STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

STATE BOARD OF OPTOMETRY
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MEETING MINUTES
March 23, 2009

The California State Board of Optometry met via telephone conference on March 23, 2009, beginning at 9:00 a.m. at the following locations:

2420 Del Paso Road, Suite 255, Sacramento, CA 95834

9033 Wilshire Blvd., Suite 402, Beverly Hills, CA 90211

45493 South Fork Drive, Three Rivers, CA 93271

17250 Russet Street, San Diego, CA 92127

155 Cadillac Drive, Sacramento, CA 95825

7300 Wyndham Drive, Sacramento, CA 95823

818 Oak Park Road, Covina, CA 91724

4580 Electronics Place, Los Angeles, CA 90039

4695 MacArthur Court, Suite 310, Newport Beach, CA 92660

325 Copa de Oro Drive, Brea, CA 92823

Members Present
Lee Goldstein, OD, MPA
Board President
Susy Yu, OD, MBA, FAAO
Board Vice President
Monica Johnson, Public Member
Board Secretary
Martha Burnett-Collins, OD
Kenneth Lawenda, OD
Katrina Semmes, Public Member
Richard Simonds, OD

Members Not Present (Excused Absence)
Alejandro Arredondo, OD
Fred Naranjo, MBA, Public Member

Staff Present
Mona Maggio, Executive Officer
Margie McGavin, Enforcement Manager
Andrea Leiva, Licensing Analyst
Michael Santiago, Legal Counsel

Guest List
Tim Hart, California Optometric Association
Katherine Demos, DCA Regulations Coordinator

FULL BOARD OPEN SESSION

1. Call to Order

Board President, Lee Goldstein, OD called the meeting to order at 9:00 a.m. Dr. Goldstein called roll and a quorum was established.

2. Discussion and Possible Action to Adopt California Code of Regulations Title 16, Section 1524, Fees

Background:

The Fee Regulation Rulemaking File was withdrawn from the Office of Administrative Law (OAL) on March 5, 2009 after it was brought to the Board's attention that there were a few discrepancies found during the final approval review:

1) It appears the Board never officially adopted the proposed language to amend California Code of Regulations (CCR) Section 1524. Though the meeting minutes reflect the Board did discuss this issue, the Board did not make a motion or vote.

2) Yen Ma, OD, submitted a public comment in opposition of the fee increase.

3) The maximum biennial renewal fee for a Statement of Licensure is $40.00. The fee is established in Business and Professions Code section 3152 subdivision (l). The proposed language erroneously states annual, and must be edited read biennial to fit the statute.

As soon as these issues are addressed, staff will resubmit the file to the Division of Legislative and Policy Review, the Legal Office and the Department of Consumer Affairs Director before resubmitting to OAL. If we are able to get the file back to OAL by the first week of April, then the regulation can be adopted as planned and we can begin to collect the new fees as scheduled.

Action Requested:

Staff requests the Board take the following action:

1) Formally approve the modified text in section (j) (1), which is being changed from annual to biennial.
2) Fully address Dr. Ma's comment as thoroughly as possible even though it is being rejected. A proper response that will show adequate consideration will describe why it is still necessary to increase the fees as proposed, despite Dr. Ma's concerns. According to OAL, relying on what has already been said does not show any consideration. Government Code section 11346.9, subdivision (a)(5) calls for an explanation with reasons.
3) Formally adopt regulation 1524, after addressing Dr. Ma's comment. A motion is required and must be reflected on the minutes. The minutes will be submitted to complete the Rulemaking File.
4) Delegate authority to Mona Maggio, Executive Office to adopt the prepared language/modified text after the 15-day comment period ends on March 27, 2009.

Dr. Goldstein led the discussion in addressing Dr. Ma's comment and indicated that the Board had not raised fees for 15 years. The fee increases are necessary in order to cover the Board's operating expenses, which have obviously risen after so many years. Without these monies, the Board will not be able to do their work and meet the expectations of the Board members. Even

though it is true that the state of California's economy is under strain and everyone is tightening their belts, after 15 years of not raising fees, the proposed increases accurately reflect what the Board needs in order to function.

Tim Hart of the California Optometric Association (COA) noted that his organization was involved in the negotiations for the fee increases in 2005. COA encouraged the Board to go forward with the fee increases and sent a letter of support since fees had not been raised in the last 15 years. Furthermore, the amount of money required for the Division of Investigation and Attorney General has increased beyond the Board's control, thus COA shows full support for the fee increase.

After considering the opposition, the Board feels that the best course of action is to adopt regulation 1524.

Motion to adopt regulation 1524 after fully addressing Dr. Ma's comment. M – Lawenda, S – Burnett-Collins; MSP – Unanimous.

Member	Aye	No	Abstention
Dr. Goldstein (President)	X		
Dr. Yu (Vice President)	X		
Ms. Johnson (Secretary)	X		
Dr. Burnett-Collins	X		
Dr. Lawenda	X		
Ms. Semmes	X		
Dr. Simonds	X		

Board members reviewed the modified text in section (j) (1), which is being changed from annual to biennial. Dr. Goldstein inquired whether this had been a typo and Mona Maggio, Executive Director stated that this had been the case. Board members inquired why the language could not say "annual" and Board staff explained that the statute would have to be completely amended in order to allow it.

Motion to adopt modified text in section (j) (1) – changed from annual to biennial. M – Goldstein, S - Burnett-Collins; MSP – Unanimous.

Member	Aye	No	Abstention
Dr. Goldstein (President)	X		
Dr. Yu (Vice President)	X		
Ms. Johnson (Secretary)	X		
Dr. Burnett-Collins	X		
Dr. Lawenda	X		
Ms. Semmes	X		
Dr. Simonds	X		

Motion to delegate authority to Mona Maggio, Executive Office to adopt the prepared language/modified text after the 15-day comment period ends on March 27, 2009. M- Burnett-Collins, S- Simonds; MSP – Unanimous.

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Member	Aye	No	Abstention
Dr. Goldstein (President)	X		
Dr. Yu (Vice President)	X		
Ms. Johnson (Secretary)	X		
Dr. Burnett-Collins	X		
Dr. Lawenda	X		
Ms. Semmes	X		
Dr. Simonds	X		

Lastly, Mona Maggio, Executive Officer noted that there was a final comment received via telephone from an anonymous Optometrist right before the beginning of the meeting. The anonymous Optometrist stated that after reading the Modified Text, he felt that the Board should require that Therapeutic Pharmaceutical Agents (TPA) certified Optometrists pay a higher fee for re-certification than Diagnostic Pharmaceutical Agents (DPA) certified Optometrists. Many other states follow this model and he feels California should do the same.

Dr. Goldstein reflected that this was a decision that required further review and that it would be best to leave it for discussion at Board Meetings to come. The proposed changes to 1524 are currently sufficient for the Board's needs and additional fees are not recommended at this time. All Board members concurred.

3. Adjournment

The meeting was adjourned at 9:35 a.m.

Monica Johnson

Monica Johnson, Board Secretary

July 14, 2009

Dated