



**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](http://www.optometry.ca.gov)



**Friday, August 16, 2013**

**Department of Consumer Affairs  
 1625 North Market Boulevard, First Floor Hearing Room  
 Sacramento, CA 95834**

<b><u>Members Present</u></b>	<b><u>Staff Present</u></b>
Alejandro Arredondo, O.D, Board President	Mona Maggio, Executive Officer
Alexander Kim, MBA, Board Secretary, Public Member	Andrea Leiva, Policy Analyst
Donna Burke, Public Member	Jessica Sieferman, Enforcement Lead
Madhu Chawla, O.D, Professional Member	Cheree Kimball, Enforcement Analyst
Fred Dubick, O.D, MBA, FAAO, Professional Member	Brad Garding, Enforcement Technician
Glenn Kawaguchi, O.D, Professional Member	Lydia Bracco, Enforcement Analyst
William Kysella, Jr., Public Member	Rob Stephanopoulos, Enforcement Analyst
Kenneth Lawenda, O.D., Professional Member	Jeff Robinson, Licensing Analyst
	Michael Santiago, Senior Legal Counsel
<b><u>Excused Absence</u></b>	<b><u>Guest List</u></b>
Monica Johnson, JD, Vice President, Public Member	On File

**9:00 a.m.**

**FULL BOARD OPEN SESSION**

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

Board President, Alejandro (Alex) Arredondo, O.D. called roll and a quorum was established. The meeting was called to order at 9:06 a.m.

**2. Welcome – President’s Report**

Dr. Arredondo reported on the following:

*A. Association of Regulatory Board of Optometry (ARBO) Annual Meeting June 23-25, 2013*

Executive Officer, Mona Maggio attended the ARBO Annual Meeting, which she explained, was the first time she was able to attend one of ARBOs meetings. Ms. Maggio stated that she found the meeting to be inspirational, educational, and a great opportunity to network with other administrators of boards of optometry, and meet with optometrists throughout the United States. Educational sessions included continuing education, laws and regulations, scope of practice expansions, and state reports from each state and provinces in Canada, belonging to ARBO.

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

Dr. Arredondo congratulated the Western University of Health Sciences, College of Optometry for receiving their full accreditation.

C. *Department of Consumer Affairs (DCA)*

Dr. Arredondo introduced and welcomed Deputy Director of Board and Bureau Relations, Christine J. Lally. Ms. Lally was appointed as Deputy Director of Board and Bureau Relations in June 2013. She has served as Assistant Secretary of Communications and Legislation for the California Technology Agencies since 2011. Additionally, Ms. Lally served as Deputy Secretary of Legislative Affairs at the California State and Consumer Services Agency in 2011.

Ms. Lally expressed appreciation for the opportunity to attend the meeting, and the opportunity to become a resource for the various DCA boards and bureaus. She explained her function as liaison between the DCA board/bureau Executive Officers and Members. Additionally, she works closely with the Governor's Office on appointments and policies pertaining to boards and bureaus.

3. **Continuing Education (CE)**

A. ***Presentation from the Association of Regulatory Boards of Optometry (ARBO), Optometric Education (OE) Tracker Program, Benefits for Licensees and Member Boards***

ARBO Program Coordinator, Sierra Rice, and OE TRACKER Committee Chair from Tennessee, Dr. Richard Orgain provided a presentation on the OE Tracker and the benefits it provides to licensing boards and licensees. Dr. Orgain is a practicing optometrist in Hendersonville, Tennessee as well as a member of multiple optometric societies. Ms. Rice has been serving as the Program Coordinator for ARBO for two years. She is responsible for the implementation of the OE tracker by state boards of optometry, CE providers, licensed optometrists, and for uploading CE attendance data submitted by CE providers.

Ms. Rice reported that the OE Tracker system electronically captures, verifies, and stores CE attendance data to benefit licensing boards, optometrists, and CE providers. As of August 2013, the OE Tracker has 46,421 registered, active optometrists, for which 45,457 have some CE data in their accounts. In California, 6,237 licensees are registered with OE Tracker, for which 5,389 have some CE data in their accounts. The value of the OE Tracker system for licensing boards is provision of an easy and quick method of auditing 100% of licensees. The value for optometrists is the ability to check CE in their account 24/7 and keep track of hours accumulated in each state, as well as the requirements for each state. The OE Tracker provides general and detailed types of reports/transcripts.

Dr. Orgain demonstrated how his CE would be managed by the OE Tracker according to optometry laws and regulations of Tennessee.

Professional Member, Dr. Kenneth (Ken) Lawenda asked and Dr. Orgain and Ms. Rice responded that currently 15 states utilize the OE Tracker in some aspect. Also, the OE Tracker provides access to uploaded CE data from state to state where an optometrist is licensed.

Dr. Arredondo inquired and Ms. Rice clarified that CE courses which are 'Counsel of Optometric Practitioner Education' (COPE) approved are already categorized. For non-COPE approved courses, the CE provider is contacted to determine which category the course falls under.

Licensing Analyst, Jeff Robinson stated that if he and OE Tracker were unable to categorize a course, he would forward the course to the CE Committee for acceptance or denial.

Public Member, Donna Burke questioned and it was explained that usually, a licensee knows which category a CE course belongs in prior to taking a course. Dr. Orgain added that for COPE-approved courses, an outline of the course is provided prior to registration.

Enforcement Lead, Jessica Sieferman asked and Dr. Orgain responded that optometrists with a revoked or suspended license may utilize the OE Tracker system as well. The OE Tracker is a database that keeps track of education regardless of status of practice (i.e. retired, some form of suspension).

Professional Member, Dr. Fred Dubick inquired and Dr. Orgain explained how non-COPE approved courses are accepted or rejected. Non-COPE approved courses must fit into a category that COPE already has. If it does not fit into one of COPE's categories, it falls upon the state board to determine whether or not the course meets that board's criteria.

Ms. Rice concluded the presentation with an explanation that OE Tracker reports are customizable. Custom reports can be created, from the general reports. Also a website handbook is available with "how to" assistance on using the application. Whatever makes auditing and verification easier for each board is what ARBO aims to provide through the OE Tracker database.

***B. Discussion and Possible Action to Amend California Code of Regulations Section 1536 to Include Medical Coursework as Acceptable CE for Optometrists***

Mr. Robinson reported on this action item. Board staff is requesting that Board Members allow the CE Committee to re-examine 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 time.

Over the years 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) Council on Optometric Practitioner Education (COPE).

They contend that many of the AMAs courses are greatly beneficial to optometrists. They seek these courses out primarily, because many of the courses the Board approves, or COPE approves, tend to be a repeat of something previously taken, and they desire to take something new.

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 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 (SB) 492 (Hernandez), the act to amend Business and Professions Code sections 3041, 3041.1, and 3110, is passed and becomes law.

The AMA accredits their own courses and is not interested in submitting their courses for COPE approval. Consequently, although the Board might wish to approve and give credit for many of these CME courses, it cannot do so because of the limitations in section 1536(e).

Because the AMA is not interested in forwarding individual course information to the Board, for Board approval, staff is proposing that the CE Committee examine this further and decide if the Board should give blanket approval for AMA ophthalmological courses, as is done with COPE approved courses.

Dr. Arredondo inquired and Policy Analyst, Andrea Leiva clarified, that the Board has authority to make the changes through regulation, and it does not need to go through the Legislature.

Dr. Arredondo opened the floor for questions.

Ms. Burke inquired of Mr. Robinson about the reference of SB 492 which the DCA is in opposition of. Mr. Robinson responded that staff has received word that SB 492 will probably be “put on a shelf” for a year, but that it is not over yet.

Dr. Dubick does not see any reason why the CE Committee cannot take a look at this and bring some full recommendations back to the Board in the future. Dr. Arredondo agreed.

Public Member, William (Bill) Kysella expressed his one concern that the Committee focus on AMA courses that relate specifically to optometry practice. Dr. Arredondo responded that this is where the CE Committee would sort out what courses are relevant and which are not.

Ms. Leiva announced that Dr. Pam Miller, O.D. requested this item be placed on the agenda and that she is present to comment on the issue.

Dr. Miller introduced herself. She has a solo practice in Southern California, and she was a member of this Board for nine years when the issue of mandatory education first came about. Dr. Miller believes the issue of expansion of practice needs to be addressed before laws become effective. She stated that as optometry expands its scope of practice, and as this Board looks at extending the licensure and educational requirements, it is incumbent upon this Board to address these issues prior to laws being changed. Optometrists are becoming much more responsible for the overall care of their patients. She urges this Board to use this opportunity proactively and take a much more aggressive stance in terms of continuing education before SB 492 becomes law. Dr. Miller is happy to assist the Board on this issue.

Dr. Lawenda stated that he does not see any problems with education being offered to ophthalmologists or physicians with regards to areas of treatment, and he inquired what the concern might be and why the Board would be resistant in approving CME courses.

Mr. Kysella reiterated his one concern that there exist AMA certified courses not relevant to the practice of optometry, therefore having blanket approval of AMA certified courses may not be appropriate.

Public Member, Alexander Kim expressed his belief that this is a great issue for the CE Committee to consider. Anything which expands the role of optometrists and increases partnership with other healthcare providers assists in making health care more affordable.

**Donna Burke moved to send the Discussion and Possible Action to Amend California Code of Regulations Section 1536 to Include Medical Coursework as Acceptable CE for Optometrists to the Continuing Education Committee. Madhu Chawla 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		

**C. Discussion and Possible Action to Approve Request for CE Extension/Exemption Form**

Mr. Robinson provided an overview of this discussion.

When an optometrist licensee has had difficulty in meeting their 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 CCR section 1536(i)(1-3). Board staff has come to the conclusion that the completion and submission of a form might best serve, and help streamline the process, as well as enable staff to keep a better record of those who are granted extensions or exemptions. Board staff relied upon examples of other board’s forms for creation ideas for two forms (one for the licensee requesting extension or exemption and one for the health practitioner). Mr. Robinson provided copies of the two forms for Board member review.

Dr. Arredondo opened the floor for comments regarding the forms.

Ms. Burke, Mr. Robinson, and Ms. Maggio discussed the purpose of the forms, the criteria for determination and the method of obtaining determining information. Ms. Burke would like to see criteria established for consistency in the event the Board is ever challenged.

**Fred Dubick moved to approve the use of the forms staff development and allow staff to move forward with making the process more efficient. Glenn Kawaguchi seconded. The Board voted unanimously (8-0) to pass the motion.**

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

**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.**

The Board met in closed session for discussion and possible action on Nat’l Ass’n of Optometrists & Opticians v. Harris, 133 S. Ct. 1241 (2013).

**FULL BOARD OPEN SESSION**

The Board reconvened into open session. Dr. Arredondo called roll and a quorum was established.

- 5. Approval of Board Meeting Minutes**

A. May 10, 2013

There were only two edits made to the minutes. Alexander Kim requested that his full name be used in the minutes. Dr. Arredondo clarified that he was also at the Southern California College of Optometry’s graduation.

Ken Lawenda moved to approve as amended the May 10, 2013 minutes. 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		

6. **Executive Officer’s Report**

A. **Budget Report** – Wilbert Rumbaoa, Department of Consumer Affairs (DCA) Budget Office

Budget Analyst, Wilbert Rumbaoa, and Budget Manager, Cynthia Dines presented an overview of the 2013/2014 Budget Report.

The Board’s budget for fiscal year (FY) 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 in FY 2013-14.

The Board’s budget for fiscal year 2013-2014 is \$1,841,000. Estimated revenue is 1.8 million dollars as well. This amount will change slightly based on directive from the Governor, budget letters and adjustments to the budget.

Ms. Dines reported on the Board’s Analysis of Fund Condition. The fund appears to be balanced. Revenues are slightly less than expenditures which may change in the future (i.e., budget change proposals, etc.).

Dr. Lawenda requested Ms. Dines update the Board on the \$1 million dollar General Fund repayment which is still outstanding. Ms. Dines responded that when loans are given to the General Fund, a “scheduled” repayment plan does not occur. However, if a board’s funds begin to decrease, and/or the board is not able to fund its mandated activities, the department requests repayment of the loan. She stated that there has not been a problem with receiving repayment when needed.

Dr. Arredondo inquired and Ms. Dines explained that the Department of Finance (which is the Governor’s financial advisor) implements the policies. The money is actually held in the General Fund with interest. When the loan is repaid, the interest is paid as well.

Dr. Arredondo opened the floor to further questions and there were none.

B. **Examination Development Overview** – Bob Holmgren, Office of Professional Examination Services

Supervising Personnel Selection Consultant of the Office of Professional Examination Services (OPES), Bob Holmgren, Ph.D. reported on the OPES examination development process. OPES is the “in-house” DCA licensure examination group. They develop the optometry California Laws and Regulations Examination (CLRE) as well as a number of other exams for various boards and bureaus in DCA.

Mr. Holmgren provided the Members with packets of background material summarizing what they do. 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.

Dr. Lawenda asked and Mr. Holmgren explained that the CLRE specifically focuses on applicants and OPES is not involved in continuing education. Therefore, if someone already has a license and the laws and regulations change, the licensure exam would not address that issue.

Ms. Maggio added that new laws and regulations are posted on the Board's website, included in the newsletter and emailed via Mail Serve to everyone on the interested parties list.

Dr. Dubick questioned the rationale for the 180 day wait period for re-examination. Mr. Holmgren responded that although he's not completely certain of the answer, the primary concern of OPES is preventing overexposure of test questions. Multiple forms are created and each form contains a different sampling of test questions. The 180 day wait period is a common decision OPES makes to avoid applicants returning to take the same form with the same sampling. The 180 days period is also consistent with other boards and bureaus.

Mr. Kysella asked and Mr. Holmgren explained that although he does not have a breakdown (in figures) of graduates taking the exam for the first time versus repeat candidates, typically new grads study hard and do quite well on the exam. Another finding is that the more times an applicant retakes the exam, the more likely it is he or she fails the exam. However, they are fewer in number than those who pass.

### ***BreEZe Overview and Status*** – Amy Cox O'Farrell, Deputy Director, DCA, Office of Information Services

Ms. Maggio introduced Deputy Director, Office of Information Services, Amy Cox-O'Farrell, and Chief Deputy Director, Awet Kidane.

Ms. O'Farrell became the Department's Chief Information Officer in February 2012. She oversees all of DCA's information technology (IT) and telecommunications services. She has been serving the state for more than 30 years and held numerous positions within DCA.

Mr. Kidane was appointed as Chief Deputy Director in January 2012. He oversees the internal operations of the Department. Prior to his appointment with DCA, Mr. Kidane served in various positions in the state Legislature, where he was a chief of staff, a senior advisor, and a consultant.

Ms. O'Farrell and Mr. Kidane presented an overview (and status) of the BreEZe program.

Mr. Kidane reported that BreEZe is one of the most important and successful IT projects DCA has seen thus far. In addition to Chief Deputy Director, Mr. Kidane is also Executive Sponsor of this project.

BreEZe is an enterprise licensing and enforcement tracking system. 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. The project was attempted in years past and was unsuccessful for various reasons. DCA is working with Accenture to design, configure, and implement BreEZe which will replace the Department's current Consumer Affairs System (CAS). Mr. Kidane believes that BreEZe will cut down on backlogs and streamline all processes. He spoke about the project going live and estimated implementation date, cost of the system, designing and testing the system, the boards involvement in the process with subject matter experts (SMEs) and full disclosure, transparent communication.

Mr. Kidane opened the floor to questions and concerns from the Board.

Mr. Kysella asked and Mr. Kidane responded that a CE tracker will be included in the BreEZe system if a board communicates need of it.

Dr. Arredondo questioned the cost. Mr. Kidane explained that DCA's boards too variable in size and demands for a figure to be estimated. He assured the Board that the exact cost will be provided, as it becomes known, and it will not be an overwhelming, unexpectedly huge figure.

Ms. Burke inquired and Mr. Kidane stated that although pulling staff away to work on BreEZe has impacted board's other goals and objectives, staff has delivered. He believes staff recognized that not investing the time right now, would drastically increase the cost down the road, as someone who is not knowledgeable of their board would be making design decisions on their behalf.

Ms. Maggio announced for the Board that optometry staff is very involved in the BreEZe process. Most everyone in the office participates at some level. Some staff are SMEs who assist with Release 1 projects. All staff is performing various data clean-up projects in preparation to ensure that only the most current and accurate data is transferred over to the new system.

Ms. O'Farrell added some comments about the fiscal impact of BreEZe on the Analysis of Fund Condition. She explained that the augmentation of Program Expenditures for state operations in the current FY and in FY 2015-16 includes money necessary to fund the BreEZe project. These figures represent the project based on first approval of the project (2011 Special Project Report). A current report should be approved in the next few months. This first report assumes that BreEZe has been up and running and that by now expenditures are being recovered (paid back). Therefore the figures in the upcoming report will probably be lower than those in this initial report. The report funding will be adjusted as soon as the control agencies approve the new project report.

C. ***Enforcement Program and Consumer Protection Initiative*** – Michael Gomez, DCA, Deputy Director, Division of Investigation and Enforcement Programs

Ms. Maggio introduced Deputy Director of DCA Division of Investigation and Enforcement Programs, Michael Gomez.

Mr. Gomez was appointed in October 2012 to oversee DCA's enforcement activities. Formerly, Mr. Gomez worked as Bureau Chief with the Commission on Peace Officer Standards and Training and has more than 30 years' worth of law enforcement experience. He also served as Vice Mayor of Dixon, California and was Chief of DCA's Division of Investigation from 1995 to 2004.

Mr. Gomez provided an overview of the Enforcement Program and Consumer Protection Enforcement Initiative (CPEI).

Mr. Gomez reported that prior to 2010, DCA received media attention regarding the backlog and delays of complaints and investigations. Additionally, there was criticism regarding the fact that certain practitioners were still treating patients. Although, the complaints had not been completely



investigated, it was public perception that the complaints were of such an egregious nature that the department should have taken actions to suspend these practitioners from seeing patients during the course of the investigations.

DCA responded by exploring strategies for resolving these issues which resulted in the CPEI. This initiative created the Best Practices policy measures for healing arts boards, and quarterly performance measures. A budget change proposal (BCP) established positions throughout the healing arts boards.

At the time CPEI was developed, the Division of Investigation (DOI) had open cases well beyond two years. CPEI identified case complexity models for determining which cases should be investigated at the board level and which should be referred to DOI for formal investigation. Additionally, CPEI monitors intake, investigation, and adjudication cycle times for each board and bureau throughout DCA.

Dr. Lawenda questioned and Mr. Gomez explained that SB 304 which in an effort of enforcement reform moves all enforcement staff investigating Medical Board practitioners to the DOI, creates a separate unit with the division. Therefore, staff currently providing services to the Board of Optometry will not be impacted by these changes.

**D. Enforcement Program – Statistics and Update**

Enforcement Lead, Jessica Sieferman reported on the enforcement unit statistics.

The enforcement unit has long been aware of optometry students', applicants', and optometrists' reluctance to communicate with enforcement staff. So staff has been working on efforts to build communication with the licensees and applicants, and help them understand that enforcement is not here to go after licensees. The Enforcement Unit's primary mission is consumer protection and seeks to obtain compliance at the lowest level possible. The majority of 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.

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 consist of less than 1% of the total volume of complaints received each fiscal year.

The Enforcement Unit encourages applicants and optometrists to contact staff to discuss their concerns, and is striving to correct the perception that the Board is "out to get optometrists".

Dr. Arredondo agreed with Ms. Sieferman regarding public perception and shared his own perception of enforcement prior to becoming a Board member.

Mr. Kysella inquired about the "Enforcement Statistical Overview" handout that was provided to the Members. His original interpretation was that during FY 2012/2013 there were no cases of sexual misconduct and just for unprofessional conduct. Ms. Sieferman clarified that this report is based upon how violations are coded. For example if an optometrist was convicted of sexual misconduct, it may have been coded as a conviction case rather than sexual misconduct.

Mr. Kysella requested that staff report on how cases are coded at the next meeting. Ms. Sieferman explained that it can be done but will take some time because there are 20 years of turnover of people coding things differently. Mr. Kysella clarified that he is interested 2009 to current.

Ms. Maggio added that three cases of sexual misconduct coded as conviction have been identified which staff will correct. Mr. Kysella and Ms. Sieferman discussed violation types.

## **E. Examination and Licensing Program – Statistics and Update**

Ms. Sieferman reported that in the past, Board staff 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 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 present the most accurate statistics for the Members, Board staff has spent numerous weeks creating AdHoc Reports based on the date application and fees were received and when licenses were issued. Ms. Sieferman put parameters on reports to pull accurate data. The problem is that putting parameters on a report places reliance on the data being correct, which is not always the case.

Therefore, in order to ensure complete accuracy, as of July 1, 2013 Board staff is manually tracking all license applications. This is a very time consuming process but does ensure accuracy. Since July 1, the situation is resolved but it is 100% manually done. Hopefully this process will be alleviated with the implementation of BreZE.

Dr. Lawenda observed that the pending complaints have increased according to the Performance Measures. Ms. Sieferman clarified that not all of the pending complaints are from the same FY. Some have rolled over from previous fiscal years.

## **F. Strategic Planning Update**

Ms. Maggio reported that on March 13, 2013, she and Ms. Leiva met with Shelly Menzel and Terrie Meduri with the DCA, SOLID Training Solutions to discuss the development of the Board Strategic Plan. It was agreed to create a 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.

## **7. Discussion and Possible Action on Regulations Affecting the Board of Optometry**

### **A. SB 1111 Provisions are as follows:**

- (1) Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license.
- (2) Revocation for sexual misconduct.
- (3) Denial of application for registered sex offender.
- (4) Confidentiality agreements regarding settlements (Gag Clauses).
- (5) Failure to provide documents and failure to comply with court order.
- (6) Psychological or medical evaluation of applicant.
- (7) Sexual misconduct
- (8) Failure to provide information or cooperate in an investigation.
- (9) Failure to report an arrest, conviction, etc.

Ms. Leiva provided an overview of the SB 1111 Provisions. 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 nine provisions. Ms. Leiva requested

that the Board consider provisions 2, 3, 7, and 9 to determine which regulations to adopt. She informed the Board that they must then direct staff to begin the regulatory process for all approved provisions.

Mr. Kidane provided a brief background of SB 1111. He then urged the Board, on behalf of the Department, to approve all of these standards/provisions. He stated that although they are not in law, consumer protection is the Department's and the Board's mission. The Department strongly urges the Board to fully implement all of the requirements because it furthers transparency and consumer protection and is in the best interest of the consumer.

Mr. Gomez added that during his tenure in law enforcement, and protection of the public, he also served as an advisor to the executive officers and staff regarding enforcement tools they could and should provide to their board for decision making. Additionally, he explained there was a time when the Legislature was looking to create a Uniform Enforcement Act. The provisions of SB 1111 begin to create a small portion of best practices called uniform standards.

Dr. Arredondo reported that SB 1111 caused a lot of controversy at the Board's last meeting, and asked why SB 1111 did not pass during the legislative process. Mr. Gomez stated his belief that at the time SB 1111 was introduced to the Legislature the Uniform Enforcement Proposal was just too much to digest. However, a pattern of uniform standards exists now throughout the boards.

Mr. Kidane agreed. He stated that the fact of the Legislative proposal not making it into law, should not preclude the Board from adopting all of the standards. It is the right thing to do.

Dr. Arredondo questioned and Mr. Kidane explained that pursuant to guidelines set forth, this Board, uses certain guidelines and definitions to provide guidance to the Administrative Law Judge (ALJ) and the Deputy Attorney General (DAG) on how they prosecute.

Dr. Lawenda asked if by adopting provision 2 of the standards the Members would be unable to ever question the ALJ's judgment and be able to respond to the complainant. Mr. Kysella clarified that currently, a DAG goes before the ALJ and makes a recommendation that the Board members can either accept or reject. Adoption of proposal 2 requires the ALJ to revoke the license of someone convicted of sexual misconduct which may not be stayed. It removes discretion from both the ALJ and the Board.

Mr. Kysella made the argument that if some 18 year old (for example) became a registered sex offender for having relations with his/her high school sweetheart, and six years later he/she is married and decides he/she wants to become a professional health care provider, provision number 3 requires automatic denial of an application. There can be no discussion and no discretion. He made the point that this may be constitutionally inappropriate. Additionally, the system currently in place protects consumers without such extreme steps.

Mr. Kysella closed his argument by reading an excerpt from Frontiers Magazine, June 11, 2013 issue. The article states that an 18 year old Florida High School student (Catlin Hunt) was expelled and charged with a felony over her consensual relationship with a 15 year old classmate which began when Catlin was 17 years. The 15 year old's parents demanded Catlin be arrested and charged stating she made their daughter gay. In eight to ten years, if these proposals pass, the ALJ will have no right to give Catlin a license to practice optometry in California even if she becomes an exemplary student.

William Kysella moved to reject the SB 1111 proposed regulation changes to CCR 1575. Fred Dubick seconded. The Board voted (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		

William Kysella moved to accept the committee's recommendation to not implement provision 3 of the SB 1111 provisions. Kenneth Lawenda seconded. The Board voted 7-Yes; 0-No; 1 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		

William Kysella moved to accept the committee recommendation to reject provision 7 by striking through the proposed 1575.2 language. Alexander Kim seconded. The Board voted 6 – Aye; 1 – No; and 1 – 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		

Donna Burke moved to accept the committee recommendation to 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 States military should be related to the practice of optometry, and discuss with the Board if the language pertaining to misdemeanors should be kept in the regulation. Fred Dubick seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		

<b>Dr. Lawenda</b>	<b>X</b>		
<b>Dr. Chawla</b>	<b>X</b>		
<b>Mrs. Burke</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		
<b>Dr. Kawaguchi</b>	<b>X</b>		

**B. Fees for Retired License Statuses**

Ms. Leiva provided an update on the fees for retired license statuses. 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.

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

Ms. Siefertman provided an update on this agenda item.

Over the past year, the Board of Optometry's Enforcement Program has seen an increase in consumer complaints regarding optometrists closing their practice without any form of patient notification. Additionally, Board staff have received an increased number of phone calls from families of optometrist who have passed away and requested guidance on who can help facilitate patient care and record transfer.

While the Board has attempted to educate optometrist about this in the past, 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.

To help address this issue, the Practice and Education Committee assisted staff in drafting language to be posted on our website, published in our newsletter and used in future outreach events. 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.

**Kenneth Lawenda moved to accept the Committee recommendations. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.**

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

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

Ms. Siefertman provided an update on this agenda item.

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. 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. The Plan was drafted using the previous Probation Monitoring Guidelines, comments from the Committee and documents from the Medical Board.

**William Kysella moved to accept implementation of the monitor plan as directed by the Committee. Alexander Kim 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		

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

Ms. Leiva reported on the following bills:

- A. ***Assembly Bill 186 (Maienschein) Professions and vocations: military spouses: temporary licenses***  
Status: Two-year bill.  
Recommended Position: Watch
  
- B. ***Assembly Bill 213 (Logue) Licensure and Certification requirements: military experience***  
Status: Two-year bill.  
Recommended Position: Watch
  
- C. ***Assembly Bill 258 (Chavez) State agencies: veterans***  
Status: Third reading in Senate Appropriations Committee.  
Staff Comments: Adding the question to the Board’s forms will not be a significant workload or cost.  
Recommended Position: Watch
  
- D. ***Assembly Bill 480 (Calderon) Service contracts***  
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.  
Recommended Position: Watch
  
- E. ***Assembly Bill 512 (Rendon) Healing arts: Licensure exemption***  
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***  
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.

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

Status: The Board has submitted its report and had its hearing.

Staff Comments: The next step is for the Board to make a motion to draft and send a letter to the Governor supporting the bill and requesting his signature.

Recommended Position: Continue support of this bill.

**Madhu Chawla moved to direct staff to draft and send a letter to the Governor supporting SB 305 and requesting his signature. 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		

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

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**

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, DCA 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**

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 non-profit charitable organizations to provide charitable vision screenings under appropriate conditions.

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

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 Drug Enforcement Agency (DEA) registration. To gain access

to the Controlled Substance Utilization Review and Evaluation System (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**

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: Continue support and direct staff to draft and send a letter to the Governor requesting his signature.

**Madhu Chawla moved to direct staff to draft and send a letter to the Governor supporting SB 829 and requesting his signature. 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		

**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)]*

Dr. Arredondo opened the floor to public comment. There were no comments.

**12. Suggestions for Future Agenda Items**

Dr. Arredondo opened the floor to suggestions for future agenda items.

Dr. Arredondo restated his concern about the Los Angeles School District's eye exams. Not much is known about how the Los Angeles schools are performing their eye examinations which makes Dr. Arredondo uncomfortable. He suggested future discussion regarding this concern.



Dr. Chawla suggested a discussion regarding possibly extending the allowable hours of online CE for glaucoma certified optometrists.

Ms. Burke requested a future report from Ms. Siefertman on the National Practitioners Data Bank data merge.

Dr. Arredondo sought clarification and Ms. Leiva confirmed that the Practice and Education and the CE Committees have been merged. Dr. Arredondo announced Dr. Lawenda's interest in serving on this Committee and suggested placing this as an item on the next agenda.

**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**

Pursuant to Government Code Section 11126(c)(3), the Board met in Closed Session for discussion and possible action on disciplinary matter.

**FULL BOARD OPEN SESSION**

**15. Adjournment**

**Fred Dubick moved to adjourn the meeting. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.**

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

The meeting was adjourned.