

**Board of Optometry**

2450 Del Paso Road, Suite 105, Sacramento, CA 95834

P: (916) 575-7170 F: (916) 575-7292 www.optometry.ca.gov



QUARTERLY BOARD MEETING
ACTION MINUTES

January 26, 2017
STRATEGIC PLANNING SESSION ONLY
Department of Consumer Affairs and
HQ2 – Ruby Room
1747 North Market Boulevard
Sacramento, CA 95834

January 27, 2017
Department of Consumer Affairs
HQ1 – Hearing Room
1625 North Market Boulevard
Sacramento, CA 95834

Members Present	Staff Present
Madhu Chawla, O.D., President	Jessica Siefertman, Executive Officer
Donna Burke, Public Member, Vice President	Rob Stephanopoulos, Assistant Executive Officer
Lillian Wang, O.D., Secretary	Joanne Stacy, Policy Analyst
Cyd Brandvein, Public Member	Charles McGirt, Lead Licensing Analyst
Martha Garcia, CLD, SLD	Cheree Kimball, Enforcement Lead
Glenn Kawaguchi, O.D.	Brad Garding, Enforcement Technician
Debra McIntyre, O.D.	Kurt Heppler, Supervising Legal Counsel
Rachel Michelin, Public Member	
Mark Morodomi, JD, Public Member	
Maria Salazar Sperber, JD, Public Member	Guest List
David Turetsky, O.D.	On File

January 26, 2017**8:30 a.m.****FULL BOARD OPEN SESSION****1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

2. 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)]

No action was taken on this agenda item.

3. Strategic Planning Session – Discussion and Consideration of Strategic Plan

Board members had discussions of the following topics to help identify new strategic goals and objectives for the upcoming strategic planning period:

- Examinations
- Laws and regulations
- Enforcement
- Outreach
- Organizational effectiveness

Next the Department of Consumer Affairs (DCA) SOLID Planning Solutions team will provide a typed copy to the Executive Officer and each Board Member for fine tuning. During the April 2017 meeting the Board will vote to approve the strategic plan.

No action was taken on this agenda item.

4. Recess

January 27, 2017

9:00 a.m.

FULL BOARD OPEN SESSION

5. Call to Order/Roll and Establishment of a Quorum

Board President, Madhu Chawla, O.D. called roll and a quorum was established.

6. 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 Section 11125, 11125.7(a)]

Public Member, Cyd Brandvein commented that committee assignments were given out at the last meeting but were not announced nor discussed; therefore, they are not on record; not reflected in the minutes. Board President, Madhu Chawla assured they will be placed on the next agenda.

7. President's Report

A. Welcome and Introductions

Executive Officer, Jessica Siefertman introduced herself and invited staff to introduce themselves.

B. 2017 Board Meeting Dates and Locations

No action was taken on this agenda item.

8. Approval of Board Meeting Minutes

A. September 23, 2016

B. October 21, 2016

C. November 4, 2016

D. November 21, 2016

The October 21, 2016 and November 4, 2016 Board Meeting Minutes will be reviewed for errors/omissions and brought back to the next meeting.

Rachel Michelin moved to post all audible meetings to the Board's website in addition to what is already posted. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				

Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Rachel Michelin moved to approve the September 23, 2016 Board Meeting Minutes. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Rachel Michelin moved to approve the November 21, 2016 Board Meeting Minutes. Lillian Wang seconded. The Board voted 9-Aye; 2-Abstention and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke			X		
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi			X		
Dr. Turetsky	X				
Dr. Wang	X				

- Update from the Department of Consumer Affairs, Which May Include Updates Pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

Mr. Jon Burke, Manager of the Department of Consumer Affairs, Board & Bureau Relations team presented an update of activities; some of which are as follows:

- On January 10, 2017 Governor Brown released his proposed 2017/2018 budget.
- On January 24, 2017 Governor Brown delivered the State of the State Address.
- On January 13, 2017 Governor Brown appointed Ms. Jolie Onodera as Deputy Secretary of Legislation at the California Business, Consumer Services and Housing Agency.
- Several Department of Consumer Affairs Boards and Bureaus are scheduled for Sunset Review Hearing in February and March. The Board of Optometry's Sunset Review Hearing is scheduled for February 27, 2017.
- Since the launch of BreEZe in late January 2016, 49% of optometrist's renewals have been submitted via the online portal. 81% of optometrist's exam applications have come in online. Those who have chosen to submit their applications online have seen a dramatically quicker turn-around time. Of the renewals submitted online, 88% were processed in one day or less. Comparatively, those who mail in their applications typically have them processed within one to two weeks providing the application is complete.
- The Office of Information Services (OIS) maintenance and operations team is managing the effort to move the Registered Dispensing Opticians (RDO) program from the Medical Board into the Board of Optometry's BreEZe domain.
- Board Members are required to complete orientation training within one year of appointment and reappointment to the Board. Also required are the online Ethics training, Sexual Harassment Prevention training, and Defensive Driving training. 2017 is a mandatory Sexual Harassment Prevention training year for the Department of Consumer Affairs (DCA). All employees and Board Members are required to complete this training even if it was completed last year.
- DCAs Annual Report is now available on DCA's website.

Public Member, Mark Morodomi requested that the Governor's budget be sent to the Board Members.

10. Executive Officer's Report

Ms. Siefertman reported on the following:

A. BreEZe

Ms. Siefertman announced a shout out to staff members, Kellie Flores and Jessica Swan for their amazing work with the RDO program.

B. Budget

Budget Manager, Marina O'Connor provided a quick overview of the Board's budget process, fund condition and expenditure reports. The Board's budget is in a healthy status.

C. Personnel

Ms. Siefertman reported on Personnel changes. Additionally, she announced that Policy Analyst, Joanne Stacy has been recruited to L.A. Care Health Plan and will be leaving the Board.

D. Examination and Licensing Programs

Lead Licensing Analyst, Charles McGirt provided an update on Subject Matter Experts and release/receipt of NBEO scores and bottlenecks in the process; Also, bottlenecks in the process of receiving applicant's transcripts.

E. Enforcement Program

Cheree Kimball reported on the Enforcement Unit. The Enforcement Unit is fully staffed for the first time in years. Staff is working with the Attorney General's Office on streamlining the case load process.

Ms. Kimball gave a shout-out to Enforcement Technician, Matt McKinney who came to the Board in November and has closed 96 cases as of the end of December. Mr. McKinney will be picking up the CE Audit Program in the coming months. Ms. Kimball gave a shout-out to Ms. Flores who is working on getting the RDO program over to Enforcement in BreEZe. Ms. Kimball gave a shout-out to Mr. Garding who has been doing the clerical and support work for the Enforcement program. His support has been essential to keeping things moving in during the last few years.

11. Bagley Keene-Open Meetings Act, Ethics and Conflict of Interest Training Summary by Legal Counsel

Supervising Legal Counsel, Kurt Heppler provided an explanation of the Bagley Keene-Open Meetings Act for Members and the public. His explanation is summarized as follows:

- The public has the right to attend and record the open session period of Board meetings (without being disruptive).
- The public has the right to comment on Board actions.
- The public has the right to copy and inspect records.
- A historical record of meetings must be kept. Webcasts of meetings are being added to the internet with increasing frequency.
- If an item is not on the agenda, the Board cannot discuss nor take action on it.
- Notice; must be posted at least 10 days in advance of the meeting date with the time and location of the meeting. Committee and Sub-Committee meetings must be noticed and open to the public. The exception is an Advisory Committee with less than three persons without any delegated authority.
- Every vote needs to be recorded.
- Locations for teleconference meetings must be specified, and these locations must be accessible to the public and ADA-compliant.
- Business is conducted in open session unless close session is authorized by law; reasons for closed session are: Matters under the Administrative Procedures Act, examinations, and Executive Office Personnel matters; not because an item is controversial or embarrassing.
- Board decisions are made at Board meetings. The Open Meetings Act (OMA) permits contacts or communications between a member of a state body and one other person.
- Board Members are required to complete a conflict of interest questionnaire annually.

There were no comments from the public.

12. Update, Discussion and Possible Action on Recommendations Regarding California Laws and Regulations Examination Frequency

Administration Chief for the Office of Professional Examination Services (OPES), Heidi Lincer provided an overview of a memo that was provided to the Members.

At the Board's request, OPES analyzed the possibility of increasing the number of examinations administered per year in order to reduce the amount of time required before a candidate who failed can retake the examination.

In light of the current pass rate and the added cost of increasing the number of examinations per year, OPES believes it is not feasible at this time to increase the number of examinations offered per year. The cost outweighs the benefits.

Should the Board decide to increase the number of examination help per year, the change would take time to build up the question bank to a level that could support the proposed frequency. In order to produce an examination that maintains adequate testing standard and is legally defensible, the Board would need to increase Subject Matter Expert (SME) attendance to 6 to 8 SMEs for each workshop on a consistent basis. If SME attendance improves and the question bank is adequately increased, then the additional forms per year could be developed. This process would take a minimum of one year.

Donna Burke moved to accept OPES recommendation and continue to monitor. Glenn Kawaguchi seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

13. Update in 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry

Ms. Stacy provided legislative updates on the following bills:

A. SB 482 (Lara) Controlled Substances: CURES Database

This bill will require some regulatory change from the Board

B. SB 622 (Hernandez): Optometry

This bill (Scope bill) will be showing up again

14. Updates, Discussion, and Possible Action on Legislative Proposal

A. Children's Vision; Education Code § 49455

Ms. Stacy reported that an author has been found for this bill. Assemblymember, Autumn Burke has agreed to be the author.

Ms. Siefertman reported that should the Board decide to move forward with the remaining proposals, they can be requested to become part of the Sunset Bill if they are non-controversial which most of them are. The Board can also attempt to put them into an omnibus bill.

B. Inspection Authority; Business and Professions Code (BPC) § 3030

Ms. Siefertman clarified that this bill is for clean-up language to correct ambiguity.

Board Members and legal counsel discussed and questioned the language of BPC § 3030 regarding establishing the dividing line between when optometry and ophthalmology is being practiced and what the language is really saying.

Mark Morodomi moved to accept the legislative proposal and delegate authority to the E.O. and Legal Counsel to streamline as long as the intent of the proposal is solved. Lillian Wang seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

C. Unlicensed Practice; BPC § 3040

Ms. Siefertman clarified that this is merely a technical request regarding clean-up language.

Lillian Wang moved to support a legislative proposal to amend BPC 3040 to the language recommended by staff. Donna Burke seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				

Dr. Turetsky	X			
Dr. Wang	X			

D. NPDB Continuous Query; Eligibility for Licensure; BPC § 3046

Ms. Sieferman explained that staff is currently enrolling all of its out-of-state applicants into the National Practitioners Databank (NPDB) to determine if applicants have been disciplined in any state for which they hold a license. The cost is \$2 per year per licensee. The cost may be added to the license renewal fee.

Donna Burke moved to support a legislative proposal to amend existing statute in order to authorize the Board to enroll all applicants and licensees into the National Practitioner Databank Continuous Query system. David Turetsky seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

E. License Barriers for Out-of-State Licensed Optometrists; BPC § 3057

Ms. Sieferman reported that this legislation is an attempt to continuously remove unnecessary barriers for licensure while still maintaining consumer protection. One issue for consideration is that any optometrist who has ever been suspended or revoked in another state they are not eligible to become licensed in California. Ms. Sieferman does not believe that was the intent of the law. The concern is regarding the Board’s rehabilitation criteria. A person may have been disciplined in another state and subsequently become completely rehabilitated. However, the way the language is currently written, it provides no discretion to the Board to offer that person a license.

Dr. Kawaguchi wishes to ensure that the Board has the NPDB up prior to language changes being made. Ms. Sieferman ensured that although the legislative process may go forward, a delay in the effective date can be made to ensure that timing provides for the NPDB to be complete before the changes are implemented.

Donna Burke moved to support a legislative proposal to strike BPC § 3057(a)(6) with a delayed implementation and stipulation that BPC 3046 is implemented first. Lillian Wang seconded. The Board voted (6-Aye, 5-No) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
--------	-----	----	---------	--------	---------

Dr. Chawla	X				
Ms. Brandvein		X			
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre		X			
Mr. Morodomi		X			
Ms. Sperber	X				
Dr. Kawaguchi		X			
Dr. Turetsky		X			
Dr. Wang	X				

F. Foreign Graduates Pathways; Eligibility for Examinations; BPC § 3057.5

Ms. Siefertman and the Foreign Graduate Workgroup, Drs. Chawla and Wang provided updates. The Board approved sponsoring legislation to create a pathway for licensure to foreign graduates in November 2014. However, SB 496 died upon receiving strong opposition from the Southern California College of Optometry (SCCO) and the California Optometric Association (COA). The concern is because there are very different levels of education and skills training amongst countries.

There currently exists a pathway for foreign graduates through an Advanced Standing Program which customizes a curriculum based on the foreign graduate’s transcripts. Three advanced standing programs exist in New England, New York, and Pennsylvania, however there are no such programs on the West Coast. California accredited schools believe there is not large enough of a demand for the program. Nevertheless, Western University College of Optometry is interested in administering such a program with input from SCCO and UC Berkeley.

Glenn Kawaguchi moved to direct staff to evaluate the accreditation process as it relates to Advanced Standing Programs implementation and report back to the Board. Debra McIntyre seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Lillian Wang moved to support a legislative proposal to repeal BPC 3057.5. Madhu Chawla seconded. The Board voted unanimously (11-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				

Dr. Turetsky	X				
Dr. Wang	X				

G. RDO Program’s Registration Expiration and Renewal Authority; BPC § 2420 and 2423

Ms. Sieferman explained that this proposal is purely a technical change to move the renewal section to the applicable Registered Dispensing Optician (RDO) statutes.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Donna Burke moved to support a legislative proposal to move the renewal section to the applicable RDO statutes. Madhu Chawla seconded. The Board voted unanimously (11-0) and the motion passed.

15. Update on Rulemaking Calendar and Possible Action Regarding Regulations Impacting the Practice of Optometry

Ms. Stacy provided an update on the following regulations:

A. Amendment to California Code of Regulations (CCR) § 1582 Unprofessional Conduct And Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval

This regulation was approved and will go into effect on April 1, 2017.

B. Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1, Rev. 7-09, Form OLA-2, Rev. 11/07, and Form LBC-4, rev. 2/07

Ms. Stacy hopes to have this one prepared to go to DCA before she leaves.

C. Amendments to CCR § 1536 Continuing Optometric Education; Purpose and Requirements

This regulation was approved by the Office of Administrative Law and went into effect on January 1, 2017.

D. Amendment to CCR § 1514.1 Co-Location Reporting Requirement

Staff is attempting to prepare and send as quickly as possible.

E. Amendment to CCR § 1502 Delegation of Functions

Status is the same as D.

F. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates

Ms. Siefertman explained that this regulation was brought before the Board in February. If the Board wished to go forward with this, staff wanted to streamline the process and put the application in regulation. However, with the Board’s decision to repeal BPC 3057.5 Members might want to hold off for now and see that happens with that legislation.

G. Amendment to CCR § 1506 Certificates – Posting

Ms. Stacy is working on this currently and hopes to have it to DCA before she leaves.

H. Amendment to CCR § 1523.5 Abandonment of Applications

The status of this regulation is the same as G.

I. Addition to CCR § 1503 Relating to Accreditation of Schools and Colleges of Optometry

The status of this regulation is also the same as G.

16. Update, Discussion, and Possible Action on Implementing SB 482 and SB 1478; Proposed Amendments to California Code of Regulations (CCR) § 1525 Relating to License Renewals

Ms. Stacy reported that SB 482 includes a requirement that the licensing agency determine who holds a DEA number and if they are using CURES. Staff has determined the most efficient method for accomplishing this requirement is to ask licensees during the time of renewal to provide a DEA number if applicable or otherwise to mark “no.”

Staff recommends moving this piece into B of Item 15. Doing so will help this legislation go through the process more efficiently.

Cyd Brandvein moved to join this package with the Agenda Item 15 (B) package then commence the rulemaking process with the first step being to send the necessary documents to the DCA and the State of California Business Consumer Services and Housing Agency for approval; then with that approval commence notice of the regulations. Lillian Wang seconded. The Board voted unanimously (17-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				

Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

17. Update, Discussion, and Possible Action on Implementing AB 1359; Proposed Amendments to CCR § 1568 Relating to Therapeutic Pharmaceutical Agents Certification Requirements

Ms. Stacy explained that when the therapeutic pharmaceutical agents (TPA) certification was created it was split into three time periods with certain requirements according to when optometrists graduated. The new bill eliminates one of the time periods making it simply before or after January 1, 1996. It also eliminates the classroom hours from the requirements as those hours are not readily offered anymore. This bill brings the regulations up to date with the statutes in place. Ms. Stacy added that the TPA Certification application will need revision to reflect the changes.

Cyd Brandvein moved to delegate authority to the Executive Officer to initiate the rulemaking process and circulate the language for the required time period. Glenn Kawaguchi seconded. The Board voted unanimously (17-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Chawla	X				
Ms. Brandvein	X				
Ms. Michelin	X				
Ms. Burke	X				
Ms. Garcia	X				
Dr. McIntyre	X				
Mr. Morodomi	X				
Ms. Sperber	X				
Dr. Kawaguchi	X				
Dr. Turetsky	X				
Dr. Wang	X				

18. Future Agenda Items

Ms. Burke requested that the offer from OPES to provide a presentation be placed on a future agenda.

During the November Board meeting, Members decided to hold a stand-alone meeting specific to mobile clinics. Ms. Michelin would like to see this placed on a future agenda item.

Ms. Michelin requested moving forward the Board vote on future agenda items. Ms. Michelin would like to place this on a future agenda item to discuss.

Dr. Turetsky requested and Ms. Sieferman assured that unlicensed optometric activity falling under online refractions will be placed on the agenda for the upcoming Public Relations Committee.

Ms. Brandvein would like updates from Committee meetings as well as the scheduled dates of upcoming Committee meetings to be added to the President's Report.

FULL BOARD CLOSED SESSION

- 19. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters**
- 20. Pursuant to Government Code Section 11126(a)(a), the Board Will Meet in Closed Session to Conduct an Evaluation of the Executive Officer**

FULL BOARD OPEN SESSION

- 21. Adjournment**