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**CONSUMER PROTECTION & PUBLIC
RELATIONS AND OUTREACH
COMMITTEE**

MEMBERS OF THE COMMITTEE

Cyd Brandvein, Chair
Debra McIntyre, OD
David Turetsky, OD

**TELECONFERENCED DRAFT MEETING
MINUTES**

February 25, 2021

Members Present	Staff Present
Cyd Brandvein, Chair	Shara Murphy, Executive Officer
Debra McIntyre, OD	Cheree Kimball, Assistant Executive Officer
David Turetsky, OD	Marc Johnson, Policy Analyst
	Matt McKinney, Enforcement Analyst
	Terri Villareal, Lead Enforcement Analyst
	Dani Rodgers, Regulatory Legal Counsel

Link to audio of meeting:

<https://www.youtube.com/watch?v=yGUetrN1pQM&feature=youtu.be>

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

Audio of Discussion: 00:30 / 1:02

Ms. Brandvein called the meeting to order at 12:00 p.m. and a 3-0 quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: 01:26 / 1:02

There were no requests for public comment.

3. Discussion and Possible Action on July 17, 2020, Consumer Protection Committee Meeting Minutes

Audio of Discussion: 02:06 / 1:02

David Turetsky asked about a quorum for approving the minutes and if there is a procedure for approving them. Ms. Murphy explained how to approve the minutes with a quorum.

There were no requests for public comment.

David Turetsky moved to accept the July 17, 2020, Consumer Protection Committee Meeting Minutes as presented. Jeff Garcia seconded. The Committee voted unanimously (3-0) and the motion carried.

Member	Aye	No	Abstain	Absent	Recusal
Ms. Turetsky	X				
Dr. Garcia	X				
Dr. Brandvein	X				

4. Discussion and Possible Action on January 31, 2020, Public Relations and Outreach Committee Meeting Minutes.

Audio of Discussion: [04.19 / 1:02](#)

There were no requests for public comment.

David Turetsky moved to adopt the Minutes. Mr. Garcia seconded. The Committee voted unanimously (3-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Turetsky	X				
Dr. Garcia	X				
Ms. Brandvein	X				

5. Review, Discussion and Possible Action on Regulations to Implement Assembly Bill 458 (Nazarian, Chapter 425, Statutes of 2019); Possible Referral to Full Board.

Audio Discussion: [05:36 / 1:02](#)

Ms. Murphy stated that the Board worked on this bill 2018/2019 with Assemblyman Nazarian’s office regarding mobile practice. This allows an optometrist to apply for a certificate to provide in-home care for optometry patients. Ms. Murphy stated that Policy Analyst Marc Johnson and Board member Dr. Turetsky worked together on this bill and Mr. Johnson will be updating the Board.

Mr. Johnson stated that this regulatory proposal implements Assembly Bill (AB) 458 which amended Business and Professions Code section (BPC) 3070.1.

Mr. Johnson continued that he worked on this with Dr. Turetsky and with Dani Rogers, the Legislative/Regulatory Counsel. Bill 3090.1 authorizes a TPA-certified optometrist to treat patients who are unable to obtain optometric services outside of their home due to a mental or physical disability. The optometrist would be required to complete an application, pay a fee, agree to a records retention schedule, and abide by patient disclosure requirements.

An optometrist would be also required to provide a patient notice prescribed by our

Board and be required to complete an authorization if a patient wishes to release patient records to the Board for enforcement purposes.

Mr. Johnson stated that the new section to the California Code of Regulations, Title section 16 1507.5 will amend the existing BPC 1524, which refers to fees. Section 1507.5 creates an initial application for a home residence permit, creates an application for renewal for home residents permit, provides requirements for a patient notice to be provided to the patient and requires an acknowledgment that the patient has received it, and allows for the release of patient medical records for enforcement purposes.

Within BPC section 1524, Fees, \$50 paid when an optometrist applies for the permit, renewal for \$50, and a delinquent fee of \$25.

Attachment A, proposed text for AB 458. Subsection A is the section that will implement BPC 3070.1 which requires an initial application to be a form; this is similar to what was done with AB 443, immunization authorization. Mr. Johnson stated that the form requirements were added within the regulation because it is our intention to upload the form to BreZE therefore putting the requirements of the form in regulation allows us to do that. The Board will still have the option to create a paper form if they wish.

The form requires some standard information such as the name, address, email address, phone number, and license number of the applicant. The applicant will sign a declaration that states all information provided is true and accurate under penalty of perjury. Mr. Johnson continued that the applicant will be required to follow all state and federal record-keeping requirements and requirements outlined in 3070.1

Section B implements BPC 3070.2 which requires a renewal application to be created. Mr. Johnson asked if anyone had any questions. Dr. Turetsky had questions.

Dr. Turetsky stated that he knows the consumer notice must be in 14-point font. He also asked if the consumer notice had any size requirements that needed to be addressed – for example, does it need to be a size of 8 x 10? Mr. Johnson stated that there are no size requirements that he is aware of regarding the application. Dr. Turetsky stated that he knows that the Department of Management Healthcare experienced issues when they printed their forms which was a size that was not specified in regulations, which caused problems for them.

Turetsky continued that as a business owner, his office provides nursing home vision care and sees 50,000 patients a year which means they would be giving out 50,000 pieces of paper which is not environmentally friendly. Dr. Turetsky asked if the consumer notice could be a part of the prescription pad to save paper and the environment? Dr. Turetsky asked if there were any regulations on how to provide the consumer notice to the patient?

Mr. Johnson said the consumer notice could be issued in person or electronically. Dr. Turetsky stated his patients are elderly and do not have access to a computer or email

and nursing homes are bombarded with emails and would not be willing to have additional emails sent to them to provide to their residents.

Mr. Johnson stated that he thought it would be permissible to include the patient notice as a part of the optometrist's prescription pad. Mr. Johnson deferred to Dani Rogers, the Board's Legislative Counsel to answer this question.

Dr. Garcia stated that he read the consumer notice and it can be provided to the "caregiver". Dr. Turetsky said that was correct; the notice would be provided to the social services director of the facility. Dr. Garcia continued that one notice could be provided to the facility which would cover all residents at the facility. Dr. Turetsky said if you look at the side comment on the document, it says it cannot be one notice per facility and that's it's one notice per person.

Ms. Brandvein stated that if more doctors' offices are moving to electronic tools such as iPads, are we able to have an electronic notice or application that can be completed and added to BreEZe?

Ms. Murphy stated that unfortunately the Board is bound by statute which requires a notice to be issued to each patient. Lengthy discussions regarding this issue concluded that because we're dealing with an at-risk population, an easily referenceable notice should be provided explaining how one could file a complaint if needed.

Dr. Turetsky asked once the regulations are approved, will the Board send out a notice through email to all optometrists informing them of the new law? Dr. Turetsky continued that he is aware of optometrists who would be interested in providing in-home services and they should be made aware of the permit to provide these services instead of potentially providing this service illegally.

Ms. Murphy stated currently optometrists can provide treatments using temporary hours to provide specified services to at-risk individuals, but we want to make sure this is a practice model for the aging population. There are some optometrists that use temporary hours to provide this service.

Ms. Murphy continued this will be a part of our regular communications as well as sending a message using the Board's listserv notification feature. The Board will also utilize social media and will post a message on our website. The new information will also be a part of the President's Message.

Dr. Turetsky said this regulation is not only for the senior population it is also for the disabled where transportation is difficult. Currently, there are optometrists who are interested in providing these services but are afraid to do so because of legal and malpractice insurance issues.

Ms. Brandvein asked for any other comments from the Committee. Mr. Johnson said he wanted to direct members to subsection C to see if there are any additions or

subtractions to this section.

Ms. Brandvein asked for public comment.

There were no public comments.

Ms. Brandvein stated that the above were some of the key calls outs that were in the draft sent to the Board. Ms. Brandvein asked for any other comments. No other comments were provided.

Ms. Brandvein asked Ms. Murphy if the Committee wanted to bring potential edits to the Board, would an actual vote on the suggested edits be required? Ms. Murphy said a vote by the Committee is required to bring this issue to the full Board. Dr. Turetsky motioned to accept the draft regulations with the friendly amendments to bring the comments as written and forward them to the Board for approval.

Dr. Garcia seconded the motion.

There were no requests for public comment.

David Turetsky moved to adopt draft regulations as written and forward them to the full Board for approval. Mr. Garcia seconded. The Committee voted unanimously (3-0) and the motion passed.

Mr. Garcia seconded the friendly amendment.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Turetsky	X				
Dr. Garcia	X				
Ms. Brandvein	X				

6. Discussion and Possible Action on Regulations to Implement Assembly Bill 896 (Low, Chapter 121, Statutes of 2020)

Audio of Discussion: [25.22 / 1:02](#)

Ms. Murphy stated that negotiations with stakeholders particularly “Vision to Learn” with help from Assembly member Low for offering the bill and then negotiations with the legislative process. This bill allows mobile practice for nonprofit organizations. These regulations that will implement and allow us to track reporting from entities that choose to apply to be a corporation that provides mobile units to make sure process is correct and within the legislation have a charge to complete the regulatory process before the end of this year so that the regulations are enacted in 2022. Ms. Murphy deferred to Mr. Johnson for an explanation of the regulatory package.

Mr. Johnson stated that Assembly bill 896 was signed into law last fall 2020 and that

regulations will be implemented on January 1, 2022. This is being presented as a draft proposal unless the Committee or Ms. Murphy opposes, Mr. Johnson requested comments and said he would work on this internally and perhaps have the committee review it again at a future Committee meeting in a month or two. Legal is still working on the draft and has not provided substantive comments on this.

Mr. Johnson continued that 896 does a couple of things - it defines what a mobile optometric office is - the statute says it can be a trailer, van, or other means of transportation in which the practice of optometry is the form and is not affiliated with an approved optometry school. The bill limits ownership of the mobile optometric office to a nonprofit or charitable organization that provides optometric services to patients regardless of their ability to pay; the bill requires the owner-operator of a mobile optometric office to register with the board and provide specified information; it also prohibits the owner-operator from accepting payments for services other than those provided to Medi-cal beneficiaries; it requires the owner-operator of a mobile optometric office to file a quarterly report with the Board and to provide a consumer notice to each patient; it requires the Board to establish regulations and registry and set a registration fee; it requires the owner-operator to maintain records and to make them available to the Board upon inspection; it would require optometrists that provide care under this law to be TPA-certified and also obtain a Statement of Licensure with the owner-operators licensed with the Board which should say "owner-operator".

Dr. Garcia asked if optometrists that visit homeless clinics in the community that is not in a mobile clinic or van or home, would this practice that fall under either of these laws? Ms. Murphy stated no because those clinics such as those that operate in a van, vehicle, or mode of transportation so a community health care event like "Stand Down" do not typically operate in vehicles so this would be outside of the law. Dr. Garcia confirmed if this is outside of the law, 458 and 896? Ms. Murphy confirmed yes.

Dr. Turetsky asked for example you have podiatrists, dentists, and optometrists, or other types of professionals working at a homeless clinic and not in a van or mobile clinic, can an optometrist be cited for operating outside of the law?

Ms. Murphy stated we worked with the authors' office to craft this so that an optometrist can use their temporary hours of work to work with a non-profit. If this goes beyond an optometrist's temporary hours of work or if this is an employment situation or extended service situation or if it does not occur inside of a vehicle, the optometrist could face an enforcement case and possible discipline.

Mr. Turetsky said his concern is that he has worked at charity events before and if he was working outside of the law and there was a professional liability action taken and your performing outside of the law, your insurance carrier will not cover you. This will have a detrimental effect on optometrists trying to do good within their community. Dr. Garcia stated this was his concern in a roundabout way. A lot of optometrists provide this service that doesn't necessarily fall within the two bills but it's not illegal if it's set as an ongoing business practice. Is that the guideline?

Ms. Brandvein wanted clarification on “temporary hours of work”. For example, if a doctor who does work outside of the regular nine to five schedule is sitting in their office and has to call back a patient would this be considered temporary hours of work? Ms. Brandvein asked Ms. Murphy for clarification.

Ms. Murphy explained by reading BPC 3070(b) “A licensed optometrist is not required to provide the location described in subdivision A...” Ms. Brandvein stated that if an optometrist wanted to serve their community potentially they would need a tax-exempt, nonprofit status which they are not this regularly, they are for-profit...how do we reconcile this if one of our optometrists wants to be in a mobile optometric office that may or may not be owned by their practice and at the same time they want to do good...Ms. Brandvein agrees with the doctors as this closes some doors at the same time as it opens them.

Dr. Turetsky said he was reading BCP 3070 and it was his understanding, or it could be his misunderstanding that when an optometrist is working at a temporary practice or filling in at another optometrist’s office.

Dr. Turetsky stated that It was dealing with a location that is registered with the board in one way or another. For example, so I break my let and am out of commission for two weeks and another optometrist fills in at the practice three days a week; that is a part of his temp practice under his statement of licensure because he is helping out.

Whereas I set up in a campground to see patients on a charity basis this is not a location that is not registered with the board and I always thought that was not permitted under this regulation. Am I wrong? Ms. Murphy said you are not wrong.

Dr. Turetsky asked the question that if an optometrist sets up an optometry office at a campground to see anyone who needs an eye exam but the optometrist doesn't have a van and the location is not registered with the Board, is this legal if done on a temporary basis? Ms. Murphy said this practice would be outside of the law.

Dr. Turetsky said to Mr. Garcia that it sounds like this goes back to what he was saying that if an optometrist wants to set up at a church, hall, or charitable event and if you are not seeing patients in a van registered with the Board it would be illegal and that your malpractice insurance wouldn't cover you if there was an issue.

Dr. Garcia asked Ms. Murphy if this is permitted by law or if this was illegal or something that is just not enforced. Ms. Murphy said there isn't a provision for this practice in the law and it is the responsibility of the Board to investigate any claims brought to us for practice that occurs outside of the law.

Dr. Garcia said so Mr. Turetsky, are you saying that setting up in a KOA campground after a flood does not fall under temporary hours of work stipulation? Mr. Turetsky said that is his understanding. Dr. Garcia continued he understands it as if you are not practicing in your normal location, not necessarily the fact that you're licensed as an

optometrist and I am practicing at your office; I see it as I'm am practicing outside of my office regardless if it is at your office or the school gym.

Ms. Brandvein asked if Legal Counsel were present. Dani Rogers said she needed some time to research this issue.

Ms. Brandvein said the way she understands it is that Dr. Garcia would not be able to go to a campsite or school or under a tent but could go into a mobile facility of some kind. Does it have to be their vehicle or are they allowed to volunteer their time in another entity's vehicle?

Ms. Murphy stated that if a nonprofit is registered as a corporation that can provide mobile clinics and if that van or clinic is registered with the Board as a mobile clinic then an optometrist could give their temporary hours to perform optometry services in that mobile clinic.

Dr. Turetsky said if the mobile van or clinic was registered with the Board. Ms. Murphy stated correct. Dr. Turetsky said for example the Lyon's Club had mobile clinics, they would have to have them registered with the Board if an optometrist wanted to work for the clinic.

Dr. Turetsky said the law has a lot of loopholes. Ms. Murphy said there were a lot of conversations to make sure we closed a loophole in the law. The language of the law focuses narrowly on the modes of transportation.

Mr. Johnson noted that Dr. Turetsky cited the Lyon's Club mobile van example. One extension of the bill would apply to the Lyon's Club. The bill allows for the Lyon's Club to be exempted from the parameters of 896. Dr. Turetsky said the way he understands it is a Lyon's Club van would have to be registered with the Board and would have to go through all of the procedures listed to make it legal to exist and provide services.

Ms. Brandvein stated that in section B is not clear if the permit is for the mobile optometric office and wondered what the relationship is between the Optometrists that want to provide care whether or not they use temporary hours or not and are walking in and delivering a service under the office permit.

Ms. Murphy stated that the individual doctor would hold a Statement of Licensure with a corporation address which would allow them to operate within the permitted mobile optometry vehicle until that is operated by that corporation.

Ms. Brandvein asked if Optometrists would need an additional permit/license. Ms. Murphy said yes if you were going to work for a place as "Vision to Learn", they would need to register for a Statement of Licensure.

Mr. Garcia asked Ms. Murphy that is it only if you seek temporary hours of work five days out of 30 for 36 out of 360? Ms. Murphy said correct.

Dr. Turetsky asked if an organization like Healing California which provides optometric and dental services on a charitable basis will set up clinics at different parts of the state; not at an opt office; at a meeting hall in a church and they provide dental and optometric services on an as-needed basis. Since they aren't in a van and they have Optometrists work for them multiple times throughout the year would this potentially be a violation the way 896 is written?

Ms. Murphy said it would be beneficial to the group to bring specific issues or situations to Legal counsel. If you are this type of organization and you are doing this, we making a regulation for you, or are we not? We cannot get into the legal interpretation. Ms. Murphy stated this discussion shouldn't prevent the group from proceeding with the regulation.

Dr. Turetsky asked if there are any members of the public that do anything from a charitable standpoint, please provide your comments.

No public comments.

Ms. Brandvein said she would not feel comfortable with an action other than having staff pursue more information. We are not ready to bring it to the Board. The stakeholders or COA and others may have comments on this as soon as we flush out more in addition to the mobile optometric community. Ms. Brandvein wants the questions clarified and bring them back to the Committee to see if we get more comments.

Ms. Murphy stated staff will work with Dr. Turetsky and Dr. Garcia to make sure we understand what these instances are, and what organizations you are concerned about and we can also hold some stakeholder meetings if they were not able to attend today or they didn't know we would get into some subset of the regulations. We can actively ask those groups to sit down and ask about those models and what they do and what was missed in this regulation.

Dr. Garcia is concerned that there are some volunteer practice modes that don't fall under 458 or 896 that need to be clarified as he knows a lot of optometrists who do these sorts of things and do not think twice about it so and now that we are talking about it we need to make it legal for them to do this.

Ms. Brandvein said that we can build it in here or somewhere else. Ms. Murphy clarified that our authority to make regulations changes is restricted by the statute. An expansion of this law would be a change to the statute and that is not something we could build within the regulations. It would be a change to the statute that would need to be addressed in another bill.

Dr. Turetsky commented that we need to get as much clarity as possible, so Optometrists are not inadvertently doing something that puts their license at risk. Ms. Brandvein asked Ms. Murphy because we are sending this back to staff, do we need a vote? Ms. Murphy said this is the first time you have seen these regulations and

the Committee needs a good understanding of the law to create regulations in good faith. Ms. Murphy asked is possible to get some feedback on the regs which are in front of you today so we can move that forward with answering the larger question?

Dr. Garcia said in terms of 896 he is good with the language and stated that the intent is not to have commercial optometric services rolling around town. Dr. Garcia asked how much regulation would the Lyon's Club be under regarding 896?

Ms. Murphy stated it would be really important to understand what their business model is so we can compare what's been outlined in statute and we can figure out where we are but also make sure we are not interpreting the statute. We need to be careful that we are not providing legal counsel to individual groups because we cannot do that as the Board. We need to understand what is and not in the statute and what sort of practice should be legalized to what kind of practice warrants enforcement.

Dr. Turetsky stated we aren't prepared to bring something to the board for discussion tomorrow, but will we have to discuss this at the board meeting?

Ms. Murphy stated there is a regulatory update that is a typical part of the Executive Officer's report item number five on the Board meeting agenda. It is listed on the packets we are working on. Let us try and do some quick staff work tonight and tomorrow morning to give you some answers you are looking for. I think it would be helpful and appropriate for the members of the Committee to say we went through these yesterday and have questions about the law and what we are making regulations for and so we have asked staff to go back and help us understand what types of groups or organizations are covered in the statute changes that were made or if they were not.

Mr. Turetsky stated that it was also good as we will have more members of the public to provide comments.

Ms. Brandvein stated that we have gone through the regulatory proposal for the first time and we have asked staff to research some specific questions as they relate to current practices. Let's see what public comments we get from tomorrow's meeting when we have stakeholders in attendance.

Ms. Murphy asked if there are any other comments that we can begin to work on within the test of the regulatory package so we can keep that moving along with the overarching questions.

Ms. Brandvein stated that she understands that staff can continue to move forward with the research on the items identified and obtain information.

7. Future Agenda Items

Audio of Discussions: [1:00 / 1:02](#)

There were no requests for future agenda items. There was no public comment.

8. Adjournment

Meeting adjourned at 1:02 p.m.

