

MEMBERS OF THE BOARD

Mark Morodomi, President
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Debra McIntyre, OD, Secretary
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Rachel Michelin
Maria Salazar Sperber
David Turetsky, OD
Lillian Wang, OD



**LEGISLATION AND REGULATION COMMITTEE
TELECONFERENCED MEETING AGENDA**

MEMBERS OF THE COMMITTEE

Lillian Wang, Chair
Glenn Kawaguchi, OD
Rachel Michelin
Maria Salazar-Sperber, JD
David Turetsky, O.D.

**Friday, September 13, 2019
9:00 to 10:00AM
(or until conclusion of business)**

Teleconference Meeting Locations:

**DCA Del Paso – Yosemite Room
2420 Del Paso Road, 1st floor
Sacramento, CA 95834**

**Moraga Library
1500 St. Mary's Road.
Moraga, CA 94556**

**Buenaventure Optometry
3301 E. Main Street Suite 1006
Ventura, CA 93003**

**Senator Hotel
1121 L Street, First Floor
Sacramento, CA 95814**

ORDER OF ITEMS SUBJECT TO CHANGE. ACTION MAY BE TAKEN ON ANY ITEM ON THE AGENDA.

1. Call to Order/Roll Call/Establishment of a Quorum
2. Public Comment for Items Not on the Agenda
Note: The committee 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 §11125, §11125.7(a)].
3. Discussion and Possible Action Regarding Meeting Minutes
 - A. May 28, 2019 Committee Meeting
4. Update, Discussion and Possible Action on Potential 2020 Legislation
 - A. Temporary License for Instructors at Accredited Schools of Optometry
 - B. Other Possible 2020 Legislation
5. Future Agenda Items
6. 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 and its committees 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 Committee 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. Members of the Board who are not members of this committee may be attending the meeting only as observers.

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 Jessica Swan at 916-575-7174 or sending 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.*

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**LEGISLATION AND REGULATION COMMITTEE
DRAFT ACTION MEETING MINUTES
May 28, 2019**

MEMBERS OF THE COMMITTEE

Rachel Michelin, Chair
Glenn Kawaguchi, OD
Maria Salazar-Sperber, JD
Lillian Wang, OD

Teleconference Meeting Locations:

DCA Del Paso Road Location 2420 Del Paso Road, 1 st Floor, Rm. 106 (Redwood Room) Sacramento, CA 95834	Moraga Library 1500 St. Mary's Road Moraga, CA 94556	LensCrafters 3855 State Street Santa Barbara, CA 93105
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Members Present	Staff Present
	Shara Murphy, Executive Officer
Glenn Kawaguchi, OD	Evan Gage, Assistant Executive Officer
Maria Salazar-Sperber, JD	Marc Johnson, Policy Analyst
Lillian Wang, OD	Jason Hurtado, Legal Counsel
	Jessica Swan, Administrative Analyst
Members Absent	Guest List
Rachel Michelin, Chair	On File

Link for audio: https://www.optometry.ca.gov/meetings/20190328_audio_mom.mp3

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

The meeting was to order at 1:30 p.m. and roll was taken. Members present: Dr. Kawaguchi in Santa Barbara, CA; Dr. Wang in Moraga, CA; and Ms. Salazar-Sperber in Sacramento, CA. Ms. Michelin was absent. 3-1 Quorum established.

2. Public Comment for Items Not on the Agenda

There was no public comment at any of the teleconference locations.

3. Discussion and Possible Action Regarding Meeting Minutes

A. March 8, 2019 Legislation and Regulation Committee Meeting

No changes were made. There was no public comment.

Dr. Wang moved to approve the March 8, 2019 LRC meeting minutes and Ms. Salazar-Sperber seconded the motion. Minutes were approved on a 3-0-1 vote.

Member	Aye	No	Abstain	Absent	Recusal
Michelin				X	
Kawaguchi	X				
Salazar- Sperber	X				
Wang	X				

4. Background, Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 458 (Nazarian): Optometrists: home residence certification

Audio of Discussion: 00:03 / 28:14

Ms. Murphy explained that the language for residential care facilities is permissive language versus restrictive. Additionally, since the two practice locations are grouped within the bill, she believes there is opportunity to look at modeling the language around the home certificate; around the health facility and residential care facility permissiveness. Ms. Murphy believes that within Section 3070.1 Section C, an amendment may be made to include home residence certificate. Committee and Staff members discussed having registration process to prevent optometrists from carving out a whole new industry without any regulatory oversight, and what amount of home visits would be considered the maximum? They also discussed the language of permit versus registration, since this industry does not encompass education or training that is certified.

Ms. Murphy noted Dr. Kawaguchi’s point that the intent of the Board was to enable practice within a home setting. Staff has worked hard with Committee staff to create greater consumer protection in this vulnerable population within this less traditional care setting.

Public Comment: Mr. Mark Morodomi, speaking in Moraga, CA, commented on the prohibitory language that states, “an optometrist shall not engage in the practice of optometry at a home location without a certificate.” He stated that this language gives the impression that the Board sees a problem home visits, which is the opposite of the intent. The Board’s intent is to allow them to perform home visits with some type of certificate. This was the comment by the Attorney General’s (AGs) Office. The AGs office is under the impression that the Board wishes to impose a ban on performing home visits which is the opposite of the Board’s intent. Mr. Morodomi wants the intent of the Board to be clear in the statute’s language.

Staff was given direction to work with Legal Counsel to allow for more permissive language which allows for home visits while maintaining consumer safety.

5. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 1467 (Salas): Optometrists: scope of practice: delegation of services agreement

No action was taken on this item.

6. Future Agenda Items

Committee members has no future agenda items. There was no public comment.

7. Adjournment

Committee adjourned at 2:03 p.m.



ISSUE MEMORANDUM

DATE	September 13, 2019
TO	Members, Legislative and Regulatory Committee (LRC)
FROM	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #4A – Update, Discussion and Possible Action on Potential 2020 Legislation: Temporary License for Instructors at Accredited Schools of Optometry

Summary:

Staff was directed at the August 2, 2019 public meeting to review the possibility of a special permit being granted by the Board for foreign-trained optometrists who teach at a school of optometry in California. This permit would allow holders to perform the full range of optometry scope of practice within the clinics of the school by which they are employed. Staff was directed to perform research on the issue and examine the Medical Board of California’s (MBC) Special Faculty Permit statutes to determine if the Optometry Board could issue such permits. Such a statutory change would require legislative action in 2020.

Background:

At the April 5, 2019 public meeting, Board Member Wang commented that several foreign trained optometrists who are currently employed at schools of optometry are unable to practice the full scope of the optometry license within their clinics, despite being qualified and their education and qualifications thoroughly vetted. At the August 2, 2019 meeting, Dr. Wang again raised the issue, and referenced temporary exemptions to be issued via [BPC 3042.5](#). These exemptions are for practice which is conducted for educational purposes and which is confined to the clinical department of the accredited school or college employing the person to whom the exemption is granted “for a specific period of time”.

Dr. Wang cited the need for clarification of the statute and asked whether the Board should require passage of the jurisprudence exam, in order to allow these foreign trained optometrists to practice the full scope of optometry within the schools. Public comment was made in support of this issue. Additional questions were raised regarding licensure implementation, CE requirements and clarification of the opportunity for foreign trained optometrists to teach in the clinics of the schools. The workload impact of this action would be minimal to the Board, and staff estimates only 8-12 applicants may apply for the permit.



Staff was directed to research the issue and review the MBC's statutes in order to develop a potential solution and present findings to the LRC for discussion and possible action. Such a change would require legislative action and could be included as a standalone bill or as part of a DCA omnibus bill in 2020.

Discussion:

The proposed bill text is based on [Business and Professions Code §§2168 – 2169](#), which sets out requirements for the MBC's special faculty permit, forms and renewal requirements. Based on preliminary direction and discussion, the intent of this bill is to do the following:

1. Create a special faculty permit for use by instructors in accredited schools of optometry and sets fees for application and renewals;
2. Require permit applicants, specifically foreign applicants, undergo and be approved by the board upon submission of documentation verifying degree obtained, education completed and various other requirements similar to a regular optometry license;
3. An applicant would need to pass the CLRE;
4. An applicant would need to pass a criminal background check;
5. An applicant would subject to all laws and regulations pertaining to the practice of Optometry and be thus subject to discipline by the Board;
6. States the permit would be renewed biannually and would need to meet normal CE renewal requirements.

Further Considerations:

Staff requests the Committee further discuss and provide direction on the following issues:

1. As part of the application process, optometry schools thoroughly vet and review a foreign optometrist's education and background. However, for public protection, should the Board conduct an additional review? How should the Board determine the education and degree equivalency of the foreign applicant?
2. The MBC uses a publicly noticed committee to review permit applications. Should the Board do the same, either as a stand-alone committee or as part of an existing committee such as the PEC?

Suggested Motion:

"I motion to recommend to the full board to pursue legislation for a special faculty permit, and direct staff to work with Legal Counsel to further develop the proposed statutory language based on the discussion and materials presented here today."



Proposed Text – Optometry Special Faculty Permits

Add §3042.55 to Article 4 of Chapter 7 of Division 2 of the Business and Professions Code:

Commented [JM1]: This statute is based upon MBC's

(a) The Board may issue a special faculty permit for the practice of optometry, as defined in Section 3041, only within an California accredited school of optometry and any affiliated institution in which the faculty permit holder is providing instruction as part of the optometry school's educational program and for which the optometry school has assumed direct responsibility. The holder of a such a faculty permit shall not engage in the practice of optometry except as provided above.

(1) Any person who meets all of the following eligibility requirements may apply for a special faculty permit:

Commented [JM2]: Are these requirements sufficient? Mirrors applicants for regular CA license

(A) Holds or has been offered an appointment at the level at the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.

(B) Has a degree as a doctor of optometry issued by an accredited school or college of optometry in another state, country or jurisdiction;

(C) Has successfully passed the licensing examination for an optometric license in another state, country or jurisdiction.

(D) Possesses a current valid license in good standing to practice optometry issued by another state, country, or other jurisdiction. The term "in good standing" means the same as in section 3057, subsection (e).

(E) Meets the requirements of section 3057, subsection (a), paragraphs (4), (5), (7), (9) and (10).

(F) Has successfully passed the board's jurisprudence examination.

(2) The Board shall exercise its discretion in determining whether an applicant satisfies the requirements of paragraph (1) of subdivision (a).

(3) The Board may establish a review committee comprised of two members of the Board, one of whom shall be a licensed optometrist and one of whom shall be a public member. The committee may review and make recommendations to the full Board regarding the applicants applying pursuant to section. Any member of the Board who is currently employed by an accredited school of optometry shall not be appointed to the committee, and may not vote on the recommendation as part of the full Board vote. At the Board's discretion, an existing subcommittee under the Board may act as the review committee.

Commented [JM3]: Is this committee needed? Could staff complete this work?

(b) Any person who meets the requirements specified above shall complete an application on a form prescribed by the board prior to being issued a special faculty permit. This information shall include, but is not limited to, the following:

Commented [JM4]: What other information should be required?

(1) A statement from the president of the optometry school at which the applicant will be employed describing the applicant's qualifications and justifying the president's determination that the applicant satisfies the requirements above.

(2) A statement by the president of the optometry school listing every affiliated institution in which the applicant will be providing instruction as part of the



optometry school's educational program and justifying any clinical activities at each of the institutions listed by the president.

(3) An acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(a) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(b) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(4) Any other information the Board deems necessary in order to verify applicant's background and qualifications for the permit.

(c) The applicant shall pay an application fee in an amount prescribed pursuant to subdivision (u) of Section 3152.

(d) A special faculty permit may be denied, suspended, or revoked for any violation that would be grounds for denial, suspension, or revocation of a optometrist license, or for violation of any provision of this article. The holder of a special faculty permit shall be subject to all the provisions of this chapter applicable to the holder of an optometry license.

(e) A special faculty permit expires and becomes invalid at midnight on the last day of the month in which the permit was issued during the second year of a two-year term commencing from the date of issuance, if not renewed. A person who holds a special faculty permit shall show at the time of license renewal that he or she continues to meet the eligibility criteria set forth in subsection (a) above.

(f) A person who holds a special faculty permit shall meet the continuing education requirements of section 3059 and shall be renewed in the same manner as an optometrist's license. The fee for renewal shall an amount prescribed pursuant to subdivision (w) of Section 3152.

(g) The Board shall adopt regulations in furtherance of this section.

Amend §3052 to Article 7 of Chapter 7 of Division 2 of the Business and Professions Code:

(u) The application fee for a special faculty permit is five hundred dollars (\$500). The board may increase the fee to not more than six hundred dollars (\$600).

(v) The renewal fee for a special faculty permit is four hundred dollars (\$400). The board may increase the fee to not more than five hundred dollars (\$500).



ISSUE MEMORANDUM

DATE	September 13, 2019
TO	Legislative and Regulatory Committee (LRC)
FROM	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #4B – Other Potential 2020 Legislation

Summary

Board staff has been reviewing the possibility of other minor changes to statute, via potential legislation in 2020. Staff has identified the need for a fee for completion of license endorsements (also known as license verifications) to other states and jurisdictions for optometry licenses and optician registrations. The Board currently does not charge such a fee since it not authorized in statute, but such a fee is very common with other DCA Boards.

Discussion

According to the Board’s Licensing Unit, approximately 80 requests for license or registrant endorsement are made per month. The endorsements require staff to review a licensee history, verify current license or registration and check for any enforcement actions. The endorsement is then completed via a letter from the Board or a form from another state or jurisdiction. This letter then has to be sent to the requesting party and also uploaded to BreEZe. Staff estimates each endorsement takes 15 minutes to complete, totaling 1,200 minutes or 20 hours of staff work per month. The Board currently charges no fee for this service.

Other Boards charge fees for an endorsement:

- Acupuncture Board: \$10, not to exceed \$10
- Dental Board: \$50, not to exceed \$125
- Physical Therapy Board: \$60, not to exceed \$60

Staff is proposing a fee of \$40, ultimately not to exceed \$60, per endorsement, which would cover the costs of staff time, BreEZe usage and mailing. With a fee of \$40, staff estimates revenue of approximately \$38,000 per year. Regulations via the normal regulatory rulemaking process may be also needed to implement that statute after the bill is passed.

Although the fee would impose a small impact on California licensees or registrants applying in other states, these fees are commonly used by other boards. This ensures public protection within this state and others by making sure license applicants are fully licensed and endorsed by the Board before practicing in another state or jurisdiction. Therefore, staff recommends LRC approval of this action and the full Board pursue this issue as bill legislation in 2020.



Suggested Motion

“I motion to recommend to the full board to pursue legislation for an endorsement fee in the 2020 Legislative session and direct staff to work with Legal Counsel to further develop the proposed statutory language based on the discussion and materials presented here today.”

Proposed Text – Endorsement Fee

Amend §3152 of Chapter 7 of Division 2 of the California Business and Professions Code:

(u) The endorsement fee is forty dollars (\$40). The board may increase the fee to not more than sixty dollars (\$60).