



Board of Optometry
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Meeting Minutes
BOARD MEETING TELECONFERENCE
 Tuesday, February 24, 2015

Western University of Health Sciences
 College of Optometry
 Vision Science Lab 2205
 Health Education Center
 701 E. Second Street
 Pomona, CA 91766

Department of Consumer Affairs
 First Floor Hearing Room
 1747 North Market Boulevard
 Sacramento, CA 95834

Starbucks
 14 Villiers Street
 London, UK

140 C Tower Street
 Beaconsfield, Quebec. H9W 6B2

1004 White Rock Rd, Ste. 100
 El Dorado Hills CA 95762

Members Present	Staff Present
Alejandro Arredondo, O.D., Board President	Mona Maggio, Executive Officer
Madhu Chawla, O.D., Vice President, Professional Member	Jessica Siefertman, Assistant Executive Officer
Donna Burke, Board Secretary, Public Member	Michael Santiago, Staff Counsel
Cyd Brandvein, Public Member	Claire Yazigi, Staff Counsel
David Turetsky, O.D., Professional Member	Nooshin Movassaghi, Policy Analyst
Glenn Kawaguchi, O.D., Professional Member	Lydia Bracco, Administrative Assistant
William H. Kysella, Jr., Public Member	
Kenneth Lawenda, O.D., Professional Member	
Alexander Kim, MBA, Public Member	
Rachel Michelin, Public Member	
Excused Absence	
Frank Giardina, O.D., Professional Member	Guest List
	On File

9:30 a.m.
FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Board President, Alejandro Arredondo, O.D. called roll and a quorum was established. The meeting was called to order at 9:30 a.m.

Executive Officer, Mona Maggio introduced Board staff attending meeting.

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)]

There was no public comment.

2. Process for Selection of a New Executive Officer

Olivia Trejo, Classification and Pay Manager with the Department of Consumer Affairs, Office of Human Resources (HR) provided information on the process for selection of a new Executive Officer (EO).

Ms. Maggio has notified the Board and Department that her retirement date is June 30, 2015.

The Executive Officer Recruitment Outline was reviewed by the Board.

Dr. Arredondo asked Ms. Trejo when a Selection Committee should be appointed. Ms. Trejo responded by saying now is the appropriate time. Dr. Arredondo stated there was interest at the last meeting from Madhu Chawla and Cyd Brandvein. He asked each member if they were still interested and both said yes. He appointed the two members to the Committee.

Ms. Trejo gave a timeline comparing other Board's selection efforts to be about three months from start to finish. Korey Landry, Human Resources Classification and Pay Analyst, will be the contact working with the selection committee and providing a draft bulletin, screening criteria, and assistance.

Ms. Maggio asked if it would be okay to add "Proposed" to the EO duty statement since the Board is still reviewing the revised EO duty statement. Ms. Trejo said yes. Ms. Trejo asked if the proposed EO duty statement will be approved at the April 24th Board meeting and Ms. Maggio said yes.

Mr. Kurt Heppler, Supervising Attorney, Department of Consumer Affairs, Legal Affairs Division, stated the Board may want to consider having a dialogue or comment on what the two committee members would do. Would they review the initial applications and submit a certain number of qualified applications for consideration to the Board? It's sometimes advantageous to fit the parameters of what the committee's obligations are in order to make it an effective and efficient process.

Public member Mr. Kysella asked if this position was open to outside applicants or just current State employees. Ms. Maggio responded, anyone.

Public member Rachel Michelin asked what the outreach for this is, can Board Members email it to people that they think would be interested in applying? How do you advertise the position? Ms. Trejo responded that they advertise on the HR website, the Board may choose to advertise in newspapers and other means to get the announcement out.

A discussion ensued with questions regarding the Board members receiving a final job announcement, the committee thinking of other avenues of distribution for the announcement and a minimum number of candidates.

Ms. Trejo stated that the screening committee will screen the applications received and it's optional for them to do initial interviews with the top five, six, or seven candidates and recommend the top candidates to interview at the next Board meeting.

Mr. Kysella suggested that the Committee complete the first round of interviews and bring at least three before the Board. Dr. Arredondo agreed. Mr. Kysella went on to say, if the Board isn't comfortable with the selection, then the announcement will have to be re-issued.

Ms. Trejo stated the bulletin has to be advertised for a minimum of 10 days, but often times they do advertise up to 30 days to allow for a true open recruitment and allow everyone to apply during that timeframe.

3. Agenda Item 4 – Discussion and Possible Action Regarding Legislation Sponsored by the Board

Dr. Arredondo introduced the Board's new Policy Analyst, Nooshin Movassaghi to review the Legislative agenda items.

The following amendments to the Business and Professions Code (BPC) were approved by the Board at its November 21, 2014 and January 23, 2015 meetings. Staff submitted six proposed languages (§3041.3, §3057.5, §3057, §3058, §3151.1, §3152) to the Senate Business, Professions and Economic Development Committee's omnibus bill on January 6, 2015. The committee only included proposed language for BPC §3057. Staff met with California Optometric Association (COA) representatives on February 11, 2015, though some comments are included in the attachments (Attachment 4 and 6), additional comments will be presented on the day of the Board Meeting.

A. Discussion and Possible Action to Amend Business and Professions Code §3041.3, TPA Certificate Requirements

Action Requested:

Staff requests the Board review and approve the public comments added to the BPC §3041.3 proposed amendments (Attachment 1). If the revised language is approved, please direct staff to move forward with the legislative process.

Background:

The Board-approved proposed language was sent as un-backed language to the Legislative Counsel. Assemblymember Adrin Nazarian agreed to author the bill. Assemblymember Nazarian serves on the Assembly Health Committee. As of February 19, 2015, staff received the following comments:

1. All California Academy of Eye Physicians and Surgeons (CAEPS) comments are included in green. Of those, Dr. Craig Kliger, MD recommended adding section 3(c)(2) "to avoid the Board from potentially granting someone who graduated as long ago as 1996 but, at that time, couldn't meet this standard, TPA certification automatically without review." Furthermore, Dr. Kliger believes that "this would probably be a rare occurrence or these standards didn't matter because all schools would have met it, but the fact it concerned someone enough to include back then means the Board should retain discretion."
2. The Office of Legislative Counsel had minor grammatical comments which staff already added to the amendments.

Ms. Movassaghi stated all of the Amendments have been sent to the Legislature un-backed, which means they are secured, spot wise, but some have authors and some don't so she is still working on them.

Ms. Maggio explained the green comments in Attachment 1 came from the California Association of Eye Physicians and Surgeons, Dr. Kliger. The Board sent all of its legislation to Dr. Kliger as well as the California Optometric Association.

Kristine Shultz, California Optometric Association had concerns regarding the proposed language Dr. Kliger put forth. Page 2 of Agenda Item 4, Attachment 1 (c)(2), Ms. Shultz stated the paragraph is unnecessary and it's unclear what "acceptable" means. Ms. Maggio agreed. Dr. Arredondo asked the Board if they were in agreement to remove (c)(2).

Ms. Movassaghi reviewed the comments in green on page 1 of Agenda Item 4, Attachment 1. A discussion ensued regarding the use of "Board" to represent the name "Board of Optometry" in documents. It was decided that "Board" would suffice.

Professional member, Dr. Turetsky asked if it was worth expanding TPA to TPG or TLG, shouldn't it be that optometrists are licensed at the highest level in the state? Ms. Maggio responded that TPA is the baseline. The consensus was there's no need for the higher certification.

Legal Counsel, Claire Yazigi asked if, in subdivision 2, where would the individuals be receiving the 80 hours of documented and accredited education in ocular and systemic diseases, Continuing Education (CE) or a school of optometry. Ms. Maggio stated either. Ms. Yazigi replied, if this is the intent, could you say "from a CE provider or school of optometry approved by the Board"?

Ms. Maggio asked how the members wanted it reworded. Mr. Kysella suggested it read, "In ocular and systemic diseases offered by an approved CE provider or California accredited school of optometry." Ms. Yazigi stated, the word "accredited" implies school, not CE. Ms. Maggio stated, in the discussion she had with those that participated in drafting the document, they agreed it could be Continuing Education.

Stan Woo, Dean of the Southern California School of Optometry, provided historical context. Typically the programs for Therapeutic Certification, the 80 hours, embody quite the coordinated curriculum related to the delivery of that knowledge. It wasn't accredited, per say, but the schools and colleges, with their various faculty and resources, were able to put together a program that met that threshold for many people over the last several decades.

Mr. Kysella clarified his previous statement regarding Page 1 of Agenda Item 4, Attachment 1. He stated, 80 hours of documented education in ocular and systemic diseases offered by a Board approved CE provider or accredited school of optometry.

Agenda Item 4, Attachment 1

§3041.3. TPA CERTIFICATION REQUIREMENTS

(a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, with either a TPA-certified optometrist in good standing, or a physician and surgeon board-certified in ophthalmology in good standing with the Medical Board of California. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular and systemic disease authorized under 3041 (b) using the agents or techniques authorized under 3014 (c) and (e). The preceptor shall certify completion of the preceptorship using a form provided by the Board. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants;

(2) Successfully completes a minimum of 80 hours of documented and accredited education in ocular and systemic diseases acceptable to the Board within two years prior to meeting the requirements of paragraph (1); and,

(3) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the Board.

(c) The Board shall grant a therapeutic pharmaceutical agents certification to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who (1) Passes all sections of the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the Board.

(2) Underwent an acceptable curriculum in the diagnosis, treatment, and management of ocular and systemic disease at an accredited school of optometry, and, as appropriate, has maintained related continuing education, as determined by the Board.

(d) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduated on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

Bill Kysella moved to approve the revised language as discussed and direct staff to move forward with the legislative process. Madhu Chawla seconded. The Board voted: 10-Aye; 0-No; 0-Abstention; 1-Absent (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				

Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

B. Discussion and Possible Action to Amend Business and Professions Code §3151.1 Issuance of License with Retired Volunteer Service Designation Requirements; Duties of Applicant; Holder of Retired License

Action Requested:

Staff requests the Board review and approve the public comments added to the BPC§3151.1 proposed amendments (Attachment 2). If the revised language is approved, please direct staff to move forward with the legislative process.

Background:

The Board-approved proposed language is currently an un-backed bill, and staff is working to secure an author. Staff received comments from CAEPS which are included in green. Dr. Kliger suggested replacing unpaid with uncompensated “to avoid any bartering.”

Mr. Kysella questioned adding “uncompensated teaching activities” and adding “other uncompensated activities approved by the Board”. The Board doesn’t have this designation yet, but is creating it. He suggested the two terms shouldn’t be included unless there is a need for them. He stated that the amendment should read, “The uncompensated teaching activities as authorized by an accredited school of optometry, and other uncompensated activities approved by the Board.”

Dr. Pamela Miller, OD, Public, stated, when talking about uncompensated, it would not be unusual for a doctor to receive compensation for mileage, lunch, and/or honorarium which falls under the term “compensation”. There is a difference between unpaid and compensation. Compensation is anything that you receive in return.

Mr. Kysella stated perhaps unpaid is a better term than uncompensated. Dr.’s Arredondo and Lawenda agreed and stated it should be left as unpaid.

Ms. Maggio questioned the term, “uncompensated teaching activities” from Dean Woo. Dr. Woo stated it was unnecessary.

Dr. Arredondo asked the Board if they were in agreement to keep the unpaid term.

Dr. Turetsky questioned if, in the future, the Board stops issuing licenses that are less than a TPA level of certification, would someone with a DPA certification who wants to volunteer, be issued a Volunteer License, Retired at voluntary status?

Ms. Maggio stated the Board would issue them the Retired Volunteer License with DPA because that designation was the minimum at the time the individual was licensed. In 2009 the Board decided everyone from that point forward would be TPA certified.

Ms. Movassaghi reviewed and read §3151.1 (b) as is below and (d) remove the comments and leave unpaid.

Ms. Yazigi asked if the last half of (d) “... and other uncompensated activities approved by the Board.” was being deleted. Ms. Movassaghi stated yes.

Agenda Item 4, Attachment 2

§3151.1. ISSUANCE OF LICENSE WITH RETIRED VOLUNTEER SERVICE DESIGNATION; DUTIES OF APPLICANT; HOLDER OF RETIRED LICENSE

(a) The board shall issue, upon application and payment of the fee prescribed in Section 3152, a license with retired volunteer service designation to an optometrist who holds a retired license for less than three years or a license that is current and active.

(b) The board shall issue, upon application and payment of the fee in Section 3147.6, a license with retired volunteer service designation to the holder of a retired license issued for three years or more if he or she satisfies all the requirements of Section 3147.6.

(c) The applicant shall certify on the application that he or she has completed the required number of continuing education hours pursuant to Section 3059.

(d) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, uncompensated optometric services at health fairs, vision screenings, and public service eye programs, uncompensated teaching activities as authorized by an accredited school of optometry, and other uncompensated activities approved by the Board.

(e) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision (c). Pursuant to Section 3146, the license expires at midnight on the last day of the license holder's birth month every two years if not renewed.

Added Stats 2012 ch 359 § 6 (SB 1215), effective January 1, 2013.

Bill Kysella moved to approve the language as discussed and direct staff to move forward with the legislative process. Alexander Kim seconded. The Board voted: 10-Aye; 0-No; 0-Abstention; 1-Absent (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

C. Discussion and Possible Action to Add Business and Professions Code §3070.2, Requirements to Practice in a Mobile Optometric Facility or Portable Optometric Facility

Action Requested:

Staff requests the Board review and approve the public comments added to the BPC §3070.2 proposed language (Attachment 3). If the revised language is approved, please direct staff to move forward with the legislative process.

Background:

Senator Patricia Bates, vice chair of the Senate Business, Professions and Economic Development Committee, agreed to author this bill. Staff has received comments from the following:

1. Staff was asked by the author's office and an out-of-state mobile optometric practice who are interested in branching out in California why the proposed

language limits mobile optometric facilities to operate as non-profit organizations or governmental agencies.

2. The Office of Legislative Counsel had minor grammatical comments which staff already added to the proposed amendments.
3. California Optometric Association (COA) (Attachment 4).

Ms. Movassaghi stated that she had a late update that Senators Berryhill and Nguyen will co-author the bill under the number SB349.

Ms. Movassaghi corrected Agenda Item 4, Attachment 3, section (2) “the optometrist maintains or discloses patient records in the following manner”. This section should be deleted, it was a misprint.

Dr. Pamela Miller had a point of clarification. Does this include optometrists that not only have brick and mortar practices, but also work outside their offices, i.e., convalescent or private homes with patients that are not able to physically go to the office?

Ms. Maggio stated it wouldn't apply to those working in nursing or convalescent homes or residential treatment facilities because the Board has a separate law for that. It proposes charitable organizations and government agencies have portable optometric locations.

Mr. Kysella asked if that addresses the COA concern of the mobile equipment as opposed to the facility, i.e. setting up equipment inside a senior center versus having a trailer that sits outside the center. Ms. Maggio said yes.

Dr. Lawenda asked if the Board will have restrictions such as trade if the doctor is a “for profit” from out of state. Will there be legal issues with this? Mr. Santiago said, no, he doesn't see any legal problems with trade or interstate trade. Ms. Yazigi stated there's no distinction being drawn on in-state versus out of state.

Ms. Shultz reviewed and read the letter dated February 5, 2015 (Attachment 4 below). She also discussed the 3070.2 amendments, (D)(iv) Description of the goods. She wasn't sure how that would impact MediCal if the doctor is billing for the service because the patient isn't being charged. The patient should be notified of the services provided as part of the comment. She suggested language that would say, “The goods and services provided to the patient and the amount charged”. She questioned (8)(H)(vi) Transport for patients. She stated when COA does vision exams, they never provide transportation. She wasn't sure what that would include and what policy would be needed. Is it transportation to the event or a preferred provider? Is this even necessary?

Ms. Maggio stated that Ms. Movassaghi, Ms. Siefertman and she met with Ms. Shultz and Kara Corches from COA to discuss COA's suggestions and concerns for B&P Code 3070.2. They agreed the changes would be fine and Ms. Corches will provide language and will present it at the next Board meeting.

Dr. Lawenda asked if Vision Service Plan (VSP), a for-profit company who has mobile facilities, will be able to take advantage of this.

Ms. Maggio replied, VSP has a relationship with a non-profit that operates the vehicles. She stated that staff will work with COA on its comments and get clarification on transporting patients. She will speak with those that helped staff draft the language and ask their thoughts about this. Staff mirrored some language from the Dental Board's mobile clinic law.

Dr. Lawenda asked for clarification of for-profit companies operating mobile optometric facilities. It was determined that as long as the non-profit sector of the company is operating the vehicles, it is alright. No motion was made. Staff will continue to work on this.

Agenda Item 4, Attachment 3

§3070.2. REQUIREMENTS MOBILE OPTOMETRIC FACILITIES

(a) For purposes of this section, "Mobile optometric facility" means a self-contained unit housing equipment, which may include a trailer or van that may be moved, towed or transported from one location to another in which the practice of optometry is performed as defined in Section 3041. Mobile optometric facilities are limited to non-profit, charitable organizations with federal tax exempt status as described in Section 501(c)(3) of the Internal Revenue Code or mobile unit that is operated by a governmental agency.

(b) The purpose of this section is to provide requirements for mobile optometric facilities to provide optometric services as authorized in Section 3041 in order to help secure the availability of quality vision care services for patients who receive care in remote or underserved areas and for patients who need specialized types of cost-effective health care.

(c) An optometrist may engage in the practice of mobile optometry provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office separate from mobile optometric facility and meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist, or the employer of the optometrist, as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in, or connected with, a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist, or the employer of the optometrist, as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in, or connected with, a residential dwelling.

(1) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at, or near, the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient records shall be maintained for each prescription as part of the patient's record, including all of the following information about the optometrist:

(i) Name.

(ii) Optometrist license number.

(iii) The place of practice and the primary business office.

(iv) Description of the goods and services for which the patient is charged and the amount charged.

(E) For services provided at a school site, a copy of consent by the parent, guardian, or legal representative and referral or order requesting optometric services from personnel in a school district or county office of education as defined in Education Code Section 49452 and the California Code of Regulations, Title 5, Education, Section 591 shall be kept in the patient's medical record.

- (3) The optometrist possesses, and appropriately uses, the instruments and equipment required for all optometric services and procedures performed within the mobile optometric facility
- (4) For mobile optometric facilities, the optometrist informs patients in writing of any condition that requires follow-up care and/or treatment.
- (5) Mobile optometric facilities shall comply with all consumer notice requirements of the board.
- (6) There is a written procedure for follow-up care of patients treated in a mobile optometric facility and that such procedure includes arrangements for treatment by a local health care professional.
- (7) The mobile optometric facility shall arrange for emergency medical care when indicated.
- (8) The mobile optometric facility shall do all of the following:
- (A) Have an access ramp or lift if services are provided to disabled persons
 - (B) Have adequate equipment and supplies for cleaning, disinfection, and sterilization.
 - (C) Have access to an adequate supply of clean running water, including hot water
 - (D) Have ready access to toilet facilities
 - (E) Have a covered galvanized, stainless steel, or other non-corrosive metal container, for deposit of refuse and waste materials.
 - (F) Comply with the applicable requirements of the Vehicle Code, and have a vehicle identification number for the mobile optometric facility.
 - (G) Maintain in good repair and in a clean and sanitary manner.
 - (H) A written policy and procedures that include, but are not limited to, all of the following:
 - (i) Scope of services.
 - (ii) Procedures for the performance of the services provided.
 - (iii) Quality assurance.
 - (iv) Infection control.
 - (v) Medical record documentation of services provided, as appropriate.
 - (vi) Transport for patients, including, but not limited to, a method of transportation, special equipment, necessary personnel, and protection from inclement weather.
 - (vii) Emergency response and evacuation plan for the mobile unit.
 - (I) Maintain a mobile unit services log that shall include, but shall not be limited to, all of the following:
 - (i) Patient chart or identification number.
 - (ii) Name, age, and sex of patient.
 - (iii) Site, date, time, and as appropriate, duration of exam.
- (d) An optometrist who satisfies all of the requirements in this section for the practice of optometry in a mobile optometric facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each location at which he or she practices.
- Mobile optometric facilities that are part of an "extended optometric clinical facility" as defined in Section 1507, Title 16, CCR are exempt from the requirements of this section.
- (f) The licensed primary business or office shall be responsible for obtaining approval for parking of the mobile optometric facility as required by the local planning, zoning, and fire authorities. The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply with all local parking laws. Any parking restrictions developed by a primary business or clinic for mobile units shall be strictly enforced by the parent facility or clinic. The primary business or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.

Agenda Item 4, Attachment 3 (letter)

February 5, 2015

Nooshin Movassaghi
 Policy Analyst
 California State Board of Optometry
 2450 Del Paso Road, Suite 105
 Sacramento, CA 95834

RE: Business & Professions Code 3070.2 - Mobile facilities legislation

Dear Ms. Movassaghi:

This letter is in response to the State Board of Optometry's legislative proposal regarding Business & Professions Code section 3070.2

Below is an outline of the California Optometric Association's (COA's) suggestions that would provide clarity and address our concerns with the legislative proposal:

- Ensure that patients receive the same standard of care in mobile facilities as provided in brick and mortar facilities.
- Recognize portable equipment, not strictly vehicles or trailers, as a "mobile facility."
- Clarify that if the mobile facility does not have the capacity for specialized testing as indicated in the eye examination of the patient, that a referral can be made to a facility or provider who can perform the needed testing.
- Protect the standard of medical record retention by matching the language in section 3007 in the Business & Professions Code.
- Clarify that vehicle facilities that do not have a lift gate or cannot fit a wheelchair can provide equivalent care through portable equipment and still follow ADA standards.
- Specify that current laws related to the employment of an optometrist apply in mobile facilities.

Thank you for your consideration. COA looks forward to working with you regarding this important legislation.

Sincerely,
David Redman, OD
Chair, Legislation and Regulation Committee

D. Discussion and Possible Action to Amend §49455 of the Education Code to Change the Requirement from "Vision Appraisal" to "Comprehensive Eye Exam"

Action Requested:

Staff requests the Board review and approve the public comments added to the Education Code §49455 proposed language (Attachment 5). If the revised language is approved, please direct staff to move forward with the legislative process.

Background:

With the assistance of Board members Rachel Michelin and Dr. Glenn Kawaguchi, OD, Senator Holly Mitchell agreed to author this bill. Senator Mitchell is on the Senate Health Committee. Staff received public comments from the COA (Attachment 6).

Ms. Movassaghi thanked Ms. Michelin and Dr. Kawaguchi for helping to secure an author. Ms. Movassaghi received word from the Senator's office that the bill has been sent to the committee as backed. There were no changes to the language. Attachment 5 reflects the language that has been submitted to the committee and approved by the Office of Legislative Counsel. Public comment in Attachment 6 from COA was the only public comment.

Dr. Arredondo asked if it was only informational. Ms. Movassaghi replied it was informational only to bring forth the public comments from COA and provide an update from the author's office. Ms. Michelin asked if it had a bill number. Ms. Movassaghi stated she has not received one. Ms. Michelin asked if the Senator was getting co-authors. Ms. Movassaghi stated she wasn't aware, but would follow-up and report t the next meeting. Ms. Michelin stated that she spoke with the Senator and thinks she could get a lot of bipartisan support.

Ms. Maggio stated staff met with COA. They talked about COA's bill amendments (Attachment 6) and additional suggestions, which Ms. Kristine Shultz would present.

Dr. Arredondo introduced Kristine Shultz, who stated that COA supports the proposal as it reads today. Their comments were based on past experience running the legislation regarding loss of existing screenings being administered by school nurses and teachers. In the past there was support around a model that would keep the current vision screening in place. Children go through that process only if they don't submit proof of an exam by an optometrist or ophthalmologist. This is done in other states that mandate this process.

Ms. Shultz went on to say the provision prohibiting a school from denying admission will require eye examinations be performed by an optometrist, ophthalmologist, or a physician. She commented that was not appropriate as physicians don't have experience providing this type of care and wouldn't have the appropriate equipment in their offices.

Ms. Maggio asked if COA will be providing the Board with language. Ms. Shultz replied, yes. Dr. Arredondo stated there would be more information submitted at the next Board meeting.

Ms. Michelin stated she is in agreement with Ms. Shultz yet was supportive of including the physician. Dr. Kawaguchi and she discussed comprehensive eye exam be inserted in the language because there would likely be less opposition from other associations. She supports children receiving vision screenings at school, beginning with first grade, if the comprehensive eye exam language will not be included in the regulation.

Dr. Chawla opined COA wouldn't want physicians doing the eye exams because they are not trained and don't have the knowledge. She noted that, as a consumer protection agency, the Board must to consider who is qualified to do the eye exam.

Agenda Item 4, Attachment 5

49455.

(a) (1) During the kindergarten year, or upon first enrollment or entry in a California school district, of a pupil at an elementary school, and at least every second year thereafter until the pupil has completed eighth grade, the pupil's vision shall be examined by an authorized person under Section 49452a physician, optometrist, or ophthalmologist. This examination shall be consistent with the most current standard, policy or guideline adopted by the American Academy of Pediatrics, the American Academy of Ophthalmology or the American Optometric Association. This examination shall include tests for visual acuity, binocular function, as well as refraction and eye health evaluations. The parent or guardian of the pupil shall provide results of the examination to the school.

(b) The examination shall include tests for visual acuity, including near vision, and color vision; however, color vision shall be examined once at enrollment and the results of the examination shall be entered in the health record of the pupil.

(e) Continual and regular observation of the pupil's eyes, appearance, behavior, visual performance, and perception that may indicate vision difficulties shall be done by the school nurse and the classroom teacher.

(f) This section shall not apply to a pupil whose parents or guardian file with the principal of the school in which the pupil is enrolling a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

(g) The department shall adopt regulation to implement this section, including training requirements and provide participation data.

(Amended by Stats. 2014, Ch. 925, Sec. 2.5. Effective January 1, 2015.)

Agenda Item 4, Attachment 6 (letter)

February 5, 2015

Nooshin Movassaghi
Policy Analyst
California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

RE: Education Code 49455 – Comprehensive Eye Examinations for Pupils

Dear Ms. Movassaghi:

This letter is in response to the State Board of Optometry's legislative proposal regarding comprehensive eye examinations for school-aged children.

Vision screenings in a pediatrician's office or at school screenings are inadequate and often unable to detect vision or binocular eye teaming problems. **For every 100 children requiring eye exam and glasses to succeed in school, 73 of these 100 children will pass a vision screening, and be sent back to class without needed glasses.** Thus, it is the position of the California Optometric Association (COA) that all children should have a comprehensive eye exam provided by an optometrist or ophthalmologist prior to starting school.

Below is an outline of our suggestions that would provide clarity and address our concerns with the legislative proposal:

- The eye exam requirement should be in addition to the current vision screening process at the schools. Some kids will fall through the cracks and there needs to be a safety net for those who don't get an eye exam. The screening should only be required if someone does not show proof of an eye exam.
- Prohibit a school from denying admission to a child or taking any other adverse action against a child because of his or her parent's or guardian's failure to obtain a vision examination for the child.
- Ensure that the eye examination is performed by an optometrist or ophthalmologist.
- Require the examination to include, at a minimum, tests for visual acuity, binocular function, refractive error and an eye health evaluation.

Thank you for your consideration. COA looks forward to working with you on this important legislation.
Sincerely,

David Redman, OD
Chair, Legislation and Regulation Committee

E. Discussion and Possible Action to Amend Business and Professions Code §3152, Fee Schedule

Action Requested:

Staff requests the Board review and discuss the BPC §3152 proposed language (Attachment 7). If approved, please direct staff to move forward with the legislative process.

Background:

The Board discussed the proposed changes to BPC §3152 at its November 21, 2014, Board Meeting. Staff was directed to research and finalize the language.

Ms. Maggio stated fee bills are difficult to get through because the legislature is not open to increasing fees unless the Board is in the red, which we are not. She wanted to speak with the Board members about the provision the Board does need that is in the fee bill. Most of it is clean-up or clarification and was discussed. Staff is prorating an initial license fee. The Board doesn't have an Initial License Fee. It does have an Application Fee, whereby the applicant pays a fee when they submit their licensure documentation. Once they meet the criteria and graduate, the Board issues an initial license. The license can be valid anywhere from a few months to almost two years, depending upon their birth date and when their license was first issued. Every optometrist's license expires on their birth month, depending upon whether it is an odd or even year.

Ms. Maggio stated some Boards offer an Initial License Fee and prorate the fee, which gets the applicants close to a two year license. The Board has received pushback because it is a new fee. According to the Board's Licensing Unit, students prefer the old system. Ms. Maggio says she's fine with not going forward. She thinks it will hold up anything the Board really needs. She pointed out that the Board does not have a delinquency fee for the Retired License with Volunteer Service Designation. This is noted in (r) in the amendment. All the other licenses that the Board renews have a delinquency fee. This would be considered a new fee.

Mr. Kysella asked if the section on Retired Licensees could be removed and added to the legislation for 3151.1 (Retired Volunteer Service Designation). Ms. Movassaghi said it's difficult to find an author when the bill is tied to a fee, but she will try.

Mr. Santiago stated it is possible because the Board has one delinquency fee that is not included in the fee schedule there is no legal impediment to placing the fee in 3152. Once the fee is approved in section 3151.1, an omnibus can be done to transfer it into 3152 because it's a non-substantive change.

Ms. Movassaghi said 3152(r) reads the delinquency fee for biennial renewal of a retired license with volunteer service designation shall not exceed twenty-five dollars (\$25). Anything in red will be deleted and that sentence will be moved to section 3151.1 as F.

Bill Kysella moved to add (r) from section 3152 to section 3151.1 as section F to stand alone as its own sentence. Donna Burke seconded. The Board voted: 9-Aye; 0-No; 1-Abstention; 1-Absent (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin			X		
Dr. Turetsky	X				

§3152. FEE SCHEDULE

The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

(a) The fee for the application and determining the candidate's eligibility to take the Board's jurisprudence examination shall not exceed two hundred and seventy-five dollars (\$275).

- (b) The fee for the application and determining a foreign graduate's eligibility for sponsorship to take any section of the licensing examinations shall not exceed two hundred dollars (\$275).
- (c) The fee for an initial license. This fee will be prorated and established according to the month of issuance, which is the month the fee is received by the Board and expiration date, which is midnight on the last day of the licensee holder's birth month following original issuance of the license. The fee for an initial license shall be charged at an amount equal to the renewal fee in effect at the time the license is issued, except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect at the time the license is issued. The board may provide by regulation the waiver or refund of the fee for an initial license if the license is issued less than 45 days before the date on which it will expire.
- (d) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).
- (e) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).
- (f) The fee for a branch office license shall not exceed seventy-five dollars (\$75).
- (g) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).
- (h) The penalty for failure to pay the annual delinquency fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).
- (i) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (j) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (k) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (l) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (m) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (n) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (o) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (p) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (q) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty one hundred dollars (\$5100).
- (r) The delinquency fee for biennial renewal of a retired license with volunteer service designation shall not exceed twenty-five dollars (\$25).
- (s) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).
- (t) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).
- (u) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).
- (v) The fee for issuance of a license or a change of name authorized by law of a person holding a license, or change of information under this chapter shall not exceed twenty-five dollars (\$25)
- (w) The fee for the replacement of any license, or renewal thereof that must be reissued because the license is lost or destroyed shall not exceed fifty dollars (\$50).
- (x) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (y) The fee for a letter of good standing or verification of licensure shall not exceed twenty-five dollars (\$25).

4. Agenda Item 5 - Discussion and Possible Action Regarding Business and Professions Code §655, Prohibition of Business Arrangements Between Optometrists and Opticians or Persons in Optical Product Business

A. Update Regarding Meeting with Assembly Member Bonilla

On February 10, 2015, Mona Maggio, and Board Members Dr. David Turetsky, O.D. and Donna Burke met with Assemblymember Susan Bonilla and Le Ondra Clark Harvey, Ph.D., Chief Consultant to the Assembly Committee on Business and Professions.

Acknowledging that Business and Professions Code (BPC) §655 and §2556 were deemed constitutional and that the stakeholder meetings held January 7th and 20th were unproductive, Assemblymember Bonilla requested the following information from the Board:

- The Board's position on BPC §655
- The Staff's difficulties, if any, in enforcing current law; and
- The Board's opinion on what business models could work in California.
- The closure of the negotiations between the Office of the Attorney General and the Optical Retailers.

After reiterating they could not speak for the Board and all questions would ultimately have to be presented to the Board, Ms. Maggio explained difficulties staff is currently facing in regards to regulating and enforcing BPC §655. Those difficulties included having two separate regulatory Boards involved and the lack of inspection authority.

B. Possible Legislative Changes Impacting Section 655

The Board has yet to receive proposed language from the Optical Retailers.

Ms. Maggio responded to each of the bullet points in A.

The Board has not taken a position on BCP655.

Staff has shared their experience with enforcing 655 in the past. The main difficulty is the laws that oversee the individuals that work for the Optical Retailers and the Registered Dispensing Opticians (RDO) are regulated by the Medical Board. Enforcing this law is difficult because when someone files a complaint they aren't sure who they are complaining about or who they need to complain about so the Enforcement Unit does an investigation on the whole complaint. Staff focuses on health for vision services whereas the Medical Board is responsible for physicians and surgeons; the latter have in statute priorities for enforcement and their focus is on physicians and surgeons, not RDO's. Ms. Maggio reminded the Assemblymember that the Board must make the decision on what business models could work in California, staff cannot provide that information. Staff is waiting to have final closure on the negotiations between the Office of the Attorney General and the optical retailers. Assemblymember Bonilla asked if it was possible for the Board to sponsor legislation. Staff knows the optical retailers are proposing legislation, but don't know if it's to repeal 655 and 2556 or if it's going to be a workaround or if it will be open for all models or just specific models. The purpose of bringing this to the Board is to ask questions so staff has direction on what the Board wants to do.

Ms. Maggio introduced Linda Schneider, Senior Assistant Attorney General. She spoke about the history of the litigation. There were two different cases, People vs. Cole with an enforcement action taken by the Attorney General's (AG) office against Cole National and Perle Vision. The case was resolved in 2007. At the same time that case was pending, the optical industry filed a constitutional challenge against the AG's Office and the Department of Consumer Affairs. They sought to have the statutes that were being prosecuted in People vs. Cole overturned as unconstitutional. In the settlement agreement, a settlement term said upon the constitutional litigation in NAOO being finally concluded that representatives from the AG's office would meet with the defendants in the People vs. Cole case to confer about their business structure and whether changes should be made to comply with sections 655 and 2556. The State agreed no enforcement action would be taken against those defendants for a period of six months following the conclusion of NAOO, the constitutional challenge.

The constitutional challenge and NAOO was resolved February 19, 2013, when the California Supreme Court declined certiorari in a petition filed by the optical industry seeking final review. That was because the statutes had been upheld through the Ninth Circuit Court of Appeal on two different appeals. Finally resolving in the State's favor, the statutes were found to be constitutional. The AG's office wanted to start exploring business model issues with the defendants. However, the Cole defendants had changed. Cole National was purchased by Luxottica. The Perle Vision stores were rebranded as Lenscrafters stores. The original defendants became Lenscrafters and its companion,

EyeExam of California. The AG's office has met and conferred with them according to the agreement and met and conferred with other optical industry retailers that were interested in participating in the process. It was handled as a confidential investigation by the AG's office. The optical retailers that participated were very forthcoming about their business models and how they were doing business in California. They provided a great deal of information that has remained confidential.

The process is now concluded and what that means for the Board of Optometry is the statutes that couldn't be enforced can now be enforced.

Ms. Schneider went on to provide concepts of what 655 is all about. In her view the statute is about preventing any detriment to the healthcare of the consumer by preventing any business relationships between optometrists, registered dispensing opticians and optical supply companies. The aim is to ensure that patients have a good comprehensive eye examination. Otherwise, the patient may be harmed by something in their health that is not revealed by the optometrist because the optometrist is not thorough enough in the examination. One of the aims of the statute is to ensure optometrists have independent clinical judgment to provide the best comprehensive eye exam.

The second aim of the statute, also to protect consumers, is on an economic level. It's to prevent over prescribing. There must be a separation between the optometrist and the optical retailers and optical supply companies. The purpose is to prevent any control of those companies over the optometrist. The optometrist can remain autonomous and can make clinical judgments without undue pressures by companies that are in the business of selling items.

The law prohibits business and finance relationships. Relationships in business are usually contract, lease or employment. Specifically, 655 says it's directed at landlord/tenant and profit sharing relationships, co-ownership, membership and proprietary interest relationships. The holding of a previous case in 1984 in interpreting 655 is important for the Board to know. The language of 655 is to be broadly interpreted.

Ms. Schneider stated that she is often asked whether a legal co-location business model exists. She said it does, but it must be something that doesn't have any control by the RDO and/or the optical company over the optometrist. Current law, and the regulation of the Board of Optometry, section 1514, set forth a model that is permissible under California law. It allows co-location but there must be no lease or contract relationship that directly or indirectly is between the optometrist and the RDO or optical supplier. Why don't optical retailers use the permissible model? She believes it is the control issue.

Dr. Lawenda commented 17 states have the co-location model. He asked whether there is any difference between 655 and the law in those other states. Ms. Schneider said some states don't have laws addressing this issue and other states address the issue by allowing some form of relationship between retailers and optometrists.

Ms. Brandvein asked about the status of the proposed language from the retailers and if the Board can re-do it? Ms. Maggio stated staff has checked with the Legislature every day and with DCA's Legislative Analyst, who has spoken with COA, and the proposed language has not been released yet. At the last Board meeting Catherine Scott was present and she said it would be released before the first committee meeting which was March 19, 2015. Once the language is presented, and the Board has a copy of it, Ms. Maggio will distribute it.

Ms. Scott stated NAOO will introduce a spot bill this week. The bill will likely not be heard until April.

Dr. Chawla questioned why the Board isn't just working with the Medical Board to move forward.

Ms. Burke asked if there is a state that mirrors what we are allowed to do in California. Ms. Schneider replied there are a few states that have very restrictive laws like California.

Mr. Kysella stated 655 makes sense for all of the reasons Ms. Schneider stated, the long history, and the Board's number one responsibility of protecting the consumer. He asked why the AG's office can prosecute an optometrist working with an RDO, but not prosecute the RDO.

Ms. Schneider responded the Board of Optometry doesn't have jurisdiction over the RDO so the Board doesn't have authority to enforce section 2556. The Medical Board has authority to enforce 2556 for RDO's. It could be prosecuted by a District Attorney because it is a misdemeanor. Theoretically, if there was a conflict, the Attorney General's office could prosecute too. She also shared that the optometrist is part of the RDO, optical company relationship. In order to discern a violation on behalf of the optometrist, the Board must investigate the entire business model of the optical retailer to find out if it is a relationship that is prohibited under 655.

Mr. Kysella stated information on negotiations is not between the Board and the optical retailers, it's between the AG's office. He would like to formally ask that those thoughts be passed on to the Assemblymember as well.

Dr. Arredondo commented his perspective is to let the Board deal with the optometrists and the AG's Office should finish their conclusions with the optical shops. He asked the Board for their thoughts.

Dr. Turetsky commented the Board should warn licensees that there is a potential problem and enforcement is a possible consequence. He would like to see a newsletter sent out that is like the one sent in August 2013 that was immediately pulled. He'd like to see something like that published to inform people of the proposed legislation.

Ms. Brandvein suggested the Board table the agenda item until the legislation is introduced.

Dr. Kawaguchi reminded the Board how many lives the Board's words could affect because it's not just about the practitioners; it's also about the millions of patients these optometrists are servicing. He cautioned that the Board could scare practitioners so much that there could be a decrease in services. He's not disagreeing with what was discussed at the last meeting he doesn't think it's appropriate for the Board to consider any action. He thinks it's appropriate to continue on the path of understanding and education.

Ms. Burke disagreed with tabling the legislation. She stated BCP 655 is legal and enforceable and encouraged the Board to introduce legislation.

Board members and staff discussed ways to introduce the law to optometrists working in co-location environments. Suggestions included sending letters to optometrists to come into compliance, give a specific date to come into compliance before enforcement would begin, reinforce what the law states constitutionally and what practices can/cannot be followed.

Ms. Maggio said staff will do a notice and start taking disciplinary action against the doctors who are working in these environments if that is the Board's directive. Another suggestion would be to propose legislation that gives the retailers a period of time to come into compliance with the law.

Ms. Brandvein stated she has an issue with having a timeframe of when the Board is going to uphold a regulation or law. She suggested the step to take: make a motion relative to the question, which is, sponsoring a bill offered. Board members stated there is no language. Ms. Burke asked why the Board isn't proposing language.

Ms. Maggio said the law is constitutional and we enforce the law that is constitutional. It's not up to us to change it, it's up to the industry who wants it changed because they need the optometrists in the office. She said without optometrists writing prescriptions, they cannot conduct business. We will enforce it against optometrists, but the Medical Board enforces for retailers. Her belief is the Board should have the RDO Program and inspection authority.

Mr. Santiago stated that the Board has enforcement discretion of when they want to file disciplinary action against its licensees. In this particular case, the Board would want the Executive Officer to give some notice to licensees about enforcement because this is an unusual circumstance. There was 10 years of litigation and there may be confusion in the public and with licensees about the status. His recommendation would be to have the EO exert that enforcement discretion to get the word out and it's clear that the 655 and 2556 are constitutional and everyone works to be compliant and contact the Board for questions. After a reasonable time passes have the EO start filing enforcement actions.

Dr. Kawaguchi asked how we are going to send out a global message when we haven't investigated scenarios. Ms. Maggio responded that they work at a co-location environment and it's a violation of law.

Ms. Schneider agrees with Dr. Kawaguchi's comment because there are legal co-location models that exist in California. Determining if a co-location is legal depends on the paperwork involved, i.e., the lease, contract, how it is set up. We can't assume that all situations are prohibited by law. She agreed that informing the licensees is a good idea.

Dr. Turetsky stated he doesn't think it's the Board's responsibility to determine for optometrists which business model is legal. They should discuss it with their legal counsel.

Before the vote, Dr. Arredondo asked if there was any discussion regarding the motion on the floor.

Ms. Burke questioned why the board would take that action as the Public Relations Committee worked on the original newsletter so a message already exists.

Mr. Kysella suggested the committee review the original document and make any relevant changes and add this to the April 23 – 24, 2015 agenda to discuss. This will give the new members an opportunity to review the newsletter. It will also give the Department of Consumer Affairs and others that opposed it an opportunity to discuss it with the Board.

Ms. Maggio said the Board will review the retailers' language and the letter at the April board meeting. She will send the original document to Dr. Chawla and Mr. Kim.

Catherine Scott, Capitol Partners, representing LensCrafters, stated that the 25%-30% of the optometrists that are employed in co-location environments currently provide approximately two million services to people in California. Forty to sixty percent offer after hours and weekends and these are services that are valuable to Californians. She would like the Board to consider what enforcement action will do to approximately 2,000 optometrists and the services they provide. The industry would like to ask the policymakers in California if they would like to be like the 49 other states that permit more models, such as 49 allow either exclusively or implicitly franchising, 47 allow subleasing and more than 15 allow direct employment. The stakeholder process did vet the issues for the stakeholders, which they heard was a valuable process. She has concerns about the process being labeled as unproductive; they have not had the stakeholders in a room on this issue for three years. It was important to the industry to hear from the stakeholders. They value that and will present legislation to the Board and stakeholders in the next few weeks for consideration.

Kimberly Kirchmeyer, Executive Director of the Medical Board of California, stated her comments are not specific to the actual motion on the floor, but is specific to the discussion. She spoke of the priorities in the Medical Board's section of code pertaining to physicians and surgeons. When they are looking at physician and surgeon complaints they have to make top priorities. The RDO Program is separate and their code section is in a different section than the Medical Practice Act for Physicians and the priorities don't pertain to those. In the past and prior to the lawsuit, they have investigated and taken action on these cases. At the Medical Board's January Board meeting a decision was made to not have further discussion on moving the RDO Program to the Board of Optometry. The Medical Board will take action where appropriate when the law is being violated.

Claire Yazigi, legal counsel, restated the motion. She also gave options to the members for how they can submit their comments to the Committee without violating the Public Meetings Act. Option one: solicit comments from individual Board members, but not have conversations in writing between them and take the comments under consideration and exercise discretion in printing the document. The other options are holding a Special Meeting before April or discussing it at the April meeting.

Madhu Chawla moved to have the Public Relations Committee, Dr. Chawla and Mr. Kim, work on the message or revisit the original document and send it to the individual Board members for feedback.

Addendum to the motion: Based on the feedback received, it's within the discretion of the Committee to perhaps schedule a teleconference meeting.

Alexander Kim seconded. The Board voted: 8-Aye; 1-No; 0-Abstention; 1-Absent (8-1) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi		X			
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin*				*	
Dr. Turetsky	X				

*Ms. Michelin was disconnected from the teleconference therefore, she could not vote.

Mr. Kysella moved to adjourn the meeting. Dr. Chawla seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin*				*	
Dr. Turetsky	X				

*Ms. Michelin was disconnected from the teleconference therefore, she could not vote.

The meeting was adjourned at 12:55 pm.