

Final Minutes

**BOARD OF OPTOMETRY
Public Meeting
February 2, 2006**

1. **Call to Order**

The meeting was called to order at 1:10 p.m. by Dr. Hernandez and a quorum was established. Present were Ms. Galvan, Johnson, and Noda, and Drs. Goldstein, Hernandez, Kame, Pollack, Simonds, and Yu. Also present were staff members Krista Eklund, and Taryn Smith and Staff Counsel Don Chang.

Dr. Hernandez introduced new member Dr. Richard K. Simonds, sworn in December 8, 2005. New member, Monica Johnson, was sworn in by Dr. Hernandez.

2. **Approval of Minutes**

Move to approve the minutes of the August 18, 2005 meeting. M – Hernandez, S - Noda, MSP - Unanimous.

3. **Election of Vice President**

In November 2005, Dr. Yarwood's appointment terminated with the appointment of Richard K. Simonds, O.D., making it necessary to elect a new Vice-President.

Move to appoint Dr. Goldstein as Vice President M - Hernandez, S – Kame, MSP - Unanimous.

4. **Pending Legislation**

Taryn Smith Presented written and verbal update reports on four pending bills affecting Optometry.

Assembly Bill 579 (Aanastad) Sponsor: California Optometric Association
According to the sponsor, the bill proposes to amend Business and Professions Code Section 3129 to modernize the current restriction on advertising free optometric services to allow publicizing charitable events, like free screenings, while still protecting consumers from “bait-and-switch” tactics. The Board previously voted to support this bill; therefore, no action was taken.

Assembly Bill 1382 (Nakanishi)
AB 1382 provides that it is a deceptive marketing practice for any person to advertise that contact lenses may be obtained without confirmation of a valid prescription. The Board previously voted to support this bill; therefore, no action was taken.

Amend and Repeal Statutes Regarding Optometric Corporations

At the November 2005 Board meeting, the Board voted to pursue legislation to eliminate the requirement for optometric corporations to register with the Board after having already done so with the Secretary of State. The California Optometric Association has indicated support for the amendments.

Due to the non-controversial nature of the amendments, the Business and Professions Committee has agreed to pursue the changes in their Omnibus Bill. The amendments were submitted to Legislative Counsel for drafting the week of January 23, 2006 and are expected to appear in an Omnibus Bill this spring.

Implement License Mobility

Representatives of the California Optometric Association and Board's Executive Officer met with Assembly Member Aanastad to discuss amending COA sponsored bill (AB 579) to include language that would facilitate licensure for out-of-state optometrists modeled after the AOA "licensure by endorsement" and similar legislation for dentists. Assembly Member Aanastad agreed to take the amendments with COA and the Board as co-sponsors. The Board instructed staff to work with COA on facilitating licensure for out-of-state optometrists.

5. **Discuss and Possible Action on Pending Changes to California Code of Regulations**

Taryn Smith reported on the following potential or pending changes to CCR:

Section 1510 (Professional Inefficiency)

The regulation provides that proper usage or failure to use specified optometric instruments during an exam constitutes unprofessional conduct. Effective January 1, 2006, inefficiency will no longer be a cause for discipline (AB 488, Chapter 393, Statutes of 2005); therefore, the Board was asked to consider repealing the regulation. DAG Char Sachson advised that the Board should not repeal the regulation because there may be pending cases that occurred prior to the repeal of inefficiency as a cause for discipline that have not yet been filed.

Move to take no action on this item M - Rosas, S – Goldstein, MSP - Unanimous.

CCR Section 1515 (Advertising of Services)

This regulation provides that violations of 651, 651.3, or 17500 of the CCR are cause for discipline by the board. Effective January 1, 2006, B&P Code Section 3110 (g) defines violation of B&P 651 or 17500 as cause for discipline AB 488, Chapter 393, Statues of 2005). Therefore, this regulation is superfluous and should be repealed.

CCR Section 1530 (Examination Results)

This regulation sets the passing score for licensing exams at 75%. Effective January 1, 2005 B&P Section 3054 was amended to require the Board to establish

passing grades for the licensure examination to be “based on psychometrically sound principles of establishing minimum qualification and levels of competency” (AB 2464, Chapter 426, Statutes of 2004). Section 3054 is now in conflict and takes precedent over CCR Section 1530; therefore, this regulation should be repealed.

Move to repeal CCR Sections 1515 and 1530 M - Rosas, S – Goldstein, MSP - Unanimous.

CCR Section 1579 Citable Offenses

The Board previously approved amendments to CCR 1579 to eliminate specified violations and establishes general categories for violations as follows:

- Patient harm
- No patient harm
- Unlicensed practice

The proposed regulation also sets the maximum fine amount at \$5,000, as established by a change in law that took effect in 2004.

The proposed amendments are under review by the Department of Consumer Affairs. If the amendments are approved, they will take effect on or before April 15, 2006. No action was taken on this regulation.

CCR Sections 1566 and 1566.1 (Consumer Notice)

A pending change to CCR Section 1566 and 1566.1 updates the requirement for optometrists to post a notice that advises patients how to contact the Board and of their right to obtain a copy of their prescription for corrective lenses. Federal law supercedes state is currently cited in the regulation. Additionally, the Board’s new address and phone numbers should be incorporated into the regulations. The rulemaking file was filed with Office of Administrative Law on January 26, 2006. Anticipated effective date is February 26, 2006. No action was taken on the regulation.

6. Executive Officer's Report

Taryn Smith provided written and verbal report on the following:

Office Relocation

All of the boards, bureaus and divisions housed within Department of Consumer Affairs (DCA) headquarters have relocated to new office buildings located north of downtown Sacramento. The Board offices moved the week of January 9, 2006. The Board’s new address is:

State Board of Optometry
2420 Del Paso Blvd., Suite 255
Sacramento, CA 95834
Phone: (916) 575-7150
Fax: (916) 575-7292

“We’ve moved” notices were mailed to all licensees and interested parties and posted on the Board’s Web site. Printed materials have been updated to reflect the new address. Copies of the new phone roster have been provided to members of the Board.

The move was relatively uneventful. However, productivity has been hampered and staff is still settling into the new space.

Licensing Activity

The Board is scheduled to begin converting its manual application review process to an automated system, known as the Applicant Tracking System (ATS), which is a comprehensive program that interfaces with our automated system for tracking licenses. Multiple regulatory programs within the Department of Consumer Affairs already use ATS. Implementing ATS is another effort to make the Licensing Program more efficient and eliminate the backlogs. The \$70,000 set-up cost is built into the operating budget for Fiscal Year 2006/07.

The next meeting of the Exam Committee is on hold pending receipt of the NBEO occupational analysis.

Enforcement Program

Recruitment has been initiated to fill the vacancy created when Jane Flint, the Board’s long-time Enforcement Coordinator, accepted a promotion with another state agency. In the meantime, existing staff is absorbing the duties of the vacant position.

Recruitment of Expert Witnesses and Investigator Training

These projects are on hold due to vacancy in Enforcement Program.

Inter-Agency Agreement with DHS

Staff continues to work with the Department of Health Services (DHS) to identify and take action on Medi-Cal fraud cases. An Inter-Agency Agreement between the DHS and the Board of Optometry was adopted by the Board at the February meeting. DHS recently reported that they were interested in expanding the agreement to include all other health care boards within the Department of Consumer Affairs. Board staff has requested, and DHS has agreed, that the Agreement with the Board of Optometry not be held up while DHS works with the other board and suggested the Agreement serve as a pilot. Unfortunately, DHS legal office has undergone numerous staff changes, so the project

temporarily was placed on hold. DHS representatives report that draft Agreement will be finalized by February 15, 2006.

Law book

Staff has been working with a vendor to publish the 2006 Law Book, which will contain the laws and regulations affecting California licensed optometrists, *at no cost to the Board*. The book was last produced in 2001 and is sorely outdated. The Law Book is expected to be published in the spring of this year.

State Board of Optometry Budget

The Board's revenue continues to fall significantly short of its expenditures and reserve funds continues to shrink. As previously reported and discussed, a fee increase will be necessary. The only question is when it should be pursued. Budget estimates for Fiscal Year 2006/07 initially indicated an immediate need for a fee increase. However, it has since been determined that the savings generated by the reduced use of investigators from the Division of Investigations are sufficient to delay pursuit of a fee increase until the 2006/07 legislative session.

Fee increases are notoriously difficult to implement via legislation and always require cooperation from the Administration, the Legislature and the profession. Staff has met on numerous occasions with representatives from the Administration to discuss the Board's budget and will continue to do so. Board staff has also discussed this issue with staff from policy committees in the Assembly and Senate. The California Optometric Association has already indicated they would support the Board's efforts to increase revenue. Staff will continue to monitor the situation for the best time to go forward with a fee increase.

The Governor has published his proposed budget for Fiscal Year 2006/07, in which the annual operating budget for the Board of Optometry is reduced by \$285,782. The vast majority of the reduction is due to savings realized when the Board stopped using investigators employed at the Division of Investigations to conduct probation monitoring.

7. Appeal for Fictitious Name Permit

Dr. Irene Yim submitted an appeal for the Board to reconsider a denied application for a fictitious name permit.

Business and Professions Code section 3125 states that it is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with a licensee(s) or registered corporation unless the Board has first issued a permit for the false or assumed name. Permit names must include the word optometry or optometric and are *not to be deceptive or inimical* to enabling a rational choice by the public. In addition to B&P Code Section 3125, the Board

has had a policy in place for many years that allows permits with same or similar names to be issued if the permit locations are more than 30 miles apart.

On November 25, 2005, the Board denied an application from Dr. Irene Yim for a Fictitious Name Permit to use the business name “Max Vision Optometry.” The application was denied because a permit was issued to Dr. Mark Galvan, OD, to use the name “Max Vision Care Inc., A Professional Optometric Corporation” in January 1997. Dr. Galvan’s permit was issued to a location 1.5 miles from that of Dr. Yim. The application was denied because the words “Max Vision” appear in both business names and the locations so close to each other, which would likely cause confusion on the part of members of the public.

Dr. Yim asks that the Board reconsider the denial of her permit.

Move to deny appeal because the name is too similar to an existing FNP. M - Goldstein, S - Simonds, MSP - Nine Ayes and one No

8. **Closed Session**

The Board voted to adopt the stipulated settlement in the Matter of Statement of Issues against Vincent Hsu.

The Board voted to adopt the stipulated settlement in the Matter of Statement of Issues against Ahn Le.

The Board voted to adopt the stipulated settlement in the Matter of the Accusation against James Stewart Hertzman.

The Board voted to adopt the stipulated settlement in the Matter of the Accusations against Eldon Dunford Ream.

The Board voted to adopt the stipulated settlement in the Matter of the Accusation against Wyman Chan.

9. **Open Session**

10. **Public Comment**

None received

11. **Future Agenda Items**

None received

12. **Adjournment**
Meeting was adjourned at 3:35 p.m.

Audrey Noda, Secretary