

Board of Optometry

Public Meeting

Junipero Serra Building
320 W. 4th Street – 7th Floor Conference Room
Los Angeles, CA 90013

May 17, 2007

1. Call to Order

The meeting was called to order by Dr. Goldstein, OD, at 10:10 a.m., and a quorum was established. Board members present were public members Mary Galvan-Rosas, Monica Johnson, and Fred Naranjo; and Drs. Lee Goldstein, Susy Yu, Daniel Pollack, and Richard Simonds (all optometrists). Also present were the Executive Officer, Taryn Smith; Staff Counsel, Spencer Walker; Deputy Attorney General, Char Sachson; and staff members Gary Randolph, Margie McGavin and Jeff Robinson.

2. Approval of Minutes

The Board was asked to approve the minutes from the February 2007 board meeting.

Move to approve the minutes with noted edits. M – Simonds; S - Pollack, MSP – Goldstein, Yu, Pollack, Naranjo, Johnson, and Simonds; Abstain – Galvan-Rosas.

3. President's Report

Dr. Goldstein said that the Board has been working extremely well since 2003 and that he is proud of the Board's new history. Noting recent media stories about dysfunctional boards, he expressed the importance that members understand and remember that the mission of the board is to serve the public by protecting the public. He expressed his confidence that members of this Board know and understand their legal and regulatory constraints and obligations and the Board's role as a decision making body on policy and oversight. He noted that each member brings his or her own experience and knowledge and thanked them for their service.

Ms. Galvan-Rosas thanked Dr. Goldstein for his leadership and support and said she was excited to work with the new Director for the Department of Consumer Affairs.

4. Healthcare Surge Project

Dr. Goldstein reported that the Department of Health Services (DHS) invited Board representatives to participate in a series of planning meetings for the purpose of developing statewide standards and guidelines for a healthcare surge during emergencies. The purpose of the meetings was to develop guidelines for California hospitals, local health department, and communities for flexing statutory and regulatory requirements to treat patients during disasters that result in a significant or sustained surge in demand for healthcare services.

The project was broken into six workgroups:

1. Declarations and Triggers
2. Existing Facilities
3. Alternate Care Sites
4. Supplies, Pharmaceuticals and Equipment
5. Personnel
6. Population Rights
7. Administrative
8. Funding Sources

Taryn Smith and Lee Goldstein participated in the Personnel workgroup with specific focus on credentialing and “flexing” the scope of practice during an emergency. Dr. Goldstein lead a discussion regarding the appropriate role for the Board and possible action. The Board discussed the possibility of expanding the scope of practice during a healthcare surge. It was reported that DHS was in the process of drafting a declaration of emergency and model plans which they will share with the Board. DHS also asked all healthcare boards specific questions regarding the Board’s authority to expand scope of practice and / or change supervision requirements in the event of an emergency.

Motion to respond to DHS request and further explore appropriate board involvement in the event of a catastrophic medical emergency. M – Goldstein, S – Pollack, MSP - Unanimous

5. Strategic Plan

The Board conducted a strategic planning session on February 7, 2007. Board members, staff and other interested parties participated in the planning session. The draft plan was presented to the Board for its consideration and possible adoption.

Motion to adopt strategic plan. M - Goldstein, S – Simonds, MSP - Unanimous

6. ARBO Optometric Education Tracker

Staff presented the following information:

The Association of Regulatory Boards of Optometry (ARBO) has requested that the Board accept their Optometric Education (OE) Tracker program, which is an automated online service for optometrists and continuing optometric education providers to track hours of continuing education (CE) credit.

The concept for OE Tracker is to provide a way to capture CE attendance at an educational meeting and transfer that data to a central electronic site where doctors and/or the state boards can access records and verify attendance to complete state board CE requirements.

Participating optometrists are given an OE Tracker card and issued CE certificates. The certificates containing a “digital validation signature” number that uniquely identifies courses and individuals. Many of the nationwide CE providers and are participating in OE tracker.

There are currently 10 states that are or are going to start accessing the ARBO database as part of their CE audits. Those states are: Arkansas, Louisiana, Georgia, Arizona, Michigan, Kansas, Maryland, North Carolina, West Virginia and New York.

ARBO representatives attended the November 2006 board meeting and made a presentation to the Board. There were a number of concerns about the program raised by Board members and staff. Those concerns included:

- liability issues could arise from erroneous information in the database
- security of information – possible counterfeited certificates
- possible fees for licensees and/or CE providers for this service in the future
- impact on CE providers that do not have COPE approval

In response to the concerns listed above, ARBO offered the following information:

- ARBO will never implement a mandatory fee for optometrists participating in OE Tracker. However, they may implement a tiered fee structure for a varied level of services.
- Courses and providers that are approved by the Board, but not COPE-approved, can be added to the database. The Board's course approval number will be added to the database so that the approval can be confirmed.
- ARBO may charge CE providers to register in their database, but they don't know when or how much.
- The digital signature on the certificates can be confirmed by accessing the database.

Dr. Yu reported on an online presentation hosted by ARBO as follows:

- probably as secure as possible
- good opportunity to leverage technology
- should reduce staff workload
- all COPE approved courses are in system

Legal counsel has determined that a contract was between the Board and ARBO would not be needed and that it will be the optometrists' responsibility to provide CE information and documentation to the Board.

Dr Yu stated that automating Board processes would be a positive change for the Board and its licensees. Staff expressed some concern that there could be confusion on the part of licensees regarding the difference between OE tracker and the state boards. Dr. Pollack expressed concern that use of the OE tracker could breach the privacy of the participating optometrists.

Motion to accept ARBOs OE Tracker program with the understanding that it is ultimately the responsibility of the optometrist to provide accurate and approved CE documentation and that the Board would not be prevented from expanding or reconsidering usage of the program in the future. Simonds – M; Yu – S; Ayes – Goldstein, Yu, Galvan-Rosas, Naranjo, Johnson, Simonds; Nays – Pollack.

**7. Therapeutic Pharmaceutical Agents – Regulations
(Discussion and Possible Action to Modify TPA Requirements)**

The Board was asked to consider adopting proposed amendments to California Code of Regulations, Title 16, Division 15 regarding therapeutic pharmaceutical agent certification requirements. Staff presented the following information.

On January 1, 2007, Senate Bill 579 (Chapter 302, Statutes 2006) took effect which allows the State Board to license an out of state licensed optometrist provided they meet the meet certain specified requirements. Included in the requirements is compliance with certification requirements to use Therapeutic Pharmaceutical Agents (TPA) set forth in B&P Section 3041.3.

Staff reported that a small group of applicants will have a very difficult time meeting all of the requirements for TPA certification. Specifically, Section 3041.3(b) requires that an applicant who graduated from an accredited school of optometry prior to January 1, 1996 must, among others, complete a preceptorship service of no less than 65 hours. The preceptor shall be board certified and licensed in good standing with the Medical Board of California.

Because the preceptorship service involves treatment by the participating optometrist, the optometrist must hold a license to practice optometry in the state where the preceptorship service occurs. This requirement would prevent an out of state licensed optometrist from completing the preceptorship service here in California because they would have to be licensed in California as well. The only way to complete the preceptorship service would be to train in another state with a board-certified ophthalmologist who is currently licensed in California. This presents a problem for the applicant.

However, B&P Section 3041.3(d)(1) authorizes out-of-state applicants to request that the Board waive requirements in Section 3041.3(b) (which includes the 65-hour preceptorship) based on fulfillment of TPA requirements in another state. The Board may grant the request for a waiver if it determines that the completed requirement was equivalent to California requirements. Business and Professions Code Section 3041.3(d)(3) authorizes the State Board of Optometry to decide all issues relating to the equivalency of an optometrist's education or training. Implementing this authority would require a regulation.

Therefore, staff proposed to amend CCR section 1578 to allow qualified applicants to accept therapeutic experience in lieu of the preceptorship program. Legal counsel drafted the following language to add to California Code of Regulations Section 1568 for the Boards consideration.

Section CCR§1568(i)

(i) If the applicant is licensed in a state outside of California and requests that the 65-hour preceptorship service requirement contained in subdivisions (e), (f) and (g) be waived based on their optometric practice experience using TPA in another state, the Board as authorized under Business and Professions Code Section 3041.3(d)(1), shall deem the experience as

equivalent to the 65-hour preceptorship service required in California provided the following conditions are met:

1. Applicant is licensed in good standing in their state of licensure.
2. Has graduated from an accredited school of optometry before January 1, 1996.
3. Has met the requirements to treat with therapeutic pharmaceutical agents in their state of licensure.
4. Has been practicing optometry in their state of licensure using therapeutic pharmaceutical agents for 5 continuous years immediately preceding the submission of their application.

Motion to adopt the proposed language. M – Simonds; S- Pollack; MSP – Unanimous. Motion to instruct staff to begin the rulemaking process to add the adopted language to CCR Section 1568. M – Simonds; S – Pollack; Ayes – Goldstein, Yu, Pollack, Naranjo, Johnson and Simonds; Abstain – Galvan-Rosas

8. Electronic Transmittal of Contact Lens and Eyeglass Rx's

Dr. Susy Yu, OD, requested that the Board discuss the legality of transmitting spectacle and contact lens prescriptions in electronic format.

The Board's legal counsel, Spencer Walker, advised that spectacle and contact lens prescriptions may be transmitted electronically, provided they have been reduced to writing. The opinion referred to Business and Professions Code Section 4040, which defines a prescription. Additionally, the Ophthalmic Practice Rule (Eyeglass Rule), 16 C.F.R. PART 456, and Business and Professions Code Section 2541.1 both require that if a spectacle lens prescription issued orally, it must first be reduced to writing.

The Contact Lens Rule 16 CFR, Part 315 requires that a contact lens prescription be provided to a patient or verified by the prescriber. Under the Act, a patient or prescriber may present a prescription in a number of forms, including a digital image of the prescription that is sent via electronic mail.

Mr. Walker advised that California optometry law does not address electronic signatures; however it is presumed that if a prescription is transmitted electronically, the signature is also in electronic form. However, if the Board desires to have electronic signatures specifically addressed, the Board should address those circumstances whereby a signature would be electronically placed on a prescription and by what method. This would enable the Board's counsel to resolve all questions regarding the present issue.

Motion to accept Mr. Walker's report and table the issue. M – Simonds; S – Pollack; Ayes – Goldstein, Yu, Pollack, Naranjo, Johnson and Simonds; Abstain – Galvan-Rosas.

9. Exam Development and Validation Workshops

Gary Randolph, the Board's Lead Licensing Analyst, provided the following report.

On March 5 and 6, 2007, the first of five workshops began which initiated the Board's long awaited project to revise the current edition of the California Laws and Regulations Examination. Proceeding workshops were then held on March 18th and 19th, and then again on April 1st and 2nd. Test experts from the Department of Consumer Affairs Office of Examination Resources facilitated these two-day workshops and provided participants with detailed instructions on the exam purpose, workshop requirements, goals, objectives and individual assignments.

The following workshops and their purpose were held at the Office of Examination Resources (OER) at 2420 Del Paso Road, Sacramento:

March 5 & 6: Reclassification Workshop

After a careful orientation on testing and test questions, the participants in this initial workshop were asked to review all questions from the current exam and analyze each question for its reliability, legality and relativity to the California optometric scope of practice. These questions were then permitted to remain as valid or recommended for deletion from the exam.

March 18 & 19: Item Writing Workshop

After a careful orientation on testing and test questions, the participants were asked to "write" new questions based on OER testing criteria. Each question was scrutinized for its reliability, legality and relativity to the California optometric scope of practice.

April 1 & 2: Item Review Workshop

After a careful orientation test questions, the participants were asked to review and audit each question for its reliability, legality and relativity to the California optometric scope of practice.

The following workshops are scheduled:

May 20 & 21 Exam Construction

This workshop is designed to incorporate all approved test questions in an overall exam format.

June 10 & 11: Passing Score

This workshop will establish the appropriate passing score.

Costs incurred for this project as of May 17, 2007 are listed below:

Subject Matter Experts (including stipend, mileage, and meals):	\$ 7,779
State Board Staff:	862
Office of Examination Resources:	<u>8,648</u>
Total to date:	\$17,289

To date the exam workshops have produced a total of 50 new valid and legally defensible questions, which is sufficient to produce three different versions of the exam. Ideally, the Board will have a bank of 150 exam questions that can be rotated into and out of production. This would help ensure the integrity of the exam. Therefore, staff and the Office of Examination Resources will continue holding exam development and validation workshops next fiscal year.

Participating subject matter experts (SME) displayed a high degree of knowledge, insight and professionalism during each of the two-day workshops. The input, knowledge of their profession and candid discussions enhanced the success of each workshop.

The projected date of workshop completion is June 11, 2007. According to the Office of Examination Resources, the completed tests will be available on or about July 2, 2007.

10. Legislation Committee

Ms. Johnson reported on the Legislation and Regulation Committee actions taken at a May 16, 2007 meeting.

Assembly Bill 986 (Eng) – Regulation of Optometry

This is the Board sponsored legislation that proposes to increase fees, set retention requirements for optometrists' patient records, and permit temporary practice without registering at a practice location. Ms. Smith reported that the bill had passed out of the Assembly and was awaiting its first hearing in the Senate. The Committee voted to recommend a support position for AB 986.

Assembly Bill 1025 (Bass) – Denial of License

This bill would remove the Board's authority to deny licensure or suspend or revoke a license based on a criminal conviction that has been dismissed on specified grounds. The Department of Consumer Affairs and Board of Accountancy are opposed to this bill. The Committee voted to recommend the Board to oppose AB 1025.

Assembly Bill 1044 (Strickland) - Optometrists Regulation

Sponsored by Lenscrafters, this bill contains the same language as AB 986 regarding temporary practice locations. The sponsor has indicated that they would move the bill if the success of AB 986 was threatened, which has not occurred. Therefore, the bill has not been heard since being introduced. The Committee voted to recommend a watch position for AB 1044.

Assembly Bill 1102 (Nakanishi) – Optometric Assistants

This is a spot bill and has not moved since it was introduced. The Committee voted to recommend a watch position for AB 1044.

Assembly Bill 1224 (Hernandez) – Telemedicine

In its current form, this bill would include make a licensed optometrist subject to the telemedicine provisions as set forth in the Medical Practice Act and would define collaborating ophthalmologist for purposes of his or her participation in treating primary open angle glaucoma. Craig Klinger, from the California Academy of Ophthalmology, reported that he anticipated that the bill would likely be significantly amended. Dr. Goldstein indicated the

same. In anticipation of amendments that significantly changed the bill, a motion was made to watch the bill until the amendments were published. The Committee voted to recommend a watch position for AB 1044.

Motion to adopt recommendations from the Legislation and Regulations Committee. M – Simonds; S – Galvan-Rosas; MSP – Unanimous.

11. Executive Officer’s Report

Taryn Smith updated the board on the following:

Automated Voice Repose System

Board staff is working with telecommunications staff at the Department of Consumer Affairs to take advantage of features available with the new phone system, which was installed when the Board relocated to its current offices. Currently, the Board uses a separate stand-alone automated voice response system at a monthly cost of \$700. The new computer-based telephone system provides an automated voice response at no additional cost.

Telecommunications staff has completed a training program on how to program this feature in the phone system and is in the process of programming our system. Board staff has recorded the updated scripts. Telecommunications staff is conducting the finagling programming changes. Implementation of the new system is scheduled for the first week in June. This is expected to save the Board approximately \$8,400 annually.

Web Updates

The following information has been posted on the Board’s website:

1. Meeting agendas for May 16 - 17, 2007 meetings in Los Angeles
2. Answers to “Frequently Asked Questions” on the following topics:
 - obtaining a license or permit appealing the denial of an application, permit or license
 - optometric corporations
 - fictitious name permits
 - TPA certification
3. Instruction on how to participate in the rulemaking process.

* Business licenses (Branch office licenses and fictitious name permits) that were issued to optometric corporations must be transferred to personal optometric licenses because the corporate registration is no longer required.

The Board has dedicated a full time employee to processing applications for Statement of Licensure since October 10, 2006. Prior to October 2006, the part-time position was insufficient to keep up with the workload. The backlog has been reduced from over 200 pending applications to zero pending.

Elimination of Board Registration of Optometric Corporations

Effective January 1, 2007, optometric corporations are no longer required to register with the Board of Optometry in addition to the Secretary of State. Staff has drafted a letter to all optometrists who are associated with a registered optometric corporation advising that the corporation will no longer be registered with the Board. The letter also states that “optometric

corporations are still required to meet all other legal requirements regarding officers, shareholders, directors, formation, etc., as established in Business and Professions Code Sections 3160-3167 and Corporations Code Sections 13400-13410. Additionally, optometric corporations that advertise under a false or fictitious business name must obtain a fictitious name permit (FNP) from the Board of Optometry.

Although the Board is no longer requiring *registration* of an optometric corporation, the Board has maintained its authority to *regulate* optometric corporations and the Board may take disciplinary action against optometrists who are not in compliance with the law.

There are approximately 775 optometric corporation registrations. Approximately 250 of those have been issued Fictitious Name Permits and/or Branch Office Licenses. These FNPs and BOLs must be transferred to the appropriate individual optometrists, instead of the optometric corporation. The BOL and FNP applications were updated to reflect the change in law. Notification was mailed to all optometric corporations on April 13, 2007 (see attached). To date, the Board has received 60 requests to transfer licenses from a board-issued corporate registrations to personal optometric licenses. The transition process will likely take at least three months.

Licensure for Out of State Applicants

Effective January 1, 2006, optometrists who were licensed outside of California prior to January 2000 and wish to practice in California may now obtain licensure without being required to take and pass the entry level exam. This pathway to licensure is patterned after the American Optometric Association's "licensure by endorsement." Such out of state applicants will be required to meet certain criteria to demonstrate eligibility, including their education and license history, criminal background check, and pass the California Laws and Regulations Exam. The next Law Exam will be administered in April 2007. In the meantime, staff has developed an application form and fact sheet for out of state applicants. The application must be approved by the Office of Administrative Law (OAL) via the regulatory process. The Final Statement of Reasons will be submitted to OAL by the end of May. To date, staff has received approximately 25 inquiries regarding this process.

Livescan – Background Checks

State regulatory boards, including the Board of Optometry, require applicants for licensure to submit fingerprints to the Department of Justice (DOJ) and Federal Bureau of Investigations for purpose of checking arrest records. Applicants who are physically in California can submit to digital fingerprinting, which is called Livescan, at local law enforcement offices. Out of state applicants must submit their fingerprints on a "hard card."

The FBI and DOJ check their records to determine if the subject has an arrest record. The Board is notified of any arrest record, regardless of outcome, prior to issuance of the license and if the license holder is arrested subsequent to obtaining the license.

Staff is working on two recent improvements to the Livescan process:

1 – Staff is working with DCA and DOJ to automate the process to notify DOJ when the Board becomes “no longer interested” in an arrest record. For example, when a licensee passes on or surrenders his/her license.

2 – DOJ has authorized posting the Livescan form on the Internet, which was previously obtained via mail from the Board. Board staff are in the process of updating written instructions for applicants and posting the Livescan form on the Board’s website.

Applicant Tracking System (ATS)

ATS is a comprehensive program that interfaces with our automated system for tracking licenses. Multiple regulatory programs within the Department of Consumer Affairs already using 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.

Progress on the implementation of the Board’s Applicant Tracking System (ATS) is on schedule. Staff personnel who will be utilizing the system have submitted the appropriate application forms, notice letters and have reviewed and approved the administrative CAS codes to be used. Training for hands on use of the system should be scheduled by the end of the month. This project is currently ahead of schedule with a projected implementation date of July 1, 2007.

iLicensing

The Board is scheduled to begin implementation of the Department of Consumer Affairs’ iLicensing program, which is an on automated *online* service that accepts credit card payments and requests for the following functions:

- Initial license applications
- License renewal
- Address changes
- Requests for duplicate licenses
- Cashiering and reports

The Board is scheduled to begin implementation in Phase 4, which will take place January – April of 2009. Although the launch date is scheduled three years away, Board staff will be working with DCA staff to identify baseline requirements to be built into the system. The Board’s budget for iLicensing over the next three years is reflected below:

Fiscal Year 2006/07	\$5,000
Fiscal year 2007/08	\$17,000
Fiscal Year 2008/09	\$13,000

Enforcement Program

Board staff has been working with Department of Consumer Affairs' Office of Information on a new report-writing feature in the automated tracking system for enforcement and licensing. The feature is called "Ad Hoc Reports" and will be useful with extracting data that was previously unattainable.

12. Future Agenda Items

The Board identified the following items for future meeting agendas:

- Diversity data
- Healthcare surge
- Request presentation from COA regarding its outreach efforts on diabetes and other healthcare issues.

13. Future meeting dates:

In response to input from Monica Johnson, the August Board meeting will be held in Orange County. The November meeting will be held in the San Francisco Bay Area. Meeting dates and locations are:

- August 16, 2007 (Orange Country in the Caltrans District 12 Building)
- November 14, 2007 (San Francisco Bay Area – Meeting site to be determined)

14. Public Comment

There was no comment from the public.

15. Petitions for Reduction of Penalty

Under direction from an Administrative Law Judge, the board held a hearing on a Petition for Reduction of Penalty filed by Sergio Ortiz, OD. After the public hearing, the Board went into closed session to deliberate. The proposed decision will be drafted by the Judge and presented to the Board for consideration via mail vote.

16. Closed Session

The Board voted to adopt the following:

- Proposed stipulated settlement and disciplinary order in the matter of the accusation against Aristides Jose Carcamo, OD
- Proposed stipulated settlement and disciplinary order in the matter of the accusation against Robert B. Alpert, OD
- Proposed stipulated settlement and disciplinary order in the matter of the accusation against Stephan Gerard Schroeder, OD
- Default decision and order in the matter of the accusation against Vincent Henry Biesiot, OD
- Default decision and order in the matter of the accusation against Lawrence Edwin Young, OD
- Proposed decision in the matter of the accusation against Craig Steinberg, OD

17. Open Session

18. Adjournment

The meeting was adjourned at 4:34 p.m.

Monica Johnson, Secretary

Date