

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, JD., 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
 FINAL BOARD MEETING MINUTES**

Friday, March 11, 2022

This public meeting was held via WebEx Events.

| Members Present | Staff Present |
|-------------------------------|---|
| Lillian Wang, President | Shara Murphy, Executive Officer |
| Marc Morodomi, Vice President | Randy Love, Assistant Executive Officer |
| Jeffrey Garcia, OD | Marc Johnson, Policy Analyst |
| Glenn Kawaguchi, OD | Terri Villareal, Enforcement Lead |
| Joseph Pruitt, OD | Natalia Leeper, Lead Licensing Analyst |
| Sandra Sims, JD | Brad Garding, Enforcement Analyst |
| David Turetsky, OD | Rebecca Bon, Legal Council |
| Donald Yoo, JD | |
| Members Absent | Guests |
| Eunie Linden, Secretary | |
| Cyd Brandvein | On File |

**Link for the audio of discussions: Part I <https://youtu.be/eLAH3Kz1DIQ>
 Part II <https://youtu.be/TAeHM-D8RQ>**

OPEN SESSION

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

Audio of Discussion: [0:04](#)

Board President, Dr. Lillian Wang called the meeting to order at 9:30 am and took roll call. Board Secretary, Eunie Linden, and public member, Cyd Brandvein were absent. All other Members were present and a quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: [0:57](#)

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).)

There were no requests for public comment.

3. President’s Report

A. Call for Board Officer Nominations

Audio of Discussion: [1:49](#)

President Wang announced that she is calling for Board officer nominations which must be received by April 8, 2022. Elections will be held at the next full Board meeting on May 20, 2022.

Executive Officer, Shara Murphy added that nominations are accepted from members of the Board as well as stakeholders within the community. The nominations are requested to all be in by April 8th to allow those who are nominated to prepare a statement for a presentation to the Board on May 20th.

4. Discussion and Possible Approval of Meeting Minutes

A. November 19, 2021, Board Meeting

B. January 7, 2022, Board Meeting

C. January 21, 2022, Board Meeting

Audio of Discussion: [4:07](#)

President Wang noted that in section five line five of the November 19th meeting minutes, Charlottesville was referenced when in fact, the National Board of Examiners in Optometry (NBEO) was in Charlotte, North Carolina.

Ms. Murphy observed a typo in Mr. Mark Morodomi’s name.

Dr. Glenn Kawaguchi explained that although he did not attend the January 7th and 21st meetings, he did review the minutes and feels comfortable with voting.

Legal Counsel, Rebecca Bon commented that she was in attendance during the January 7, 2022 Board Meeting.

There were no requests for public comment.

Jeffrey Garcia moved to accept the November 19, 2021, January 7, 2022, and January 21, 2022, Board Meeting Minutes with the minor edits discussed. Sandra Sims 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 | | | | |

5. Presentation by Association of Regulatory Boards of Optometry (ARBO)

A. Quarterly Meeting Report

B. Presentation on ARBO OE Tracker

Audio of Discussion: [8:50](#)

Ms. Murphy announced that ARBO presenters include Executive Director of ARBO, Lisa Fennell and Drs. of Optometry, Susy Yu, Kenneth Lawenda and Patrick Oneill.

[Ms. Fennell](#) began the presentation. She provided the history and background of ARBO's National Board Exam Review Committee. The Committee was established in 1991 as part of an agreement between ARBO and the National Board of Examiners in Optometry (NBEO), when the NBEO took over the administration of the TMOD exam. The initial purpose of the committee was to review the examinations on an annual basis and ensure that they continue to meet the needs of the ARBO member licensing boards. The oversight committee, The National Board of Examiners Review Committee (NBERC) was tasked by the NBEO Board of Directors to evaluate the content of the exams, review any changes in policies and procedures that impact or may impact the validity or reliability of the exams; additionally, to ensure that the content on the website properly presents the exams to potential candidates. The Committee is established annually by the ARBO Board of Directors. The Committee and all ARBO's budget are developed by the Finance Committee. NBERC attends council meetings every year to observe the exam development process.

Committee Chair, [Dr. Patrick Oneill](#) disclosed that he is solely in the capacity of Co-Chair of the National Board Exam Review Committee (NBERC) of ARBO. He is also the immediate past President of ARBO. As of January 1, 2022, he has begun serving a term on the NBEO Board of Directors.

Dr. Oneill reported that in the past NBERC focused mainly on the content of the exams, and there were not many issues to be found. The validity and reliability were found to be excellent. There was an issue with testing for subconjunctival injections in West Virginia. There were a few issues with exam security and updating Part III. After requests from ARBO's members (due to scope of advancement) the NBE developed laser and surgical procedures exams. More recently NBERC has also investigated conflicts of interest in the exam development process and within the NBEO board. Most item writers are from optometry schools; therefore, NBERC investigated this for any biases from specific programs. NBERC felt that the conflict of interest would be better managed if the Association of Schools and Colleges of Optometry (ASCO) nominees were not administrators

Dr. Oneill praised the cumulative minds who developed the examination. He stated that they are dedicated people who know their content and are committed to doing a great job. NBERC is trying to become a little more involved in the development of the exam; are there conflicts

of interest? Can any sort of bias be introduced that would make it less valid to the State Board of Optometry for licensing its candidates? Any board who has concerns or issues regarding the NBEO examinations should come to ARBO. ARBO and NBERC will start the dialogue with the NBEO to see how the issues can be addressed and matters can be resolved.

President Wang commented that when she served on NBERC and watching what all the different committees went through developing the questions; it was very impressive.

Ms. Murphy announced that a concern came to Dr. Wang and Ms. Brandvein after viewing some materials from the ARBO Annual Meeting. In ARBO's financial statements it is delineated that \$250,000 of ARBO's annual funding comes from NBEO directly. The concern is that if it is NBERC job to ensure that the NBEO examination is the best measurement possible for state or jurisdiction boards to base qualification for practice on. Due to the percentage of funding for ARBO there is the concern that ARBO and NBERC may have a conflict of interest in ever pushing back on whether the NBEO's measurement is the best that it can be.

Dr. Oneall responded saying that every 10 years California does a complete review of NBEO. Florida has just completed a review; Canada has just done one as well to ensure (independently) that it is meeting the standards and recommendations and requirements of their boards.

Dr. Joseph Pruitt asked if the independent reviews have the same potential impact on the NBEO testing as NBERC's review? Dr. Oneall replied that they have different protocols, and his guess is that they are a little bit different and biased regarding needs.

Ms. Fennel added that while ARBO and NBEO do have a revenue sharing agreement, NBERC is more of the collective voice, the feedback from members.

Dr. Pruitt, speaking from experience in having recently served on the committee, attested that there is no conflict of interest currently. However, the question is "could it at some point become an issue"? The issue is the potential for the financial relationship to be seen as the door to conflict arising and deteriorating the quality of the test. Ms. Sandra Sims agreed.

President Wang recommended bringing this agenda item back to the May 27, 2022, Board meeting and to invite Ms. Fennell and Dr. Pruitt back.

Dr. Glenn Kawaguchi asked if Ms. Fennell if she can provide the Board with more details about the NBERC membership and how decisions are made? Ms. Fennell agreed. Dr. Kawaguchi suggested a vetting process where committee members must demonstrate that they do not have any biases.

Ms. Fennel provided an overview on the OE Tracker system. 8.502 California licensed optometrists have some form of CE entered in their OE Tracker account. The tracker provides value to licensing boards by quickly and easily auditing 100% of licensees, reducing administrative efforts, and electronically transfer data from OE Tracker to individual electronic licensing system. Therefore, the OE Tracker benefits the licensing board, the optometrist, and the CE provider. She explained that everyone has an account that they can login at no charge. If an individual wants complete access, there is a charge of \$25 per year.

Ms. Fennel explained that the relationship between ARBO and NBEO goes very far back. The exam began as an exam committee and was eventually incorporated into a separate organization when the NBEO took over the TMOD exam.

Dr. Turetsky argued that OE Tracker is easy to use and to monitor. He believes the Board should be using the OE Tracker and require its licensees to use it as well. Ms. Sandra Sims and Dr. Garcia concurred with Dr. Turetsky. Dr. Lawenda provided a testimonial of the effectiveness of the OE Tracker.

Dr. Garcia asked if the audit can be customized. Ms. Fennel replied “yes”.

Mr. Mark Morodomi asked (regarding jurisdictions that require the use of OE Tracker) if the requirements were made by regulation or statute? Can copies of the legislation or citations be sent to the Members? Ms. Fennel agreed to investigate how the requirements were made.

There were no requests for public comment.

The meeting moved to Agenda Item 8.

6. Discussion and Possible Action on 2022 Legislation – Proposed Changes to Business and Professions Code Sections 655, 2559, 3040 and 3094 (Optometry and Optician Practice Acts)

A. Assembly Bill 1733 (Quirk) State Bodies: open meetings

B. Other Legislation of Interest

Audio of Discussion: [2:45:13](#)

Ms. Murphy reported on this item. Staff continues to work on proposed changes to Business and Professions Code Sections 655, 2559, 3040 and 3094. At the last meeting a workgroup was activated on this issue. Drs. Turetsky and Kawaguchi met with staff. She announced that Cricket Borges comes to the Board with more 20 years of enforcement experience at DCA. Ms. Borges has jotted down some ideas that may improve enforcement and clarify our authority. Staff does not have any textural updates for the Board to review at this point. Staff continues to review. For the last few years Board members have requested that staff research modernization of the Board’s practice act statute, and staff are undertaking this request currently with this workgroup. The Board is not currently included in a legislative vehicle; therefore, none of the changes discussed have a vehicle currently. There are possible vehicles that could be used so staff are in conversations with the Legislature regarding those specific provisions and any others that might be identified before the end of the legislative session. Staff will come back to the Board or committee to discuss those provisions and then bring those to the Board with recommendations.

Ms. Murphy explained that the real action for today is AB 1733 authored by assembly member Quirk which would give the Board an opportunity to continue meeting in teleconferences as well as providing a single public meeting space where attendees might gather if they so choose; but also, can continue to contribute to meetings via WebEx. Last year the Little Hoover Commission conducted studies of several public boards across the state and concluded that over the last two years there was increased participation and the ability to reduce travel costs while using WebEx video services. Consequently, staff is requesting that the Members open discussion and determine if it is their will to provide a support letter or any position on AB 1733.

Mr. Morodomi noted (while reading through the text of the proposed change to the B&P Code) that there are certain situations where it is added to the subject that this covers a person and entity. He asked that staff work with legal counsel to look at the addition of "entity" to that line, as it is his legal understanding that person includes entity. Mr. Morodomi questioned whether the redundancy creates an ambiguity in what the term "person" means? Ms. Murphy explained that staff is bringing this change forward because of the inability to substantiate the Board's claims against Stanton Optical as holding itself out as providing optometric services. The Administrative Law Judge (ALJ) decision specifically stated that there was not a person holding itself out with the ability to provide optometric services and therefore Stanton Optical was not in violation of that provision of law because they are not a person but an entity. Therefore, the Board was unable to defend its citations with the current wording of the statute.

Public comment was heard from Christine Schultz representing the California Optometric Association (COA). Ms. Schultz brought to the Board's attention several pieces of legislation that COA has been working on and that the Board has taken an interest in. COA hopes to get the Board's support on the bill to waive professional licensure renewal fees on most personnel stationed outside of California. This bill is senate bill (SB) 1237 authored by Senator Josh Newman. COA thought the Board might want to co-author this legislation but at the least a support letter would be very helpful moving forward. There is also the bill that Dr. Major mentioned about the PIA lab issue to allow patients to go outside of the PIA to get their glasses. This bill is SB 1089 by Senator Scott Wilk and COA would appreciate the Board's support on this one as well. Lastly, there are two scope measures; one of them, the cleanup bill AB 2574 she believes would be appropriate for the Board to support at this time. This bill addresses two provisions that were inadvertently dropped out when AB 407 was enacted; these are the ability to be a lab director for Clearwave testing and the ability to stabilize a patient with an acute attack of angle closure glaucoma.

The meeting moved to Agenda Item 9.

7. Presentation on Military Licensure by the Department of Consumer Affairs

Audio of Discussion: [2:35:44](#)

Brian Clifford with the DCA Executive Office provided a presentation on the efforts of DCA wide and preexisting legislative statute that provides accommodations for military families and spouses. Mr. Clifford reported that in the Executive Office they saw in 2012 a significant increase in the number of bills relating to military licensure issues. In addition to AB 1588 (the renewal waiver legislation) there was legislation passed to expedite for military spouses. There is a question that must be on every application and renewal regarding military service. At the same time DCA saw an increase in the reporting that the Legislature was requiring from DCA and its boards and bureaus. In 2012 DCA prepared a very large report regarding the acceptance of military credit with military licensure, and that report is on the DCA website. Additionally, the Legislature added military specific questions to the Sunset Review report template which pertain to many of the bills that were passed in 2012 and 2013. Recently the Legislature added additional annual reporting requirements regarding temporary licenses and processing times. This will be added to the DCA annual reporting process in approximately the next 6 months. Some of the benefits that boards and bureaus are required to extend to military members and spouses include expediting applications for honorably discharged and military spouses; however, they still need to meet all the requirements for licensure to get licensed. They just get to go to the front of the line and should be processed as quickly as possible. The renewal waivers for military members called to active duty is a general benefit.

The temporary licensure, which was passed last year and begins July 1, 2022, requires boards to issue temporary licensure to military members. To assist military members and their families, DCA established a dedicated website which provides all this information for them in one place. Additionally, there is a military button to go on every DCA website. In 2018, DCA established the military licensure committee to develop best practices and improve the licensing of military personnel. An intranet page was also created for this committee to share best practices and helpful links regarding the statutes that pertain to military licensure. The statute allows licensees who are called to active duty be exempt from renewal requirements; this includes fees, continuing education, and any other requirements a board may have.

There were no requests for public comment.

The meeting moved to Agenda Item 6.

8. Presentation by Doug Major on behalf of Children's Vision Now.

Audio of Discussion: [1:26:05](#)

Doctor Doug Major provided a presentation on behalf of Children's Vision Now. He summarized the healthcare inequality and explained the rationale for his involvement. There was a vision care crisis during COVID. Glasses were not available because the Prison Industry Authority (PIA) shut down for many months. Various health care groups were begging for a temporary voucher system to meet the needs of these children. The efforts were reprimanded, and PIA contracted with labs outside of California. Children's Vision Now was able to participate during last year's legislation day; over 40 legislators were involved. Dr. Major hired his own lobbyist. During the process he discovered a group called Medi-Cal Children's Health Advisory Panel (MCHAP). This group is supposed to drive all children's initiatives in the state. Although they have dental and health care, they have never mentioned vision in all the agendas Dr. Major has looked at. The MCHAP regards highly and asks for input by a non-profit advocacy group called Children's Now. For this reason, Children's Vision Now formed a coalition with Children's Now to try to get the message out to change policy. Dr. Major noted that they do not want to have to legislate this. It is not a money issue; it is a policy issue. He asserted that vision care needs to be in the Department of Health Care Services Medi-Cal children's dashboard. Mr. Morodomi questioned Dr. Major about what he anticipates the counterargument (from the state) will be regarding the dashboard issue? Dr. Major explained that PIA has categorized it into the PIA problem which they say is getting better. We need to stop allowing PIA to compete with commercial products. No priority is given to children's vision. This is the health care services most widely spread health care disparity.

Dr. Garcia noted that very few optometrists and even fewer ophthalmologists accept Medi-Cal because the reimbursement rates are terrible. The easiest way to increase access to health care is to increase the reimbursement rates just a little bit. It would be surprising how many more children and Medi-Cal patients would be served. If Medi-Cal would cut loose on the lab services and other private or commercial labs were allowed to provide Medi-Cal glasses, it would eliminate that issue completely.

Dr. Kawaguchi commented that sometimes with key stakeholders the willingness to change is a major barrier. He believes we need to improve health care access, and that this is a health care crisis.

Dr. Major noted that a letter from the Board would be very helpful.

Dr. Turetsky commented that he works with skilled nursing facilities, and he sees about 50,000 Medi-Cal recipients each year. He has encountered many of the same issues. Drs. Turetsky and Major will discuss this further.

The meeting moved to Agenda Item 10.

9. Discussion and Possible Action on Regulations on Mobile Optometric Office Owner and Permit Program (Adopt Title 16, §§1583 – 1587)

Audio of Discussion: [2:55:04](#)

Ms. Murphy reported on the progress of these regulations. She reminded Members that last year staff brought a regulatory package to them that works specifically on AB 896. The Board was fortunate enough to work with the former Assembly Budget Chair, Assembly Member, Evan Low in our Sunset Review extension legislation. The Board was also able to confirm some additional details on owner-operator program and mobile optometric office permits. Staff is working diligently with regulatory counsel (right up to the minute this morning) trying to bring before the Members language to review. There are a few more details to iron out with regulatory counsel. Staff will bring the forms and language to the Legislation and Regulation Committee (LRC) on April 22, 2022. Ms. Murphy added that she wants Board Members to know that they are working as feverishly as possible to meet the deadline for approval of this regulatory package by the end of the year. Staff will work with the Legislature as well.

Public comment was received from Dr. James Dearstorff. He announced that approximately six months ago his group started to organize a mobile optometric clinic in Ventura County. He was surprised to learn that there was no legislation or approval for such an endeavor. They raised \$58,000 to build a completely free mobile optometric clinic. Dr. Dearstorff wishes to know how solid the date is when we will know if all the regulations are approved, particularly the physical requirements such as ADA access. Ms. Murphy responded stating that the Board would like for Dr. Dearstorff be a part of the LRC on April 22nd and provide his input as a stakeholder. Staff intends to have the Board review that content during the May 20, 2022, Board Meeting with the hope that it will be approved and move through the regulatory process. She explained that staff is unable to provide a firm deadline but wants to ensure stakeholders that they will have time to offer their input. Dr. Dearstorff responded that he will plan to attend both meetings.

President Wang called the meeting back to session after lunch. She explained that it was brought to her attention that the Board did not take a position on AB 1733.

There were no requests for public comment.

David Turetsky moved for the Board to support AB 1733. Sandra Sims seconded. That Board voted unanimously (7-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 | | | | |

The meeting moved to Agenda Item 11.

10. Department of Consumer Affairs Update

A. Executive Office – Update of Governor’s 2022 Budget

B. Budget Office

Audio of Discussion: [2:12:22](#)

Deputy Director of Board and Bureau Relations, Carri Holmes provided an update on the Governor’s 2022 budget. On January 5, 2022, Governor Newsom signed an executive order that extended the Sunset date set in Assembly Bill (AB) 361 allowing boards and committees to meet remotely through March 31st without disclosing member locations. On January 31 Assembly Member Quirk introduced AB 1733 which would permanently allow boards and committees to meet remotely while also providing physical and virtual options for members of the public to participate.

Ms. Holmes provided an update on the DCA Enlightened Licensing Project. This workgroup was formed in 2020 to utilize licensing subject matter experts throughout the entire department. The group’s purpose is to help individual boards and bureaus streamline and make their licensing process more effective and efficient by utilizing best practices, information technology, and cost-saving measures.

Ms. Holmes announced that Tanya Corcoran began serving as the Department’s first Compliance and Equity Officer effective March 2nd. This position will oversee DCA’s SOLID Training and Planning Solutions, Organizational Improvement Office, Equal Employment Opportunity Office, and Internal Audit Office. This merged oversight will allow DCA to better identify and analyze emerging issues department-wide and provide timely solutions to DCA’s boards, divisions, and bureaus.

Dr. Kawaguchi noted that the Board has been waiting a very long time to get someone appointed to the optician program. This makes it difficult for Members to make fully knowledgeable decisions as it relates to opticianry. Ms. Holmes shares his frustration. She assured the Board that this is on the Governor’s Office radar. Ms. Holmes hopes to have good news soon.

There were no requests for public comment.

Budget Analyst, Veronica Hernandez reported on the Board’s budget condition. She began with the release of the Governor’s budget on January 10, 2022. The budget released provided budget numbers for the Board that includes incremental adjustments to the current FY 21-22 and to the base budget for FY 22-23. The Board’s fund began 2020-2021 with an adjusted beginning balance of just over 2 million. Approximately 1.8 million in revenue was collected and approximately 1.9 million was expended. The Board ended 2020–2021 with almost 2.1 million in reserves, which equates to approximately 9.4 months in reserve. This represents the amount of time the Board can continue normal operations without any

additional incoming revenues. The Board began the current year with 2.1 million, and projects to bring in approximately 2.4 million in revenue and expend approximately 2.6 million, leaving the Board with leaving the Board with 1.8 million or 5.6 months in reserve. Projections could change as we enter the second half of the fiscal year. The Budget Office will continue to monitor these expenditures and revenue, and report back to the Board with monthly reports and future physical months close.

Ms. Hernandez reported that for budget year 2022-2023 which is displayed in the recent Governor's budget the Board projects to receive 4 million in revenues and transfers which includes the transfer of approximately 1.1 million remaining in the RDO fund and expend 4 million, leaving the Board with a fund balance of approximately 2 million or 6.1 months in reserve. Ms. Hernandez explained that a few things to note would be one of the main driving factors to expenditures and incremental increase in future years is a result of personnel service adjustments. These include the general salary increase as well as employee comp and rate adjustments. The Board currently has 3 budget change proposals (BCPs) being reviewed by the Legislature. Any future legislation or unanticipated events could result in the Board's need for additional resources which would increase cost pressures on the fund. The Budget Office will continue to monitor the Board's fund and keep the line of communications with boards and executive staff open for future needs or expectations.

Mr. Morodomi asked if the Board is sufficiently funded and is healthy enough to afford a pay raise for the Board's Executive Officer or alternatively to fund a change in the step-structure for the Executive Officer. Karen Munoz, Budget Office Manager addressed his concern explaining that the Board's 3 BCPs (currently under legislative review) does put some strain on the fund currently. In looking at out years with less revenue and more expenditures it does decline the Board's fund balance; therefore, any additional expenditures will strain the fund. The Budget Office will work with Ms. Murphy and executive staff to see if there are other areas where expense adjustments can be made; however, without an increase in revenue and decrease in expenditures it does decline the fund in future years.

Mr. Morodomi asked again if despite the fund decline, can the Board (right now) afford the pay raise? Can the Board afford a change in the steps right now? Ms. Munoz stated that there is not a current projection for future pay raises other than the normal general salary increase that is projected in future years of approximately 3%. She added that the fund condition will be provided to Ms. Murphy, after the meeting, which does show a 3% increase in expenditures and a decline in the Board's fund. It would be good if there are plans to alleviate the structural imbalances by increasing revenue to balance out the increase to expenditures. Ms. Munoz stressed that based on the current Board structure any increase to expenditures, other than what has been appropriated, would put a strain on the fund. Hypothetically if the Board has already appropriated 3 million to spend and we increase it to 3.2 million that would decline the fund. Budgets is projecting that the Board will spend its full appropriation. However, if additional costs like a salary increase is absorbed within current appropriation it will take away from some of the natural reversions the Board has been able to find, but it does not increase the appropriation. For example, with the 3 BCPs currently under review, any additional resources or increase will decline the fund. If there are any purchases that are absorbed in the Board's current appropriations that the Board can spend it just means less reversion back to the fund.

There were no requests for public comment.

11. **Executive Officer's Report**
- A. Enforcement Program**
 - i. Quarterly Statistics²²**
 - ii. Update on January Enforcement Bulletin**
 - iii. Presentation on Enforcement Citations and Advertising**

 - B. Examination and Licensing Programs**
 - i. Quarterly Statistics**
 - ii. Presentation of Optometry Reinstatement After Cancellation**
 - iii. Update on Immunization Certifications and Processing**

 - C. Regulatory Update**
 - i. Optometry Continuing Education Regulations (Amend Title 16 §1536)**
 - ii. Implementation of AB 458 (Adopt Title 16, §1507.5; Amend Title 16, §1524)**
 - iii. 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)**
 - D. Outreach and Communications Update**
 - E. Strategic Plan Update – Report of Committees**

Audio of Discussion: [5:13](#) Part II

Lead Enforcement Analyst, Terri Villareal reported on A, iii regarding how the Board decides when to issue a citation. Ms. Villareal explained an administrative citation is an enforcement action that is not a discipline and does not seek to suspend or revoke a license. It merely imposes a monetary fine and/or an abatement. She announced that they are public and posted to the Board's website. The Business and Professions (B&P) Code §125.9 authorizes all agencies within the DCA to issue citations for violations of their respective licensing law or regulations. The section specifies, a citation may include a fine for up to \$5,000. B&P Code § 2556.2(h)(1) indicates the Board can issue a cite and fine to an optical company, optometrist, or a registered dispensing optician for violations of this section. B&P Code § 3095 indicates the Board may establish a system for the issuance of citations and the assessment of administrative fines as deemed appropriate by the Board which the Board has done in the following sections:

Ms. Villareal reported that then California Code of Regulations (CC&R) §1576 allows the Board to issue a citation to an optometrist license; CC&R §1577 allows the Board to issue a citation to an unlicensed person for the practice of optometry. These laws are in place to protect the public. Whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public shall be paramount. Citations are issued when the violation can be proven. They bridge the gap between education letters and initiation of formal disciplinary action. Several factors are considered. A list of the most common is as follows: There is no real potential for client patient harm; the act does not demonstrate potential unfitness to practice by the licensee or registrant; and the violation may not be ongoing and is more minor or technical in nature. She explained that minor or technical violations include failing to register for a fictitious name permit, failure to apply for a Statement of Licensure, failure to notify the Board of an address of record change within 30

days, failure to cooperate with a Board investigation, failure to post a license in public view, practicing with an expired license or registration, failure to provide a patient with their prescription at the end of the exam, failure to provide a receipt for services rendered at the end of the office visit, advertising violations, misrepresentation, and failing a continuing education audit. Class A violations range from a minimum of \$1,500 to \$2,500 per violation. Class B violations range from a minimum of \$500 to \$2,500 for each violation; and Class C ranges from a minimum of \$250 to \$2,500 per violation. If a citation contains multiple violations the total amount may be much larger. Additionally, a citation may be issued for up to \$5,000 if certain circumstances apply such as a violation that has an immediate relationship to the health and safety of another person.

Dr. Turetsky requested clarification regarding not receiving a statement after an office visit and whether this is always a citable offense. Ms. Villareal answered that each case depends upon the circumstance. It is not necessarily a citable offense. I may have just been forgotten. The first step towards an investigation is when a consumer files a complaint. Staff would then reach out to the optometrist and ask why a receipt was not provided. They would have a chance to explain their side of the story.

Enforcement Analyst, Brad Garding added that B&P Code § 3076 mandates that a receipt is required to be given at the conclusion of an eye exam.

Dr. Garcia noted that while it is true that administrative citations merely impose a monetary fine or an order of abatement, he does not believe this is completely accurate because they are still reported to the national databank. Ms. Villareal confirmed that they are reported. Dr. Garcia contended that it is important to be transparent and state that there are implications to receiving a citation such as being on a five-year list. He believes the trainings should reflect this fact. Ms. Villareal agreed to add it to this presentation.

Mr. Morodomi agreed with Dr. Garcia and commented that citations are an important enforcement tool. Mr. Morodomi asked if citations show up in the licensee's BreZE records? Ms. Villareal clarified that citations show up on the Board's website under Enforcement Actions and remain there for 5 years.

President Wang noted that citations are not as benign as getting a parking ticket for example. When a licensee with a citation(s) applies for another job, the employer will ask if the licensee has ever received any disciplinary action or citations. Therefore, the citation could prevent the licensee from getting the job. Ms. Villareal confirmed this and added that it can also affect the licensee's insurance or ability to obtain a loan. Although it is not a formal discipline it has repercussions.

Mr. Morodomi stated that in his tenure with the Board he has not seen an agenda item that reports the citations that the Executive Officer has issued during a period. He would like to know what staff is doing during all their enforcement hours.

Dr. Garcia asked if it is a mandate to post citations on board and bureau websites? Ms. Villareal responded that she does not believe it is a mandate. Next Dr. Garcia asked if there is a way to discriminate violations by level of seriousness and listing them accordingly rather than lumping them altogether? Ms. Villareal explained that enforcement's first step is to ask the licensee "why are you doing this?" Sometimes the licensee will write back explaining that they were not aware of the violation and that they have corrected it. If they

have complied, the case is closed. If the Board is unable to get compliance from the licensee, that is when enforcement issues citations.

Assistant Executive Officer, Randy Love addressed why citations are posted to the Board's website. Mx. Love explained that citations are public information and a matter of public record. Whether the violation is minor or less minor, as a consumer protection agency, they are not sure that the Board should be looking at hiding public actions against licensees by not posting and sharing them. As far as posting them to the National Provider Databank, the federal government has asked that the Board do that; therefore, if not posted the Board runs the risk of being in violation of their requirements.

Mr. Garding provided his part of the presentation regarding advertising violations. Advertising is any form of public communication used to bring the practice of optometry or opticianry to the attention of the public. The Board has a culture of enforcement which is to protect the public. The second main function of the Board is to educate licensees. The Board attempts to gain compliance prior to any administrative action. Issuing citations is a last resort when the Board is unable to gain compliance. Advertising violations can lead to deceived or defrauded consumers; therefore, gaining compliance is more important than issuing citations or other actions.

Mr. Garding stated the advertising laws pertaining to optometrists that enforcement sees most often. When practicing with an assumed fictitious name, a fictitious name permit (FNP) issued by the Board is required. All optometrists listed on an FNP must be included in the advertising. The use of Dr. requires the use of "O.D., OPT, optometrist" following their name. Holding oneself out as a specialist in eye disease and/or claiming to have special knowledge of optometry are forbidden. Advertising without the required certificates is a violation. Advertising free eye exams without specifying in the advertisement exactly how the customer gets the free exam is a violation. An optometrist is not a physician and must not be advertised or mislead as such. In general, false, or misleading statements that can mislead the public are violations. Under most circumstances an optometrist must have Statement of Licensures (SOLs) for every practice location other than their address of record. Optometrists must advertise with their Board registered name only. Signs, cards, stationary or other advertising must clearly and prominently identify the individual optometrist or optometrists. FNPs are required when using a fictitious name and must include optometric or optometry in the title. In advertising the fictitious name must be used exactly as issued, and all the optometrists listed on that application must be included in the advertisement.

Next Mr. Garding reported on optician advertising laws. A Registered Dispensing Optician (RDO) may not link their advertising to an optometry practice. In a sublease agreement and RDO may only state there is an independent optometrist located in the leased space. Price advertisements must disclose any fees that are associated. Opticians are not allowed to advertise eye exams or collect fees for eye exams. They are not allowed to furnish eye exams nor state that they provide these services. Additionally, spectacle and contact lens dispensers may not advertise, nor provide optician services apart from an RDO. A consequence of not coming into compliance is that the registrant may not renew the license until compliance is achieved. In the absence of compliance, the case may be referred to the Attorney General's Office for formal discipline where an accusation can be filed. A citation is posted to the registrant's public profile for 5 years. Federal law requires that a citation be reported to the National Practitioner's Data Bank. Some of the potential consequences of a citation include the following: being dropped from and insurance panel, greater difficulty in

obtaining a small business loan, greater difficulty in obtaining optometric equipment from sellers. These consequences are all outside of the Board's control and input.

Dr. Turetsky asked if there is a process by which enforcement makes decisions to ensure there is consistency across every case. Ms. Murphy addressed this question. She explained that what the Board wants to ultimately achieve by a citation and fine is to compel compliance. If compliance is reached before a citation is issued the citation may be appealed. If it is concluded that the citation was improperly issued, the sitting executive officer can modify the citation and remove the fine or withdraw the citation altogether. If compliance is gained through the investigative process and there is not a willful desire to mislead consumers, then it is highly possible that the citation may be withdrawn. Dr. Turetsky asked if in a situation where the licensee does not request the informal meeting and pays the fine it will be recorded and placed on the licensee's record? Ms. Murphy clarified that normal procedure includes making the licensee aware of their opportunity to have an informal conference to appeal the citation amount or the citation itself. Additionally, all citations must be signed by the executive officer.

Dr. Garcia noted that in the profession of optometry, there are specialists who pursue that title by becoming a Fellow of the American Academy of Optometry. They can then apply to become a diplomate. He believes there are certain optometrists in the profession who deserve to call themselves "specialists". Dr. Garcia asked if other states not allowing that title? Ms. Murphy replied that he brought up a great point and that it warrants being made a future agenda item. Ms. Murphy believes that reaching out to the Association of Regulatory Boards in Optometry (ARBO) regarding their uses of specialist will help in bringing this issue to full discussion.

Mr. Joseph Pruitt commented that other jurisdictions exclusively use the title "optometric physicians". He wonders if it is in the Board's best interest to exclude it. He asked if the Board might potentially consider a future discussion on this matter?

There were no requests for public comment.

The meeting moved to B. iii. Update on Immunization Certifications.

Lead Licensing Analyst, Natalia Leeper reported on this agenda item. Ms. Leeper explained that this issue has been brought to the Members to decide whether the Board wishes to accept the 20-hour course. Only about 15 hours can be accepted as continuing education because 35 hours (for all therapeutic certified optometrists) must be in ocular disease. Therefore, the remaining 5 hours will be lost unfortunately. Some of the 8 hours which are a part of self-study may be used towards the 20 hours of self-study allowed. Staff requests that that Board Members decide whether they will accept these hours as continuing education towards their 50 hours every two years.

Dr. Garcia explained how the PEC arrived at 15 hours for immunization certification CE. The PEC felt that much of the content fell cleanly into the Board's CE categories. He noted that since it falls within optometrist's scope of practice it just makes sense to award CE to doctors who engage in this extra certification. They decided on 12 hours of general optometry or miscellaneous CE because 8 hours are live training and 4 hours are self-study. Staff wishes to engage in a bit more research then bring it back to the PEC.

There were no requests for public comment.

The meeting moved on to item 11. E. Strategic Plan Update – Report of Committees

Dr. Turetsky read a report by Cyd Brandvein, Chair of the Consumer Protection and Outreach Committee (CPOC). A few of the issues that the committee touched on are as follows:

- Develop new or refreshed current training for licensees and professionals as well as the Board.
- Committee participated in a pilot onboarding training for new members to be better informed on the regulatory and licensing processes.
- Modifying training for students and for the licensee community.
- Looking at the Board’s communication practices with a focus on what we say and how we say it.
- Sharing of legislative updates to better inform practitioners about changes in practices within the state of California.

Dr. Turetsky then provided a report from the Legislation and Regulation Committee (LRC). During the last LRC meeting the focus was mainly on the cleanup language of AB 1534. Basically, the LRC wants to ensure that the cleanup language enhances consumer protection, closes the loopholes from current legislation, and improve enforcement violations. Additionally, they discussed ways to bring in stakeholders and meeting with other industry players.

Drs. Garcia and Wang initiated a discussion regarding the letters following license numbers which indicate various certifications, and how the Board plans to designate the immunization certification. Ms. Leeper explained that at the beginning of January 2022 she began processing some of these immunization certification applications. She is creating certificates which include the doctor’s license number, their current designation (TPG, TLG etc.), and their address on file with the Board. She explained that the current designation plan is to add an I for immunization to the end of whatever certification they have had, but this will not reflect until this process option is added to BreEZe. In the meantime, she will post to the Board’s website upon Ms. Leeper’s approval so that consumers and other licensees can see who has been issued the certification thus far.

Mr. Morodomi asked why it is necessary to add letters to the license number for the certifications? Dr. Kawaguchi explained that several years ago, he and Dr. Turetsky were involved in trying to increase clarify for consumers about what type of care they could obtain from a practitioner. Nevertheless, he believes it has become too complicated.

Drs. Garcia, Wang, Pruitt, Kawaguchi and Turetsky agreed that the addition of letters is becoming excessive and does not make sense.

Dr. Kawaguchi commented that he has been thinking about the changes that the pandemic has brought to CE and the continued changes the Board will undergo now and in the future regarding CE. He questions how the Board can ensure that doctors are continuing their education in an engaged and effective manner to protect consumers?

Dr. Pruitt noted that BreEZe calls the certifications “specialties which seems to be a contradiction. Ms. Leeper explained that unfortunately, “specialty” is what the Board must use for BreEZe functionality to be able to add the certifications to the license. It is a complicated

technical issue. Dr. Pruitt contended that this is more reason to move away from adding letters to the license as certification designations.

Ms. Murphy stated that the Board has some legislative history to research regarding the intentions of the prohibition against “specialty”, the Board’s history in why the system of letters was enacted and researching national and international data to determine if other jurisdictions allow the listing of specialties. The discussion will be added to a future agenda.

Dr. Wang addressed Dr. Kawaguchi’s question from earlier? She reported that the one thing the PEC requires of all CE providers who want to present live virtual classes is that they must check attendance. They can check by asking a question to confirm the attendee is paying attention or they can request that the attendee type a certain word. There are different methods for checking attention; but the Board cannot force somebody to actively pay attention.

Ms. Sims admitted there is no way to truly guarantee someone is paying attention; nevertheless, there are tools to help gauge attention. She suggested using poll questions related to subject matter throughout the presentation, having short quizzes in between various topics, and break out groups.

There were no requests for public comment.

12. Future Agenda Items

Audio of Discussion: [1:41:49](#) Part II

There were no requests from Members for future agenda items.

There were no requests for public comment.

13. Closed Session

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

The Board Will Adjourn the Meeting

The meeting moved into closed session.

The meeting adjourned at 4:00 p.m.