FINAL MINUTES
OF THE PUBLIC MEETING
OF THE BOARD OF OPTOMETRY
NOVEMBER 5, 2004

1. Call to Order

The meeting was called to order at 8:45 a.m. by Dr. Hernandez. Present were Messieurs De La Cruz and Naranjo, and Drs. Goldstein, Hernandez, Kame, Pollack, Yarwood and Yu. Ms. Mary Rosas was present. Also present were Staff Members Krista Eklund, Jane Flint, and Taryn Smith, and Staff Counsel Don Chang.

Ms. Noda arrived at 8:50 a.m.

The Board took a moment of silence to recognize Major Charles R. Soltes, Jr., O.D., a Garden Grove optometrist killed by a suicide bomber in Iraq.

2. Approval of Minutes

Move to approve the minutes of the April 16, 2004 meeting. M – Goldstein, S – Yarwood, MSP, ayes – De La Cruz, Goldstein, Hernandez, Kame, Naranjo, Noda, Pollack, Yarwood and Yu. Abstention - Rosas.

3. Discussion and Possible Action to Modify Enforcement Statutes: Business and Professions Code, Division 2, Chapter 7, Articles 5 (Revocation and Suspension) And 6 (Offenses Against the Chapter)

Ms. Char Sachson, Deputy Attorney General, presented suggested amendments to the Board's enforcement statutes. Ms. Sachson had compared by the Board's existing laws with those of other health care boards to identify areas for potential improvement.

The Board elected to revisit suggested language that would

mandate the Board investigate licensees against whom a specified type of indictment or criminal complaint has been filed.

The Board discussed an amendment that would require certain Board actions against a sex offender. Mr. Chang & Ms. Sachson advised the board that the proposed statute may cause a loss of discretionary authority as to when an individual on probation may apply for reinstatement of their license. They advised the board that the proposed statute forces the board to deny anyone who is registered as a sex offender, for a mandatory 10-year revocation period, under any circumstances. They explained that under section 314 of the penal code, even a nude model could be charged with indecent exposure. Therefore, this could prove to be a problematic statute. The board elected to maintain discretion over when an individual on probation may apply for reinstatement and not pursue the suggested amendment.

Move that the Enforcement Committee review Items 2 (Investigation; persons against whom an information, indictment or criminal complaint has been filed) and strike the part that states: "he or he shall have his or her license revoked for a period of 10 years. They also moved to strike section 3C (sex offender registration), for the purpose of maintaining discretion over the terms and conditions of probation.. M – Rosas, S – Yarwood, MSP, Unanimous.

The following will summarize the action taken by the Board on this agenda item:

Amend existing statutory language pertaining to:

- Grounds in general; powers and proceedings (3090)
- Conduct of proceedings (3090(a))
- Unprofessional conduct (3090(b))
- Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter (3090(a))
- Improper advertising (3104)
- Fraudulent procurement of license (3095)
- False statement in application (3096.6)
- Conviction of a crime substantially related (3094)
- Conviction defined, authority to suspend, revoke or refuse license (3107)
- Conviction of violating law regulating drugs or controlled substance (3107.1)
- Practice without certificate (3127)
- Employment of suspended or unlicensed optometrist (3102)
- Permitting another to use certificate (3106)
- Alteration of certificate (3123 & 3124)
- Fraud in obtaining fee (3101)
- Incompetence (3090©)
- Record keeping (3108)
- Citations and Fines (3135)

Add statutes pertaining to:

- Gross Negligence
- Repeated acts of negligence
- Committing an act punishable as a sexually related crime
- Excessive prescribing, furnishing, or administering controlled substances or drugs or drugs specified in §4022
- Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities
- Prescribing, furnishing, or administering of controlled substances or drugs specified in §4022 or treatment without a good faith prior examination of the patient and optometric reason therefor
- Performing any service beyond scope of practice
- Failure to follow infections control guidelines
- Failure to comply with request for patient records
- Any action or conduct which would have warranted the denial of a license
- Denial of licensure, revocation, suspension, restriction, or any other disciplinary action by another state
- Denial of applications, probationary licenses and modifications thereof

Repeal statutes pertaining to:

- Gross ignorance
- Professional inefficiency
- Intemperance
- Excessive use of alcoholic beverages
- Failure to refer patient with pathology to physician

The proposed language approved by the Board is attached.

4. Discussion Regarding Future Legislation

Board members were given the opportunity to propose ideas for future legislation. Following items were discussed as possible changes to the Optometry Practice Act:

- Eliminate or modify the restrictions on “specialties”
- Eliminate or modify restrictions on advertising free eye exams
- Eliminate or modify the requirement to us OD with Dr.
- Modify the license types and restrictions for optometrists
- Clarify CE extensions and exemptions
- Permit optometrists to use the term “optometric physician”
- Begin discussions regarding expanding the scope of optometry

5. Proposed Language to Modify Amendments to California Code of Regulations, Title 16, Section 1566 (Release of Prescriptions: Notice Required.

At the June 2003 Board meeting members directed staff to begin the rulemaking process to amend California Code of Regulations (CCR) Sections 1566 and 1566.1, which require that optometrists post a notice regarding prescription release laws and how to contact the Board to file a complaint. However, due to recent changes in federal law, the previously approved amendments to Section 1566 must be modified.

In the meantime, a federal regulation was enacted

superceding State law regarding the release of contact lens prescriptions, once again making CCR 1566 inaccurate. The new federal regulation requires all eye doctors to provide prescriptions for corrective lenses to their patients, whether requested or not.

The Board discussed the amending CCR 1566 to reflect new federal regulation regarding the release of contact lens and eyeglass prescriptions.

Concern regarding consumer confusion, with regard to the release of contact lens prescriptions was discussed. Mr. Naranjo reported - There may be consumer misunderstanding regarding the filling of their prescriptions. Consumers may believe they must have their prescription filled where they received their exam and fitting. Dr. Goldstein advised that some Of the education regarding the education regarding release of prescriptions needs to take place prior to the doctor appointment.

Move to approve the proposed language to modify amendments to California Code of Regulations, Title 16, Section 1566 (Release of Prescriptions: Notice Required with edits. M – Goldstein, S – Yu, MSP, unanimous.

6. Report and Possible Action on the Board of Optometry Fund Condition

Ms. Smith reported that the Optometry board fund is shrinking. With the help of the finance committee, spending reduction plans were

implemented; In spite of the spending reduction measures, the fund is still becoming depleted. Ms. Smith reported that she met with the administration and it was suggested that a fee increase would be necessary. It was the consensus of the Board that staff be instructed to work with the Committee and Association regarding a fee increase.

7. Enforcement Committee Report

Dr. Goldstein reported on the Enforcement Committee meeting and the successful implementation of the self-monitoring program for probationers. In an effort to reduce expenditures the Board instructed staff to implement a new self-monitoring program for probationers at the July 9, 2004 meeting. Under the new program the Board ceased using sworn peace officers employed by the Department's Division of Investigation (DOI) to monitor all optometrists on probation. Only those with a history of drug, alcohol or sexual abuse are referred to DOI for monitoring. All others are required to submit a Quarterly Report of Compliance.

All twenty-five probationers have been advised of the new reporting requirements. Twenty-two probationers have reported to date. Dr. Goldstein reviewed the reports submitted and found them generally satisfactory. He will continue to work with staff to identify potential problems in the probation program.

Dr. Goldstein reported on the Boards Public Information Disclosure Policy. There have been frequent questions regarding what the board intends to disclose. The Board directed staff to disclose the active disciplinary actions for all persons that have been disciplined since the reconstituted met for the first time in May 2003. Staff was directed to evaluate disclosure policies of other regulatory bodies and report back to the Board.

Ms. Smith explained the need to amend the current Cite and Fine regulation. Currently, the specificity in CCR Section 1579 creates problems a violation of a law or regulation occurred, but the law or regulation is not listed in CCR 1579. In such cases, although issuance of citation and fine may be the most appropriate action, the Executive Officer does not have the authority to do so. The Executive Officer must determine whether to pursue formal discipline or close the case with a Notice of Warning.

Move for adoption of the revised cite & fine program. M – Goldstein, aye – unanimous. Motion carried.

8. Consideration of Pending Application from Graduate of Foreign School of Optometry

The Board consider a request for endorsement of minimal education requirements from a candidate who graduated from an optometry school outside of the United States.

Move to grant NBEO Sponsorship to Mona Shahoveisi. M – Goldstein, S – Rosas, MSF, ayes – Goldstein,

	Rosas, Yarwood and Yu, nays – De La Cruz, Hernandez, Kame, Naranjo, Noda and Pollack. Motion denied. Dr. Goldstein advised that soon the board will need to make a policy decision regarding equivalency and foreign graduates.
9. Establish a Task Force on Licensure for Graduates of Foreign Schools of Optometry	Dr. Yarwood, Dr. Goldstein, Mr. Naranjo and Ms. Noda volunteered to sit on a task force on Licensure for Graduates of Foreign Schools of Optometry.
10. Executive Officer's Report	Ms. Smith highlighted the following items from the Executive Officer's Report: • Licensing Program • Enforcement Program • Budget • Federal Regulations Regarding Release of Contact Lens Prescriptions • Office Relocation • Public Outreach and Public Education • Pending Litigation • Legislative Update
11. Future Meet Dates	2005 meeting dates were set as follows: February 17, 2005 May 19, 2005 August 18, 2005 November 17, 2005
12. Discuss and Possible Action on Disciplinary Matter(s)	None.

13. Open Session

14. Public Comment

Dr. Walls thanked the Board for meeting at Southern California College of Optometry.

15. New Business

16. Adjournment

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Page A. Yarwood, O. D., M. S., F.A.A.O.
Secretary

Attachment: Statutory Amendments approved at the November 4, 2004 meeting.