

The mission of the California State Board of Optometry is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry.

**MEMBERS OF THE BOARD**

Mark Morodomi, JD, President  
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 David Turetsky, OD  
 Lillian Wang, OD  
 Vacant, Public Member  
 Vacant, Public Member  
 Vacant, Public Member  
 Vacant, Optician Licensed Member



**APPROVED BOARD MEETING MINUTES**

**Friday, September 18, 2020**

**This public meeting was held via WebEx Events.**

<b>Members Present</b>	<b>Staff Present</b>
Mark Morodomi, President	Shara Murphy, Executive Officer
Debra McIntyre, Secretary	Cheree Kimball, Assistant Executive Officer
Cyd Brandvein	Marc Johnson, Policy Analyst
Jeffrey Garcia, OD	Natalia Leeper, Licensing Coordinator
David Turetsky, OD	Matt McKinney, Enforcement Analyst
Lillian Wang, OD	Rebecca Bon, Legal Counsel
<b>Members Absent</b>	
Glenn Kawaguchi, OD	

**Link for the audio of discussion:**

<https://www.youtube.com/watch?v=UqgYajHmj10&feature=youtu.be>

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

*Audio of Discussion:* [0:30 / 4:15:46](#)

President Morodomi called the meeting to order at 1:00 p.m. and a 6-1 quorum was established.

**2. Public Comment for Items Not on the Agenda**

*Audio of Discussion:* [2:48 / 4:15:46](#)

Public comment was received from Kristine Schultz with the California Optometric Association (COA), who requested public comment be made after each agenda item.

### **3. Introduction of New Board Member – Dr. Jeffrey Garcia, O.D.**

*Audio of Discussion:* [4:42 / 4:15:46](#)

President Morodomi welcomed and introduced the newest Board Member, Dr. Jeffrey Garcia, O.D. Dr. Garcia thanked the Members and Staff for their welcoming and their assistance in getting started. He explained that he has desired to be on this Board panel for over 15 years, but vacancies and life prevented it until now. Dr. Garcia has three optometry practices, and he is an adjunct professor at the Western University of Health Sciences and the Southern California College of Optometry (SCCO).

Public comment was heard from Dr. [Elizabeth Hoppe](#), who expressed her gratitude to Dr. Garcia for his service as a mentor for the students at Western University.

- ### **4. Presentation by the Office of Professional Examination Services (OPES)**
- a. NBEO Examinations and California Optometry Laws and Regulations Examination**
  - b. Summary of Policy and Legal Mandates**
  - c. Examples of Other Board Examinations Impacted by COVID-19**
  - d. Examples of DCA Waivers Granted in Response to COVID-19**

*Audio of Discussion:* [1:07:07 / 4:15:46](#)

[Dr. Heidi Lincer](#), Chief of the Office of Professional Examination Services (OPES) provided a presentation overview of OPES activities. She reported that the NBEO Part I is usually taken during the third year. NBEO Part II is usually taken during the fourth year. NBEO Part III (the subject of concern) is only offered in North Carolina. OPES is the consulting division of DCA. OPES works with various DCA boards and bureaus to ensure licenses are valid and legally defensible. OPES is mandated by Business and Professions (B&P) Code 139 which states that all examinations used for licensure in California must be based on an occupational analysis (OA) which is a detailed study of the profession. The OA is the legally defensible method of determining the content of the examination to ensure that it measures safe and competent entry-level practice. Any alternative licensing process would need to meet the criteria of B&P 139 and be validated by OPES. During the review, OPES determined that the examinations have entry-level content that is necessary for licensure in this state but determined having a single testing site may be problematic. Dr. Lincer reported that not only did the NBEO examinations meet the B&P 139 according to OPES's evaluation, but from a psychometric perspective, these exams are legally mandated, and they ensure that the Board complies with B&P 139. Consequently, should the Board create some alternative form of licensure, it would have to meet B&P 139 criteria as well.

[Tracy Montez](#), DCA Chief of Programs and Policy Review, provided information on the waiver process. As of yesterday, DCA has issued 62 waivers; many of which have been extensions of initial waivers issued during the early stages of the pandemic. It is important to understand that although the Director has the authority to approve waivers, she does have to work within the parameters of established laws and regulations. Although there have been 62 waivers, there has not been a waiver of the examination requirements for any type of licensure under DCA.

President Morodomi asked if the Board of Optometry laws provide have flexibility or time restriction regarding when the exams are taken; Dr. Montez deferred this question to the Board's legal counsel. President Morodomi also asked that if the Board has the authority to create temporary licensure, what step would the Board need to take to allow for the temporary license; Dr. Montez replied that this would depend upon how the Board's regulations are written. A mechanism to receive a temporary license without taking Part III may already be in the Board's regulations. Ms. Murphy noted that it does not appear that the Board's regulations (as written) allow for any type of licensure before completion of all three parts of the national exam and the California Laws and Regulations Exam (CLRE). All four pieces must be completed first. The statutes do not allow the flexibility to create this because there is not a statute to which revised regulations may apply.

President Morodomi asked who has the power to grant waivers; Dr. Montez responded it is the Director who has the power to grant waivers, not the Board of Optometry. He then asked if there are pathways such as those for interns and externs that would allow a graduate to practice optometry without having a license; Ms. Murphy responded that she is not aware of any such statute. Dr. Turetsky asked Ms. Murphy if a person who has not taken Part III can practice optometry with a DPA certification instead of a TPA certification? Ms. Murphy explained that this is one of the pathways that were discussed; however, it is not possible because it would require the removal of a regulation (1523(f)).

Dr. Turetsky noted that individuals given some type of a temporary license, would undoubtedly not be able to be part of any insurance panel. They probably would not be able to get on Medicare or get on Medi-Cal. The optometrists would be limited to eye exams on patients who pay by cash only. Dr. McIntyre commented that anyone with a limited license would not be able to acquire their liability and malpractice insurance. Dr. Wang responded that if they are restricted from getting on panels and restricted from malpractice insurance, their hire-ability would be extremely limited; therefore, it would need to be a regular license for them to practice while waiting to take the NBEO Part III.

#### Public Comment:

Masha Masoeda explained that she is a fourth-year optometry student at Berkeley. As fourth-year extern students, they do go to a lot of different places, including leaving California for some externships. In these cases, they are working under the liability of another optometrist. So, if this were to continue after graduation and they are trying to get jobs in California working under another optometrist, there are implications for that doctor whose liability they are under. Will that optometrist's insurance rates go up? Will it be common knowledge that they have hired "quasi" externs, "quasi" graduate doctors to work under them? And now they must sign off on all these extra charts when they have not seen the patients in their entirety.

Dr. Hoppe wished to follow up on some of the regulations in North Carolina. She noted that their definition of the word "extern" is a little different in the way that their regulation is written; she explained that in NC regulations the word "extern" is used for an unlicensed optometrist. The term "extern" is not for a student in NC; it is for a graduate from an accredited school or college of optometry who is not yet licensed. The period of provisional licensure is 6 months

duration and may be applied for renewal up to a total of 3 times. She noted that in North Carolina Board's description, they have a highly detailed description of what supervision consists of. Their policies are well developed.

[Dr. Jennifer Coyle](#) returned to the conversation on barriers to a candidate's ability to access the examinations. The person she alluded to in her presentation has an identified ADA issue. These are the types of barriers that Dr. Coyle feels have become more complex. Regarding the issue of graduates having to work under another doctor's liability and being unable to get on any insurance panels; She suggested that perhaps a full license, which is temporary in that it expires after a certain amount of time may be considered.

Dr. Garcia asked if the optometry school deans know how many of their students would prefer delaying their board exams during the pandemic versus not delaying and taking them now. Dr. Coyle admitted that she has not polled them for this question, and she will be happy to follow up with this information. Therefore, she believes there will be students who pursue a temporary provisional license. Dr. Flanagan stated that he has not directly polled the Berkeley University students, nevertheless, he would be greatly surprised if many of the graduates did not avail themselves of the opportunity of a temporary license if it was offered to them.

Dr. Turetsky asked if an optometrist makes a mistake while having a temporary license and the mistake cost the patient their eyesight, what would the legal ramifications be when the lawsuit is filed; how would this negatively impact the Board, the DCA, and the Governor if the Governor's Office approves of some alternate license? Ms. Bon replied that it may depend upon what approval means or what mechanism allows the person to practice. When they are, it would be like any other licensee having an issue with meeting the minimum standards. Dr. Turetsky noted that the Board has a couple of applicants who have been unable to get licensed in this state because they failed Part III on several occasions. He asked if these individuals would be able to take advantage of this new way of getting licensed; Ms. Bon responded that without knowing the specifics of how a person would be able to practice without Part III it is difficult to determine.

## **6. Discussion of Presentation by Optometry College/School Deans and California Optometric Association Regarding Need for Accommodations and Impacts to Students**

*Audio of Discussion:* [10:32 / 4:15:46](#)

Ms. Murphy announced that all three Deans of the California Optometry Colleges are present for this meeting. Each Dean wished to comment.

Dr. Coyle reported that SCCO has significant concerns regarding the conditions and accessibility of the three parts of the National Board of Examiners in Optometry (NBEO) exams that are required for licensure. The class of 2021 were scheduled to take the exams back in March at the Pierson View test centers across California and the nation. Dr. Coyle explained that SCCO is concerned about the November administration because, should there be a resurgence of the COVID virus, would citizens be faced with stay-at-home orders again and those test center openings canceled. They are also concerned about students having access to the Part II exam should the same scenario occur. At the top of the concerns is the students

having to travel all the way to Charlotte, North Carolina to take Part III since there is only one test site in the nation. Dr. Coyle emphasized that the three Deans agree that a temporary path to healthcare licensure that does not require immediate completion of the Board exams would allow these graduates to enter the workforce upon graduation. She noted that SCCO students spend four years in school and undertake a highly rigorous curriculum that includes constant assessment (testing). Students provide direct patient care to over a thousand patients during their third or fourth year, and they are graded on those patient interactions.

[Dr. Elizabeth Hoppe](#), Founding Dean of the College of Optometry at Western University Health Sciences disclosed that she is currently serving as a member of the board of directors for the NBEO, and she has been a member since 2013. Dr. Hoppe added that when making evidence-based decisions, longitudinal data with multiple measures vastly outweighs single measurements made at one single occasion at one point in time. Dr. Hoppe concluded that she and her colleagues would never advocate for a pathway to licensure without testing but asked the Members to recognize the extensive testing already being done by the schools of optometry as being valid, reliable and appropriate indicators of competency to enter the practice of optometry. The creation of a pathway to temporary licensure would allow greater access to essential eye care and essential vision care services for the residents of California.

[Dr. John Flanagan](#) with the Berkeley College of Optometry spoke and disclosed that he is President of the Association of Schools and Colleges of Optometry (ASCO). Dr. Flanagan requests that the Board consider the need for emergency planning for the event of closure and the danger students currently face in needing to travel for their examinations. He noted that the level of clinical competence upon graduation is adequate for consumer protection. He congratulated the NBEO for their efforts in addressing this problem. Dr. Flanagan and the College of Optometry of UC Berkeley believe that in the case of another COVID surge, it is unlikely that the NBEO will be able to control test centers and to maintain access to test centers in the event of increased COVID-19 and further shut-downs across the country. Dr. Flanagan noted that the need for an emergency pathway to temporary licensure is not a national board issue; rather, at this point, it is a state board issue.

[Kristine Schultz](#) representing the California Optometric Association (COA). Ms. Schultz reported that the COA is extremely concerned about forcing students to travel during the COVID-19 pandemic. She asserted that the Board needs to act to protect students from risking their health and their lives. The testing the students receive in school is far more comprehensive than a one-day test. Additionally, students will not graduate the program if they are not competent to practice. COA believes that the easiest way to address this problem is to allow the colleges to attest to a graduate's competency upon graduation and not have to take the NBEO during this crisis. She contended that the fact that students took and passed the NBEO in 2021 is not a reason for inaction as these students had no option. Ms. Schultz proposed that a different reasonable alternative may be to create temporary licensure where the doctor would be allowed to practice under supervision; once they take the NBEO they would be fully licensed. She argued that some states even have the authority to waive the NBEO on a case-by-case basis.

Dr. Flanagan commented that he requested a document from the Association of Regulatory

Boards in Optometry's (ARBO's) Executive listing. It is Dr. Flanagan's understanding that ARBO has a current state of knowledge for every state. Dr. Garcia questioned what colleges in other states are doing to mitigate the risk of testing; Dr. Hoppe replied with three examples (Michigan, Alabama, and Oklahoma). She reported that each of these state's boards has an excellent partnership with the optometry schools in their state. In Michigan, they allowed a pathway for temporary licensure. They made this decision in the early phase of the pandemic and it expired at the end of July. They are currently reviewing whether they should extend it. Alabama also created an opportunity for temporary licensure between the time of graduation and the time of completing state licensure requirements.

Dr. Turetsky followed up on Ms. Shultz's comment about schools attesting to the competency of their recent graduates. He recalls that there was some discussion about this idea at the last Board meeting; and that Dr. Flanagan noted a concern that this could place universities schools in an untenable position should there ever be a liability claim. Dr. Flanagan clarified that although there was discussion that led to him to this concern, it was a different question that he was responding to. Dr. Flanagan added that there is no liability issue with regards to schools attesting to the competency of their graduates if the outcome of the clinical competencies is well documented and proven.

President Morodomi asked if the schools that have a pathway for temporary licensure, have any additional requirements? For example, the temporarily licensed optometrist working under the supervision of a licensed optometrist? Dr. Hoppe answered that in the state of North Carolina regulations were recently adopted for provisional licensure which does require supervision by a licensed optometrist. President Morodomi reported that he viewed the Board's waiver application that was sent to DCA, and he read DCA's response. The official response was that the waiver not be granted because optometrists are not directly involved in the patient care for patients with COVID. Dr. Hoppe added that some research from other countries has indicated the prevalence of ocular symptoms in patients with COVID; particularly in pediatrics. She stated that she currently has students who are out in their fourth-year residency participating in symptom screening, temperature checks, etc. on the front lines as part of an interprofessional approach to battling the virus.

Public Comment:

[Robert Sumner](#) with the Assembly Business and Professions Committee reported that Assembly Member Low would like to echo the urgency of the issue relating to the Part III NBEO and the various implications of a graduate having to travel to North Carolina during the pandemic. He stated that this issue is notably worthy of inclusion in the next Sunset Review.

[Dr. David Cochrell](#) is a state board member in Oklahoma. He stated that they came to the same conclusion as the three deans that the schools are where the rigorous testing takes place; therefore, they asked themselves if there was truly a reason to keep students from moving into practice as they were unable to complete Part III, due to no fault of their own. He explained that they have approximately 30 graduates (annually) who take their boards to do their residency. The Oklahoma board looked at the qualifications of their graduates and worked to create a situation whereby they could waive the national board requirement and

begin working as optometrists. They looked heavily at ASCO and the optometry schools to determine everyone's competency. Dr. Garcia asked if all three parts of the NBEO have been waived or just Part III? Dr. Cochrell replied that all three parts were waived. Ms. Murphy asked Dr. Cochrell how many optometrists Oklahoma currently oversees? Dr. Cochrell responded that their state has a little over 700 licensees; however, they have approximately 50 graduates take their boards each year. President Morodomi asked if the waiver was done by the board or some other body in Oklahoma. Dr. Cochrell responded that their state has the authority to waive therefore, his board waived the requirement.

President Morodomi questioned how the Oklahoma board went about deciding that graduation from the optometry schools was enough; Dr. Cochrell explained that they did three things: 1) they requested information from the Oklahoma Colleges of Optometry. 2) They requested information from ASCO, and 3) they compared the curriculum from the other schools. Although the curriculums were not the same; they were similar enough to provide the same level of competency. He added that the graduates who have the national board requirement waived, all received permanent and full licensure; they do not need to take the NBEO later.

## **7. Discussion of Alternatives to the NBEO Exam for 2021 Graduates/Licensure Applicants**

*Audio of Discussion: [1:58:30 / 4:15:46](#)*

Ms. Murphy explained that staff wishes to discuss the ideas that have been presented and what pathways would need to be for those to be a workable action plan; particularly a waiver or a temporary license. Ms. Murphy thanked the Deans for the opportunity to get the Board's survey out to the 238 potential graduates. Staff received emailed responses from 143 of those graduates (60% response rate). Staff also received feedback from the Board's psychometrician. She provided a slide presentation of the NBEO Part III Survey – Graduates of 2021. From the survey results, 130 graduates intend to apply for licensure upon graduation; 13 do not. The survey asked questions attempting to gauge the sensitivity these graduates have to the COVID threat and the measures they are taking to protect themselves and their families.

Ms. Murphy reported that 64% of the graduates stated that they would be willing to pay a higher examination fee for the convenience of having a west coast testing location, and they are comfortable with paying 50% more. She also reported that 60% of the 116 graduates who responded to the question would be willing to accept some form of partial or temporary licensure to delay travel during the pandemic. Ms. Murphy explained that staff discussed with legal counsel the Board's opportunity to provide some type of provisional license. She directed Members' attention to California Code of Regulations (CCR) 1523(f). With the waiver of CCR 1523(f), it would be possible for the Board to take action to provide diagnostic licensure (DPA) if deemed necessary during a time of emergency.

President Morodomi announced that in listening to the survey results, he has come up with five fixes the Members may discuss. Each one has pros and cons.

1. Do nothing at all.
2. Just for COVID, take action for a DCA waiver that says graduates do not have to take Part

III of the NBEO.

3. Enact a statutory or regulatory change that grants the Board the power (for the next emergency) to grant a suspension of these testing requirements.
4. Create and have in place a mechanism for issuing a temporary or provisional license with a time limit and which requires the completion of the NBEO later.
5. Remove the NBEO Part III by a statute change.

Dr. Wang questioned removing NBEO Part III. She commented that since the national board is taken by optometry graduates in each state, removing it from California requirements may not be the best action in case these California optometrists move to another state at some point. Dr. Wang believes a temporary or provisional license would be ideal. Dr. Turetsky proposed the possibility of issuing a license then immediately revoking it allowing the graduate to practice during a period of probation. Ms. Murphy noted that with the Attorney General's involvement this would be too costly for the Board to absorb. Dr. Turetsky suggested that part of the probation is that the licensee pays all Board fees.

Dr. Wang suggested that the Board could ask for a waiver of 1531(a), then have OPES and the schools work together to come up with an equivalent to Part III? The schools theoretically could create an alternative exam to Part III since they used to provide the clinical examination many years ago. Dr. Montez confirmed that this is a potential solution.

Public Comment:

[Ms. Masoeda](#) requested that one more question be added regarding the purpose of the travel. Regarding a west coast location for the NBEO Part III, Ms. Masoeda proposed an alternative. She suggested that instead of 15,000 students traveling to Charlotte, can the proctors for the exam travel to each of the schools for an "exam week".

Dr. Hoppe expressed her encouragement by the robust discussion. She is inspired by the ideas expressed and the open-mindedness everyone is showing to seek viable solutions. She appreciates that the Board is seeking an emergency solution since time is of the essence. Dr. Hoppe would like to support the possibility of offering an additional certification or additional attestation on a candidate by candidate basis beyond the testing performed as a regular part of the curriculum.

Ms. Schultz stated that it is unlikely that a DCA waiver will occur since it has not been approved for any other profession. Another option would be legislation. Ms. Schultz explained that COA can assist with a legislative solution. She noted that having OPES determine that what the colleges are already testing is equivalent to the NBEO. This would create a pathway for an emergency regulation to waive the NBEO during the pandemic.

Dr. Coyle spoke on behalf of the Southern California College of Optometry (SCCO). She encourages the Board to consider all ACOE accredited schools. She explained that SCCO does attest (for other states) that their students are competent; typically, they are competent in more advanced procedures. Dr. Coyle added that SCCO would be willing to work with the Board and take on any attestation paperwork for this pathway.



Dr. Flanagan stated that they will do everything they can to support an equivalence and/or attestation.

President Morodomi agrees with Ms. Schultz that obtaining a waiver from the Director is not likely; however, he is not against giving it a try anyway. He would like staff and legal counsel to return and tell Members what steps need to be taken; tell Members what changes need to be made in the regulations; what this Board needs to do; and what OPES needs to do before making a final decision. Dr. Turetsky announced that he would like to have a couple of things to present to staff so that they can move forward. He would like to have some definite pathways that Ms. Murphy and staff can begin investigating.

Ms. Murphy explained that the Director's waiver authority is directly tied to regulation or statute. It is not an authority to add; therefore, it may only be used to waive a current requirement/regulation/ statute. It would not provide authority to add an attestation, or supervision or any other fail-safes. Dr. Turetsky argued that if the Board waives the NBEO requirement, without the attestation from the school, the Board would be potentially opening itself up to waiving the requirement for unqualified applicants. Dr. Wang believes the Board would be wasting time trying to obtain a waiver. The deans have already tried and were denied. She thinks the equivalency option 4 makes the most sense.

Ms. Murphy asked Regulatory Counsel Dani Rogers if staff still needs to surmount the hurdle of regulatory changes to the language that states the NBEO Part III is required for licensure. Ms. Rogers responded that using the emergency regulation hurdle has a specific legal standard statute that must be met. This standard only looks at the needs of the health of the public, and not the benefit of a specific class of people like the students. If staff can gather the data to support the argument that allowing graduates to begin practicing diverts patients away from the ER, there may be a chance; without that data, it will be difficult to proceed via this route. President Morodomi asked the Dean to compile the evidence to support the idea that waiving the requirement is necessary for public safety.

Dr. Hoppe addressed a specific concern of an individual who has made multiple attempts but still has not passed their NBEO exam. She stated that it may be stipulated that this would not be an alternative pathway for someone who did not score well on their exam. She believes any hesitations or limitations may be worked out procedurally. President Morodomi asked how much time staff needs. Ms. Murphy explained with probationer and Sunset Review matters to discuss, she is not able to provide a clear timeline.

Dr. Montez hopes that OPES can provide a written memo and timeline by October or November. President Morodomi hopes for a one-page road map to changing regulations or statutes; from OPES he requests one-page of written standards for declaring an equivalent. Dr. Montez believes OPES can provide a roadmap by November.

## **8. Discussion of Consumer, Applicant and Employment Impacts and Possible Action to Adopt a Plan for Alternate Competency Verification**

*Audio of Discussion:* [4:05:19 / 4:15:46](#)

There were no requests for public comment.

**Lillian Wang moved to direct staff to work with OPES to understand what may be a valid option for equivalency that would then inform the regulatory language that would need to be developed; concurrently, direct staff to work with the schools, colleges and COA to develop a substantive justification for the emergency regulation. Cyd Brandvein seconded. The Board voted (6-Aye; 0-No; 1-Absent) and the motion passed.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>	
Mr. Morodomi	X					
Dr. Kawaguchi				X		
Dr. McIntyre	X					
Ms. Brandvein	X					
Dr. Garcia	X					
Dr. Turetsky	X					
Dr. Wang	X					

**9. Adjournment**

Meeting adjourned at 5:15 p.m.