

MEMBERS OF THE BOARD

Mark Morodomi, J.D., President
Glenn Kawaguchi, O.D., Vice President
Debra McIntyre, O.D., Secretary
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David Turetsky, O.D.
Lillian Wang, O.D.
Vacant, Public Member
Vacant, Public Member
Vacant, Licensed Member
Vacant, Licensed Member



**QUARTERLY BOARD MEETING
APPROVED MEETING MINUTES**

This public meeting was held via WebEx Events.

Thursday, August 13, 2020

Members Present	Staff Present
Mark Morodomi, President	Shara Murphy, Executive Officer
Glenn Kawaguchi, Vice President	Cheree Kimball, Assistant Executive Officer
Debra McIntyre, Secretary	Marc Johnson, Policy Analyst
Cyd Brandvein	Natalia Leeper, Licensing Coordinator
David Turetsky, OD	Will Maguire, Legal Counsel
Lillian Wang, OD	Matt McKinney, Enforcement Analyst

Link for the audio of 8/13/20 discussion: Part 1 of 2

<https://www.youtube.com/watch?v=JOsFXhQ8MHq&feature=youtu.be>

Link for the audio of 8/13/20 discussion: Part 2 of 2:

<https://www.youtube.com/watch?v=7fcCjL2drEY&feature=youtu.be>

Full Board Open Session

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

Audio of Discussion: [0:05 / 1:45:58](#)

Dr. McIntyre called the meeting to order at 10:00 a.m. and took roll. All members were present via WebEx events and a quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: [1:15 / 1:45:58](#)

There were no public comments.

Closed Session

3. Pursuant to Government Code Section 11126(c)(3), the Board will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters Before the Board

The Board went into closed session at 10:07 a.m.

Open Session

The Board resumed open session at 11:30 a.m.

4. Strategic Planning Overview (SOLID)

Audio of Discussion: [3:41 / 1:45:58](#)

A. Introductions

B. Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis

C. Environmental Scan

SOLID Strategic Business Analyst and Facilitator Trisha St. Clair and Co-Facilitator and Planning Manager Shirley Jones provided an overview of the strategic planning. Strategic planning is performed because during the Department of Finance audits, they look to ensure that boards have a current strategic plan. Therefore, the Department of Consumer Affairs (DCA) requires that each board maintain a current strategic plan. DCA invited SOLID Planning to organize the process and assist the Board in achieving success. Ms. St. Clair explained the process. After today's planning session the strategic plan will be drafted. Once the final draft is completed, members will vote on it. After it is approved the plan will be posted on the Board's website. Action planning is the final stage in which members break each objective into steps. The steps are assigned to staff.

Ms. St. Clair presented the 2020 Environmental Scan stakeholder survey with 563 participants. Mr. Morodomi noted that there were 563 participants who each had one vote. The voting results were from only three consumers and 544 licensees. Mr. Morodomi finds it interesting that the voting is somewhat skewed particularly when it is external stakeholders; skewed towards licensees as opposed to consumers or members of the public. He asked if this is a correct observation; Ms. St. Clair confirmed that is correct Ms. St. Clair explained that when the Board sends the survey out to the List Serve, it requires people to respond, and staff does not have control over who decides to respond.

There were no public comments.

5. Re-establish Mission, Vision, and Values (SOLID)

Audio of Discussion: [13:11 / 1:45:58](#)

The Board reviewed the mission statement: *“to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practices of Optometry and Opticianry”*.

The Board reviewed the vision statement: “To promote high quality optometric and optical care for the people of California”.

The Board reviewed the values statement, the five core values are equipped with definitions.

There were no public comments.

6. Objective Development (SOLID)

Audio of Discussion: [24:28 / 1:45:58](#)

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

- Licensing
- Examination
- Law and Regulation
- Enforcement
- Outreach
- Board Administration

Staff will work with SOLID to finalize the strategic plan and submit the draft strategic plan to a workgroup of Mr. Morodomi and Dr. Turetsky. The Board will then review and potentially approve the strategic plan at the next Board meeting.

Public comment was made by Adam Bentley. He suggested providing outreach to colleges to bring about a greater awareness of optician registrations. Ms. Murphy replied that this is something staff has been working on and contact was made with the colleges; staff formulated plans for outreach visits but have been hampered by budget and the inability to effectuate any travel. Mr. Morodomi argued that this issue is particularly important. He asked if this can be noted somewhere in the strategic plan so that it is not forgotten. Further, Mr. Bentley asked if would it be possible to open two professional optician spots? President Morodomi noted that the strategic plan would be to decide whether the Board wishes to discuss this in a future meeting. Dr. Turetsky suggested expanding the Board to 13 members and add an additional optician and perhaps an additional public member. Dr. Wang argued that this is already considered one of the largest boards. President Morodomi stated that he is not ready to place this issue in the strategic plan.

7. Future Agenda Items

Audio of Discussion: <https://youtu.be/7fcCjL2drEY?t=10378>

Board members had no items. There was no public comment.

The Board went to closed session at 5:04 p.m. Upon adjournment of closed session, recess was taken until Friday, August 14, 2020.

Friday, August 14, 2020

Members Present	Staff Present
Mark Morodomi, President	Shara Murphy, Executive Officer
Glenn Kawaguchi, Vice President	Cheree Kimball, Assistant Executive Officer
Debra McIntyre, Secretary	Marc Johnson, Policy Analyst
Cyd Brandvein	Natalia Leeper, Licensing Coordinator
David Turetsky, OD	Will Maguire, Legal Counsel
Lillian Wang, OD	Matt McKinney, Enforcement Analyst
	Dani Rogers, Legal Counsel

Link for the audio of 8/14/20 discussion: Part 1 of 2:

<https://www.youtube.com/watch?v=toXswEH99Bo&feature=youtu.be>

Link for the audio of 8/14/20 discussion: Part 2 of 2:

<https://www.youtube.com/watch?v=CZ1R65-4aPM&feature=youtu.be>

Full Board Open Session

1. Call to Order / Roll Call and Re-establishment of a Quorum

Audio of Discussion: [0:05 / 2:09:40](#)

Dr. McIntyre called roll at 10:00 a.m. and a 6-0 quorum was re-established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: [1:21 / 2:09:40](#)

There was no public comment.

3. Board President's Report

Audio of Discussion: [2:22 / 2:09:40](#)

Due to a change to the past Board members, President Morodomi deferred this report to the next meeting.

There was no public comment.

4. Call for Nominations for Board Officer Elections

Audio of Discussion: [2:38 / 2:09:40](#)

Dr. McIntyre reported that nomination ballots have been distributed and must be received by Monday, August 31st. Open elections will be held at the next Board meeting on October 23rd to 2020. The positions for nomination are President, Vice President, and Secretary.

President Morodomi asked if there is a possibility of the Sunset Review being postponed due to COVID? Ms. Murphy replied that confirmation has been received that the Board will be receiving sunset review in the spring of next year.

There was no public comment.

5. Discussion and Possible Action on Appointment of Non-Board members to Board Committees

Audio of Discussion: [9:34 / 2:09:40](#)

Dr. Madhu Chawla, OD to Practice and Education Committee

President Morodomi appointed Dr. Chawla to the Practice and Education Committee (PEC). Dr. Turetsky asked how long the appointment will last and if this method should be considered for all Board committees; Mr. Morodomi responded that he does not believe an announcement or process is required. Additionally, in regards of “term of office”, he will need to consult with Legal Counsel. President Morodomi believes the term is either for one year, or they may serve at the pleasure of the President. After one-year reappointment is required. Dr. Turetsky questioned what training is required of an appointee who has not been formerly trained to sit on a committee? Ms. Murphy explained the difference between the Board’s issue committees and the Board’s statutorily mandated committees.

Ms. Brandvein asked if there is a fair and equitable application process and asked if prior Board members bypass the application process and does the Board then just vet those people who have never served on the Board; Ms. Murphy reminded Members that the process is very scripted for the Dispensing Optician Committee (DOC) because it is statutorily mandated and requires appointment by the Governor.

President Morodomi requested to set this as a future agenda item. Although he has appointed Dr. Chawla to the PEC out of dire necessity, he has not had the opportunity to consider the implications and the necessity of procedures if the Board is to start appointing to other committees.

There was no public comment.

Lillian Wang moved to move the appointment of Madhu Chawla to the Practice and Education Committee. Debra McIntyre seconded. The Board voted unanimously (6-0), and the motion carried.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

6. Discussion and Possible Action Regarding Which Board Member Should be Appointed to Serve on the Dispensing Optician Committee Pursuant to Business and Professions Code Section 3020

Audio of Discussion: [35:25 / 2:09:40](#)

President Morodomi asked Dr. Kawaguchi if he would be willing to serve on the DOC and if Dr. McIntyre would be okay with him being the appointee; Dr. Kawaguchi said he would like to serve on the DOC and Dr. McIntyre agreed.

Cyd Brandvein moved to appoint Glenn Kawaguchi to the Dispensing Optician Committee. David Turetsky seconded. The Board voted unanimously (6-0), and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

7. Discussion and Possible Action on Presentation by the National Board of Examiners in Optometry for Additional Test Locations

Audio of Discussion: [37:29 / 2:09:40](#)

Dr. Jill Bryant, OD and Dr. Brook Houck, PhD shared a PowerPoint presentation with the Board on behalf of the National Board of Examiners (NBEO) regarding additional test locations. They provided the NBEO Mission Statement and just like the Optometry Board the overall purpose of NBEO exams is to protect the public. The NBEO accomplishes this purpose by spending the majority of time working with criteria for the Minimally Qualified Candidate (MQC). The exams must be sufficiently demanding and rigorous in order to meet the good faith expectations of public protection for licensure.

Dr. Bryant described the NBEO’s security plans (social distancing, masks, and disinfecting practices for protecting against COVID-19). She also addressed long-term considerations, contingency planning, and second-wave shutdown for future crisis scenarios. Rescheduling challenges and the NBEO’s action steps were also addressed.

Both a short-term and long-term strategy are in the works. Dr. Houck provided an overview on remote proctoring, paper and pencil testing, computer-based testing at the schools, standardization, key points, the decision to move to one testing site, choosing Charlotte, NC, and psychometric perspective on multiple test sites.

Dr. Turetsky asked if they ever been challenged by anyone regarding Americans with Disabilities Act for the reason of having just one test site. Dr. Bryan replied that they have had a few candidates request accommodations during their part III of the exam; for which the accommodations were made. The NBEO has been able to manage mobility issues quite well. She added that it is more common to receive requests for the computer-based exams than it is for the NBEO's performance-based exams.

Public comment:

- Kristine Schultz, Interim Executive Director for the California Optometric Association (COA). Ms. Schultz stated that she is present to request that the Board hold a separate regulatory hearing to find a solution that will ensure that students do not have to travel across the country during a pandemic. Several other states have waived the NBEO test during this time. She felt California laws need to be changed to allow the colleges to test competency during an emergency; no other profession in California has just one test center all the way across the country for their clinical skills test.
- Dr. John Flanagan (representing the California Optometry schools) commented. His plea is to the state Board to plan for crisis. He noted that the class of 2020 has experienced problems as far as being able to retake examinations and getting fingerprinted in time and urged the Board to not underestimate the cost of those issues. Dr. Flanagan's primary concern is the class of 2021 and hopefully not, but possibly 2022. Dr. Flanagan clarified that he is not suggesting graduates not take the California exam, but he is advocating for crisis planning for a temporary ability to recognize clinical competence. He is advocating for a temporary waiver of part III.

Dr. Turetsky questioned the possibility of a school sponsoring a new graduate in the event that traveling to the test center is not possible? Dr. Flanagan doubts that the legal counsel on each of the campuses would accept that liability even on a temporary basis. Nevertheless, it is certainly worth being explored. Another idea would be or the National Board to issue a temporary certificate based upon graduation hurdle. Dr. Kawaguchi questioned why if graduation equals competence, why do graduates sometimes not pass Part III? Dr. Flanagan replied that he suspects this is part of the reason why the exam is being revised. The NBEO Part III exam really only tests technical competence. Dr. Wang commented that temporarily waiving the NBEO Part III is an interesting proposition.

- Tracy Montez, Divisions Chief of Programs and Policy with the Department of Consumer Affairs (DCA). She shared that while she greatly supports and appreciates all of the steps the NBEO has taken to ensure standardization and

reliability of their exams, she would like them to again consider alternate locations. She emphasized that this is in compliance with Business and Profession Code (BPC) Section 139. One of the requirements with DCA boards and the examinations is to ensure meeting the highest level of standards possible while balancing and addressing any barriers to licensure. Dr. Montez asserted that having only one examination site on the east coast certainly does appear to present a barrier to licensure. Additionally, she encourages the Board to explore whether the clinical examination is needed, based on comments received today, and that it is not just an add-on requirement.

Dr. Wang requested that a special meeting be held to discuss this issue versus waiting until the October meeting. Members agreed.

8. Discussion and Possible Approval of May 15, 2020 Board Meeting Minutes

Audio of Discussion: [1:57:57 / 2:09:40](#)

Board Members had no changes. There were no public comments.

Lillian Wang moved to approve the May 15, 2020 Board Meeting Minutes. David Turetsky seconded. The Board voted unanimously (6-0), and the motion carried.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

9. Update by Representatives of the Department of Consumer Affairs, Which May Include Updates, Discussion and Possible Action Pertaining to the Department’s Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

Audio of Discussion: [2:01:39 / 2:09:40](#)

A. Department of Consumer Affairs

Carrie Holmes, Deputy Director of Board and Bureau Relations for DCA, provided a presentation on DCA activities and the budget office. She explained that her job is to be a point of contact and a resource, and to assist with the training of board appointments. She assured the Members that she is working closely with the Governor’s Office, and this Board is a priority for appointments. President Morodomi shared his concern about appointments by the Speaker and the Pro Tem which have been pending for a

tremendously long time. He requested assurance that this issue is a priority; Ms. Holmes assured President Morodomi that this is on her radar.

B. Budget Office

Budget Analyst Marie Reyes provided a brief update on the Board's budget. She noted last year's optometry and RDO budgets which were analyzed quite conservatively.

There were no public comments.

Recess was taken at 12:10 p.m. Meeting resumed at 1:10 p.m.

9. Update, Discussion and Possible Action on Assembly Bill 896 (Low)

Audio of Discussion: [13:15 / 2:38:26](#)

Mr. Johnson provided a summary of the latest changes to AB 896, which is currently working its way through the Senate process. He announced all Board concerns have been addressed. Dr. Kawaguchi requested that Mr. Johnson speak about the amendment regarding additional waivers for certain organizations. Mr. Johnson explained that the AB 896 workgroup had raised concerns regarding certain groups such as Lions Club, community clinics, religious-based clinics that have established models. To ensure that these groups were exempted a text was included that exempts nonprofit or charitable organizations that use volunteer optometrists engaged in the temporary practice of optometry. Vision Service Plan (VSP) is comfortable with the changes as well.

Dr. Turetsky recalled one issue regarding one entity who contracts with optometrists to provide services. This entity hires optometrists as per diem contractors. He asked if there is language in the bill that will exempt these specific groups from AB 5; Mr. Johnson was unsure if the bill addresses this issue.

There was no public comment.

10. Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1536 (Continuing Education Regulations)

Audio of Discussion: [20:43 / 2:38:26](#)

Mr. Johnson reported the Board approved some changes to California Code of Regulations Section 1536 and sent it back to the PEC for additional discussion on a couple of items. The PEC had their discussions, made their changes, and returned it to the Board. Mr. Johnson noted changes to the following sections:

Subsection (c)(1): The Board requested further discussion on a required test as part of self-study courses for CE credit. The PEC concurred.

Subsection (c)(1)(F): Proposed subsection (F), which would have added “any other technology the Board chooses to adopt as adequate to accomplish this purpose”, was removed by Legal Counsel as being too vague as to future technologies.

Subsection (c)(4): Staff recommends striking “in person” from the requirement for continuing education course credit obtained by participation in a board meeting. DCA is developing technology to track attendance in WebEx teleconference sessions and has encouraged boards to use teleconference meeting as a best practice following the resolution of the COVID-19 pandemic

Subsection (d)(2)(B): The PEC recommends the addition of “presenting the content” to allow a course that may be pre-recorded but DOES allow for live Q&A during or after the content with the instructor who presented the material. The words “or is prerecorded” have been removed to align with this intent.

President Morodomi inquired (hypothetically) what if 1 out of 5 instructors are available for the Q&A; does this satisfy the legal requirement or do all 5 instructors have to be on the Q&A? Ms. Murphy replied that the intention of the PEC is to ensure that the instructor who presents the material is the person who answers the Q&A; therefore, if 5 instructor present the lecture then those same 5 instructors all need to be available for the Q&A and the small changes to the language ensures that this is understood.

Subsection (e)(3): The Board changed “courses” to “activities” to better reflect the procedures used by COPE to approve their CEs. The PEC concurs with this change.

Subsection (f): Staff recommends the addition of “credit hours desired for approval” for each course and the “educational category” that the course may fall under. The PEC recommends keeping the course submission requirement at 45 days instead of 90, to accommodate real-world conditions of scheduling and preparations made by CE providers.

Members and staff discussed the options for providing a copy of COPE’s educational category codes to assist providers with choosing their course categories correctly. They also discussed the difference between pre-recorded courses that are self-study and those that are still considered “live”. President Morodomi asked Ms. Rogers if the Board can approve the regulation and leave it to her and Board staff to insert the appropriate language expressing intent; Ms. Rogers replied they can.

There was no public comment.

David Turetsky moved to approve proposed changes to Title 16, Section 1536 and the Form CE-01 as presented and discussed here today; and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review and if no adverse comments are received authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing. Glenn

Kawaguchi seconded. The Board voted unanimously (6-0), and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

11. Update, Discussion and Possible Action on Changes to Title 16 California Code of Regulations Sections 1399.270 – 1399.285 (Optician Program Statutes)

Audio of Discussion: [47:58 / 2:38:26](#)

Mr. Johnson reported that the Board has been working on proposed statutory changes to the optician statutes for well over a year now; in that same spirit, staff wishes to propose some changes to the regulations for the optician program. He noted that these changes will be restricted to simply placing current initial registration and registration renewal forms that are used exclusively within the BreZE system into regulation and to align current fees with the statute; as well as make a couple of other non-substantive changes.

Mr. Johnson reviewed the proposed language changes for the following California Code of Regulations (CCR) sections, subsections, and articles:

- Section 1399.220(b) – Contact Lens Dispenser (CLD) initial application.
- Section 1399.220(c) – Spectacle Lens Dispenser (SLD) initial application.
- Section 1399.220(d) – Non-Resident Contact Lens Dispenser (NCLD) initial application.
- Section 1399.222 – Requirements for renewal of a registration.
- Section 1399.222(a) – Requirements for an RDO renewal application.
- Section 1399.222(b) – Requirements for the SLD renewal application.
- Section 1399.222(c) – Requirements for the CLD renewal application.
- Section 1399.222(d) – Requirements for the NRCLD renewal application.
- Section 1399.260 – RDO fees.
- Section 1399.261 – CLD fees.
- Section 1399.262 – Deletion of the application refund fee. These fees are not refunded anymore per DCA policy.
- Section 1399.263 – SLD fees.
- Section 1399.264 – NRCL fees.

Public comment:

- [Joe Neville](#) with the National Association of Optometrists and Opticians (NAOO). He noted that Section 1399.220(a)(12) requires the name and registration numbers of the CLD or SLD who will be filling prescriptions for the RDO. He recalled that this was discussed several years ago, and it was labeled the

“decoupling conversation”. When an optical firm is planning to open a business, it will frequently apply for its RDO registration well in advance of the time that it knows who the SLD or CLD will be. The decision that was made 3 years ago was that this information would not be requested in the initial application rather they would be required to supply the information once they hired someone. Ms. Leeper responded that she would be okay with making it optional, but there are quite a few businesses that apply after they have already opened.

The Board discussed what language change(s) would be needed to make it optional. They decided upon adding “*when available*” to the end of (12) so that it reads “*Name(s) and registration number(s) of the contact lens dispenser or the spectacle lens dispenser who will be filling prescriptions for the registered dispensing optician when available*”.

- Adam Bentley suggested language that requests the information prior to the business opening so that a time frame exists, and the Board is supplying an expectation for the receipt of the applicant’s information. President Morodomi replied that he does not wish to hold up this regulation by wordsmithing. President Morodomi asked about the NRCLD fees; If a person does not reside in California and they wish to sell contact lenses, they must pay this fee? Ms. Leeper confirmed that this is correct.

Glenn Kawaguchi moved to approve proposed changes to Title 16, Sections 1399.220 through 1399.285 of the California Code of Regulations as presented and discussed here today, including but not limited to the initial RDO application changes; and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business Consumer Services and Housing Agency for review and if no adverse comments are received authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing. Cyd Brandvein seconded. The Board voted unanimously (6-0), and the motion carried.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

12. Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1399.273 and Optician Disciplinary Guidelines Incorporated by Reference

Audio of Discussion: [1:18:34 / 2:38:26](#)

Mx. Kimball provided an overview of the changes. The Dispensing Optician Committee (DOC) began a review of the Guidelines in August 2017 and completed the review in December 2019. Between 2017 and 2019, staff made minor revisions and restructured the Guidelines where appropriate based in part on the advice of the DOC. The DOC moved to send the Guidelines to the full Board for discussion and approval at the December 2019 meeting. Although agendaed at the February 28, 2020 Board meeting, staff requested additional review via the Consumer Protection Committee (CPC), which reviewed the proposal at the July 17, 2020 public meeting.

The words “when available” were added to condition #12. Additionally, the use of non-binary references throughout was added throughout the document as a non-substantive change.

There was no public comment.

Glenn Kawaguchi moved to approve the proposed text for California Code of Regulations Title 16, Section 1399.273; the Optician Disciplinary Guidelines and forms optc-ne1 and optc-qr1 incorporated by reference as presented and discussed here today; and direct staff to submit the text to Office of Administrative Law for posting for a 45 day public comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. David Turetsky seconded. The Board voted unanimously (6-0), and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Turetsky	X				
Dr. Wang	X				

13. Update, Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)

Audio of Discussion: [1:32:03 / 2:38:26](#)

At the May 15, 2020 Board Meeting, the full Board reviewed the proposed changes to the dispensing optician statutes. After discussion of the item, the Board directed the DOC to further review certain sections of the proposal, as well as consider feedback received at the meeting from individual board members and stakeholders. The DOC reviewed the Board’s suggestions at the June 18, 2020 public meeting and returned with their comments and suggestions.

Dr. Kawaguchi feels that the Board is trying to move this forward when it is not ready. His recommendation is to not move forward with the Legislative currently.

Public Comment:

- Joe Neville felt more conversation is needed on several issues. For example, a provision in 2555(u) requires that an optician refer customers who do not have a current prescription. His concern is that he does not see how this would be monitored and regulated and lawsuits that may result. There are a few other concerns that need to be discussed at the next DOC meeting.

President Morodomi is not sure that this step would be productive. He views the next step as full Board discussion on the statutory proposal. Ms. Brandvein recommended postponing moving forward and engage in a joint conversation between the Legislation and Regulation Committee (LRC) and the DOC. Clarity in the language needs to be brought forward now rather than assuming clarity will come while going through the process.

Dr. McIntyre directed attention to page number 105, Section 2564.76(c). Her intention was for this section to be reworded such that a dispenser could not substitute a different manufacturer brand or physical property of the lens. In the rewording it makes it sound as though the color may not be altered but a different manufacturer brand or other physical property may be substituted.

Mark Morodomi moved to approve the proposed changes presented and discussed here today to the text of Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code, and direct the Executive Officer to pursue legislation in the 2021 legislative session and delegate the authority to the Executive Officer to make any technical, non-substantive changes to the text as needed. The motion died for lack of a second.

Dr. Kawaguchi's opinion is that it would be helpful to send this to the LRC. It would not be valuable to send it back to the DOC. Dr. Wang believes it should go to both LRC and DOC.

14. Executive Officer's Report

Audio of Discussion: [2:03:47 / 2:38:26](#)

A. Enforcement Program

[Mr. McKinney](#) provided the Enforcement Report, noting the report contains work performed over the last fiscal year (FY), charts and attachments, which contain statistics for the final quarter of fiscal year 2020 as well as for the full fiscal year. Mr. McKinney reported that there are currently 3 analysts investigating optometry enforcement cases with an average caseload of 54 cases per analyst; and there is 1 opticianry analyst with an average caseload of 73 cases. During the previous Board meeting, members asked enforcement staff to provide information on probationers in consideration of the current pandemic. Currently, there are 14 active probationers; of these staff have received

requests to accommodate conditions; 6 of which is function as an optometrist or optician and condition 10 for community services for the probationers. Staff received one request to accommodate condition 4 which is probation monitoring costs and 8 cost recovery for one probationer.

Mr. Morodomi requested that a summary (of what is happening with probationers under COVID) be included in the next Executive Officer's Report.

B. Examination and Licensing Programs

[Ms. Leeper](#) provided a brief overview of the examination and licensing programs.

C. Regulatory Update

Mr. Johnson provided an update on the Board's current regulatory packages.

- Assembly Bill (AB) 2138 deals with denial of applications, revocation, suspension of licenses, and criminal convictions. The package just came back from DCA and Agency; they have both approved the package. The next step is to send it to the Office of Administrative Law (OAL) which Mr. Johnson will do next week. They will have 30 days to provide the Board with an approval or denial. He hopefully anticipates that this package may be enacted into law around the end of the year.
- Implementation of AB 443 which allows a therapeutic certified optometrist to administer immunizations. DCA is currently reviewing the package. Staff is looking to make this an emergency regulation due to some changes brought about by the COVID-19; especially since the Center for Disease Control (CDC) has ordered more than twice the historical volume of influenza vaccinations and is developing programs to expand methods to get those vaccinations out to the public. DCA is requesting a justification as to why this needs to be an "emergency regulation"; therefore, staff is working on that currently.
- 2019 Optometry Disciplinary Guidelines update: This package is currently being assembled by staff and anticipates sending it to DCA Legal early in the Fall.

There were no public comments.

15. Future Agenda Items

Audio of Discussion: [2:33 / 2:38:26](#)

The following items were added to a future meeting:

- Review of the strategic plan draft that was put together on August 13, 2020. On October 23, 2020, the draft will come back to the full Board for discussion and refinement.
- Stakeholder appointments to the policy committees; research by Legal and staff on the processes of other boards.

- A special Board meeting for alternative validations of competency to practice within optometry.

Dr. Turetsky commented that statutes still state that an optometrist can only seek employment from a physician and surgeon who practices the specialty of ophthalmology versus just being employed by a physician and surgeon. This was changed about 40 years ago to reflect that prior to that time it just said: “*physician and surgeon*”, and it restricts the ability of patients to receive care under specialized circumstances. He strongly feels that it is time for the Board to update this so that an optometrist can work for any physician if that physician and that physician’s patients would benefit from the services of an optometrist. The language is found in BPC 3109.

There was no public comment.

15. Adjournment

Meeting adjourned at 3:48 p.m.