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QUARTERLY BOARD MEETING AGENDA
Friday, August 26, 2016
9:00 A.M. – 5:00 P.M.
(or until conclusion of business)

Courtyard Marriott
2701 Main Street
Irvine, CA 92614

ORDER OF ITEMS SUBJECT TO CHANGE

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations of resources.

FULL BOARD OPEN SESSION

1. Call to Order/Roll Call and Establishment of a Quorum
2. Petition for Reduction of Penalty and Early Termination of Probation (9:00 am)
 - A. Dr. Gregory Tom, OD

FULL BOARD 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 and the Above Petition

FULL BOARD OPEN SESSION

4. 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\(a\)](#)]
5. President's Report
 - A. Welcome and Introductions
 - B. 2016-2017 Board Meeting Dates and Locations
 - C. Committee and Workgroup Structures
6. Approval of Board Meeting Minutes
 - A. May 27, 2016
7. Department of Consumer Affairs Report
8. Executive Officer's Report

- A. BreEZe
 - B. Budget
 - C. Personnel
 - D. Examination and Licensing Programs
 - E. Enforcement Program
 - F. Strategic Plan
9. ARBO Annual Meeting Summary
 10. Update on Occupational Analysis and Audit of NBEO Examination
 11. Update on the Board's 2016 Sunset Report
 12. Update on RDO Advisory Committee
 13. Discussion and Possible Action on 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry
 - A. AB [12](#) (Cooley) State Government: Administrative Regulations: Review
 - B. AB [2744](#) (Gordon) Healing Arts: Referrals
 - C. SB [1039](#) (Hill) Professions and Vocations
 - D. SB [1155](#) (Morell) Professions and Vocations: Licenses: Military Service
 - E. SB [1195](#), 1194 or Similar Bill; Proposed Legislation Addressing *North Carolina Board of Dental Examiners* Supreme Court Decision
 - F. SB [482](#) (Lara) Controlled Substances: CURES Database
 - G. SB [622](#) (Hernandez): Optometry
 - H. SB [836](#) Registered Dispensing Opticians Program Move (Originally TB 201)
 14. Update and Possible Action on Children's Vision and Mobile Clinic Workgroups
 15. Update on Rulemaking Calendar and Possible Action Regarding Regulations Impacting the Practice of Optometry
 - A. Amendment to California Code of Regulations (CCR) § 1582 Unprofessional Conduct and Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval
 - B. Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees
 - C. 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
 - D. Amendments to CCR § 1536 Continuing Optometric Education; Purpose and Requirements
 - E. Proposed Revision to CCR § 1514.1 Co-Location Reporting Requirement
 - F. Amendment to CCR § 1502 Delegation of Functions
 - G. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates
 - H. Amendment to CCR § 1506 Certificates –Posting
 - I. Amendment to CCR § 1523.5 Abandonment of Applications
 - J. Proposed Addition to CCR § 1503 Relating To Accreditation of Schools and Colleges of Optometry
 16. Discussion and Possible Action Regarding Minimum Certification Requirements For All Optometrists to Practice in California
 17. Election of Officers
 18. Future Agenda Items
 19. Adjournment

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

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the open meeting act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: *The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Robert Stephanopoulos at (916) 575-7186, emailing a written request to Robert.Stephanopoulos@dca.ca.gov or mailing a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 1 – Call to Order/Roll Call and Establishment of a Quorum**

Dr. Madhu Chawla, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Madhu Chawla, O.D., President

Cyd Brandvein, Vice President

Rachel Michelin, Secretary

Donna Burke

Martha “Ruby” Garcia, CLD, SLD

Glenn Kawaguchi, O.D.

Debra McIntyre, O.D.

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To: Board Members **Date:** August 26, 2016

From: Cheree Kimball **Telephone:** (916) 575-7185
Lead Enforcement Analyst

Subject: Agenda Item 2 - Petition for Reduction of Penalty and Early Termination of Probation

Dr. Gregory Lawrence Tom, O.D. (Petitioner) was issued Optometrist License Number 10427 by the Board on September 22, 1994. On March 26, 2007, the Board filed an Accusation against Petitioner charging him with violating laws and regulations of the Optometry Practice Act. The Petitioner entered into a Stipulated Surrender of License, adopted by the Board, effective April 3, 2008.

On or about February 23, 2009, the Petitioner filed a Petition for Reinstatement of License, which the Board granted effective January 1, 2010. Petitioner's license was reinstated, immediately revoked, the revocation was stayed, and the license was placed on probation for five years. The Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation on November 19, 2010, which the Board denied, effective August 16, 2011.

On or about August 18, 2011, the Board filed a Petition to Revoke Probation against the Petitioner. By Decision and Order effective August 29, 2012, the Board adopted a Proposed Decision granting the Board's Petition. Petitioner's license was revoked effective August 29, 2012.

On or about May 1, 2013, Petitioner filed a Petition for Reinstatement, which the Board granted effective December 11, 2013. Petitioner's license was reinstated, immediately revoked, the revocation was stayed, and the license was placed on probation for five years. The Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation on December 12, 2014, which the Board denied, effective April 22, 2015.

The Petitioner is requesting the Board to grant his Petition for Reduction of Penalty and Early Termination of Probation.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reduction of Penalty or Termination of Probation
2. Copies of Decision, Order Denying Petition for Reconsideration, Decision, Order Denying Petition for Reconsideration, Decision and Order, Order Denying Petition for Reconsideration, Petition to Revoke Probation, Decision, Decision, Decision and Order, and Accusation
3. Certification of Licensure

Petition for Early Termination of Probation

Gregory Tom, O.D.

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- 5. Ethic Certificates**
- 6. CA Optometry Law Certificate**
- 7. Letters of Recommendation**



STATE BOARD OF OPTOMETRY
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Agenda Item 2, Attachment 1



**PETITION FOR REDUCTION OF PENALTY
 OR EARLY TERMINATION OF PROBATION**

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME	(FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
	GREGORY	L	TAM	
2. ADDRESS	(NUMBER)	(STREET)	DATE OF BIRTH	
	202	Aspenwood Ct	7/16/67	
	(CITY)	(STATE)	(ZIP CODE)	TELEPHONE
	SAN RAMON	CA	94582	(970) 2068152
3. PHYSICAL DESCRIPTION	(HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
	5'10"	155	BAN	BRN
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				UCBSB
NAME OF SCHOOL				
UC BERKELEY SCHOOL OF OPTOMETRY				
ADDRESS	(NUMBER)	(STREET)		
	210	Minor Hall		
	(CITY)	(STATE)	(ZIP CODE)	
	Berkeley	CA	94720	
5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
Vision One Optometry Pleasanton CA	04/2010	8/2012	PRIVATE

7. Are you or have you ever been addicted to the use of narcotics or alcohol? YES NO
8. Are you or have you ever suffered from a contagious disease? YES NO
9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? YES NO
10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) YES NO
11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) YES NO
12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? YES NO

Agenda Item 2, Attachment 1

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.
14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.
15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.
16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.
17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.
18. List all optometric literature you have studied during the last year.
19. List all continuing education courses you have completed since your license was disciplined.
20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 4/25/16 Signature 

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

To: Directors and Members of the California Board of Optometry

Re: Dr. Gregory Tom, O.D.
Application for Early Termination of Probation

I originally surrendered my license as a result of an audit by VSP that revealed improper billing. While I cannot undue what I have done, I am extremely humbled and remorseful for my actions. I am very sorry that I did not uphold my optometric oath and that I allowed money to compromise my integrity and honesty. My professional abilities have never been questioned and I have made life-saving diagnoses. But, I let material goals outweigh my moral and ethical values. It was an error in judgment that I have learned a lot from, and it will never happen again.

I learned a valuable lesson. I will never forget what I put my family through, nor will I forget all the hard work that I put into my professional career, only to lose my practices and license. Every day for the past 10 years, I am reminded of my careless mistakes and how my actions affected the lives of others. At the time, I was single and did not have a great deal of responsibilities. I now have a family with two young children. Having children changes people. Each day I try to be a role model for my family. My actions and my choices are contributing every day to their development of their values and ethical parameters. They are now old enough to understand mistakes and they are developing their own ethical boundaries. I feel that I am strong enough and have rehabilitated myself to be a great parent, teacher, and contributing doctor to my community.

The road to this point has been filled with many trials and tests. Recently, I suddenly lost my father to cancer. He was a great role model to me and every day I constantly strive to make amends for my past actions. When he found out about my situation, he was disappointed but he forgave me. I have finally learned to forgive myself. I have come to terms with the consequences of my decisions. Before he passed, I promised my father I would atone for my errors and I will keep that promise to him.

Factors Supporting Early Termination of Probation

Dr. Tom is currently only able to work for other doctors under their direct supervision. Dr. Tom has a strict policy of providing only services that are authorized by the insurance plan. He has studied, learned, and understands the specifics of each medical plan where he works. If multiple procedures are performed, he advises the staff and surgeon that billing cannot be done in certain circumstances if those are the insurance rules. He is constantly aware of insurance boundaries and always places patient care first and foremost. His actions show he has developed boundaries and awareness of proper billing. Even though he does not own the office, he is instinctively watching out for the office's billing accuracies.

His records have been audited each month by his monitor and have not shown any deficiencies in regards to his professional abilities or record keeping. Dr. Tom's monitor has visited each doctor's office he has worked for to inspect and observe the work environment and role Dr. Tom performs.

Dr. Tom continues to teach about the eye at financially challenged schools as part of their science class. He has taught this class since 2009. This was an added community volunteer service that was not required by his current probation. In the class, he also performs multiple dissections of a bovine eye for every student to see and touch. This has helped expand students' interest in science and optometry in schools that typically do not have abundant financial resources. He also talks to the students about doing the right thing and doing things the right way.

Dr. Tom is a highly motivated optometrist and loves his profession. He continues to take more than the required continuing education. He has continued to expand his optometric license parameters. In 2015, he completed his glaucoma certification and can now treat glaucoma under his license in California. If the Petition is granted, Dr. Tom wants to provide care to areas of need in Oakland and San Leandro, where a high incidence of diabetes and glaucoma exists.

Monthly, he continues to perform volunteer optometric services at an eye clinic in an economically challenged area that serves San Leandro and Oakland, California. His probationary terms require 16 hours per month. He routinely volunteers 25% more hours than required. Dr. Tom helped start the eye clinic. where there was a need but no resources available. He supplied the equipment, including the phoropters, projectors, trial lenses, slit lamp, and portable tonometer. The eye clinic has built a very solid rapport with local M.D.s who are very appreciative of Dr. Tom's diagnostic abilities and donation of time. If granted his early termination of his probation, Dr. Tom intends to continue to provide volunteer optometric services at this clinic.

Though it is expected, it is still important to know that Dr. Tom has been completely compliant with all terms of his probation. He has completed his law test ahead of schedule. He prepaid the monthly fee required by the Board to maintain his probation. He took his probation seriously, committed to meeting or exceeding every requirement, and has done so.

Dr. Tom has submitted several letters of recommendation vouching for his character and professionalism. Superior Court Judge Braden Woods supports Dr. Tom's full reinstatement, the public's need for his abilities, and states, "Dr. Tom has redeemed himself and can be trusted to follow the ethical boundaries of his profession and make a positive contribution to society. His acting probation monitor, Dr. James Young, O.D., describes his accurate record keeping and sees no deficiencies in any and all audits. Another one is from his current employer, Dr. Sarbjit Hundal, M.D. Dr. Mika Hiramatsu, M.D., Director of RotaCare, provided a letter in regards to his devotion and help in creating a free optometry center in San Leandro, California. Dr. Michelle Tom, M.D., describes his desire to practice and how his skills are needed in the community.

Dr. Tom has been licensed for over 22 years. His mistake and conduct that resulted in his discipline was related to a VSP insurance adverse action. He has suffered from financial hardship and his health has also suffered from all the stress. He has served 33 months of his 60-month probation and will have served 36 months by the time the Board's decision is made. He's not asking to be forgiven or excused, he's saying that the probation has achieved its purpose of rehabilitation and he's asking to have that probation ended early.

Dr. Tom has not practiced independent optometry since 2006 and would love nothing more than to be able to return to private practice and contribute to those needed communities. He has the knowledge, desire, expertise and advanced credentials to help his community. But, more than that, he has the commitment to ethics and honesty that this Board can be comfortable and confident that he will not repeat the things that got him into this situation again. Based on the supporting factors above, his 100% compliance with his probationary terms, his dedication to advancing his license with glaucoma certification, his extensive volunteer activities and donation of time, and, more than anything, his acknowledgment that what he did was wrong, it would in the best interest of the public to allow the Petitioner to terminate probation. There is nothing further to gain from continuing his probation. Dr. Tom is remorseful and wants a chance to start over. He is safe to return without any license restriction and has clearly solidified his professional ethical and moral boundaries.

Questions 13-20

Question 12: Have you ever had disciplinary action taken against your optometric license in this state or any other state? Please attach a statement of explanation.

As these questions are very similar, both Questions 12 and 13 are addressed below.

Question 13: List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

Yes, I have had disciplinary action taken against my optometric license in the state of California. I voluntarily surrendered my license in October 2007 and the Board of Optometry accepted this as of April 2008.

Vision Service Plan, VSP, performed its annual audit at my office locations. My San Mateo office was audited and found to have zero (0) violations. Subsequent audits of the San Ramon and San Jose offices produced several discrepancies with regards to billing on medically necessary contact lenses and glasses over contacts and prescription sunglasses for children. The audit was for 2001-2002.

At these offices, VSP specifically audited only patients that involved the above categories, necessary contacts and sunglasses on children. There were a total of 30 files audited in San Jose and 37 files audited in San Ramon.

An independent consultant, Dr. Daniel Lau, reviewed the charts in question. He agreed with some of the VSP findings and indicated there was evidence of overbilling on some contact lens supplies and glasses. VSP claimed that I owed them approximately \$85,000 in fees, of which \$50,000 was already paid. Many of the charges were contested with supporting documentation and shown to be correct. VSP, however, never responded to the claims. Several patients were in the middle of their fittings and had yet to return for follow up and they wore contact lenses, yet VSP did not respond to this evidence. The financial difference was withheld from the offices and VSP never provided any means of accounting or explanation of benefits.

Many of the claims were for medically necessary contact lenses. VSP had always allowed a back up pair of lenses for patients that meet these requirements. However, VSP had changed its rules to eliminate this and only allowed glasses over contacts. I had several patients negatively react to this change. I then would request the lab to remove the lenses and replace them with their full prescription so the patient now had a back up pair. At the time, I felt that the insurance company was not taking care of the patient. The patient still paid for all their costs and got their contacts covered also. We used a prefilled out form from VSP and always got paid the same amount. The fees received were in slightly higher than fees for private paying previous patients. The patient care and diagnosis was never compromised; however, the patient did receive benefits they would not normally have received under the new guidelines. Thus, the practice and patient benefited financially. In addition, some children were given prescription sunglasses and in some cases just non-prescription sunglasses. I understood that VSP did

not allow nonprescription lenses. My actions were foolish, irresponsible, and unethical in trying to take something from an insurance company even though it benefited the patient.

When I first obtained my optometry license I worked for a few private VSP doctors and they showed me how sunglasses were approved with just the smallest of prescriptions. I did not feel comfortable in giving prescription lenses to those who did not require it, so I contacted the lab and asked them if there was a way to remove the lenses and provide them with a better lens. They said yes and provided plano polycarbonate grey lenses. These actions were obviously not appropriate and very unprofessional and unethical. At the time, I thought it was a great way to promote sunglasses and get them covered under their insurance and help the parents out who were financially challenged. This method of billing was only done on these select patients. VSP subsequently removed me from its panel in 2002. Other major insurance companies were made aware of VSP findings and performed audits but no billing discrepancies were found and I remained in good status until I sold the businesses in February 2006.

The overbilling accounted for less than 0.01% of the total number of yearly exams. However, this in no way justifies what was done, even if it was just one patient.

14. Explain why you feel your license should be restored, or the disciplinary penalty reduced.

I would like to have my license fully reinstated based on my actions for the past 3 years and what I have learned over that time.

By accepting the probationary terms and embracing the Board's decision, I have successfully met all of the terms of my probation. In most cases I have exceeded or met the requirements before their due dates.

I worked diligently to finish my Ethic Class requirements immediately after my probation initiated and all the required essays. I traveled a long distance and met with the director to discuss the topics personally. In January 2014, I completed Ethical Concerns by the Pennsylvania College of Optometry. In 2015, I completed another Ethics class, Ethical Guidelines and Expected Conduct of Optometrists by Southern CA College of Optometry. I feel that this is an important achievement as it has helped me further develop ethical boundaries that I encounter each day. Each day I am reminded of my past and how I need to continue to be on the correct side of any ethical situations in life or in practice.

Another reason for my full reinstatement has been my extensive commitment to volunteer optometric services and non-optometric services.

Providing free optometric community service was a requirement of my probation. I have been volunteering at RotaCare in San Leandro, CA. RotaCare clinic is a non-profit corporation where doctors and nurses provide free medical care to the non-insured in surrounding communities. I started the eye care clinic at RotaCare. Prior to my start, there was no eye service available. In this community, there is a large segment of uninsured patients who are at high risk for glaucoma and diabetes based on the demographics. I was required to volunteer 16 hours per month. I have consistently provided up to 40% more than the required volunteer hours.

In addition, I personally provided all the equipment in the eye clinic from the phoropters, lensometer, trial lens, pupilometer, portable Goldman tonometer, retinoscope, ophthalmoscope, and BIO. I also helped locate and repair the Slit Lamp microscope currently in use. It is now a full eye clinic and has become a big contribution to the community. This is clearly stated in the letter of recommendation by its Medical Director, Dr. Mika Hiramatsu, M.D.

I treat patients from 3 months old to 80 years of age. I see many patients who are new to the USA and have never received adequate optometric care. I am proud to tell them I am an optometrist. I also interact with many MDs and residents. I am able to teach residents and MDs about the role modern optometry plays in health care and how optometrists do much more

than just glasses. Furthermore, I plan on continuing this volunteer work even if my license is fully reinstated. There is a high demand for eye care in this area and I feel that I can continue to make a difference with my skills as an optometrist and as a liaison between the optometric and medical community.

From 2008, I have volunteered at local schools to contribute back to the community. I have developed an optometric education program to teach elementary school children in economically challenged areas. I have taught in various classes each month during the year in Alameda and Contra Costa County. I educated students on the anatomy and functions of the human eye. I have received hundreds of letters from the students who are so appreciative of the time. This is critical in our schools given the lack of funds to do such activities.

In addition, I volunteered at schools to help enhance their science programs by conducting a “cow eye dissection” at various schools in Alameda, Contra Costa, and San Mateo County. All of the schools are lacking the necessary funding for such science projects. I purchase fresh cow eyes from slaughterhouses and bring them to the students to learn about the anatomy of the eye. The students are able to touch the parts and learn and have fun at the same time. It is a priceless experience. It has been so impacting that word is spreading and more teachers want the dissection in their classrooms.

Becoming glaucoma-certified is another way that I have continued to expand my scope of practice and improve my clinical skills to better serve my community. This was not a requirement by the terms of my probation or continuing education. I love my profession and I have always continued to improve my skills. To become glaucoma-certified, I had to put in the time to study the course material and pass the required tests. I need this certification to help the communities that do not have readily available access to medical care.

In summary, I have clearly met or exceeded all the requirements of my probationary terms. My actions, more than just words, clearly demonstrate my dedication to returning to full reinstatement and that I can be trusted to return to the public without monitoring. The extensive volunteer services shows that I am committed to my community. I am proud that I have made an impact on the community and I will continue to support the community moving forward. I feel that there is nothing further to gain from being on probation and my actions support my request to terminate my probation.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers, and locations.

My probation terms do not allow me to work independently. I have to be under the supervision of another doctor.

Working as an employed optometrist was a very daunting task. My previous employer, who wrote a letter of recommendation for me in 2012, had to hire another optometrist when I had to stop practicing in August 2012. Many potential employers will not hire an optometrist on probation, as insurance carriers did not allow probation optometrists to see patients. Often many ridiculed me if I was granted an interview. Corporations stated that HR did not allow optometrists on probation. It was a very humbling experience to be more than qualified but unable to find work.

I found some temporary work for an independent optometrist, Tammy Nguyen, who worked at JC Penny Optical in San Bruno, CA, which was over 90 minutes from my home. I was strictly an on-call doctor. I practiced general optometry doing eye exams and contact lens fittings. I was offered far less compensation than other optometrists, though, due to my probation. I began working for Dr. Nguyen on December 27, 2014 and continued until April 2015 when she gave up her lease.

I was then employed by Dr. William Ellis, M.D. from March 1, 2014 through August 23, 2014. I worked at his locations in El Cerrito, Walnut Creek, Corte Madera, and San Francisco. I screened for LASIK, pterygium, and cataract patients. I was again offered less compensation as a result of my probation.

I worked on call and for fill in for Dr. James Young, O.D., at Sears Optical a few days a month from January 27, 2014 until September 26, 2014 and remain on call. I performed general eye exams and contact lens fittings.

I worked part time for Dr. Tara Starr, M.D., in her Berkeley office and occasionally in her Lafayette office from October 2014 until April 2015, as she required an OD for six months. I performed general eye exams and work ups on all her surgical patients pre and post op, glaucoma patients, diabetics and general patients. I was limited in my work schedule due to inability to obtain membership on insurance panels. As such my compensation was markedly reduced based solely on the fact that I was a risk factor due to my probation.

Currently I work for Dr. Sarbjit Hundal, M.D. at the Mission Valley Eye Medical Center. I perform general eye exams and contact lens fittings. I work 12 hours per week and as an on call doctor. The reason for my limited work schedule is my inability to gain membership to medical and vision plans. They will not allow optometrist on probation to be on their panels. Dr. Hundal would prefer to have all optometrist on all panels. He has offered me work based on my clinical skills and ability to treat patients but will not increase my hours until I have panel membership.

I started the eye clinic at RotaCare at Davis Street in San Leandro, California. Finding a volunteer organization to practice optometry was a very challenging task. Several clinics denied my volunteer requests stating their Board did not approve probationary ODs. I approached RotaCare about starting an optometry clinic. I explained the high demand in the area and the need for this added service. RotaCare is the free clinic where doctors provide free medical treatment for non-insured patients. Prior to my start, there were no eye services available. The clinic did not have any funds to start an optometry clinic and vendors would not donate any equipment. The solution: I provided all the equipment in the eye clinic from the phoropters, trial lens, pupilometer, portable Goldman tonometer, retinoscope, ophthalmoscope, and BIO.

At RotaCare, we treat patients of all ages who do not have medical insurance. I work with other nurses, MDs, and medical students. Together we provide valuable medical services for an underserved community. I started working here in January 2014 and plan on continuing my volunteer services even post of my hopeful early termination of probation.

I have been a volunteer coach in my community for youth sports and development in the cities of San Ramon and Walnut Creek for the past 4 years. I have also spent last two years volunteering with the Catholic Youth Organization (CYO). I have implemented a lot of my life skills and core values into these settings. The directors and parents of these other leagues have noticed my unique teaching style and how it relates outside of sports. I have actually been asked to coach other teams and parents are now requesting for me to be their children's coach. I truly believe this is yet another way I am positively impacting local youth.

I have been volunteering at The First Tee since July 2009. I made the decision to continue this community volunteer service despite not having it be a term of my probation. I chose to do this because it enables me to positively affect kids and provides me yet another way to give back to the community. I have committed to do this in 2016 also. It will be 7 years this coming July. I have taken numerous classes and passed tests to become reach the level of Certified Golf Coach, which takes approximately 4 years to complete.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

Rehabilitation is defined as the ability to restore someone to a satisfactory state as through education or other means. I believe that my actions demonstrate the vindication of my character and will show that I am a reputable and ethical person.

My volunteer optometry services with RotaCare at Davis Street in San Leandro, CA has helped rehabilitate my character. My probation requirement was 16 hours per month. I have devoted time in excess of these hours almost every single month. I started the eye clinic here at RotaCare. They never had an eye clinic. I provide a great and needed service for this diverse, economically challenged community. I am truly fortunate when I see the expression on patients I see. Many are from foreign countries and have never had optometric eye care. Others have lost their jobs and have not received eye care in several years. Their expressions of happiness and words of gratitude are worth every minute. I truly feel that I am helping the community. RotaCare needed an optometrist but Dr. Tom, the optometrist, needed RotaCare just as much. As much as I have given, I have received and I am reminded of what an impact I have on those around me.

From 2013 to 2014, I have completed over 173 hour of continuing education. I am very committed to my profession and want to be at the forefront of it.

In 2015, I completed an additional 44 units of continuing education. In addition, I completed my glaucoma certification. By mid 2016, I will have completed 45 hours of continuing education. I respect my profession and education only further supports the rehabilitation of my character.

Another form of rehabilitation has been non-optometric community service by working with The First Tee. I stated work with the First Tee in July 2009 and this July 2016 will be 7 years of community service. This is a non-profit that helps introduce inner city and economically challenged children to the game of golf and its unique values. I am responsible for teaching the children life skills and how those skills relate to everyday life and how it will impact them and affect them in a positive manner. There are 9 core values: Honesty, Perseverance, Respect, Sportsmanship, Integrity, Responsibility, Confidence, Judgment, and Courtesy. We teach each of these values and how students can apply these everyday at home and in life.

Each year I have taken ethic classes. Ethical Concerns on January 27, 2014 by Dr. Roberto Pineda M.D., and Nancy Holekamp, M.D. The article addresses how doctors face ethical challenges how they apply to private practice and decisions we face daily in practice. Ethical Guidelines and Expected Conduct by Optometrists by Tony Carnevali, O.D was another ethics class. This article addressed the daily ethical situations optometrists encounter in clinical practice. These not only educate me on ethical issues, they remind me of issues I have experienced and how to react in the future.

17. No courses were taken except for continuing education.

18. List all optometric literature you have studied during the last year.

1. Review of Optometry
2. Optometric Management
3. Eye and Contact Lens Science and Clinical Practice
4. Optometry Today
5. Vision Monday
6. American Journal of Ophthalmology
7. Contact Lens Spectrum

Here is a sample list of the various articles that I have read and studied in the last 12 months:

New Technology for Dry Eye Treatment
New Surgical Options for Presbyopia
Myopia Control Strategy
The Rapid Evolution of Cataract Surgery
Ocular Surface Wellness
Eye On Glaucoma and OSD
Are You Clear on Your Macular Function Screening Responsibilities
Increase Your Allergy Know How
The Lowdown on Blue Light
OCT and Common Clinical Uses
Topical Steroids and the Treatment of Ocular Inflammation
Contacts Lens Infiltrates
Collagen Cross Linking
Disorders of the Nasolacrimal Duct
Varicella Zoster Virus
Shingles to Chicken Pox
Corneal Transplant Surgery
The Minimally Invasive Glaucoma Surgery That Keeps its Promise
Marking Up Lenses for Scleral Fitting
The Impact of Environment on Dry Eye
Irregular Astigmatism
Is Cyclosporine the New Normal for Treating Dry Eye
The Role of Amniotic Membrane Transplantation
Integrated Cross Disciplinary Approaches to Management of Diabetic Eye Disease
Diet and Nutrition in AMD
Prevention and Management of Ocular Inflammation

19. List all continuing education courses you have completed since your license was disciplined.

	Name	Date	Hours
1.	Berkeley Practicum 2014	January 18-20, 2014	20
2.	Morgan Sarver Symposium 2014	May 2-4, 2014	21
3.	Ethical Concerns	January 27, 2014	1.0
4.	Optometry Medical Model Initiative	September 4, 2014	2.0
5.	CEing is Believing 2014	July 16-18, 2014	24
6.	Berkeley Practicum 2015	January 17-19, 2015	20
7.	CEing is Believing 2015	January 28-29, 2015	24
8.	Ethical Guidelines and Ethical Conduct by ODs	October 5, 2015	2.0
9.	Glaucoma Case Management	September 25, 2015	16
10.	Glaucoma Grand Rounds	August 13-14, 2015	16
11.	SIB 2016	February 25, 2016	22
12.	Integrated Cross-Disciplinary Management of Diabetes	April 7, 2016	2.0
13.	Morgan Symposium 2016	April 30, 2016	21

20. List names, addresses, and telephone numbers of persons submitting letters of recommendations accompanying this petition.

James Young, O.D.
Probation Monitor
1700 Stoneridge Mall Rd, 3rd Floor
Pleasanton, CA 94588

Honorary Braden C. Woods
Superior Court of CA
County of San Francisco
575 Polk St. – Dept. 8
San Francisco, CA 94102

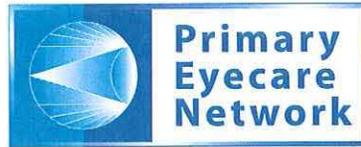
Michelle Tom, M.D.
24451 Health Center Dr.
Laguna Hills, CA 92653

Craig Steinberg, J.D
Law office of Craig Steinberg, O.D, J.D.
5737 Kanan Rd #540
Agoura Hills, CA 91301
(to arrive at hearing)

Mika Hiramatsu, M.D.
Medical Director RotaCare Bay Area
3081 Teagarden St.
San Leandro, CA 94577

Dr. Sarbjit Hundal, M.D
Medical Director, Mission Valley Eye Medical Center
39263 Mission Blvd
Fremont, CA 94539

Continuing Education Certificates



The Optometric Medical Model Initiative

Palm Event Center in the Vineyard - Pleasanton, California

September 4, 2014

COPE Event # Pending

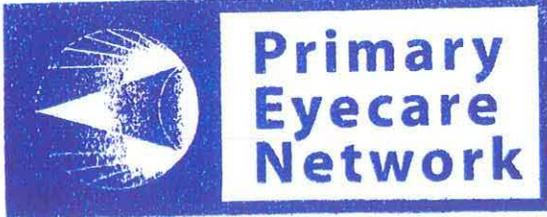
Certificate of Attendance

Attendee Name: Gregory Tom, OD

Address: 3191 Crow Canyon PL San Ramon, CA 94583

License #: _____ State: _____ License #: _____ State: _____

On completion of the event, please present this form to a course monitor to validate your attendance.

Course ID#	Credit Hours	Course Title & Instructor	Validation
41665-GL	2 hours	Decisions in Glaucoma: When to pull the trigger Robert Prouty, OD	

Thank you for attending.
You will receive a total of 2 Credit Hours for this event.



COPE Administrator: Mary Eastwood, OD, Manager of Education Services

Please Note:

Keep this certificate as your validated record of attendance. COPE Administrator will not notify any licensing board, or any other agency, of your attendance unless specifically required by your licensing board. COPE Administrator does not guarantee that the course you have attended has been approved for continuing education credit by your licensing board. COPE Administrator will retain a copy of this certificate for 5 years.

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

DENNIS M. LEVI, O.D., PH.D.
DEAN

SCHOOL OF OPTOMETRY
BERKELEY, CALIFORNIA 94720-2020

January 21, 2014

To Whom It May Concern:

This is to certify that Gregory Tom, OD, attended the following lectures on January 18 - 20, 2014, at the 25th Annual Berkeley Practicum. The continuing education program was presented by the School of Optometry, University of California, Berkeley.

State CA License No. 10427T State License No.

January 18, 2014

8 TPA Hours
(including 2 GLAUC-CE Hours)

- Chirag Patel, MD Monday Morning Quarterback: Anterior Segment Triage and Treatments
Todd Margolis, MD, PhD Ocular Surface Diseases and Corneal Discomfort/Pain
Denise Goodwin, OD, FAAO Optic Nerve: Itis, Opathy, and Edema
Robert Prouty, OD, FAAO Glaucoma Treatments: From Medications to 'Reefer Madness'

January 19, 2014

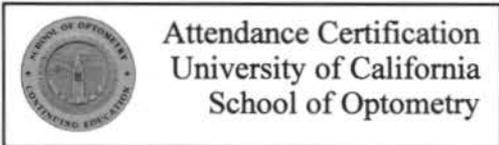
8 TPA Hours
(including 2 GLAUC-CE Hours)

- Robert Prouty, OD, FAAO Lumps, Bumps and Lid Lesions: Know When to Hold and to Fold
Leo Semes, OD, FAAO Adventures in Posterior Segment Grand Rounds
Harry Quigley, MD New Views of Glaucoma Therapy - 2014
Edward Chu, OD, FAAO Strokes and Ocular Manifestations in Your Patients: Prevention & Management

January 20, 2014

4 TPA Hours

- Mika Moy, OD, FAAO and Christina Wilmer, OD, FAAO How to Treat Anterior Ocular Infections: Updates and Practical Pearls
'Name that Disease': Cases and Treatments for Anterior Ocular Infections



Patsy L. Harvey, O.D., M.P.H
Continuing Education Director

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SANTA BARBARA • SANTA CRUZ

DENNIS M. LEVI, O.D., PH.D.
DEAN

SCHOOL OF OPTOMETRY
BERKELEY, CALIFORNIA 94720-2020

May 5, 2014

To Whom It May Concern:

This is to certify that **Gregory Tom, OD**, attended the following lectures on May 2-4, 2014, at the 29th Annual Morgan/Sarver Symposium. The continuing education program was presented by the School of Optometry, University of California, Berkeley.

State CA License No. 104275 State _____ License No. _____

May 2, 2014

**5 TPA Hours
(including 5 GLAUC-CE Hours)**

Carl Jacobsen, OD and
Todd Severin, MD

*2014 Updates on Detection, Diagnosis, Treatment and Management of Glaucoma
Glaucoma Cases - Parts 1 and 2*

May 3, 2014

6 TPA, 2 MISC Hours

Etty Bitton, OD
Ed Hernandez, OD
William Townsend, OD
Nancy Wong, OD

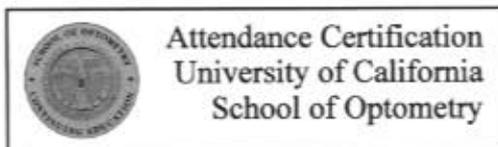
*Red, Green and Yellow: Understanding Ocular Surface Staining
Vision Care in California: New Directions, New Treatments
My Retinal Detachment: Now I See, Now I Don't
Optical Coherence Tomography (OCT): Posterior Segment Applications*

May 4, 2014

8 TPA Hours

Leonard Messner, OD
Etty Bitton, OD
William Townsend, OD
Michael Samuel, MD

*Concussions: Neuro-Ophthalmology, Complications & Management
Not a Dry Eye in the House
Diabetes and the Eye: What We Must Know For Our Patients
Ocular Nutrition: Treating Macular Degeneration with Nutritional Supplements*



Patsy L. Harvey, O.D., M.P.H
Continuing Education Director



CEiB 2014 CERTIFICATE OF ATTENDANCE



Dr. Gregory Tom
 202 Aspenwood Ct
 San Ramon CA 94582
 United States
OE Tracker: 534000

Administrator:
 Daniel Rostenne, EyeCarePro
 55 Douglas Crescent
 Toronto ON, M4W 2E6
 (412) 532-6542 - danielr@eyecarepro.net

Event:
 COPE Event #107654
 Event Title: CEiB2014
 Location: Online
 Dates: July 16th - 22nd, 2014

Date	Course	Instructor(s)	Credit Type	Hours	Test
8/26/2014	A day in the Retina Clinic (41386-PS)	Leo Semes	COPE Approved - Online	1	Passed
7/16/2014	Effective Perimetry (41339-GO)	Joe Pizzimenti	COPE Approved - Online Interactive	1	Passed
8/26/2014	Eye Nutrition 101: What You Need to Know and How to Exp... (41913-GO)	Steven Newman	COPE Approved - Online	1	Passed
8/26/2014	Myopia Control: Peer Reviewed Research Update (42019-GO)	Alan Glazier	COPE Approved - Online	1	Passed
7/16/2014	OhhAhhhAhhh - The Magic of Orthokeratology Continues - ... (38243-CL)	Cary Herzberg	COPE Approved - Online Interactive	1	Passed
7/16/2014	Pain Management in the Optometric Practice (41272-PH)	Steven Ferruci	COPE Approved - Online Interactive	1	Passed
7/16/2014	Ultra-widefield Auto-Fluorescence Advantages and Limita... (34529-PS)	Jerome Sherman	COPE Approved - Online Interactive	1	Passed
8/26/2014	Become The Consultant Of Your Business (42125-PM)	Jay Binkowitz	COPE Approved - Online	1	Passed
7/16/2014	Diabetes: A Public Health Crisis (41338-SD)	Joe Pizzimenti	COPE Approved - Online Interactive	1	Passed
8/26/2014	Diagnosing the Surface: Current Technologies for Ocular... (41838-AS)	Richard Maharaj	COPE Approved - Online	1	Passed
7/16/2014	High Energy Blue Light (41391-GO)	Thomas Gosling	COPE Approved - Online Interactive	1	Passed

Gregory Tom
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 United States
OE Tracker: 534000

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 (412) 532-6542 - danielr@eyecarepro.net

Event:
 COPE Event #107654
 Event Title: CEiB2014
 Location: Online
 Dates: July 16th - 22nd, 2014

Date	Course	Instructor(s)	Credit Type	Hours	Test
8/26/2014	Lipiflow Treatment for Evaporative Dry Eye (38023-SD)	Alan Glazier	COPE Approved - Online	1	Passed
8/26/2014	The Management of Eye Diseases using Epigenetics, Nutri... (37395-PD)	George Rozakis	COPE Approved - Online Interactive	1	Passed
8/26/2014	The Most Current Course on Corneal Collagen Cross Linki... (41987-AS)	Andrew Morgenstern	COPE Approved - Online	1	Passed
8/26/2014	Clinical Decisions in Glaucoma (41840-GL)	Mark Dunbar	COPE Approved - Online	1	Passed
8/26/2014	High Tech in Low Vision (41088-LV)	Alexis Malkin	COPE Approved - Online	1	Passed
8/26/2014	Infiltrates: From Tissue to Treatment (41387-CL)	Loretta Szczołka-Flynn	COPE Approved - Online	1	Passed
8/26/2014	When Equal is not Equal (41809-GO)	Agustin Gonzalez & Mel Friedman	COPE Approved - Online	1	Passed
8/26/2014	Paleo, Gluten-Free, Vegan: What's important for eye he... (41089-GO)	Laurie Capogna	COPE Approved - Online	1	Passed
8/26/2014	A Lifetime of Contact Lens Wear: The Keys to Making it ... (32965-CL)	Mile Brujic	COPE Approved - Online	1	Passed
8/26/2014	Modern Cataract Surgery with the Femtosecond Laser (41911-PO)	Rob Stutman and Scott Laborwit	COPE Approved - Online	1	Passed
8/26/2014	Beyond Dry Eye: Improving the Success of Treating the O... (41960-AS)	Scott Hauswirth	COPE Approved - Online	1	Passed

Gregory Tom
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OE Tracker: 534000

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 55 Douglas Crescent
 Toronto ON, M4W 2E6
 (412) 532-6542 - danielr@eyecarepro.net

Event:
 COPE Event #107654
 Event Title: CEiB2014
 Location: Online
 Dates: July 16th - 22nd, 2014

Date	Course	Instructor(s)	Credit Type	Hours	Test
8/26/2014	The Power Of The Pupil (41087-NO)	Kelly Malloy	COPE Approved - Online	1	Passed
8/26/2014	Holes: Hold or Fold (41273-PS)	Diana Shechtman	COPE Approved - Online	1	Passed



SiB 2015 CERTIFICATE OF ATTENDANCE



Dr. Gregory Tom

202 Aspenwood Ct
 Pleasanton CA 94582
 United States
OE Tracker: 534000

Administrator:

Daniel Rostenne, EyeCarePro
 55 Douglas Crescent
 Toronto ON, M4W 2E6
 (412) 532-6542 - danielr@eyecarepro.net

Event:

COPE Event #108539
 Event Title: SiB2015
 Location: Online
 Dates: January 28th - 29th, 2015

Date	Course	Instructor(s)	Credit Type	Hours	Test
3/16/2015	Carotid Stenosis: The Manifestations and Clinical Spect... (43525-SD)	Richard Zimbalist	COPE Approved - Online	1	Passed
1/28/2015	K-Sicca? What to Pick-A?! (43782-AS)	Vicky Wong	COPE Approved - Online Interactive	1	Passed
1/28/2015	Low Vision Rehabilitation So Easy Even a Caveman Can Do It! (43703-LV)	Joseph Maino	COPE Approved - Online Interactive	1	Passed
1/28/2015	Reducing ARMD Risk Factors (43666-PS)	Steven Newman	COPE Approved - Online Interactive	1	Passed
1/28/2015	Updates on Collagen Cross Linking (43632-AS)	Andrew Morgenstern	COPE Approved - Online Interactive	1	Passed
3/16/2015	Retinal OCT Deconstructed (43583-GO)	Ian Raden	COPE Approved - Online	1	Passed
3/16/2015	Yuck – Demodex; Killing Those Little Buggers (43693-AS)	Alan Glazier	COPE Approved - Online	1	Passed
3/16/2015	Adv. Scleral Lens Technologies for the Treatment Cornea... (43802-AS)	Edward Boshnick	COPE Approved - Online	1	Passed
3/16/2015	Meet the Choroid (43588-GO)	Joseph Pizzimenti	COPE Approved - Online	1	Passed
3/16/2015	Sutureless Amniotic Membranes: When and How to use them (43691-AS)	Nicholas Colatrella	COPE Approved - Online	1	Passed

CERTIFICATE of ACHIEVEMENT

This is to certify that

Gregory Tom

has completed the course

Complete 16-Hour Glaucoma Case Management Course

September 25, 2015



Dennis M. Levi, OD, PhD
Professor of Optometry and Vision Science;
Professor of Neuroscience;
Dean, School of Optometry

Credit Hours: 16.0

mwguuvlrPX



JOHN G. FLANAGAN, O.D., PH.D.
DEAN

SCHOOL OF OPTOMETRY
BERKELEY, CALIFORNIA 94720-2020

UC Berkeley School of Optometry

Glaucoma Grand Rounds

Thursday, August 13, 2015 – Friday, August 14, 2015
Meredith W. Morgan Eye Center ~ Minor Hall, Berkeley Campus

This is to certify that ***Gregory Tom, OD***

State CA License No. 10927 State _____ License No. _____

attended the UC Berkeley School of Optometry sponsored program on August 13-14, 2015.

SPEAKER	LECTURE TITLE
---------	---------------

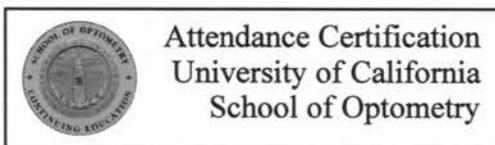
Thursday, August 13, 2015

Glen Ozawa, OD	<i>Glaucoma Patient Grand Rounds – An Introduction</i>
Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Cases and Pre-Case Review</i>
Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Grand Rounds</i>
Karen Walker-Brandreth, OD	<i>Optic Nerve Evaluation in Glaucoma</i>
Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Case Presentations and Review</i>

Friday, August 14, 2015

Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Pre-Case Review</i>
Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Grand Rounds</i>
Glen Ozawa, OD and Karen Walker-Brandreth, OD	<i>Glaucoma Patient Case Presentations and Review</i>

**16 Hours TPA CE
including 16 GLAUC-CE Hours**



Christina S. Wilmer, OD, FAAO
Associate Dean of Clinical Affairs

CE CREDIT CERTIFICATE

Event

COPE Event ID #: 109510
Title: Integrated Cross-Disciplinary Approaches to the Management of Diabetic Eye Diseases
City: Ambler | State: PA
Dates: 2015-06-23 - 2017-06-23

Dr. Gregory Tom
202 Aspenwood Ct
San Ramon CA 94582
OE Tracker: 534000

Administrator
Maureen Platt
321 Norristown Road, Suite 150
Ambler, PA 19002
(215) 628-7754 - Maureen.Platt@PentaVisionMedia.com

Date	Course	Credit Type	Hours	Test
4/7/2016	Integrated Cross-Disciplinary Approaches to the Management of Diabetic Eye Diseases COPE ID: 45276-SD Instructor(s): Joseph Pizzimenti O.D	Written	2	Passed: 95%

**Course History for Licensee Gregory L. Tom, O.D.
From: 01/01/2016 - 04/14/2016**

If you have attended CE courses that are not listed below, please fax your attendance certificates to ARBO at 1-888-703-4848 and we will add them to your account

Course Title	COPE ID	CEE	Category	Format	Date Completed	Instructor	Provider	Hours	Serial #
Anterior Segment OCT Applications in Contact Lens Evaluation Lake Oswego, OR	47245-CL		Contact Lenses	Internet/Online	02/25/2016	Jeffrey Sonsino	PROACTIVE OPTOMETRIC PHYSICIANS	1	11872054
The Role of VEP and PERG in Eye Care Lake Oswego, OR	47316-PD		Principles of Diagnosis	Internet/Online	02/16/2016	Alberto Gonzalez Garcia	PROACTIVE OPTOMETRIC PHYSICIANS	2	11894565
Applications of OCT Technology for Anterior Segment and Contact Lens Management Lake Oswego, OR	47420-AS		Trt/Mngmnt Anterior Segment	Internet/Online	02/16/2016	Steven Eiden	PROACTIVE OPTOMETRIC PHYSICIANS	1	11894566
Detecting Lesions with Widefield color and AF Images and Diagnosing the Detected Lesions with SD OCT Lake Oswego, OR	47514-PS		Trt/Mngmnt Posterior Segment	Internet/Online	02/16/2016	Jerome Sherman	PROACTIVE OPTOMETRIC PHYSICIANS	1	11894567
Clinical Evaluation of Eyelid Lesions Lake Oswego, OR	47229-SD		Systemic/Ocular Disease	Internet/Online	02/13/2016	James Milite	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884249
The Use of Off Label Drugs and Treatments in Optometric Care Lake Oswego, OR	47314-PH		Pharmacology	Internet/Online	02/13/2016	Steve Silberberg	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884255
The Top 10 Reasons to Measure Macular Pigment MP Lake Oswego, OR	47746-PS		Trt/Mngmnt Posterior Segment	Internet/Online	02/13/2016	Stuart Richer	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884259
Blepharitis, MGD and Ocular Surface Disease Lake Oswego, OR	47247-AS		Trt/Mngmnt Anterior Segment	Internet/Online	02/12/2016	Ian Gaddie	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884251
Ophthalmic Drug Delivery Systems Lake Oswego, OR	47279-PH		Pharmacology	Internet/Online	02/12/2016	Agustin Gonzalez	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884252
How to be a Hero The Eye and Systemic Disease Lake Oswego, OR	47284-SD		Systemic/Ocular Disease	Internet/Online	02/12/2016	Mark Friedberg	PROACTIVE OPTOMETRIC PHYSICIANS	2	11884253
Medical Therapy Is Not Enough - Whats Next Lake Oswego, OR	47219-GL		Glaucoma	Internet/Online	02/11/2016	Richard Witlin	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884248
Dry Eye The Past, Present, and Future Lake Oswego, OR	47244-AS		Trt/Mngmnt Anterior Segment	Internet/Online	02/11/2016	David Kading	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884250
Complications of Ocular Surgery and Their Management Lake Oswego, OR	47289-PO		Peri-Op Mngmt of Ophth Surgery	Internet/Online	02/11/2016	Mark Friedberg	PROACTIVE OPTOMETRIC PHYSICIANS	2	11884254
Key to Retinal Assessment Making Visible what is Invisible Lake Oswego, OR	47515-PS		Trt/Mngmnt Posterior Segment	Internet/Online	02/11/2016	Jerome Sherman	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884257
Advanced Cataract Co-Management Lake Oswego, OR	47185-PO		Peri-Op Mngmt of Ophth Surgery	Internet/Online	02/10/2016	Richard Witlin	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884247
The Harsh Reality of Posterior Segment Disease in a Healthy Patient Practice Lake Oswego, OR	47329-PS		Trt/Mngmnt Posterior Segment	Internet/Online	02/10/2016	Gina Wesley	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884256
The role of Inflammation in systemic and retinal Lake Oswego, OR	47577-SD		Systemic/Ocular Disease	Internet/Online	02/10/2016	Stuart Richer	PROACTIVE OPTOMETRIC PHYSICIANS	1	11884258
Infections of the Ocular Adnexa Lake Oswego, OR	47228-SD		Systemic/Ocular Disease	Internet/Online	02/09/2016	James Milite	PROACTIVE OPTOMETRIC PHYSICIANS	1	11872053
Life on the Edge Part 2 Lake Oswego, OR	47373-AS		Trt/Mngmnt Anterior Segment	Internet/Online	02/09/2016	Katherine Mastrota	PROACTIVE OPTOMETRIC PHYSICIANS	1	11872055
TOTAL COPE HOURS - 22							TOTAL NON-COPE HOURS - 0		
TOTAL HOURS: 22									

Signature Agreement

By signing this document, I do hereby attest that I personally attended the listed course(s) and the information included is accurate to the best of my knowledge. I understand that the information attested to in this certificate may be shared with relevant optometry licensing boards or other state agency responsible for the licensure and regulation of optometrists.

.....
Signature

Agenda Item 2, Attachment 1
.....
Date

Ethics Class Certification

CERTIFICATE OF CONTINUING PROFESSIONAL EDUCATION

Accreditation: The Audio-Digest Foundation is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

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GREGORY L TOM OD
 202 ASPENWOOD CT
 SAN RAMON CA 94582

DATE 01/27/2014
 CUSTOMER ID # 22175911
 LICENSE # _____
 STATE OF LICENSURE: _____

**THIS PARTICIPANT HAS SUCCESSFULLY COMPLETED THE FOLLOWING CE ACTIVITIES
 (APPLIES TO TESTS GRADED Jan 27 2011 THRU Jan 27 2014)**

DATE	VOLUME ISSUE	TITLE	PRE/POST-TEST	CE CREDITS
OPHTHALMOLOGY				
01/27/14	49-04	ETHICAL CONCERNS <i>Roberto Pineda, MD, Nancy M. Holekamp, MD</i> Test answers: 1=D, 2=C, 3=A, 4=D, 5=A, 6=D, 7=D, 8=B, 9=A, 10=D COPE # 30235-EJ, Event ID # 101652	60% 100%	1.0

TOTAL CE CREDITS EARNED : 1.0



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Marshall B. KETCHUM UNIVERSITY
Southern California College of Optometry

**QUALITY ONLINE EDUCATION
FOR INDEPENDENT OPTOMETRY**

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**You answered 16 out of 20 questions correctly.
Your score is 80 %.
A passing grade is 70 %.**

Congratulations! You passed the examination. Here are the results of your exam to print for your records. You will receive your CE certificate via Email. If you do not receive your certificate within the next 5 minutes, please call Sue Atkinson at 714 449-7442 or email ce@ketchum.edu.

Course ID: 16
Course Name: Ethical Guidelines and Expected Conduct by Optometrists (NEW 9/4/2014, 42516-EJ)
Registration #: 4084
Date Registered: 10/5/2015
Date Passed: 10/5/2015 11:12:53 PM
Your Name: Gregory Tom
Address: 202 Aspenwood Ct
City: San Ramon
State: Ca
Zip: 94582
Phone: 5102068152
Fax:
Email Address: idoc4u2c@yahoo.com
License #: 10427 TG
Vision West Member: N

Be sure to come back to this site periodically to check for new courses which are being added on an ongoing basis.

Please print this page for your records.

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CA Laws and Regulations Exam

NAME: GREGORY TOM
BIRTHDATE: 07/16/1967
EXAM DATE: 12/05/2013
FILE ID: 4173
TEST CENTER: Walnut Creek



EXAM: California Optometry Laws and Regulations Examination

Congratulations! You have passed the California Optometry Laws and Regulations Examination.

YOU ARE NOT YET LICENSED TO PRACTICE AS AN OPTOMETRIST.

Your results will be sent to the California State Board of Optometry (SBO), which will advise you by letter of the other steps you may need to take to receive an Optometrist license.

A license will only be issued by SBO once you have passed the National Board of Examiners in Optometry Examination Parts 1-3, the California Laws and Regulations Examination, and SBO has received and reviewed criminal history information from the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

If you have already received notice from SBO that you have passed the California Laws and Regulations Examination and you have submitted all requirements for licensure, you should receive your license within 30 days from the date of passing this examination. If you have not received your Optometrist license by then, you may contact SBO after the 30-day period is over. Please do not call SBO before that time, as phone calls during this process will only further delay the mailing of notices and licenses.



CALIFORNIA STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105
SACRAMENTO, CA 95834
TELEPHONE: 916-575-7170
WWW.OPTOMETRY.CA.GOV

Handwritten signature and date:
12/05/13

Letters of Recommendation

James M. Young, O.D.
1700 Stoneridge Mall Rd
Pleasanton, CA 94588-3271
T: 925.737.0126
F: 925.737.0127

April 15, 2016

To: Board members, Administrative Hearings officials

Re: Petition for Reduction of Penalty or Early Termination of Probation by #10427T, Tom, Gregory OD

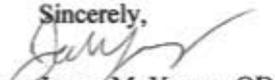
As Dr. Tom's practice monitor for the past 27 months of his 60-month probation term, I am pleased to endorse this Petition and to report he continues to demonstrate both good exam charting compliance and direct patient care.

At this time, I recommend the Board consider at least shortening the probation term if not granting early release, based on the following factors:

- Dr. Tom has now demonstrated professionally acceptable chart audit results for the past 27 months without any discrepancies. He does not perform, set, or control any patient billing or fee collection activities.
- Dr. Tom's prior violations and conduct have never involved his clinical competence or direct patient care.
- The original offenses occurred over 12 years ago (VSP insurance adverse action occurred 10.24.2003).
- Dr. Tom's work hours were recently severely cut due to inadmissibility to several insurance panels which comprise a large portion of the vast majority of eyecare employers' business. This cut was unrelated to Dr. Tom's patient care. This problem along with most employers' natural reluctance to hire probationers causes Dr. Tom substantial difficulty satisfying the minimum employment hours requirement.
- Dr. Tom willingly takes more C.E. and does more volunteer work than required. As Superior Court Judge B. Woods noted in 2013, such initiative and activity is favorable evidence toward rehabilitation.
- Dr. Tom and his household are now facing substantial financial hardship since his spouse was recently laid off from work. Dr. Tom truly wants to work and refuses to financially depend on others. Dr. Tom has excellent diagnostic skills and natural ability to create immediate valued rapport with patients, talents that are too valuable to go unused. However, he needs a clear license status to be useful to most employers.
- Dr. Tom has accepted full responsibility for prior offenses and probation violations, continues to suffer the consequences, and is strongly deterred against ever re-offending, due to heightened awareness of insurers' scrutiny, audits, and severely limited work opportunities. His clean audit results to date demonstrate increased conscientiousness and acceptance of the serious importance of professional ethics at all times.

Based on the foregoing, I sincerely believe Dr. Tom has accepted and learned from the gravity of his past misconduct and has sufficiently rehabilitated to deserve granting this Petition.

Sincerely,



James M. Young, OD

Superior Court of California
County of San Francisco



BRADEN C. WOODS
JUDGE

April 18, 2016

RE: Dr. Gregory Tom, O.D. – Petition for Full Reinstatement

Dear Members of the California Board of Optometry:

I believe the time has come to grant Dr. Gregory Tom's (Greg) petition for reinstatement. Over the past six years, Greg has honored his probation terms, shown remorse, and greatly improved his ability to make sound ethical decisions. He has demonstrated his rehabilitation through his actions, including: yearly ethics classes, public service through both optometric as well as non-optometric volunteer service, and commitment to the profession through starting a free eye clinic at Rotacare.

You will see in your files that I have written to you on Greg's behalf previously. In addition to being long-time friends of the Tom Family, my wife and I have been patients of Dr. Tom, and we have been following his progress throughout his probation.

Greg's dedication to not only completing but excelling during his probationary period has been remarkable. To the best of my knowledge, he has exceeded the expectations and requirements set forth for his probation, thereby proving worthy of reinstatement at this time. He has excellent clinic skills as an optometrist, and I am confident he will make a positive contribution to society.

Thank you for considering his petition. I can be contacted by phone or e-mail if I can provide any additional information.

Regards,

A handwritten signature in blue ink that reads "Braden C. Woods". The signature is fluid and cursive.

Hon. Braden C. Woods
Superior Court of California
County of San Francisco
400 Mc Allister Street
San Francisco, CA 94102
(415) 551-4020 – bwoods@sftc.org



RotaCare[®] Bay Area, Inc.
San Leandro
Davis Street Family Resource Center

11 April 2016

Jessica Sieferman
California Board of Optometry
Department of Consumer Affairs
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

RE: GREGORY TOM, OD
License 10427

Dear Ms. Sieferman

Dr. Gregory Tom has been an ongoing volunteer at the RotaCare Free Medical Clinic, San Leandro, since January 30, 2014. As you know, I am a pediatrician and the medical director of the clinic.

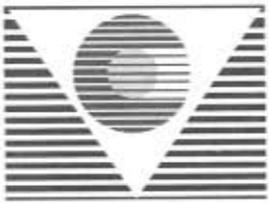
Dr. Tom has consistently volunteered beyond his required 16 hours per month at the clinic. He has been very reliable and consistent, and we have all greatly appreciated his expert assistance. The other volunteer physicians, medical residents, patients and families have found him friendly, helpful and happy to help. He often has seen more patients than any other provider during his clinic hours. We are very grateful to have this resource for our low-income patient population. I hope he will continue to volunteer for some time.

I support the early termination of Dr. Tom's probation. Please contact me if you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mika Hiramatsu'.

Mika Hiramatsu, MD



39263 MISSION BLVD., • FREMONT, CA 94539 • (510) 796-4500 • FAX (510) 796-4573

April 15, 2016

To: California Optometric Board

Dr. Gregory Tom, O.D., has been working in my office for approximately one year. He has been an asset to my practice as he has very good clinical skills, diagnostic ability and I am very comfortable and happy with his ability to perform his duties as an optometrist.

Patients are very satisfied with the level of care and communication that they receive from Dr. Tom. They trust his recommendations, as do I - he has provided care for several patients that have been with me for over thirty years.

In terms of his character, I would describe him as very professional, honest, and trustworthy. I can vouch for him as an outstanding optometrist who always places patient care as the main priority.

Having his license fully reinstated would be of benefit to the public as they would gain a very competent and caring doctor who can practice optometry to the fullest extent.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hundal', written in a cursive style.

Dr. Sarbjit Hundal, M.D.
Medical Director
Mission Valley Eye Medical Center
39263 Mission Blvd
Fremont, CA 94539

April 18, 2016

To : Board of Optometry

I am writing this letter on behalf of Gregory Tom's reinstatement for his optometry license. I am aware of his past offenses and believe the board should reconsider its decision to reinstate his license.

As his sister, I can tell you that there has been a radical change in his character. He is truly remorse for what has occurred and has become a different person. He is humble and kind. I see the change in the way he interacts with his family and friends that I have never seen before. He spends significant amount of time with his two young children. He is patient and loving. He teaches them to be honest, patient, and humble. Our relationship is the best it has ever been.

He volunteers and teaches children in underserved areas. He helped start the free eye clinic at Rotacare in San Leandro, CA. His care and compassion for helping children is demonstrated as the coach and mentor for two of the local youth basketball teams.

As an optometrist, he has excellent clinical skills and possesses a wonderful bedside manner. His patients respect his clinical decisions and his easy going personality have made him very popular. When the Board of Optometry revoked his license, Gregory informed his office and his patient's that he was no longer practicing optometry. There were many tears shed that day. The community not only lost one of its best clinicians but a well respected leader as well.

Gregory is extremely remorseful about what transpired and has learned much from this experience. His past actions weigh heavily on his shoulders. Not a day goes by that he does not regret his previous mistakes. He takes responsibility for his actions. He is a very different person now than he was then. I do not believe he would take those same actions today. It is important that you are aware that Gregory's past actions are out of character for him. He has never previously been associated with any wrong-doing or misrepresentation, nor will he in the future.

Since this matter, Gregory's whole life has changed. He continues to stay involved in his local community and works tremendously hard to regain their trust and respect. I would ask that when you review Gregory's past actions, that you also consider his change in character, dedication to his profession and devotion to his community. Please be mindful that, "Good people make mistakes. Even the best of us." What is even more important is what you do after the mistake is made. We all deserve a second chance.

I believe that Gregory Tom would be an invaluable addition to the practice of optometry. I strongly recommend without reservation that the Optometry Board reconsider reinstating Gregory's license.

Sincerely,



Michelle Tom, M.D.

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reduction of
Penalty or Early Termination of Probation:

Case No. CC 2013-47

GREGORY L. TOM,

OAH No. 2015010052

Optometrist License No. 10427

Petitioner.

DECISION

This matter was heard before a quorum of the California Board of Optometry (the Board), Department of Consumer Affairs, State of California, in Van Nuys, California, on January 23, 2015.

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings, presided over the hearing.

Petitioner Gregory L. Tom appeared and represented himself.

Deputy Attorney General Sydney Mehringer appeared on behalf of the Office of the Attorney General, State of California.

The petitioner's evidence and the arguments and observations of the Deputy Attorney General were presented in open session. Board members had the opportunity to ask questions to assist in their deliberations. Additionally, Board members read and considered the petition and exhibits filed by the petitioner. At the conclusion of the open hearing on the petition, the Board met in closed session to deliberate and to vote on whether to approve the petition.

The matter was submitted at the conclusion of the hearing.

FACTUAL FINDINGS

1. On September 22, 1994, the Board issued Optometry License number 10427 to the petitioner.

2. In 2001 and 2002, the petitioner submitted bills to Vision Service Plan (VSP) for payment as an authorized service provider. After VSP conducted an audit, the insurance carrier determined that the petitioner had submitted fraudulent or improper bills totaling \$84,829.53.

3. On March 26, 2007, while acting in her official capacity, Taryn Smith (the complainant), as executive officer of the Board, brought an Accusation against the petitioner. The petitioner stipulated to the surrender of his license and, without making any specific admission, agreed that there was a factual basis for the imposition of discipline.

4. On April 3, 2008, the Board adopted the Stipulated Surrender of License and Order. Costs were awarded to the Board in the amount of \$11,284.57.

5. Thereafter, the petitioner filed a petition for reinstatement of his license. At the hearing on his petition, the petitioner appeared before the Board and testified on his own behalf. He presented evidence of paying partial restitution to the insurance carrier and character references from a probation monitor.

6. On June 15, 2009, the Board granted the petition for reinstatement. The petitioner's license was reinstated and immediately revoked, with the revocation stayed and the license placed on probation for five years.

7. On November 19, 2010, the petitioner filed a Petition for the Reduction of Penalty or Early Termination of Probation. At the hearing on his petition, the petitioner appeared before the Board and testified again on his own behalf. However, the evidence showed that the petitioner had failed to comply with the previous terms of probation. The petitioner performed optometry services at a local college for compensation without reporting the work to the Board. He was also not supervised by another optometrist as required by the terms of probation. After being admonished for the violation, the petitioner wrote a check to reimburse the college the compensation he had received. On the face of the reimbursement check, the petitioner inserted the memo "donation." The Board denied the petition based on (1) the claimant's failure to comply with previously imposed terms of probation and (2) the Board's concern that the petitioner was attempting to derive a tax benefit when he reimbursed the college.

8. On August 18, 2011, the complainant filed a Petition to Revoke Probation on six grounds of probation violations. On August 29, 2012, the petition was granted, the stay of revocation was lifted and the prior order of revocation was imposed.

9. Thereafter, the petitioner filed a Petition for Reinstatement of his license. On November 12, 2013, the Board granted the petition based on the petitioner's evidence, including his testimony. A license was issued to the petitioner and immediately revoked, with the revocation stayed and the license was placed on probation for five years, beginning December 11, 2013.

10. Beginning in January 2014, the petitioner commenced work under the supervision of a licensed optometrist. He is assigned clinical work and examines patients, but

he handles no administrative or billing tasks. The petitioner has performed to the satisfaction of his monitor and patients. The petitioner has been unable to secure other employment because of his probationary status.

11. The petitioner and his monitor have filed quarterly reports with the Board. The petitioner has donated time to serve communities without insurance or other resources for eye care. He teaches life skills to children and volunteers as a coach. He has completed continuing education courses in law and ethics.

12. On December 12, 2014, the petitioner filed his second Petition for the Reduction of Penalty or Early Termination of Probation. At the hearing on his petition, the petitioner appeared before the Board and testified that he had learned from his mistakes and that he was extremely remorseful. However, this testimony was identical in content and tone as the testimony given in prior hearings, and yet the petitioner's conduct failed to comport with those prior assurances. Accordingly, the petitioner's testimony is unreliable and not credited.

LEGAL CONCLUSIONS

1. Cause does not exist to grant the Petition for Penalty Reduction or Early Termination of Probation pursuant to Government Code section 11522 because the petitioner has not demonstrated that he is rehabilitated from his prior acts and offenses under the criteria of California Code of Regulations, title 16, section 1516. (Factual Findings, paragraphs 1 through 10; Legal Conclusions, paragraphs 2 through 6.)

2. Government Code section 11522 provides that a person whose license has been revoked or suspended may petition the agency for a reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

3. Business and Professions Code section 3091, subdivision (b), authorizes the Board, on the petition of a licensee, to modify or terminate the terms and conditions imposed on the probationary license.

4. The petitioner bears the burden of establishing his fitness for early termination of probation. (Evid. Code, § 500.) In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) While the petitioner is seeking termination of probation, the principles and standards set forth in the cited cases dealing with reinstatement of a license would logically apply to a petition for early termination of probation.

5. When considering a petition for reinstatement under Government Code section 11522, the Board must evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:¹

- (A) The nature and severity of the acts or offenses.
- (B) The petitioner's total criminal record.
- (C) The time that has elapsed since commission of the acts or offenses.
- (D) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the petitioner.
- (E) If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.
- (F) Evidence, if any, of rehabilitation submitted by the petitioner.

6. The petitioner has committed multiple acts involving dishonesty. He submitted fraudulent or improper bills to VSP. He thereafter engaged in the unsupervised practice of optometry withholding notification to the Board in violation of the terms of his probation. He has substantial history of disciplinary action and his successful completion of the first year of a five-year probationary term is insufficient to evaluate or anticipate the petitioner's rehabilitation. The evidence is neither clear nor convincing that the petitioner is fit to engage in the practice of optometry without Board oversight. The public will be served only by the petitioner's satisfactory compliance with all terms of probation as previously ordered.

ORDER

The petition of Gregory L. Tom is denied. The terms of probation remain in full force and effect.

ORDERED: March 23, 2015

EFFECTIVE: April 22, 2015


 Alejandro Arredondo, O.D., President
 California Board of Optometry
 Department of Consumer Affairs

¹ California Code of Regulations, title 16, section 1516, subdivisions (b) and (c).

BEFORE THE BOARD OF
OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of License of:

Gregory Lawrence Tom

Optometrist License No. 10427

Respondent.

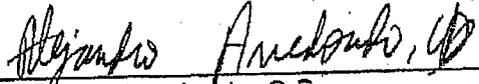
Case No. CG 2013-47

OAH No. 2013080607

ORDER DENYING PETITION FOR RECONSIDERATION

The Board of Optometry, having considered Respondent's
November 28, 2013 letter as a Petition for Reconsideration in the above-entitled
matter and determining that good cause for the granting of reconsideration has not
been established, hereby denies the granting of the Petition.

IT IS SO ORDERED this 10th day of December, 2013.


Alejandro Arredondo, O.D.
President
California State Board of Optometry

BEFORE THE BOARD OF
OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
for Reinstatement of:

OAH No. 2013080607

GREGORY TOM,

Optometrist License No. 10427,

Petitioner.

Agency Case No. CC 2013-47

DECISION

A quorum of the Board of Optometry (Board) heard this matter on September 13, 2013, in Pomona, California. Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom (Petitioner) represented himself.

Sydney Mehringer, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 13, 2013.

FACTUAL FINDINGS

1. On May 1, 2013, Petitioner filed a Petition for Reinstatement.
2. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.
3. In March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted

bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

4. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.

5. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation with various terms and conditions.

6. Petitioner's probationary terms and conditions included, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change of place of practice within 15 days (term and condition 3).

7. In November 2010, Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation. Petitioner sought the early termination of his five-year probation. He contended it was appropriate to end his probation early because he was sufficiently rehabilitated from the earlier transgressions he committed. By Decision and Order, that Petition was denied effective August 16, 2011. Petitioner's Petition for Reconsideration filed thereafter was denied on September 20, 2011.

8. At a probation meeting in May 2011, Petitioner admitted that he had worked at three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Eyecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his probation. Petitioner explained that once he understood this was a violation of his probation, he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing, Petitioner asserted he would not do so.

9. On August 18, 2011, the Board filed a Petition to Revoke Probation. By Decision and Order, effective August 29, 2012, Petitioner's license was revoked. On August 27, 2012, Petitioner filed a Petition for Reconsideration which was denied.

10. In his current Petition, Petitioner asserted that he has changed his mentality and learned from his mistakes since his license has been revoked. He described himself as a changed person and that the year since his license has been revoked has been a "long time." He explained how his revocation has caused his family financial and emotional hardship. Petitioner feels ashamed when he has to inform family members that he is unable to handle their optometric needs.

11. Petitioner offered the testimony of Radbert Chin, O.D., his prior employer, and James Young, O.D., Petitioner's monitor when Petitioner was on probation. Both support Petitioner once again becoming licensed. Additionally, Petitioner offered a letter from Superior Court Judge Braden C. Woods (Judge Woods), County of San Francisco. Judge Woods opinion is that reinstatement of Petitioner's license would not pose a threat to the public. Judge Woods believes that Petitioner's license should be reinstated and that if Petitioner were licensed it would be a benefit to the community.

12. After considering the Petition, all of its exhibits, the testimony of Petitioner and the other witness, the Board concluded that Petitioner has established that the Petition should be granted, with terms and conditions.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to grant Petitioner's Petition for Reinstatement pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-12.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement."

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] ... [¶]

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner established, by clear and convincing evidence to a reasonable certainty, that his license should be reinstated. The public will be protected by issuing Petitioner a probationary license. The probationary license will include terms and conditions to protect the public.

ORDER.

Petitioner Gregory L. Tom's Petition for Reinstatement of licensure is hereby granted. A license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed and Petitioner's license placed on probation for a period of 5 years with the below stated terms and conditions. Petitioner will be hereinafter referred to as "Respondent" in the terms and conditions stated below.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her probation period. Respondent shall only work as a supervised employee in his capacity as an optometrist.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 0 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting

documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of (to be determined by Board) (Ex: 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of

California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. LICENSE SURRENDER

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

17. WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation defendant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his/her worksite monitor submits complete and timely reports. Failure to ensure his/her worksite monitor submits complete and timely reports shall constitute a violation of probation.

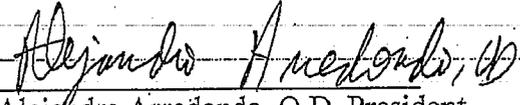
If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

18. ETHICS CLASS

Respondent is required to take an ethics class, as approved by the Board, during each year of his probation, for a total of five classes.

Ordered: November 12, 2013

Effective: December 11, 2013


Alejandro Arredondo, O.D. President
California Board of Optometry
Department of Consumer Affairs

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PAGE 02

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

GREGORY LAWRENCE TOM

Optometrist License No. 10427

Case No. CC 2008-225

OAH No. 2011080850

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective on August 29, 2012.

IT IS SO ORDERED this 29th day of August, 2012.

Alejandro M. Anselmo, D

ALEJANDRO M. ANSELMO,

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

Case No. 2003-125

OAH No. 2011080850

GREGORY LAWRENCE TOM
63 W. Angela St.
Pleasanton, CA 94566

Optometry License No. 10427

Respondent

DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the State Board of
Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 29, 2012.

It is so ORDERED July 30, 2012.

Alejandro Arellano, OD

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

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BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

GREGORY LAWRENCE TOM, O.D.,
Optometry License No. 10427,

Respondent.

Case No. 2003-125

OAH No. 2011110025

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on May 10 and 31, 2012, in Oakland, California.

Deputy Attorney General Char Sachson represented Mona Maggio, Executive Officer of the State Board of Optometry.

Craig S. Steinberg, O.D., Attorney at Law, represented respondent Gregory Lawrence Tom, O.D., who was present throughout the proceeding.

The record was left open until June 4, 2012, for complainant to submit a response to respondent's Hearing Brief (Ex. K.). Complainant did not file a response. The record was closed and the matter was submitted for decision on June 4, 2012.

SUMMARY

Following the filing of an accusation against him, and pursuant to a Stipulated Surrender and Order, respondent surrendered his optometry license effective April 3, 2008. Thereafter respondent petitioned the board to reinstate his license, which was granted effective July 15, 2009. The license was reinstated on probation to the board for five years on stated terms and conditions. In this proceeding, complainant seeks to revoke respondent's probation for his failure to comply with six conditions of his probation.

FACTUAL FINDINGS

1. On September 22, 1994, the State Board of Optometry issued Optometrist License No. 10427 to respondent Gregory L. Tom. The license was surrendered effective April 3, 2008, in connection with disciplinary proceedings in Case No. 2003-125. The license was reinstated on probation effective July 15, 2009. The license was in full force and effect during all times relevant to this proceeding. It will expire, unless renewed, on July 31, 2012.

2. On January 13, 1995, the board issued to respondent Fictitious-Name Permit No. 2081 ("20/20 Optometry," San Ramon). The permit expired April 14, 2003, and has not been renewed.

3. On May 11, 1995, the board issued to respondent Branch Office License No. 4052. The license was cancelled on April 14, 2003.

4. On May 31, 1995, the board issued to respondent Fictitious Name Permit No. 2155. The permit expired April 14, 2003, and has not been renewed.

5. On June 15, 2001, the board issued to respondent Branch Office License No. 6275. The license expired on February 1, 2004, and has not been renewed.

6. On October 18, 2001, the board issued to respondent Fictitious Name Permit No. 2858 ("20/20 Optometry of Silicon Valley," San Jose). The permit expired on January 31, 2004, and has not been renewed.

Prior Discipline/License Surrender

7. In the prior disciplinary action respondent surrendered his license effective April 3, 2010. The discipline was based on a stipulated Surrender of License and Order in which respondent agreed that there was a factual basis for imposition of discipline based on the allegations in the accusation that he had committed insurance fraud, altered patient records, and made false representation of facts in his optometry practice. In particular, it was alleged, based on an audit of his billings conducted by Vision Service Plan (VSP), that respondent had fraudulently billed VSP, and received payment, in the amount of \$84,929.53 over a multiple-year period. Respondent agreed that in the event he were to petition the board to reinstate the license, all the allegations and charges set forth in the accusation would be deemed to be true, correct, and admitted by him. Respondent was ordered to pay the board its costs of investigation and enforcement of \$11,284.57 prior to reinstatement of the license. And, under the terms of the agreement, respondent agreed to wait one year after the effective date of the decision before applying for reinstatement.

License Reinstatement on Probation

8. Respondent filed a petition to reinstate his license on February 23, 2009. Although the petition was filed one month early, the board agreed to consider the petition. Among the evidence he presented to the board was evidence of payment of \$75,460 in restitution to VSP. The board found that respondent had demonstrated sufficient rehabilitation to warrant his reinstatement on probation. The board commented:

Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patient's medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short time since the conduct and the surrender of the license, petitioner must wait an additional period of time before the license is actually reinstated.

Although the effective date of the decision granting respondent's petition for reinstatement was July 15, 2009, the actual reinstatement of his license did not take place until January 1, 2010. The board ordered the reinstated license immediately revoked, stayed the revocation, and placed the license on probation for five years. Among the terms and conditions of probation imposed by the board were Restricted Practice, Reporting, Cooperate with Probation Surveillance, Monitoring, Maintain Records, Community Service, Payment of Costs, and Restitution. In addition, Probation Condition 12 provided that if respondent violated the conditions of his probation, the board may, after giving respondent notice and an opportunity to be heard, set aside the stay order and impose the revocation of respondent's license.

9. Respondent has had two probation monitors. His initial monitor was Margie McGavin. Jessica Siefertman assumed McGavin's caseload in February 2010. Respondent cooperated with both probation monitors, and he communicated with them regularly.

10. With the approval of Probation Monitor McGowan, respondent resumed working as an optometrist in January 2010 under the supervision of Radbirt Jonas Chin, O.D., at VisionOne Optometry in Pleasanton. Respondent worked for Dr. Chin on a part-time basis. Dr. Chin has been satisfied with respondent's performance.

11. Probation Monitor McGowan apparently approved Professor Robert B. DiMartino, O.D., M.S., as respondent's practice monitor. Dr. DiMartino did not submit any probation monitoring reports. The only document Dr. DiMartino provided of his monitoring of respondent, which he called "mentoring," is contained in a letter he wrote directly to board president Lee Goldstein, O.D., dated May 15, 2011. Respondent has a new practice monitor as of August 2011.

12. Respondent complied with all probation requirements associated with payment of cost recovery. Respondent exceeded the requirements for community service and for continuing education. Respondent has been active in a program called First Tee. He also volunteers at schools and at senior homes. At his most recent compliance meeting, no new violations were identified.

Petition to Revoke Probation.

13. On August 18, 2011, complainant issued the petition to revoke probation, alleging six violations of probation.

14. At hearing, Paragraph 20 of the petition to revoke probation was amended to allege as the factual basis for the Fourth Cause to revoke probation:

Respondent failed to submit to the Board and obtain approval of a monitoring plan for his work at the colleges.

THE FIRST, SECOND AND FOURTH CAUSES TO REVOKE PROBATION

15. Probation Condition 2 restricted respondent's employment on probation to a practice under the supervision of an optometrist or ophthalmologist as follows:

Petitioner is restricted from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment.

16. Probation Condition 3 required respondent to report to the board any change in employment as follows:

Petitioner shall inform the board in writing of any change of *place of practice* and place of residence within fifteen (15) days.
(Emphasis added.)

Business and Professions Code section 3005 defines "place of practice," as used in the Optometry Practice Act, to mean "any location where optometry is practiced."

17. Probation Condition 5 required respondent to have a practice monitor. It provided:

Within 30 days of the effective date of this decision, petitioner shall submit to the board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist,

who shall provide periodic reports to the Board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.

18. Respondent did not report to either of his probation monitors that he provided optometry services at community colleges while on probation. Respondent admits that he provided optometry services at Foothill College on January 25 and April 12, 2010; at College of San Mateo on February 8, 2010, March 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011; and at Canada College on March 1, 2010, November 22, 2010, and March 7, 2011.

Respondent was hired by the schools as an independent contractor, and he received compensation for his services in the form of a stipend. For example at Foothill College, respondent signed an independent contractor agreement, completed invoices for his services, was paid \$350 per day for his services, and provided a taxpayer identification number for "Advanced Optometric Eyecare" on a IRS form W-9. Respondent examined 10 to 18 students per day, and prescribed lens where appropriate. Respondent permitted students to obtain single correction lens for \$15 and some of the frames for \$40. (These were for frames that were either donated or purchased at reduced rates.) Respondent would charge more for lenses with more complicated corrections, and he would charge more for frames other than the ones which were donated or purchased by him at a reduced rate. Respondent handled all the money except a \$20 deposit, which the school collected for the examination. If the student purchased glasses, the \$20 was applied toward the cost of the glasses. If no glasses were purchased, the deposit was refunded. Respondent would make up the glasses at his office, and then deliver them to the school. If there were problems with the glasses, the students would come into the VisionOne offices and he would fix the problem there.

19. There is no question that respondent was practicing optometry while at the community colleges. As defined by the Optometry Practice Act, that work was included within respondent's "place of practice." (Bus. & Prof. Code, § 3005.) Probation Condition 3 required respondent to report any change of his place of practice to the board. Respondent's failure to advise the board of his employment at the community colleges constituted a violation of Probation Condition 3.

20. Respondent was not supervised by an optometrist or an ophthalmologist in the performance of these services. Respondent's unsupervised employment at the community colleges constituted a violation of Probation Condition 2.

21. Respondent's services were not monitored by his practice monitor. Respondent's unmonitored employment at the community colleges constituted a violation of Probation Condition 6. Respondent's testimony that he told Dr. DiMartino of these services was self-serving, and is not competent evidence that his employment at the community

colleges was monitored. It is noted that Dr. DiMartino did not mention these services in his May 2011 letter to the board president.

22. Probation Monitor Sieferman first learned of respondent's work at the community colleges through a complaint filed with the board by one of the community colleges. She opened an investigation with the Division of Investigation in May 2011. The investigation was conducted by Investigator Andrew Omahen.

23. Probation Monitor Sieferman and respondent met on May 27, 2011. Respondent admitted working at the community colleges at that time, but stated that he believed it was community service. Respondent believed that his work at the community colleges was community service because he had performed this type of service since a student at the School of Optometry at the University of California, Berkeley, in the early 1990's under the supervision of a professor. Respondent continued working with the professor after he graduated for some time. After the professor died in 2002, the professor's wife requested that respondent continue the work, which he did, until he surrendered his license.

24. It never occurred to respondent that his work at the community colleges was employment. He believed it was community service because he could have earned more money working for an optometrist, and because the glasses were provided to the students at such discounted rates. Respondent first learned there was a problem with his service at the schools in an interview with Investigator Omahen on May 14, 2011. Respondent scheduled a meeting to discuss this with his probation monitor in May, as he wanted her to hear from him about his conduct. Respondent returned the stipends he had earned from the schools.

THIRD AND FIFTH CAUSES FOR PROBATION REVOCATION

25. Probation Condition 5 required respondent to cooperate with the board's probation program as follows:

Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent:

26. Probation Condition 7 required respondent to maintain record of lens prescriptions he dispensed or administered as follows:

Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient; 2) the date; 3) the price of the services and goods involved in the prescription; 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records

in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

27. Investigator Omahen made an unannounced visit at Dr. Chin's offices on May 14, 2011. The investigator requested to review patient records. The patient records maintained by Dr. Chin were kept electronically, and made available for inspection. Respondent did not provide the patient records of the community college students. Respondent did not provide the investigator with a list of patients required to be maintained by Probation Condition 7.

28. A second meeting took place on May 25, 2011. At this meeting respondent provided a list of patients but the list did not include the community college students. Respondent subsequently provided an updated list which included most of the community college students, but it did not include students he examined on two days at Foothill College.

29. Respondent has provided varying accounts to Investigator Omahen and Monitor Siefertman and at hearing about whether he maintained records of the community college students. He testified that he did not maintain the records of the student patients at the community colleges, but rather he gave the records to the colleges at the end of each day for their keeping in the student health record. If the student needed glasses, he kept the record and returned it with the glasses to the school. He also stated that he kept some of the records, but they were kept in a box at Dr. Chin's office and he believes they were destroyed following a fire at the office.

30. Probation Condition 7 required respondent to maintain a record of lens prescriptions he dispensed or administered in a ledger form. Respondent did not maintain such a record while on probation, and did not create one until it was requested by Investigator Omahen. Respondent's conduct constituted a violation of Probation Condition 7.

31. Probation Condition 5 required respondent to cooperate with the board's probation program by providing patient records upon request. Respondent provided the records of patients he saw in Dr. Chin's office, but not those of all the community college students, stating that he had returned them to the community college for their safe keeping. Business and Professions Code section 3007, however, requires an optometrist to retain patient records for a minimum of seven years from the date he or she completes treatment of the patient. It is therefore found that respondent violated Probation Condition 5 by his inability to provide the patient records of the community college students upon the request of the board.

SIXTH CAUSE FOR PROBATION REVOCATION

32. Probation Condition 11 required respondent to provide proof to the board that he had made full restitution to Vision Service Plan. This condition provided:

Within 90 days of the effective date of this order, Petitioner shall submit to the board proof that he has made full restitution to VSP Vision Care.

33. As alleged in the accusation, a VSP audit of respondent's billings determined that respondent had inappropriately billed and received payment from VSP in the amount of \$84,829.53. As of the date of the petition for reinstatement, respondent had paid VSP \$75,460 in restitution. Under the terms of Probation Condition 11, respondent was to submit proof of payment of "full restitution" within 90 days of the effective date of the order granting his petition for reinstatement. The order became effective July 15, 2009. Respondent was thus required to submit proof of payment of the full amount of \$84,829.53 within three months of that date.

34. Respondent did not provide verification of payment of "full restitution" to VSP within 90 days July 15, 2009. In failing to do so, he violated Probation Condition 11.

35. Respondent eventually paid VSP a reduced amount of \$8,785.64 by check dated July 26, 2010, which was more than one year after the effective date of the board's decision. VSP accepted that amount as payment in full of the outstanding restitution amount by letter dated August 9, 2010.

36. Respondent explained his delay as a product of his request for information from VSP which would specify to him the amount he owed. Respondent believed that VSP had withheld money due him during his last six months of panel membership, and without knowing the amount that was withheld he felt he was unable to calculate what he owed VSP. Respondent made numerous requests to VSP for various documents, including "reconciliation statements" for the six-month period and copies of an audio recording and transcript of a December 2003 VSP hearing. According to Respondent, VSP did not respond to any of his inquiries.

On July 26, 2010, respondent requested Probation Monitor Siefertman to send him the amount due VSP. She contacted VSP and was advised by Thomas Jones that the amount owing was \$8,758.84. Respondent wrote a check for that amount that day.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

2. Pursuant to Condition 12 of his probation to the board, respondent's may be revoked upon findings that he violated its terms and conditions.

3. By reason of the matters set forth in Factual Findings 15 through 21, it was established that respondent violated Conditions 2, 3 and 5, of his probation to the board in connection with his employment at the community colleges. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

4. By reason of the matters set forth in Factual Findings 25 through 31, it was established that respondent violated Conditions 5 and 7 of his probation to the board by failing to maintain a ledger of all lens prescriptions associated with his community college employment, and failing to make available all patient records. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

5. By reason of the matters set forth in Factual Findings 32 through 34, it was established that respondent violated Condition 11 of his probation to the board by reason of his failure to timely provide proof of payment of full restitution to VSP. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

Disciplinary Considerations

6. The question presented is whether respondent's probation should be extended as he requests, or whether his probation should be revoked as complainant requests.

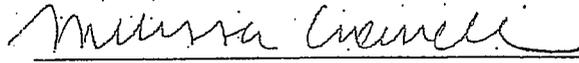
The probationary terms were developed by the board in order to ensure that respondent could practice optometry with safety to the public after having committing serious acts of unprofessional conduct as an optometrist. While all evidence in mitigation has been considered, it is concluded that respondent's lack of compliance with probation is for the most part unmitigated. While respondent believed that his work at the community colleges was community service, he failed to pose the question to his probation monitor with whom he had regular contact. The work was unmonitored and unsupervised, which is exactly what this board forbade under its order reinstating the license. Respondent's failure to maintain a ledger of his work at the community colleges made it impossible for it to be reviewed as well. Respondent was also ordered by this board to make full restitution to VSP in the amount of \$84,829.53 within three months of reinstating his license. Instead of complying with that order, respondent choose to quibble with VSP over the remaining amount of restitution he owed, saying that was his right. That was not his right, as the board's order regarding the amount of restitution he owed was a final order, and he had admitted the amount of restitution he owed VSP by virtue of petitioning for reinstatement. Lastly, respondent's inconsistent statements regarding the records of the community college patients raise questions about his candor.

The ultimate goal of licensing generally, and the highest priority of the board in exercising its disciplinary functions, is the protection of the public. (Bus. & Prof. Code, § 3010.1.) Probation is a serious matter, and the conditions of the board are meant to be strictly followed, not interpreted by probationers as it suits them. Respondent's overall performance on probation does little to install confidence that his performance on probation in the future would be different. For this reason, it is concluded that continuing respondent on probation would not be consistent with the public protection.

ORDER

The petition to revoke probation is granted, and probation is revoked. The stay of the revocation imposed in Case No. 2003-125 (Decision effective July 15, 2008) is lifted and the order of revocation of Optometrist License No. 10427 issued to respondent Gregory Lawrence Tom is imposed.

DATED: June 21, 2012



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early
Termination of Probation for:

Case No. CC-2008-225

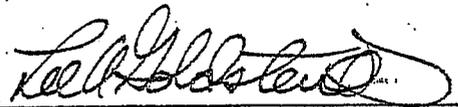
GREGORY TOM

Optometrist License No. 10427

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective.

IT IS SO ORDERED this 30th day of September, 2011.



1 KAMALA D. HARRIS
 Attorney General of California
 2 FRANK H. PACOE
 Supervising Deputy Attorney General
 3 CHAR SACHSON
 Deputy Attorney General
 4 State Bar No. 161032
 455 Golden Gate Avenue, Suite 11000
 5 San Francisco, CA 94102-7004
 Telephone: (415) 703-5558
 6 Facsimile: (415) 703-5480
 Attorneys for Complainant

7
 8 BEFORE THE
 STATE BOARD OF OPTOMETRY
 9 DEPARTMENT OF CONSUMER AFFAIRS
 STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke
 Probation Against,

Case No. 2003-125

PETITION TO REVOKE PROBATION

12 GREGORY LAWRENCE TOM
 13 DBA 20/20 OPTOMETRY
 3191 Crow Canyon Place, Suite C
 14 San Ramon, CA 94583

15 Optometry License No. 10427
 Fictitious Name Permit No. 2081
 16 Fictitious Name Permit No. 2155
 Branch Office License No. 6275

17 Respondent.

19
 20 Complainant alleges:

21 PARTIES

22 1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her
 23 official capacity as the Executive Officer of the State Board of Optometry, Department of
 24 Consumer Affairs.

25 2. On or about September 22, 1994, the State Board of Optometry issued Optometrist
 26 License Number 10427 to Gregory L. Tom (Respondent). The Optometrist License was in effect
 27 at all times relevant to the charges brought herein and will expire on July 31, 2012, unless
 28 renewed.

1. 3. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name
 2 Permit Number 2081 to Gregory L. Tom (Respondent). The Fictitious Name Permit expired on
 3 April 14, 2003, and has not been renewed.

4 4. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name
 5 Permit Number 2155 to Respondent. The Fictitious Name Permit expired on April 14, 2003, and
 6 has not been renewed.

7 5. On or about June 15, 2001, the State Board of Optometry issued Branch Office
 8 License Number 6275 to Respondent. The Branch Office License expired on February 1, 2004,
 9 and has not been renewed.

10 6. In a disciplinary action entitled "In the Matter of the Accusation Against D.B.A.
 11 20/20 Optometry, Gregory Lawrence Tom, Case No. 2003-125, Respondent surrendered his
 12 Optometrist License. The surrender was effective April 3, 2008. On or about February 23, 2009,
 13 Respondent petitioned to have his Optometrist License reinstated.

14 7. In a disciplinary action entitled "In the Matter of Petition for Reinstatement Against
 15 Gregory L. Tom," Case No. 2003-125, the State Board of Optometry issued a decision, effective
 16 July 15, 2009, in which Respondent's Optometrist License was reinstated, and immediately
 17 revoked. However, the revocation was stayed and Respondent's Optometrist License was placed
 18 on probation for a period of five (5) years with certain terms and conditions. A copy of that
 19 decision is attached as Exhibit A and is incorporated by reference.

20 JURISDICTION.

21 8. This Petition to Revoke Probation is brought before the State Board of Optometry
 22 (Board), Department of Consumer Affairs.

23 FIRST CAUSE TO REVOKE PROBATION

24 (Restricted Practice)

25 9. At all times after the effective date of Respondent's probation, Condition 2 stated:
 26 "Restricted Practice: Petitioner is prohibited from owning or operating his own optometry
 27 private practice. He is restricted to supervised employment by an optometrist or ophthalmologist.
 28

1. whose license is in good standing and who has been approved by the Board or its designee prior
2 to petitioner commencing employment.”

3 10. Respondent’s probation is subject to revocation because he failed to comply with
4 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
5 are as follows:

6 11. On or about January 25, 2010 and April 12, 2010, Respondent provided optometry
7 services at Foothill College in Los Altos Hills, California. On or about February 8, 2010, March
8 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011, Respondent provided optometry
9 services at College of San Mateo in San Mateo, California. On or about March 1, 2010,
10 November 22, 2010 and March 7, 2011, Respondent provided optometry services at Canada
11 College in Redwood City, California. On unknown dates, Respondent also provided optometry
12 services at City College of San Francisco in San Francisco, California. Respondent was not
13 supervised by a Board-approved optometrist or ophthalmologist as required by Condition 2, and
14 he received compensation for his services. Respondent saw between 10 and 18 students per day
15 while working at the schools.

16 SECOND CAUSE TO REVOKE PROBATION

17 (Reporting)

18 12. At all times after the effective date of Respondent’s probation, Condition 3 stated:
19 “Reporting: Petitioner shall inform the Board in writing of any change of place of practice
20 and place of residence within fifteen (15) days.”

21 13. Respondent’s probation is subject to revocation because he failed to comply with
22 Probation Condition 3, referenced above. The facts and circumstances regarding this violation
23 are as follows:

24 14. Respondent failed to inform the Board in writing that he practiced at Foothill College,
25 College of San Mateo, Canada College and San Francisco City College, as stated above in
26 paragraph 11.

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THIRD CAUSE TO REVOKE PROBATION

(Cooperate with Probation Surveillance)

15. At all times after the effective date of Respondent's probation, Condition 5 stated:

~~"Cooperation with Probation Surveillance: Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent."~~

16. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

17. Respondent failed to comply with Probation Conditions 2, 3, 6, 7 and 11. Additionally, an investigator from the Division of Investigation, acting as the Board's agent, requested access to patient records. Respondent failed to provide access to the requested records.

FOURTH CAUSE TO REVOKE PROBATION

(Monitoring)

18. At all times after the effective date of Respondent's probation, Condition 6 stated:

"Monitoring: Within 30 days of the effective date of this decision, petitioner shall submit to the Board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board."

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, referenced above. The facts and circumstances regarding this violation are as follows:

20. Respondent failed to submit to the Board and obtain approval for a monitoring plan.

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FIFTH CAUSE TO REVOKE PROBATION

(Maintain Records)

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21. At all times after the effective date of Respondent's probation, Condition 7 stated:
"Maintain Records: Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request."

22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows:

23. Respondent failed to maintain records of all lens prescriptions that he dispensed or administered during his probation.

SIXTH CAUSE TO REVOKE PROBATION

(Restitution)

24. At all times after the effective date of Respondent's probation, Condition 11 stated:
"Restitution: Within 90 days of the effective date of this order, Petitioner shall submit to the Board proof that he has made full restitution to VSP Vision Care."

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 11, referenced above. The facts and circumstances regarding this violation are as follows:

26. Respondent failed to provide the Board with verification of payment of restitution to VSP Vision Care within 90 days of the effective date of the order.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision.

- 1. Revoking the probation that was granted by the State Board of Optometry in Case No. 2003-125 and imposing the disciplinary order that was stayed thereby revoking Optometrist License No. 10427 issued to Gregory L. Tom;
- 2. Revoking or suspending Optometrist License No. 10427, issued to Gregory L. Tom;
- 3. Revoking or suspending Fictitious Name Permit No. 2081, issued to Gregory L. Tom;
- 4. Revoking or suspending Fictitious Name Permit No. 2155, issued to Gregory L. Tom;
- 5. Revoking or suspending Branch Office License No. 6275, issued to Gregory L. Tom;
- 6. Taking such other and further action as deemed necessary and proper.

DATED: 8/18/2011

Monna Maggio
 MONA MAGGIO
 Executive Officer
 State Board of Optometry
 Department of Consumer Affairs
 State of California
 Complainant

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BEFORE THE
 BOARD OF OPTOMETRY
 DEPARTMENT OF CONSUMER AFFAIRS
 STATE OF CALIFORNIA

In the Matter of the Petition
 for Reduction of Penalty or Early
 Termination of Probation of:

 GREGORY TOM, O.D.,

 Optometrist License No. 10427,

 Petitioner.

OAH No. 2011060861

Agency Case No. CC 2008-225

DECISION

A quorum of the Board of Optometry (Board) heard this matter on June 21, 2011, in Los Angeles, California. The members of the Board present were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D., Vice President; Monica Johnson; Alexander Kim; Kenneth Lawenda, O.D.; and Fred Naranjo.

Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Jessica Siefertman, the Board's Enforcement staff, was also present during the proceedings.

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom, O.D., (Petitioner) represented himself.

Michelle McCarron, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on June 21, 2011.

FACTUAL FINDINGS

1. On or about November 19, 2010, Petitioner filed the Petition for Reduction of Penalty or Early Termination of Probation. Petitioner seeks the early termination of his five-year probation. He contends it is appropriate to end his probation early because he is sufficiently rehabilitated from the earlier transgressions he committed.
2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.
3. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.
4. In approximately March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.
5. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.
6. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation upon various terms and conditions.
7. Petitioner's probationary terms and conditions include, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change of place of practice within 15 days (term and condition 3).
8. Petitioner's probation continues until January 1, 2015.
9. Petitioner asserted that he has changed his mentality and learned about his mistakes during his time on probation. He described himself as a changed person who has been diligent, cooperative, and proactive with all of the Board's probationary requirements. He explained that, while he agrees he lost sight of the ethical line between what was best for his patients and what was best for the doctor, he never placed any patient at risk by his misconduct. He explained how his revocation and probation has caused him and his family financial and emotional hardship. He described his community service, including designing an educational course on the human eye for preschool and elementary school children and

working with the First Tee of Contra Costa County (a golf program for minors). Petitioner has continued his continuing education studies. He reads optometry articles on a regular basis. Petitioner was single when he engaged in misconduct. He is now married and is a father. He asserted that his family life has allowed him to mature.

10. Petitioner submitted letters of support, including letters from Russell Wong, Learning Disability Specialist, Foothill College, dated November 23, 2010; Braden C. Woods, dated November 26, 2010; Richard A. Tramor, Esq., dated November 29, 2010; Radbert Chin, O.D., dated November 18, 2010; and Claire Tom, Petitioner's wife, dated December 1, 2010. Each author generally described Petitioner as a good person who has learned from his mistakes, a hard worker, and someone who is deserving of practicing optometry without restrictions.

11. At a probation meeting in May 2011, Petitioner admitted that he has worked at three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Eyecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his current probation. Petitioner explained that once he understood this was a violation of his probation, he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing, Petitioner asserted he would not do so.

12. The Board approved Petitioner's probation monitor, Robert B. DiMartino, O.D., as of August 2010. DiMartino, however, has issued only one probation monitor report, in the form of a brief letter, dated May 15, 2011. In that report, DiMartino describes his monitor responsibility as "mentor[ing]." There is no evidence that DiMartino has reviewed any of Petitioner's patient files during his probation monitoring.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reduction of Penalty or Early Termination of Probation, pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-12, and Legal Conclusions 2-6.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

(a) . . . (a)

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner did not prove, by clear and convincing evidence to a reasonable certainty, that the early termination of probation is warranted. Petitioner violated two conditions of probation (terms and conditions 2 and 3) by accepting stipends in exchange for

his optometry services and failing to inform the Board of these actions. While he returned those stipends to each college, he did so only after being confronted by an investigator from the Division of Investigations about the services Petitioner provided to those colleges. Further, and despite his assertion to the contrary, his notation of "donation" on each of his checks gives the Board suspicion that Petitioner intended (at least initially) to use these payments as personal tax benefits. Separate from these actions, Petitioner failed to provide persuasive evidence of rehabilitation.

6. Petitioner's original misconduct was serious and warrants the current probation period to protect the public. With insufficient evidence of rehabilitation to merit an early end to his probation, the Petition should be denied.

ORDER

Gregory Tom's Petition for Early Termination of Probation is denied.

Dated: August 16, 2011


Lee A. Goldstein, O.D., President
California Board of Optometry



BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

GREGORY LAWRENCE TOM, O.D.

Optometry License No. 10427

Respondent.

Case No. 2003-125

OAH No. 2009040794

DECISION

The attached Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective July 15, 2009.

It is so ORDERED June 15, 2009

LEE A. GOLDSTEIN, O.D. MPA
PRESIDENT
BOARD OF OPTOMETRY

**BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

GREGORY LAWRENCE TOM, O.D.,
Optometry License No. 10427

Petitioner.

Case No. 2003-125

OAH No. 2009040794

DECISION

This matter was heard by a quorum of the Board of Optometry (Board) on May 15, 2009, in Fullerton, California. Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. Board members present and participating were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D.; Martha Burnett-Collins, O.D.; Monica Johnson; Kenneth Lawenda, O.D.; Fred Naranjo; Edward J. Rendon, M.P.A.; and Susy Yu, O.D.

The record was closed and the matter was submitted for decision. Thereafter, the Board met in an executive session and decided the matter on the day of the hearing.

Gregory Lawrence Tom (petitioner) represented himself.

Erin Sunseri, Deputy Attorney General, California Department of Justice, appeared pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. On or about September 22, 1994, the Board issued Optometry License Number 10427 to petitioner.

2. a. The Board, by Decision and Order effective April 3, 2008, in Case No. 2003-125, adopted a Stipulated Settlement and Disciplinary Order resolving an accusation that had been brought against petitioner.

b. In the Stipulated Surrender of License and Order, petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and alteration of medical records. The facts underlying the

accusation are that from 2001 through 2006, petitioner fraudulently submitted bills to insurance provider Vision Services Plan (VSP), totaling approximately \$80,000. Petitioner also committed unprofessional conduct by altering his patients' medical records.

c. Pursuant to the Stipulated Surrender of License and Order, paragraph 22, Petitioner agreed to pay the Board its costs of investigation and enforcement in the amount of \$11,284.57, prior to the issuance of a new or reinstated license.

3. a. Pursuant to the Order, petitioner surrendered his license. Petitioner agreed not to petition the Board for reinstatement until one year from the effective date of the Decision and Order; i.e., until April 3, 2009.

b. Petitioner filed the instant petition for reinstatement on February 23, 2009. Although he filed the petition more than one month prior to the earliest agreed upon application date, the Board decided to consider it.

4. Petitioner contends his license should be reinstated because he admitted and accepted responsibility for his wrongful conduct. Petitioner acknowledged that he should not have substituted his own judgment for the insurance company rules. He grasped the gravity of his actions, and recognized how he harmed others. Petitioner believes that he has learned a painful lesson, and he is willing to comply with whatever guidelines the Board deems necessary.

5. Since petitioner surrendered his license, he has worked in the bank industry and has volunteered at a local preschool. Petitioner has completed 63 continuing education hours, and has studied various optometric literature. He also took an ethics class through the Department of Real Estate. In addition, petitioner paid \$75,460 restitution to VSP.

6. Petitioner submitted multiple references supporting his petition, including a letter from Robert DiMartino, O.D., Professor of Clinical Optometry at University of California, Berkeley. Dr. DiMartino highlighted petitioner's intellect and talent. He noted that although petitioner's actions demonstrated a lack of judgment, he has the capacity to learn from his error. Dr. DiMartino stated that petitioner's expertise was a great loss to the public, and that ongoing audits would best protect the public.

7. Petitioner's wife, Claire Syn Tom, testified in support of his reinstatement. She reiterated how difficult it has been for petitioner, and their family, to lose his license. Subsequent to the surrender, Mrs. Tom has noticed that petitioner's behavior has changed in numerous ways; for example, before his license was revoked, he focused primarily on his practice, and now he devotes himself to their family. In addition, Mrs. Tom has observed that petitioner has accepted responsibility for his actions, and he possesses more integrity than before this occurred.

LEGAL CONCLUSIONS

1. Cause exists to grant petitioner's petition for reinstatement, pursuant to Business and Professions Code section 11522, as set forth in factual findings 1-7 and legal conclusions 2-4.

2. Petitioner bears the burden to prove, by clear and convincing evidence, that he is sufficiently rehabilitated and entitled to reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.)

3. California Code of Regulations, title 16, section 1516 provides that the following rehabilitation criteria may be evaluated when considering a petition for reinstatement: (1) the nature and severity of the act(s) or crime(s) under consideration as grounds for denial; (2) evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) the extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) rehabilitation evidence.

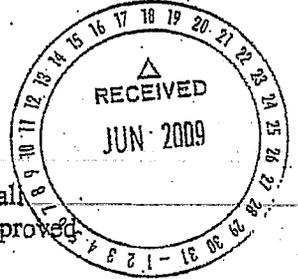
4. Petitioner has demonstrated sufficient rehabilitation to warrant his reinstatement on probationary terms. Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his experience and family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, Petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patients' medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short period of time since the conduct and the surrender of his license, petitioner must wait an additional period of time before the license is actually reinstated. Given the forgoing, the following order adequately protects the public interest while acknowledging petitioner's rehabilitation efforts.

ORDER

Gregory Tom's petition for reinstatement is granted and his certificate of registration to practice optometry shall be reinstated, effective January 1, 2010. The certificate shall be immediately revoked, provided that the revocation shall be stayed, and the certificate shall be placed on probation for five (5) years, upon the following terms and conditions:

1. Obey All Laws: Petitioner shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. Restricted Practice: Petitioner is prohibited from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment.
3. Reporting: Petitioner shall inform the Board in writing of any change of place of practice and place of residence within fifteen (15) days.
4. Residency of Practice: The period of probation shall not run during the time petitioner is residing or practicing outside the jurisdiction of California. If, during probation, petitioner moves out of the jurisdiction of California to reside or practice elsewhere, petitioner is required to immediately notify the Board in writing of the date of departure, and the date of return, if any.
5. Cooperate with Probation Surveillance: Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent.
6. Monitoring: Within 30 days of the effective date of this decision, petitioner shall submit to the Board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.
7. Maintain Records: Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.
8. Education Coursework: Within 90 days of the effective date of this decision, and on an annual basis thereafter, petitioner shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program must include at least eight hours of ethics course(s); and the program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Petitioner shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an



examination to test petitioner's knowledge of the course. Petitioner shall provide written proof of attendance in such course or courses as are approved by the board.

9. Community Service: Within 60 days of the effective date of this decision Petitioner shall submit to the Board, for its approval, a plan for community service, according to which he shall provide free services on a regular basis to an underserved community or charitable facility or agency for at least 10 hours a month, for the first 24 months of probation. Once a year Petitioner shall provide the Board with proof that he has complied with the plan.

10. Payment of Costs: Petitioner must pay to the Board the full amount of the unpaid costs assessed against him, as he agreed in the Stipulated Surrender and Order, totaling \$11,284.57. This amount is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Petitioner shall commence making payments upon notification by the Board or its designee of the amount of unpaid costs, the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although petitioner is free to pay the costs earlier than prescribed in the schedule. If petitioner has not paid the full amount of costs at the end of the five-year period of probation, his probation shall be extended until full payment has been made.

11. Restitution: Within 90 days of the effective date of this order, Petitioner shall submit to the Board proof that he has made full restitution to VSP Vision Care.

12. Violation of Probation: If petitioner violates probation in any respect, the Board, after giving him notice and an opportunity to be heard, may terminate probation and impose the stayed discipline, or such discipline as it deems appropriate. If an accusation or petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

13. Completion of Probation: Upon successful completion of probation, petitioner's certificate will be fully restored.

IT IS SO ORDERED.

Dated: June 15, 2009


 LEE A. GOLDSTEIN, O.D., President
 Board of Optometry
 Department of Consumer Affairs
 State of California

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2003-125

D.B.A. 20/20 OPTOMETRY
GREGORY LAWRENCE TOM
3191 Crow Canyon Place, Suite C
San Ramon, CA 94583

Optometry License No. 10427
Fictitious Name Permit No. 2081
Fictitious Name Permit No. 2155
Branch Office License No. 6275
Statement of Licensure Cert. No. 5181

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 3, 2008

It is so ORDERED March 3, 2008



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR., Attorney General
of the State of California
WILBERT E. BENNETT
Supervising Deputy Attorney General
DIANN SOKOLOFF, State Bar No. 161082
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2212
Facsimile: (510) 622-2270

Attorneys for Complainant

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2003-125

GREGORY LAWRENCE TOM
D.B.A. 20/20 OPTOMETRY
3191 Crow Canyon Place, Suite C
San Ramon, CA 94583

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Optometry License No. 10427
Fictitious Name Permit No. 2081
Fictitious Name Permit No. 2155
Branch Office License No. 6275
Statement of Licensure Cert. No. 5181

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in
this proceeding that the following matters are true:

PARTIES

1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
Optometry. She brought this action solely in her official capacity and is represented in this

matter by Edmund G. Brown Jr., Attorney General of the State of California, and by Diann Sokoloff, Deputy Attorney General.

2. Gregory Lawrence Tom (Respondent) is represented in this proceeding by attorney Richard Tamor, whose address is 1901 Harrison Street, 9th Floor, Oakland, CA 94612.

3. On or about September 22, 1994, the State Board of Optometry issued Optometry License No. 10427 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

4. On or about December 12, 2006, the State Board of Optometry issued a Statement of Licensure Certificate No. 5181 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The license was in full force and effect and at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

5. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2081 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

6. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2155 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

7. On or about June 15, 2001, the State Board of Optometry issued Branch Office License No. 6275 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on February 1, 2004, and has not been renewed.

JURISDICTION

8. Accusation No. 2003-125 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The

Accusation and all other statutorily required documents were properly served on Respondent on March 26, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2003-125 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

9. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2003-125. Respondent also has carefully read, discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Order.

10. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

12. Respondent, without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the allegations in Accusation No. 2003-125, and hereby surrenders his Optometry License No. 10427 for the Board's formal acceptance.

13. Respondent without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the

allegations in Accusation No. 2003-125, and hereby surrenders his Statement of Licensure Certificate No. 5181 for the Board's formal acceptance.

14. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Optometry License and Statement of Licensure Certificate without further process.

CONTINGENCY

15. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that the surrender of Optometry License No. 10427, and Statement of Licensure Certificate No. 5181 issued to Respondent Gregory Lawrence Tom, doing business as 20/20 Optometry, is accepted by the State Board of Optometry.

18. The surrender of Respondent's Optometry License and Statement of Licensure Certificate, and the acceptance of the surrendered license, permits, and certificate by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

19. Respondent shall lose all rights and privileges as an optometrist in California as of the effective date of the Board's Decision and Order.

20. Respondent shall cause to be delivered to the Board his Optometry License No. 10427, his Statement of Licensure Certificate No. 5181, and his wall and pocket license certificates on or before the effective date of the Decision and Order.

21. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2003-125 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

22. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$11,284.57 prior to issuance of a new or reinstated license.

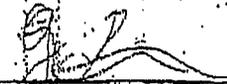
23. Respondent shall not apply for licensure or petition for reinstatement for one year from the effective date of the Board's Decision and Order.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Richard Tamor. I understand the stipulation and the affect it will have on my Optometry License, Fictitious Name Permits, and Branch Office License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

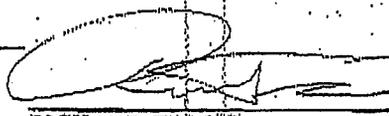
DATED: 12/7/07



GREGORY LAWRENCE TOM
Respondent

I have read and fully discussed with Respondent Gregory Lawrence Tom the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 12/16/07



RICHARD TAMOR
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

DATED: 12/20/07

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General


DIANN SOKOLOFF
Deputy Attorney General

Attorneys for Complainant.

1 EDMUND G. BROWN JR., Attorney General
 of the State of California
 2 WILBERT E. BENNETT
 Supervising Deputy Attorney General
 3 DIANN SOKOLOFF, State Bar No. 161082
 Deputy Attorney General
 4 California Department of Justice
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 622-2212
 Facsimile: (510) 622-2270
 7 Attorneys for Complainant

8
 9 **BEFORE THE**
 10 **STATE BOARD OF OPTOMETRY**
 11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No.

13 GREGORY LAWRENCE TOM
 DBA 20/20 OPTOMETRY
 14 3191 Crow Canyon Place, Suite C
 San Ramon, CA 94583
 15 Optometry License No. 10427
 16 Fictitious Name Permit No. 2155
 Fictitious Name Permit Number 2081
 17 Branch Office License Number 6275

ACCUSATION

18 Respondent.

19
 20 Complainant alleges:

21 PARTIES

22 1. Taryn Smith (Complainant) brings this Accusation solely in her official
 23 capacity as the Executive Officer of the State Board of Optometry, Department of Consumer
 24 Affairs.

25 2. On or about September 22, 1994, the State Board of Optometry issued
 26 Optometry License Number 10427 to Gregory Lawrence Tom (Respondent). The Optometry
 27 License was in full force and effect at all times relevant to the charges brought herein and will
 28 expire on July 31, 2008, unless renewed.

1 10. Section 3110 of the Code states:

2 "The board may take action against any licensee who is charged with
 3 unprofessional conduct, and may deny an application for a license if the applicant has committed
 4 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
 5 includes, but is not limited to, the following:

6 "(a) Violating or attempting to violate, directly or indirectly assisting in or
 7 abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules
 8 and regulations adopted by the board pursuant to this chapter.

9 "(b) Gross negligence.

10 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent
 11 acts or omissions.

12 "(d) Incompetence.

13 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty
 14 or corruption, that is substantially related to the qualifications, functions, or duties of an
 15 optometrist.

16 "(f) Any action or conduct that would have warranted the denial of a license.

17 ...

18 "(g) The failure to maintain adequate and accurate records relating to the
 19 provision of services to his or her patients.

20 11. Section 810 of the Code states:

21 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
 22 including suspension or revocation of a license or certificate, for a health care professional to do
 23 any of the following in connection with his or her professional activities:

24 "(1) Knowingly present or cause to be presented any false or fraudulent claim for the
 25 payment of a loss under a contract of insurance.

26 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the
 27 same, or to allow it to be presented or used in support of any false or fraudulent claim.

28 ///

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Insurance Fraud)

12. Respondent is subject to disciplinary action under sections 810(a)(1) and 810(a)(2), in conjunction with section 3110, in that between March 23, 2002 and June, 2003, respondent fraudulently submitted bills to Vision Service Plan (VSP).

13. VSP conducted an audit of respondent's San Ramon and San Jose offices on July 28-29, 2003. A sample of respondent's insurance claims were selected and reviewed. Fifty-five (55) claims from both his San Jose and his San Ramon offices were audited. The audit disclosed that thirty seven (37) claims or 67% of the claims that were reviewed from his San Jose office, and forty-four (44) claims or 80% of the claims reviewed from his San Ramon office were billed inappropriately or could not be substantiated because the patient record could not be located. The audit further found that inappropriate billing patterns were also found to have occurred with some of the same patients' services from previous years dating back to 2001 and 2002. As a result of the audit, VSP terminated respondent from membership status on October 24, 2003, and determined that the amount improperly paid to respondent by VSP was \$84,829.53. In general, the audit revealed the following inappropriate billing patterns: (1) billing for medically necessary contact lenses when none were provided; (2) providing prescription lenses for use without contact lenses when authorization was given only for spectacle lenses for use over contact lenses; (3) providing plano gray-3 lenses when a prescription lens was ordered and billed to VSP; (4) inflating amounts billed to VSP for medically necessary contact lenses, and (5) committing other infractions, including double billing for medically necessary contact lenses, double billing insurance plans, switching dates of service, changing patients' dates of birth to support billing, billing an intermediate exam for a comprehensive exam, inflating the wholesale frame costs, overcharging patients for options, and billing plano sunglasses as frame only.

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1 14. Respondent's fraudulent billing submissions to VSP included the
2 following:

3 a. In some cases (patients 5, 14, 15, 32, 49, and 51) the VSP materials and
4 Interim Benefits Pre-Certification Request Forms (Pre-Cert) for medically necessary contact
5 lenses (MNCL) i.e., contact lenses that are required by the patient as defined by VSP and do not
6 include elective, cosmetic contact lenses, were filled out for patients using + cylinder formats for
7 the Spectacle Rx (prescription), when the patient record showed - cylinder format on the
8 examination findings. The cylinder on the Pre-Cert Forms was not marked + or -; this often
9 made it appear that there was a significant change in the patient's Rx when that was not true.
10 Pre-Cert Forms were filled out with a different spectacle Rx than that which was documented on
11 the patient's record.

12 b. In one case (patient 28), MNCL were pre-certified by VSP but the Patient
13 Survey (the survey sent by VSP to patients who have received services and materials under VSP
14 plans, and filled out by the patients and returned to VSP) stated that he/she did not wear or
15 receive contact lenses. (Respondent billed VSP for these services and he was paid the maximum
16 allowance under the coverage.)

17 c. In some cases (patients 15, 23, 25, 49 and 50), VSP was routinely billed for
18 spectacle lenses to be worn on top of the MNCL. Respondent provided prescription lenses for
19 use without contact lenses when authorization was given only for spectacle lenses with use over
20 contacts. The Rx of these lenses was routinely a +0.50 D for each eye. There was no apparent
21 therapeutic objective for these Rxs. The Rxs were given without any documentation on the
22 patient record of near-point testing to establish a need for this type of help; it appeared to be done
23 solely for the purpose of inflating the VSP billing.

24 d. In some cases (patients 1, 3, 10, 17, 20, 21, 28, 29, 41, 53, 55 and 58), children
25 as young as 18 months were given Rxs for glasses when the findings were unreliable - as would
26 be expected at that age. The resulting Rx given to the children, and billed to VSP, were not
27 therapeutically significant; the documented examination findings did not establish any need for
28 the correction.

1 e. In some cases (patients 57 and 58), where spectacle lenses for use over contact
2 lenses and spectacle lenses for young children were prescribed, and billed to VSP, the VSP
3 Patient Surveys that were filled out by the patients or their parents showed that no lenses were
4 supplied to the patient by Dr. Tom's office.

5 f. In some cases (patients 10, 17, 21, 21, 29, 33, 36, 41, 46, 48), where spectacle
6 lenses for use over MNCL and spectacle lenses for young children were prescribed, the VSP
7 Patient Surveys that were filled out by the patients or their parents showed that non-prescription
8 sunglasses were supplied to the patient instead of the Rx lenses billed to VSP.

9 g. In some cases (patients 1, 3, 4, 10, 17, 20, 21, 48 and 62), the documentation
10 on the "Laboratory Instructions" part of the spectacle lens orders instructed the laboratory to ship
11 plano (non-prescription) sunlenses (Gray 3 planes) to Dr. Tom's office instead of the Rx
12 spectacle lenses specified on the billings to VSP for that patient.

13 h. In some cases (patients 4, 5, 7, 10, 17, 20, 21, 26, 29, 30, 33, 38, 41, 46, 48, 50,
14 60, 61 and 62), the billings to VSP routinely stated that dilation of the patient was performed on
15 almost every patient, but inspection of the individual patient records reviewed showed that
16 nineteen of those patients did not receive a dilated examination.

17 i. In one case (patient 24), Dr. Tom's office billed VSP for MNCL and spectacle
18 lenses for use over the contacts. The patient had Lasik surgery 18 months before the billing took
19 place; Dr. Tom was the co-managing optometrist on the surgery and filled out forms
20 documenting that the patient had 20/20 acuity without Rx 12 months before his office executed
21 the billing in question to VSP.

22 j. In some cases (patients 3 and 60), the Rx on VSP Doctor Service Report (IDC)
23 was not supported by the patient record.

24 15. Incorporating by reference the allegations in paragraphs 12 through 14,
25 respondent's conduct in knowingly presenting false and fraudulent claims to VSP for payment
26 constitutes unprofessional conduct within the meaning of Code sections 810 (a)(1) and 810(a)(2)
27 and provides grounds for disciplinary action under Code section 3110.

28 ///

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Alteration of Medical Records)

16. Respondent is subject to disciplinary action under section 3105, in conjunction with section 3110, in that between March 23, 2002, and June, 2003, respondent fraudulently submitted bills to Vision Service Plan (VSP).

17. Incorporating by reference the allegations in paragraphs 12 through 14, respondent's conduct in fraudulently submitting bills to VSP necessarily involved altering and modifying the medical records of some of his patients with fraudulent intent and creating a false medical record with fraudulent intent. This conduct constitutes unprofessional conduct within the meaning of Code section 3105 and provides grounds for disciplinary action under Code section 3110.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-False Representation of Facts)

18. Respondent is subject to disciplinary action under section 3106, in conjunction with section 3110, in that between March 23, 2002, and June, 2003, respondent fraudulently submitted bills to Vision Service Plan (VSP).

19. Incorporating by reference the allegations in paragraphs 12 through 14, respondent's conduct in fraudulently submitting bills to VSP necessarily involved knowingly creating paperwork directly related to his practice of optometry that falsely represented facts regarding several of his patients constitutes unprofessional conduct within the meaning of Code section 3106 and provides grounds for disciplinary action under Code section 3110.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometry License Number 10427, issued to Gregory Lawrence Tom, DBA 20/20 Optometry;

2. Revoking or suspending Fictitious Name Permit Number 2155, issued to Gregory Lawrence Tom, DBA 20/20 Optometry.

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3. Revoking or suspending Fictitious Name Permit Number 2081, issued to Gregory Lawrence Tom, DBA 20/20 Optometry.

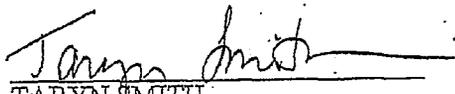
4. Revoking or suspending Branch Office License Number 6275, issued to Gregory Lawrence Tom, DBA 20/20 Optometry.

5. Ordering Gregory Lawrence Tom to pay the State Board of Optometry a civil penalty of five hundred dollars (\$500) for a violation of Code section 3105.

6. Ordering Gregory Lawrence Tom to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

7. Taking such other and further action as deemed necessary and proper.

DATED: 3/26/67



TARYN SMITH
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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CALIFORNIA STATE BOARD OF
OPTOMETRYSTATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov**CERTIFICATION**

The undersigned, Jessica Sieferman hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the California State Board of Optometry (Board), and that in such capacity she has custody of the official records of the Board.

On this fifth day of August 2016, the Executive Officer examined said official records of the Board and found that **GREGORY LAWRENCE TOM** graduated from the University of California in Berkeley, School of Optometry in 1994. Optometry License No. 10427 was granted to him effective September 22, 1994. Said Optometry License will expire July 31, 2018, unless renewed. The current address of record for said Optometry License is 1700 Stoneridge Mall Rd, 3rd Floor, Pleasanton, CA 94588.

Said records further reveal that on or about August 27, 1996, **GREGORY LAWRENCE TOM** became certified to utilize Therapeutic Pharmaceutical Agents pursuant to Business and Professions Code (BPC) Section 3041.3.

Said records further reveal that on or about March 26, 2007, the Board filed an Accusation in Case No. CC 2003-125. The Board, by Decision and Order effective April 3, 2008, adopted a Stipulated Surrender of License and Order resolving said Accusation. Optometry License No. 10427 and Statement of Licensure No. 5181 were surrendered.

Said records further reveal that on or about February 23, 2009, **GREGORY LAWRENCE TOM** filed a Petition for Reinstatement, in Case No. CC 2003-125. The Board, by Decision and Order effective July 15, 2009, granted said Petition. Optometry License No. 10427 was reinstated effective January 1, 2010. Said license was immediately revoked, the revocation was stayed and the license was placed on probation for five (5) years, with terms and conditions.

Said records further reveal that on or about November 19, 2010, **GREGORY LAWRENCE TOM** filed a Petition for Reduction of Penalty or Early Termination of Probation, in Case No. CC 2008-225. The Board, by Decision and Order effective August 16, 2011, denied said Petition.

Said records further reveal that on or about August 19, 2011, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. CC 2008-225. The Board, by Order effective September 30, 2011, denied said Petition.

Said records further reveal that on or about August 18, 2011, the Board filed a Petition to Revoke Probation in Case No. CC 2003-125. The Board, by Decision and Order effective August 29, 2012, adopted a Proposed Decision resolving said Petition. Said Decision and Order granted the revocation of probation and lifted the stay of revocation that was effective on January 1, 2010. Optometry License No. 10427 was revoked effective August 29, 2012.

Said records further reveal that on or about August 27, 2012, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. 2003-125. The Board, by Order effective August 29, 2012, denied said Petition.

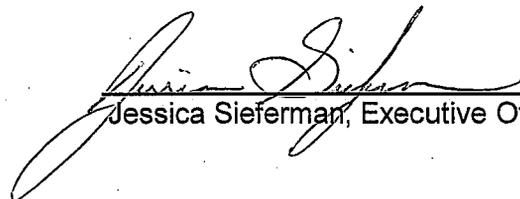
Said records further reveal that on or about May 1, 2013, **GREGORY LAWRENCE TOM** filed a Petition for Reinstatement, in Case No. CC 2013-47. The Board, by Decision and Order effective December 11, 2013, granted said Petition. Optometry License No. 10427 was reinstated effective December 11, 2013. Said Optometry License was immediately revoked, the revocation was stayed and the license was placed on probation for five (5) years, with terms and conditions.

Said records further reveal that on or about November 28, 2013, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. CC 2013-47. The Board, by Order effective December 10, 2013, denied said Petition.

Said records further reveal that on or about December 12, 2014, **GREGORY LAWRENCE TOM** filed a Petition for Reduction of Penalty or Early Termination of Probation, in Case No. CC 2013-47. The Board, by Decision and Order effective April 22, 2015, denied said Petition.

Said records further reveal that on or about September 29, 2015, **GREGORY LAWRENCE TOM** became certified to diagnose and treat primary open angle glaucoma in patients over the age of 18 years pursuant to BPC Section 3041(f).

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this fifth day of August 2016.


Jessica Sieferman, Executive Officer

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Board Staff

Telephone: (916) 575-7170

Subject: Agenda Item 3 - Pursuant to Government Code Section [11126\(c\)\(3\)](#), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters and the Received Petition

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Madhu Chawla, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 4 – Public Comment for Items Not on the Agenda

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\(a\)](#)].

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** August 26, 2016

From: Madhu Chawla, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 5 - President's Report**

The Board's Mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.

A. Welcome and Introductions

Introductions of Board staff and members of the public (voluntary)

B. 2016 – 2017 Board Meeting Dates

The quarterly board meeting dates are scheduled for the following:

- November 4, 2016 – TBD – Southern California
- January 26-27, 2017 – Southern California
 - January 26, 2017 was added for Strategic Planning facilitated by the Department of Consumer Affairs. This is expected to take the full day.
- April 21, 2017 – Oakland
- August 4, 2017 – Sacramento
- November 3, 2017 – Southern California

C. Committee and Workgroup Structures

Consumer Protection Committee

- Rachel Michelin - Chair
- Mark Morodomi
- Dr. McIntyre

Practice and Education Committee

- Dr. Chawla - Chair
- Cyd Brandvein
- Dr. Wang

Public Relations and Outreach Committee

- Donna Burke – Chair
- Dr. Turetsky
- Dr. Kawaguchi – added to assist with online refraction outreach

Legislation and Regulation Committee

- Rachel Michelin - Chair
- Dr. Chawla
- Dr. Wang

Children's Vision Workgroup

Delegated Focus: Work with stakeholders on the issues surrounding the children's vision bill and present stronger legislation for Board consideration during the next legislative session.

- Rachel Michelin
- Dr. Kawaguchi

Mobile Clinic Workgroup

Delegated Focus: Work with stakeholders on the issues surrounding the mobile clinic bill and present stronger legislation for Board consideration during the next legislative session.

- Rachel Michelin
- Dr. Wang

Foreign Graduate Workgroup

Delegated Focus: Work with stakeholders on the issues surrounding the foreign graduate bill and present stronger legislation for Board consideration during the next legislative session.

- Dr. Chawla
- Dr. Wang

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Rachel Michelin
Board Secretary

Telephone: (916) 575-7170

Subject: Agenda Item 6 – Approval of Board Meeting Minutes

A. May 27, 2016



Board of Optometry
2450 Del Paso Road, Suite 105, Sacramento, CA 95834
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BOARD MEETING ACTION MINUTES
May 27, 2016
Elihu Harris Building
1515 Clay Street, Room 11
Oakland, CA 94612

DRAFT

Members Present	Staff Present
Madhu Chawla, O.D., President	Jessica Sieferman, Executive Officer
Cyd Brandvein, Public Member, Vice President	Robert Stephanopoulos, Assistant Executive Officer
Rachel Michelin, Public Member, Secretary	Joanne Stacy, Policy Analyst
Glenn Kawaguchi, O.D., Professional Member	Kurt Heppler, Legal Counsel
Debra McIntyre, O.D., Professional Member	
Mark Morodomi, Public Member	
Maria Salazar Sperber, Public Member	
David Turetsky, O.D., Professional Member	
Lillian Wang, O.D., Professional Member	
Excused Absence	Guest List
Donna Burke, Public Member	On File

Friday, May 27, 2016

10:00 a.m.

FULL BOARD OPEN SESSION

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

Board President, Dr. Madhu Chawla, O.D. called the meeting to order. Dr. Chawla 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. President's Report

- A. Welcome and Introductions**
- B. 2016-2017 Board Meeting Dates and Locations**
- C. Committee Appointments**

No action was taken on this agenda item.

4. Approval of the Board Meeting Minutes

- A. February 19, 2016**

Dr. Lillian Wang moved to approve the minutes of February 19, 2016. Cyd Brandvein seconded. The Board voted 7-Aye; 2-Abstain and the motion passed.

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

B. May 13, 2016

Cyd Brandvein moved to accept the minutes of May 13, 2016. Lillian Wang seconded. The Board voted unanimously (9-0) and the motion passed.

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

5. Department of Consumer Affairs Report

Manager of Board and Bureau Relations, Jonathan Burke provided an update on Department of Consumer Affairs (DCA) activities.

No action was taken on this agenda item.

6. Executive Officer's Report

- A. BreZE
- B. Budget
- C. Personnel
- D. Examination and Licensing Programs
- E. Enforcement Program
- F. Strategic Plan

No formal action was taken on this agenda item.

7. Update, Presentation, and Possible Action on the Sunset Review Process/New Sunset Issues

Rachel Michelin moved to create Sunset Committee consisting of the President and Vice-President to assist staff with report writing, review, recommendations, and presentation to Legislature. David Turetsky seconded. The Board voted unanimously (9-0) and the motion passed.

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

8. Update on RDO Advisory Committee Application and Creation of RDO Appointments Committee

No action was taken on this agenda item.

9. Update from the Public Relations and Outreach Committee Regarding the Board’s Online Refractions Educational Campaign

David Turetsky moved to approve suggested amendments to online refraction brochure. Lillian Wang seconded. The Board voted unanimously (9-0) to pass the motion.

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

10. Discussion and Possible Action on 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry

- A. AB 12 (Cooley) State Government: Administrative Regulations: Review
- B. AB 2744 (Gordon) Healing Arts: Referrals
- C. SB 1039 (Hill) Professions and Vocations

Rachel Michelin moved to take a support if amended position and approve the staff recommendations regarding the omnibus language; and also to approve the proposed fee structure using the application fee. Debra McIntyre seconded. The Board voted unanimously (9-0) to pass the motion.

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

- D. SB 1195 (Hill) Professions and Vocations: Board Actions: Competitive Impact
- E. SB 349 (Bates) Optometry: Mobile Optometric Facilities
- F. SB 402 (Mitchell) Pupil Health: Vision Examinations
- G. SB 482 (Lara) Controlled Substances: CURES Database

- H. SB 622 (Hernandez): Optometry
 - I. TB 201 Registered Dispensing Opticians Program Move

11. Discussion and Possible Action of Proposed Amendment to Title 16, CCR § 1523 Licensure and Examination Requirements – Update License Applications

Glenn Kawaguchi moved to approve the revised form and proposed amendments to CCR § 1523. Cyd Brandvein seconded. The Board voted unanimously (9-0) to pass the motion.

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

12. Discussion and Possible Action on Recommendations from the Practice and Education Committee to Amend the Continuing Education Course Approval Request Form

Rachel Michelin moved to approve the recommendation from the Practice and Education Committee regarding the Continuing Education Course Approval Request form amendments. Lillian Wang seconded. The Board voted unanimously (9-0) and the motion passed.

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

13. Future Agenda Items

No action was taken on this agenda item.

14. Petition for Reduction of Penalty and Early Termination of Probation

A. Dr. Richard Armstrong, O.D., License No. 9196

FULL BOARD CLOSED SESSION

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

FULL BOARD OPEN SESSION

16. Adjournment

The full meeting can be viewed at <http://www.optometry.ca.gov/meetings/index.shtml> or by clicking [here](#).

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Madhu Chawla
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 7 – Department of Consumer Affairs Report

2450 Del Paso Road, Suite 105
 Sacramento, CA 95834
 (916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: August 26, 2016

From: Jessica Sieferman
 Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 8 – Executive Officer’s Report

A. BreEZe Database

Licensing Statistics demonstrates the Board’s growing success with applicants and licensees using BreEZe (Attachment 1). As demonstrated below, the majority of initial optometrist applications are received online. This success may be credited to the annual outreach provided to the California schools of optometry, encouraging students to take full advantage of the BreEZe system.

Online Initial Application Percentages	
Optometrist	84%
Statement of Licensure	42%
Branch Office License	27%
Fictitious Name Permits	16%

Online Renewal Application Percentages	
Optometrist	40%
Statement of Licensure	33%
Branch Office License	8%
Fictitious Name Permits	6%

Since BreEZE implementation, cycle times for optometrist and BOL applications as well as FNP renewals have decreased. Unfortunately, all other licensing cycle times have increased. Staff is currently investigating causes and will work quickly to identify process improvements to address this issue.

Staff is also developing an outreach plan that includes additional contact with licensees and partnering with COA and local optometric societies to increase BreEZe awareness. Staff is developing a monthly report to identify licenses eligible to renew within 90 days and email the BreEZe link to those licensees.

B. Budget
Optometry

Fund Condition: (Updated August 11, 2016)

According to the Fund Condition Analysis (Attachment 2), the Board’s revenues were more than its expenditures in the prior year (PY 15/16). For the current year (CY 2016-17), the analysis does factor in repayment of the \$1,000,000 general fund loan this, pursuant to item

1110-001-0763 Budget Act of 2011. This could potentially increase the reserve to 17.4 months. However, with expenditures projected to exceed revenues in the future budget years (BY 2017-18 and BY 2018-19), the reserve will continually decrease.

Expenditure Report: *(Based on Fiscal Month 12, Updated August 11, 2015)*
Attachment 3

Attorney General Cost Breakdown: Attachment 4

Registered Dispensing Optician Program:

The RDO Program Fund Condition and Expenditure Report will be provided during the meeting.

Attorney General Cost Breakdown: Attachment 5

C. Personnel

Board Vacancies

The Board has filled the licensing and enforcement lead positions as well as the vacant enforcement position.

Charles McGirt has accepted the licensing lead position, taking over for Jeff Robinson. Originally serving as the Board of Registered Nursing's (BRN) lead probation technician, Charles brings extensive BreEZe knowledge and experience in developing training and procedure manuals and preparing/maintaining monthly reports. He was BRN's main point of contact for the probation unit and gained licensing experience through cross training at BRN. We are excited to have him leading the Board's licensing unit and serving as the main point of contact for applicants.

Kellie Flores was promoted to the vacant enforcement analyst/board liaison position previously held by Lydia Bracco. Kellie served as the RDO Program's Management Services Technician since January and temporarily assisted the Board with some of Lydia's responsibilities upon Lydia's retirement. Kellie has been a standout employee with the Board and has been the single point of contact for over 4000 RDO registration holders. As a truly independent worker, she has been actively observing, documenting, and suggesting changes to improve efficiency within the RDO Program. Further, Kellie will be an invaluable resource when the Board begins to design and configure the RDO program in the BreEZe system early next calendar year.

Kellie will continue to assist Board members and staff with travel arrangements, reimbursement, and per diems in her new position. Her work ethic and demeanor make her a great addition to the enforcement unit and a dependable point of contact for Board member needs.

Cheree Kimball was promoted to the enforcement lead position, previously held by Robert Stephanopoulos. With over 12 years of enforcement experience (seven years with the Board), Cheree has proven to be an invaluable resource. She has used her extensive knowledge of Board statutes, regulations, and procedures to train new enforcement staff throughout the years. In addition, Cheree participated in the BreEZe data validation and user acceptance testing for enforcement and gained a wealth of exposure to the inner-workings of the system. Cheree reviews case recommendations from other analysts and the enforcement technician, compiles enforcement statistics and reports, and represents the Board at BreEZe user group meetings.

Interviews for the positions previously held by Kellie and Cheree will be held in mid-August, and offers will be made to candidates at the end of the month. Once these positions are filled, Kellie and Cheree will train their respective successors. Once filled, the Board will be fully staffed and ready to tackle pending caseload, exceed performance measures and expand its scope of work to include additional outreach, proactive enforcement, and internal projects.

Staff Professional Development

Board management continues its involvement with DCA's mentorship pilot program. Ms. Siefertman has been contacted by some DCA employees seeking a mentor. Management has highly encouraged Board staff to fully utilize the mentorship program, resulting in several staff members finding additional DCA mentors. Ms. Siefertman has also found a few seasoned Executive Officers to serve as her mentors.

In addition to monthly staff meetings, management started conducting one-on-one interviews with staff. An idea borrowed from the Physical Therapy Board's Executive Officer, these meetings provide management a "state of the union" picture of staff work life. This involves them answering questions regarding what gets them up in the morning, what they like about the Board, what they don't like about the Board, etc. In addition, staff is asked what they like and don't like about management. These answers provide light to the differences between each staff member's motivations, allowing management to effectively tailor their management style to meet individual staff needs. Further, staff can provide suggestions for the management improvement.

A "kudos wall" is now located in the office. This wall is a place where staff can provide recognition for their colleagues by filling out small cards and attaching them to the wall for posterity. In addition, the wall will be used for exceptional surveys and positive letters received from consumers and licensees recognizing individual employees.

Management Development

Board management continues its participation in the extensive DCA management trainings and has nearly completed DCA's Management Academy. Once completed, management will search for additional management trainings offered by DCA and outside sources in order to continuously improve their skills. Board management will continue to actively participate in DCA events and network with management from other Boards, Bureaus, and Departments.

D. Examination and Licensing Programs

Examination Workshops

As previously reported, the Board has experienced a difficult time recruiting for subject matter experts (SME) to participate in the California Laws and Regulation Examination (CLRE) Workshops. Staff and the Office of Professional Examination Services (OPES) attributed the increased difficulty to not being able to offer continuing education credit to participants.

However, due to staff efforts, recent workshops have seen a 100% increase in the number of SMEs participating. By increasing the number and SME diversity, OPES will be able to create a test that will better assess the applicants who want to practice in California. Participation will increase even further once the Board's regulation packet which provides CE credit for participation in the workshops is approved.

Additionally, staff devised a more efficient system to track and monitor the SME contracts. The previous method made it difficult to determine the running totals of SME costs. The improved system allows staff to keep the workshop expenses up to date.

Optometry Licensing Program

This year's graduation season met with a sharp increase in calls from anxious applicants checking on the status of their applications (70-80 calls per week). While Board staff is happy to assist these callers, it did take valuable time away from processing applications. With the majority of recent graduates now licensed, calls have slowed and we are making attempts to streamline application processing to maximize the analyst's time, while still providing timely assistance to callers. The addition of a full-time Lead Licensing Analyst will allow the Board to field calls and permit the licensing unit to continue to process applications in a timely manner.

RDO Registration Program

The RDO program currently receives an average of 15 phone calls per day; a drastic increase from the average of 3 calls per day reported by the Medical Board of California. Once the RDO Program's fund improves, the Board will fill the vacant 0.5 Office Technician to field these calls.

Currently, the Board maintains over 4000 RDO registrations and received 426 paper applications in the past fiscal year. The Board will begin designing the RDO program in BreEZe later this year, which will allow applicants/registrants the option to apply/renew online.

E. Enforcement Program

The enforcement unit currently consists of one lead associate governmental program analyst (AGPA), one staff services analyst (SSA), and one office technician (OT). However, the staff services analyst is still the RDO Program until the MST Vacant position is filled. RDO Program complaints increased every quarter of the last fiscal year, a trend that is anticipated to continue. As previously reported, the Board’s enforcement staff will continue to absorb the RDO enforcement workload until the RDO Program’s fund condition can support filling the 0.6 Special Investigator position.

In order to handle the increased caseload which is expanding in both number and complexity, the SSAs positions were reclassified to AGPA position. This position demands the incumbent to work more independently than a SSA and requires higher level analytical skillset. Duty statements for all enforcement staff were revised to reflect accurate and increased responsibilities

Further, enforcement has partnered with the California Department of Public Health and the Food and Drug Administration in a joint effort to combat the ever-increasing issue of unlicensed contact lens sales. This is typically a large problem during Halloween season; however, due to the increased popularity of movies and shows adapted from comics and their related conventions, the problem has become a year-round issue.

Moreover, Board enforcement continues its efforts to partner with the Medical Board of California regarding issues which crossover between the respective licensees.

The Enforcement Unit currently has 258 pending enforcement cases (195 optometrists, 63 RDO Program). With the majority of RDO cases received since its transfer from the Medical Board of California to the Board of Optometry.

Optometry Program	FY15/16				
	Jul-Sept	Oct-Dec	Jan-Mar	Apr-Jun	Total
Received	62	54	53	94	263
Closed	57	57	64	30	208
Pending	167	155	142	206	206
Referred to AG	0	1	2	2	5
Final Disciplinary Orders	0	2	0	1	3

RDO Program	FY15/16				
	Jul-Sept	Oct-Dec	Jan-Mar	Apr-Jun	Total
Received	7	12	27	38	84
Closed	13	17	16	25	71
Pending*					
Referred to AG*					
Final Disciplinary Orders	0	2	0	0	2

F. Strategic Plan

During the May 2016 Board meeting, the Board directed staff to research what creating a new strategic plan would entail and provide a potential timeline to the Board. Board staff contacted DCA’s SOLID Training Solutions, who agreed that given all of recent changes to the Board in the past year, a new Strategic Plan should be created. With that, SOLID provided the attached project

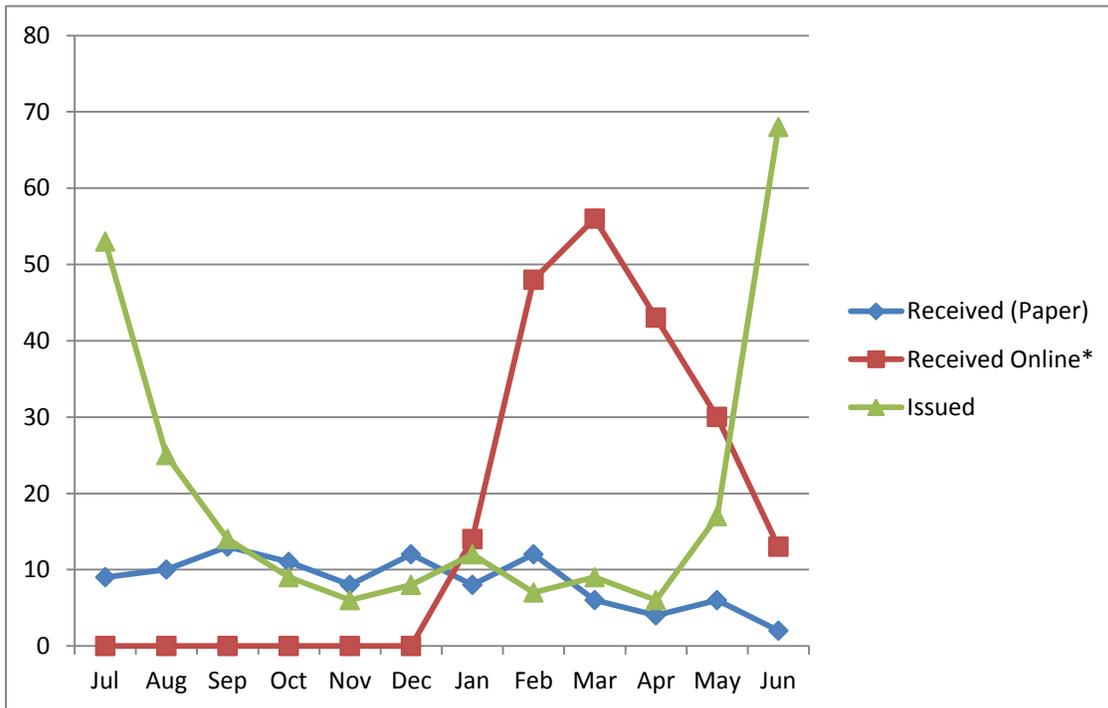
plan (Attachment 6) and offered to hold the all-day Board Member Session the day before the Board's January 2017 meeting.

Attachments

1. Licensing Statistics
2. Optometry Fund Condition
3. Optometry Expenditure Report
4. Optometry AG Cost Breakdown
5. RDO AG Cost Breakdown
6. Strategic Plan Timeline

Optometrist License Applications

		FY 2015-16												
		Q1			Q2			Q3			Q4			FY
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	TOTAL
OPTs	Received (Paper)	9	10	13	11	8	12	8	12	6	4	6	2	101
	Received Online*	N/A	N/A	N/A	N/A	N/A	N/A	14	48	56	43	30	13	204
	Issued	53	25	14	9	6	8	12	7	9	6	17	68	220
	Avg. Cycle Time (Total Days)**	108	172	122	194	332	262	217	196	123	59	74	105	134
	Pending Apps	120	105	104	106	108	112	122	175	228	269	288	235	235

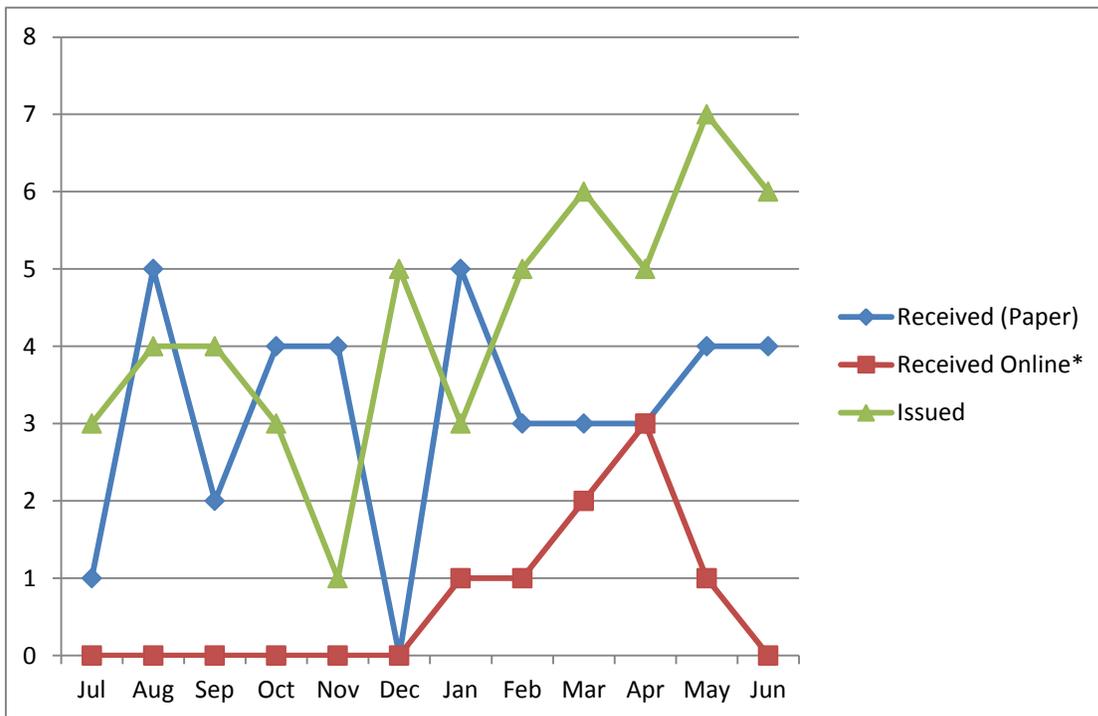


*BreEZe was not available for online optometry applications until January 19, 2016

**Once applicant is approved to sit for California Laws and Regulations Exam

Branch Office License Applications

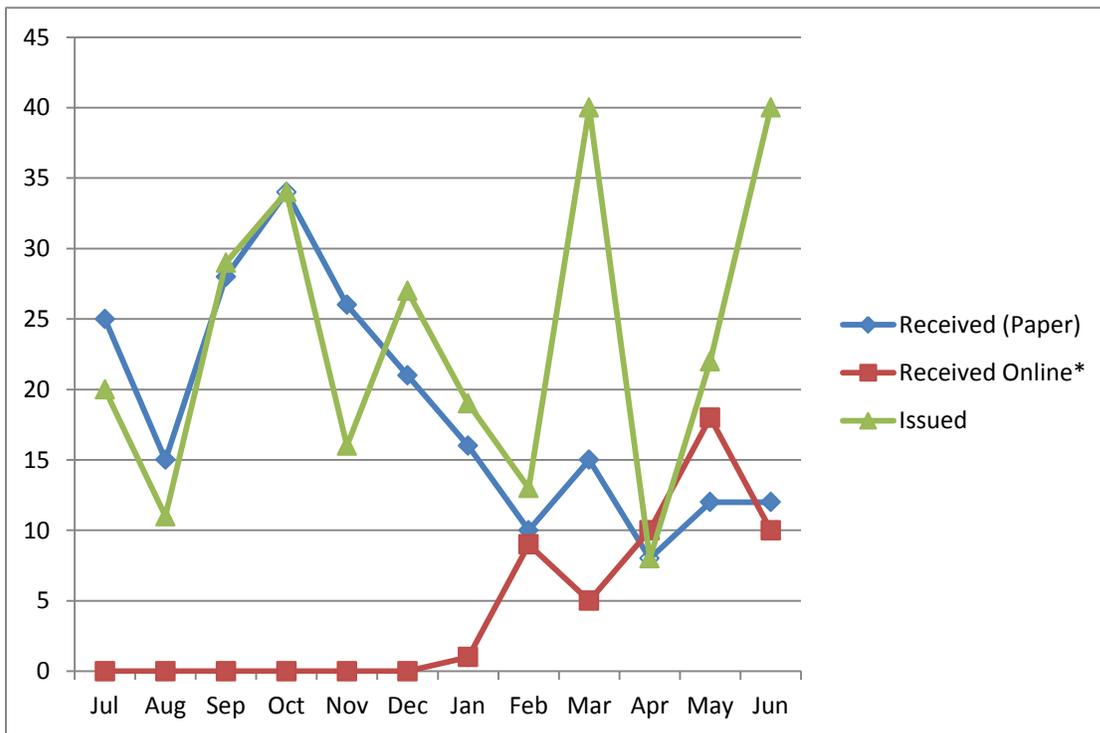
		FY 2015-16												
		Q1			Q2			Q3			Q4			FY TOTAL
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
BOLS	Received (Paper)	1	5	2	4	4	0	5	3	3	3	4	4	39
	Received Online*	N/A	N/A	N/A	N/A	N/A	N/A	1	1	2	3	1	0	8
	Issued	3	4	4	3	1	5	3	5	6	5	7	6	42
	Avg. Cycle Time (Total Days)	291	65	61	76	60	176	71	22	24	58	50	25	73
	Pending Apps	9	10	8	9	12	7	10	9	8	9	7	5	5



*BreZE was not available for online optometry applications until January 19, 2016

Statement of Licensure Applications

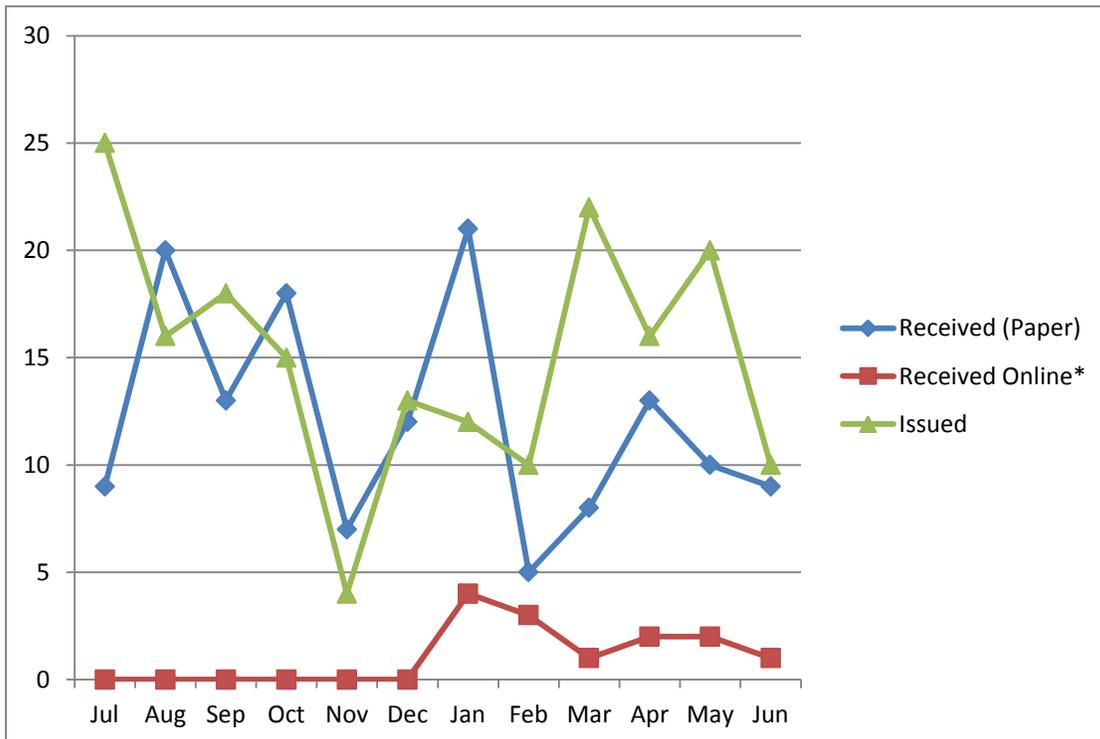
		FY 2015-16												
		Q1			Q2			Q3			Q4			FY TOTAL
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
SOLS	Received (Paper)	25	15	28	34	26	21	16	10	15	8	12	12	221
	Received Online*	N/A	N/A	N/A	N/A	N/A	N/A	1	9	5	10	18	10	53
	Issued	20	11	29	34	16	27	19	13	40	8	22	40	236
	Avg. Cycle Time (Total Days)	46	45	31	20	12	51	16	25	32	22	35	25	30
	Pending Apps	23	27	26	26	36	30	28	34	14	24	32	14	14



*BreZE was not available for online optometry applications until January 19, 2016

Fictitious Name Permit Applications

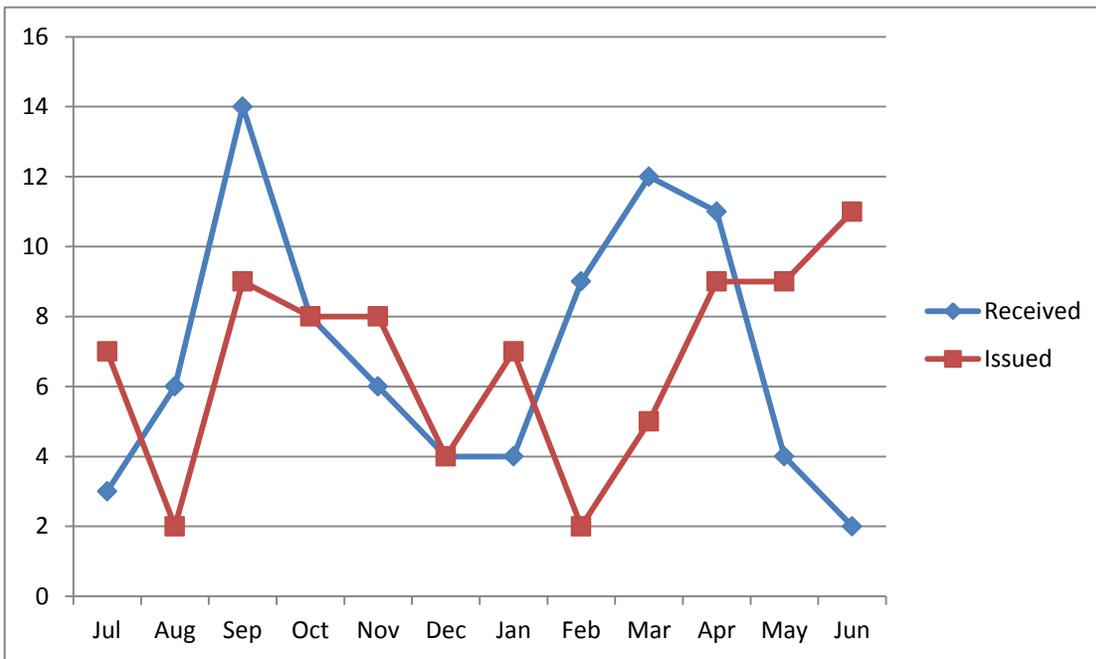
FY 2015-16															
			Q1			Q2			Q3			Q4			FY TOTAL
			Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
FNPS	Received (Paper)		9	20	13	18	7	12	21	5	8	13	10	9	127
	Received Online*		N/A	N/A	N/A	N/A	N/A	N/A	4	3	1	2	2	1	13
	Issued		25	16	18	15	4	13	12	10	22	16	20	10	161
	Avg. Cycle Time (Total Days)		199	76	75	88	52	57	19	11	39	55	45	65	74
	Pending Apps		25	29	24	27	30	29	42	40	27	26	18	18	18



*BreZE was not available for online optometry applications until January 19, 2016

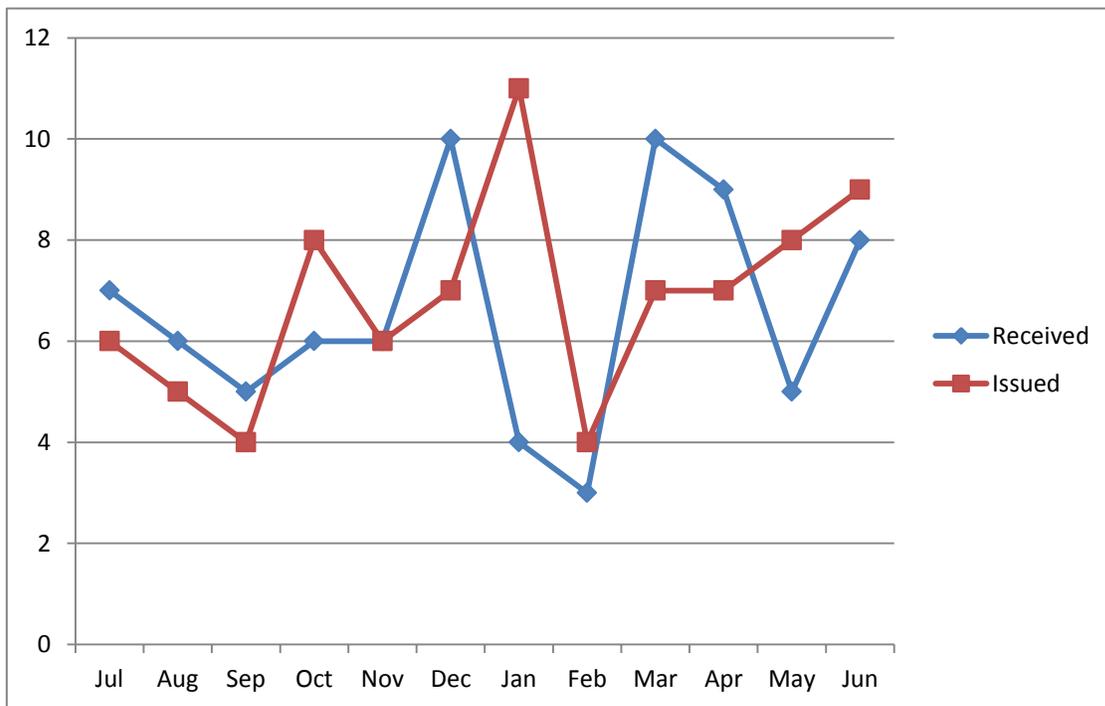
Registered Dispensing Optician Applications

		FY 2015-16												
		Q1			Q2			Q3			Q4			FY
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	TOTAL
RDOs	Received	3	6	14	8	6	4	4	9	12	11	4	2	83
	Issued	7	2	9	8	8	4	7	2	5	9	9	11	81
	Avg. Cycle Time (Days)	33	12	29	14	19	17	27	41	141	43	55	69	43
	Pending Apps	11	15	20	20	18	18	15	22	29	31	26	17	17



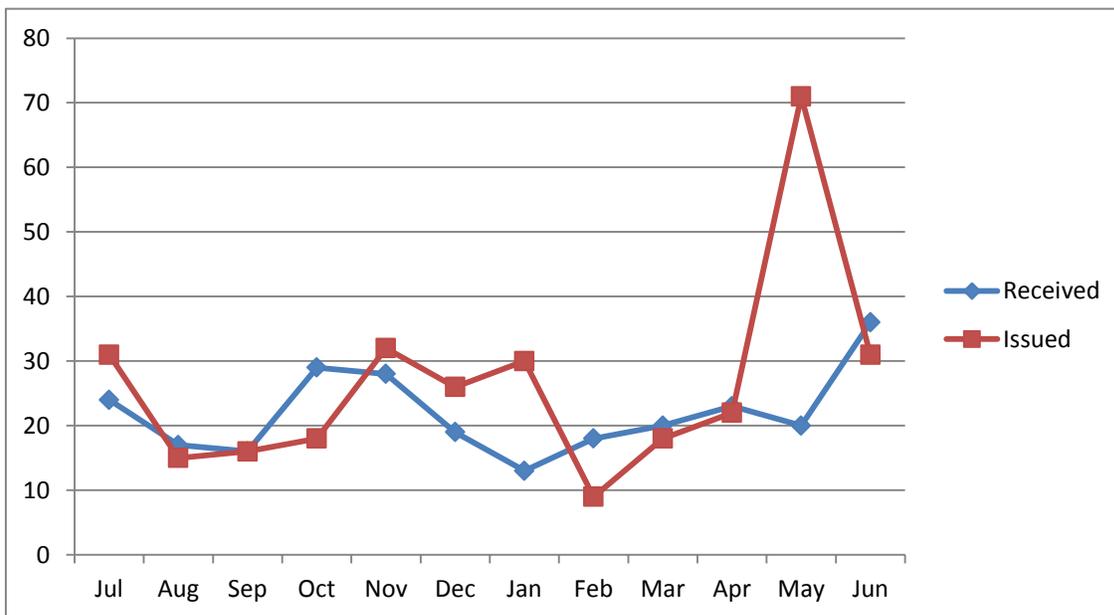
Contact Lens Dispenser Applications

		FY 2015-16												FY TOTAL
		Q1			Q2			Q3			Q4			
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
CLDs	Received	7	6	5	6	6	10	4	3	10	9	5	8	79
	Issued	6	5	4	8	6	7	11	4	7	7	8	9	82
	Avg. Cycle Time (Days)	96	19	30	34	13	15	36	26	27	32	36	43	35
	Pending Apps	14	15	16	14	14	17	10	9	12	14	11	10	10



Spectacle Lens Dispenser Applications

FY 2015-16														
Q1			Q2			Q3			Q4			FY TOTAL		
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
SLDs	Received	24	17	16	29	28	19	13	18	20	23	20	36	263
	Issued	31	15	16	18	32	26	30	9	18	22	71	31	319
	Avg. Cycle Time (Days)	50	21	47	52	13	16	60	26	48	44	25	51	40
	Pending Apps	112	114	114	125	121	114	97	106	108	109	58	63	63



Non-Resident Contact Lens Dispenser Applications

FY 2015-16													
Q1			Q2			Q3			Q4			FY TOTAL	
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
NRCLDS	Received	0	0	0	0	0	0	1	0	0	0	0	1
	Issued	0	0	0	0	0	0	0	0	1	0	0	1
	Avg. Cycle Time (Days)	0	0	0	0	0	0	0	0	63	0	0	63
	Pending Apps	1	1	1	1	1	1	1	2	2	1	1	1

Optometrist License Renewals

Expire biannually on the last day of OD's birth month

		3rd Quarter (starting Jan. 19, 2016)			4th Quarter			FY Total
		Jan	Feb	Mar	Apr	May	Jun	
OPT Renewals	Received Paper	89	284	206	167	158	137	1041
	Received Online	15	64	122	138	161	188	688
	Avg. Cycle Time Paper(Days)	5	10	10	16	11	11	11
	Avg. Online Cycle Time (Days)	2	1	3	5	6	7	5

Branch Office License Renewals

Expire annually on February 1.

		3rd Quarter (starting Jan. 19, 2016)			4th Quarter			FY Total
		Jan	Feb	Mar	Apr	May	Jun	
BOL Renewals	Received Paper	48	43	10	8	0	1	110
	Received Online	1	1	6	0	1	0	9
	Avg. Cycle Time Paper (Days)	5	14	10	32	0	19	11
	Avg. Online Cycle Time (Days)	1	1	1	0	1	0	1

Statement of Licensure Renewals

Expire biannually on the last day of OD's birth month

		3rd Quarter (starting Jan. 19, 2016)			4th Quarter			FY Total
		Jan	Feb	Mar	Apr	May	Jun	
SOL Renewals	Received Paper	18	35	14	19	13	26	125
	Received Online	3	3	1	8	16	31	62
	Avg. Cycle Time Paper (Days)	5	10	6	6	7	8	7
	Avg. Online Cycle Time (Days)	2	1	13	29	12	35	25

Fictitious Name Permit Renewals

Expire annually on January 31.

		3rd Quarter (starting Jan. 19, 2016)			4th Quarter			FY Total
		Jan	Feb	Mar	Apr	May	Jun	
FNP Renewals	Received Paper	146	67	125	7	1	1	347
	Received Online	4	2	12	3	0	0	21
	Avg. Cycle Time Paper (Days)	5	10	17	14	91	2	11
	Avg. Online Cycle Time (Days)	1	1	1	1	0	0	1

Registered Dispensing Optician Renewals

		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
RDO	Received	51	23	37	15	11	26	23	22	24	39	46	59	376
	Avg. Cycle Time	37	88	49	51	68	126	82	47	85	51	55	31	66

Contact Lens Dispenser Renewals

		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
CLD	Received	31	32	32	30	39	23	28	32	36	41	37	45	406
	Avg. Cycle Time	19	14	15	21	39	18	13	14	11	21	16	12	18

Spectacle Lens Dispenser Renewals

		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
SLD	Received	68	70	70	68	88	72	76	70	83	89	61	118	933
	Avg. Cycle Time	27	18	11	14	24	15	15	29	15	33	29	11	21

Non-Resident Contact Lens Dispenser Renewals

		1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
NRCLD	Received	0	0	0	0	0	0	1	0	1	0	1	0	3
	Avg. Cycle Time	0	300	0	0	0	0	0	13	3	0	0	0	124

0763 - State Board of Optometry Analysis of Fund Condition

8/11/2016

(Dollars in Thousands)

2016 Budget Act

NOTE: \$1 Million Dollar General Fund Repayment Outstanding

	*PY 2015-16	Budget Act CY 2016-17	BY 2017-18	BY + 1 2018-19
BEGINNING BALANCE	\$ 1,518	\$ 1,908	\$ 2,827	\$ 2,714
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,518	\$ 1,908	\$ 2,827	\$ 2,714
REVENUES AND TRANSFERS				
Revenues:				
125600 Other regulatory fees	\$ 28	\$ 63	\$ 63	\$ 63
125700 Other regulatory licenses and permits	\$ 160	\$ 152	\$ 152	\$ 152
125800 Renewal fees	\$ 1,687	\$ 1,597	\$ 1,597	\$ 1,597
125900 Delinquent fees	\$ 10	\$ 10	\$ 10	\$ 10
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 9	\$ 5	\$ 8	\$ 8
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2
161400 Miscellaneous revenues	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,896	\$ 1,829	\$ 1,832	\$ 1,832
Transfers from Other Funds				
GF loan per item 1110-001-0763 BA of 2011 (repay)	\$ -	\$ 1,000	\$ -	\$ -
Totals, Revenues and Transfers	\$ 1,896	\$ 2,829	\$ 1,832	\$ 1,832
Totals, Resources	\$ 3,414	\$ 4,737	\$ 4,659	\$ 4,546
EXPENDITURES				
Disbursements:				
0840 State Controller (State Operations)	\$ -	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 3	\$ 3	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 1,503	\$ -	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 1,907	\$ 1,945	\$ 1,984
Total Disbursements	\$ 1,506	\$ 1,910	\$ 1,945	\$ 1,984
FUND BALANCE				
Reserve for economic uncertainties	\$ 1,908	\$ 2,827	\$ 2,714	\$ 2,562
Months in Reserve	12.0	17.4	16.4	15.2

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.
- D. BASED ON PRELIMINARY FISCAL MONTH 13*

**BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2015-16 EXPENDITURE PROJECTION**

FM 12

OBJECT DESCRIPTION	FY 2014-15		FY 2015-16				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET STONE	CURRENT YEAR EXPENDITURES	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	(MONTH 13)	6/30/2015	15-16	6/30/2016			
PERSONNEL SERVICES							
Salary & Wages (Staff)	434,990	434,990	464,000	373,947	81%	374,416	89,584
Statutory Exempt (EO)	71,550	71,550	82,000	65,840	80%	65,840	16,160
Temp Help Reg (907)	72,094	68,314	41,000	43,830	107%	97,813	(56,813)
Temp Help (Exam Proctors)							0
Board Member Per Diem	13,900	12,500	7,000	7,300	104%	13,000	(6,000)
Committee Members (DEC)							0
Overtime	4,830	4,830		2,348		3,400	(3,400)
Staff Benefits	244,711	244,388	303,000	214,492	71%	214,761	88,239
TOTALS, PERSONNEL SVC	842,075	836,572	897,000	707,757	79%	769,230	127,770
OPERATING EXPENSE AND EQUIPMENT							
General Expense	8,909	8,907	16,000	9,497	59%	10,400	5,600
Fingerprint Report	4,009	3,308	5,000	4,389	88%	5,000	0
Minor Equipment	2,989	2,989	12,000	1,146	10%	1,146	10,854
Printing	1,808	1,803	8,000	5,946	74%	5,946	2,054
Communications	3,665	3,665	5,000	2,549	51%	2,800	2,200
Postage	16,336	15,066	11,000	9,547	87%	10,400	600
Insurance			0				0
Travel In State	41,225	38,273	8,000	28,191	352%	40,000	(32,000)
Travel, Out-of-State			0	589		2,000	(2,000)
Training	350	0	1,000	563	56%	563	437
Facilities Operations	111,133	111,105	59,000	111,349	189%	112,000	(53,000)
Utilities			0				0
C & P Services - Interdept.	2	2	3,000	97	3%	97	2,903
C & P Services - External	16,205	30,465	15,000	11,118		17,438	(2,438)
DEPARTMENTAL SERVICES:							
OIS Pro Rata	176,558	180,901	246,000	246,000	100%	246,000	0
Admin Pro Rata	118,209	118,209	128,000	128,000	100%	128,000	0
Interagency Services	0	0	0			0	0
IA w/ OPES	24,784	24,784	0	24,784		24,784	(24,784)
DOI-Pro Rata	3,562	4,128	3,000	3,000	100%	3,000	0
Public Affairs Pro Rata	3,131	3,131	8,000	8,000	100%	8,000	0
PPRD Pro Rata	3,993	4,119	0			0	0
INTERAGENCY SERVICES:							
Consolidated Data Centers	335	315	5,000	613	12%	613	4,387
DP Maintenance & Supply	1,990	1,990	1,000	3,378	338%	3,378	(2,378)
Statewid Pro Rata	82,909	82,909	101,000	101,246	100%	101,000	0
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight	0	0	484	0	0%	0	484
Exam Site Rental			0				0
C/P Svcs-External Expert Administrative	98	98	0	49		49	(49)
C/P Svcs-External Expert Examiners	0	0	20,516	0	0%	0	20,516
C/P Svcs-External Subject Matter	15,200	14,700	0	1,344		15,200	(15,200)
ENFORCEMENT:							
Attorney General	149,353	149,353	229,000	74,098	32%	150,000	79,000
Office Admin. Hearings	32,318	32,318	38,000	17,570	46%	32,500	5,500
Court Reporters	3,098	2,298		572		3,000	(3,000)
Evidence/Witness Fees	8,904	8,404	16,000	920	6%	9,000	7,000
DOI - Investigations	149,358	153,458	0			0	0
Major Equipment	0		5,000		0%	0	5,000
Other Items of Expense	58	58	0			20,000	(20,000)
Vehicle Operations			0				0
TOTALS, OE&E	980,489	996,755	944,000	794,555	84%	952,314	(8,314)
TOTAL EXPENSE	1,822,564	1,833,327	1,841,000	1,502,312	163%	1,721,544	119,456
Reimb. - State Optometry Fund							0
Sched. Reimb. - Fingerprints	(3,871)	(3,871)	(6,000)	(4,966)	83%	(6,000)	0
Sched. Reimb. - Other	(3,760)	(3,760)		(2,350)			0
Probation Monitoring Fee - Variable	(17,633)	(17,633)		(9,700)			0
Unsched. Reimb. - Investigative Cost Recovery	(43,913)	(43,913)		(22,875)			0
Unsch. - DOI ICR Administrative Case				(32)			0
Unsched. Reimb. - ICR - Prob Monitor							0
NET APPROPRIATION	1,753,387	1,764,150	1,835,000	1,462,389	80%	1,715,544	119,456
SURPLUS/(DEFICIT):							6.5%

Board of Optometry - OPT
 Attorney General Expenditures - FY 2015-2016
 DOJ Customer Number 003581 - Enforcement (Group Code 9077)

		<u>Number of Hours</u>	<u>Rate</u>	<u>Amount</u>
July	Attorney Services	19.75	\$170.00	\$3,357.50
	Paralegal Services	2.75	\$120.00	\$330.00
				<u>\$3,687.50</u>
August	Attorney Services	8.00	\$170.00	\$1,360.00
	Paralegal Services	0.00	\$120.00	\$0.00
				<u>\$1,360.00</u>
September	Attorney Services	57.50	\$170.00	\$9,775.00
	Paralegal Services	0.25	\$120.00	\$30.00
				<u>\$9,805.00</u>
October	Attorney Services	65.25	\$170.00	\$11,092.50
	Paralegal Services	2.75	\$120.00	\$330.00
				<u>\$11,422.50</u>
November	Attorney Services	37.75	\$170.00	\$6,417.50
	Paralegal Services	2.75	\$120.00	\$330.00
				<u>\$6,747.50</u>
December	Attorney Services	49.00	\$170.00	\$8,330.00
	Paralegal Services	0.75	\$120.00	\$90.00
				<u>\$8,420.00</u>
January	Attorney Services	53.00	\$170.00	\$9,010.00
	Paralegal Services	1.75	\$120.00	\$210.00
				<u>\$9,220.00</u>
February	Attorney Services	7.75	\$170.00	\$1,317.50
	Paralegal Services	3.50	\$120.00	\$420.00
				<u>\$1,737.50</u>
March	Attorney Services	45.75	\$170.00	\$7,777.50
	Paralegal Services	1.00	\$120.00	\$120.00
				<u>\$7,897.50</u>
April	Attorney Services	25.00	\$170.00	\$4,250.00
	Paralegal Services	4.75	\$120.00	\$570.00
				<u>\$4,820.00</u>

May	Attorney Services	26.50	\$170.00	\$4,505.00
	Paralegal Services	1.25	\$120.00	<u>\$150.00</u>
				\$4,655.00
June	Attorney Services	23.50	\$170.00	\$3,995.00
	Paralegal Services	2.75	\$120.00	<u>\$330.00</u>
				\$4,325.00
		FYTD Total = \$74,097.50		

Board of Optometry - RDO Program
 Attorney General Expenditures - FY 2015-2016
 DOJ Customer Number 003577 - Enforcement (Group Code 9188)

		<u>Number of Hours</u>	<u>Rate</u>	<u>Amount</u>
July	Attorney Services	18.75	\$170.00	\$3,187.50
	Paralegal Services	1.75	\$120.00	\$210.00
				<u>\$3,397.50</u>
August	Attorney Services	21.25	\$170.00	\$3,612.50
	Paralegal Services	0.25	\$120.00	\$30.00
	Auditor/Analyst Services	1.25	\$99.00	\$123.75
				<u>\$3,766.25</u>
September	Attorney Services	21.50	\$170.00	\$3,655.00
	Paralegal Services	0.00	\$120.00	\$0.00
	Auditor/Analyst Services	2.25	\$99.00	\$222.75
				<u>\$3,877.75</u>
October	Attorney Services	5.50	\$170.00	\$935.00
	Paralegal Services	0.25	\$120.00	\$30.00
				<u>\$965.00</u>
November	Attorney Services	2.25	\$170.00	\$382.50
	Paralegal Services	0.00	\$120.00	\$0.00
	Auditor/Analyst Services	0.50	\$99.00	\$49.50
	Special Agent	0.00	\$120.00	\$0.00
	Cost of Suit			\$0.00
				<u>\$432.00</u>
December	Attorney Services	2.50	\$170.00	\$425.00
	Paralegal Services	0.25	\$120.00	\$30.00
				<u>\$455.00</u>
January	Attorney Services	19.50	\$170.00	\$3,315.00
	Paralegal Services	0.00	\$120.00	\$0.00
	Auditor/Analyst Services	0.50	\$99.00	\$49.50
				<u>\$3,364.50</u>
February	Attorney Services	12.25	\$170.00	\$2,082.50
	Paralegal Services	0.50	\$120.00	\$60.00
				<u>\$2,142.50</u>
March	Attorney Services	12.50	\$170.00	\$2,125.00

	Paralegal Services	0.25	\$120.00	<u>\$30.00</u>
				\$2,155.00
April	Attorney Services	12.25	\$170.00	\$2,082.50
	Paralegal Services	0.00	\$120.00	<u>\$0.00</u>
				\$2,082.50
May	Attorney Services	12.50	\$170.00	\$2,125.00
	Paralegal Services	3.25	\$120.00	<u>\$390.00</u>
				\$2,515.00
June	Attorney Services	7.75	\$170.00	\$1,317.50
	Paralegal Services	0.25	\$120.00	<u>\$30.00</u>
				\$1,347.50
			FYTD Total =	\$26,500.50

Board of Optometry Strategic Plan Schedule

Approved on _____

Task		Due Dates
Preliminary Meeting	SOLID works with EO to gather information about the Board of Optometry and discuss the strategic planning methodology.	1 hour meeting week of 9/26/16
Determine stakeholders	Board to determine stakeholders and create an email contact list for the online survey. Board to send online survey invitation to all stakeholders. SOLID to draft email invitation to stakeholders for use by the Board.	Weeks of 9/26/16 and 10/3/16
Board Member Interviews	SOLID will send EO a draft of the email invitation to be sent to Board members in preparation for the individual phone interviews.	10/3/16 – 10/14/16
EO Interview	SOLID interviews EO.	1 hour meeting week of 10/3/16
Staff Focus Group (or online survey)	SOLID conducts on one 4-hour staff focus group in HQ2 training room.	Week of 10/10/16
Compile Results for Review	Upon completion of interviews, focus group, and survey, SOLID will compile and analyze the data and produce an environmental scan outlining the Board's strengths, weakness, opportunities, and threats. The final Environmental Scan will be the foundation during the strategic planning session to develop objectives within each of the Board's goal areas.	10/17/16 – 10/28/16
Send Draft Environmental Scan to EO	SOLID will email a DRAFT of the Scan to EO for review. SOLID makes edits as needed	10/31/16 – 11/4/16
EO Emails Scan to Board and Legal	Scan and worksheet will be emailed from EO to Board with suggested email text from SOLID. Board of Optometry Legal Counsel should also receive a copy and a meeting invite to the session.	One week prior to planning session
Pre-Session Review	EO meets with planner to review materials, sequence of PowerPoint, and seating chart in the room where session will be held.	Mid November
Planning Session	SOLID will facilitate the strategic plan development session with Board members. Through discussion, our purpose is to highlight review the trends identified from the surveys, interviews, and focus group to establish objectives for the Board's new strategic plan. During the planning session the Board will also develop/revise the Board's mission statement, vision statement, and values.	Full day in December 2016
Update Strategic Plan	SOLID will use information gathered at planning session to update Board's strategic plan. A comprehensive draft will be sent to EO for review by target due date.	December 2016
Present Strategic Plan	Strategic plan is reviewed and adopted by Board. Board may decide to work with DCA's Publications, Design, and Editing (PDE) team to have the plan professionally designed.	TBD
Action Planning Session	SOLID will facilitate a meeting with Board staff to create an action plan to guide completion of strategic objectives by establishing due dates, identifying major tasks, and assigning responsible parties.	TBD

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To: Board Members **Date:** August 26, 2016
From: Jessica Sieferman **Telephone:** (916) 575-7184
Executive Officer
Subject: Agenda Item 9 – ARBO Annual Meeting Summary

Background:

The Association of Regulatory Boards of Optometry ([ARBO](#)), made up of 66 regulatory boards throughout the United States, Canada, Australia, and New Zealand, is the forum for all optometry licensing and regulatory agencies to meet, develop, and exchange ideas. ARBO played a key role in the development of optometric laws; the development of a uniform curriculum for optometry schools; and the accreditation of schools and colleges of optometry.

In conjunction with the Association of Schools and Colleges of Optometry (ASCO), ARBO created the National Board of Examiners in Optometry ([NBEO](#)). ARBO continues to provide programs to accredit optometric continuing education courses, to track and audit the CE attendance of licensed optometrists and to assist with license mobility. ARBO serves as a conduit for sharing information among licensing boards to help them increase efficiency and decrease costs.

Each year, ARBO holds a meeting for representatives from all regulatory boards to come together and discuss national issues impacting the regulatory boards and the practice of optometry. Historically, the Board has had an extremely difficult time securing approval to attend this meeting.

However, this year, the Board was approved to send one individual to ARBO's 97th Annual Meeting. The Executive Officer attended the three-day meeting in June. A brief summary of some key topics is below. The ARBO full meeting agenda and meeting materials can be found [here](#).

Board Member Training and Legal Update

[Dale Atkinson](#), Esq., ARBO General Counsel, provided training similar to DCA's Board Member Orientation Training. Mr. Atkinson made a point to remind all members that, despite their occupation – whether or not they were a professional member – they are all public members. The role for all members is public protection. Professional associations advocate for the profession; board members advocate for the public.

Mr. Atkinson cautioned Boards using social media to ensure each Board's legal counsel is heavily involved with any information distributed.

Mr. Atkinson also provided an update on top regulatory cases; many included recent antitrust litigation that happened after the North Carolina Board of Dental Examiners Supreme Court case. Essentially, Mr. Atkinson advised all boards to ensure they are operating within their scope – consumer protection – and in good faith. He recommended boards not get involved in scope of practice legislation/issues; that is the role of the professional associations.

Mr. Atkinson's legal update can be found [here](#).

National Board of Examination Review Committee (NBERC) Report

NBERC is an ARBO committee whose purpose is to review the content and ensure that the content of the National Board Examination process is current and appropriate for ARBO Member Boards.

NBERC also evaluates the policies and procedures of the NBEO that might impact the validity and reliability of the examination and to review how information is presented to both students/graduates and licensing boards.

NBERC met in December 2015 to review the Part I, Part II, and Part III tests for the targeted (first time the test is offered after candidates achieve eligibility) and non-targeted (subsequent offering) test days for 2016.

NBERC's report made the following conclusions:

- The NBEO is addressing the advanced procedures demands of expanding scope legislation by adding to the CSE.
- While the NBEO is increasing its fees this year, it is still very competitive with other professions of similar size. This is the first increase in ten years.
- The NCTTO is very impressive. The clinical testing is very standardized and is very efficient. Checks and balances insure entry level skills.
- The NBERC appreciates the outstanding dedication of the Part I, Part II and Part III council members, and the expertise that they lend to the construction of the examinations. We were impressed with the quality of the professionals at the NBEO meeting and their dedication to developing a comprehensive test for optometry students and practicing clinicians.
- We feel the NBEO examinations are a reliable measure of entry-level optometrists and look forward to their continued evolution.

The full NBERC report can be found [here](#).

OE TRACKER Committee Report

The Optometric Education (OE) TRACKER captures and stores continuing education attendance data for optometrists. The information is retained in the secure ARBO database and can be accessed online by licensees and the Board. OE TRACKER can save time and reduce paperwork by tracking all CE credits electronically.

The OE TRACKER Committee provided an update to the OE TRACKER Program. The Board currently accepts OE TRACKER certificates for audit verification purposes. In the past, the Board heard a presentation on the benefits of OE TRACKER. Those benefits include the ability for staff to quickly verify CE attendance and audit 100% of licensees. Historically, the Board has audited roughly 5% or less of its licensees. This is an extremely time consuming process, and staff is working on researching more efficient methods to perform CE Audits. Staff believes OE TRACKER would be the most efficient way to audit licensees. However, until optometrists are required to use OE TRACKER, staff would not be able to fully implement its auditing capabilities.

More information on OE TRACKER can be found [here](#). The Committee's report can be found [here](#).

Staff would like the Board to discuss this topic at a future meeting and consider the benefits and potential negatives to requiring optometrists to use OE TRACKER.

Healthcare Workforce Data Center

The Virginia Department of Health Professions Healthcare Workforce Data Center (DHP HWDC) Director provided a presentation on optometrists in the workforce. Unfortunately, not much data is available, because the information is not being collected. In the Director's report, she stated the following:

“Nationwide, there is a serious lack of objective, consistent, and comparable research quality data and analysis to support effective healthcare workforce policy and planning.

We are on the verge of “perfect storm” due to an unprecedented increase in overall healthcare demand coinciding with an impending decrease in supply.”

The Director went on to explain that there is “some, but not enough, coordination across states and professions.” While boards have the state's licensure data, that does not equate to practice data.

The Board currently provides data to California's Office of Statewide Health Planning and Development ([OSHDP](#)), the Board does not collect any workforce data. Workforce data is often requested whenever considering legislation, any budget change proposals, and professional studies.

Some Boards, like the Medical Board of California, collect workforce data through optional electronic surveys during renewal. During a future Board meeting, staff would like the Board to consider adding an optional workforce survey to renewals to start capturing workforce data.

The full report can be found [here](#).

Executive Director/Administrator Workshop

All Executive Directors/Administrators met to discuss updates, best practices and any regulatory issues at their Boards. The ARBO General Counsel, Dale Atkinson, also joined to help address questions. This was a great opportunity to learn from each other and improve the regulatory programs.

Discussing universal issues such as unlicensed practice, social media, online refractions, license mobility, overall enforcement struggles, and the atmosphere in the regulatory world after the North Carolina decision was extremely beneficial.

As a result of this meeting, Board staff is researching several new ways to counter unlicensed practice and the illegal sales of plano contact lenses. In addition, at a future Board meeting, staff would like the Board to consider moving to completely paperless renewal and replacement certificates.

Reasonable Regulation in an Electronic Era

Attorney and instructor at Lewis and Clark Law School provided an overview of issues regulatory boards are facing when it comes to new and innovative technology. Staff encourages Board Members to read the entire report [here](#). While it does not provide any legal advice, it offers some information and questions to consider when considering policy decisions.

2017 ARBO Annual Meeting

The next annual meeting will be held on June 18-20, 2017 in Washington, DC. The Board was approved to send one representative to that meeting.

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To: Board Members **Date:** August 26, 2016
From: Jessica Sieferman **Telephone:** (916) 575-7184
Executive Officer
Subject: Agenda Item 10 – Update on Occupational Analysis and Audit of NBEO Examination

Background:

During the May 2016 Board meeting, the Board discussed the need for an occupational analysis and audit of the National Board of Examiners in Optometry (NBEO) examination. As reported, DCA Policy and industry standards, an occupational analysis and comprehensive audit should be conducted on licensing exams every five years. The occupational analysis is needed to assure validity, maintain consistency, preserve security, and ensure integrity of the examination. However, the Board has not had an analysis and audit performed since 2009.

The analysis and audit is estimated to cost \$85,912¹ total. This includes services from OPES and subject matter experts' time and associated travel expenses.

The Board requested more information from staff related to this process and if the Board could consider using alternative vendors to conduct the analysis and audit. After further research, it was determined that the Board could not use outside vendors at this time. OPES is comprised of civil service employees who can provide these services within their scope of expertise. Therefore, Government Code § [19130](#)(b) requires the Board to use OPES rather than contract with outside vendors.

To assist the Board, OPES provided the attached memo comprised of additional background information, a cost breakdown of their services, and a proposed project plan.

Attachments

1. OPES Memorandum

¹ This estimate is less than the original \$90,000 estimate reported to the members at the May 2016 meeting. During the BCP process, more accurate estimates were determined based on applicable rates and the project plan.



OFFICE OF PROFESSIONAL EXAMINATION SERVICES
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ISSUE MEMORANDUM

DATE	August 10, 2016
TO	Jessica Sieferman, Executive Officer California State Board of Optometry
FROM	 Heidi Lincer, Ph.D., Chief Office of Professional Examination Services (OPES)
SUBJECT	Occupational Analysis and National (NBEO) Review Information

BACKGROUND INFORMATION

California Business and Professions Code section 139 (B&P Code section 139) requires, among other things, that the Department of Consumer Affairs (DCA) create a policy that establishes standards for the review of state and national licensure examinations used in California.

The following areas, at a minimum, are considered in a review of state and national examinations:

- Occupational analysis report and frequency of updates
- Demographic information about the sample of practitioners surveyed
- Description of method to establish content-related validity
- Test plan and method to link to occupational analysis
- Item development process (experts used, editing methods, etc.)
- Method to ensure standards are set for entry-level practice
- Size of item banks
- Statistical performance of examinations
- Examination reliability
- Pass point setting methodology
- Pass/fail ratio
- Test security methods; test administration processes
- Right to access information from all studies and reports from test vendors (local or national)
- Right of state agency to review recent examination

Occupational Analysis and Audit Information

Page 2

OPES cannot recommend using a national examination without meeting the requirements of B&P Code section 139 and DCA policy.

Further, Government Code 19130(b) requires state agencies to use civil service employees to perform services within their scope of expertise rather than contracting with outside vendors. At this time, OPES anticipates being able to perform the occupational analysis and audit and cannot issue a waiver of services. OPES regularly conducts occupational analyses and audits of national examinations for DCA's boards, bureaus, and committees.

ESTIMATED COSTS FOR OPES SERVICES

The following estimates **do not** include the cost of subject matter expert (SME) time and any associated travel expenses. Typically, 8–10 SMEs are recommended for each workshop.

Optometrist Occupational Analysis Estimated Cost: \$57,992

Review of National Board of Examiners in Optometry
(NBEO) Exam and Linkage Study Estimated Cost: \$27,920

PROJECT PLAN

Review of the NBEO examination will begin toward the end of the occupational analysis since results of the occupational analysis are necessary for reference. Attachment A includes draft Project Plans with anticipated target dates.

OPES looks forward to working with the State Board of Optometry to complete these projects. If you have any questions, please contact me at 916-575-7265.

cc: Tracy Montez, Ph.D., Chief, Division of Programs and Policy Review

Attachment A

OPTOMETRIST OCCUPATIONAL ANALYSIS PROJECT PLAN

MAJOR PROJECT EVENTS	TARGET DATES
1. Develop Job Content and Structure	July/Aug 2017
Review background information Schedule and conduct interviews Transcribe interview information Develop preliminary list of tasks and knowledge	
2. Review Tasks and Knowledge	August/Sep 2017
Prepare for two 2-day workshops Conduct one 2-day workshop with SMEs Revise tasks and knowledge Conduct one 2-day workshop Revise tasks and knowledge	
3. Construct and Distribute Pilot Questionnaire	Sep/Oct 2017
Develop demographic items and rating scales Prepare questionnaire for pilot study Email questionnaire for pilot study Review results of pilot study	
4. Construct and Distribute Final Questionnaire	Oct-2017
Determine sampling plan Prepare draft of final questionnaire Prepare final questionnaire	
5. Data Analysis	Nov/Dec 2017
Download final questionnaire data files Prepare data files for analysis Analyze demographics, task and knowledge ratings Develop preliminary description of practice	
6. Review Results of Occupational Analysis	Dec-2017
Prepare for one 2-day workshop Conduct workshop Develop description of practice/examination outline	
7. Submit Validation Report	Dec/Jan 2017/18
Prepare draft of report Prepare camera-ready copy of report	

REVIEW OF NATIONAL EXAM (NBEO) AND LINKAGE STUDY PROJECT PLAN

MAJOR PROJECT EVENTS	TARGET DATES
1. Review Background Information	Nov 2017/Feb 2018
Review NBEO Examination Information Review NBEO Occupational Analysis Review NBEO Exam Administration Procedures	
2. Review Psychometric Quality of NBEO Exam	Feb/Mar 2018
Evaluate Psychometric Quality of NBEO Exams	

Occupational Analysis and Audit Information
Page 4

3. Linkage Study of NBEO Exam Plan and CA OA Results	Mar/Apr 2018
Prepare for Linkage Study workshop Conduct 2-day workshop with SMEs Compile results of workshop	
4. Data Analysis	May/Jun 2018
Analyze Linkage Study Results	
5. Submit Report	Jun-2018
Prepare draft of NBEO Review & Linkage Study Report Prepare, print and submit final report	

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To: Board Members **Date:** August 26, 2016
From: Board Sunset Committee **Telephone:** (916) 575-7170
Executive Officer
Subject: Agenda Item 11 – Update on the Board’s 2016 Sunset Report

During the May 2016 Board meeting, staff provided an overview of the sunset review process for the Board. At that time, the Board voted to create a Sunset Committee consisting of the President and Vice-President to assist staff with report writing, review, recommendations, and presentation to Legislature.

On July 8, 2016, the Senate Committee on Business, Professions and Economic Development sent a memo to all Boards subject to Sunset (Attachment 1). Included was the Sunset Template Boards are to use (Attachment 2) and Guide for Completing Tables (Attachment 3).

On July 12, 2016, the Department of Consumer Affairs (DCA) held its First Annual Sunset Review Meeting with staff from all impacted Boards. During that meeting, DCA provided Board staff an overview of the process, general process timeline (Attachment 4), guidance on completing each section, and main DCA points of contact for assistance.

One recommendation provided at the meeting was to hold monthly Board teleconferences to review the report and provide input. Between teleconferences, an established Sunset Committee would provide more in depth assistance to staff and review drafts prior to submitting to the Board. Since the report is from the Board, it is imperative Board Members provide significant review and input.

Staff has provided a first rough draft to the Sunset Committee for review and feedback. After this preliminary review, the Sunset Committee and staff would like to submit the draft to the Board for consideration during a September teleconference. Monthly teleconferences would then be held until the November 4, 2016 Board meeting, where the Board would provide final approval of the report.

Sieferman, Jessica@DCA

From: Mason, Sarah <Sarah.Mason@SEN.CA.GOV>
Sent: Friday, July 08, 2016 4:26 PM
Subject: Report Request - Sunset Oversight Review 2016-2017
Attachments: BPED Oversight Report Form 2016.doc; Guide for Completing Tables.doc

M e m o r a n d u m

To: Boards Subject to Sunset Oversight Review by the Legislature in 2016-2017

From: Senate Committee on Business, Professions and Economic Development

Date: July 8, 2016

Subject: Request for Information and Issues to be Addressed for 2016-2017 Sunset Oversight Review

This is to inform you that Sunset Oversight Review will begin in the Fall of 2016. The comprehensive process allows the Legislature to review the laws and regulations pertaining to a board and evaluate its programs and policies; determine whether the board operates and enforces its regulatory responsibilities and is carrying out its statutory duties; and examine fiscal management practices and financial relationships with other agencies. Through Sunset Oversight Review, boards are also evaluated on key performance measures and targets related to the timeliness of action, enforcement and other necessary efforts to serve the needs of California consumers while promoting regulatory efficiency and effectiveness.

Each entity within the DCA (boards, bureaus, programs, commissions, committees) is subject to Sunset Oversight Review at least once every four years, and more often as needed. The following are subject to Sunset Oversight Review for 2016-2017:

Board of Chiropractic Examiners
 State Board of Guide Dogs for the Blind
 Medical Board of California
 California Board of Occupational Therapy
 State Board of Optometry
 Osteopathic Medical Board of California
 Naturopathic Medicine Committee
 Physical Therapy Board of California
 Respiratory Care Board of California
 Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
 *Board of Registered Nursing (two-year extension pursuant to SB 466 [Hill, Chapter 489, Statutes of 2015]; separate oversight report form provided)
 *Board of Vocational Nursing and Psychiatric Technicians (two-year extension pursuant to AB 179 [Bonilla, Chapter 510, Statutes of 2015; separate oversight report form to be provided)

Attached to this email is the "BPED Oversight Report Form" (Report) that should be completed by **December 1, 2016**. This Report provides a snapshot and substantive information about who the board is, who the board licenses, and how the board performs its regulatory functions.

The first sections of the Report provide an overview of the board's current regulatory program, and contain pre-formatted tables and charts to be completed by the board. The latter sections focus on responses by the board to particular issues raised by the individual board or raised during prior Sunset Oversight Review.

Please respond to all questions in the Report, including the tables, charts and appropriate statistical information for the fiscal years indicated. In the event that some information may not pertain to your particular board, please note it on your response, but be sure to include information that is relevant to your activities and programs.

In completing your Report, please note the following:

Section 10 – Board Action and Response to Prior Sunset Issues. This should reflect the board's response to each individual issue and recommendation that was raised during the prior Sunset Oversight Review.

Section 11 – New Issues. This is the board's opportunity to raise new issues and make recommendations. These can reflect statutory or regulatory changes, administrative improvements and efforts or respond to issues impacting the practice or board. The Sunset Oversight Review process allows the board to work collaboratively with the Legislature on all issues impacting the board and profession(s).

Along with the Report Form, you are also being sent a *Guide for Completing Tables in the Oversight Review Questionnaire*. Most of the tables may be completed from data in standard reports that the board already receives. If your board does not use the Department of Consumer Affairs' report and data processes, please report information using the definitions given in the Guide.

Please plan to submit 4 hard copies of the board's final Report. Please also plan to submit an electronic copy (you may submit a PDF version, but we also request a Microsoft Word copy).

Your Report serves as the basis for the Background Paper staff will prepare. Recommendations in the Background Paper may include necessary statutory changes, necessary regulatory changes, administrative and operational changes, budget changes and other reforms.

We will announce the dates for the Sunset Oversight Review hearings in early 2017. Once the hearing dates are set, we request that the board notify its interested parties list of organizations, groups or individuals regarding these public hearings.

If you have any questions about the attached documents or the Sunset Oversight Review process, please contact Sarah Mason of the Senate Committee on Business, Professions and Economic Development at (916) 651-4104.

Sarah Mason

Consultant

Senate Committee on Business, Professions and Economic Development
State Capitol, Room 2053

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[BOARD NAME]
BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM
As of [date]

Section 1
Background and Description of the Board and Regulated Profession

Provide a short explanation of the history and function of the board.¹ Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

1. Describe the make-up and functions of each of the board’s committees (cf., Section 12, Attachment B).

Table 1a. Attendance			
[Enter board member name]			
Date Appointed:		[Enter date appointed]	
Meeting Type	Meeting Date	Meeting Location	Attended?
Meeting 1	[Enter Date]	[Enter Location]	[Y/N]
Meeting 2	[Enter Date]	[Enter Location]	[Y/N]
Meeting 3	[Enter Date]	[Enter Location]	[Y/N]
Meeting 4	[Enter Date]	[Enter Location]	[Y/N]

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?

¹ The term “board” in this document refers to a board, bureau, commission, committee, department, division, program, or agency, as applicable. Please change the term “board” throughout this document to appropriately refer to the entity being reviewed.

3. Describe any major changes to the board since the last Sunset Review, including, but not limited to:
 - Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)
 - All legislation sponsored by the board and affecting the board since the last sunset review.
 - All regulation changes approved by the board the last sunset review. Include the status of each regulatory change approved by the board.
4. Describe any major studies conducted by the board (cf. Section 12, Attachment C).
5. List the status of all national associations to which the board belongs.
 - Does the board’s membership include voting privileges?
 - List committees, workshops, working groups, task forces, etc., on which board participates.
 - How many meetings did board representative(s) attend? When and where?
 - If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

**Section 2
Performance Measures and Customer Satisfaction Surveys**

6. Provide each quarterly and annual performance measure report for the board as published on the DCA website
7. Provide results for each question in the board’s customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

**Section 3
Fiscal and Staff**

Fiscal Issues

8. Is the board’s fund continuously appropriated? If yes, please cite the statute outlining this continuous appropriation.
9. Describe the board’s current reserve level, spending, and if a statutory reserve level exists.
10. Describe if/when a deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.

Table 2. Fund Condition						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Beginning Balance						
Revenues and Transfers						
Total Revenue	\$	\$	\$	\$	\$	\$

Budget Authority						
Expenditures						
Loans to General Fund						
Accrued Interest, Loans to General Fund						
Loans Repaid From General Fund						
Fund Balance	\$	\$	\$	\$	\$	\$
Months in Reserve						

- Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?
- Describe the amounts and percentages of expenditures by program component. Use *Table 3. Expenditures by Program Component* to provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

Table 3. Expenditures by Program Component								(list dollars in thousands)	
	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16		
	Personnel Services	OE&E							
Enforcement									
Examination									
Licensing									
Administration *									
DCA Pro Rata									
Diversion (if applicable)									
TOTALS	\$	\$	\$	\$	\$	\$	\$	\$	

*Administration includes costs for executive staff, board, administrative support, and fiscal services.

- Describe the amount the board has contributed to the BreEZe program. What are the anticipated BreEZe costs the board has received from DCA?
- Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.

Table 4. Fee Schedule and Revenue								(list revenue dollars in thousands)
Fee	Current Fee Amount	Statutory Limit	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	% of Total Revenue	

--	--	--	--	--	--	--	--

15. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved

Staffing Issues

16. Describe any board staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.

17. Describe the board’s staff development efforts and how much is spent annually on staff development (cf., Section 12, Attachment D).

**Section 4
Licensing Program**

18. What are the board’s performance targets/expectations for its licensing² program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

19. Describe any increase or decrease in the board’s average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the board to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

20. How many licenses or registrations does the board issue each year? How many renewals does the board issue each year?

Table 6. Licensee Population					
		FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				

² The term “license” in this document includes a license certificate or registration.

	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				

Table 7a. Licensing Data by Type

Application Type	Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
					Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2013/14	(Exam)				-	-	-	-	-	-
	(License)				-	-	-	-	-	-
	(Renewal)			n/a	-	-	-	-	-	-
FY 2014/15	(Exam)									
	(License)									
	(Renewal)			n/a						
FY 2015/16	(Exam)									
	(License)									
	(Renewal)			n/a						

* Optional. List if tracked by the board.

Table 7b. Total Licensing Data

	FY 2013/14	FY 2014/15	FY 2015/16
Initial Licensing Data:			
Initial License/Initial Exam Applications Received			
Initial License/Initial Exam Applications Approved			
Initial License/Initial Exam Applications Closed			
License Issued			
Initial License/Initial Exam Pending Application Data:			
Pending Applications (total at close of FY)			
Pending Applications (outside of board control)*			
Pending Applications (within the board control)*			

Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):			
Average Days to Application Approval (All - Complete/Incomplete)			
Average Days to Application Approval (incomplete applications)*			
Average Days to Application Approval (complete applications)*			
License Renewal Data:			
License Renewed			
* Optional. List if tracked by the board.			

21. How does the board verify information provided by the applicant?
 - a. What process does the board use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?
 - b. Does the board fingerprint all applicants?
 - c. Have all current licensees been fingerprinted? If not, explain.
 - d. Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?
 - e. Does the board require primary source documentation?
22. Describe the board’s legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.
23. Describe the board’s process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.
 - a. Does the board identify or track applicants who are veterans? If not, when does the board expect to be compliant with BPC § 114.5?
 - b. How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the board?
 - c. What regulatory changes has the board made to bring it into conformance with BPC § 35?
 - d. How many licensees has the board waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on board revenues?
 - e. How many applications has the board expedited pursuant to BPC § 115.5?
24. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

Examinations

Table 8. Examination Data			
California Examination (include multiple language) if any:			
	License Type		
	Exam Title		
FY 2012/13	# of 1 st Time Candidates		
	Pass %		
FY 2013/14	# of 1 st Time Candidates		
	Pass %		
FY 2014/15	# of 1 st Time Candidates		
	Pass %		
FY 2015/16	# of 1 st time Candidates		
	Pass %		

Date of Last OA				
Name of OA Developer				
Target OA Date				
National Examination (include multiple language) if any:				
License Type				
Exam Title				
FY 2012/13	# of 1 st Time Candidates			
	Pass %			
FY 2013/14	# of 1 st Time Candidates			
	Pass %			
FY 2014/15	# of 1 st Time Candidates			
	Pass %			
FY 2015/16	# of 1 st time Candidates			
	Pass %			
Date of Last OA				
Name of OA Developer				
Target OA Date				

- 25. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required? Are examinations offered in a language other than English?
- 26. What are pass rates for first time vs. retakes in the past 4 fiscal years? (*Refer to Table 8: Examination Data*) Are pass rates collected for examinations offered in a language other than English?
- 27. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?
- 28. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

School approvals

- 29. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?
- 30. How many schools are approved by the board? How often are approved schools reviewed? Can the board remove its approval of a school?
- 31. What are the board’s legal requirements regarding approval of international schools?

Continuing Education/Competency Requirements

- 32. Describe the board’s continuing education/competency requirements, if any. Describe any changes made by the board since the last review.
 - a. How does the board verify CE or other competency requirements?

- b. Does the board conduct CE audits of licensees? Describe the board’s policy on CE audits.
- c. What are consequences for failing a CE audit?
- d. How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure?
- e. What is the board’s course approval policy?
- f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?
- g. How many applications for CE providers and CE courses were received? How many were approved?
- h. Does the board audit CE providers? If so, describe the board’s policy and process.
- i. Describe the board’s effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensee’s continuing competence.

**Section 5
Enforcement Program**

- 33. What are the board’s performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
- 34. Explain trends in enforcement data and the board’s efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

Table 9a. Enforcement Statistics			
	FY 2013/14	FY 2014/15	FY 2015/16
COMPLAINT			
Intake			
Received			
Closed			
Referred to INV			
Average Time to Close			
Pending (close of FY)			
Source of Complaint			
Public			
Licensee/Professional Groups			
Governmental Agencies			
Other			
Conviction / Arrest			
CONV Received			
CONV Closed			
Average Time to Close			
CONV Pending (close of FY)			
LICENSE DENIAL			

License Applications Denied			
SOIs Filed			
SOIs Withdrawn			
SOIs Dismissed			
SOIs Declined			
Average Days SOI			
ACCUSATION			
Accusations Filed			
Accusations Withdrawn			
Accusations Dismissed			
Accusations Declined			
Average Days Accusations			
Pending (close of FY)			

Table 9b. Enforcement Statistics (continued)			
	FY 2013/14	FY 2014/15	FY 2015/16
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions			
Stipulations			
Average Days to Complete			
AG Cases Initiated			
AG Cases Pending (close of FY)			
Disciplinary Outcomes			
Revocation			
Voluntary Surrender			
Suspension			
Probation with Suspension			
Probation			
Probationary License Issued			
Other			
PROBATION			
New Probationers			
Probations Successfully Completed			
Probationers (close of FY)			
Petitions to Revoke Probation			
Probations Revoked			
Probations Modified			
Probations Extended			
Probationers Subject to Drug Testing			
Drug Tests Ordered			
Positive Drug Tests			
Petition for Reinstatement Granted			
DIVERSION			
New Participants			
Successful Completions			
Participants (close of FY)			
Terminations			
Terminations for Public Threat			

Drug Tests Ordered			
Positive Drug Tests			

Table 9c. Enforcement Statistics (continued)			
	FY 2013/14	FY 2014/15	FY 2015/16
INVESTIGATION			
All Investigations			
First Assigned			
Closed			
Average days to close			
Pending (close of FY)			
Desk Investigations			
Closed			
Average days to close			
Pending (close of FY)			
Non-Sworn Investigation			
Closed			
Average days to close			
Pending (close of FY)			
Sworn Investigation			
Closed			
Average days to close			
Pending (close of FY)			
COMPLIANCE ACTION			
ISO & TRO Issued			
PC 23 Orders Requested			
Other Suspension Orders			
Public Letter of Reprimand			
Cease & Desist/Warning			
Referred for Diversion			
Compel Examination			
CITATION AND FINE			
Citations Issued			
Average Days to Complete			
Amount of Fines Assessed			
Reduced, Withdrawn, Dismissed			
Amount Collected			
CRIMINAL ACTION			
Referred for Criminal Prosecution			

Table 10. Enforcement Aging						
	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year						
2 Years						
3 Years						
4 Years						
Over 4 Years						
Total Cases Closed						
Investigations (Average %)						
Closed Within:						
90 Days						
180 Days						
1 Year						
2 Years						
3 Years						
Over 3 Years						
Total Cases Closed						

35. What do overall statistics show as to increases or decreases in disciplinary action since last review?
36. How are cases prioritized? What is the board’s compliant prioritization policy? Is it different from DCA’s *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.
37. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?
 - a. What is the dollar threshold for settlement reports received by the board?
 - b. What is the average dollar amount of settlements reported to the board?
38. Describe settlements the board, and Office of the Attorney General on behalf of the board, enter into with licensees.
 - a. What is the number of cases, pre-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?
 - b. What is the number of cases, post-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?
 - c. What is the overall percentage of cases for the past four years that have been settled rather than resulted in a hearing?
39. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board’s policy on statute of limitations?

40. Describe the board’s efforts to address unlicensed activity and the underground economy.

Cite and Fine

- 41. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the \$5,000 statutory limit?
- 42. How is cite and fine used? What types of violations are the basis for citation and fine?
- 43. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?
- 44. What are the 5 most common violations for which citations are issued?
- 45. What is average fine pre- and post- appeal?
- 46. Describe the board’s use of Franchise Tax Board intercepts to collect outstanding fines.

Cost Recovery and Restitution

- 47. Describe the board’s efforts to obtain cost recovery. Discuss any changes from the last review.
- 48. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.
- 49. Are there cases for which the board does not seek cost recovery? Why?
- 50. Describe the board’s use of Franchise Tax Board intercepts to collect cost recovery.
- 51. Describe the board’s efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

Table 11. Cost Recovery (list dollars in thousands)				
	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
Total Enforcement Expenditures				
Potential Cases for Recovery *				
Cases Recovery Ordered				
Amount of Cost Recovery Ordered				
Amount Collected				
* “Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on violation of the license practice act.				

Table 12. Restitution (list dollars in thousands)				
	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
Amount Ordered				
Amount Collected				

Section 6

Public Information Policies

52. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the board's website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?
53. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings? How long to webcast meetings remain available online?
54. Does the board establish an annual meeting calendar, and post it on the board's web site?
55. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with DCA's *Web Site Posting of Accusations and Disciplinary Actions* (May 21, 2010)?
56. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?
57. What methods are used by the board to provide consumer outreach and education?

Section 7 Online Practice Issues

58. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate internet business practices or believe there is a need to do so?

Section 8 Workforce Development and Job Creation

59. What actions has the board taken in terms of workforce development?
60. Describe any assessment the board has conducted on the impact of licensing delays.
61. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.
62. Describe any barriers to licensure and/or employment the board believes exist.
63. Provide any workforce development data collected by the board, such as:
 - a. Workforce shortages
 - b. Successful training programs.

Section 9 Current Issues

64. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?
65. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?
66. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.
- a. Is the board utilizing BreEZe? What Release was the board included in? What is the status of the board's change requests?
 - b. If the board is not utilizing BreEZe, what is the board's plan for future IT needs? What discussions has the board had with DCA about IT needs and options? What is the board's understanding of Release 3 boards? Is the board currently using a bridge or workaround system?

Section 10 Board Action and Response to Prior Sunset Issues

Include the following:

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committees during prior sunset review.
3. What action the board took in response to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue, if appropriate.

Section 11 New Issues

This is the opportunity for the board to inform the Committees of solutions to issues identified by the board and by the Committees. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, legislative changes) for each of the following:

1. Issues that were raised under prior Sunset Review that have not been addressed.
2. New issues that are identified by the board in this report.
3. New issues not previously discussed in this report.
4. New issues raised by the Committees.

Section 12 Attachments

Please provide the following attachments:

- A. Board's administrative manual.
- B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).
- C. Major studies, if any (cf., Section 1, Question 4).
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).

Section 13 Board Specific Issues

THIS SECTION ONLY APPLIES TO SPECIFIC BOARDS, AS INDICATED BELOW.

Diversion

Discuss the board's diversion program, the extent to which it is used, the outcomes of those who participate and the overall costs of the program compared with its successes.

Diversion Evaluation Committees (DEC) (for BRN and Osteo only)

1. DCA contracts with a vendor to perform probation monitoring services for licensees with substance abuse problems, why does the board use DEC? What is the value of a DEC?
2. What is the membership/makeup composition?
3. Did the board have any difficulties with scheduling DEC meetings? If so, describe why and how the difficulties were addressed.
4. Does the DEC comply with the Open Meetings Act?
5. How many meetings held in each of the last three fiscal years?
6. Who appoints the members?
7. How many cases (average) at each meeting?
8. How many pending? Are there backlogs?

9. What is the cost per meeting? Annual cost?
10. How is DEC used? What types of cases are seen by the DEC?
11. How many DEC recommendations have been rejected by the board in the past four fiscal years (broken down by year)?

Guide for Completing Tables in BP&ED Oversight Review Questionnaire

Table 1a. Attendance

To complete *Table 1a. Attendance*, include the information for each board¹ member who served on the board since the board's last sunset review.

Table 1b. Board/Committee Member Roster

Table 1b. Board/Committee Member Roster, should be completed for each board/committee meeting in the last four complete fiscal years. Each meeting date, location, member name, and meeting type should be noted. Indicate attendance at the meeting with a "yes", absence with a "no", and if they were not a member at the time of the meeting note that with "n/a."

Table 2. Fund Condition

For projected fiscal year revenues and budget authority, please use the numbers included in the most recent Governor's proposed budget. When determining projections for expenditures in future fiscal years, assume reversions based on the percentage reverted in the prior three full fiscal years. When determining months in reserve, one month's expenditure is one-twelfth of the budget authority for the next fiscal year based on the Governor's proposed budget.

Table 3. Expenditure by Program Component

The DCA Budget Office can prepare this table.

Table 4. Fee Schedule and Revenue Table

Include all fees charged by the board. Revenue totals can be obtained from Month 13 Calstars reports. Please report the percentage of revenue based on the most recent full fiscal year results.

Table 6. License² Population

These data elements can be obtained from the Month 13 Calstars report.

Tables 7a. Licensing Data by Type and 7b. Total Licensing Data

¹ "Board" refers to a board, bureau, commission, committee, department, division, program or agency, as applicable.

² "License" includes a license certificate or registration.

Licensing data elements can be obtained from the Licensing for Job Creation (LJC) reports generated by the Department. Boards that self-report the LJC data should use the definitions below when compiling this table.

Table 7a requires initial license and initial exam data input. Each data element has been defined below. It is important to remember that this table only asks for "Initial (first time)" licensure and exam information.

Definitions for Licensing Data (Tables 7a, 7b)	
Application Type	License or Exam application name plus designate if data is for an exam or license (example: ARB (Exam) or ARB (Lic))
Closed	Applicant withdrew application, application was abandoned, or application was denied during the reporting period.
Issued	Represents the number of licenses issued during the reporting period. The term "License" means initial licensure, temporary permits, interim licenses, registrations, and certificates.
Pending Applications (Total as of the close of the fiscal year)	Initial License/Initial Exam applications that have not been approved, issued, or closed. This number should include both applications for which the board is waiting on material from the applicant (incomplete applications) AND applications that the board has not reviewed yet.
Pending Applications outside of the board control: Incomplete)	A subset of "Pending Applications" – This is all applications that do not, upon initial submission, contain all necessary documents for examination eligibility and/or initial license and the board has advised the applicant. This entry is optional, and should be listed if tracked by the board.
Pending Applications within the board control: Complete)	A subset of "Pending Applications" – This is all applications that the board is working on which are not incomplete (missing information from the applicant). This entry is optional, and should be listed if tracked by the board.
Cycle Time/Processing Time (complete app)	Total days to process complete initial license/initial exam applications (applicant submitted all paperwork required). This is the timeframe from when the board received the application for initial exam and/or initial licensure to the time the application was approved for exam eligibility or license issuance.

Definitions for Licensing Data (Tables 7a, 7b)	
<p>Cycle Time/Processing Time (incomplete app)</p>	<p>Total days to process incomplete initial license/initial exam applications (applicant still owes the board documentation/information to complete the application). This means the application was deficient at some point during the approval process. This is the timeframe from when the board received the application for initial exam and/or initial licensure to the time the application was approved for exam eligibility or license issuance.</p>
<p>Cycle Time/Processing Time (Combined: Complete/Incomplete)</p>	<p>This is a weighted average of days to process applications (Combined initial license/initial exam applications). If the board is unable to separate the processing time, then a combined time for all applications should be entered. This is the timeframe from when the board received the application for initial exam and/or initial licensure to the time the application was approved for exam eligibility or license issuance.</p>

Table 8. Examination Data

This data is generated internally by each board.

Tables 9a, 9b, 9c. Enforcement Statistics

The following CAS reports will provide most of the enforcement data needed to complete Tables 9a, 9b, and 9c: EM 10, 091, 096 and 095. However, additional reports may be needed.

Boards that do not use the CAS enforcement modules, please use the “Definitions for Enforcement Data” below

Definitions for Enforcement Data (Tables 9a, 9b, 9c)	
<p>COMPLAINTS</p>	<p>Cases that are generated by consumer complaints, internal complaints and referrals from other agencies.</p>
<p>Received</p>	<p>Total count of complaints received by the board.</p>
<p>Closed</p>	<p>Total count of complaints closed, and NOT referred for investigation, by the board.</p>

Referred to Investigation	Total count of complaints referred to Investigation (either Desk Investigation, Non-Sworn Investigation, or Sworn Investigation).
Average Time to Close	Cycle time; from complaint received to complaint closed OR referred to investigation. Calculated in days.
Pending (close of FY)	Total count of complaints which have been received by the board, but have not yet been closed or referred to investigation.
CONVICTIONS/ARRESTS	Cases generated by criminal history reports.
CONV Received	Total count of convictions received by the board.
CONV Closed	Total count of convictions closed by the board or referred for investigation.
Average Time to Close	Cycle time; from convictions received to complaint closed OR referred to investigation. Calculated in days.
CONV Pending (close of FY)	Total count of convictions which have been received by the board, but have not yet been closed or referred to investigation.
ALL INVESTIGATIONS	When a case is assigned to investigation.
First Assigned	Total number of initial assignments to investigation (Desk, Non-Sworn, or Sworn).
Closed	Total number of Investigations (Desk, Non-Sworn and/or Sworn) which are closed.
Average days to close	Cycle time; from when the case was received as a complaint, to when it is closed at the Desk, Non-Sworn, or Sworn investigation level.
Pending (close of FY)	Total count of Investigations which have been received by the board, but have not yet been closed or referred to further investigation.
Desk Investigations	When a case is assigned to an analyst for desk review.
Closed	Total count of Desk Investigations closed by the board.

Average Time to Close	Cycle time; from the dated when the Desk Investigation was received as a complaint, to the dated when it is closed OR referred to further investigation. Calculated in days.
Pending (close of FY)	Total count of Desk Investigations which have been received by the board, but have not yet been closed or referred to further investigation.
Non-Sworn Investigation	When a case is assigned for field investigation by an investigator who is NOT a sworn peace officer.
Closed	Total count of Non-Sworn Investigations closed by the board.
Average Days to Close	Cycle time; from the date when the Non-Sworn Investigations was received as a complaint, to the date when it is closed OR referred to further investigation. Calculated in days.
Pending (close of FY)	Total count of Non-Sworn Investigations which have been received by the board, but have not yet been closed or referred to further investigation.
Sworn Investigation	When a case is assigned for field investigation by an investigator who IS a sworn peace officer.
Closed	Total count of Sworn Investigations closed by the board.
Average days to close	Cycle time; from the date when the Sworn Investigation was received as a complaint, to the date when it is closed OR referred to further investigation. Calculated in days.
Pending (close of FY)	Total count of Sworn Investigations which have been received by the board, but have not yet been closed or referred to further investigation.
LICENSE DENIALS	
License Applications Denied	Number of License Denials Issued
SOIs	Statement Of Issues
SOIs Filed	Total count of SOIs filed.
SOIs Withdrawn	Total count of SOIs withdrawn.

SOIs Dismissed	Total count of SOIs dismissed.
SOIs Declined	Total count of SOIs declined.
Average Days SOI	Cycle time; from the date the case was received as a complaint to the date when the SOI was issued. Calculated in days.
ACCUSATIONS	
Accusations Filed	Total count of Accusations filed.
Accusations Withdrawn	Total count of Accusations withdrawn.
Accusations Dismissed	Total count of Accusations dismissed.
Accusations Declined	Total count of Accusations declined.
Average Days Accusations	Cycle time; from the date the case was received as a complaint to the date when the Accusation was issued. Calculated in days.
DISCIPLINE	
Disciplinary Actions	
Proposed/Default Decisions	Total count of Proposed/Default Decisions filed.
Stipulations	Total count of Stipulations filed.
Average Days to Complete	Cycle time; from the date the case was received as a complaint to the date when the Disciplinary Order was issued. Calculated in days.
AG Cases Initiated	Total count of cases referred to the Attorney General.
AG Cases Pending (close of FY)	Total count of cases pending at the AG.
ISO	Total count of Interim Suspension Orders (ISOs) issued.
Disciplinary Outcomes	

Revocation	Total count of Disciplinary Orders to revoke a license.
Voluntary Surrender	Total count of Disciplinary Orders to surrender a license.
Suspension	Total count of Disciplinary Orders requiring only the Suspension of a license.
Probation with Suspension	Total count of Disciplinary Orders requiring both Suspension of a License and Probation.
Probation	Total count of Disciplinary Orders requiring only the Probation of a license.
Probationary License Issued	Total count of Probationary Licenses issued.
Compliance Actions	
ISO & TRO Issued	Total count of Interim Suspension Orders & Temporary Restraining Orders issued.
PC 23 Orders Requested	Total count of Cease Practice Orders sought per Penal Code Section 23.
Public Letter of Reprimand	Total count of Public Letters of Reprimand issued.
Cease & Desist/Warning	Total count of Cease & Desist or Warning Letters issued.
Referred for Diversion	Total count of individuals referred to the board's Diversion Program.
Compel Examination	Total count of orders compelling a Physical or Mental Examination.
CITATIONS & FINES	
Citations Issued	Total count of Citations issued.
Average Days to Complete	Cycle time; from the date the case was received as a complaint to the date when the citation was issued. Calculated in days.
Amount of Fines Assessed	Total amount of fines assessed.

Reduced, Withdrawn, Dismissed	Total count of fines reduced and citations withdrawn or dismissed.
Amount Collected	Total amount of revenue generated by collection of fines.
PROBATION	
New Probationers	Total count of individuals beginning probation.
Probations Successfully Completed	Total count of individuals who successfully completed probation.
Probationers (close of FY)	Total count of probationers as of the close of the fiscal year.
Petitions to Revoke Probation	Total count of petitions filed to revoke a probation order.
Probations Revoked	Total count of individuals whose licenses were revoked due to probation violations.
Probations Extended	Total count of individuals whose probations were extended.
Probationers Subject to Drug Testing	Total count of probationers required to be tested for drugs.
Drug Tests Ordered	Total count of drug tests ordered.
Positive Drug Tests	Total count of positive drug tests.
Petition for Reinstatement Granted	Total count of those probationers that have been granted reinstatement in the fiscal year.

Table 11. Cost Recovery

This data is generated internally by each board.

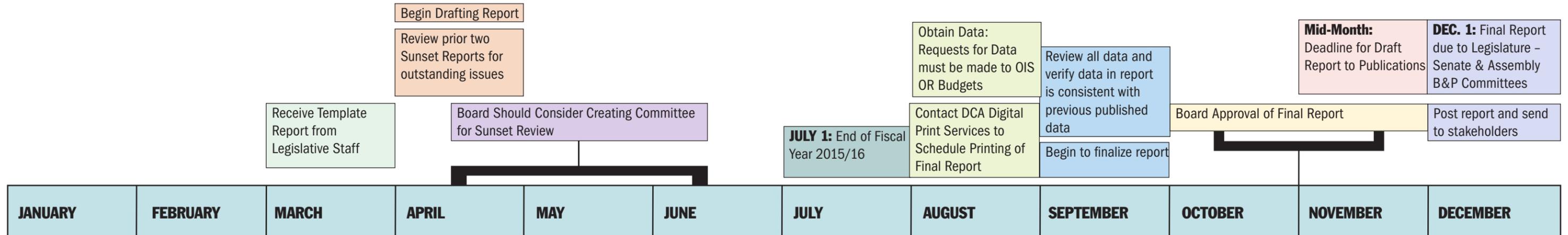
Table 12. Restitution

This data is generated internally by each board.

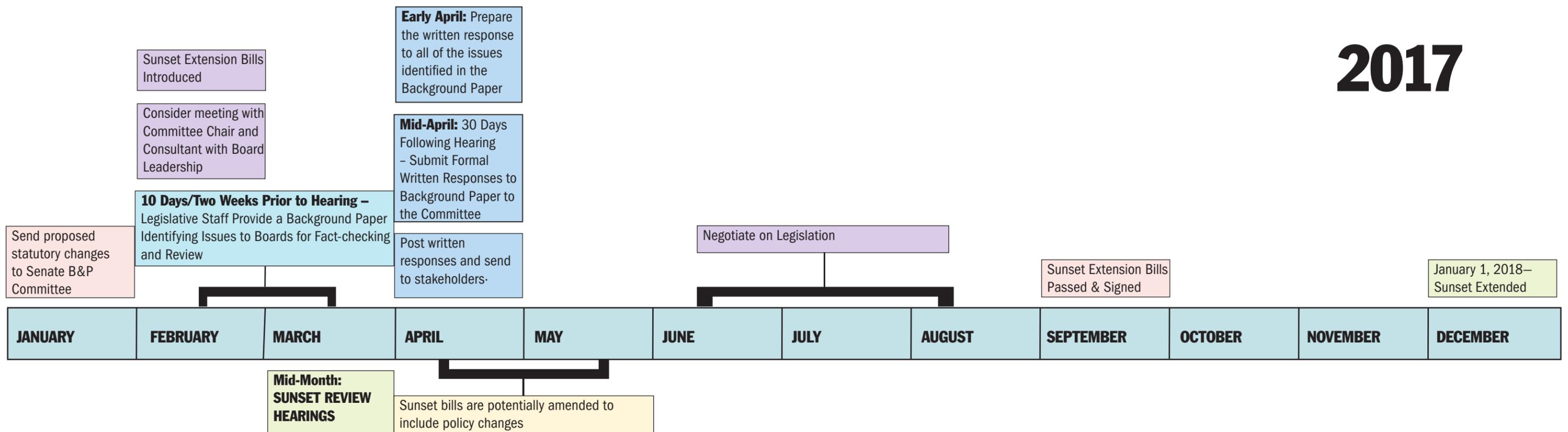


SUNSET REVIEW PROCESS

2016



2017



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To: Board Members **Date:** August 26, 2016
From: Appointment Committee **Telephone:** (916) 575-7170
Subject: **Agenda Item 12 – Update on RDO Advisory Committee**

During the May 2016 Board meeting, the Board provided input on the Dispensing Optician Committee (DOC) Interest Form, process and distribution methods.

The approved form was emailed to interested parties encouraging highly qualified candidates to apply. Board Members were also encouraged to use their various public outreach networks to distribute the form and solicit interest. Board staff hand delivered the form, accompanied with a letter from the Board President, to members of the legislature and the Governor's Appointments Office. In addition, the letter and form was mailed to all registered dispensing opticians, spectacle lens dispensers, and contact lens dispensers.

The application deadline was August 12, 2016. The Board received 30 applications from dispensers. However, no applications were received from the public. Therefore, the application deadline will be extended to allow more time for public member recruitment.

The Appointments Committee is developing an in depth public outreach strategy to recruit business professionals interested in serving state government. This will include reaching out to the Governor's Appointments Office for additional assistance to identify public individuals who may be interested in using the DOC as a potential stepping stone for a DCA board position in the future.

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To: Board Members

Date: August 26, 2016

From: Joanne Stacy
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 13 – Discussion and Possible Action on 2016 Legislation Impacting Healing Arts Boards and the Practice of Optometry

The following bills, as currently written, impact the Board's functions and the practice of optometry. Legislation versions and status change frequently. The information below is current as of August 10, 2016. To view the most recent bill version, status and corresponding analysis, please click on the applicable hyperlinks below.

A. [Assembly Bill 12 \(Cooley\) State Government: Administrative Regulations: Review.](#)

Last Amended: August 19, 2015

Summary: This bill would require every state agency to review all provisions of the California Code of Regulations (CCR) it has adopted, and to adopt, amend, or repeal any regulations identified as duplicative, overlapping, or out of date by January 1, 2018.

Status: Died

Recommendation: Watch

Position: None

Recent Bill Analysis: [08/24/15- Senate Appropriations](#)

Potential Board Impact: This is in line with the Board's Strategic Plan (Objective 3.3) to review current regulations and determine the need for clarity and revisions. This bill would simply mandate the review by statute.

B. [Assembly Bill 2744 \(Gordon\) Healing Arts: Referrals.](#)

Last Amended: August 8, 2016 – The amendments were technical and clarifying.

Summary: This bill provides that payment or receipt of consideration for advertising for prepaid services offered by a licensed healing arts practitioner, subject to certain exclusions, does not constitute a referral of those services, and specifies that if the prepaid service is not appropriate for the purchaser, the licensee must provide a full price refund to the purchaser, as specified.

Status: Amended and ordered to second reading. Headed to the Senate Floor.

Recommendation: Watch

Position: None

Recent Bill Analysis: [08/03/16 – Senate Floor Analyses](#)

Potential Board Impact: Over the last few years, the Board's enforcement unit has received several inquiries into the legality of using service such as Groupon and how it relates to BPC § 650. This bill will provide clarity that using said services would not violation the law. Thus, staff believes this will assist licensees when considering this type of service and may lead to less enforcement cases.

C. **Senate Bill 1039 (Hill) Professions and Vocations**

Last Amended: 08/01/16

Summary: This is an omnibus bill which includes several changes to a number of boards under the Department of Consumer Affairs and also includes specified fee increases for several boards including the Board of Registered Nursing, the Pharmacy Board, the Contractors State License Board and the Court Reporters Board. This measure would also eliminate the current Telephone Medical Advice Services Bureau.

Status: Assembly Appropriations

Recommendation: Support: The Board had previously taken a Support if Amended position, the bill has been amended to include the Board's suggested amendments.

Recent Bill Analysis: [08/01/16 – Assembly Appropriations](#)

Potential Board Impact: The new RDO fee structure has been added with the other entities requesting fee increases.

The previous version of this bill deleted a provision that allows contact lens and spectacle lens dispensing applications to expire. This was unintended consequence of code clean up and had been fixed by legislative council. The bill now keeps the language is the current code section.

Attached is the RDO fee structure the Board approved during the May 2016 meeting and have been amended into SB 1039. (Attachment 1)

D. **Senate Bill 1155 (Morrell)**

Last Amended: June 23, 2016

Summary: This bill requires every board under the Department of Consumer Affairs (DCA) to waive initial license fees for the application for and issuance of an initial license to an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the California National Guard or the United States Armed Forces and was honorably discharged. SB 1155 requires a veteran be granted only one fee waiver to an individual veteran and not to an application of or a license issued to an individual veteran on behalf of a business or other entity. The bill prohibits issuance of a waiver for renewal of a license, the application for and issuance of an additional license, a certificate, a registration, a permit associated with the initial license, or the application for an examination.

Status: Assembly Appropriations

Recommendation: Watch

Recent Bill Analysis: [08/01/16 – Assembly Appropriations](#)

Potential Board Impact: The fiscal impact of this bill is unknown because the Board has only recently started to ask if an applicant is a veteran or not. The bill is narrowly tailored to only waive the initial license fee for the veteran which would reduce the impact. Currently, the only DCA Board that is in support of the bill is California Board of Accountancy.

E. SB 1195, 1194 or Similar Bill; Proposed Legislation Addressing North Carolina Board of Dental Examiners Supreme Court Decision

Last Amended: April 6, 2016

Summary: Grants authority to the Director of the Department of Consumer Affairs (DCA) to review a decision or other action, except as specified, of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified; eliminates the requirement that the executive officer of the Board of Registered Nursing be a registered nurse; clarifies when a judgment or settlement for treble damages antitrust award would be granted for a member of a regulatory board; provides for an additional standard for the Office of Administrative Law to follow when reviewing regulatory actions of state boards. Also makes various changes that are intended to improve the effectiveness of the Veterinary Medical Board (Board) and extends the Board's sunset dates.

Status: Died

Recommendation: Watch

Recent Bill Analysis: [06/01/16 – Senate Floor Analyses](#)

Potential Board Impact: This bill grants more authority to the Director by allowing him/her to approve, disapprove, or modify the board decisions or actions. However, this still may not address the concerns raised by the U.S. Supreme Court Decision in the North Carolina State Board of Dental Examiners v. FTC or protect the members from potential anti-competitive lawsuits. In addition, any consumer who does not approve a Board action may request the Director's review, which would stay (hold) the Board action. This could lead to delayed implementation of a disciplinary decision if a respondent challenges a Board decision.

Note: There has been proposed language related to the North Carolina Board of Dental Examiners Supreme Court case. This language, initially intended for SB 1195 (Hill), will now be amended into a new vehicle before the end of session. The new language has been a compilation of the effective parties and addresses some of the concerns that were raised with SB 1195.

F. Senate Bill 482 (Lara) Controlled Substances: CURES Database

Last Amended: April 7, 2016

Summary: This bill requires prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II or III drug to a patient for the first time and delays implementation of this requirement until the Department of Justice (DOJ) certifies that the CURES database is ready for statewide use.

Status: Assembly Floor 08/04/16

Recommendation: Watch

Recent Board Analysis: [08/05/16 – Assembly Floor Analyses](#)

Potential Board Impact: The impact to the Board would be minor. Licensees are already required to register on the CURES system. By adding the requirement to use the system, enforcement may see a slight increase for non-compliance. The Board previously discussed the CURES requirement and expressed frustration with the requirement for licensees to pay for and register in the system but no requirement to actually use the system. At that time, the Board discussed exploring future legislation to mandate optometrists use the system when prescribing controlled substances. Thus, this bill does what the Board believed needed to be done already.

G. Senate Bill 622 (Hernandez): Optometry

Last Amended: June 22, 2016

Summary: This bill would make various expansions in the scope of practice for optometrists and authorize certification in specified laser procedures, minor surgical procedures, and vaccinations.

Status: Pulled by author while in Assembly Business and Professions

Recommendation: Maintain Support Position

Recent Bill Analysis: [07/13/15- Assembly Business And Professions](#)

Potential Board Impact: While this bill increases the scope of optometrists, the way the bill is currently written, the impact to the Board is expected to be minor. BreEZe configuration changes would need to be done and minor regulations would need to be drafted to fully implement the bill.

H. SB 836 Registered Dispensing Opticians Program Move (Originally TB 201)

Last Amended: 06/16/15

Summary: This bill would, notwithstanding any other law and in addition to any action available to the board, authorize the board to issue a citation containing an order of abatement and an order to pay an administrative fine, not to exceed \$50,000, for a violation of a specified section of law. The bill would also delete the authorization to redact personal information from a lease agreement, and would, therefore, expand an existing crime resulting from imposition of a state-mandated local program.

Status: Effective 06/27/16

Recommendation: None

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To: Board Members

Date: August 26, 2016

From: Joanne Stacy
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 14 – Update and Possible Action on Children’s Vision and Mobile Clinic Workgroups

This report is intended to provide the Members with an update on the workgroups for Children’s Vision and Mobile Clinic Workgroups.

Children’s Vision:

Previous Legislation: Senate Bill [402](#) (Mitchell) Pupil Health: Vision Examinations

Senate Bill 402, introduced by Senator Mitchell, requires a pupil’s vision to be examined by a physician, optometrist, or ophthalmologist, as specified, and requires the pupil’s parent or guardian to provide the results of the examination to the pupil’s school. This bill prohibits a school from denying admission to a pupil or taking any other adverse action against a pupil if his or her parent or guardian fails to provide the results of the examination. If the results of the examination are not provided to the school, this bill requires a pupil’s vision to instead be appraised pursuant to existing law, as specified. The bill passed out of both Senate Education Committee and Senate Health Committee with no “no” votes. However, the bill was placed on suspense and did not pass out of Senate Appropriations Committee. This is the farthest the bill has gotten.

Workgroup History and Update: As previously reported, the Board created a workgroup to work with stakeholders on this issue and present stronger legislation for the next legislative session. The workgroup, comprised of Rachel Michelin and Dr. Kawaguchi, met on February 18 and again on April 28 with stakeholders. Educators, optometrists, nurses, insurance agencies and youth advocates all came together to discuss the important issues facing children’s vision.

The next workgroup meeting was originally scheduled for August needed to be moved to accommodate a change in schedule. The workgroup is currently finding a date and location that will work best and will present draft bill recommendations back to the Board.

Mobile Clinics:

Previous Legislation: Senate Bill [349](#) (Bates) Optometry: Mobile Optometric Facilities

Senator Bates introduced SB 349 in 2015 which would have created guidelines for mobile optometric facilities, in order to help secure the availability of quality vision care services for patients who receive care in remote or underserved areas. This bill would have established standards for the operation of mobile

optometric facilities, including physical requirements, ownership limitations, record-keeping protocols. The bill did not make it out of Senate Committee on Business and Professions.

Workgroup History and Update: During the November 2015 Board Meeting, the Board created a workgroup to work with stakeholders on this issue and present stronger legislation for the next legislative session. The Board President appointed Rachel Michelin and Lilian Wang, OD to the workgroup. The workgroup held its first meeting with stakeholders in April 2016. The workgroup heard several concerns related to the initial bill language and decided the best option was continue working with stakeholders to draft new language rather than work to fix the previous bill.

The workgroup will continue working with stakeholders and bring recommendations back to a future meeting. The next workgroup meeting will address draft bill language and recommendations back to the full Board.

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To: Board Members **Date:** August 26, 2016

From: Joanne Stacy **Telephone:** (916) 575-7182
Policy Analyst

Subject: **Agenda Item 15 – Discussion and Possible Action on Regulations Impacting the Practice of Optometry**

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

Background:

At its August 16, 2013 meeting, the Board voted to initiate a rulemaking to give the Board authority to compel an applicant to submit to a psychological or physical examination, and further define unprofessional conduct. The rulemaking action was printed in the California Regulatory Notice Register on October 18, 2013, and the 45-day comment period for the public started on October 18, 2013 and ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. Staff resubmitted the unchanged rulemaking package to the Office of Administrative Law, which was printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period began on August 8, 2014 and concluded on September 22, 2014.

The rulemaking action was printed in the California Regulatory Notice Register December 12, 2014, and the 45-day comment period for the public started on December 12, 2014 and ended on January 26, 2015. The hearing was held on January 26, 2015. There were no comments or public speakers at the hearing. The rulemaking package was approved by the Department of Consumer Affairs and Agency.

On December 4, 2015, the Board received a Decision of Disapproval of Regulatory Action for the rulemaking package. In order to resolve all issues, Board counsel

prepared an Addendum to the Initial Statement of Reasons and Modified Text which must be available for a 15 calendar day public comment period. Any comments made regarding the addendum must be presented to the Board for consideration and be summarized and responded to in the Final Statement of Reasons.

The Board approved the Addendum and Modified Text and directed staff to send it out for the required 15-day comment period. In the absence of any adverse comments, direct staff to resubmit the rulemaking packet to OAL for approval, and request an extension from the appropriate agency if necessary.

Update:

The rulemaking package has been completed by staff and is going through the check and approval process at DCA. It was necessary to request a deadline extension from the Office of Administrative Law (OAL) to allow for internal approval. The deadline extension was granted making the packet due to OAL October 25, 2016.

Action Requested:

None

B. Proposed Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees

Background:

During the November 20, 2015 Board meeting, the Board voted to adopt proposed amendments to the applicable CCR sections, raising each fee to its statutory cap, in order to temporarily address the RDO Programs current fund condition. However, if the minimum fee is set in statute, via the pending SB 1039, there would no longer be a need to adopt the proposed language.

Update:

Staff is preparing the rulemaking package for notice.

Action Requested:

None

C. 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

Background: During the February 2016 Board meeting, the Board approved amendments to the Continuing Education (CE) Course Approval Request Form and delegated authority to the Practice and Education Committee to approve CE courses.

However, during the April 2016 Practice and Education Committee meeting, the Committee requested additional minor changes to the form in order to ensure the Committee receives the necessary information to determine whether a course meets the requirements specified in CCR § 1536.

In May 2016, the Practice and Education Committee voted for a final version of the form and text, and the suggested changes were brought before the full Board. The forms were approved at the May 2016 Board Meeting.

Update:

None at this time

Action Requested:

None

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

Background:

In August 2013, the Board approved the Continuing Optometric Exemption/Extension Form for licensees requesting CE exemptions/extensions, pursuant to CCR § 1536. However, the form needs to be updated to accurately reflect current law and incorporated by reference.

Similarly, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g). Currently, CE Providers seeking course approval submits a completed CE Course Approval form and the applicable fee. However, the form should be updated to reflect current law, approved by the Board, and incorporated by reference.

Based on the above, staff drafted the proposed amendments to CCR § 1536. The Board approve the revised forms and proposed amendments to CCR § 1536 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update: Staff has completed the packet and submitted it to DCA for internal check and approval. The packet is due to the Office of Administrative Law (OAL) on September 25, 2016. OAL has 30 working days to approve or disapprove the rule making packet. Regulations go into effect quarterly; if the packet is approved then it will go into effect January 1, 2017.

Action Requested:

None

E. Proposed Revision to CCR § 1514.1 Co-Location Reporting Requirement

Background:

During the November 20, 2015 Board meeting, the Board voted to adopt the proposed addition to CCR § 1514.1 and related form. However, the Board also requested the Administration's assistance in amending BPC Section 2556.1 to expand the reporting requirement to registered dispensing opticians.

Update:

In response to the Board's request, the Administration included the requested amendment in the trailer bill, which is has now passed. Board staff is working on amending the applicable form and regulatory language and will bring proposed amendments to the next Board meeting.

Action Requested:

None

F. Amendment to CCR § 1502 Delegation of Functions

Background:

As described above, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g) and approve CE extension requests. In order for staff to approve these courses and CE extension requests, the Executive Officer (EO) should be given the delegated authority from the Board. Otherwise, the way the regulation is currently written, each course and request for CE extension would have to go before the Board for approval.

The proposed regulatory revision would also authorize the EO to accept default decisions and stipulated surrenders of a license. In May 2013, the Board voted against delegating authority to accept default decisions and stipulated surrenders based on the low volume of disciplinary matters it receives and the belief that delegating such authority prevented the Board from weighing in on disciplinary decisions. However, given the addition of several new license types and imperfect information regarding the potential volume of licensing and disciplinary actions, Board legal counsel has suggested that the Board may want to revisit this decision.

As a consumer protection agency, the Board is obligated to protect California consumers and patients. Please note that in cases of defaults, the respondent, applicant or cited person has two mechanisms available to get to a hearing on the merits. In cases of stipulated surrenders, the respondents, often times represented by attorneys, have agreed to no longer practice in California. Here, the issue is timing, as any delay may allow respondents with admitted alcohol/drug addictions to continue treating patients and/or allow those who admitted to providing gross negligent, incompetent and/or substandard care to continue providing said care.

In February 2016, The Board voted to approve the proposed amendments to CCR § 1502 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

G. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates

Background:

In order for foreign graduates to obtain sponsorship to sit for the National Board of Examiners in Optometry (NBEO) examination, applicants were required to submit the Application for International (Foreign) Graduate Sponsorship. In addition, applicants were required to submit fingerprints and have their education evaluated by a professional credential evaluation service. However, the application and additional requirements need to be updated to reflect current law, approved by the Board, and incorporated by reference.

In February 2016, the Board approved the proposed form and amendments to CCR § 1530.1 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

H. Amendment to CCR § 1506 Certificates –Posting

Background:

In August 2015, the Board adopted a Consumer Notice describing what each certification means to the consumer. In addition, the Board adopted language

amending CCR § 1506 to clarify existing language. These amendments align with the Board's Strategic Plan Goal 3, objective 3.3.

Update:

None at this time

Action Requested:

None

I. Amendment to CCR § 1523.5 Abandonment of Applications

Background:

The Board does not have the authority to abandon any license/permit applications. In order to issue licenses/registrations/permits, the Board must receive the necessary information, documentation, and/or other materials. Some applicants, however, may apply and never submit the required information even after frequent requests from staff for the missing items.

Consequently, the Board maintains application files that may never be issued and will always be reported as "pending" workload; these files are in a sort of perpetual holding pattern, which is neither efficient nor productive. Staff must store and monitor these files and keep them open even though the application may have been sitting dormant for years. The Board appears to be one of the few DCA entities who do not have this authority.

To rectify this, Board approved the proposed addition to CCR § 1523.5 in May 2016 and directed staff to prepare proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

J. Proposed Addition to CCR § 1503 Relating To Accreditation of Schools and Colleges of Optometry

Background

Business and Professions Code (BPC) § 3023 mandates the Board "accredit schools, colleges, and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrist."

BPC § 3025.2 allows the Board, through regulation, to "... recognize, accept, or adopt the advice, recommendation, accreditation or approval of a nationally recognized accrediting agency or organization." However, the Board does not have any such supporting regulation.

The Board only accepts schools and colleges of optometry who have received accreditation through the Accreditation Council on Optometric Education (ACOE). As stated on their website, ACOE "is the only accrediting body for professional optometric degree (O.D.) programs, optometric residency programs and optometric technician programs in the United States and Canada.

Both the U.S. Department of Education and the Council on Higher Education Accreditation recognize the ACOE as a reliable authority concerning the quality of education of the programs the Council accredits. ACOE accreditation means the programs that have attained accredited status:

Meet the Council's standards of educational effectiveness; and

Show a demonstrated commitment to quality assessment and improvement.”

In order to align the Board’s process with law, Board staff and legal counsel recommend adopting the attached proposed regulatory language (Attachment 1).

Action Requested:

Please review, consider, and vote to approve the proposed language. If approved, please delegate authority to the Executive Officer to initiate the rule making process and circulate the language for the required time period.

Attachment

1. Proposed Addition to CCR § 1503. Accreditation

Proposed Addition to CCR § 1503. Accreditation

150x . For the purposes of the Optometry Practice Act, those colleges and universities offering optometric educational programs leading to the issuance of a Doctor of Optometry degree and accredited by the Accreditation Council on Optometric Education (ACOE) shall be deemed accredited by the board. Accreditation under this section shall automatically terminate upon termination of the program's accreditation by ACOE.

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To: Board Members

Date: August 26, 2016

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 16 – Discussion and Possible Action Regarding Minimum Certification Requirements For All Optometrists to Practice in California

Background:

During the February 2016 Board meeting, the Board discussed minimum certification requirements for all optometrists. Specifically, the Board discussed whether an optometrist should be required to obtain a therapeutic pharmaceutical agent (TPA) certification in order to continue practicing in California.

It was reported that, as of January 18, 2016, the Board had 557 licensed optometrists who only have a diagnostic pharmaceutical agent (DPA) certification and 85 licensed optometrists with no certification. These optometrists were issued licenses after meeting the minimum licensing requirements at that time, and they continue to practice within their very limited scope of practice.

Some members opined that practicing without a TPA certification is below the standard of care because they cannot diagnose or treat patients for conditions outlined in BPC § [3041](#) (b) in order to determine the overall health of the eye. Licensees without a TPA certification are limited to the following scope¹ (BPC § 3041(a)):

- (1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.
- (2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.
- (3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.
- (4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.
- (5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

In order to determine overall eye health, those licensees would need to refer the patients to a properly certified optometrist or ophthalmologist for a more in depth examination.

After discussion and allowing time for public comment, the Board directed staff and legal counsel to research what can be completed through creating and/or amending existing regulation. The Board voted

¹ Pursuant to CCR § 1561, only DPA certified optometrists may use topical pharmaceutical agents.

(5-Aye; 3-Abstain) to approve moving forward with legislation requiring all optometrists to obtain a TPA certification.

Standard of Care vs. Scope of Practice

The “standard of care,” established by an expert witness, is the level of care owed to a patient. The Board takes action against those licensees who deviate from the standard of care, specifically, in cases of unprofessional conduct, gross negligence or repeated negligent acts.

The “scope of practice” defines the acts a licensed optometrist is permitted to do. A licensee who competently practices within the scope of practice is not subject to discipline, because he/she is not violating the law.

As of August 8, 2016, the Board has 486 DPA licensed optometrists and **XX** optometrists with no certification.

Requirements

The impacted California licensees graduated from an accredited school or college of optometry prior to 1992. Some obtained licensure in other states and may have obtained a TPA certification in that state. Therefore, the below statutes and regulations apply; the full text of each section is attached for your reference (Attachment 1):

DPA Requirements:

Business and Professions Code (BPC) § [3041.2](#)

CCR § [1561](#)

CCR § [1562](#)

CCR § [1563](#)

TPA Requirements:

BPC § [3041.3](#) (b), (d)(1,3)

CCR § [1568](#) (a), (d),(f), (i)

Staff Comments:

As requested, staff worked with legal counsel to determine if requiring all licensees to obtain a TPA certification as a condition of maintaining an active license in CA could be completed through regulation. It has been determined that legislation is needed to make this change.

Requested Action:

Please consider the additional information provided above. If the Board maintains its position to pursue legislation, please direct the Legislation and Regulation Committee to work draft language for the Board to consider at the November meeting.

Attachments:

1. Applicable Statutes and Regulations

DPA Requirements:**Business and Professions Code (BPC) § 3041.2** *(Article 3 added by Stats. 1937, Ch. 423.)*

- a) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.
- b) Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.

(Amended by Stats. 2013, Ch. 473, Sec. 7. Effective January 1, 2014.)

California Code of Regulations (CCR) § 1561

- (a) The purpose of this article is to implement Business and Professions Code Section 3041.2, as added to said code by chapter 418 of the 1976 statutes. Only those optometrists meeting the requirements of this article may use topical pharmaceutical agents in the examination of human eyes.
- (b) In order to use topical pharmaceutical agents in the examination of human eyes, an optometrist must:
 - (1) complete a course in pharmacology approved by the Board or have equivalent experience satisfactory to the Board; and
 - (2) provide evidence of taking and passing either:
 - (A) both the Applied Basic Science and Clinical Skills sections of the NBEO examination as it was constituted beginning in January 2010; or
 - (B) a pharmacology examination equivalent to subdivision (b)(1) above and administered by an accredited school or college of optometry.
 - (c) The Board will issue a Diagnostic Pharmaceutical Agents certification to optometrists fulfilling the requirements of subsection (b) authorizing them to use topical pharmaceutical agents.

Note: Authority cited: Sections 3025, 3041.2 and 3053, Business and Professions Code. Reference: Sections 3041 and 3041.2, Business and Professions Code.

HISTORY

1. Amendment filed 5-20-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 21).

2. Amendment of subsection (b) filed 5-8-89; operative 6-7-89 (Register 89, No. 27).

3. Amendment of section and Note filed 2-8-2011; operative 3-10-2011 (Register 2011, No. 6).

This database is current through 7/29/16 Register 2016, No. 31

CCR § 1562. Pharmacology Courses.

- (a) In order to be approved by the Board, a course in pharmacology must include instruction in general pharmacology, ocular pharmacology, and in ocular pharmacology applied to relevant clinical procedures. The course must be at least 55 hours in length and be subdivided as follows:
 - General Pharmacology: 15 hours
 - Ocular Pharmacology: 20 hours
 - Clinical Laboratory (ocular pharmacology applied to relevant clinical procedures): 20 hours
- (b) Approval by the Board shall be required of all pharmacology course instructors.

CCR § 1563. Pharmacology Examination.

- (a) The pharmacology course examination shall cover coursework in general pharmacology, ocular pharmacology, and ocular pharmacology with relevant clinical procedures and shall be given in conjunction with the annual optometrist licensure examination or when otherwise designated by the Board.
- (b) The examination fee shall not exceed thirty-five dollars (\$35).
- (c) The procedure specified in Section 1533 will be used for requests to inspect examination papers or to appeal examination scores.

Note: Authority cited: Section 3153, Business and Professions Code. Reference: Sections 3041.1 and 3041.2, Business and Professions Code; Sections 1560, 1561 and 1562, California Administrative Code.

TPA Requirements:

BPC § [3041.3](#) (*Article 3 added by Stats. 1937, Ch. 423.*)

- (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b) and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.
- (b) The board shall grant a therapeutic pharmaceutical agents (TPA) certification to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:
- (1) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, with either a TPA-certified optometrist in good standing or a physician and surgeon board-certified in ophthalmology in good standing. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular and systemic disease. The preceptor shall certify completion of the preceptorship using a form approved by the board. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.
 - (2) Successfully completes a minimum of 100 hours of directed and accredited education in ocular and systemic diseases within two years prior to meeting the requirements of paragraph (1).
 - (3) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.
- (c) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who passes all sections of the National Board of Examiners in Optometry's national board examination or its equivalent, as determined by the State Board of Optometry.
- (d) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be granted a therapeutic pharmaceutical agents certification.
- (1) In order to obtain a therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for therapeutic pharmaceutical agents certification, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.
 - (2) In order to obtain a therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for therapeutic pharmaceutical agents certification, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.
 - (3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

(Amended by Stats. 2015, Ch. 443, Sec. 1. Effective January 1, 2016.)

CCR § 1568. Therapeutic Pharmaceutical Agents Usage -Purpose and Requirements.

Only those optometrists meeting the requirements of this Article may apply for TPA Certification to use Therapeutic Pharmaceutical Agents. The Application for TPA Certification (Form TPA-1 Rev. 4/96), which is hereby incorporated by reference, may be obtained from the Board's Headquarters office. Requirements for TPA certification are as follows:

- (a) If the applicant is licensed to practice optometry in California and graduated from an accredited school of optometry prior to January 1, 1992:
 - (1) Completion of an 80-hour TPA didactic course provided either by the University of California at Berkeley School of Optometry or the Southern California College of Optometry or recognized ophthalmological residency review committee or at an accredited school or college located outside of California as provided in Section 1570 in this Article.
 - (2) Pass the examination given at the conclusion of the TPA course.
 - (3) Pass the TMOD component of the NBEO administered after July 1, 1992.
 - (4) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.
 - (5) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (b) If the applicant is a licensed optometrist in California and graduated from an accredited school of optometry after January 1, 1992 but before January 1, 1996:
 - (1) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.
 - (2) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (c) If the applicant is a graduate from an accredited school of optometry after January 1, 1996:
 - (1) Obtain a California optometrist license.
 - (2) Be certified by an accredited school of optometry that the applicant is competent in the diagnosis, treatment, and management of ocular, systemic disease.
 - (3) Be certified by an accredited school of optometry that the applicant has completed 10 hours of experience with an ophthalmologist.
- (d) If the applicant is licensed outside California and graduated from an accredited school of optometry before January 1, 1992:
 - (1) Obtain a California optometrist license.
 - (2) Completion of an 80-hour TPA didactic course provided either by University of California at Berkeley School of Optometry or Southern California College of Optometry or recognized ophthalmological residency review committee or at an out-of-state school as provided in Section 1570 in this Article.
 - (3) Pass the examination given at the conclusion of the TPA course.
 - (4) Pass the TMOD component of the NBEO administered after July 1, 1992.
 - (5) Complete 20 hours of self directed study in the treatment and management of ocular, systemic disease.
 - (6) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (e) If the applicant is licensed outside California and graduated from an accredited school of optometry after January 1, 1992 but prior to January 1, 1996:
 - (1) Obtain a California optometrist license.
 - (2) Complete 20 hours of self directed study in the treatment and of management of ocular, systemic disease.
 - (3) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (f) If the applicant is licensed in a state outside of California, graduated from an accredited school of optometry prior to January 1, 1992 and has practiced in that state, or on a reservation or a facility supported and maintained by the United States government with a TPA license:
 - (1) Obtain a California optometrist license.
 - (2) Pass the TMOD component of the NBEO administered after July 1, 1992.
 - (3) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (g) If the applicant is licensed in a state outside of California, graduated from an accredited school of optometry after January 1, 1992 but before January 1, 1996 and has practiced in that state or on a reservation or a facility supported and maintained by the United States government with a TPA license:

- (1) Complete 20 hours of self directed study in the treatment and of management of ocular, systemic disease.
- (2) Complete a 65-hour preceptorship service as defined in Section 1567 in this Article.
- (h) All TPA certified optometrists pursuant to this Article must complete 50 hours of continuing education in order to renew licensure. Thirty-five of the required hours shall be in the diagnosis, treatment and management of ocular, and systemic disease consistent with Business and Professions Code section 3059, subdivision (f).
- (i) If the applicant is licensed in a state outside of California and requests that the 65-hour preceptorship service requirement contained in subdivisions (e), (f) and (g) be waived based on their optometric practice experience using TPA in another state, the Board, as authorized under Business and Professions Code Section 3041.3(d)(1), shall deem the experience as equivalent to the 65-hour preceptorship service required in California provided the following conditions are met:
 - (1) Applicant is licensed in good standing in their state of licensure.
 - (2) Applicant has graduated from an accredited school of optometry before January 1, 1996.
 - (3) Applicant has met the requirements to treat with therapeutic pharmaceutical agents in their state of licensure.
 - (4) Applicant has been practicing optometry in their state of licensure using therapeutic pharmaceutical agents for 5 continuous years immediately preceding the submission of their application.

Note: Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 3041.3 and 3059, Business and Professions Code

HISTORY

- 1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).
- 2. Amendment of subsection (h) filed 12-20-2004; operative 1-19-2005 (Register 2004, No. 52).
- 3. New subsection (i) and amendment of Note filed 7-3-2008; operative 7-3-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 27).

*This database is current through 7/29/16 Register 2016, No. 31
16 CCR § 1568, 16 CA ADC § 1568*

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To: Board Members

Date: August 26, 2016

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 17 – Election of Officers

Election of Officers

[Business and Professions Code § 3014](#) states that the board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Nomination Forms and Candidate Statements

Nomination forms were distributed to Board Members prior to the Board Meeting. Nominated candidates were notified of the nomination and provided an opportunity to include candidate statements in the Board meeting materials. Candidates are also able to make any statements during the Board Meeting.

Available Offices and Nominations

The available offices are President, Vice President and Secretary. As of August 12, 2016, Board staff received the following nominations:

- President:
 - Cyd Brandvein, nominated by Dr. David Turetsky, OD
 - Dr. Madhu Chawla, OD, nominated by Dr. Lilian Wang, OD

Additional Nominations

Any additional nominations may be made during this agenda item.

Action Requested

Please seek additional nominations and provide time for each candidate to make any additional statements. After all statements have been made, please solicit public comment. Once all have been heard, please conduct roll call votes on each office position.

Attachments:

1. Nomination form for Cyd Brandvein
2. Nomination form for Dr. Madhu Chawla, OD
3. Dr. Chawla's Candidate Statement



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OFFICER NOMINATION FORM

- NOMINATED OFFICE: President
 Vice President
 Secretary

- NOMINEE:
- | | |
|---|--|
| <input type="checkbox"/> Madhu Chawla, OD | <input type="checkbox"/> Glenn Kawaguchi, OD |
| <input checked="" type="checkbox"/> Cyd Brandvein | <input type="checkbox"/> Lilian Wang, OD |
| <input type="checkbox"/> Rachel Michelin | <input type="checkbox"/> Mark Morodomi |
| <input type="checkbox"/> David Turetsky, OD | <input type="checkbox"/> Maria Salazar Sperber |
| <input type="checkbox"/> Debra McIntyre, OD | <input type="checkbox"/> Martha Garcia, CLD, SLD |
| <input type="checkbox"/> Donna Burke | |

NOMINATED BY:

OPTIONAL*
NOMINATION
REASON:

Please provide a brief description of why you believe this nominee is the best candidate for the selected office.

As the Board's ultimate duty is to serve the public of California, I am a strong believer that its officers should be members of the public. Ms. Brandvein has an excellent understanding of Board procedures and functions. She has experience in presiding over meetings, has excellent communications skills and a good rapport with all members of the Board and staff.

²⁰⁶
*This field is completely optional. Nominations may be made without any justification.



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OFFICER NOMINATION FORM

- NOMINATED OFFICE: President
 Vice President
 Secretary

- NOMINEE:
- | | |
|--|--|
| <input checked="" type="checkbox"/> Madhu Chawla, OD | <input type="checkbox"/> Glenn Kawaguchi, OD |
| <input type="checkbox"/> Cyd Brandvein | <input type="checkbox"/> Lilian Wang, OD |
| <input type="checkbox"/> Rachel Michelin | <input type="checkbox"/> Mark Morodomi |
| <input type="checkbox"/> David Turetsky, OD | <input type="checkbox"/> Maria Salazar Sperber |
| <input type="checkbox"/> Debra McIntyre, OD | <input type="checkbox"/> Martha Garcia, CLD, SLD |
| <input type="checkbox"/> Donna Burke | |

NOMINATED BY:

OPTIONAL*
NOMINATION
REASON:

Please provide a brief description of why you believe this nominee is the best candidate for the selected office.

I would like to like to nominate Madhu Chawla for board president. She was an excellent representative of the board this past year. She did an excellent job leading and managing all the board meetings, and I would like to see her continue in another year as board president.

*This field is completely optional. Nominations may be made without any justification.

Candidate Statement

Candidate: Madhu Chawla, OD **Nominated Office:** President

Professional Experience:

Experience working in multiple practice settings including the following: Hospital/HMO (current position), private practice within both an optometry and ophthalmology setting, community health center, academic clinical setting, commercial optometry setting

Service to California State Board of Optometry, Appointed June of 2012:

- Currently serving as Board President
- Board Vice President, 2014-2015
- Practice and Education Committee, 2012-Present, Committee Chair 2013-present
- Public Relations Committee Member, 2013-Present
- Consumer Protection Committee, 2012-2013
- Legislative Committee Member, 2012-present
- Executive Officer Recruitment Committee Member, 2015
- Sunset Committee Member, 2016

Current Leadership Roles at Kaiser Permanente:

- Lead Optometrist at Kaiser Permanente Woodland Hills Medical Center
- Lead medical center liaison for ODs at KP Woodland Hills Medical Center
- Optometry Representative on Woodland Hills Medical Center Leadership Council
- Chair, Southern California Regional Optometry Glaucoma Subcommittee
- Chair, Southern California Regional Optometry Education Committee
- Lead OD member, Southern California Regional Eye Care Technology Committee
- Member, Southern California Regional Legislative Committee
- Member, Southern California Regional Contact Lens Subcommittee
- Member, Southern California Regional Low Vision Subcommittee
- Recipient of 2014 Optometrist of the Year Award for KP Southern CA
- Recipient of Local Medical Center Kaiser Permanente Everyday Heroes Award, 2016 (awarded for dedication to patient care and patient advocacy)

Other Service to Profession of Optometry:

- National Board of Examiners in Optometry (NBEO): Past Proctor and Clinical Examiner
- Association of Regulatory Boards of Optometry (ARBO), OE Tracker Committee, 2015-present
- Participation in international and local eye care clinics including service to underserved populations in India, South Africa, Chile, Laos, Romania, Los Angeles, Boston, and San Diego

During my time on the Board these past 4.5 years, I have worked to steadily increase my participation as well as expand my knowledge of pertinent issues. Serving on multiple committees throughout my time on the Board has allowed me to work on a variety of projects including those related to enforcement, legislation, and education of the public and our licensed professionals. My passion for and my dedication to my profession are evident by my extensive participation in virtually all aspects of direct patient care as well as the care delivery process. My participation on numerous committees throughout my career has provided an unparalleled opportunity to serve as a mediator and facilitator while working in concert with a large variety of health care professionals, administrators, legislators, patient advocacy groups, volunteers, students, IT consultants, business consultants, opticians, and other optometric and medical support staff.

The positions I have held have given me an opportunity to support optometrists in the advancement of our profession as well as to ensure that the patients I have served receive the highest quality of care.

My vision is that of a unified Board that capitalizes on the unique strengths of each of its members to move forward together so that we may advocate for the well-being of patients seeking optometric care and the consumers of all aspects of optometric services in our state. I feel that my broad range of experience has provided me with the skills to continue to serve as an effective, efficient, and conscientious Board President.

I respectfully ask for your support and vote.

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To: Board Members

Date: August 26, 2016

From: Jessica Siefertman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 18 – Future Agenda Items

The Board may discuss and decide whether to place a matter on the agenda of a future meeting. Future agenda items currently include, but are not limited to, the following:

- Staff Outreach at CE Events
- Control over scope of practice – what other states are doing
- Revising Business and Profession Code Section [3077](#): Branch Office License
- Strategic Plan
- Sunset Report
- Dispensing Optician Committee Appointments
- Online Refractions Outreach Campaign

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To: Board Members

Date: August 26, 2016

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 19 – Adjournment
