

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

MEMBERS OF THE BOARD

Lillian Wang, OD, President
 Mark Morodomi, Vice President
 Eunie Linden, JD, Secretary
 Cyd Brandvein, Public Member
 Jeffrey Garcia, OD
 Glenn Kawaguchi, OD
 Joseph Pruitt, OD
 Sandra D. Sims, JD, Public Member
 David Turetsky, OD
 Donald Yoo, JD, Public Member
 Vacant, Optician Licensed Member



**QUARTERLY BOARD MEETING
 MEETING MINUTES**

Friday, November 19, 2021

This public meeting was held via WebEx Events.

Members Present	Staff Present
Lillian Wang, O.D., President	Shara Murphy, Executive Officer
Mark Morodomi, J.D., Vice President	Cheree Kimball, Assistant Executive Officer
Eunie Linden, J.D., Secretary	Marc Johnson, Policy Analyst
Cyd Brandvein	Terri Villareal, Enforcement Lead
Jeffrey Garcia, O.D.	Natalia Leeper, Lead Licensing Analyst
Glenn Kawaguchi, O.D.	Brad Garding, Enforcement Analyst
Joseph Pruitt, O.D.	Dani Rogers, J.D., Regulatory Counsel
Sandra Sims, J.D.	Michael Kanotz, J.D., Legal Counsel
David Turetsky, O.D.	
Donald Yoo, J.D.	

**Link for the audio of discussions: Webcast 1 of 2: <https://youtu.be/2o7z74pKZEU>
 Webcast 2 of 2: <https://youtu.be/9Km-owl8Vz8>**

OPEN SESSION

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

Audio of Discussion: [0:11](#)

President Wang called the meeting to order at 12:36p. Secretary Linden called roll and a quorum was established. Mark Morodomi and Donald Yoo were absent.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: [1:13](#)

There were no requests for public comment.

The meeting moved to Agenda Item 4.

4. Discussion and Possible Approval of August 27, 2021 Board Meeting Minutes
Audio of Discussion: [4:05](#)

There were no requests for public comment.

David Turetsky moved to approve the August 27, 2021 Board meeting minutes as presented. Jeffrey Garcia seconded. The Board voted (8-Aye, 0-No, 2-Absent) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Mr. Morodomi				X	
Ms. Linden	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Kawaguchi	X				
Dr. Pruitt	X				
Ms. Sims	X				
Dr. Turetsky	X				
Mr. Yoo				X	

5. Association of Regulatory Boards of Optometry (ARBO) Quarterly Meeting Report
Audio of Discussion: [6:11](#)

Executive Officer Murphy announced that the Board has had individual engagement with the Association of Regulatory Boards in Optometry (ARBO) and the National Board of Examiners in Optometry (NBEO). The Board is moving forward with its risk mitigation task force. ARBO has been asked about their contingency planning in the event of some sort of outage or inability to conduct testing at the Charlottesville location. Additionally, the Board has engaged ARBO and the NBEO in a discussion about financial conflicts of interest to ensure that the Board is doing its due diligence to investigate the separation between the two organizations and ensure that ARBO's oversight of the NBEO exams is as robust as possible. The next meeting with ARBO is set for December 1, 2021. She assured that any report from that meeting will be brought to the Board.

President Wang invited Dr. Ken Lawenda and Lisa Fennel from ARBO to provide public comments. Ms. Fennel had no comments at this time and is looking forward to the December 1st meeting. Dr. Lawenda stated that he is very interested in the meetings with Ms. Fennel and the Board regarding questions concerning ARBO and the NBEO and is also a liaison to the Optometry Board. President Wang stated that she and Cyd Brandvein are on the task force and they will be attending the December 1st meeting as well.

Public comment was heard from Dr. Doug Major from Children’s Vision Now, who has been working on the children’s access to care issue. He provided a quick update announcing that during the academy meeting they collaborated with the representatives from each of the schools of optometry in Stanford and created an ad hoc access to children group, very similar to what Bruce Moore established in Massachusetts. They are still working to establish an access to children’s care outreach. This is still a problem in California with 5.4 million children having limited access to care.

The meeting moved to agenda item #7.

7. Discussion and Possible Action on Decision Not to Proceed on Implementation of AB 443 Regulatory Rulemaking (Amend Title 16, § 1524; Adopt Title 16, § 1527)

Audio of Discussion: [15:52](#)

Policy Analyst Marc Johnson provided an update stating that AB 443 is in process and had a 45-day comment period earlier in the year. In October the Governor signed AB 691 into law as an urgency measure. This bill expands the authorization for a therapeutic pharmaceutical agent (TPA) certified optometrist to perform immunizations as well as the COVID vaccine. Additionally, it establishes into law the application fee and the text of an immunization certification application with the Board. Since this law is in effect the regulations of AB 443 are no longer needed; therefore, staff requests that the Board vote to not proceed with the implementation of AB 443.

There were no requests for public comment.

Cyd Brandvein moved to approve a notice of decision not to proceed for the implementation of AB 443 regulatory rule making pursuant to government code §11347 and direct the Executive Officer to file the notice with the Office of Administrative Law and post to the Board’s website. Glenn Kawaguchi seconded. The Board voted (8-Aye; 0-No) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Mr. Morodomi				X	
Ms. Linden	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Kawaguchi	X				
Dr. Pruitt	X				
Ms. Sims	X				
Dr. Turetsky	X				
Mr. Yoo				X	

8. Discussion and Possible Action on Optometry Continuing Education Regulations (Amend Title 16, § 1536)

Audio of Discussion: [21:42](#)

Executive Officer Murphy noted the package has been submitted to DCA as part of the rulemaking process and DCA has returned some proposed changes to the text. Mr. Johnson provided explanations to the text changes. He explained that section (c)(1) was rewritten by Legal to clarify the meaning of a test; whether it be interactive or self-assessment testing. Section (c)(4) adds the word “live” as opposed to in-person, which is to reflect attendance at a day’s Board meeting; either online live or in-person. Mr. Johnson explained that section (d)(1)(B) was written for greater clarity; regarding section (e)(1), legal counsel raised concern that listing only the Western Accreditation of Schools and Colleges (WASC) would narrow selection of courses which might be offered by other optometric programs not accredited by WASC but approved by an accrediting agency recognized by DOE.

Proposed text. Section (e)(3) adds the word “course” back into the text. Subsection (f) removed reference to “credit hours desired for approval, educational category and learning objectives” as these requirements are already listed on the CE-01 form. Regarding subsection (g)(1), parts of it were originally in (f)(3) and have been relocated to (g)(1) for better clarity and flow. Also, a couple of definitions have been added in. They are listed on form CE-01 and are also reflective of statutes for child abuse detection, ethics, elder abuse detection, pharmacology etc. Section (g)(5) is the section that prohibits providers from using letterhead, seal, and logos; this section was also relocated. Section (g)(6) was added by Legal Counsel to match the live and interactive question on the form CE-01. It clarifies for the Board which kind of participatory instruction is being provided during the course.

Mr. Johnson pointed out highlighted changes to the form CE-01. The most significant change is reorganizing and adding categories in the course category section. This fully reflects the text written in section 1536(g)(1). Some additional information has been added to reflect that a provider might be a company and may have a point of contact. On the second page of the CE-01 two new questions are listed; The first new question asks if the course is live and interactive which reflects the text written in (g)(6). The second new question asks if the provider agrees to not use the Board’s letterhead, seal, or logo on any course certificates, advertising, or solicitation, and reflects the text written in (g)(5). Mr. Johnson noted the last change that asks the provider what types of participatory interaction apply to the course; this section was re-written by Legal Counsel for clarity, so applicants can denote for the Practice and Education Committee (PEC) which kind of participatory instruction is occurring during the course.

Dr. Kawaguchi asked if child or elder abuse fall under category 1 for CME; Executive Officer Murphy admitted that she has not had opportunity to dive into what the CME category 1 is exactly. When CME courses are submitted by a licensee, staff simply verifies the course is accredited by the continuing education institution for physicians and surgeons. It may be that within the category 1 CME there are courses that address elder abuse, child abuse, and cultural equities; and these would certainly be accepted by the Board to count as CE credits. Dr. Kawaguchi referenced the last sentence of the first paragraph of (c)(1) which states *“through self-assessment testing (open-book tests that are completed by the licensee, submitted to the provider, graded, and returned to the licensee with correct answers and an explanation of why the answer chosen by the educational provider was the correct answer”*.

Dr. Kawaguchi noted that some of the self-study tests will provide what the correct answer was, but do not provide an explanation as to why it was the correct answer. He is concerned that by this statement the Board may limit the type of self-study courses that may be taken. A correct answer should be enough because one can always re-read the material to understand the why. Regulatory Counsel Dani Rogers suggested ending the statement at correct answer and striking the second point.

Public comment was heard from Kristine Shultz representing the California Optometric Association (COA). She referenced (g)(1)(B) "*Ocular signs or symptoms of systemic related disease*" was added. She questioned why this was added specifically to ocular signs. She noted that it seems unnecessarily specific, as there are many signs of systemic disease that might not be ocular that are clearly within the realm of optometry. Additionally, she expressed concern over (g)(1)(D) adding the definition of "*clinical optometry (use of specific devices or instruments in the practice of optometry)*" because it is very specific. It is not clear whether immunizations would be included. Ms. Shultz believes broad language would be more appropriate here.

Public comment was heard from Ms. Ruby Garcia. She asked if this language would only apply to optometrists; staff confirmed it would.

Dr. Garcia suggested saying "*ocular and systemic signs and symptoms and related disease*". Executive Officer Murphy explained that staff and Legal Counsel did have back and forth discussion regarding this item; Ms. Rogers explained that the intent was to mirror the categories of continuing education that are in business and professions code 3059. In that section at (e) it states that "*35 of the 50 hours of continuing education shall be on the diagnosis treatment and management of ocular disease in any combination of the following areas (1) glaucoma (2) ocular infection (3) ocular inflammation (4) topical steroids (5) systemic medication (6) risk of addiction associated with schedule two drugs*". Ms. Rogers deferred to the subject matter experts insofar as whether what they are proposing are within those categories; she offered to send Executive Officer Murphy that information if she would like to contact them.

Ms. Schultz commented on BPC section 3059 (e) where it states "*35 of the 50 hours of CE shall be on the diagnosis, treatment, and management of ocular disease in any of these categories*", she advised that with the regulation the Board is making all the CE apply to these limited categories. She does not believe this is the intent of the law; therefore, there is no reason to limit to those categories under the statute. Ms. Rogers concurred that Ms. Schultz is correct. Mr. Johnson responded explaining that staff and legal have worked this thoroughly in the last month; the concern was originally raised that within our text we listed out systemic related disease. Legal suggested that the Board define that because the term is not found in statutory regulations. Dr. Garcia recommended that if asked to define it, the Board might define it broader than specific devices or instruments in the practice of optometry. Ms. Rogers concurred. It can always be further defined later if necessary; it would only mean having to provide a 15-day modified text period. Mr. Johnson added that the details of this discussion today will all be reflected in the minutes which will help explain to the public and to OAL the

rationale behind the decisions. This discussion will be very helpful in getting this regulation into law.

Member Sims noted that (g)(1) does have that inclusive language *“including the following subject matters”* yet does not limit it to only those subject matters. She also noted that subsection (h) does reflect to that broader language of section 3059(e). She asked if that language may be broad enough to include other topics that are not specifically mentioned in the prior subsections (a) through (g)? Ms. Rogers answered “absolutely, it is all including and not limiting”. Dr. Garcia asked (if along those lines) can the Board change the text to *“including but not limited to the following subject matter areas”*; Ms. Rogers responded that it may be done; however, OAL sometimes does not favor the “including but not limited to” language because it poses a clarity issue. She stated the Board may certainly try it. Mr. Johnson confirmed that the Board has decided on changing the text to *“including but not limited to”*.

Dr. Kawaguchi stated that he did not pick up on Member Sims point regarding subsection (h) that it is very encompassing. This reduces his concern over subsection (b). Related to Dr. Garcia’s suggestion, he noted that historically attorneys do not like that type of language because it broadens the language too much. Dr. Kawaguchi asked Dr. Garcia to look at subsection (g)(1) one more time to see if it satisfies his concerns around it being broad enough. Dr. Garcia agreed stating that *“including the following subject matter”* is fine, but he would still like to see the parenthetical information on (D) struck.

President Wang questioned if members are okay with (g)(1)(B) as is; or do they want to adopt Dr. Garcia’s suggestion of *“ocular and systemic signs or symptoms of systemic related disease”*? Mr. Johnson recapped the edits agreed upon from this discussion as follows:

- Section (g)(1)(B) rewriting to state “ocular and systemic signs or symptoms of related disease”.
- Section (g)(1)(d) removing the parentheses and keeping just the term “clinical optometry”.
- Section (i)(2) deleting he or she and adding “they” to be consistent with ACR 260.
- On form CE-01 correcting the typo of “detection”; also adding the letters USD after \$50 to denote United States currency.

Dr. Kawaguchi stated that higher up in the document he had suggested eliminating “an explanation of why the answer chosen by the educational provider was the correct answer”; the change is to end the (c)(1) statement with “correct answer”. Ms. Sims commented that the language in 1536(b) “his and her” should be changed to “them”. Executive Officer Murphy noted that the change to (g)(1)(B) will also need to be made to the form CE-01.

Jeff Garcia moved to approve proposed changes to Title 16 Section 1536 and the Form CE-01 incorporated by reference into the section as presented and discussed here today and delegate authority to the Executive Officer to make non-substantive changes as needed before submission to the Director of the Department of Consumer Affairs and Business and Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to set the matter for Hearing.

Sandra Sims seconded. The Board voted (8-Aye; 0-No; 1-Abstain) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Mr. Morodomi			X		
Ms. Linden	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Kawaguchi	X				
Dr. Pruitt	X				
Ms. Sims	X				
Dr. Turetsky	X				
Mr. Yoo				X	

Mark Morodomi joined the meeting at 10:32 a.m. The Board took a short break at 10:45 a.m. and reconvened at 11:05 a.m.

9. Department of Consumer Affairs Update

Audio of Discussion: [1:25:16](#)

A. Executive Office

Executive Officer Murphy referred members to a written report which was presented as part of the meeting materials.

B. Budget Office

DCA Budget Analyst Bill Lloyd provided data on the Board’s revenue status. The Board is estimated to have revenue of about 2.7 million dollars. YTD spending is just over six hundred thousand. The end of year revenue projection was 2.6 million, which is about \$50,000 short.

Vice President Morodomi asked why the revenue projection was \$50,000 short, and what can happen in the upcoming year to solve it; Mr. Lloyd explained that the projections are based on the first 3 months and how they relate to what was budgeted. He suggested that perhaps his manager Renee Milano might have more information for the second part of the question. Ms. Milano responded that the shortfall budgets is projecting is based off preliminary projections, so the beginning balance is based off those beginning year projections. Mr. Lloyd provided information on the expenditures. The expenditures for FY 20-21 so far are coming under the budget. Personnel services are roughly \$27,000 under the budget amount for YTD; operating expenses equipment is about \$805,000 under budget for what is expected at year ending, which is a very good reversion to the general budget fund. Although the revenue projections were \$50,000 short, Budgets is projecting about \$800,000 under expenditure projections which is a very good balance.

Mr. Lloyd reported on the Board's fund condition. The Board started 2020-2021 with just over 2 million dollars and took in revenue of about 1.823 million. The total expenditures were \$1,863,000.00 with a balance of 2 million 45 thousand remaining. The months in reserve amount means that the 2 million dollars can fund the Board for eight months without any further revenues coming in. In the projections for the current year (CY) 20-21, the budget year (BY) 22-23, and BY plus 1 (23-24) the fund balance remains very healthy with a significant month's reserve. Dr. Garcia asked if there is a point where the Board's months in reserves could potentially be too high and raise red flags; Mr. Lloyd replied that each board has a statutory limit on months in reserves that it may not exceed, but he did not have the Board's statutory cap available at this time. Some are 12 months or 24 months and some boards do not have one. Ms. Milano assured the Board that she can provide this information later; although, she does not believe the Optometry Board has a restriction.

Executive Officer Murphy noted that during the first two years of her tenure, the Board struggled hard with bootstrapping, and has made great strides in making budget change proposals and in better allocating funds to increase the health of the Board's reserve. However, the Board is going through a building period, where the last year of bootstrapping has been incredibly hard on staff. The Board is undergoing a building period to better handle the application flow and enforcement cycle timeline.

Public comment was received from Kristine Shultz. She expressed appreciation to Executive Officer Murphy and all her staff. She noted that Executive Officer Murphy has been working hard to address issues with new licensure and other issues as well. Ms. Shultz appreciates the need for additional staff members to take care of Board business.

Public comment was heard from Ruby Garcia who commended the Board and staff. She announced that as she works with opticians, they are looking to see how they may help with interns. Ms. Garcia explained that they need some guidance to determine how interns may help with the workload that Board staff has.

The meeting moved to Agenda Item 6.

6. Discussion and Possible Action on Legislative Proposals and Priorities for 2022

Audio of Discussion: [1:44:17](#)

Mr. Johnson reported that staff has legislative proposals for 2022; some changes to section 655, 3040 and 3094. Staff were unable to find an author for the special faculty permit proposal that was done back in 2019; but is looking to do this again during the next legislative year in 2022. The text has not changed. The bill would allow foreign trained optometrists who teach at one of the 3 optometry schools in California to perform the full scope of practice within the clinic where they are employed. Some public comments were received suggesting removing optometry and optician license fees for those who are active duty military and not just reservists. Current law does allow for the waver of renewal requirements and fees for reservists called to active duty, but it appears to be silent for active duty military stationed outside of California. It is Mr. Johnson's understanding that the COA is developing a proposal around this and Board staff could potentially work with the COA to develop language with the

assistance of legal counsel. Staff plans to provide a presentation to the Board in the Spring. He noted that California still has a very low number of military licensees under its jurisdiction.

Executive Officer Murphy reminded Members that these legislative proposals are recommendations from the LRC. The first two are simple; The first one is just a reauthorization for staff to find a sponsor for the foreign trained faculty permit. The second is the authorization for staff to work with the COA (Dr. Garcia is one of the Board’s subject matter experts) and DCA staff to bring Members more information that might inform the Board’s intent.

David Turetsky moved authorize and direct staff to engage with the COA; and to direct the Legislation and Regulation Committee to develop proposed statutory language with legal counsel. Cyd Brandvein seconded. The Board voted (9-Aye, 0-No) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Mr. Morodomi	X				
Ms. Linden	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Kawaguchi	X				
Dr. Pruitt	X				
Ms. Sims	X				
Dr. Turetsky	X				
Mr. Yoo				X	

Dr. Turetsky addressed Business and Professions Code Section 655 within the 1534 cleanup. A recent public decision adopted by the Board on a proposed decision from the Administrative Law Judge (ALJ) regarding 21 amended citations that were filed against Stanton Optical. The factual findings and legal conclusions are clear that the Board needs to make some changes to the way the statute is currently written.

Dr. Turetsky explained that the text of subsection (d)(16) needs to be struck so that ophthalmology groups are no longer excepted from ensuring the independence of optometrists from businesses or companies with which the optometrists are co-located. A definition needs to be created within subsection BPC 655(a)(7) which defines what a co-location is and update the reference within subsection BPC 655(a)(5) to ophthalmic device dispensing business and add the correct reference to Article 2.7. The same adopted decision by the ALJ also made the issue clear that optometry and opticianry practices must clearly require compliance from individuals, entities, and corporations. Because the current statutes are specific to individuals, the Board was unable to defend the claim that Stanton Optical illegally advertised the furnishings of optometric services. By adding entities and corporations the Board will close-up that loophole. Additionally, adding the word entity is applicable throughout BPC section 3040. BPC section 3094 adds entity throughout that section as well.

Dr. Turetsky requested that fellow professional Members look at 655 page 3 and explained that “therapeutic ophthalmic product” means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes. He noted that certain eye conditions are not eye diseases and certain procedures are not treatments but rather correction. Dr. Turetsky believes the wording should be “prescriptive and therapeutic ophthalmic products” instead. Also, instead of “*eye disease*” change it to “*eye disease or refractive error or conditions*” or “*visual rehabilitation*” or “*diseased eyes*”. Ms. Sims suggested changing it to read “*prescriptive and therapeutic ophthalmic product means lenses or other products that provide direct treatment of eye conditions or visual rehabilitation*”. Board agrees.

Dr. Turetsky pointed out item number 2 “*optical company means a person or entity that is engaged in the manufacture, sale, or distribution to physicians, surgeons, optometrists, health plans or dispensing opticians of lenses, frames, supplies or appliances, devices or kindred products*”. Dr. Turetsky explained that his reading of this means an optical company is not impacted if it sells those products directly to a consumer. Executive Officer Murphy responded and directed members to 655(a)(5) where registered dispensing optician means a person or entity license pursuant to chapter 5. She explained that staff would request a change to make this text mirror the language throughout the rest of the statute. Dr. Turetsky recommended adding the word “*consumer*” into the text. Executive Officer Murphy agreed this would create less ambiguity.

Public comment was received from James Jack on behalf of National Vision. He noted that Dr. Turetsky outlined several proposed statutory changes which include 655 and 3040. He asked if all of these are listed in the Board packet for Agenda Item 6. Executive Officer Murphy responded that not all of them listed in the Board packet are public materials. This is the reason for recommending to the Board a more general motion that would allow staff to work with stakeholders. She noted this would give the Board opportunity to pursue a proposal based upon the two points made clear within the findings of the Stanton Optical decision. Mr. Jack contended that National Vision has concerns about making more changes to 655 so soon after making significant and somewhat controversial changes to that section, and those changes have not yet taken statutory effect. He understands that this is characterized and “clean-up” but felt National Vision has not had the opportunity to understand its impact in dialogue with Board staff and asked for the Board to defer a decision on this issue.

Public comment was received from Joe Neville, representing the National Association of Optometrists and Opticians (NAOO). Neville agreed with Mr. Jack and felt that what they have heard today is more than cleanup. The NAOO would like to continue its engagement with the Board which they have always appreciated. He stated that some of the items in (d)(1) through (15) simply would not apply in the NAOO’s experience with something beyond a landlord/tenant relationship. He believes this emphasizes the need for further conversation; perhaps not moving forward exactly as described today, and rather get the stakeholder feedback first and then move on to the next step.

Public comment was received from Ruby Garcia. She noted that coming from an opticianry and educational point of view, they want to be able to tell opticians what is going to happen in the future. For that reason, they would like to be involved.

Public comment was received from Kristine Schultz. Ms. Schultz stated that she wishes to lend her support to the Board’s efforts to address some of the deficiencies that were identified in litigation. She looks forward to working together in the upcoming months.

Vice President Morodomi noted that Dr. Turetsky is on holdover status and the Board may not have him at some point later in the year; therefore, the Board can sure benefit from his expertise while it can. Vice President Morodomi asked if this matter can be discussed further at the LRC meeting so that stakeholders are given the opportunity to present their expertise and have the LRC move to modify legislation based on those conversations? Executive Officer Murphy assured this was the intention. Staff would have until August 2022 to make final changes and to work with the Legislature and stakeholders to make the language as it should be. Dr. Kawaguchi stated that he has concerns about the proposed motion. He is on the LRC and the LRC did not have an opportunity to discuss this in detail. While he does not disagree that there are changes that should be considered, he is not ready to delegate authority the way the motion is worded currently. He does look forward to continued discussions.

Ms. Brandvein suggested appointing a workgroup to work with the team ahead of the December 10th deadline to ensure that there are experts working with the Board and its team to represent that which the Board would like to move forward with now and then hold over that which the Board would like for further discussion through the committee structure. President Wang appointed Drs. Turetsky and Kawaguchi to the workgroup.

Sandra Sims moved to approve the legislative proposal as presented and discussed here today and delegate to the Executive Officer the authority to negotiate with and submit to the Legislature changes to clarify the enforcement authority in the Optometry Practice Act as informed by the factual findings and legal conclusions presented within the Stanton Optical decision adopted by the Board on August 23, 2021 and presented to the public on September 23, 2021. Eunie Linden seconded. The Board voted (8-Aye; 1-No) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Mr. Morodomi	X				
Ms. Linden	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Kawaguchi		X			
Dr. Pruitt	X				
Ms. Sims	X				
Dr. Turetsky	X				
Mr. Yoo				X	

The Board took a break for lunch at 12:19 p.m. and reconvened at 1:00 p.m. The meeting reconvened at 1:00. Ms. Linden took roll call. All Board Members were present including Donald Yoo. A quorum was established.

3. Board President's Report

Audio of Discussion: [0:29](#) (Video Part II)

a. Introduction of New Board Member, Donald Yoo

President Wang welcomed the newest Member, Mr. Yoo.

b. Dispensing Optician Committee Openings

President Wang provided a brief background of the Dispensing Optician Committee (DOC), which is a statutorily required committee that advises the Board and makes recommendations regarding regulations of opticianry. The DOC is currently comprised of 5 Members; one who is a Registered Dispensing Optician (RDO); one who is a Spectacle Lens Dispenser (SLD) or a Contact Lens Dispenser (CLD); there are also 2 public Members, and one who is a member of the Board (Dr. Kawaguchi). She reported that as of June 1, 2021 the DOC has only 3 Members all of whom are serving their grace period. The Board would like to recommend and strongly encourage anybody who is interested and eligible to apply. Executive Officer Murphy added that this would include anybody who has an active CLD or SLD registration in California or works for a registered ophthalmic device dispensing business.

President Wang announced to all the optometrists in California regarding optometric assistants; the Board is currently seeking subject matter experts. For any optometrists who have optometric assistants working in their offices, the optometric assistants are encouraged to email the Board so that they may become subject matter experts and be part of the workshops relating to optometric assistants.

Vice President Morodomi questioned the DOC not having a quorum; President Wang clarified that the DOC has not been able to meet because they have not been able to meet quorum on any meeting dates. The DOC is a committee of 5 and it only has 3 members currently; therefore, all members would have to be present to be a quorum. Additionally, all 3 members are in their grace period.

The meeting moved to Agenda Item 11.

11. Executive Officer's Report

A. Enforcement Program

i. Quarterly Statistics

ii. Presentation on Enforcement Process

Audio of Discussion: [9:12](#) (Video Part II)

Executive Officer Murphy announced that part of the Board's strategic plan is to provide at every quarterly meeting, presentations to the Board regarding the enforcement and disciplinary process. Staff are developing training modules and a handbook specific to enforcement for optometry. These training modules will be made available to new and existing Board Members at the end of the Board's strategic plan.

Enforcement Analyst, Brad Garding provided a presentation on the disciplinary process which included the following:

- How it begins
- What are considered serious violations?
- When the formal discipline process begins
- Possible outcomes of discipline
- Probation terms enhance consumer protection
- Types of subsequent discipline
- Discipline Process Overview

Mr. Yoo asked if staff keep statistics on how many of the cases are settled or dismissed; Mr. Garding responded that the Board has records of those numbers. All records of decisions that are effective are kept for 75 years. Most cases are settled. Mr. Yoo questioned if the AG's Office ever declines or refuses a case due of lack of evidence; Mr. Garding replied that some cases are pushed back very occasionally. He has been with the Board since 2012 and has only seen two cases pushed back. Staff does not consider sending a case to the AG until it feels the case is solid and will not lose in court. Mr. Yoo asked if there has ever been a dismissal of an accepted case? Mr. Brading responded stating that there have been a few dismissals; one was a sexual related case that came down to the witnesses' testimony. The AG had all the information needed but it did not wash out when it went to Hearing.

Vice President Morodomi, regarding probation supervision, asked if the items that are monitored while on probation are more of a cookie cutter check off list, or are they specific to the underlying violation. Mr. Garding assured that they are specific to the underlying violation. Vice President Morodomi asked who directs the monitor regarding the monitoring. Mr. Garding explained that this would be spelled out in the decision. The worksite monitor would provide a quarterly report and they would audit the records.

Vice President Morodomi asked if an optometrist is found to be improperly issuing prescriptions, who directs the worksite monitor to monitor their prescription writing practice? Is that included in the Board's order or does someone else do that; Ms. Villareal explained that it would depend upon the case; there are different conditions of probation and remedial education is one of them. The respondent would be directed to take college level courses in the field. When their license is on probation it is unlikely that they want to deviate from the order. Mx. Kimball reminded members that the decision and order spells out what has been violated and what the probation terms are; therefore, when information is given to the worksite monitor, the monitor is aware of the situation, the infraction, and the terms of probation who then provides the reports directly to management. Vice President Morodomi noted he would like to see a sample probation report and see how it is written and categorized.

Dr. Turetsky asked when a complaint is submitted, how long does it take for the Board to acknowledge that the complaint was received. Mr. Garding responded that the Board is required to acknowledge within 10 days.

There were no requests for public comment.

B. Examination and Licensing Programs

i. Quarterly Statistics

ii. Presentation on Optometry Initial Licensing Process

Audio of Discussion: [44:50](#) (Video Part II)

Item ii was tabled until a future meeting.

Ms. Leeper highlighted some other licensing improvements for next year. She announced that one of the most important improvements was the creation of a letter to be sent to applicants upon passing their CLRE informing them that their passing score was received from the Board's third part exam administrator (PSI) and that they may now continue their application. BreEZe automatically sends the applicants a notification that they may now apply for part two of the examination. This feature has been significantly helpful for many applicants. Additionally, staff has changed the wordings of the applications themselves for greater clarity to applicants on how best to contact them by staff easier. It stresses the need for email addresses. The wording better lays out the process, so applicants know what is next and what to expect and improve communication with the Board's candidates. Ms. Leeper provided information regarding changes that are still being implemented. During the beginning of November 2021 applicants can now submit attachments online instead of having to email them to the Board. These changes have streamlined communication and expedited the licensing process.

Executive Officer Murphy announced that in addition to these changes that will greatly improve processing times, management has been able to effectuate the hires that have been worked on since fall of last year. The Board is happy to announce the inclusion of a new licensing Management Services Technician who is being cross trained on the both the optometry and opticianry programs. Additionally, existing staff are being cross trained as well. Dr. Kawaguchi expressed appreciation that Ms. Leeper is an "out-of-the box" thinker and problem solver and asked Ms. Leeper to keep the Board informed about future needs.

Dr. Turetsky commented that he has received about a half dozen phone calls from optometrists who are looking to hire a new optometrist, but their prospects had not received their license and they wanted to know what is going on with this. Executive Officer Murphy acknowledged that some calls and emails did not get returned; which is one of the reasons staff sincerely apologize to the Board's applicants and licensees looking to hire. She noted that cross-training is really the point. Staff has not had the staffing resources necessary to get those calls and emails returned with actual information because there are not enough staff trained on the licensing process and how to retrieve respective information. Executive Officer Murphy reiterated that this is the impetus of cross-training for better phone support and more timely email response.

Vice President Morodomi acknowledged that he understands the current lack of ability to provide a substantive response to voice mail and email messages; however, he agrees with Dr. Turetsky's concerns that somebody respond to calls and email stating that fact. Executive Officer Murphy acknowledged that she and staff hear this criticism most certainly and that it is

important for stakeholders and licensees to know that they are not going into a black hole. She assured that management and staff are making sure of better preparedness (better staffed and trained) while going through the rest of this cycle and into the next cycle. Ms. Brandvein noted that in past periods of peak demand the Board was able to bring in retired annuitants to assist with the demand. Executive Officer Murphy assured Ms. Brandvein that they did actively search for those annuitant individuals for both the Board's licensing and enforcement staff while the Board continues to endure staff turnover and change; unfortunately, appropriate resources were not found.

Ms. Linden asked if the Board is just limited to the BreEZe system or if it may look at outside consultants or third-party providers of various software-related services to patch in with BreEZe; Executive Officer Murphy explained that the implementation was started 2015 and DCA and the Board are still making improvements to this system; although the Board is at this point locked into the BreEZe system.

There were no requests for public comment.

C. Legislative and Regulatory Update

- i. Assembly Bill 407 (Salas and Low) Optometry: scope of practice**
- ii. Assembly Bill 691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations**
- iii. Assembly Bill 1534 (Committee on Business and Professions) Optometry: mobile optometric clinics: regulations**
- iv. Senate Bill 509 (Wilk) Optometry: COVID-19 pandemic: temporary licenses**
- v. Optometry Continuing Education Regulations (Amend Title 16, §1536)**
- vi. Implementation of AB 896 (Adopt Title 16, §§1583 – 1586)**
- vii. Implementation of AB 458 (Adopt Title 16 §§1507.5; Amend Title 16, §1524)**
- viii. Optician Program Omnibus Regulatory Changes (Amend Title 16, §§1399.200 – 1399.285)**
- ix. Optometry Disciplinary Guidelines (Amend Title 16, §1575)**
- x. Dispensing Optician Disciplinary Guidelines (Amend Title 16, §1399.273)**
- xi. Requirements for Glaucoma Certification (Amend Title 16, §1571)**

Audio of Discussion: [1:17](#) (Video Part II)

Members were referred to the memo on this agenda item which was provided as part of the meeting packet.

There were no requests for public comment.

D. Outreach and Communications Update

E. Strategic Plan Update – Report of Committees

Mr. Johnson reported that as part of the strategic plan staff has begun tracking the Board's social media metrics and posts. In his research of what other boards are doing, he found that the Board has a much more robust social media presence than many other boards, including

the Board of Barbering and Cosmetology which has 560,000 licensed individuals yet they only have 779 followers on Twitter. The physical therapy board which is similar in size to this Board has 733 followers. He noted that we have 866 followers, but our program is much smaller in size than the Board of Barbers and Cosmetology. Other boards do not post like this Board. We post regularly and have some interaction as the data shows. Our social media is growing slowly; we are not actively trying to be optometry influencers yet many of the big national associations and individual optometry influencers follow us. Mr. Johnson assured that the Board is getting traction with our social media work.

Public comment was received from Ruby Garcia who thanked the Board for the discussion. She offered any support they may provide to the Board.

The meeting moved to Agenda Item 10.

10. Staff Presentation and Discussion of 2022 Board and Committee Meeting Dates
Audio of Discussion: [1:21](#) (Video Part II)

Executive Officer Murphy announced that the meeting dates are included in the Member's materials. It is not necessary for these dates to be approved by the Board. There is flexibility for rescheduling as needed. Ms. Linden and President Wang both expressed a conflict with the March 4, 2022 meeting date.

There were no requests for public comment.

12. Future Agenda Items
Audio of Discussion: [1:25:12](#) (Video Part II)

Dr. Garcia suggested (in response to Executive Officer Murphy talking about the OE Tracker being incorporated into the Board's system) that when the time is appropriate it may be a good idea for ARBO to come and explain how this might work and make the process smoother and easier.

Ms. Linden would like to hear more about the ongoing work Dr. Major previously announced regarding increasing optometric access to children. Executive Officer Murphy noted that this is a great organization that has a lot of great data and understanding of healthcare and wellness issues around children. She assured Ms. Linden that staff will make the effort to make that connection and look at bringing some content to the LRC so the Board may discuss how it may further engage in that initiative.

Vice President Morodomi still has many questions regarding the citation system and worksite monitoring. It occurs to him that if an ALJ orders worksite monitoring and does not specify what things should be monitored the Board's hands are tied. The Board may not be able to alter that order without an additional hearing. He noted that the process is still very unclear to him. Executive Officer Murphy responded that she has it in her notes to provide a session specifically on citations and assessments and specifically on probation. She forced staff to change their schedule last time so she cannot commit to this occurring at the next Board

meeting; however, it is on the list and staff will be able to bring that content in 2022.

Public comment was heard by Ruby Garcia. She noticed that there was a future agenda item regarding the low passing rate for opticians; and given that the DOC has not been able to meet; next year there will be at least 11 optician programs and a statewide apprenticeship program opening up; therefore, looking at the passing rate and educational resources she asked how quickly can the Board have these discussions? She noted that perhaps the Board should not bypass the DOC, but this is an important agenda item that needs to be addressed.

Executive Officer Murphy announced that the Board will now enter closed session and immediately upon conclusion of closed session the meeting will adjourn, and there will not be any further public information. She thanked everyone for their attendance and input.

13. Closed Session

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

B. The Board will meet in Closed Session Pursuant to Government Code Section 11126(a)(1) to Conduct the Annual Performance Evaluation of its Executive Officer

Upon conclusion of closed session, the meeting adjourned.