~~unless monthly reporting is permitted pursuant to subdivision (f) of Section 11190, and~~ in a format specified by the Department of Justice:

(1) Full name, address, and telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of ~~licensure and license number,~~ *licensure, national provider identifier (NPI) number,* the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, *NPI number,* and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

~~(f)~~

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber *and dispenser* invitees shall be licensed by one of the boards or committees identified in subdivision ~~(a) of Section 805.8~~ *(d) of Section 208* of

the Business and Professions Code, in active practice in California, and a regular user of CURES.

~~(g)~~

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision ~~(a) of Section 805.8~~ *(d) of Section 208* of the Business and Professions Code, one or more of the ~~regulatory~~ boards or committees identified in subdivision ~~(a) of Section 805.8~~ *(d) of Section 208* of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program *(PDMP)*.

~~(h)~~

(g) The Department of Justice may establish a process to educate authorized subscribers of *the* CURES *PDMP* on how to access and use *the* CURES *PDMP*.

~~(i) The CURES Fund is hereby established within the State Treasury. The CURES Fund shall consist of all funds made available to the Department of Justice for the purpose of funding CURES. Money in the CURES Fund shall, upon appropriation by the Legislature, be available for allocation to the Department of Justice for the purpose of funding CURES.~~

~~SEC. 6.~~

SEC. 7. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) A ~~licensed~~ health care practitioner ~~eligible to prescribe~~ *authorized to prescribe, order, administer, furnish, or dispense* Schedule II, Schedule III, or Schedule IV controlled substances *pursuant to Section 11150* or a pharmacist ~~shall~~ *shall, before January 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later,* submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner or pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(A) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal ~~Drug Enforcement Administration (DEA)~~ *DEA* registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Any subscriber accessing information for any other reason than caring for his or her patients.

(B) Any authorized subscriber shall notify the Department of Justice within 30 days of any changes to the subscriber account.

~~(2) To allow sufficient time for licensed health care practitioners eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances and a pharmacist to apply and receive access to PDMP, a written request may be made, until July 1, 2012, and the Department of Justice may release to that practitioner or pharmacist the history of controlled substances dispensed to an individual under his or her care based on data contained in CURES.~~

(2) A health care practitioner authorized to prescribe Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(c) ~~(1) Until the Department of Justice has issued the notification described in paragraph (3), in~~ *In* order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to

licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

~~(2) Upon the Department of Justice issuing the notification described in paragraph (3), licensed health care practitioners eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances and pharmacists shall be strongly encouraged to access and consult the electronic history of controlled substances dispensed to an individual under his or her care prior to prescribing or dispensing a Schedule II, Schedule III, or Schedule IV controlled substance.~~

~~(3) The Department of Justice shall notify licensed health care practitioners and pharmacists who have submitted the application required pursuant to subdivision (a) when the department determines that CURES is capable of accommodating all users, but not before June 1, 2015. The department shall provide a copy of the notification to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel, and shall post the notification on the department's Internet Web site.~~

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the Department of Justice pursuant to this section shall be considered medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a prescriber or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.

~~SEC. 7.~~

SEC. 8. Section 11165.4 is added to the Health and Safety Code, to read:

11165.4. (a) The Department of Justice may seek *voluntarily contributed* private funds from insurers, health care service plans, ~~and~~ qualified ~~manufacturers~~ *manufacturers, and other donors* for the purpose of supporting CURES. Insurers, health care service plans, ~~and~~ qualified ~~manufacturers~~ *manufacturers, and other donors* may contribute by submitting their payment to the

Controller for deposit into the CURES Fund established pursuant to subdivision ~~(e) of Section 11165.~~ *(c) of Section 208 of the Business and Professions Code.* The department shall make information about the amount and the source of all private funds it receives for support of CURES available to the public. Contributions to the CURES Fund pursuant to this subdivision shall be nondeductible for state tax purposes.

(b) For purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug, substance, or immediate precursor listed in any schedule in Section 11055, 11056, or 11057 of the Health and Safety Code.

(2) "Health care service plan" means an entity licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(3) "Insurer" means an admitted insurer writing health insurance, as defined in Section 106 of the Insurance Code, and an admitted insurer writing workers' compensation insurance, as defined in Section 109 of the Insurance Code.

(4) "Qualified manufacturer" means a manufacturer of a controlled substance, but does not mean a wholesaler or nonresident wholesaler of dangerous drugs, regulated pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code, a veterinary food-animal drug retailer, regulated pursuant to Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, or an individual regulated by the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, or the California Board of Podiatric Medicine.

~~SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to protect the public from the continuing threat of prescription drug abuse at the earliest possible time, it is necessary that this act take effect immediately.~~

O

BILL ANALYSIS

Date of Hearing: June 25, 2013
Counsel: Shaun Naidu

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

SB 809 (DeSaulnier) - As Amended: May 28, 2013

SUMMARY : Creates a dedicated fund to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP) by the Department of Justice (DOJ). Specifically, this bill :

1) Makes legislative findings and declarations relative to CURES.

2) Requires the following health practitioner boards to additionally charge licensees under their supervision that are authorized to prescribe, order, administer, furnish, or dispense controlled substances a fee of up to 1.16% of the renewal fee that the license was subject to as of July 1, 2013, assessed annually. This fee is due and payable at the time the licensee renews his or her license and must be submitted with the licensee's renewal fee, and in no case exceed the reasonable costs associated with operating and maintaining CURES: Medical Board of California (MBC), Dental Board of California (DBC), Board of Pharmacy (BOP), Veterinary Medical Board (VMB), Board of Registered Nursing (BRN), Physician Assistant Committee of the MBC, Osteopathic Medical Board (OMB), Naturopathic Medicine Committee of the OMB, Board of Optometry (CBO), and the Board of Podiatric Medicine (BPM).

3) Requires the BOP to additionally charge fees for wholesalers and out-of-state wholesalers of dangerous drugs and veterinary food-animal drug retailers of up to 1.16% of the renewal fee that the wholesaler or nonresident wholesaler was subject to as of July 1, 2013, assessed annually. This fee is due and payable at the time the wholesaler or nonresident wholesaler renews its license and must be submitted with the wholesaler's or nonresident wholesaler's renewal fee. Clarifies that in no case shall this fee exceed the reasonable costs associated with operating and maintaining CURES.

4) Creates CURES accounts within various specified funds and

requires that the monies collected from licensing fees for CURES be deposited into the CURES account in each fund.

5) Requires that monies in the various CURES accounts be deposited into the CURES Fund, established within the State Treasury, consisting of all funds made available to DOJ to operate and maintain CURES.

6) Requires the MBC to periodically develop and disseminate information and education material regarding assessing a patient's risk of abusing or diverting controlled substances and information relating to CURES to each licensed physician and surgeon and to each general acute care hospital in this state. Requires MBC to consult with the Department of Health Care Services and DOJ in developing the materials, as specified.

7) Authorizes DOJ to seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. Requires DOJ to report annually to the Legislature and make available to the public the amount and sources of funds it receives for support of CURES. Prohibits grant funds from being appropriated from specified accounts for the purpose of funding CURES.

8) Requires that the operation of CURES comply with all applicable federal and state privacy and security laws and regulations.

9) Authorizes DOJ to establish policies, procedures, and regulations regarding using, accessing, evaluating, managing, implementing, operating, storing, and securing the information within CURES.

10) Allows DOJ to invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. Requires all prescriber invitees to be licensed, as specified, in active practice in California, and a regular user of CURES.

11) Requires DOJ, prior to upgrading CURES, to consult with licensed prescribers by one or more of the identified regulatory boards or commissions and any other stakeholder identified by DOJ for the purpose of identifying desirable

capabilities and upgrades to the CURES PDMP.

12) Allows DOJ to establish a process to educate authorized subscribers of CURES on how to access and use CURES.

13) Strongly encourages licensed health care practitioners eligible to prescriber Schedule II, III, or IV controlled substances and pharmacists to access and consult the electronic history of controlled substance dispensed to an individual under his or her care prior to prescribing or dispensing a Schedule II, III, or IV controlled substance.

14) Requires a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, to submit an application to participate in the CURES PDMP. Requires DOJ, upon approval of the practitioner or pharmacist subscriber, to release the electronic history of controlled substances dispensed to an individual under his/her care based on data contained in the CURES PDMP. Increases, from 10 to 30 days, the time in which an authorized subscriber must notify DOJ of any changes to the subscriber account. Requires DOJ to notify applicants, the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislature Counsel when CURES is upgraded and can accommodate all users and include notification on the DOJ Web site, but not before June 1, 2015.

15) Requires DOJ to seek private funds from insurers, health care service plans, and qualified manufacturers for the purpose of supporting CURES; permits specified insurers, health care service plans, and qualified manufacturers to make voluntary contributions to the CURES Fund, which will be nondeductible for state tax purposes; and requires DOJ to make information about funds it receives for support of CURES publicly available.

16) Defines the following terms for purposes of state law relative to CURES:

a) "Controlled substance" as a drug, substance, or immediate precursor listed in Schedule II, III, or IV.

b) "Health care service plan" to mean an entity licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975.

c) "Insurer" to mean an admitted insurer writing health insurance and an admitted insurer writing workers' compensation insurance, as they are defined in the

Insurance Code.

d) "Qualified manufacturer" to mean a manufacturer of a controlled substance which is not a wholesaler or out-of-state wholesaler of dangerous drugs, a veterinary food-animal drug retailer or a licensee of any of the above-mentioned boards.

17) Makes various technical and conforming changes.

EXISTING LAW :

1) Requires DOJ to maintain CURES for the electronic monitoring of the prescribing and dispensing of Schedule II, III, and IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. (Health and Safety Code (HSC) Section 11165(a).)

2) Requires a dispensing pharmacy or clinic to provide specified prescription data for each prescription for a Schedule II, III, or IV controlled substance to DOJ on a weekly basis. (HSC Section 11165(d).)

3) Allows a licensed health care practitioner who is eligible to prescribe Schedule II, III, or IV controlled substances, or a pharmacist, to make a written request to DOJ for the history of controlled substances dispensed to an individual under his or her care, and allows DOJ to provide that information to that health care practitioner or pharmacist. (HSC Section 11165.1(a).)

4) Provides that the history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from DOJ pursuant to this section shall be considered medical information subject to specified confidentiality provisions. (HSC Section 11165.1(d).)

5) Requires every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II, III or IV to record specified information

relating to the transaction. (HSC Section 11190.)

FISCAL EFFECT : Unknown

COMMENTS :

1) Author's Statement : According to the author, "SB 809 provides essential funding to continue and strengthen the CURES

Prescription Drug Monitoring Program, a vital resource for medical professionals and law enforcement to detect and prevent prescription drug abuse and addiction, and save lives. Without dedicated funding, the CURES program will be suspended and California will join Missouri as the only state in the nation without a Prescription Drug Monitoring Program.

"Prescription drug abuse is the Nation's fastest-growing drug problem and has been classified as a public health epidemic by the Centers for Disease Control and Prevention. One hundred people die from drug overdoses every day in the United States and prescription painkillers are responsible for 75 percent of these deaths, claiming more lives than heroin and cocaine combined, and fueling a doubling of drug-related deaths in the United States over the last decade. In California, on average, there are six deaths every day from prescription drug overdose and1.2 million emergency room visits related to the misuse or abuse of pharmaceuticals.

"SB 809 provides sufficient and sustainable revenue to maintain the CURES program operations, sustain full modernization, and improve program participation and utilization by requiring all practitioners and pharmacists to enroll in the CURES PDMP."

2) Background : The CURES was established in 1997 by AB 3042 (Takasugi), Chapter 738, Statutes of 1996, in response to recommendations of the Controlled Substance Prescription Advisory Council. (SCR 74, 1992.) CURES is a state database of dispensed prescription drugs with a high potential for misuse. The program initially was intended to electronically monitor the prescribing and dispensing of Schedule II controlled substances, such as Oxycodone. The CURES program provides for real-time electronic transmission of specified prescription data to DOJ. Essentially, the data is analyzed for indications that controlled substances are being improperly prescribed, or that drug abusers are obtaining

prescriptions from many doctors (doctor shopping).

In September 2009, DOJ launched the Prescription Drug Monitoring Program (PDMP) system allowing pre-registered users, including licensed health care prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense controlled substances, law enforcement, and regulatory boards, to access real-time patient controlled substance history information through a secure website. Prior to the adoption of PDMP, doctors and pharmacists had to request information by fax, mail, or phone and wait days for a response. Under the system, a registered person authorized to prescribe or

dispense a controlled substance is able to instantly look up a new patient's controlled substance history to determine whether the patient legitimately needs medication or is doctor shopping. The system also assists persons authorized to prescribe or dispense controlled substances to assure patient safety.

3) Patient Privacy : Under existing law, certain protections are put in place to ensure the privacy of patients and consumers whose information are entered into CURES. (HSC Section 11165(c).) Specifically, it provides that DOJ can release CURES data in limited circumstances for specified purposes. For example, data obtained from CURES can be provided only to appropriate state, local, and federal entities for disciplinary, civil, or criminal purposes and to other entities as determined by DOJ for educating practitioners. (Id.) This bill removes this patient privacy provision and replaces it with language that allows DOJ to establish policies, procedures, and regulations regarding the use, access, and security of CURES information. (Page 8, lines 29-32.) A policy consideration presented by this bill is whether the committee prefers to have provisions regarding the access to and release of personal consumer medical information determined by DOJ or through the legislative process, where there is a great deal of public input and accountability.

4) Funding : According to a June 2012 report prepared by DOJ, "Currently, there is no permanent funding to support the CURES/PDMP program. The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, the Department opted

to assign five staff to perform temporary dual job assignments on a part-time basis. Although some tasks are being performed, the program is faced with a constant backlog (e.g., four-week backlog on processing new user applications, six-week response time on emails, twelve week backlog on voicemails, etc.) In addition, since January 23, 2012, four unpaid Regional Occupational Program (ROP) students have been assigned to assist with the workload. Their assignments ended at the conclusion of the school year effective May 31, 2012. DOJ intends on replacing these unpaid students with paid students to ensure some continuity; however, this is a temporary solution and will not resolve the long-term issue of insufficient staff support.

"The only funding currently available is through renewable contracts with five separate regulatory boards and one grant.

As a result, funding for CURES/PDMP in state fiscal year (FY) 2011-12 consists of $296,000 that can be used only for PDMP system data and maintenance. The contracts are renewed every two to three years (depending on the board) contingent upon the availability of adequate board funds (Health & Safety Code 11165). In addition, the federal Bureau of Justice Assistance (BJA) recently authorized the extension of the Fiscal Year (FY) 2010 Harold Rogers grant to DOJ into state FY 2012-13, allowing CURES/PDMP to carry over approximately $340,000 in unspent grant funds specified for outreach and system development. While DOJ has been able to successfully renew contracts with the boards and receive grant funding this year, these sources of funding are not permanent and may not be available in future years and cannot be used to fund staff positions. In addition, these two funding sources are insufficient to operate and maintain the PDMP system, make necessary enhancements or fully fund a PDMP modernization effort. The DOJ has once again applied for the current Harold Rogers grant, however, it will not provide sufficient funding for the ongoing costs of the program." (CURES 2.0, An Integrated Approach to Preventing Prescription Drug Abuse and Diversion, June 2012.)

5) Controlled Substances : The federal government regulates the manufacture, distribution, and dispensing of controlled substances through the Controlled Substances Act of 1970. The act ranks into five schedules those drugs known to have potential for physical or psychological harm, based on three considerations: (a) their potential for abuse, (b) their

accepted medical use, and (c) their accepted safety under medical supervision.

Schedule I controlled substances have a high potential for abuse and no generally accepted medical use such as heroin and LSD. Schedule II controlled substances have a currently-accepted medical use in treatment, or a currently-accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin. Schedule III and IV drugs include Vicodin, Zanex, Ambien and other anti-anxiety drugs that generally have less potential for abuse than Schedule II drugs but are known to be mixed in specific ways to achieve a narcotic-like end product. Schedule V drugs are available over the counter.

6) Argument in Support : According to the California Attorney General's Office (AGO) , "Prescription drug abuse is the

fastest-growing drug problem in the United States. While there has been a decrease in the use of some illegal drugs like cocaine, data from the National Survey on Drug Use and Health shows that 7 million people, or nearly one-third of people 12 years old and over who used drugs for the first time, began by using a prescription drug non-medically in 2010. The majority of the CURES funding was cut during the Fiscal Year 2011-2012 budget and CURES and the PDMP have since been staffed by a single AGO employee. Additionally, the current PDMP is a dated, unstable program that has needed an upgrade to meet the needs of prescribers and pharmacists.

"The current budget funds the upgrade of the PDMP, and this legislation is necessary to provide the ongoing funding to operate and maintain the program."

7) Prior Legislation :

a) SB 360 (DeSaulnier), Chapter 418, Statutes of 2011, updated CURES to reflect the new PDMP and authorized DOJ to initiate administrative enforcement actions to prevent the misuse of confidential information collected through the CURES program. SB 360 also provided additional requirements and sanctions for security prescription printers and their employees who have direct contact with,

or access to, controlled-substance prescription-drug forms.

b) SB 616 (DeSaulnier), of the 2011-12 Legislative Session, would have created a dedicated fund to maintain the CURES. SB 616 failed passage in the Assembly Business, Professions and Consumer Protection Committee.

c) SB 1071 (DeSaulnier), of the 2009-10 Legislative Session, would have imposed a per-pill tax upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV to be allocated to DOJ for the cost of the CURES program. SB 1071 failed passage in the Senate Health Committee.

d) AB 2968 (Mullin), Chapter 286, Statutes of 2006, added more information to the requirements for a physician to prescribe a controlled substance, and required electronic monitoring of Schedule IV drugs.

e) SB 734 (Torlakson), Chapter 487, Statutes of 2005, made various technical and clarifying changes to CURES.

f) SB 151 (Burton), Chapter 406, Statutes of 2004, made the CURES reporting system permanent.

g) AB 3042 (Takasugi), Chapter 738, Statutes of 1996, established CURES as a three-year pilot program.

REGISTERED SUPPORT / OPPOSITION :

Support

California Attorney General Kamala Harris (Sponsor)
American Cancer Society Cancer Action Network
American College of Emergency Physicians, California Chapter
American Medical Association
California Association for Nurse Practitioners
California Association of Oral and Maxillofacial Surgeons
California Department of Insurance
California Medical Association
California Labor Federation
California Narcotic Officers Association
California Pharmacists Association
California Primary Care Association
California Police Chiefs Association

California Society of Health-System Pharmacists
California State Board of Pharmacy
California State Sheriff's Association
Center for Public Interest Law
City and County of San Francisco
County Alcohol and Drug Program Administrators Association of California
Deputy Sheriffs' Association of San Diego County
Healthcare Distribution Management Association
Health Officers Association of California
Kaiser Permanente
Medical Board of California
National Coalition Against Prescription Drug Abuse
South Orange County Coalition
Troy and Alana Pack Foundation
Western Occupational and Environmental Medical Association
University of California

One private individual

Opposition

None

Analysis Prepared by : Shaun Naidu / PUB. S. / (916) 319-3744

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 14, 2013

AMENDED IN SENATE APRIL 23, 2013

SENATE BILL No. 821

Introduced by Committee on Business, Professions and Economic Development (Senators Lieu (Chair), Block, Corbett, Emmerson, Galgiani, Hernandez, Hill, Padilla, Wyland, and Yee)

March 20, 2013

An act to amend Sections 1613, 1915, 1926.2, 3024, 3025, 3040, 3041.2, 3051, 3057.5, 3077, 3093, 3098, 3103, 3106, 3107, 3109, 3163, 4053, 4107, 4980.36, 4980.397, 4980.398, 4980.399, 4980.40, 4980.43, 4980.50, ~~4980.72,~~ 4984.01, 4984.7, 4984.72, 4989.68, 4992.05, 4992.07, 4992.09, 4992.1, 4996.1, 4996.3, 4996.4, 4996.9, 4996.17, 4996.18, 4996.28, 4999.20, 4999.33, 4999.45, 4999.46, 4999.47, 4999.50, 4999.52, 4999.53, 4999.55, ~~4999.60,~~ 4999.64, and 4999.100 of, and to add Section 4021.5 to, the Business and Professions Code, and to amend Section 14132 of the Welfare and Institutions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law, the Dental Practice Act, establishes the Dental Board of California, which was formerly known as the Board of Dental Examiners of California. Existing law requires the board to have and

use a seal bearing its name. Existing law creates, within the jurisdiction of the board, a Dental Hygiene Committee of California, that is responsible for regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions.

This bill would amend those provisions to remove an obsolete reference to the former board and to make other technical changes.

(2) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. That act refers to the authorization to practice optometry issued by the board as a certificate of registration.

This bill would instead refer to that authorization issued by the board as an optometrist license and would make other technical and conforming changes.

(3) Existing law, the Pharmacy Law, governs the business and practice of pharmacy in this state and establishes the California State Board of Pharmacy. Existing law prohibits the board from issuing more than one site license to a single premises except to issue a veterinary food-animal drug retailer license to a wholesaler or to issue a license for compound sterile injectable drugs to a pharmacy.

This bill would additionally authorize the board to issue more than one site license to a single premises to issue a centralized hospital packaging license. The bill would also establish a definition for the term “correctional pharmacy.”

Existing law authorizes the board to issue a license as a designated representative to provide supervision in a wholesaler or veterinary food-animal drug retailer. Existing law requires an individual to meet specified requirements to obtain and maintain a designated representative license, including a minimum of one year of paid work experience related to the distribution or dispensing of dangerous drugs or devices or meet certain prerequisites.

The bill would require the one year of paid work experience to obtain a designated representative license to be in a licensed pharmacy, or with a drug wholesaler, drug distributor, or drug manufacturer. The bill would also make related, technical changes.

(4) Existing law provides for the licensure and regulation of marriage and family therapists, licensed educational psychologists, licensed clinical social workers, and licensed professional clinical counselors by the Board of Behavioral Sciences. Existing law makes various changes to the licensing and associated eligibility and examination

requirements for marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors, effective January 1, 2014.

This bill would delay the implementation of these and other related changes until January 1, 2016.

Existing law requires all persons applying for marriage and family therapist or licensed professional clinical counselor licensure examinations to have specified hours of experience, including experience gained by an intern or trainee as an employee or volunteer.

This bill would specify that experience shall be gained by an intern or trainee only as an employee or volunteer.

~~Existing law also authorizes the board to issue a license to a person who, at the time of submitting an application for a license pursuant to this chapter, holds a valid license in good standing issued by a board of marriage counselor examiners, board of marriage and family therapists, or corresponding authority, of any state or country if certain conditions are met, considering hours of experience obtained outside of California during the 6-year period immediately preceding the date the applicant initially obtained the license.~~

~~This bill would instead require time actively licensed as a marriage and family therapist to be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours if the applicant has fewer than 3,000 hours of qualifying supervised experience.~~

Existing law establishes a $75 delinquent renewal fee for a licensed educational psychologist and for licensed clinical social workers.

This bill would instead specify that $75 is the maximum delinquent renewal fee.

Existing law requires an applicant for registration as an associate clinical social worker to meet specified requirements. Existing law also defines the application of social work principles and methods.

This bill would additionally require that all applicants and registrants be at all times under the supervision of a supervisor responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who is responsible to the board for compliance with all laws, rules, and regulations governing the practice of clinical social work. The bill would also specify that the practice of clinical social work includes the use, application, and integration of the coursework and experience required.

Existing law requires a licensed professional clinical counselor, to qualify for a clinical examination for licensure, to complete clinical mental health experience, as specified, including not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

This bill instead would require not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth.

(5) The bill would also make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1613 of the Business and Professions Code is amended to read:

1613. The board shall have and use a seal bearing the name "Dental Board of California."

SEC. 2. Section 1915 of the Business and Professions Code is amended to read:

1915. No person other than a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

(1) Applying nonaerosol and noncaustic topical agents.

(2) Applying topical fluoride.

(3) Taking impressions for bleaching trays.

(c) A registered dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

(1) Polishing the coronal surfaces of teeth.

(2) Applying bleaching agents.

(3) Activating bleaching agents with a nonlaser light-curing device.

(4) Applying pit and fissure sealants.

(d) A registered dental assistant in extended functions acting in accordance with the rules of the dental board in applying pit and fissure sealants.

(e) A registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions licensed in another jurisdiction, performing a clinical demonstration for educational purposes.

SEC. 3. Section 1926.2 of the Business and Professions Code is amended to read:

1926.2. (a) Notwithstanding any other provision of law, a registered dental hygienist in alternative practice may operate one mobile dental hygiene clinic registered as a dental hygiene office or facility. The owner or operator of the mobile dental hygiene clinic or unit shall be registered and operated in accordance with regulations established by the committee, which regulations shall not be designed to prevent or lessen competition in service areas, and shall pay the fees described in Section 1944.

(b) A mobile service unit, as defined in subdivision (b) of Section 1765.105 of the Health and Safety Code, and a mobile unit operated by an entity that is exempt from licensure pursuant to subdivision (b), (c), or (h) of Section 1206 of the Health and Safety Code, are exempt from this article. Notwithstanding this exemption, the owner or operator of the mobile unit shall notify the committee within 60 days of the date on which dental hygiene services are first delivered in the mobile unit, or the date on which the mobile unit's application pursuant to Section 1765.130 of the Health and Safety Code is approved, whichever is earlier.

(c) A licensee practicing in a mobile unit described in subdivision (b) is not subject to subdivision (a) as to that mobile unit.

SEC. 4. Section 3024 of the Business and Professions Code is amended to read:

3024. The board may grant or refuse to grant an optometrist license as provided in this chapter and may revoke or suspend the license of any optometrist for any of the causes specified in this chapter.

It shall have the power to administer oaths and to take testimony in the exercise of these functions.

SEC. 5. Section 3025 of the Business and Professions Code is amended to read:

3025. The board may make and promulgate rules and regulations governing procedure of the board, the admission of applicants for examination for a license as an optometrist, and the practice of optometry. All of those rules and regulations shall be in accordance with and not inconsistent with the provisions of this chapter. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

SEC. 6. Section 3040 of the Business and Professions Code is amended to read:

3040. It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

SEC. 7. Section 3041.2 of the Business and Professions Code is amended to read:

3041.2. (a) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.

(b) Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents

specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.

SEC. 8. Section 3051 of the Business and Professions Code is amended to read:

3051. All applicants for examination for an optometrist license in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

SEC. 9. Section 3057.5 of the Business and Professions Code is amended to read:

3057.5. Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who meets all of the following requirements to take the examinations for an optometrist license:

(a) Is over 18 years of age.

(b) Is not subject to denial of a license under Section 480.

(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

SEC. 10. Section 3077 of the Business and Professions Code is amended to read:

3077. As used in this section, “office” means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have an office unless he or she is licensed to practice optometry under this chapter.

(b) An optometrist, or two or more optometrists jointly, may have one office without obtaining a branch office license from the board.

(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. The additional office, for the purposes of this chapter, constitutes a branch office.

(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall

notify the board in writing of that desire in a manner prescribed by the board.

(e) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed by the board.

(f) On and after January 1, 1957, no branch office may be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1 of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter.

On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.

(g) Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the optometrist license of each optometrist who, individually or with others, has a branch office. An optometrist license so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a license after suspension for failure to comply with the provisions of this chapter relating to branch offices.

(h) The holder or holders of a branch office license shall pay the annual renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each year. The failure to pay the fee in advance on or before February 1 of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.

(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license

issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly.

Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.

(j) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

(1) Complies with the definition of an optometric corporation in Section 3160.

(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.

(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.

SEC. 11. Section 3093 of the Business and Professions Code is amended to read:

3093. Before setting aside the revocation or suspension of any optometrist license, the board may require the applicant to pass the regular examination given for applicants for an optometrist license.

SEC. 12. Section 3098 of the Business and Professions Code is amended to read:

3098. When the holder uses the title of "Doctor" or "Dr." as a prefix to his or her name, without using the word "optometrist" as a suffix to his or her name or in connection with it, or, without holding a diploma from an accredited school of optometry, the letters "Opt. D." or "O.D." as a suffix to his or her name, it constitutes a cause to revoke or suspend his or her optometrist license.

SEC. 13. Section 3103 of the Business and Professions Code is amended to read:

3103. It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses, or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a licensed optometrist in the manner permitted by law.

SEC. 14. Section 3106 of the Business and Professions Code is amended to read:

3106. Knowingly making or signing any license, certificate, or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

SEC. 15. Section 3107 of the Business and Professions Code is amended to read:

3107. It is unlawful to use or attempt to use any license or certificate issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license or certificate.

SEC. 16. Section 3109 of the Business and Professions Code is amended to read:

3109. Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no

optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms "accepting employment to practice optometry" as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a license under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

SEC. 17. Section 3163 of the Business and Professions Code is amended to read:

3163. Except as provided in Section 3078, the name of an optometric corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall include the words optometric corporation or wording or abbreviations denoting corporate existence, provided that the articles of incorporation shall be amended to delete the name of a former shareholder from the name of the corporation within two years from the date the former shareholder dies or otherwise ceases to be a shareholder.

SEC. 18. Section 4021.5 is added to the Business and Professions Code, to read:

4021.5. "Correctional pharmacy" means a pharmacy, licensed by the board, located within a state correctional facility for the purpose of providing pharmaceutical care to inmates of the state correctional facility.

SEC. 19. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Notwithstanding Section 4051, the board may issue a license as a designated representative to provide sufficient and qualified supervision in a wholesaler or veterinary food-animal drug retailer. The designated representative shall protect the public health and safety in the handling, storage, and shipment of

BILL ANALYSIS

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
Richard S. Gordon, Chair
SB 821 (Business, Professions and Economic Development) - As Amended: June 19, 2013

SENATE VOTE : 39-0

SUBJECT : Healing arts.

SUMMARY : Makes several technical and noncontroversial changes to provisions within the Business and Professions Code (BPC) related to the regulation of the Dental Board of California (DBC), Board of Optometry (BO) Board of Behavioral Sciences (BBS), as well as dental hygienists regulated under the Welfare and Institutions Code (WIC), as specified. Specifically, this bill :

1) Revises the seal utilized by the DBC from "Board of Dental Examiners of California" to the "Dental Board of California".

2) Clarifies the in the context of optometry, preferred name for a license is "optometrist license" and the preferred name for certifications is "optometrist certification(s)."

3) Defines the term "correctional pharmacy" to mean "a pharmacy, licensed by the Board of Pharmacy (BOP), located within a state correctional facility for the purpose of providing pharmaceutical care to inmates of the state correctional facility."

4) Specifies that one year of paid work experience in a licensed pharmacy or with a drug wholesaler, drug distributor, or drug manufacturer as specified, meets a requirement for a designated representative license in a wholesaler or veterinary food-animal drug retailer.

5) Revises the BOP's authority to not issue more than one site license to a single premise except as follows:

   a) To issue a veterinary food-animal drug retailer license to a wholesaler, as specified;

b) To issue a license to compound sterile injectable drugs to a pharmacy, as specified; and

c) To issue a centralized hospital packaging license, as specified.

6) Specifies that the qualifying degree program required to obtain licensure as a Licensed Marriage and Family Therapist (LMFT) or a Licensed Professional Clinical Counselor (LPCC) must include a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified.

7) Revises the operation date for specified requirements for licensure as a LMFT from 2014 to 2016.

8) Specifies that LMFT applicants may obtain supervised experience only as an employee or volunteer, and further specifies that experience may not be gained by interns or trainees for work performed as an independent contractor or reported on specified IRS Form 1099.

9) Specifies that an LMFT applicant licensed outside of California that has less than 3000 hours of qualifying supervised experience, may count their supervised experience as substantially equivalent with time actively licensed as a LMFT, at a rate of 100 hours per month up to a maximum of 1200 hours.

10) Clarifies that the delinquent renewal fee for a Licensed Educational Psychologist (LEP) shall be a maximum amount of $75.

11) Extends the operational date of specified requirements for licensure as a Licensed Clinical Social Worker (LCSW) from January 1, 2014 to January 1, 2016.

12) Clarifies that the use, application and integration of specified social work coursework and experience shall be considered a part of the application of social work principals and methods.

13) Requires all applicants for licensure as LCSW to be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of

counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the BBS for compliance with all laws, rules, and regulations governing the practice of clinical social work.

14) Clarifies that the use, application and integration of specified coursework and experience may be a part of the definition of professional clinical counseling principals and methods.

15) Allows an applicant for LPCC licensure to obtain up to 375 hours of experience providing personal psychotherapy, crisis counseling or other counseling services via telehealth as specified.

16) Specifies that Professional Clinical Counseling (PCC) interns are not required to have direct supervision for attendance at workshops, seminars, training sessions or conferences.

17) Specifies that PCCs trainees, interns, and applicants may obtain supervised experience only as an employee or volunteer, and further specifies that experience may not be gained by interns or trainees for work performed as an independent contractor or reported on an IRS Form 1099.

18) Extends the operational and repeal dates for specified requirements for licensure as a LPCC from January 1, 2014 to January, 1 2016.

19) Specifies that an LPCC applicant licensed outside of California that has less than 3000 hours of qualifying supervised experience, may count their supervised experience as substantially equivalent with time actively licensed as an LPCC, at a rate of 100 hours per month up to a maximum of 1200 hours.

20) Specifies that all dental hygiene services provided by a registered dental hygienist in extended functions, and a registered dental hygienist in alternative practice as specified, may be covered as long as they are within the scope of the Denti-Cal benefits as specified, and the services are provided by a registered dental hygienist in extended functions or registered dental hygienist in alternative practice.

21) Makes other technical and clarifying changes.

EXISTING LAW

1) Describes the qualifying degree program required to obtain licensure as a LMFT or a LPCC, if the applicant began graduate study after August 1, 2012. (BPC 4980.36; 4999.33)

2) Allows LMFT, Licensed Clinical Social Worker (LCSW) and LPCC applicants to gain experience hours as a W-2 employee or a volunteer. (BPC 4980.43; 4996.23; and 4999.47)

3) Specifies examination eligibility requirements for out-of-state LMFT and LPCC licensees. (BPC 4980.72 and 4999.60)

4) Specifies that the delinquent renewal fee for a license is $75 for LEPs. (BPC 4989.68 and 4996.3)

5) Specifies that LCSW applicants and interns must always be under the supervision of a supervisor who is responsible to the BBS for compliance with all laws and regulations. (BPC 4996.18)

6) Allows an LPCC applicant to count up to 250 hours of experience providing crisis counseling over the telephone. (BPC 4999.46)

7) Outlines the requirements for direct supervisor contact for PCC interns. (BPC 4999.46)

8) Defines the practice of clinical social work and professional clinical counseling. (BPC 4996.9, 4999.20).

9) Permits the DBC to have and use a seal bearing the name "Board of Dental Examiners of California." (BPC 1613)

10) Specifies that no person other than a registered dental hygienist, registered dental hygienist in alternative functions practice, registered dental hygienist in extended functions or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients. (BPC 1915)

11) Specifies that a registered dental hygienist in alternative practice may operate one mobile dental hygiene clinic registered as a dental hygiene office or facility as specified. (BPC 1926.2)

12) Allows the OB to grant or refuse to grant a certificate of registration as specified and may revoke or suspend the certificate of registration of any optometrist for any cause as specified. (BPC 3024)

13) Allows the BO to make and promulgate rules and regulations governing the procedures of the BO, the admission of applicants for examination for optometrists and the practice of optometry. (BPC 3025)

14) Specifies that it is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration. (BPC 3040)

15) Defines a controlled substance, as specified, for purpose of the Pharmacy law. (BPC 4021)

16) Permits the BOP to issue a license to a designated representative to provide sufficient and qualified supervision in a wholesaler or veterinary food-animal drug retailer and specifies that the designated representative shall protect the public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices in the wholesaler of veterinary food-animal drug retailer. (BPC 4053)

17) Specifies the minimum requirements necessary to apply for a designated representative license, for purpose of the Pharmacy law. (BPC 4053)

18) Specifies that the BOP may not issue more than one site license to a single premise except to issue a veterinary food-animal drug retailer license to a wholesaler or to issue a license to compound sterile injectable drugs to a pharmacy as specified. (BPC 4107)

FISCAL EFFECT : Unknown

COMMENTS :

1) Purpose of this bill . This is a "Committee bill" authored by the Senate Business, Professions and Economic Development Committee (BPED) for the purpose of consolidating multiple, non-controversial revisions to existing law into a single bill. The provisions contained in this bill make minor, technical, clarifying and other non-controversial substantive changes to several health-related boards regulated under the DCA.

Specifically, this bill makes various changes to the licensure requirements for LMFTs, LEPs, LCSWs and LPCCs, and revises their operational and repeal dates by two years; revises the preferred title for optometrist licenses and certifications; revises the current stamp utilized by the DBC; adds registered dental hygienists and registered hygienists in extended functions to statute in order to allow specified practitioners to bill and be paid for the services provided; defines a correctional pharmacy; and specifies the work experience required to obtain a designated representative license. This bill is author sponsored.

2) Author's statement . According to the author, "This bill is the annual Omnibus Committee bill authored by the [BPED] which consolidates a number of non-controversial provisions related to various regulatory programs and professions governed by the [BPC]. Consolidating the provisions in one bill is designed

to relieve the various licensing boards, bureaus and professions from the necessity and burden of having separate measures for a number of non-controversial revisions. Many of the provisions of this bill are minor, technical and updating changes while other provisions are substantive consensus changes intended to improve the ability of various licensing programs and other entities to efficiently and effectively administer their respective laws."

3) Dental Board of California . The DBC was created by the Legislature and provides for the licensure and regulation of dental health professionals in California. The DBC regulates approximately 100,000 licensed dental health professionals including dentists, registered dental assistants and registered dental assistants in extended functions.

This bill would update the seal used by the DBC to properly reflect its formal name "Dental Board of California."

Currently, mobile units are licensed by the Department of Health Care Services and regulated by the DBC. This bill would update those provisions allowing a registered dental hygienist in alternative practice to operate one mobile dental hygiene clinic registered as a dental hygiene office or facility. Lastly, this bill updates the Welfare and Institutions Code (WIC) to provide that dental hygiene services provided by a registered dental hygienist in alternative practice may be covered as long as they are within the scope of Denti-Cal benefits.

4) Board of Optometry . The BO is responsible for the regulatory oversight of approximately 9,000 optometrists, the largest population of optometrists in the United States. In 1913, a new Optometry Practice Act was enacted creating the BO, defining its duties and powers, and prescribing a penalty for a violation of the Act. This bill simply updates current law regarding the preferred name of an optometrist's authorization to practice from "certificate of registration" to an "optometrist license".

5) California Board of Pharmacy . The BOP was established in 1891 to protect consumers by licensing and regulating those responsible for dispensing medications to the public. The BOP oversees all aspects of the practice of pharmacy, including the practitioner, practice site, and drugs and devices. The BOP also regulates drug manufactures. This bill updates the provisions of law relating to who may apply for a designated representative license and also adds the definition of a correctional pharmacy.

6) Board of Behavioral Sciences . The BBS regulates professionals who generally perform counseling services, but are not registered psychologists or psychiatrists. The BBS regulates

four different licensing categories: LMFTs, LCSWs, LPCCs, and LEPs. The BBS oversees a population of approximately 80,000 licensees.

Current law describes the qualifying degree program required to obtain licensure as an LMFT or an LPCC, if the applicant began graduate study after August 1, 2012. Unlike the requirements for graduate study prior to August 1, 2012, these sections do not specify that the instruction in child abuse assessment and reporting must be at least seven hours in length, and must meet other specified requirements. Because

the current requirements are still in effect, the BBS seeks a clarifying provision specifying the course must be seven hours in length and meet other requirements in current law. This bill will provide clarity to both applicants for licensure and BBS staff that the child abuse assessment and reporting instruction must still meet certain requirements.

Additionally, current law allows LMFT, LCSW, and LPCC applicants to gain experience hours as a W-2 employee or a volunteer, but not as an independent contractor. However, the BBS sometimes receives applications for exam eligibility from individuals who are contracting and receiving a 1099 tax form. Some applicants think that because the statute says "employed," they can be 1099 employees, which is incorrect. The BBS desires to amend the law to clarify that experience gained as an independent contractor and/or reported on an IRS Form 1099 does not count toward licensure. This bill specifically states that those applicants who obtain experience as a contractor will not be counted for licensure requirements. This bill makes other technical and clarifying provisions to the BBS.

7) Technical amendments . The Committee recommends the following technical amendments to address any potential concerns with this bill relating to supervised experience for applicants for licensure as LPCC and LMFT:

On page 23, line 12, after the word "trainees" strike "for work performed" and strike line 13.

On page 51, strike lines 14-16.

On page 64, line 33, after the word "trainees" strike "for work performed" and on line 34, after "contractor" strike "or reported on an IRS Form 1099."

8) Related legislation . SB 822 (Senate Committee on Business, Professions and Economic Development) makes several technical changes to provisions within the BPC related to the regulation of various professions, including those overseen by the California Board of Accountancy, the Contractors' State

License Board, the Board of Guide Dogs for the Blind, and the Board for Professional Engineers, Land Surveyors and Geologists. This bill is pending in the Assembly Appropriations Committee.

SB 823 (Senate Committee on Business, Professions and Economic Development) revises the qualifications for certified public accountant licensure in order to smooth the transition to the new requirements for some applicants, and reestablishes certain provisions regarding the administration of the Transcript Reimbursement Fund operated by the Court Reporters Board of California. This bill is pending in the Assembly Appropriations Committee.

9) Potential chaptering out conflict . This bill amends the same code section (BPC 4999.20) as SB 243 (Wyland) of 2013, which revises the current training and education requirements for LPCCs in order for them to complete the training needed for treatment of couples or families during a degree program, rather than after the program. SB 243 is currently pending on the Assembly Floor. If both measures continue to move, chaptering out language will need to be added to the bill and SB 243 to prevent a conflict.

This bill also amends the same code section (WIC 14132) as SB X1 (Ed Hernandez and Steinberg), which establishes the existing Medi-Cal benefit package as the benefit package for the expansion population eligible under the Affordable Care Act (ACA). SB X1 recently passed both the Assembly and Senate and is pending in enrolling. If this bill continues to move forward, chaptering out language will need to be added to this bill to prevent a conflict.

REGISTERED SUPPORT / OPPOSITION :

Support

Board of Behavioral Sciences

Opposition

None on file.

Analysis Prepared by : Elissa Silva / B.,P. & C.P. / (916) 319-3301

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:** August 16, 2013

From: Alejandro Arredondo O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 11 – 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)].

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:** August 16, 2013

From: Alejandro Arredondo O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 12 – 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
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To: Board Members **Date:** August 16, 2013

From: Jessica Sieferman
Enforcement Lead **Telephone:** (916) 575-7170

Subject: **Agenda Item 13A. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation**

Dr. Susanne Anderson, O.D. (Petitioner) was issued Optometrist License Number 6613 by the Board on September 5, 1979. On November 9, 2010, the Board filed an Accusation against Petitioner charging her with violations of laws and regulations based on allegations of criminal convictions based on alcohol use. In a stipulated settlement agreed to by Petitioner, on October 12, 2011, Petitioner's license was revoked, the revocation stayed and was placed on five (5) years probation, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant her Petition for Reduction of Penalty and Early Termination of Probation.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of Stipulated Settlement and Disciplinary Order, Accusation
3. Certification of Licensure

RECEIVED BY
STATE BOARD OF OPTOMETRY
Consumer Affairs
2012 NOV 20 AM 2:57

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PETITION FOR REDUCTION OF PENALTY OR EARLY TERMINATION OF PROBATION

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO. OPT 6613 TPG
Susanne	Wilch	Anderson (aka: Krout)	
2. ADDRESS (NUMBER)	(STREET)		DATE OF BIRTH 09/28/1950
P.O. Box 1300			
(CITY)	(STATE)	(ZIP CODE)	TELEPHONE (805) 929-2020
Nipomo	California	93444	

3. PHYSICAL DESCRIPTION	(HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
	5'4"	110	Blue	Blond

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED

NAME OF SCHOOL
Southern California College of Optometry

ADDRESS (NUMBER) (STREET)
2575 Yorba Linda Boulevard

(CITY) (STATE) (ZIP CODE)
Fullerton California 92631

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? ☐ YES ☑ NO

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	
Sold Nipomo,CA Practice and	my last day in Nipomo or any		VC violations were 2007,2010 (over 5 years from last patient)
was not working as an O.D.	Optometry or M.D. practice was	06/30/01	I took sabbatical in 2001
Practice had been during:	09/28/79	06/30/01	Had been solo O.D. office

7. Are you or have you ever been addicted to the use of narcotics or alcohol? ☐YES ☒NO

8. Are you or have you ever suffered from a contagious disease? ☐YES ☑NO

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? ☐YES ☑NO

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) only those vehicle code violations in CA that led to current 10/12/2011 action against my optometry license. See exhibits A & B attached ☑YES ☐NO

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) See exhibit B: Bench (unsupervised) probation through 13/29/2013 for latter of above California vehicle code violations. ☑YES ☐NO

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? See exhibit C: Only this current action in California; I hold no other licenses in other states. ☑YES ☐NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS. Please see exhibits A, B, C and attached answers for #s 10,11,12

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION
Please see attached pages with answers for 13, 14, 15, 16, 17, 18, 19, and 20

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action. Action effective October 12, 2011; please see effective date on lower part, page 1, exhibit C
14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.
15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.
16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.
17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.
18. List all optometric literature you have studied during the last year.
19. List all continuing education courses you have completed since your license was disciplined.
20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date November 16, 2012 Signature Susanne Wilh Anderson (aka: Krout)

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2450 Del Paso Road, Suite 105, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

10. I have only pled no contest to those vehicle code violations in California that are the basis of my present probation by the Board of Optometry, documentation of which The Board already has in its possession to wit: California Vehicle Code 23103.5, Vehicle Code 23152(B), and Vehicle Code 23103(A).

Please refer to exhibits "A" and "B" attached hereto.

11. I am on bench (unsupervised) probation in California through 29 March, 2013 for California Vehicle Code 23103(A) as described in a document which the Board possesses.

Please refer to exhibit "B" attached hereto.

12. I have had disciplinary action effective 12 October, 2011 taken against my optometric license in California, and am on Probation in California, the only state in which I am licensed. Full details are described in The Probation Orientation Meeting Notice of 9/26/2011.

Please refer to exhibit "C" attached hereto.

13. The Board's Decision, Stipulated Settlement and Disciplinary Order, and Accusation (hereinafter referred to as the "Order") which became effective on October 12, 2011 comprises the disciplinary action taken against my license. The Board has this document in its possession. The document which caused the Order to go into actual effect is the Probation Orientation Meeting Notice dated September 26, 2011 (hereinafter referred to as the "Notice") and which is attached hereto. The provisions of the Notice established October 12 2011, as the effective date when the terms and conditions of the Order were to go into effect, as is stated in the lower portion of the first page of the Notice.

Please see Exhibit "C" attached hereto.

14. I believe that my license should be restored to its prior non probationary status as I have dutifully and fully fulfilled all of the conditions of my probation over which I have had control. I have taken all of the necessary classes, attended the proper support group sessions regularly, visited with a Board approved PhD Psychologist every two weeks, paid my fees regularly, maintained my office in San Luis Obispo since August, 2011, called on a daily basis for and passed all of my biological fluid tests, and complied with quarterly reports of all of the foregoing, on a timely basis. I have always responded to my probation monitor immediately. I have kept up with my continuing education.

Having been inhibited by a "probated" license has in effect prevented me from completing my community service volunteer work, the remaining portion of which I am in the process of proactively and creatively working to complete. The difficulty is compounded by having a "probated" license as described herein below.

On or about October 15, 2011 I submitted by FAX my proposed alternative community service arrangement comprising a properly signed form from the San Luis Obispo Lion's Club. Not having received a response from the Board by October 23, I emailed the Board inquiring about the proposed community service arrangement and was informed that the FAX had not been received. I then mailed the materials as well as two checks for my probation monitoring and fee recovery. I know that this mailing was received by the Board because the checks were negotiated soon thereafter.

Having sent my proposal for community service to the Board, and knowing it had been received, I was awaiting a response as to whether it was acceptable. I received a phone call on April 14, 2012 from the Board informing me that the Board was having difficulty in

communicating with the proper representative of the Lion's Club. I then called the Lion's Club and learned from them that they did not have enough hours available for me to fulfill my community service requirements. This resulted in a six month delay in my search for proper venue for the performance of my community service work.

The foregoing not withstanding, I did in mid-August of 2012 submit for approval community service with the San Luis Obispo Literacy Council and was approved for that service by the Board and the Literacy Council. I have since then just completed September and October service hours (12 each month) with the Literacy Council. However, I am as of the present not receiving current referrals from that organization. Apparently what has occurred is that the vision screenings are voluntary on the part of the Literacy Council's clients and only those clients who wish to undergo vision screening are referred to me.

Prior to that, in June of 2012, in order be proactive in completing my community service requirement, I worked with the senior health program for the Community Action Partnership of San Luis Obispo, (hereinafter "CAPSLO"), under the Director Heather Murphy, R.N. I was able to complete a number of hours working at different senior centers and had hopes that this arrangement would enable me to fulfill my community service requirement. When, however, Mrs. Murphy was contacted by the Board of Optometry and learned that I was on probation, she took the position that CAPSLO did not want me to continue working because , as she stated in an E-mail to me, a copy of which went to the Board: "...we don't use these types of volunteers under our program..." She thus made it clear to both myself and the Board that it was my probationary status that precluded me from being able to continue doing the work that I had been doing for those months, helping to screen eyes and clarify different visually related questions for which the seniors were seeking answers. I had been very kindly referred to her county organization by a doctor who had been arranging the Lion's Club school screenings and who I have known for years. I had not mentioned my probationary condition to Mrs. Murphy ahead of time, given the difficulty that I was having in being accepted as a volunteer that no organization wanted. Mrs. Murphy was very pleased with my work at the different senior centers, appreciative of the fact that I had been able to develop the program for screening seniors. However when she learned that I was on probation, she stated that she no longer wanted or needed my services. My probationary status was the sole cause of my inability to continue working with the seniors in the CAPSLO program.

The 6 month delay in the approval of any immediate community service was partly due to a communication glitch that was not within my control, my having submitted to the Board my Lion's Club signed form for approval of community service prior to October 24, 2011, well before my November deadline, only to find out through a phone call from the Board's representative on April 24, 2012, 6 months later than my mailed in form, that "phone tag" was taking place with unanswered messages with Del Dingus, Secretary of the Lion's Club, and that I needed to attend to facilitating the approval of my heretofore timely submission of my signed

community service paper, signed by a Lion's Club administrator, obviously based upon my previous long standing good name and generous service. As it turned out, the Lion's Club was unable to offer to me an adequate number of hours. It was only after the handicap of this six months' time delay that it became apparent to me that my probationary status was inhibiting my completion of my community service and that I needed to be very proactive and creative in lining up different venues. It had always been my experience that volunteers were welcome additions to a community, particularly professionals who were very knowledgeable, proficient, experienced, and multilingual (I am proficient in Spanish, as my practice for 23 years was comprised of approximately 20% Hispanic patients). In my past I had always been welcomed as a volunteer but that has not been the case since I was placed on probation.

When I tried to work for the NOOR Foundation (refer Exhibit "F" attached hereto) at the end of April 2011 (just prior to my efforts with CAPSLO), the staff was excited and had told me that they could use someone, especially someone who was multilingual, and that I should get a tuberculosis test. I received the test, and it was negative. Despite having done what the staff asked, when the doctor in charge returned from his Guatemala volunteer mission and learned that I was on probation, he told me that he did not want me to work at the local clinic. It was made clear to me that were I not on probation they would very much have liked to have me working with them. Given that I speak Guatemalan Spanish fluently, the doctor in charge also stated they could have used me on the volunteer mission, had I not been tied down from travel due to biological fluid testing requirements that have been consistently negative for over one year. My Board's ALCOHOLIC'S ANONYMOUS support group requirements and the psychological counseling obligations would also have prevented my participation in the volunteer mission since it involved travel outside of the area for a minimum necessary length of time, which was 6 weeks.

Because The California vision Foundation does not have enough people for them here to be able to make use of my services as determined by a Board employee who herself made inquiries attempting to assist me in fulfilling my community service requirements, I am in a quandary as to how I will satisfy that requirement. My last hope, the Literacy Council does not appear to be providing the number hours I had originally hoped to receive.

My inability to find outlets for community service is ironic in that my optometric career has itself, comprised a preponderance of community service from the local senior citizen centers to the schools by way of lecturing 5th graders studying the eye and Lion's Club screenings in my early practice development years to international service (LIGA International Flying Doctors of Mercy in Mexico and "Mission to Moscow" in Russia) in my later years of practicing. It was while working with LIGA that I was in a plane crash on November 2, 1991 in Mexico. (Refer to exhibit "H" attached hereto.) This crash resulted in permanent injury to a facial nerve causing speech and blepharospasm problems, a corneal cut to my eye's surface, an orbital injury affecting the musculature and pupillary reaction of the eyes, a concussion, and broken ribs.

The current urine testing and meeting with support groups and the psychological counseling requirements of my probation are preventing my ability to offer the gracious and quality care of needy people here at home and around the world as I have in the past. In addition it is also inhibiting my professional growth as it impinges on my being able to attend local continuing education offered by local doctors and the California Optometric Association (hereinafter referred to as "COA") events where the timing of such events does not fit in exactly with my fluid testing, support groups, or psychological counseling.

My request to have my license restored to its prior non-probated status is based upon my having cooperated fully with all of the probationary conditions to understandably insure to the public that only quality doctors are functioning in the profession (even though I, however, was never functioning in a non-quality status). As I have always been a laudable doctor of optometry, a fact to which my strong references attest, I have come to the point at which my post one year probationary status is about to negatively impact and inhibit my providing of excellent care for the visual needs of the public in my community and my ability to practice in community service venues. In addition I am unable to volunteer to help out other doctors who because of injury or death require assistance in their practices. My probationary status prevents me from treating Medicare or insurance patients. I am unable to work as a volunteer in overseas volunteer work. I am unable to fully participate in my own optometric education and development.

As an example the affect of my probationary status on my professional education, last year I lost a day of the November, 2011 California Optometric Association Monterey Symposium that I have participated in since it was started, due to a biological fluid test requirement. (I have never failed to call in nor have I ever had a negative result in over a year.)

The opposite of the my probationary status is now becoming manifest—the public is losing the time, skill, knowledge, selfless devotion and educated enthusiasm of an excellent practitioner due to my many hours lost to probationary matters and attentions. My previous Medicare patients wonder why I cannot take them; doing so is illegal for a non-Medicare provider, and I cannot be a Medicare provider because I am on probation. I cannot treat my patients that have insurance because insurance companies will not accept Doctors that are on probation in their plans. My Hispanic patients are frustrated and unhappy, as there are very few Optometrists that are bilingual and thus they have to travel to find a bilingual doctor.

My community service obligation and the payment of the cost recovery are the only remaining requirements that I need to fulfill to satisfy my probation requirements. As should be apparent I have made a number of attempts to complete my community service requirements and although, I would truly and sincerely like to complete this obligation, it has been made clear to me that I will be unable to do so if I continue to be in a "Probationary" status. I also need to have my

probationary status removed for business reasons, as it prevents me from seeing insurance and Medicare patients, a major component of my former practice. (especially Vision Service Plan)

The Board's present description of "Disciplinary Actions" in its website which states: "...repeated negligent acts..." would imply to anyone reading it that I had been practicing optometry while consuming alcoholic beverages. In fact I took a sabbatical from practice on June 30, 2001 after I had sold my practice. I had not seen any patients since that time and until I was placed on probation by this Board. Thus my misdemeanor offenses took place six years and nine years after I begun my sabbatical and six years and nine years after I had seen my last patient before beginning my sabbatical. The description on the Board's website borders on libel by implication in that it creates the impression that I was in practice and exposing patients to harm treating them while consuming alcohol. The foregoing notwithstanding, in order for me to complete the requirement of community service I need to have my probation terminated and the website entry eliminated.

I have now been on probation since October 12, 2011; I have had >100 bodily fluid tests. I called in daily without fail, attended every test when asked to attend, and every test has been negative. I have attended all of the alcohol education classes I have been required to attend. I have undergone all of the psychological counseling required by the terms of my probation. I have passed the California Optometry Laws and Regulations Examination (FILE ID: 1551) I have paid all of my probation monitoring fees. I have paid all installments pursuant to the required fee recovery condition. I have fully complied with all of the conditions of my probation, save and except for one.

The only condition I have not fully fulfilled is the community service requirement. There are two fundamental reasons why this is true:
The first is that my being on probation creates a "red flag" for any organization that might consider availing themselves of my services as was the case with CAPSLO and the SLO Noor Foundation. Once the person in charge learns that I am on probation, they want nothing to do with me.

The second reason why this is true is that when any organization considering my services examines the Board's web site and its comments about me, I am instantly transformed from the respected Dr. Anderson, O.D. who has practiced in the community for 22 years, with not one complaint by any patient and with not one instance of practice below the standard of care, into a persona non grata who is a threat to any person finding themselves in my chair. Someone in my AA group said,"...You must have done something really bad." I live in a small community.

If I ever at any time in the past had done what is attributed to me on the web site, I could well understand the need to disclose that information to an otherwise unsuspecting public. The fact is however, I had not ever seen a patient during the time of my aberrational behavior and the last patient I saw prior to such time was more than 5 years earlier, prior to that act. My aberrational act was totally isolated from my professional life and brought on by the two events of physical pain from which I was suffering. My conduct since the occasions of my aberrational act proves

that those isolated occurrences where just that, isolated occurrences that will never repeat themselves.
I therefore respectfully request that the Board correct the erroneous statements on its web site and enter into a final agreement with me terminating my probation, subject to conditions subsequent, to which I will stipulate, that require me to complete the remainder of my community service and pay the balance of the recovery fee and if for any reason I fail to fulfill these conditions, probation will be re-imposed with such conditions as the Board may deem necessary and appropriate under the circumstances.

If the Board will end my probation, I will sign an agreement with Board to insure the completion of the community service requirement and I will also pay the balance of the cost recovery that I owe to the Board. At this point there is no reason to continue my probation as I have shown over the last year by my continued abstinence from alcohol that the offenses that brought my probation about were aberrations cause by circumstances that are fully explained in the answer to item number 16, herein below.

15. Since September of 2011 I have been self-employed in my practice in San Luis Obispo, California that I started one month prior to that date in order to comply with the conditions of my probation. In addition I volunteered to perform the community service I was permitted to perform as described in the paragraph 14 hereinabove. I also complied with all of my probation requirements, passed the California Laws and Regulations Examination, and at the same time I continued to maintain all of my continuing education requirements. In addition, starting in January of 2011 and continuing through the present, I am working with my daughter in developing and completing her Utility Patent Application Number 13/373,457, patent pending, concerning an ophthalmic instrument for use in monitoring macular degeneration and other more rare retinal disorders. I have also, for my own intellectual advancement and related to the practice of Optometry, taken on a personal investigative project of reading literature concerning blood supply to the optic nerve head, as related to the progression of low tension glaucoma.

16. I have taken all of the Board required education classes in addition to the extensive rehabilitative classes required by the terms of the Court and the Department of Motor Vehicles. As per the Court imposed probation requirements, I attended required regular ALCOHOLIC'S ANONYMOUS support group meetings and have met and counseled with a Board approved psychologist on a regular basis. I followed all of the required procedures related to compliance with all of the foregoing. I should note however that my personal decision to cease any consumption of alcohol was made immediately after my last violation. I never had a drink again since that date, January 2010.

Since January of 2010, I personally made a commitment not to consume any alcohol and have abided by that fully. Prior to January, 2010 I did not consume alcohol in any form on a regular basis other than a glass of wine or champagne at a wedding or on holidays. That social

behavior, as slight as it was, no longer takes place as I now consume no alcohol at all. I had made a personal decision to never consume alcohol again prior to the Board's action.

The foregoing notwithstanding, the circumstances leading to the imposition of the present probation by the Board are replete with mitigating factors that should be considered and made known to the Board. In addition neither of the two offenses which are the basis of my present probation took place when I was functioning as an Optometrist or seeing patients and in fact I had been on sabbatical for more than five years. In this regard the Board's statement about me on its website of "Disciplinary Actions" which states: "...repeated negligent acts..." would imply to anyone reading it that I had been practicing optometry and treating patients while consuming alcoholic beverages, which in fact is totally untrue and borders on libel per se. These circumstances comprise a further reason to end my probation as the acts which have caused me to be placed on probation took place completely outside and unrelated to the practice of Optometry. Further as I will show hereinbelow they were aberrations from what has been my usual behavior, and explainable by mitigating circumstances.

On the two occasions comprising my Motor Vehicle Code Violations, I used alcohol as a substitute for pain killers. On the occasion of my first violation in 2007, more than five years after having sold my practice to take a sabbatical, (and not having engaged in the practice of Optometry at any location) I had consumed a small amount of alcohol in order to relax in the evening, after having functioned all day with a splinted, smashed finger that I had injured earlier that day when the finger got caught in a closing electric gate on my property. At the time of my arrest, my blood alcohol level was .06 or .02 under the presumptive level of .08. I had been driving through a construction zone and my vision was compromised due to what I later learned was a cataract, and which was causing me to experience multiple monocular images in the glaring construction lights out of my right eye. This caused my driving pattern to appear to be slightly irregular. After I was stopped by an Officer and asked to perform roadside field sobriety tests, I functioned poorly on the pupillary, and saccade test due to the left eye orbital injury I had suffered in the LIGA International volunteer mission plane crash in 1991 (described hereinabove). In addition I was unable to balance properly, also as a result of injuries suffered in the same plane crash.

At the end of September in 2009 while a pedestrian in Rouen, France, and walking along the side of a city street in the late evening I was knocked down and severely injured by a speeding automobile that failed to stop to render assistance. The accident cut my head, forced my left upper teeth through my right lower lip, broke my left collarbone, tore my left knee medial collateral ligament, and broke 2 or 3 metatarsals in my left foot which the car ran over when it knocked me down. I was still receiving treatment and therapy for these injuries in January of 2010.

On the occasion of my second motor vehicle code violation in January of 2010 I had some alcohol in the evening to alleviate my pain after having had my first physical therapy appointment for the above-described injuries. That same day I was seen by my doctor for the removal of the left side braces on my foot, my knee and thigh—(that had been in place since the accident) and collarbone, and had also undergone an intense regimen of physical therapy for the first time. I was in physical pain. I had some alcohol and displayed bad judgment by driving after having consumed the alcohol. I realized my bad judgment when, within a few miles of my house I recognized that it would not be safe for me to be driving on a freeway and was in the process of attempting to turn around when I was stopped by an Officer. I later learned that someone in the neighborhood had observed me making a U-turn and had called the authorities. While I should not have been driving at all, I at least had the foresight to recognize that driving on the freeway would have only exacerbated the situation. I have fully paid the penalties for my poor judgment. My previous actions will never be repeated, as I will never display similar poor judgment in the future under any circumstances. I no longer consume any alcohol and never will as I truly want to function at my fullest capacity one hundred percent of the time and resume the practice of Optometry. In this context I would respectfully request the Board to end my probation, remove the misleading comments it has posted on its website. (Please refer to Exhibit "G" attached hereto.) The comments to which I refer in Exhibit G are misleading because my Motor Vehicle Code offenses were totally unrelated to the practice of Optometry in that, at no time was any member of the public subjected to any ill-treatment by me. In this regard it is clear that no evidence exists that I was ever treating members of the public in a compromised condition and further my record confirms that neither the Board nor any third party provider has ever received any complaint or communication from any member of the public or any third party alleging that I have ever provided treatment that was not consistent with the standards of care applicable to the Optometric profession. There is in fact a very good reason why the Board has never received any complaint or communication concerning this issue and that reason is that I did not consume alcohol in any amount when I was in practice and the incidents which have resulted in this proceeding are aberrations as shown by the circumstances I have set forth in this document. Further, the letters of recommendation that are provided as part of my response to Item Number 20 herein, confirm that the other members of the profession and a Board Certified Ophthalmologist hold myself and my practice of Optometry over the last 22 years in the highest regard.

17. POST-GRADUATE OR REFRESHER COURSES

I completed the **"Treatment and Management of Glaucoma" program** from 2009 through 2012, passing all exams and receiving a certificate from **Southern California College of Optometry**.

The program was offered as a comprehensive program comprised of the following courses in a package for its completion (**55 hours**):

Treatment & Management of Glaucoma—**24 Hour Didactic Course with exam (pass)**
Friday-Sunday, August 21-23,2009 at the Fullerton Campus

Glaucoma Phase II—**15 hour with exam (pass),** Dr. Sawamura
August 20, 2011, Southern California College of Optometry, Fullerton Campus

Glaucoma Grand Rounds—**16 graduate hours with oral exam (pass)**, Dr. Sendrowski, O.D.
January 14, 2012 at Southern California College of Optometry, Fullerton Campus

In addition, at the **Southern California College of Optometry** I attended and received credit for **"Ocular Disease parts I and II. Each part was 18 hours, comprising 36 hours altogether**.

THE TWO POST-GRADUATE PROGRAMS AT SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY TOTALED **91 UNITS--55 FOR THE FIRST AND 36 FOR THE SECOND**

I attended all three days of **The Monterey Symposium of November 9 through November 11, 2012** as I have each year since the COA started the program in 1980. *I worried all weekend about the need for a biological fluid test as the weekend testing in Monterey is impossible so that I would have had to cancel my program* in Monterey, CA at the Convention Center.

In addition I attended three days of **The Monterey Symposium November 10-13, 2011** *(Unfortunately I missed a part of the Sunday program due to biological fluid test) for which I had to drive 4 hours home to San Luis Obispo County*

EACH OF THE ABOVE MONTEREY SYMPOSIUMS COMPRISES APPROXIMATELY 20 CONTNUING EDUCATION UNITS SUBJECT TO CLASS AVAILABILITY AND ATTENDANCE FOR APPROXIMATELY 40 POST-GRADUATE EDUCATION UNITS.

THE 91 SCCO POST GRADUATE UNITS AND THE MONTEREY SYMPOSIUM UNITS OF 40 =131

18. OPTOMETRIC LITERATURE

I traditionally have always read "Review of Optometry," "California Optometry," and "Optometric Physician." I have always subscribed to and read these and have found them to be very informative monthly magazines which feature cutting edge and educational articles related to the profession.

Optometric Literature that I have studied during the last year is well beyond the scope of my listing all of it. I read everything pertinent to macular degeneration to help my daughter in the development of her utility patent for her portable ophthalmic device, study for which began about January, 2011. I also read everything that I could find concerning blood supply to the optic nerve with the intention of developing an instrument to measure blood supply to the optic nerve in an office or clinic setting, as I felt and still do that glaucoma is a lot more involved than just eye pressure, a major factor being blood supply to the optic nerve and vascular perfusion. I later learned that my instrumentation idea was already under research in a university hospital near the French-Swiss border, therefore I never took it any further. However, the reading that I did covered a number of articles, learning more than what was offered in my continuing education classes.

For blood supply to the optic nerve, the subject of my readings covered areas including: sleep apnea, glaucoma suspect demographic and ethnicity studies, confocal studies, to physics papers on Doppler lasers, wavelengths of light, fiber optic cables, and endoscopic cameras. My reading included several other studies about glaucoma and retinal anatomy and physiology. Investigative research has been accomplished with laser Doppler velocimeter and haemorhedogy—laser Doppler flowmetry used to determine optic nerve head relative blood velocity, volume, and flow. The foregoing studies showed a strong correlation with the advancement of low eye pressure glaucoma and blindness. My goal had been to miraculously devise a means by which blood flow to the optic nerve as it enters the eye could be measured routinely by an instrument within the setting of a typical eye-doctor office or eye clinic. The ability to make such a diagnosis within that setting would change the course of early glaucoma discovery, treatment, and management so as to fend off even the early stages of a vision threatening disease.

In working on the utility patent for the portable ophthalmic instrument, the articles that I read dealt with current and research ophthalmic instrumentation for the detection and monitoring of macular degeneration by means of different methods around the world. In addition the articles addressed the macular degeneration disease itself including its types, stages, treatments, current care, and potential future care. I studied testing devices and current research on testing devices by way of on line articles and studies from foreign university studies. The articles that I read addressed other rare retinal diseases as well. I was seeking to ascertain in the context of developing the invention, the retina's visual responses to different colors of filtered light, thus enabling its use in testing for diseases other than macular degeneration with changes in color filters or pattern configuration. Below is a very brief list of references concerning macular

degeneration, blood supply to the optic nerve, and various studies from universities around the world on the diseases and instruments relating to these subjects, all of which I had to review in the context of my work with the utility patent and in the context of my proposed development of the instrument to measure blood supply to the optic nerve:

ALLERGAN 2010. "Eye Map Picture", used in Figure 2. (

Optometry Continuing Education Course)

http://www.allergan.com/products/eye_care/index.htm

Burress, J. (2008). "Macular Degeneration Study Links Behavior, Visual Improvement"

pbaOnline 11 Dec. 2008, 4.27.2010

(http://www.publicbroadcasting.net/wabe/news.newsmain/article/0/0/1436692/Atlanta./Macular.Degeneration.Study.Links.Behavior..Visual.Improvement)

Nassar, M. (1996). Threshold Amsler grid testing to detect reserving power of the macula and optic nerve. *Bull Ophthalmol Soc. Egypt, 89* (6), 97-101.

Gale et. al (Ophthalmology and Visual Science: 2003)

Delcourt et. al. (POLA Study) (Investigative Opthalmology and Visual Science: 2006)

Tan et. al. (BLUE MOUNTAIN Study) (American Academy of Opthalmology: 2008)

AREDS Report 22 (Archives of Ophthalmology: 2007)

O' Connel & Nolan et. al (Am. Journal of Clinical nutrition 2008, Science Direct & IOVS 2006/07)

Simple Anatomy of the Retina
Web vision-"The Organization of the Retina and Visual System"
Dr. Helga Kolb. Dr. Eduardo Fernandez. Dr. Ralph Nelson
Webmaster: Dr. Brian W. Jones
Updated: October, 2003

IU First To Isolate Method To Track Blood Flow To Optic Disc, Nerve
I.U. School of Medicine
Released: February 28, 1997
Author: Alon Harris, PhD., Director
http://www.medicine.indiana.edu/news_releases/archive_97/2glaucoma.htm

Study of Ocular Blood Flow Using Laser Doppler Flowmetry in Patients With Glaucoma and/or Obstructive Sleep Apnea Syndrome
University Hospital, CHU de Grenoble , Grenoble, France
Last updated April 2, 2009
Study Chair: Christophe Chiquet, Professor, MD, PhD
Study Director: Jean-Louis Pepin, Professor, MD, PhD
http://clinicaltrials.gov/ct2/show/study/NCT00874913?show_desc=Y

19. CONTINUING EDUCATION COURSES

Please see attached copies of continuing education certificates which represent CE from several different venues: California Optometric Association, Tri-County Optometric Society, Shepard Eye Center, and Southern California College of Optometry.

Please refer to exhibit "D" attached hereto.

California Optometric Association

Monterey Symposium 2012	Nov. 9 through Nov. 11, 2012	20 units
Monterey Symposium 2011	Nov. 19 through Nov. 13, 2011	17 units

Tri-County Optometric Society

Sycamore Mineral Springs Event	Oct. 13, 2012	4 units
Firestone Event	July 24, 2011	4 units

Shepard Eye Center	Oct. 11, 2012	2 units
	Feb. 17, 2011	2 units

Southern California College of Optometry Jan. 14, 2012 16 units

Total 65 units

20. **Letters of Recommendation**:

Please refer to exhibit "E" attached hereto.

Dr. Steven S. Jio, O.D. (805)528-2237
2098 9th Street, Suite A
P.O. Box 6336
Los Osos, CA 93412-6336

Dr. Greg Kaiser, O.D. This is the home address from which Dr. Kaiser often mails items.
661 Woodland Dr.
Los Osos, CA 93402-3817

Dr. Greg W. Kaiser, O.D. (805)772-6166
Central Coast Optometric Center
800 Quintana Rd., 1d
Morrow Bay, CA 93442

Dr. Paul T. Stallman, M.D. (805)481-3733
2 James Way, Suite 203
Pismo Beach, CA 93449

CRIMINAL DOCKET - MISDEMEANOR
SAN LUIS OBISPO COUNTY SUPERIOR COURT
STATE OF CALIFORNIA
SAN LUIS BRANCH

DOCKET NO: M000398637

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,

VS.

KROUT, SUSANNE WILCH / 001
DEFENDANT,

MISDEMEANOR CHARGE(S)	PLEA/DISPO
001 VC23152(A)	M NGP /DISM
002 VC23103(A)	M NOLO/NOLO

DA CASE NO=070001320 ID=0000367877/000
MNID: D000301416

AGENCY: CA HIGHWAY PATROL SLO
CASE= M00374507 CT= M1
ATTY: STEIN, JEFFREY R-RETAINED
PROB OFFICER:
BLOOD ALCOHOL RESULTS: BLOOD .06
INTERPRETER REQUIRED:
REV=C025
DATE ACTION FILED WITH COURT 02/01/07
VIOLATION DATE: 01/04/07

DATE	PROCEEDINGS	SYS
	** ALL PURPOSE ASSIGNMENT: JUDGE	
AA/AA/AA	BLOOD ALCOHOL RESULTS: BLOOD .06	
01/09/07	##### BOOK/RELEASE #	
01/29/07	JUDGE CRAWFORD;CLK GUERRA;DDA VAN ROOGEN;ATTY STEIN; DEFT NOT PRESENT AT NO FILING; CASE CONT TO 02/14/07;8:30;D7.	
02/01/07	ARRN 02/14/2007 0830 DEPARTMENT 7	
02/14/07	JUDGE CRAWFORD; CLK CARDWELL; DDA VAN ROOYEN; DEFT NOT PRES; ATTY STEIN PRES FOR DEFT @ ARRN; ARRN HELD; DEFT ENTERS NGP; WTT	
	FILED: O/R (NOT SIGNED)	
	PT 03/05/2007 0830 DEPARTMENT 7	
	##### O.R. NOT SIGNED #	
03/05/07	JUDGE CRAWFORD; CLK CARDWELL; DDA VAN ROOYEN; ATTNY STEIN PRES FOR DEFT @ PT. WTT.	
	FILED: STIPULATION AND ORDER FOR TRANSPORTATION AND ANALYSIS OF BLOOD SAMPLE.	
	PT 04/02/2007 0830 DEPARTMENT 7	
	##### O.R. NOT SIGNED #	
04/02/07	JUDGE CRAWFORD; CLK MCCUTCHEON; DDA VAN ROOYEN; DEFT NOT PRES; ATTY STEIN PRES FOR DEFT AT PT. WTT.	
	PT 04/25/2007 0830 DEPARTMENT 7	
	##### O.R. NOT SIGNED #	
04/25/07	JUDGE CRAWFORD, CLK STIMAC, DDA VAN ROOYEN, ATTY STEIN, DEFT NOT PRES @ PT, PLED NOLO CT2, CT1 DISM, WT/SENT; PC1385	
	FILED: TAHL WAIVER, DA SUBS CHARGES	
	SENT: 001 SAN LUIS OBISPO BY JUDGE CRAWFORD	
	CT 001 M VC23152(A) DISM 04/25/2007	
	CT 002 M VC23103(A)/23103.5 NOLO 04/25/2007	
	PROBATION BENCH 18 MO ENDS 10/25/2008	
	OBEY ALL LAWS	
	WET RECKLESS PROGRAM CONTACT/ENROLL WITHIN 21 DA	
	COMPLETE WITHIN 180 DA BY 10/22/2007	
	FINE: $825 (INCLUDES $20 SECURITY FEE)	
	$825 DUE BY 05/15/2007 OR IF AR FEE OF $30 IS PAID BY 05/15/2007 PAYMENTS OF $75 PER MONTH BEGINNING 06/15/2007 UNTIL PAID IN FULL.	
	FINE	
	PROBATION	
	ALCOHOL OR DRUG RELATED 23103 CONVICTION	
	DUI CONDITIONS ARE AS FOLLOWS:	
	SHALL NOT: COMMIT CRIMINAL OFFENSE; REFUSE BLOOD ALCOHOL TEST; DRIVE VEHICLE WITH BLOOD ALCOHOL ABOVE .00 %; OBEY ALL LAWS; DRIVE ONLY IF LICENSED AND INSURED	
04/30/07	NOTIFIED: CHPS, ALSV	
05/02/07	AR	
05/09/07	DOJ 8715 NOTIFICATION SENT	
05/10/07	RECEIVED $830.00 PAYOR # 82407 KROUTANDERSON, SUSANNE	

CONTINUED ON PAGE: 2

DATE	** ALL PURPOSE ASSIGNMENT: JUDGE PROCEEDINGS	SYS CLERK
	AR PAID IN FULL RECEIPT NUMBER S 142971	
05/14/07	DMV NOTIFIED	
	FILED: PROOF OF ENROLLMENT INTO WET RECKLESS DDP	
05/16/07	FILED: PROOF OF ENROLLMENT INTO WET RECKLESS	
05/24/07	RECD: REQ FOR COPIES FROM BD OF OPTOMETRY, SACRAMENTO CA	
07/03/07	MAILED: CERT COPIES AS REQUESTED TO BOARD OF OPTOMETRY SASE	
07/10/07	FILED: PROOF OF COMPLETION FROM WET RECKLESS DDP	

LSL114-M169 219

I hereby certify that the annexed document is a true and correct printout of the data as it appeared on our court computer as of October 22, 2012

Susan Matherly
Court Executive Officer

By _____
Deputy Clerk

CRIMINAL DOCKET - MISDEMEANOR
SAN LUIS OBISPO COUNTY SUPERIOR COURT
STATE OF CALIFORNIA
GROVER BEACH BRANCH

DOCKET NO: M000442962

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,

VS.

KROUT, SUSANNE WILCH / 001
DEFENDANT,

MISDEMEANOR CHARGE(S)	PLEA/DISPO
001 VC23152(A)	M NGP /DISM
P01 VC23103(A)	M DENY/ADMT
002 VC23152(B)	M NGP /NOLO

DA CASE NO=100001329 ID=0000367877/000
MNID: D000301416

AGENCY: CA HIGHWAY PATROL SLO
CASE= M02974510 CT= MG
ATTY: ONEILL, GEORGE B-RETAINED
PROB OFFICER:
BLOOD ALCOHOL RESULTS: .17 BL
INTERPRETER REQUIRED:
REV=C025 TARGET DATE: 05/25/10
DATE ACTION FILED WITH COURT 01/11/10
VIOLATION DATE: 01/11/10

DATE	PROCEEDINGS	SYS
	** ALL PURPOSE ASSIGNMENT: JUDGE JAC CRAWFORD	
AA/AA/AA	BLOOD ALCOHOL RESULTS: .17 BL	
01/11/10	ARRN 02/09/2010 0830 GROVER BEACH DEPT 1 #HRGS: 1	
01/19/10	##### BOOK/RELEASE #	
02/01/10	ATTY GEO ONEILL REQ CASE RESE	
	** VACATED: ARRAIGNMENT , 02/09/2010, RESET	
	ARRN 02/23/2010 0830 GROVER BEACH DEPT 1 #HRGS: 1	
	##### BOOK/RELEASE #	
02/23/10	JUDGE CRAWFORD; CLERK DUCKWORTH; DDA BAIRD; ATTY G. ONEILL	
	PRES FOR DEFT; ARRD; NGP; DENIES PRIORS; WTT	
	PT 03/16/2010 0830 GROVER BEACH DEPT 1 #HRGS: 2	
	##### COURT O/R CONDITIONAL SEARCH AND SEIZURE,	
	CHEMICAL TESTING, NOT USE OR POSSESS, STAY AWAY	
	FROM PLACES WHERE ALCOHOL IS SERVED #	
03/16/10	JUDGE CRAWFORD; CLERK DUCKWORTH; DDA K. WILSON; ATTY O'NEILL	
	PRES FOR DEFT; WTT	
	TSC 03/29/2010 0830 GROVER BEACH DEPT 1 #HRGS: 3	
	##### COURT O/R CONDITIONAL #	
03/29/10	REC'D: COPY REQUEST FROM BOARD OF OPTOMETRY	
	JUDGE J.CRAWFORD; CLK DUCKWORTH; DDA BAIRD; DEFT NOT PRES;	
	ATTY G.ONEILL PRES FOR DEFT @ TSC; NOLO CT2; CT 1 DISM;	
	PRIOR ADMITTED; WJT; FACTUAL BASIS FOR PLEA; WT/JDGMT	
	CRT DOES NOT ORDER IMPOUND/REGISTRATION SHOWS 2005 LEXUS IS	
	COMMUNITY PROPERTY	
	FILED: TAHL WAIVER	
	SENT: 001 GROVER BEACH BRANCH BY JUDGE CRAWFORD	
	CT 001 M VC23152(A) DISM 03/29/2010	
	CT 002 M VC23152(B) NOLO 03/29/2010	
	CT P01 M VC23103(A) ADMT 03/29/2010	
	PROBATION BENCH 3 YR ENDS 03/29/2013	
	JAIL: 40 DA , CREDIT FOR 2 JAIL DAYS SERVED	
	SURRENDER DATE: 05/28/2010 7 PM	
	OBEY ALL LAWS	
	SB38 2ND OFFENDER DWI PGM CONTACT/ENROLL WITHIN 21 DA	
	COMPLETE WITHIN 21 MO BY 12/29/2011	
	MAY DO IN ANY CALIF COUNTY	
	FINE: $2100 (INCLUDES SECURITY AND CONVICTION FEES)	
	$2100 DUE BY 04/15/2010 OR IF AR FEE OF $30	
	IS PAID BY 04/15/2010 PAYMENTS OF $85 PER MONTH	
	BEGINNING 05/01/2010 UNTIL PAID IN FULL.	
	FINE	
	PROBATION	
	JAIL, PRISON, OR CYA	
	REFERRED TO DUI 2ND OFFENDER PROGRAM	
	DUI CONDITIONS ARE AS FOLLOWS:	
	SHALL NOT: COMMIT CRIMINAL OFFENSE; REFUSE BLOOD	
	ALCOHOL TEST; DRIVE VEHICLE WITH BLOOD ALCOHOL ABOVE	
	.00 %; OBEY ALL LAWS; DRIVE ONLY IF LICENSED AND	
	INSURED	

CONTINUED ON PAGE: 2

EXHIBIT B

DATE	** ALL PURPOSE ASSIGNMENT: JUDGE JAC CRAWFORD PROCEEDINGS	SYS CLERK
04/01/10	REC'D CK $2100 FINE PD RECEIVED $2100.00 PAYOR # 268702 KROUT, SUSANNE WILCH	
04/05/10	FILED: PROOF OF ENROLLMENT:DAS 2ND CHANCE PRGM REC'D: CERTIFIED COPY REQ FROM DEFT	
04/09/10	MAILED: CERTIFIED COPIES TO BOARD OF OPTOMETRY MAILED: CERTIFIED COPIES TO DEFT RECEIVED $27.00 PAYOR # 268702 KROUT, SUSANNE WILCH	
04/23/10	NOTIFIED: CHPS, ALSV <<<<< DMV ABSTRACT UPDATED VIA LINK >>>>>	
05/05/10	DOJ 8715 NOTIFICATION SENT	
01/03/12	FILED: NOTICE OF COMPLETION: DAS 2ND CHANCE PRGM	

LSL114-M169 H18

STATE AND CONSUMER SERVICES AGENCY EDMUND G. BROWN JR., GOVERNOR

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

CALIFORNIA STATE BOARD OF
OPTOMETRY

PROBATION ORIENTATION MEETING

CERTIFIED MAIL

September 26, 2011

Dr. Susanne Anderson, O.D.
P. O. Box 1300
Nipomo, CA 93444-1300

Re: CC 2006-121

Dear Dr. Anderson:

This letter will serve as notice to you of your probation interview and provide you with information regarding your probation. As your probation monitor, I will be conducting your orientation interview, which has been scheduled for **October 14, 2011** at **1:00 PM** at **1625 North Market Blvd., Third Floor – Monterey Room, Ste. 322, Sacramento, CA 95834.**

In order to expedite the probation interview, I have enclosed documents that need your immediate attention. Please complete all documents and submit them on the dates specified on the attached list of due dates. All forms due on October 12, 2011 can be submitted at your orientation. Please bring your valid California Identification card and the completed Data Report Form to your orientation.

In addition, your first opportunity to take the California Laws and Regulations Exam will be immediately following your orientation interview. Pursuant to Condition #10 of your Stipulated Settlement and Disciplinary Order, you must take and pass this exam within the first 12 months of your probation. There is a six month waiting period between exams, so you will have three chances to pass the exam before the 12 month period is over.

A copy of the Board's Decision, Stipulated Settlement and Disciplinary Order, and Accusation has already been sent to you for your review. This decision will become effective on October 12, 2011

Please feel free to contact me with any questions or concerns at (916) 575-7184.

Sincerely,

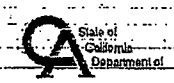
Jessica Sieferman
Probation Monitor
Jessica.Sieferman@dca.ca.gov

EXHIBIT C

Due Dates
Dr. Susanne Anderson, O.D.
CC 2006-121

Biological Fluid Testing	Pursuant to Condition #18, you are to submit to Biological fluid testing **immediately**. Phamatech will contact you shortly to arrange for your testing to start on **October 12, 2011**.
Quarterly Probation Report	Your first quarterly report, covering October 12th through December 31, 2011, is due by **January 7, 2012**. A sample of the *Quarterly Report of Compliance* form and your quarterly report schedule is included for your review.
Probation Monitoring Costs	Pursuant to Condition #4, your first Probation Monitoring Cost payment, in the amount of $100.00 is due on **October 12, 2011**. Each payment thereafter is due on the first of each month.
Notice to Employer	Pursuant to Condition #6, you "shall provide to the Board the names, physical address, mailing address, and telephone number of all of your employers and supervisors..." Please complete the attached *Release of Confidential Information* form and submit it by **October 12, 2011**. In addition, have your employer complete the *Notice to Employer* form. Your employer must submit the notice by **October 12, 2011** or prior to you returning to work.
Notice to Patients	Pursuant to Condition #7, your Notice to Patients must be approved by **November 11, 2011**. Please submit your proposed Notice to Patients by **October 12, 2011** to ensure you receive approval by the due date.
Cost Recovery	Pursuant to Condition #9, you shall pay the Board $3,320.00 in full within six months from the end of your probationary term. Should you wish to set up a payment plan, your first payment will be due **October 12, 2011**. Please review the attached proposed *Cost Recovery Payment Plan*. If this is acceptable to you, please complete this form and submit it by **October 12, 2011.**
California Laws and Regulations Exam	Pursuant to Condition #10, you must take and pass the California Laws and Regulations Examination by **October 12, 2012.**
Community Service	Pursuant to Condition #11, you must submit a community service program in which you provide free professional services on a regular basis to a community or charitable facility or agency, amounting to a minimum of 10 hours per month by **November 11, 2011.**
Group Support Meetings	Pursuant to Condition #19, you are to attend at least one 12-step recovery meetings during each week of probation. Attendance should start **immediately**. Please complete the attached *Group Support Attendance* form for each month of probation. Your first attendance forms are due on **January 7, 2012** with your first Quarterly Report.
Alcohol and Drug Treatment	Pursuant to Condition #20, you must complete a Board approved drug and alcohol treatment of at least 6 months duration by **July 10, 2012.**
Continuing Education	Pursuant to Condition #21, you must submit for approval a 4-hr (minimum) education program or

	course in the areas of drug and alcohol addiction by **January 10, 2012.**
Psychotherapy or Counseling Program	Pursuant to Condition #22, you must submit for approval the name and qualifications of a psychotherapist to perform treatment by **December 12, 2011.**



BOARD OF OPTOMETRY
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170 Fax: (916) 575-7292

Quarterly Report of Compliance

(Return to the address shown above)

(PLEASE PRINT OR TYPE)

NAME: Last	First	Middle	License No.

RESIDENCE ADDRESS: Number	Street	City	State	Phone

OFFICE ADDRESS: Number	Street	City	State	Phone

NAME OF EMPLOYER, PARTNER, OR ASSOCIATE (if any, and as may be appropriate):

Last	First	Middle

ADDRESS: Number	Street	City	State	Phone

Name of your probation surveillance officer:

Since the last quarterly report have you had any problem securing or maintaining employment? (YES) (NO)

Explain in Detail, If answer is Yes:

Since the last quarterly report, have you: (Circle Yes or No)

1. Been arrested, charged, or convicted of any violation of Federal, State and local laws?..... (YES) (NO)
2. Complied with every condition of the terms of your probation? ..... (YES) (NO)
3. Complied with all optometry laws? ..... (YES) (NO)
4. If required, have you paid the Board any Cost Recovery? If so, how much _____ . (YES) (NO)
5. Participated in any continuing education program? If so, please complete the following:

   Course: _____ Date: _____ Certificate Attached: (YES) (NO)

   Course: _____ Date: _____ Certificate Attached: (YES) (NO)

   Course: _____ Date: _____ Certificate Attached: (YES) (NO)

   (Note: Original certificate of completion must be attached for compliance credit – originals will be returned)

6. Please attach copies of complete patient records for 6 patient encounters. These are not to be of the same patient type, i.e. 3 for patients under 40 years of age, 3 for patients over 40 years of age with varying ranges of refractive and eye health characteristics.

Explain any YES answer to question 1 and any NO answer to question 2 or 3:

_____

_____

I hereby submit this Quarterly Report as required by the California Department of Consumer Affairs, Board of Optometry and its order of probation thereof, and declare under penalty of perjury the laws of the State of California that I have read the foregoing report in its entirety and know its contents and that all statements made are true in every respect, and understand that misstatements of omissions of material fact may be cause for revocation of probation.

_____ _____

Probationer Signature **Date**

STATE AND CONSUMER SERVICES AGENCY — EDMUND G. BROWN JR., GOVERNOR

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov

Quarterly Report Schedule
Anderson, Susanne O.D.

CC 2006-121

Probationary Period	Due Date
Oct. 12, 2011 – Dec. 31, 2011	Jan. 7, 2012
Jan. 1, 2012- March 31, 2012	April 7, 2012
April 1, 2012 – June 30, 2012	July 7, 2012
July 1, 2012 – Sept. 30, 2012	Oct. 7, 2012
Oct. 1, 2012 – Dec. 31, 2012	Jan. 7, 2013
Jan. 1, 2013- March 31, 2013	April 7, 2013
April 1, 2013 – June 30, 2013	July 7, 2013
July 1, 2013 – Sept. 30, 2013	Oct. 7, 2013
Oct. 1, 2013 – Dec. 31, 2013	Jan. 7, 2014
Jan. 1, 2014 – March 31, 2014	April 7, 2014
April 1, 2014 – June 30, 2014	July 7, 2014
July 1, 2014 – Sept. 30, 2014	Aug. 4, 2014
Oct. 1, 2014 – Dec. 31, 2014	Jan. 7, 2015
Jan. 1, 2015 – March 31, 2015	April 7, 2015
April 1, 2015 – June 30, 2015	July 7, 2015
July 1, 2015 – Sept. 30, 2015	Aug. 4, 2015
Oct. 1, 2015 – Dec. 31, 2015	Jan. 7, 2016
Jan. 1, 2016 – March 31, 2016	April 7, 2016
April 1, 2016 – June 30, 2016	July 7, 2016
July 1, 2016 – Oct. 12, 2016	Oct. 12, 2016

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

CALIFORNIA STATE BOARD OF
OPTOMETRY

RELEASE OF CONFIDENTIAL INFORMATION

I, _____, License No._____, authorize
(Full name of Probationary Optometrist)

Person or entity: _____
Address: _____
Telephone number: _____

to disclose all records and information, confidential or otherwise, and to answer any questions pertaining to my compliance with all federal, state and local laws, and rule and regulations of the Board of Optometry, including my employment, drug and or alcohol rehabilitation, physical and or mental health status, to the Board of Optometry, Probation Program Monitor, Probation Program staff, and or designated representative(s). All information requested should be sent to or directed to:

Board of Optometry
ATTN: Jessica Sieferman
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

This authorization shall be valid immediately and shall expire only after I successfully complete my probation term with the Board, or after I am terminated from the Probation Program early due to a successful petition outcome, or after my optometrist license is revoked or surrendered by the Board.

_____ _____
Signature of Probationary Optometrist Date

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

CALIFORNIA STATE BOARD OF
OPTOMETRY

Probationer: Dr. Susanne Anderson, O.D.
License Number: OPT 6613
Case Number: CC 2006-121

NOTICE TO EMPLOYER

Employer Name:_____ License Number:_____
Phone Number:_____ ext.:_____
Address:_____

Probationer's date of hire:_____

I,_____, certify that I am Dr. Susanne Anderson's employer. I further certify that, on _____, said probationer provided me a copy the Decision, Order, and Statement of Issues against her. I have read and I am aware of the discipline imposed by said Decision.

Further, I understand that the Board may communicate with me in regards to said probationer's work status, performance, and monitoring.

_____ Date:_____
Employer's Signature

STATE AND CONSUMER SERVICES AGENCY EDMUND G. BROWN JR., GOVERNOR

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

CALIFORNIA STATE BOARD OF OPTOMETRY

COST RECOVERY PAYMENT PLAN

Name **Susanne Anderson, O.D.** License No. **OPT 6613**

Decision / Stipulation No. **CC 2006-121** Probation Condition: **9**

Payment Terms: **Paid in full 6 mo. prior to end of term** Current Amount Due: **$3,320**

In accordance with my probation requirement, I propose to make payment(s) to the Board as follows:

I will make an initial payment of **$60.50** by **October 12, 2011**.

Thereafter, I will make **53** payments in the amount of **$61.50** by the first of each month thereafter, until the total is paid in full.

I understand that if I fail to make any payment(s) as described within this payment plan, I will be in violation of my probation requirements and possible face further disciplinary action against my license to practice optometry. I am also aware of Business and Professions Code Section 125.3(g) that allows the Board to deny me renewal of my license for failure to pay these costs.

Signature Date

Probation Monitor Date

Payments must be in the form of a cashier's check, money order, or personal check drawn from an account with sufficient funds. To ensure that your payment is credited to the correct account, **please write: "COST RECOVERY CASE NO. CC 2006-121"** on the front of your payment document. Make your checks payable to: California State Board of Optometry.

Mail your payment to:

Board of Optometry
Attention: Jessica Sieferman
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

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

CALIFORNIA STATE BOARD OF OPTOMETRY

GROUP SUPPORT ATTENDANCE

NAME: Dr. Susanne Anderson, O.D. MONTH/YEAR _____

You must obtain verification of attending Support Group Meetings such as AA, NA, ALANON, ACA, Recovery. The person you select to verify your attendance at such meetings must completely fill in one row on this form, for each meeting that they are verifying your attendance. **You are to turn in this form to your Probation Monitor for each month at the end of each quarter with your Quarterly Report.**

You are required to attend **1-5** Support Group Meeting per week.

Week 1	Date	Time of Meeting	Type or Name of Meeting	Verifying Name/Initial
Week 2	Date			
Week 3	Date			
Week 4	Date			
Week 5	Date			

From: events <events@coavision.org>
To: sande80328 <sande80328@aol.com>
Subject: California Optometric Association - purchase confirmation
Date: Tue, Oct 9, 2012 3:05 pm
Attachments: MS2012_Registration_Info.pdf (39K)

You are registered for the following:

Susanne W. Anderson, O.D. (4175)
Charged to CC: XXXXXXXXXXXX8981

Total charges include everything paid for in this event registration transaction. If you have questions or need to make any changes to your registration, please call COA at 800.877.5738.

= Event & Functions ==========
Event Title: Monterey Symposium 2012 (MS2012)
Event Total: $575.00

OD Option 1 Online Registration
Function Price: $575.00

Saturday Lunch Voucher-
Nov 10, 2012 12:00 PM to Nov 10, 2012 3:00 PM
Function Price: n/a

Friday Lunch Voucher-
Nov 9, 2012 12:00 PM to Nov 9, 2012 3:00 PM
Function Price: n/a

$50 COA Bucks
Function Price: n/a

FF2 - Food for Thought: Presbyopic? • Take It One Day At
Nov 9, 2012 6:45 AM to Nov 9, 2012 7:45 AM
Function Price: n/a

103 - Retina Review: Top Ten Reasons to Request a Retina
Nov 9, 2012 8:00 AM to Nov 9, 2012 9:40 AM
Function Price: n/a

105 - Ocular Manifestations of Systemic Disease:
Nov 9, 2012 10:00 AM to Nov 9, 2012 11:40 AM
Function Price: n/a

109 - New Perspectives in Glaucoma, Cataracts and
Nov 9, 2012 3:00 PM to Nov 9, 2012 3:50 PM
Function Price: n/a

113 - Abuse of Prescription and Non-Prescription Drugs
Nov 9, 2012 4:00 PM to Nov 9, 2012 4:50 PM
Function Price: n/a

116 - Fun with Herpes: HEDS I, II and You
Nov 9, 2012 5:00 PM to Nov 9, 2012 5:50 PM
Function Price: n/a

201 - Interactive Therapeutics: My Most Challenging
Nov 10, 2012 8:00 AM to Nov 10, 2012 9:40 AM
Function Price: n/a

204 - Ocular Side-Effects of Systemic Medications
Nov 10, 2012 10:00 AM to Nov 10, 2012 11:40 AM

EXHIBIT D

Function Price: n/a

209 - Role of Vascular Disease in Glaucoma
Nov 10, 2012 3:00 PM to Nov 10, 2012 3:50 PM
Function Price: n/a

210 - Rapid Fire Opthalmic Surgical Update
Nov 10, 2012 4:00 PM to Nov 10, 2012 5:40 PM
Function Price: n/a

FF3 - Food for Thought: Overview of RESTASIS®
Nov 10, 2012 6:45 AM to Nov 10, 2012 7:45 AM
Function Price: n/a

CLW1 -Unraveling The Mysteries of CLIA: Enhancing Patient
Nov 11, 2012 8:00 AM to Nov 11, 2012 9:40 AM
Function Price: n/a

304 - Optometric Role in Treating Glaucoma
Nov 11, 2012 10:00 AM to Nov 11, 2012 11:40 AM
Function Price: n/a

306 - Steroids and Controlled Substances
Nov 11, 2012 12:00 PM to Nov 11, 2012 12:50 PM
Function Price: n/a

Please keep a copy of this confirmation for your records.

Cancellation Policy:

Please review the attached document for important OptoWest information including our registration cancellation policy.

Thanks,
California Optometric Association

Tri-County Optometric Society
1255 14th St.
Los Osos, CA 93402
805-801-5567

Certificate of Participation in Continuing Education

Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.
Address P.O. BOX 1300, NIPOMO, CA 93444
Lic# OPT 6613 TPGL SS# 399 48 2338

Course Information:

Location: Sycamore Mineral Springs Resort
1215 Avila Beach Drive
San Luis Obispo, CA 93401

Date: Saturday, October 13, 2012

Course Title	**Credit Hours**
"Corneal Inlays and Lasik Outliers" John Davidson, M.D.	1.0
"Periocular Malpositions and Involutional Changes" Noelene Pang, M.D.	1.0
"Interesting Cases of Vitreoretinal Pathology" Nathan Steinle, M.D.	1.0
"Update on Vitreoretinal Pharmacology" Dilsher Dhoot, M.D.	1.0
TOTAL HOURS	**4.0**

Official certificate or record when signature and seal are affixed.

Approving Officer: _____

Official Seal

SHEPARD
EYE CENTER
Better Vision for a Better Life

Dennis Shepard, MD Stephen Bylsma, MD Rami Zarnegar, MD Dan Shepard, MD Randall Goodman, MD
James Franta, OD Ken Kendall, OD Felicia Lew, OD

General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration
BOTOX • Primary Eye Care • Contact Lenses • Low Vision

Certification of Participation in Continuing Education

This will certify that:

Susanne Anderson OD
P.O Box 1300
Nipomo Ca 93444

OD license No. 6613T Social Security No. 399-48-2338

Susanne W. Anderson O.D.
Signature of Licensee

Attended the following courses:

- Common Post Op Complications
- Glaucoma Surgical Implants

Sponsored by:

Shepard Eye Center
1414 East Main Street
Santa Maria, CA 93454

On October 11th, 2012, Approved for 2.0 CME hours.

Course Instructors:

Dr. Rami Zarnegar
Signature of Instructor

Dr. Stephen Bylsma
Signature of Instructor

Southern California College of Optometry
2575 Yorba Linda Boulevard
Fullerton, CA 92631-1699

Anderson Susanne W OD
P.O. Box 1300
Nipomo, CA 93444

License#: 6613

Report date: 17-Oct-12

COURSE	DATE	TITLE	INSTRUCTOR	HOURS	GRADE	LOCATION
Current Term	33.00					
Cumulative	204.00					
		Continuing Education 2012				
COE1849	14-Jan-2012	Glaucoma Grand Rounds	Dr.Sendrowski..	16.00	P	SCCO
Graduate	HOURS					
Current Term	16.00					
Cumulative	220.00					

END OF TRANSCRIPT

Date

Registrar

Southern California College of Optometry
2575 Yorba Linda Boulevard
Fullerton, CA 92631-1699

Anderson Susanne W OD
P.O. Box 1300
Nipomo, CA 93444

License#: 6613

Report date: 17-Oct-12

COURSE	DATE	TITLE	INSTRUCTOR	HOURS	GRADE	LOCATION
		Continuing Education 1994				
COE011	04-Mar-1994	Tri-County Optometric Society TPA	Various	100.00	P	Vntura
Graduate	HOURS					
Current Term	100.00					
Cumulative	100.00					
		Continuing Education 2002				
COE1838	11-Aug-2002	OCOS PATHOLOGY SYMPOSIUM	BOSE/CONDELL	6.00	P	SCCO
Graduate	HOURS					
Current Term	6.00					
Cumulative	106.00					
		Continuing Education 2004				
COE1834	21-Mar-2004	Pediatric Optometry	Barnhardt	7.00	P	scco
Graduate	HOURS					
Current Term	7.00					
Cumulative	113.00					
		Continuing Education 2005				
COE1831	05-Mar-2005	3rd Annual Ocular Disease Program		9.00	P	SCCO
Graduate	HOURS					
Current Term	9.00					
Cumulative	122.00					
		Continuing Education 2009				
COE1831	11-Jul-2009	Ocular Disease Part 2	DrsAustin&Tooma	18.00	P	SCCO
COE1855	21-Aug-2009	Glaucoma 24 Certification Course	Dr. Bright	24.00	P	SCCO
Graduate	HOURS					
Current Term	42.00					
Cumulative	164.00					
		Continuing Education 2010				
COE1843	14-Mar-2010	Scleral GP Contact Lens	Dr. B. Larson	7.00	P	SCCO
Graduate	HOURS					
Current Term	7.00					
Cumulative	171.00					
		Continuing Education 2011				
COE1814	20-Aug-2011	Glaucoma Phase II 15 hr Certificati	Drs. Sawamura	15.00	P	SCCO
COE1832	12-Mar-2011	Ocular Disease Part I	Drs.Chu, Cotter	18.00	P	SCCO
Graduate	HOURS					

* * * CONTINUED ON NEXT PAGE * * *

Date

Registrar

California Optometric Association

2415 K Street, Sacramento, CA 95816
Tel: (916) 441-3990 Toll-Free: (800) 877-5738
Fax: (916) 448-1423

License: 06613

Susanne W. Anderson, O.D.
P.O. Box 1300
Nipomo, CA 93444-1300

CONTINUING EDUCATION TRANSCRIPT

California Optometric Association
Monterey Symposium 2011
Monterey, CA
November 10 - 13, 2011

Code Listing

TPA - ANY OF THE FOLLOWING
(Glaucoma, Ocular Infection, Inflammation, Systemic Meds, Pain Medications)
O - OTHER(Binocular Vision, Contact Lenses, Low Vision, Vision Therapy)
PM - PRACTICE MANAGEMENT
ABO - American Board of Opticianry - Approved
NCLE - National Contact Lens Examiners Approved
AOA- AOA Approved only

COURSE TITLE	DATE	SPEAKER	HRS	CATEGORY	COPE
100- Clinical Challenges in Uveitis	11/11/11	David P. Sendrowski, OD, FAAO	2.00	TPA	COPE# 30943-SD
105- Systemic Antibiotic Management of Infection and Ocular	11/11/11	Blair Lonsberry, MS, OD, MEd, FAAO	2.00	TPA	COPE# 28669-PH
108- Diagnosing and Mngng Ocular Urg and Emergencies	11/11/11	Blair Lonsberry, MS, OD, MEd, FAAO	2.00	TPA	COPE# 24959-SD
112- Infection Protection: An Antibiotic Update	11/11/11	Alan Kabat, OD, FAAO	1.00	TPA	COPE# 27812-PH
202- The Latest in Management of AS Disorders	11/12/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31935-AS
207- The Latest in Management of PS Disorders	11/12/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31936-PS
211- Imaging in Glaucoma Today	11/12/11	George William Comer, OD, MBA	2.00	TPA	COPE # 32904-GL
301- Update on Retinal Vascular Disease	11/13/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31937-GO
309- High Performance High Wrap Rx - Easy!	11/13/11	Mark Mattison-Shupnick, ABOM, BS	1.00	OTH/ABO/AO	COPE# 31707-PM
F3- Increase Patients While Building a Successful Rx	11/12/11	Peter Kehoe, O.D.	1.00	NO CREDIT	
216- Picking Through Ophthalmology's Trash	11/12/11	Alan Kabat, OD, FAAO	1.00	PM	COPE # 27800-AS

This is your verification of course attendance at Monterey Symposium 2011.
Please keep for your records. Please note that Practice Management course hours do not count towards license renewal.

Tri-County Optometric Society
1700 N. Rose Ave
Oxnard, C.A. 93030
805-983-0700

Certificate of Participation in Continuing Education

Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.
Address P.O. BOX 1300, NIPOMO, CA 93444
Lic# 6613TPG SS# 399-48-2338

Course Information:

Location: Firestone Brewery
620 McMurray Rd.
Buellton, CA 93427

Date: Sunday, July 24, 2011

Course Title	**Credit Hours**
"Ocular Trauma" Steve S. Couvillion, M.D.	1.0
"Diagnostic and Surgical Differences in Eyelid Surgery" Randall L. Goodman, M.D.	1.0
"Diabetic Education for the Optometric Patient" Paula Vetter, R.N., FNP	2.0
TOTAL HOURS	**4.0**

Official Certificate or record when signature and seal are affixed.

Approving Officer: _____

Official Seal

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Suzanne Anderson, OD
P. O. Box 1300
Nipomo CA 93444-1300

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Suzanne Anderson, OD**

Opt. License No: 6613 T

Attended: **Ocular Disease Program, Part I**

Date: Saturday & Sunday, March 12 & 13, 2011

Instructor(s):

Saturday, March 12, 2011 • Day One - 9 Hours

Diagnosing and Managing Ocular Urgencies & Emergencies - Blair Lonsberry, M.S., O.D., MEd.
What Makes a Patient a Glaucoma Suspect Versus an Ocular Hypertensive? - Gayle Howard, M.D., Ph.D.
Early Management of Intraocular Pressure inGlaucoma - Gayle Howard, M.D., Ph.D.
When Diplopia is more than Double Vision - Ray Chu, O.D., M.S.
Ocular Dermatology - Dawn Pewitt, O.D.
Differential Diagnosis of Headaches in Children - Sue Cotter, O.D., M.S.
Anterior Segment Review - Jeffrey Austin, O.D.

Sunday, March 13, 2011 • Day Two - 9 Hours

Ocular Surface Disorders and Blepharitis - David Sendrowski, O.D.
Episcleritis and Scleritis: Simple Approaches to Diagnosis and Management - David Sendrowski, O.D.
Retinal Vascular Update - John Nishimoto, O.D., M.B.A.
Macular Disease - Steve Ferrucci, O.D.
Optometric Co-Management of Retinal Procedures - Steve Ferrucci, O.D.
Eye Care: Cases from the Field - Jay Rofsky, O.D.
Clinical Optometry and the Law - Stephen Eap, O.D., J.D.
Ophthalmic Drug Update 2011 from A to Z - Judy Tong, O.D.
Current and Future Treatments of Corneal Dystrophies - Loren Rude, O.D.

Sponsored and Administered by:

The Department of Continuing Education Southern California College of Optometry

Total Continuing Education Credits Earned: **18**

Sue Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

SHEPARD
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Better Vision for a Better Life

Dennis Shepard, MD Stephen Bylsma, MD Rami Zarnegar, MD Dan Shepard, MD Randall Goodman, MD
James Franta, OD Ken Kendall, OD Jason Chang, OD

General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration
BOTOX • Primary Eye Care • Contact Lenses • Low Vision

Certification of Participation in Continuing Education

This will certify that:

Susanne Anderson
P.O Box 1300
Nipomo Ca 93444

California License No. 6613T Social Security No. 399-48-2338

Signature of Licensee

Attended the following courses:

- Sudden Painless Loss of Vision
- Recent Advancements in Diagnosis and Treatment of the Anterior Segment

Sponsored by:

Shepard Eye Center
1414 East Main Street
Santa Maria, CA 93454

On February 17, 2011, Approved for 2.0 CME hours.

Course Instructors:

Dr. Rami Zarnegar

Signature of Instructor

~~Dr. Stephen Bylsma~~ Dr. Randall Goodman

Signature of Instructor

California Optometric Association

2415 K Street, Sacramento, CA 95816
Tel: (916) 441-3990 Toll-Free: (800) 877-5738
Fax: (916) 448-1423

License Number: 06613

Susanne W. Anderson, O.D.
P.O. Box 1300
Nipomo, CA 93444-1300

CONTINUING EDUCATION TRANSCRIPT
California Optometric Association
Monterey Symposium 2010
Monterey, CA - November 5-7, 2010

COPE Event # 101278

Code Listing

TPA - ANY OF THE FOLLOWING
(Glaucoma, Ocular Infection, Inflammation, Systemic Meds, Pain Medications)
O - OTHER*(Binocular Vision, Contact Lenses, Low Vision, Vision Therapy)*
PM - PRACTICE MANAGEMENT
ABO - American Board of Opticianry - Approved
NCLE - National Contact Lens Examiners Approved
AOA- AOA Approved only

COURSE TITLE	Date	Speaker	CE HRS	Category	COPE
• 102- Retinal Disease Update on New Treatment and Referral	11/5/10	Jay Haynie, OD, FAAO	2.00	TPA	COPE: 21277-PS
• 106- Adventures in Anterior Segment	11/5/10	Paul M. Karpecki, OD, FAAO	2.00	TPA	COPE: 25511-AS
• 108- Corneal Surgery Comanagement	11/5/10	Maynard L. Pohl, OD, FAAO	2.00	TPA	COPE: 18258-PO
• 113- Ocular Health and Wine	11/5/10	Paul M. Karpecki, OD, FAAO	1.00	TPA/AOA ON	COPE: 22351-CL
• 200- Glaucoma Grand Rounds	11/6/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 21046-GL
• 206- Neuro Grand Rounds	11/6/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 24898-NO
• 208- The Role of Gender in Glaucoma Therapy	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 25765-GL
• 211- What's Eating You? Diagnosis & Trtmt. of Corneal Ulcers	11/6/10	Louise Sclafani, OD, FAAO	2.00	TPA	COPE: 26371-AS
• 213- Controversies in Glaucoma	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 26717-GL
• 300- Secondary Glaucomas	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 26718-GL
• 301- It's Not What Your Country Can Do For You - CL Advanc	11/7/10	Louise Sclafani, OD, FAAO	1.00	OTHER	COPE: 22750-CL
• 304- Glaucoma An Obsession with Progression	11/7/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 24034-GL
• 308- Refractive Surgery Problem Solving	11/7/10	William Tullo, OD, FAAO	2.00	OTHER	COPE: 21521-RS

This is your verification of course attendance at Monterey Symposium.
Please keep for your records. Please note that Practice Management course hours do not count towards license renewal.

Tri-County Optometric Society
7605 Morro Road
Atascadero, CA 93422
805-466-3777

Certificate of Participation in Continuing Education

Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.
Address P.O BOX 1300, NIPOMO, CA 93444
Lic# OPT 6613 TPG SS# 399-48-2338

Course Information:

Location: Et Voila
12304 Los Osos Valley Road
San Luis Obispo, CA 93405

Date: Saturday, October 16, 2010

Course Title	Credit Hours
"Advantages of Descemet Stripping Automated Endothelial Keratoplasty (DSAEK)" John Cotter, M.D.	1.0
"Diagnosis and Treatment of Conjunctival and Corneal Neoplastic Diseases" Mark Sherman, M.D.	1.0
"Update on Myasthenia Gravis" Mary Amir, M.D.	1.0
"Adult Strabismus" Adam Abroms, M.D.	1.0
TOTAL HOURS	**4.0**

Official Certificate or record when signature and seal are affixed.

Approving Officer: _____

Official Seal

SHEPARD
EYE CENTER
Better Vision for a Better Life

Dennis Shepard, MD Stephen Bylsma, MD Rami Zarnegar, MD Dan Shepard, MD Randall Goodman, MD
James Franta, OD Ken Kendall, OD Jason Chang, OD Gregg Duistermars, OD

General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration
BOTOX • Primary Eye Care • Contact Lenses • Low Vision

Certification of Participation in Continuing Education

This will certify that:

Susanne Andersen, OD
P.O. Box 1300
Nipomo, CA, 93444

California License No. 6613T Social Security No. 399-48-2338

Signature of Licensee

Attended the following courses:

- Eyelid Tumors
- When to Refer to Retina

Sponsored by:

Shepard Eye Center
1414 East Main Street
Santa Maria, CA 93454

On October 14, 2010, Approved for 2.0 CME hours.

Course Instructors:

Dr. Randall Goodman, MD

Signature of Instructor

Dr. Daniel Shepard, MD

Signature of Instructor

1414 East Main Street • Santa Maria, CA 93454 • 805-925-2637 • 800-821-1787 • Fax 805-347-0033 • www.ShepardEye.com
Hablamos Español

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Susanne Anderson, O.D.
Po Box 1300
Nipomo CA 93444

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Susanne Anderson, O.D.** Opt. License No: **6613T**

Attended: **Getting Comfortable Prescribing Scleral GP Contact Lenses CE Program**

Date: **Sunday, March 14th, 2010**

Instructor(s):

Dr. T. Edrington – Intralimbal GP Contact Lenses for the Management of Irregular Corneas
Dr. C Sindt – RGP Lens Categories and Fitting Principles
Dr. G. Chiu – Scleral Lenses Overview – Tips and Tricks
Drs. C Sindt, B. Larson & G. Chiu – Scleral Fitting Grand Rounds
Drs. C Sindt, B. Larson & G. Chiu – Scleral Hands-On Workshop

Sponsored and Administered by: The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: **7**

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

SHEPARD
EYE CENTER
Better Vision for a Better Life

Dennis Shepard, MD Stephen Bylsma, MD Rami Zarnegar, MD Dan Shepard, MD Randall Goodman, MD
James Franta, OD Ken Kendall, OD Jason Chang, OD Gregg Duistermars, OD

General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration
BOTOX • Primary Eye Care • Contact Lenses • Low Vision

Certification of Participation in Continuing Education

This will certify that:

Susanne Anderson, OD
P.O. Box 1300
Nipomo, CA 93444

California License No. 6613T Social Security No. 399-48-2338

Susanne Anderson, OD
Signature of Licensee

Attended the following courses:

- Using Ribioflavin & UV to treat Keratoconus
- Posterior Capsule Opacification in Toric Intraocular Lenses (One (1) Credit hour approval pending)

Sponsored by:

Shepard Eye Center
1414 East Main Street
Santa Maria, CA 93454

On February 18, 2010, approved for one (1) credit hour.

Course Instructors:

Dr. Rami Zarnegar, MD
Signature of Instructor

Dr. Stephen Bylsma, MD
Signature of Instructor

DR. STEVEN S. JIO
OPTOMETRIST
2098 9TH STREET, SUITE A
P.O. BOX 6336
LOS OSOS, CALIFORNIA 93412-6336

TELEPHONE 528-2237

Oct. 24, 2012

To whom it may concern,

I have known Dr. Susanne Anderson both professionally and casual socially since 1980 when I opened my practice. Throughout the years, I have always known her to be both professional and responsible in her behavior.

To first give some background about myself, prior to beginning my career in optometry, I worked in a regional spinal cord injury center in San Jose. In the time I worked there, I took care of many victims who were hit by drunk drivers, and were now paralyzed for the rest of their lives, while the drunk driver escaped with minor injuries, and in two particular instances escaped prosecution on technicalities. As a result of this I have developed a zero tolerance for impaired drivers (and hope I am never in the position to be one of them), and would not agree to help anyone who I believed drove while intoxicated.

Thorough the years, I have encountered Dr. Anderson at many professional meetings, and have actually traveled together with her to some of them, and have not had a circumstance where I felt she acted recklessly in her behavior. I have also done some school vision screenings in our area with her, and never detected any impairment in function or appearance. Lastly, I helped her out on my days off from my practice to work in her office when she took time off after the birth of her children. The office seemed to be efficiently run, and it was easy for me to continue the continuity of care for her patients with her recordkeeping (her documentation was easy to follow).

Finally, I actually had Dr. Anderson as a patient subsequent to a plane crash she was in on a volunteer trip to Mexico. She suffered some head injuries, and needed some help with some loss of accommodative function as a result of those injuries. I understand there were also some other minor persistent neurological issues that occurred.

I hope this information is of some help to you in your consideration of Dr. Anderson's probationary term. If all other terms and qualifications are met, I would support a dismissal of her current status. If you have any questions, please feel free to contact me.

Sincerely,

Steven S. Jio, O.D.

EXHIBIT 15

Greg W. Kaiser O.D.
Central Coast Optometric Center
800 Quintana Rd., 1d
Morro Bay,CA 93442
(805)772-6166

November 10, 2012

To Whom It May Concern,

I have known Dr. Susanne Anderson for over 30 years. In the early 1990's, I worked with Dr. Anderson in Mexico on several trips with the Liga International group of volunteer doctors. From August 1995 to January 1998, I worked with Dr.Anderson on a part-time basis at her office in Nipomo,Ca. I saw hundreds of her patients and reviewed many of her exam records. Dr.Anderson's records revealed her as a very thorough and capable Optometrist with a good Rapport with her patients.

I have never seen Dr. Anderson intoxicated or under the influence of drugs, or incapable of Presenting herself in a professional manner. She has raised three wonderful children who are all college graduates and fine citizens. As my colleague, I hold Dr.Anderson in high esteem.

Greg W. Kaiser O.D.

Paul T. Stallman, MD
Oculoplastic and Aesthetic Facial Surgery

Thursday November 1, 2012

To the Board of Directors of the California Board of Optometry:

I am a Board Certified Ophthalmologist practicing in San Luis Obispo County since 2000.

When I began my practice I occasionally visited the office of Dr. Susanne Anderson. She was always professionally attired and conducted herself in a professional fashion. She was able to cogently discuss relevant ophthalmic issues. When I saw her at continuing education meetings she was professional, coherent and articulate. I never witnessed her consuming alcohol and she never appeared compromised.

Sometime after 2000, I became her physician, treating her for chronic blepharospasms. During her office visits she has always been coherent, articulate and has not seemed impaired in any way.

I have always known Dr. Anderson to be professional and that she maintained a reputation as a committed, professional optometrist when she was practicing.

Should you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely,

Paul Stallman, MD

2 James Way
Suite 203
Pismo Beach, CA 93449
805-481-3733
www.stallmancosmeticsurgery.com

Follow Us

providing *high quality* care

San Luis Obispo's Free Clinic

Now taking appointments.

Clinic Hours: 1:00pm - 5:00pm Friday and Saturday

The SLO Noor Foundation is a volunteer-based, non-profit organization dedicated to providing high quality free health care to uninsured people living within our community. Our team of volunteers, including physicians, nurses and pharmacists serves San Luis Obispo's uninsured and underserved by providing free primary and specialty care, along with education, outreach and advocacy...because no one should go without health care.

The SLO Noor Foundation Free Clinic operates solely on donations and grants from patients, private individuals, businesses, civic, Hospitals, and charitable foundations. The medical and educational services we provide enable our patients to lead healthier and more productive lives, which in turn, has a positive impact on their families and our community.

Recent News

Apple Farm Annual Open House - Benefiting the SLO Noor Foundation Sat., Nov. 10th 10am-3pm

Apple Farm Annual Open House - Benefiting the SLO Noor Foundation Sat., Nov. 10th 10am-3pm

Yarns at the Adobe - Sunday, October 7th, 3-6 pm .

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Exhibit E

About us

At the SLO Noor Foundation we understand the obstacles and challenges the uninsured face in our community when trying to obtain the quality medical care they need. The SLO Noor Foundation was established as a non-profit organization to help aid this problem. We provide free, high quality health care to those who could not otherwise afford access to care in San Luis Obispo County. The Foundation hopes to mitigate the effect on our community of the growing number of uninsured adults residing in our neighborhoods, the increasing risk of poor health conditions impacted by the lack of insurance, and the prevalence of the low-income and homeless in need of medical care."

Mission

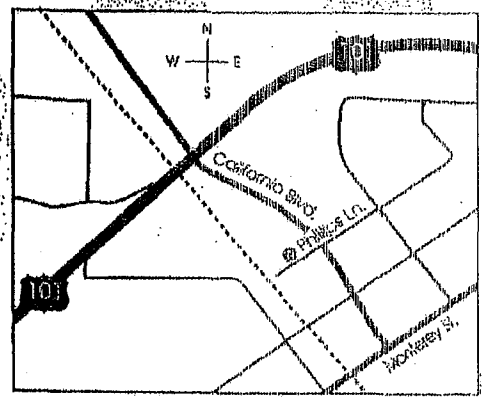
The mission of the SLO Noor Foundation is to provide the under-served and disadvantaged of SLO County with free access to the quality care they deserve, regardless of race, ethnicity, religion, immigration or socioeconomic status. We are committed to bettering our community by:

- Providing quality preventative and episodic primary health care to the uninsured
- Providing support group literature and partnering with social workers to assist individuals in identifying and qualifying for programs (including insurance) and other resources available in the community.
- Offering discount prescription information for prescriptions to be filled at local pharmacies
- Providing students with early exposure to addressing health care disparities through the mutually beneficial cooperative efforts of patients, healthcare professionals and members of the community

1428 Phillips Lane, Suite B-4
San Luis Obispo, CA 93401

Phone: (805) 439-1797
Fax: (805) 439-1799

slonoorfoundation.org

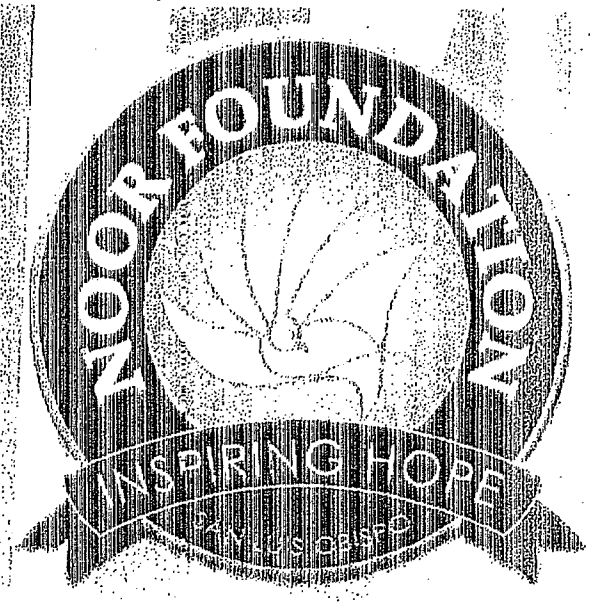


Hours

Primary Care Clinic
Fridays and Saturdays
1p.m. - 5 p.m.

Eye Clinic - Last Thursday of every month
8 a.m. - 12 p.m.

Inspiring hope & providing *high quality* care

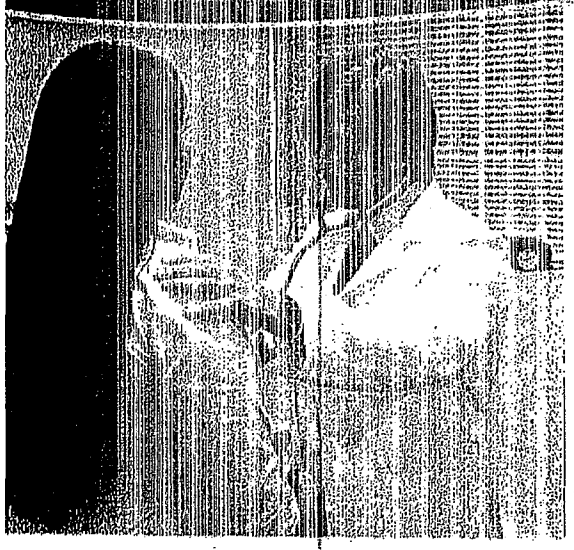


Inspiring hope providing high quality care

A free, high quality non-emergent health care clinic.

Services

The following services are provided for free to all patients who visit the SLO Noor Foundation Free Clinic



Basic Primary Care

- Patient Education
- Disease Prevention & Screening
- Physical Exams
- Women's Health
- Men's Health
- Laboratory Testing
- Specialty Referrals
- Physical Therapy
- Nutritional support
- Screening to help you qualify for Medi-Cal, CenCal, or similar free public insurance

Medical Services

Designed to meet the essential need that has arisen in our community, Medical Services are the cornerstone of the SLO Noor Foundation. Our clinic provides a "medical home" to adults with acute and chronic illnesses needing routine medical supervision and medications.

Services provided include basic medical care, laboratory testing, diabetes treatment and much more. Individuals needing specialty care such as cardiology, rheumatology, oncology and other sub-specialties may receive such care in the clinic or through referrals. These services are offered on a mixed appointment and walk-in schedule. As with all our clinic services, basic tests are free as well.

Case Management/Social Services

The case management department at the SLO Noor Foundation assists our patients in obtaining needed services in the community. Case managers work with clients to help them identify their needs and goals. Clients are then provided with referrals and information that is aimed at meeting those needs to assist them in achieving their goals. Our services are provided within a short-term framework that encourages the empowerment of clients to ensure them the opportunity to control their own future.

Women's Health

The SLO Noor Foundation is especially committed to providing ongoing support of women's health through regular screening and follow-up appointments. Staff members assist patients in accessing needed care of breast and other types of cancer through a referral program.

Referrals in the Areas of

- Housing
- Transportation
- Substance abuse issues
- Emergency food assistance
- Skilled Nursing or Assisted Living Placement Service

Vision

- Comprehensive eye exams
- Eye Glasses
- Glasses repair
- Medical treatment for glaucoma, allergies, etc.
- Diabetic eye exams

CALIFORNIA STATE BOARD OF OPTOMETRY

Licensee Name:	ANDERSON SUSANNE WILCH
License Type:	Optometrist (OPT)
License Number:	6613
License Status:	**Renewed** Definition
	Probation Definition
Expiration Date:	**September 30, 2013**
Issue Date:	September 15, 1979
License or Registration Class:	TPG
Address:	PO BOX 1300
City:	NIPOMO
State:	CA
Zip:	93444-1300
County:	SAN LUIS OBISPO
Actions:	**Yes**

A search of our records reveals that this optometrist may have been involved in a complaint that resulted in disciplinary action or a citation. You should contact the Board of Optometry at optometry@dca.ca.gov for more information.

Related Licenses/Registrations/Permits

No records returned

Public Disclosure

Administrative Disciplinary Actions

Case Number:	CC200900010700
Description of Action:	LICENSE PLACED ON 5 YEARS PROBATION FOR UNPROFESSIONAL CONDUCT: USE OF ALCOHOLIC BEVERAGES REPEATED NEGLIGENT ACTS, ACTS O THAT WOULD HAVE W ARRANTED DENIAL OF LICENSE, AND CONVICTIONS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS, AND DUTIES OF AN OPTOMETRIST
Effective Date of Action:	October 12, 2011

Public documents relating to this action are available here: http://www.optometry.ca.gov/consumers/enforcement/krout_decision.pdf

Disclaimer for Disciplinary Actions

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This information is updated Monday through Friday - Last updated: APR-03-2012

Disclaimer

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Exhibit H

Mercy Workers Save Colleagues in Mexico Crash

November 06, 1991|JESSE KATZ | TIMES STAFF WRITER

Using a crucifix as a splint, hair bands as tourniquets and shredded T-shirts as bandages, a group of USC nursing students and a Lancaster eye doctor saved the lives of four colleagues whose plane had crashed on a medical mission in Mexico.

The crash occurred last weekend when one of four single-engine planes piloted by the Flying Doctors of Mercy struck electrical lines and smashed into rugged terrain in the northwestern state of Sinaloa.

What transpired was a harrowing race against death by the California volunteers--won with primitive, makeshift measures far removed from their high-tech training.

"We were all dirty, our shirts were torn, we had blood under our fingernails and on our face--it was like a total MASH unit," USC nursing senior Rosie Romero, 22, said Tuesday. She was one of five students who made the trip to fulfill a volunteer work requirement in their community health class.

Instead of ambulances, they borrowed pickup trucks from local villagers and raced to the scene along dirt roads, crossing creeks and dodging livestock. A mayonnaise jar was used to collect urine specimens, a burlap sack served as a pillow and jagged wounds were cleaned with buckets of water.

By the time U.S. rescue crews arrived 10 hours later, it was dark. The tiny airport in El Fuerte had no radar or lights. Guided only by the headlamps of trucks that residents had parked around the runway, four Lear jets made daredevil landings and airlifted the injured to a trauma center in Tucson.

On Tuesday, the victims all were listed in fair condition with multiple fractures, cuts and bruises. Back in Los Angeles, the nursing students and the eye doctor were exhausted but relieved.

"It was a fabulous human experience," said ophthalmologist Rulon Beesley.

Said 26-year-old USC senior Denise Greene: "We basically sat down afterward, had a couple of margaritas and said, 'Whoa, what a day.' "

When the trip began Friday, the group had hoped to provide a range of medical services and supplies to the Mexican poor, including such basics as toothbrushes and toothpaste. For the volunteers of Liga International, a 66-year-old organization also known as Flying Doctors of Mercy, the trips are regular affairs in which they send as many as 25 planes a month south of the border.

Allen Clark, 38, an optician and pilot from Lancaster, had made the journey dozens of times, as had the three optometrists in his airplane. But as he was completing the last leg of the trip Saturday morning, from Guaymas to Choix, the craft's wing snagged electrical wires and the plane plummeted upside-down to the ground.

"It was like, Oh my God, I know they're going to be dead," Romero recalled thinking as she viewed the wreckage from above.

The three other planes in the convoy landed on a dirt airstrip about 10 miles away, where residents of the tiny village were awaiting their arrival. The students, some of whom speak Spanish, explained what had happened and were off in a frantic, bumpy ride in the back of the villagers' pickup trucks.

Ads by Google

About 45 minutes later, they encountered their wounded colleagues, who had been pulled from the wreckage by town folk. Clark had a fractured pelvis, crushed kneecap, broken foot and a deep cut across his chin. The others--G. Clark Pierre of Lancaster, Susan Anderson of Santa Maria and Greg Kaiser of San Luis Obispo--had injuries ranging from dislocated shoulders to compound fractures. Most were bleeding profusely.

"It was really life and death," said USC senior Amy Schmuecker, 27. "We just got in there and did the best we could."

Beesley said he took off the brace he was wearing for a herniated disc and used it to immobilize one victim's wrenched shoulder while the nursing students shredded their clothing for bandages, turning their T-shirts into tank tops.

Local residents gathered sticks and fence posts for splints. A hair band and the tubing from a stethoscope served as tourniquets. Some of the nursing students, who had split off to find medical supplies, showed up with a bag of IV solution and one needle--shared by the most critically injured.

"I had worked as a nurse before, but I never \07 felt \f7 like a nurse until Saturday," said USC senior Jill Houston, 26.

I AM LISTED AS SUSAN ANDERSON OF SANTA MARIA, CA

I am mentioned as Susan Anderson from Santa Maria, CA, near Lompoc and one of my referrees is Dr. Kaiser

They put the injured in the backs of the pickups and traveled to the town's primary clinic--little more than an empty shell of a building. They found gauze, masking tape and a wooden crucifix about six inches long that decorated the lobby.

"I was a little ambivalent about that, you know, being in a historically Catholic society," said Elizabeth Hahn, 44, also a USC senior. "But we really didn't have time to stop and say, 'Excuse me, can I use your crucifix as a splint.' "

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 2006-121
SUSANNE WILCH KROUT, AKA SUSANNE WILCH ANDERSON 240 Calle Del Sol Nipomo, CA 93444 Optometrist License No. 06613 Respondent.	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 12, 2011.

It is so ORDERED September 12, 2011

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SUSANNE WILCH KROUT, AKA SUSANNE WILCH ANDERSON 240 Calle Del Sol Nipomo, CA 93444 Optometrist License No. 06613 Respondent.	Case No. 2006-121 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Shawn P. Cook, Deputy Attorney General.

2. Respondent Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent) is represented in this proceeding by attorney Michael Krout, Esq., whose address is: P.O. Box 1028 San Luis Obispo, CA 93406

3. On or about September 5, 1979, the State Board of Optometry issued Optometrist License No. 06613 to Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent). The

Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. 2006-121 and will expire on September 30, 2011, unless renewed.

JURISDICTION

4. Accusation No. 2006-121 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 18, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2006-121 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2006-121. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2006-121.

9. Respondent agrees that her Optometrist License is subject to discipline and she agrees to be bound by the State Board of Optometry (Board)'s probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

SEVERABILITY CLAUSE

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

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 06613 issued to Respondent Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California. Respondent shall notify the Board in writing within three days of any incident resulting in her arrest, or charges filed against, or a citation issued against, Respondent

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

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

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM. Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

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

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

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

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

4. PROBATION MONITORING COSTS.

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

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

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

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

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

5. FUNCTION AS AN OPTOMETRIST. Respondent shall function as an optometrist for a minimum of 24 hours per week for the entire term of her probation period.

6. NOTICE TO EMPLOYER.

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

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

The employer will then inform the Board, in writing, that she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to

obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

7. NOTICE TO PATIENTS.

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

8. CHANGES OF EMPLOYMENT OR RESIDENCE.

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

Respondent shall also notify her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. boxes are accepted for mailing purposes; however the Respondent must also provide her physical residence address as well.

9. COST RECOVERY.

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be $3,320 and shall be paid in full directly to the Board, in a Board approved payment plan, within 6 months from the end of the probation term. Cost recovery will not be tolled.

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

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

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

10. TAKE AND PASS LICENSURE EXAMINATION(S).

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

11. COMMUNITY SERVICE.

Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free professional services on a regular basis to a community or charitable facility or agency, amounting to a minimum of ten (10) hours per month of probation. Such services shall begin no later than 15 days after respondent is notified of the approved program./ / /

12. VALID LICENSE STATUS.

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

13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, or the probation monitoring costs incurred. Travel out of California for

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

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

14. LICENSE SURRENDER.

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

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

15. VIOLATION OF PROBATION.

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

///

16. COMPLETION OF PROBATION.

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

17. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES.

Respondent shall abstain completely from the personal use or possession of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

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

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

18. BIOLOGICAL FLUID TESTING.

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

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

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

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

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

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

19. PARTICIPATE IN GROUP SUPPORT MEETINGS .

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

signed documentation confirming such attendance to the Board during the entire period of probation.

20. ALCOHOL AND DRUG TREATMENT.

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

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

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

21. CONTINUING EDUCATION.

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

This program or course shall be in addition to the Continuing Optometric Education requirements for renewal, and shall be obtained with all costs being paid by the Respondent. Following completion of each course, the board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the board.

22. PSYCHOTHERAPY OR COUNSELING PROGRAM.

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of respondent's choice.

Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until such time as the Board releases his/her from this requirement and only upon the recommendation of the counselor. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric or psychological evaluations by a Board-appointed psychiatrist or psychologist.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael Krout, Esq.. I understand the stipulation and the effect it will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 11 July 2011 Susanne Wilch Anderson, O.D.
SUSANNE WILCH KROUT, AKA SUSANNE WILCH ANDERSON (Susanne Wilch Krout)
Respondent

I have read and fully discussed with Respondent Susanne Wilch Krout, aka Susanne Wilch Anderson the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11 July 2011
Michael Krout, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: April 18, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

SHAWN P. COOK
Deputy Attorney General
Attorneys for Complainant

LA2010503553
Stipulation.rtf

Exhibit A

Accusation No. 2006-121

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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SUSANNE WILCH KROUT, AKA SUSANNE WILCH ANDERSON** **18649 Via Princessa** **Santa Clarita, CA 91387** **Optometrist License No. 06613** Respondent.	Case No. 2006-121 ACCUSATION

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

2. On or about September 5, 1979, the State Board of Optometry issued Optometrist License Number 06613 to Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 150 of the Code states: "The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs."

5. Section 118, subdivision (b), of the Code provides that the suspension /expiration/ surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 22 of the Code states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3)(A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) "The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

. . . .

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

10. Section 3090 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce

and administer this article as to license holders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

11. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

* * *

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(f) Any action or conduct that would have warranted the denial of a license.

* * *

"(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

"(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the

use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

12. California Code of Regulations, title 16, section 1517 states:

"For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare.

13. A "dangerous drug" or "dangerous device" is any drug or device that is unsafe for self-use within the meaning of Code section 4022 in that it requires a prescription under federal or state law.

14. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

15. CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

a. "Diazepam, generic for the brand name Valium 10 mg.", a benzodiazepam derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

b. "Premarin" is a drug made up of conjugated estrogens obtained from the urine of pregnant mares, and is categorized as a dangerous drug pursuant to Section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Use of Alcoholic Beverages or Controlled Substances to an Extent)

16. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions (a) and (l) in that Respondent has used alcoholic beverages and/or controlled substances to the extent or in a manner, as to be dangerous or injurious to her or other persons. The circumstances are as follows:

17. On or about January 4, 2007 at 2134 hours, Respondent was arrested for suspected violation of Vehicle Code sec. 23152, subd. (a)- driving under the influence of alcohol and/or drugs, after she was stopped in or around San Luis Obispo by the California Highway Patrol for weaving on the roadway. When Respondent exited her vehicle, she stumbled and walked with an unsteady gait. Respondent's PAS results were #1 at .07 and #2 at .073. Her blood alcohol result was .06 BL. Respondent admitted to the officer that she had consumed a "Bloody Mary" and had taken the controlled substances Valium, Diazepam and Premarin at approximately noon earlier that day.

18. On or about April 25, 2007, Respondent was convicted by the Superior Court of California, County of San Luis Obispo, in People v. Susanne Wilch Krout, case no. M398637, on her plea of nolo contendere to violation of Vehicle Code sections 23103, subd. (a) and 23103.5, subd.(a) [alcohol related ("wet") reckless driving] a misdemeanor, and a prior offense under Vehicle Code section 23103.5, subd. (c). for the purposes of sections 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections. Respondent's imposition of her sentence was suspended for 18 months, she was ordered to attend a "wet reckless" program, and submit proof of completion within 180 days.

19. On or about January 11, 2010 at 1946 hours, Respondent was arrested for suspected violation of Vehicle Code sec. 23152, subd. (a)- driving under the influence of alcohol and/or drugs, and section 23152, subd. (b)- driving with a blood alcohol content of .08% or higher after she was stopped in or around San Luis Obispo by the California Highway Patrol for weaving on the roadway and making a wide right turn. When Respondent exited her vehicle, she staggered and had trouble standing up. Respondent's PAS results were #1 at .167 and #2 at .164. Her blood alcohol result was .17 BL. Respondent initially denied having consumed any alcohol, but later admitted to the officer that she had drunk 2 glasses of champagne earlier that day between 4 am and 6am. She denied taking any current prescriptions, though Valium was found by the officer in her purse. She admitted that she was under the care of "Dr. Book", in Santa Maria.

20. On or about March 29, 2010, Respondent was convicted by the Superior Court of California, County of San Luis Obispo, in People v. Susanne Wilch Krout, case no. M000442962,

on her plea of nolo contendere to violation of Vehicle Code sections 23152, subd. (b) [driving with blood alcohol of .08 or greater] a misdemeanor. Respondent received a 3 year suspended sentence, was sentenced to 40 days in county jail with credit for time served of 2 days, a stay of execution until May 28, 2010, and ordered to attend a DDP (Drinking Driver Program) for second offenders.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Repeated Negligent Acts)

21. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions (a) and (c) in that she committed repeated negligent acts. The facts are as alleged in the preceding paragraphs 16 through 20, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Acts or Conduct that Would Have Warranted Denial of License)

22. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions (a) and (f) and 480, subdivision (a)(3) in that she engaged in acts or conduct that would have warranted denial of her license. The facts are as alleged in the preceding paragraphs 16 through 20, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Substantially Related Convictions)

23. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions (a) and (k) and 490, in conjunction with California Code of Regulations, title 16, section 1517, in that she engaged in acts or conduct that would have warranted denial of her license. The facts are as alleged in the preceding paragraphs 16 through 20, which are incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 06613, issued to Susanne Wilch Krout, aka Susanne Wilch Anderson;

2. Ordering Susanne Wilch Krout to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: Nov. 9, 2010

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

LA2010503553
accusation.rtf

Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Tel: (916) 575-7170
Fax: (916) 575-7292
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CERTIFICATION

The undersigned, Mona Maggio hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the Board of Optometry of the State of California, and that in such capacity she has custody of the official records of said board.

On this twenty-ninth day of April 2013, the Executive Officer examined said official records of said Board of Optometry and found that **SUSANNE WILCH ANDERSON** graduated from Southern California College of Optometry in 1979, and is the holder of Certificate of Registration to Practice Optometry No. 6613, which was granted to her effective September 5, 1979. Said Certificate of Registration is currently in full force and effect and will expire September 30, 2013 unless renewed. The current address of record for said Certificate of Registration is PO Box 1300, Nipomo, CA 93444.

Said records further reveal that on or about March 17, 1997, **SUSANNE WILCH ANDERSON** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that, effective August 4, 2011, as the result of disciplinary action taken in Case number CC 2009-107, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 6613. However, the revocation was stayed and the Certificate was placed on probation for a period of five (5) years.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twenty-ninth day of April 2013.

Mona Maggio

Mona Maggio, Executive Officer

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:** August 16, 2013

From: Jessica Sieferman
Enforcement Lead **Telephone:** (916) 575-7170

Subject: **Agenda Item 13B. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation**

Dr. Jeffrey Hall, O.D. (Petitioner) was issued Optometrist License Number 6242 by the Board on October 3, 1977. On August 23, 2010, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on allegations of repeated negligent acts and gross negligence and/or incompetence. In a stipulated settlement agreed to by Petitioner, on April 4, 2012, Petitioner's license was revoked, the revocation stayed and was placed on five (5) years probation, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant his Petition for Reduction of Penalty and Early Termination of Probation.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of Stipulated Settlement and Disciplinary Order, Accusation
3. Certification of Licensure

Consumer Affairs

Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170/(866) 585-2666
www.optometry.ca.gov

PETITION FOR REDUCTION OF PENALTY OR EARLY TERMINATION OF PROBATION

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
Jeffrey	Allan	Hall	6242T
2. ADDRESS (NUMBER)	(STREET)		DATE OF BIRTH
8312 Lake Murray Blvd. Suite C			4-10-51
(CITY) (STATE)	(ZIP CODE)		TELEPHONE
San Diego, Ca	92119		(619) 464-2026
3. PHYSICAL DESCRIPTION (HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
5'2"	160	Brown	Brown

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED

NAME OF SCHOOL: Pennsylvania College of Optometry (Salus University)

ADDRESS (NUMBER) (STREET): 8360 Old York Rd.

(CITY) (STATE) (ZIP CODE): Ellins Park, PA. 19027

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? ☐ YES ☒ NO

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE

7. Are you or have you ever been addicted to the use of narcotics or alcohol? ☐YES ☒NO

8. Are you or have you ever suffered from a contagious disease? ☐YES ☒NO

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? ☐YES ☒NO

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) ☐YES ☒NO

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) ☐YES ☒NO

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? ☒YES ☐NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.

18. List all optometric literature you have studied during the last year.

19. List all continuing education courses you have completed since your license was disciplined.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 4-17-13 Signature [signature]

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2450 Del Paso Road, Suite 105, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

#13

Case No. CC 2008-78 Details of complaint listed in accusations presented to the State Board. In short unprofessional conduct by incomplete exam and exam records of patient K.W.

#14

This is the one and only complaint to the State Board, insurance company, consumer, or any agency in my nearly 36 years of practice. I accept the short comings in this case, but there were extenuating circumstances, and this was certainly an exception to the rule. My onsite monitor Paul Lavin, O.D. can attest to the high level of optometric care provided at my office.

#15

I have continued to work as an Optometrist, seeing patients in my practice that I established in 1979.

#16

I have taken the optometric law exam and passed. I have taken the continuing education in pediatrics that the Board required. I have done the 20 hours per month of community service required.

A. Numerous community projects through the La Mesa Sunrise Rotary Club. I am a 25 year founding member, and run several ongoing fund raising projects.
B. I see patients 2 days a month at the Lion's Optometric clinic in San Diego. Some of the more challenging patients from Lions are seen at my office (i.e. keratoconus) at no charge.
C. Big Pals (a big brother like program). My little pal is autistic. I started with him when he was 10. He is 11 now, and my plan is to stay with him until he is 18 (or beyond).
D. Procuring new ophthalmic frames for Lion's, and Dr. Dan Rosenbaum's Family Health Centers of San Diego.
E. Support for optometry Giving Sight. We were recognized by this organization for raising over ten thousand dollars for this worthwhile cause.
F. Pro bono exams for residents of Noah Home's. Residents of Noah Home's are individuals who are physically or mentally challenged (many are older with Down's syndrome). These patients are seen at my private office.

#17

Took the glaucoma track at the Monterey Symposium. See enclosed list of courses taken in the past 12 months.

#18.

I read numerous publications including Vision Monday, 20/20, Eyefind, Review of Optometry and Contact Lens Forum

#19

See the enclosed transcripts

#20.

Personal recommendations see enclosed.

A. David Geffen O.D. FAAO Ph. 858-442-5614
B. David Greenberg M.D. Ph.619-977-5303
C. Paul Lavin O.D., FAAO Ph.619-287-9590
D. William Pogue M.D. 8310 La Mesa Blvd. #151 La Mesa, CA 91942 Ph. 619-460-4670

August 3, 2011

To Whom It May Concern:

RE: Jeffery Hall, OD

This letter is in reference to Jeffery Hall, OD whom I have known over the past 25 years. I have worked with Dr. Hall as a colleague, study partner, committee member and as a friend. We have shared patients over the years sending those individuals needing care who are located closer to the others practice to receive the same outstanding care they were used to. I can speak to Dr. Hall's character as being at the highest level of any eye doctor I know. His concern over his patients care is obvious by his dedication to education, study, and updating the technology in his office.

I have participated in a study group with Dr. Hall over the past 20 years. Starting with only a few of us meeting approximately once a month to know belonging to a group of more than 40 doctors. We discuss the current trends in disease management, contact lenses, spectacles and practice management. Jeff always brings stimulating ideas and concerns to the group and is a well respected member and participant.

I have also participated in many clinical trials for new contact lens products over the years with Dr. Hall. By being selected to help companies determine the effectiveness of new products, it shows the respect that industry has for Jeff. We have sat at many tables with industry representatives discussing the pros and cons of new devices. His opinions always were cutting edge and thoughtful.

I have worked with Dr. Hall for the past 10 years on the California Optometric Associations (COA) Education and Meetings committee. As a past chair, I always looked to Dr. Hall's opinion of our plans as a test for the greater optometric community. He stimulates discussion among other committee members and always listens and respects the others thoughts. His knowledge of optometry is extremely well respected amongst the entire committee as well as throughout the COA.

I work in a comanaging surgical practice and as such have treated a number of Dr. Hall's patients. I have always found his patients to be very loyal and happy to be under his care. His reports are complete and accurate. Our office can always count on his data to use for surgical procedures.

Dr. Hall is also a leader in the community. He is one of the leading optometrist in the philanthropic organization, Optometry Giving Sight. He has raised funds for this organization among his patients as well as other doctors. He also is active in the San Diego community and a well known philanthropist.

As a friend, I am in contact with Dr. Hall frequently. I enjoy our discussion on patient care and treatment. I have grown professionally from our association. I would trust him to care for myself and my family. He is the first person I call for an outside opinion on a difficult case. I know of no other optometrist I respect more highly. As a testament to this trust, I have referred one of the best interns to come through my practice to him for possible employment. This individual who has the potential to be a great doctor will have the best mentor I can think of to follow in Dr. Hall.

In summary, I can think of no optometrist who is more highly respected and as well thought of as Dr. Jeffery Hall.

Sincerely,

David I. Geffen, OD, FAAO

To Whom It May Concern
RE: Jeffrey Hall OD

Dear Sirs and Madam:

The purpose of this correspondence is to stand in strong support of Dr. Jeffrey Hall in the issues before you. My reasons for this support will be clearly outlined in the body of this document.

Firstly, let me introduce myself. My name is David Greenberg and I have been a practicing medical physician specializing in Family Medicine and Sports Injury Medicine for over 30 years. During my career, I have also sub-specialized in Emergency Medicine and Industrial Medicine. I retired from active practice in 2006 secondary to a recreational vehicle accident.

While in practice, I had the distinct pleasure of getting to know Dr. Hall from a professional and personal perspective. I would not be exaggerating to state that Dr. Hall is one of the most conscientious and dedicated professionals that I have been associated with in any specialty. Over the course of my career, I have referred literally hundreds of patients to Dr. Hall for optometric examinations. On numerous occasions, I found it necessary to call Dr. Hall to request him to see a patient requiring immediate / acute emergency care. I can recall no instance that his services were ever denied. Moreover, many of these patients would report back to me and thank me for referring them to such a caring professional.

Moreover, it is my strong conviction that Dr. Hall is among the most academically gifted in his field. In some cases, his examinations provided me with vital information of significant diagnostic value. If further optometric studies were indicated, Dr. Hall was quick to arrange the necessary referrals or testing.

Finally, because of my long tenure with medical professionals and hospital personnel, I am privileged to know that Dr. Hall enjoys a very favorable reputation among his opthmologic and optometric colleagues.

In conclusion, I stand in good company with many of my medical colleagues who are honored to have Dr. Hall in our community serving our patients.

Your attention to this delicate matter is sincerely appreciated.

David R. Greenberg

Paul J. Lavin, O.D., F.A.A.O.

Member
AmericanOptometricAssociation

DOCTOR OF OPTOMETRY

Fellow, American Academy of Optometry

655 Saturn Boulevard, Suite H
San Diego, California 92154

Telephone (619)425-9001
Fax (619) 423-3807

August 1, 2011

To Whom It May Concern:

Please accept this letter as a character reference for Jeff Hall, O.D.

I have known Dr. Hall for about 32 years. Over those years, I have found him to be one of the elite colleagues in my field. When I have participated in study groups with him, I have found his knowledge to be both thoughtful and insightful. We have exchanged countless ideas both clinically and professionally. Additionally, I have found him to be extremely charitable both monetarily with his generous donations to Optometry Giving Sight, and time wise with his many hours of service to the California Optometric Association and San Diego County Optometric Society.

Private practice optometrists, like Dr. Hall and myself, examine hundreds of patients per month. Although we all strive to provide impeccable care 100% of the time, as humans, this may not always happen. I don't know all of the details regarding the isolated case that has caused his care to come into question, but I'm certain this does not represent his overall quality of care.

Overall, Dr. Hall is a conscientious and knowledgeable professional. I would have no hesitation entrusting myself or any member of my family to his care.

Sincerely,

Paul Lavin OD

Paul J. Lavin, O.D., FAAO

To Whom it May Concern
State Board of
Optometry

re: Dr. Jeffrey Hall, 6210 Lake Shore Drive, San Diego 92110-3043

Dear Gentlepersons:

I have know Jeffrey Hall, hereafter referred to as "Jeff Hall", since 1987. He and I, along with 21 others in the La Mesa area, founded the La Mesa Sunrise Rotary Club. He and I remain as the two remaining charter members of that fine club.

I was a practicing Radiologist for 32 years at Grossmont District (now Grossmont/Sharp) Hospital, and retired fully at age 68, or in 2000. Therefore, I knew the East County (San Diego) medical scene well. I have known many patients of Dr. Jeff Hall's, and have always heard fine things and complementary discourse about him. In particular, his personal interest in the health and well-being of his patients is beyond question. He always made time for his patients when they needed to talk.
I have never heard anything but the very best about Jeff. Put another way, to reinforce my point, I have never heard the slightest hint of criticism, either personally or professionally. He has high credentials, and he is the kind of person and Optometrist whom you would like to know.

Jeff's attendance at Rotary has been nearly perfect, I believe. He participates in the activities, and in the discussions. He has introduced us to a non-profit organization of his choosing, the "Optometry Giving Sight". He is very active in that, I believe that he is on their Board of Directors. Jeff has held one of our La Mesa Sunrise Rotary fund raisers at his home, a garage sale, for many years. Not only does it raise funds for humanitarian purposes of Rotary (like "Polio Plus"), but it also raises the level of interpersonal relationships of the Rotarians who attend and help. This year, he and his wife, Fern, allowed our club to have its annual "In and Out" party at his home. That permitted our small club, 26 strong, to use more money for humanitarian purposes.

I have never heard Jeff Hall criticize, unless there has been great cause for it; even then, he is careful about his statements. He is very level headed, relates extremely well with people, and, from my viewpoint, has only positive attributes.
I believe that I can speak for the entire La Mesa Sunrise Rotary Club in saying that Dr. Jeff Hall is highly respected, sought out for opinions and advice, and is a wonderful person, whom we all care for very much.

Thank you for your attention to this matter. If you have need for personal communication, you may reach me at home (619)460-4678, gimle2@cox.net, 8130 La Mesa Blvd. #151, La Mesa, CA 91942. I am temporarily without cell phone(lost it).

Very truly yours,

William L. Pogue, M.D., retired

Jeffrey A. Hall, O.D.
8312 Lake Murray Blvd. Ste C
San Diego, CA 92119

Ph 619-464-2076
Fax 619-464-8958
Email: drhall@visionsource-drhall.com

Age: 60

Current Position: Owner and Director of Lake Murray – San Carlos Optometric Center since 1979.

Practice Description: Therapeutic optometrist with glaucoma certification practicing in all phases of optometry with specific emphasis on contact lenses: especially in the area of specialty lenses, such as Torics, Extended Wear and Orthokeratology.

Prior Professional Associations:
January 1978 through December 1979, Jerome S. Lieblein, O.D.
May 1977 through January 1978, Michael Brody, M.D., F.A.C.S.

Education:
Pennsylvania College of Optometry – Doctor of Optometry, May 1977.
Pennsylvania College of Optometry – Bachelor of Science, June 1975.
Rutgers State University of New Jersey – Bachelor of Science, May 1973.

Licenses Held:
California, TPA Certified, Glaucoma certified, Status: Active
New York – Inactive.
New Jersey – Inactive.

Optometric Associations:
Member of California Optometric Association Educational Board. Current Clinical Skills Examiner, National Board of Examiners in Optometry-Inactive.
Committee Member of the California Optometric Association, Contact Lens Anterior Segment – Active.
Member of the American Optometric Association – Active
Member of the Contact Lens Section of the American Optometric Association – Active.
Member of the California Optometric Association – Active.
Member of the San Diego Optometric Society – Active.

Current Associations:
Optometrist to Grossmont College
Optometrist to Borrego Solar Corporation

Prior Associations:
Optometrist to the San Diego Padres
Optometrist to Phoenix Research Corporation

Clinical Investigations:

May 2009	Ciba Silicone Hydrogel Multifocal Study P319-C-013
Dec.2009	ClearCare Case Study P-409-C-001
Oct. 2008	Vistakon #VMFL-(CR-0817) Multifocal study
Jan. 2006	Ciba Daily Contact Lens Study
Jan. 2005	Bausch & Lomb Contact Lens Study
Oct. 2004	Ciba Toric Contact Lens Study
Sept. 2003	Ciba Solution Study
June 2002	B&L Solution Study on going

Clinical Investigations continued:

June 2001	Polymer Tech Ortho K Study on going
May 2001	Ciba Solution Study
Apr. 2000	Dailies Allergy Benefit Study
Apr. 2000	Evaluation & Performance of B & L Pure Vision
Oct. 1999	Ciba See 3
Oct. 1997	B&L Softlens 66 vs. Acuvue UV Daily Wear Comparison Study
Nov. 1993	Polymer Tech. Solutions Study
Apr. 1993	Polymer Tech. TLD Gas Perm Lens Study.
Jan. 1992	Polymer Tech. Solutions Study.
Oct. 1991	Allergan Solution One Year Study.
May 1991	Polymer Tech. Solutions Study.
Oct. 1990	Ciba Vision Wetting Drop Study.
May 1990	Polymer Tech. RXD Lens Study.
Mar. 1990	Szabocsik & Associates 3 in 1 Cleaner.
Dec. 1989	Hydrocurve Solution Study.
Aug. 1988	Bausch & Lomb Sequence Marketing Study .
Aug. 1988	Hydrocurve Peroxide Study.
Jan. 1988	Alcon Gas Permeable Wetting and Soaking Solution.
Nov. 1987	Ciba Wetting Drop Study.
Nov. 1987	Hydrocurve One Step Peroxide Disinfectant Study.
Feb. 1987	Bausch & Lomb Optima Toric Marketing Study.
Dec. 1986	Alcon Pharmaceutical Solution Study.
Nov. 1985	Barnes & Hind GP Solution Study
Oct. 1985	Bausch & Lomb Lens Lubricant Study.
May 1985	Bausch & Lomb Bifocal No Jump Study.
Dec. 1984	Hydrocurve II 55 Treated Lens Study.
Nov. 1984	Bausch & Lomb Extended Wear, Plus B & L 70 Study.
Oct. 1984	Bausch & Lomb Bifocal EN2 Concentric Study.
Oct. 1984	Hydrocurve Extended Wear Bifocal Study.
Sept 1984	Hydrocurve Extended Wear Tinted Lenses Study.

Lectures and Seminars:

May 1987	Bausch & Lomb lecture on Bifocal soft lens fitting. Optifair, San Francisco.
April 1986	Bausch & Lomb lecture on specialty lens fitting, soft Torics, Optifair, New York.
May 1983	Bausch & Lomb training seminar for specialty lenses, Toric and Bifocal lenses, Laguna Beach, California.

Acknowledgements & Publications:

- 2010 Optometry Giving Sight Philanthropist of the Year
- Clinical Evaluation of OptiFree among Preservative-Sensitive Patients, "Contact Lens Spectrum", June 1989.
- The Right Patients for Bifocal Contact Lenses, "Optometric Management", Sept. 1988.
- Bausch & Lomb's Bi-Tech Bifocal, "Contact Lens Spectrum".

California Optometric Association

2415 K Street, Sacramento, CA 95816
2415 K. Street Sacramento, CA 95816 Tel: (916) 441-3990
Toll-Free: (800) 877-5738 Fax: (916) 448-1423

License Number: 06242

Jeffrey A. Hall, O.D.
8312 Lake Murray Blvd Ste C
San Diego, CA 92119

AH Jessica Siefermann

Code Listing
TPA - ANY OF THE FOLLOWING *(Glaucoma, Ocular Infection, Inflammation, Systemic Meds, Pain Medications)* O - OTHER *(Binocular Vision, Contact Lenses, Low Vision, Vision Therapy)* PM - PRACTICE MANAGEMENT ABO - American Board of Opticianry - Approved NCLE - National Contact Lens Examiners Approved AOA - AOA Approved only

CONTINUING EDUCATION TRANSCRIPT

California Optometric Association
Optowest 2012
Indian Wells , CA
April 12-14, 2012

COPE Event ID # 103657

COURSE TITLE	Date	Speaker	CE HRS	Category	COPE
101- Taming the Desert...Contemporary Concepts in Diag	4/12/12	S. Barry Elden, OD, FAAO	2.00	TPA	COPE# 33347-AS
103- To BV or Not to BV: VT in the Primary Care Office	4/12/12	Dominick Maino, OD, MEd, FAAO, FCOVD	2.00	OTHER	COPE# 33637-FV
107- Uveitis Update	4/12/12	Mark Dunbar, OD	1.00	TPA	COPE# 31990-PS
111- Diagnosis and Management of Special Populations	4/12/12	Dominick Maino, OD, MEd, FAAO, FCOVD	2.00	OTHER	COPE# 33636-GO
117-3D Vision Syndrome: A Technologically Driven Visual Imp	4/12/12	Dominick Maino, OD, MEd, FAAO, FCOVD	2.00	OTHER/ABO/AC	COPE# 31535-GO
202- Ocular Disease and Women	4/13/12	Kelly Nichols, OD, MPH, PhD	2.00	TPA	COPE# 30821-SD
204- Neuro-ophtalmology Basics	4/13/12	Madhu R. Agarwal, MD	2.00	TPA	COPE# 26666-PS
210-What's New in Cornea and Contact Lenses	4/13/12	Timothy B. Edrington, O.D., MS	2.00	OTHER/NCLE/A	COPE# 34337-CL
213- How to Improve Your Online Rating	4/13/12	Justin Bazan, OD	1.00	PM/ABO/AOA	COPE# 33648-PM
301- Understanding MS and Other Neurological Diseases	4/14/12	Madhu R. Agarwal, MD	2.00	TPA	COPE# 26663-PS
304- What Can Google Do for You?	4/14/12	Justin Bazan, OD	2.00	PM/ABO/AOA	COPE# 29158-PM
308- Low Vision Case Reports	4/14/12	Tina R. MacDonald, OD, FAAO	2.00	OTHER	COPE# 33647-LV

This is your verification of course attendance at Optowest 2012
Please keep for your records. Please note that Practice Management course hours do not count towards license renewal.

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JEFFREY A. HALL, O.D.** **8312 Lake Murray Blvd., Suite E** **San Diego, CA 92119** **Optometrist License No. 6242** Respondent.	Case No. CC 2008-78 OAH No. 2010120671

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 4, 2012.

It is so ORDERED March 5, 2012.

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
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JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JEFFREY A. HALL, O.D.** **8312 Lake Murray Blvd., Suite E** **San Diego, CA 92119** **Optometrist License No. 6242** Respondent.	Case No. CC 2008-78 OAH No. 2010120671 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne, Deputy Attorney General.

2. Respondent Jeffrey A. Hall, O.D. (Respondent) is represented in this proceeding by attorney Mr. Ali Oromchian, whose address is: Mr. Ali Oromchian, Sara Izadpanah, Esq. Dental & Medical Counsel, P.C., 111 Deerwood Rd, Suite 340, San Ramon, CA 94583.

3. On or about October 3, 1977, the State Board of Optometry issued Optometrist License No. 6242 to Jeffrey A. Hall, O.D. (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC 2008-78 and will expire on April 30, 2013, unless renewed.

JURISDICTION

4. Accusation No. CC 2008-78 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 1, 2010. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. CC 2008-78 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC 2008-78. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. CC 2008-78.

10. Respondent agrees that his Optometrist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the State Board of Optometry or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

SEVERABILITY CLAUSE

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

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 6242 issued to Respondent Jeffrey A. Hall, O.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California. Respondent shall notify the Board in writing within three days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

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

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

submitted between July 1st and July 7th.

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

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

Failure to submit complete and timely reports shall constitute a violation of probation.

3. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

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

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

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

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

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

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

of why the Respondent is unable to make such payment(s) must accompany this submission.

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

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

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

6. NOTICE TO EMPLOYER Respondent shall provide to the board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

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

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

7. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying

for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

9. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be $9,200.00 and shall be paid in full directly to the Board, in a Board approved payment plan, within 6 months from the end of the Probation term. Cost recovery will not be tolled.

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

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

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

10. TAKE AND PASS LICENSURE EXAMINATIONS Within 60 days of the effective date of this Decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six month intervals

until success is achieved. Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation and shall immediately cease practice until directed by the Board.

11. COMMUNITY SERVICE Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which respondent provides free optometric or non-optometric services on a regular basis to a community of charitable facility or agency, amounting to a minimum of 20 hours per month of probation. Such services shall begin no later than 15 days after respondent is notified of the approved program.

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

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

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

14. LICENSE SURRENDER During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right

to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

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

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

16. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

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

The worksite monitor's license scope of practice shall include the scope of practice of the respondent that is being monitored or be another health care professional if no monitor with like practice is available. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and

conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the board.

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

a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board.

b) Interview other staff in the office regarding the licensee's behavior, if applicable.

c) Review the licensee's work attendance.

18. WORKSITE MONITOR REPORTS Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

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

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

19. CONTINUING EDUCATION Within 90 days of the effective date of this Decision, Respondent shall submit to the Board for its prior approval an educational program or course to be in areas of identification and treatment of binocular disorders and strabismus. The education program or course(s) shall consist of a minimum of four (4) hours for each practice area.

This program or course shall be in addition to the Continuing Optometric Education requirements for renewal, and shall be obtained with all costs being paid by the Respondent. Following completion of each course, the board or its designee may administer an examination to

test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the board.

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

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mr. Ali Oromchian. I understand the stipulation and the effect it will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 1-25-12

JEFFREY A. HALL, O.D.
Respondent

I have read and fully discussed with Respondent Jeffrey A. Hall, O.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1-25-12

Mr. Ali Oromchian
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: February 6, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

CARL W. SONNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. CC 2008-78

RECEIVED BY
STATE BOARD OF OPTOMETRY

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Attorneys for Complainant

2010 SEP -3 PM 4:27

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JEFFREY A. HALL, O.D.** **8312 Lake Murray Blvd., Suite E** **San Diego, CA 92119** **Optometrist License No. 6242** Respondent.	Case No. CC 2008-78 ACCUSATION

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

2. On or about October 3, 1977, the State Board of Optometry issued Optometrist License Number 6242 to Jeffrey A. Hall, O.D. (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 20, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3110 of the Code states:

> "The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.
>
> "(b) Gross negligence.
>
> "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.
>
> "(d) Incompetence.
>
> . . . .
>
> "(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients."

5. Section 118, subdivision (b), of the Code provides that the suspension/ expiration/ surrender/ cancellation of a license shall not deprive the Board/ Registrar/ Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 125.3 of the Code provides, in pertinent part, that the Board/ Registrar/ Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTS

7. KW, born in January, 2003, was diagnosed at her preschool to require an eye examination. KW's mother scheduled an appointment for her daughter with Respondent, who performed on April 27, 2007 a non-dilated eye examination on KW and prescribed eyeglasses for reading only. Respondent's examination report indicated the following:

- The chief complaint noted on the eye examination record was "Screening from school-Failed."
- Patient information form completed on date of service indicated that the patient has not had a previous eye examination and was currently taking Nasonex, poly-fluoride, and vitamins as medications.
- Patient did not have a habitual prescription (i.e., currently wears no eyeglasses).
- Humphrey Instruments auto-refractor measurements indicated a prescription of +3.00-0.50 X 019 (right eye) and +4.50-1.75 X 0 (180) (left eye).
- Cover test performed at 6 meters indicated esophoria.
- Butterfly Stereo Acuity test was performed. Results unclear from documentation.
- Tonometry measurements were not performed .
- Diagnostic eye drops (dilating, cycloplegic) were not given.
- Refraction results revealed a prescription of +2.00-0.50X19 (right eye) and +2.00-1.00X180 (left eye). Best corrected visual acuities were not recorded possibly due to poor response from the patient.
- Anterior segment examination was unremarkable.
- Ophthalmoscopy (undilated) indicated a cup-to-disc ratio of .2 of each optic

nerve. Examination of the peripheral retina was not performed or recorded.

• The recommendations, diagnosis, and plan of treatment were not recorded.

8. Eyeglasses with the prescription of +2.00-0.50X020 (right eye) and +2.00-1.00X180 (left eye) were ordered on April 27, 2007 and delivered to KW on May 7, 2007. KW's mother paid $288 for the eyeglasses.

9. When KW reported that "she doesn't see any better with or without" the eyeglasses, the complainant returned with her daughter to Respondent's office. KW's mother stated that Respondent did not reexamine KW with the eyeglasses at that time and according to her, "brushed me off saying that is just kids."

10. During a regular visit to her pediatrician in January 2008, KW's mother stated that KW "didn't like to wear" her eyeglasses. The pediatrician referred KW to an ophthalmologist, Dr. Ostrow, for a second opinion.

11. KW's mother scheduled an appointment for her daughter with Dr. Ostrow for an eye examination on February 1, 2008. KW's pediatrician sent Dr. Ostrow a letter, dated February 1, 2008, that provided the following information to Dr. Ostrow regarding the referral of KW:

• The patient, KW, has never had a dilated exam nor a cycloplegic refraction.

• The patient's mother noted that "her eyes have been crossing for at least 1 or 2 years and not sure how much more."

• Cycloplegic refraction revealed a prescription with "significantly more hyperopia than in her current lenses."

• Patient assessed with accommodative esotropia with questionable bilateral amblyopia.

• Mother advised that "without these glasses on, she will have a tendency to

cross more."

• Patient advised to return in one month to "recheck alignment of her eyes as well as her vision with the correct glasses on."

12. Dr. Ostrow examined KW and reported the following:

• The chief complaint noted on the eye examination record was "Failed VA screen at school last year-saw OD and mom wants second opinion."

• Patient was currently on Nasonex for nasal allergies and has no known drug allergies.

• Visual acuities without correction were 20/40- (right eye) and 20/50- (left eye) using full Snellen letters.

• Ocular motility testing indicated variable esotropia, which became larger at near, with and without eyeglasses on.

• Cycloplegic refraction revealed a prescription of +4.00+0.75X90 (right eye) and +4.00+1.00X90 (left eye). Best-corrected visual acuities were not performed nor recorded.

• Stereo acuity test indicated that the patient was able to perform the test but may have slightly decreased stereo vision.

• Anterior and posterior segment examinations were unremarkable.

• Patient was dilated at 10:40AM with 1 % cyclopentolate and 2.5% phenylephrine.

• Patient was diagnosed with accommodative esotropia correctable with eyeglasses. Follow-up was scheduled for one month.

• Eyeglass prescription of +4.00+1.00X90 (right eye) and +4.00+1.00X90 (left eye) was released to patient.

13. KW's mother reported that Dr. Ostrow told her that he was amazed "at how misdiagnosed she [KW] was" and that "they [Respondent] didn't dilate her eyes." Dr. Ostrow prescribed eyeglasses for full-time wear and scheduled a follow-up appointment for KW. The new prescription for KW was for eyeglasses with +4.00+1.00X90 (right eye) and +4.00+1.00X90 (left eye). They were ordered on February 1, 2008 and delivered to KW on February 8, 2008. KW's mother paid $61 for the eyeglass lens replacement. The eyeglass prescription was filled by Respondent. Afterwards, KW reported that "she can she see so much better with her new glasses."

14. At the 30-day follow-up appointment after KW received her new eyeglasses, Dr. Ostrow discovered reduced vision in the left eye and began patching therapy, which was successful in improving vision in that eye. His report provided the following information:

- Parent reported that patient doing "fine" with eyeglasses.
- Visual acuities with correction were 20/25+1 (right eye) and 20/40-1 (left eye) using full Snellen letters.
- Patient diagnosed with amblyopia (left eye), accommodative esotropia, and ptosis (left eye) and prescribed full-time patching of the right eye for three weeks.
- Patient scheduled for a follow-up appointment in three weeks.

15. On March 28, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

- Patient returned for 3-week follow-up of patching therapy. Parent reported that patient is doing "very well".
- Visual acuities with correction improved to 20/20- (left eye) using full Snellen letters.

• Full time patching of the right eye was discontinued. Patient advised to wear eyeglasses full-time.

• Patient scheduled for a follow-up appointment in three months.

16. On June 26, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 3-month follow-up. Parent and child reported no changes.

• Visual acuities with correction were 20/25-3 (right eye) and 20/30+2 (left eye) using full Snellen letters.

• Patient prescribed full-time patching of the right eye for 2 weeks.

• Patient scheduled for a follow-up appointment in two weeks.

17. On July 10, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 2-week follow-up of patching therapy.

• Visual acuities with correction improved to 20/30+1 (left eye) using full Snellen letters and 20/20 with single Snellen letters.

• Full time patching of the right eye was discontinued.

• Patient scheduled for a follow-up appointment in three months.

18. On October 8, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 3-month follow-up. Parent reported no esotropia with eyeglasses only when without eyeglasses and tired.

• Visual acuities with correction were 20/30+ (right eye) and 20/30+2 (left eye) using full Snellen letters and 20/25 (left eye) with single Snellen letters.

• Patient advised to wear eyeglasses full-time.

• Patient scheduled for a follow-up appointment in six months.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. Respondent is subject to disciplinary action under Section 3110(b) and (q) in that Respondent engaged in repeated negligent acts, including record keeping violations, as set forth in paragraphs 7 through 18, inclusive, which are incorporated in here by reference, in that:

a. Respondent failed to properly diagnose KW's accommodative esotropia, and instead misdiagnosed KW as having esophoria;

b. Respondent failed to conduct a cycloplegic refraction on KW;

c. Respondent negligently failed to prescribe the maximum cycloplegic refraction for full-time wear to treat KW's accommodative esotropia. Instead, the Respondent prescribed his manifest refraction to be used only for reading.

d. Respondent failed to schedule follow-up care and visits to confirm KW's visual acuity and eye deviation results;

e. Respondent failed to record the degree of esophoria in prism diopters after Respondent performed a cover test on KW at distance (6 m) with resultant esophoria and to perform and record the degree of esophoria at near (40 cm);

f. Respondent failed to properly document and record his diagnosis, treatment and plan of action for KW following her examination; and

g. Respondent failed to reexamine KW to determine why KW was not seeing better with her eyeglasses after KW's mother reported to Respondent that KW said that she "doesn't see any better with or without" her eyeglasses.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence)

20. Respondent is subject to disciplinary action under Section 3110(b) and (d) in that Respondent engaged in acts of gross negligence and/or incompetence, as set forth in paragraphs 7 through 18, inclusive, which are incorporated in here by reference, in that:

a. Respondent failed to conduct a cycloplegic refraction on KW;

b. Respondent failed to properly diagnose KW's accommodative esotropia and amblyopia, and instead misdiagnosed KW as having esophoria; and

c. Respondent failed to prescribe the maximum cycloplegic refraction for full time wear to treat KW's accommodative esotropia.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 6242, issued to Jeffrey A. Hall, O.D.;

2. Ordering Jeffrey A. Hall, O.D. to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 23, 2010

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JEFFREY A. HALL, O.D. 8312 Lake Murray Blvd., Suite E San Diego, CA 92119 Optometrist License No. 6242 Respondent.	Case No. CC 2008-78 ACCUSATION

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

2. On or about October 3, 1977, the State Board of Optometry issued Optometrist License Number 6242 to Jeffrey A. Hall, O.D. (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 20, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3110 of the Code states:

> "The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.
>
> "(b) Gross negligence.
>
> "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.
>
> "(d) Incompetence.
>
> . . . .
>
> "(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients."

5. Section 118, subdivision (b), of the Code provides that the suspension/ expiration/ surrender/ cancellation of a license shall not deprive the Board/ Registrar/ Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 125.3 of the Code provides, in pertinent part, that the Board/ Registrar/ Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTS

7. KW, born in January, 2003, was diagnosed at her preschool to require an eye examination. KW's mother scheduled an appointment for her daughter with Respondent, who performed on April 27, 2007 a non-dilated eye examination on KW and prescribed eyeglasses for reading only. Respondent's examination report indicated the following:

- The chief complaint noted on the eye examination record was "Screening from school-Failed."
- Patient information form completed on date of service indicated that the patient has not had a previous eye examination and was currently taking Nasonex, poly-fluoride, and vitamins as medications.
- Patient did not have a habitual prescription (i.e., currently wears no eyeglasses).
- Humphrey Instruments auto-refractor measurements indicated a prescription of +3.00-0.50 X 019 (right eye) and +4.50-1.75 X 0 (180) (left eye).
- Cover test performed at 6 meters indicated esophoria.
- Butterfly Stereo Acuity test was performed. Results unclear from documentation.
- Tonometry measurements were not performed .
- Diagnostic eye drops (dilating, cycloplegic) were not given.
- Refraction results revealed a prescription of +2.00-0.50X19 (right eye) and +2.00-1.00X180 (left eye). Best corrected visual acuities were not recorded possibly due to poor response from the patient.
- Anterior segment examination was unremarkable.
- Ophthalmoscopy (undilated) indicated a cup-to-disc ratio of .2 of each optic

nerve. Examination of the peripheral retina was not performed or recorded.

• The recommendations, diagnosis, and plan of treatment were not recorded.

8. Eyeglasses with the prescription of +2.00-0.50X020 (right eye) and +2.00-1.00X180 (left eye) were ordered on April 27, 2007 and delivered to KW on May 7, 2007. KW's mother paid $288 for the eyeglasses.

9. When KW reported that "she doesn't see any better with or without" the eyeglasses, the complainant returned with her daughter to Respondent's office. KW's mother stated that Respondent did not reexamine KW with the eyeglasses at that time and according to her, "brushed me off saying that is just kids."

10. During a regular visit to her pediatrician in January 2008, KW's mother stated that KW "didn't like to wear" her eyeglasses. The pediatrician referred KW to an ophthalmologist, Dr. Ostrow, for a second opinion.

11. KW's mother scheduled an appointment for her daughter with Dr. Ostrow for an eye examination on February 1, 2008. KW's pediatrician sent Dr. Ostrow a letter, dated February 1, 2008, that provided the following information to Dr. Ostrow regarding the referral of KW:

• The patient, KW, has never had a dilated exam nor a cycloplegic refraction.

• The patient's mother noted that "her eyes have been crossing for at least 1 or 2 years and not sure how much more."

• Cycloplegic refraction revealed a prescription with "significantly more hyperopia than in her current lenses."

• Patient assessed with accommodative esotropia with questionable bilateral amblyopia.

• Mother advised that "without these glasses on, she will have a tendency to

cross more."

• Patient advised to return in one month to "recheck alignment of her eyes as well as her vision with the correct glasses on."

12. Dr. Ostrow examined KW and reported the following:

• The chief complaint noted on the eye examination record was "Failed VA screen at school last year-saw OD and mom wants second opinion."

• Patient was currently on Nasonex for nasal allergies and has no known drug allergies.

• Visual acuities without correction were 20/40- (right eye) and 20/50- (left eye) using full Snellen letters.

• Ocular motility testing indicated variable esotropia, which became larger at near, with and without eyeglasses on.

• Cycloplegic refraction revealed a prescription of +4.00+0.75X90 (right eye) and +4.00+1.00X90 (left eye). Best-corrected visual acuities were not performed nor recorded.

• Stereo acuity test indicated that the patient was able to perform the test but may have slightly decreased stereo vision.

• Anterior and posterior segment examinations were unremarkable.

• Patient was dilated at 10:40AM with 1 % cyclopentolate and 2.5% phenylephrine.

• Patient was diagnosed with accommodative esotropia correctable with eyeglasses. Follow-up was scheduled for one month.

• Eyeglass prescription of +4.00+1.00X90 (right eye) and +4.00+1.00X90 (left eye) was released to patient.

13. KW's mother reported that Dr. Ostrow told her that he was amazed "at how misdiagnosed she [KW] was" and that "they [Respondent] didn't dilate her eyes." Dr. Ostrow prescribed eyeglasses for full-time wear and scheduled a follow-up appointment for KW. The new prescription for KW was for eyeglasses with +4.00+1.00X90 (right eye) and +4.00+1.00X90 (left eye). They were ordered on February 1, 2008 and delivered to KW on February 8, 2008. KW's mother paid $61 for the eyeglass lens replacement. The eyeglass prescription was filled by Respondent. Afterwards, KW reported that "she can she see so much better with her new glasses."

14. At the 30-day follow-up appointment after KW received her new eyeglasses, Dr. Ostrow discovered reduced vision in the left eye and began patching therapy, which was successful in improving vision in that eye. His report provided the following information:

- Parent reported that patient doing "fine" with eyeglasses.
- Visual acuities with correction were 20/25+1 (right eye) and 20/40-1 (left eye) using full Snellen letters.
- Patient diagnosed with amblyopia (left eye), accommodative esotropia, and ptosis (left eye) and prescribed full-time patching of the right eye for three weeks.
- Patient scheduled for a follow-up appointment in three weeks.

15. On March 28, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

- Patient returned for 3-week follow-up of patching therapy. Parent reported that patient is doing "very well".
- Visual acuities with correction improved to 20/20- (left eye) using full Snellen letters.

• Full time patching of the right eye was discontinued. Patient advised to wear eyeglasses full-time.

• Patient scheduled for a follow-up appointment in three months.

16. On June 26, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 3-month follow-up. Parent and child reported no changes.

• Visual acuities with correction were 20/25-3 (right eye) and 20/30+2 (left eye) using full Snellen letters.

• Patient prescribed full-time patching of the right eye for 2 weeks.

• Patient scheduled for a follow-up appointment in two weeks.

17. On July 10, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 2-week follow-up of patching therapy.

• Visual acuities with correction improved to 20/30+1 (left eye) using full Snellen letters and 20/20 with single Snellen letters.

• Full time patching of the right eye was discontinued.

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18. On October 8, 2008, KW returned for a follow-up appointment, at which Dr. Ostrow made the following observations:

• Patient returned for 3-month follow-up. Parent reported no esotropia with eyeglasses only when without eyeglasses and tired.

• Visual acuities with correction were 20/30+ (right eye) and 20/30+2 (left eye) using full Snellen letters and 20/25 (left eye) with single Snellen letters.

• Patient advised to wear eyeglasses full-time.

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FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. Respondent is subject to disciplinary action under Section 3110(b) and (q) in that Respondent engaged in repeated negligent acts, including record keeping violations, as set forth in paragraphs 7 through 18, inclusive, which are incorporated in here by reference, in that:

a. Respondent failed to properly diagnose KW's accommodative esotropia, and instead misdiagnosed KW as having esophoria;

b. Respondent failed to conduct a cycloplegic refraction on KW;

c. Respondent negligently failed to prescribe the maximum cycloplegic refraction for full-time wear to treat KW's accommodative esotropia. Instead, the Respondent prescribed his manifest refraction to be used only for reading.

d. Respondent failed to schedule follow-up care and visits to confirm KW's visual acuity and eye deviation results;

e. Respondent failed to record the degree of esophoria in prism diopters after Respondent performed a cover test on KW at distance (6 m) with resultant esophoria and to perform and record the degree of esophoria at near (40 cm);

f. Respondent failed to properly document and record his diagnosis, treatment and plan of action for KW following her examination; and

g. Respondent failed to reexamine KW to determine why KW was not seeing better with her eyeglasses after KW's mother reported to Respondent that KW said that she "doesn't see any better with or without" her eyeglasses.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence)

20. Respondent is subject to disciplinary action under Section 3110(b) and (d) in that Respondent engaged in acts of gross negligence and/or incompetence, as set forth in paragraphs 7 through 18, inclusive, which are incorporated in here by reference, in that:

a. Respondent failed to conduct a cycloplegic refraction on KW;

b. Respondent failed to properly diagnose KW's accommodative esotropia and amblyopia, and instead misdiagnosed KW as having esophoria; and

c. Respondent failed to prescribe the maximum cycloplegic refraction for full time wear to treat KW's accommodative esotropia.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 6242, issued to Jeffrey A. Hall, O.D.;

2. Ordering Jeffrey A. Hall, O.D. to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 23, 2010

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

CERTIFICATION

The undersigned, Mona Maggio hereby certifies as follows:

> *That she is the duly appointed, acting and qualified Executive Officer of the California State Board of Optometry (Board), and that in such capacity she has custody of the official records of the board.*

On this 25th day of July 2013, the Executive Officer examined said official records of the Board and found that **Jeffrey Allan Hall** graduated from the Pennsylvania College of Optometry in Philadelphia, PA in 1977, and is the holder of Certificate of Registration to Practice Optometry No. 6242, which was granted to him effective October 10, 1977. On July 25, 2013, said Certificate of Registration is currently in full force and effect and will expire April 30, 2015, unless renewed. The current address of record for said Certificate of Registration is 8312 Lake Murray Blvd, Ste C, San Diego, CA 92119.

Said records further reveal that on or about April 21, 1997, **Jeffrey Allan Hall** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that, effective April 4, 2012, as the result of disciplinary action taken in Case number CC 2008-78, the Board revoked Certificate of Registration to Practice Optometry No. 6242. However, the revocation was stayed and the Certificate was placed on probation for a period of five (5) years.

Given under my hand and the seal of the California State Board of Optometry, at Sacramento, California, this 25th day of July 2013.

Mona Maggio, Executive Officer

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:** August 16, 2013

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

Subject: **Agenda Item 14 – Full Board Closed Session**

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

Memo

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

To: Board Members

Date: August 16, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 15 – Adjournment**