

# California State Board of Optometry

*A presentation about the Complaint Process.*



*Presented by Enforcement  
Manager Joely Walker*

# The Complaint Process

*The Board protects the health and safety of its consumers through licensing and regulation of the practices of Optometry and Opticianry.*



Ensuring high quality eye care  
for California's consumers



# Business and Professions Code

## Section 3010.1

(Priority of the Board - protection of the public)

- Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions.
- Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

# Meet the Enforcement Staff

- Brad Garding, Analyst – AG and Applicant cases
- Terri Villareal, Lead Analyst - Probation Monitor
- Cricket Borges, Analyst – CE compliance
- Pink Crosby – Technician - Intake





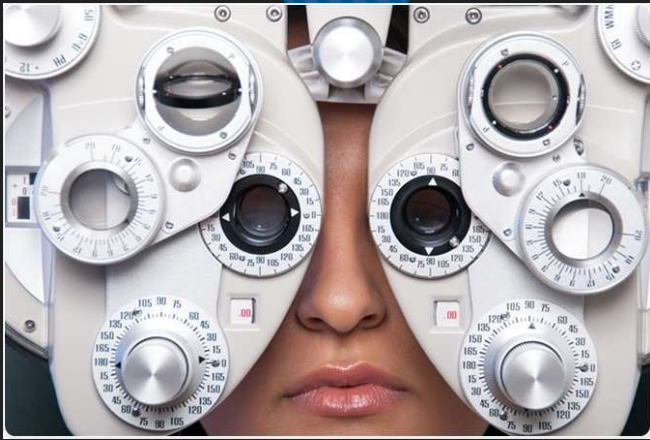
# Enforcement Program

- Protection of the public and patient safety is paramount by law, and rehabilitation only when it does not conflict with public safety

## ***Enforcement staff is responsible for:***

- Responding to complaints
- Conducting investigations
- Monitoring discipline imposed

# Complaint Review Process



Complaints are primarily received from:

- Consumers/patients, family members, or a friend of the patient
- Licensees, government agencies, law enforcement
- Anonymous



# Complaint Review Process

- Complaint Initiation – Triage allegations
  - Sexual misconduct, unprofessional conduct, fraud, and DULs are a few of the allegations staff investigates.



# Complaint Review Process



This Photo by Unknown Author is licensed under CC

Is the issue within the Board's jurisdiction?

- Non-jurisdictional complaints include optometrist/office personnel rudeness; HMO problems or denial of services; etc.

Does the complaint warrant immediate investigation?

- High Priority/Urgent Complaint: sexual misconduct, optometrist or optician impairment (i.e., drugs/alcohol or physical/mental condition)



# Complaint Review Process

- Is there prior complaint history on the Subject?
  - Ongoing investigations/pending disciplinary actions / probation?
  - Any prior complaints for the same allegations?
- What information should be obtained for review?
  - Medical records, police reports/court documents
  - Subject's response

# Complaint Review Process

- Contact the patient (or designee) for authorization to obtain records



- Contact optometrist for treatment summary and medical records



# Complaint Review Process

## Technical Expert Review

- Does the case require a review by a Technical Expert?
- Cases that require an expert review generally involve a misdiagnosis or a missed diagnosis

# Complaint Review Process

- Technical Expert Review of Case - Possible Outcomes
  - Close case
  - Citation and fine (For technical violations: failure to provide medical records, false advertising, etc.)
  - Refer for formal investigation - Division of Investigation



# Types of Violations/Allegations that are investigated

- **Sexual Misconduct** or sexual exploitation of the patient/doctor relationship
- **Over prescribing**
- **Aiding and abetting** (including the unlicensed practice of optometry or opticianry)
- **Optometrist misconduct** (including conviction of a crime, substance abuse, fraud)
- **Mental/physical illness**
- **Gross negligence** (an extreme departure from accepted standards of optometry or opticianry practice)
- **Incompetence** (Subject is found to be lacking in knowledge and performing procedures that are below the standard of care)
- **Repeated negligent acts** (“simple” negligent acts that are not extreme departures from the accepted standards of practice but are still considered a departure from the standard of care – one act of simple negligence is not enough to take formal action)

# Investigation Process

- Possible Investigation Outcomes –
  - Close Case
  - Citation and fine
  - Refer to local district attorney for criminal action
  - Issue a public letter of reprimand
  - Refer for disciplinary action
  - Interim actions (PC23, ISO, Petitions to Compel)



# Disciplinary Process

- Accusation or Statement of Issues filed
  - First public document pursuing formal action
- Notice of Defense filed by the Respondent

# Disciplinary Process

Three types of Decisions:



Stipulated Settlement



Proposed Decision



Default



# Disciplinary Process

- All decisions go to the Board for a vote, either at Closed Session at a Board Meeting or via email ballot
  - ✓ Adopt
  - ✓ Non-adopt
  - ✓ Reject

# Disciplinary Process

- Possible Disciplinary outcomes:
  - ✓ Revocation/Surrender of license
  - ✓ Probation (terms and conditions may include the following:
    - ✓ Taking continuing educational courses
    - ✓ Prohibited practicing, practice restrictions
    - ✓ Retaking an exam
    - ✓ Biological fluid testing at subject's expense






# Disciplinary Process

## ➤ Appeal Process

- Order to Vacate
- Board – Petition for Reconsideration
- Superior Court – Writ of Mandate
- Court of Appeals
- California Supreme Court

# Final Reporting

- ✓ National Practitioner's Databank
- ✓ News Bulletin
- ✓ Board's website

- 
- ☐ Revocation of License (1110)
  - ☐ Probation of License (1125)
  - ☐ Suspension of License (1135)
  - ☐ Summary or Emergency Limitation or Restriction on License (1138)
  - ☐ Summary or Emergency Suspension of License (1139)
  - ☐ Reprimand or Censure (1140)
  - ☐ Voluntary Surrender of License (1145)
  - ☐ Voluntary Limitation or Restriction on License (1146)
  - ☐ Limitation or Restriction on License (1147)





**Questions?**