



CALIFORNIA STATE BOARD OF
OPTOMETRY

Board Meeting

Friday, December 14, 2012

Southern California College
of Optometry



MEMBERS OF THE BOARD

Alejandro Arredondo, O.D., President
Monica Johnson, Vice President
Alexander Kim, Secretary
Kenneth Lawenda, O.D.
Donna Burke
Madhu Chawla, O.D.
Fred Dubick, O.D.
Glen Kawaguchi, O.D.
William Kysella, Jr.

**CALIFORNIA STATE BOARD OF
OPTOMETRY****QUARTERLY BOARD MEETING AGENDA**

Southern California College of Optometry
Blake Meeting Room
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699
(714) 870-7226 (directions only)

Friday, December 14, 2012
9:30 a.m. – 5:00 p.m.
(or until conclusion of business)

ORDER OF ITEMS SUBJECT TO CHANGE**FULL BOARD OPEN SESSION**

1. Call to Order – Roll Call – Establish a Quorum
2. Disciplinary Process – Overview
Presented by Anahita Crawford, Deputy Attorney General, Board Liaison
3. Petitions for Reduction of Penalty or Early Termination of Probation
 - A. Dr. Susanne Anderson, OPT 6613
 - B. Dr. Brent Gibson, OPT 10198

FULL BOARD CLOSED SESSION

4. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION

5. Welcome – President's Report
 - A. Committee Appointments
 - B. Other
6. Approval of Board Meeting Minutes
 - A. August 10, 2012
 - B. August 31, 2012
 - C. October 19, 2012

The Board of Optometry's mission is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers and to ensure high quality care.

7. Executive Officer's Report
 - A. Budget
 - B. Personnel
 - C. Sunset Report
 - D. BreEZe Update
 - E. Examination and Licensing Programs
 - F. Enforcement Program
8. Discussion and Possible Action on Retention Schedule
9. Rulemaking Calendar
 - A. Update on California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
 - B. Update on CCR §1514, Renting Space and Practicing on Premises of Commercial (Mercantile) Concern and §1525.1, Fingerprint Requirements
 - C. Discussion and Possible Action on Comments Received During the 45-day Comment Period for CCR §1508, §1508.1, §1508.2, and §1508.3, Sponsored Free Health Care Events
 - D. Discussion and Possible Action to Draft Language and Commence a Rulemaking to Add and Amend Regulations Pertaining to DCA's Consumer Protection Enforcement Initiative
 - E. Discussion and Possible Action to Draft Language to Clarify the Fees for the Board's Retired License Statuses
 - F. Discussion and Possible Action to Draft Language for the Training of Optometric Assistants
10. Legislation
 - A. Update on Legislation the Board is Following
 - B. Discussion and Possible Action on Possible Proposals for Legislation for 2013-2014
11. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]
12. Suggestions for Future Agenda Items
13. Adjournment

PUBLIC COMMENTS: *Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.*

NOTICE: *The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

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

To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 1 – Call to Order

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

Alejandro Arredondo, O.D., Board President, Professional Member

Monica Johnson, Board Vice President, Public Member

Alexander Kim, Board Secretary, Public Member

Donna Burke, Public Member

Madhu Chawla, O.D., Professional Member

Fred Dubick, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

William Kysella, Public Member

Kenneth Lawenda, O.D., Professional Member

Memo

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

To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 2 – Disciplinary Process - Overview

Anahita Crawford, Deputy Attorney General, Board Liaison will give an overview of the complaint handling and disciplinary process.

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

To: Board Members

Date: December 14, 2012

From: Jessica Sieferman
Probation Monitor, Enforcement Analyst

Telephone: (916) 575-7170

**Subject: Agenda Item 3A. In the Matter of the Petition for Reduction of Penalty
and Early Termination of Probation**

Dr. Susanne Anderson, O.D. (Petitioner) requested a continuance of her petition. Therefore, her petition will be heard at a later date.

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www.optometry.ca.gov

To: Board Members

Date: December 14, 2012

From: Jessica Sieferman
Probation Monitor, Enforcement Analyst

Telephone: (916) 575-7170

**Subject: Agenda Item 3B. In the Matter of the Petition for Reduction of Penalty
and Early Termination of Probation**

Dr. Brent Gibson, O.D. (Petitioner) was issued Optometrist License Number 10198 by the Board on September 16, 1993. On August 17 2010, the Board filed an Accusation against Petitioner charging her with violations of laws and regulations based on allegations of criminal convictions based on drug use. In a stipulated settlement agreed to by Petitioner, on August 4, 2011, Petitioner's license was revoked, the revocation stayed and was placed on three (3) years probation, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant her Petition for Reduction of Penalty and Early Termination of Probation. She is not represented by an attorney.

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

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of Stipulated Settlement and Disciplinary Order, Accusation
3. California Codes and Regulations Section 1516 – Criteria for Rehabilitation
4. Standards for Reinstatement or Reduction of Penalty
5. Certification of Licensure



Board of Optometry
 2420 Del Paso Road, Suite 255
 Sacramento, CA 95834
 (916) 575-7170/(866) 585-2666
www.optometry.ca.gov



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

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

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST) (MIDDLE) (LAST)	CERTIFICATE OF REGISTRATION NO.			
Brent Lee Gibson	10198			
2. ADDRESS (NUMBER) (STREET)	DATE OF BIRTH			
355 N. Maple St.	10-03-1949			
(CITY) (STATE) (ZIP CODE)	TELEPHONE			
Barbark, CA 91505	(818) 800-6878			
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5'11" 250 Blue Lt. Brown				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
Illinois College of Optometry				
ADDRESS (NUMBER) (STREET)				
3241 S. Michigan Ave				
(CITY) (STATE) (ZIP CODE)				
Chicago, IL 60616				
5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

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

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
Costco 2901 Los Feliz Blvd, Los Angeles CA	2002	2007	DR lease Practice in Commercial setting
Costco 21300 Rascoe Blvd, Canoga Park CA	2005	2006	Lease Practice
Walmart-Vision Center Bakersfield CA	2004	2005	Lease Practice

39M-12

Walmart-Vision Center Palmdale/Lancaster, CA 2005 2006 Lease Practice
 Target - Brent L Gibson MD 2006 2007 Lease Practice
 8840 Corbin Ave, Northridge CA

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

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

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

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

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

Date 8-28-12 Signature Brent Gibson

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

August 27, 2012

To all serving members of the California Board Of Optometry;

It is with respect for the Board that I make petition for release of my probation after one year from initial disciplinary action on August 4th 2011. I know very well that the Board takes these request with great scrutiny as the public protection is foremost in your mind. I have spent each year since early 2007 in rethinking, realigning and rehabbing my life to become a better person and I continue to work at it - this was not supposed to be easy and it has not been easy. I made some bad mental and moral decisions in my life and during that period I witnessed the destruction of my marriage, the breakdown of my family, a financial collapse with medical problems, then bankruptcy followed by a family member suicide attempt and finally my personal failures as well as bringing embarrassment to optometry and the local community. I accept none of the above for an excuse to do something personally wrong. I was not brought up that way and have never believed in looking anywhere for the problem but within. I believe I have taken responsibility and put forth effort to change my heart and my thinking so that I would never take those steps or make those morally bankrupt decisions again.

I support myself and spouse with a studio apartment, basic food and living expenses, a 12 year old vehicle on about \$4,000 gross each month. There is no savings, no estate, and usually less than \$100 in the account on any average day. This is not a complaint but a reality for me as I use 20% of my net earnings to pay for drug testing. I'm petitioning release because I have not used any illicit drug since 2007 and I have never been an alcohol drinker and have been tested throughout the intervening years never showing drug use.

I am petitioning because I desire to open myself up to be able to practice more days and to put a greater amount of time into study for the TMOD and CLAR.

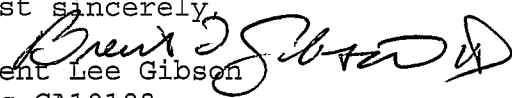
This petition is brought forward because my kidney condition is fourth stage kidney failure and medical tests and ongoing care are required which I cannot otherwise afford to pay. I have just finished seeing a Nephrologist and had to delay that visit by more than six months. I now have tests requested by the specialist that I will have to put off because I do not have insurance or income to support the expense. I am on six different prescription medications for hypertension, cad, enlarged prostate, and kidney function issues which is also an ongoing expense issue. Even with these challenges I feel great and believe that being given the continued opportunity to practice optometry will also serve the public well as I contribute to eye

health care in this state.

I cannot prove what's in my heart but I have done my best to follow the guidelines and rules. I make request of the Board to allow me to take the CLAR test again before any revocation of my license based on my failed attempt at passing the law exam- I acknowledge the importance of the 'laws test' to the Board. Because I have regained a healthy and normal life over the last 5 years and have been compliant in substance to the disciplinary action I ask for early release from probation or a path to early probation release by passing the law exam in 6 months. I would ask for elimination of further drug testing as ~~it~~^{it is now} over 5 years from last use-and every test given in last year was negative for use.

If the Board believes I remain a threat to the public served I will understand and respect your decision. Should the Board desire to meet to talk with me before making any decision I will be available at your request. Thank you.

Most sincerely,


Brent Lee Gibson
Lic CA10198

August 27, 2012

ATTACHMENT TO:

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

7. Yes, my addiction with personal use of crack cocaine likely started in mid year 2005. I reached a point somewhere in 2006 that I would seek out using it and I would want more and I did consider myself to be in addiction. My use progressed to the point in 2007 that I had to smoke it 1,2 or 3 times or more each day.

9. Yes, while going through the court diversion program at Tarzana Treatment Center during most of 2007. Also in Colorado Springs in 2008 and 2009 I would have random drug tests and was observed and treated by a certified addiction therapist for a period of approximately 6 months.

10. Yes Jan 2007 for a felony charge with use of cocaine and small appliance theft and for misdemeanor solicitation in 1999. Both probations were terminated per 1203.4 PC and convictions were expunged.

11. Yes, probation through the present CA Board of Optometry stipulation agreement.

12. Yes, the present disciplinary action taken in August of 2007 by the CA Board of Optometry. This present action is the only disciplinary action I have received since acquiring my doctor of optometry degree in 1974 from Illinois College of Optometry.

13. My name is Brent Lee Gibson and my California license number is 10198. The effective date of my disciplinary action from the Board was August 4th, 2011.

The cause of this disciplinary action by the Board involved my arrest in January 2007 for personal possession and use of cocaine coupled with a personal appliance theft. At that time I did not notify the Board of this event as I should have. I accepted the charges against me and entered the court's diversion program for first time offenders (Deferred Entry of Judgment Program). It was a difficult year but I wanted to get better, and with effort, completed the program on February 5, 2008. I continued rehabilitation under control of my family in Colorado Springs, CO

for 18 months. During this time I was in individual therapy with an certified addiction therapist and spent 6 months living and working with a minister who had experience with counseling addicts from a spiritual standpoint and I would continue to attend 12 step programs usually centered in church programs. I would also work for my brother (general janitorial labor) so as to contribute something toward the expenses of my therapy and additional medical expenses that were necessary. From the days following my arrest I became very committed to turn things around and make things right.

The disciplinary action was justified because of my actions, my arrest, and my lack of communication with the Boarding in 2007 notifying them of my status after my arrest. I acknowledge the Boards primary requirement to protect the public from harm and have continued to work hard to follow the guidelines given me to express the difference in the person I am now from that person 5 years ago.

14. I know I fell short by not passing the CLAR exam and this is solely my responsibility. I do believe that the exam did focus significantly on personal actions and procedures and I am now restudying and believe I will do significantly better and I do hope the

Board can continue to hold me to passing that test without needing to continue with probation and probation activities.

I request or petition my license to be restored for the following reasons:

1) I do not believe I am a risk to the public or to their well being because I have changed to a healthy person emotionally and mentally and enjoy optometry as I did in 1974 when I began practice.

2) I desire to progress forward. The income I receive now leaves me living one week to the next financially. The \$6000 + this past year that was used for drug testing was to inform the board of any continued risk factor I would be. I humbly believe that I have expressed normal healthy human behavior. It would be most helpful to apply those significant dollars toward ongoing medical cost.

I remain with physical issues such as hypertension and now some kidney failure and due to these health issues- some previous to 2007, I have not been able to acquire health insurance affordable enough to cover me. With a restored license I would find it more likely to acquire several more days of practice allowing me to pay off my cost recovery expenses sooner to the board.

3) Much time is spent in drug testing and I have never tested positive because my last use of an illicit drug was 2007

4) In regards to my volunteer work I enjoy it and would continue monthly work with the organization MEND as the experience has been a good one. In regards 12 step meetings I have been a

regular attendee since 2007 and do lead some of these meetings throughout the year. These are a part of my life now and not viewed as an obligation.

5) My efforts include daily search for one or two more days of practice and I will continue whether under probation or granted probation release. Outside of family and optometry my focus on passing the TMOD and CLAR will be priority by using my evenings and most every weekend to studying about treatment and management of ocular disease and the laws pertain to such.

6) The letters of support are from those whom I have been in contact with during this past year and most of them know my attitude and behavior. I asked them to express what they believe in their heart to be true and what they have personally witnessed.

15. Since August 4th 2011, I have continued to practice as an independent contractor for two offices that would still have me work for them while on probation. At least 4 offices have stopped using my services and several others have not contracted for my services probably due in part to my probation status and lack of the TMOD certification. I have worked on credentialing for Medicare, Medical, and VSP and have everything completed except that TMOD certification. Although I had a TPA certification while practicing in Wisconsin it was not accepted in CA in the early 90's and I did not decide to retake it until last year and at 62 it has been difficult to pass so far - but I am continuing studies for the TMOD and expect my efforts will result in gaining certification and that will open up significant practice opportunities as I complete the credentialing process for handling insurance patients.

The following are the places I use my services as an independent contractor:

Affordable Vision Center
906 San Fernando Rd.
San Fernando, CA 91304
Biana Ohanian OD
bianaohanian@msn.com
818-361-1513
Usually every Saturday

Long Beach Eye Center
2572 Atlantic Ave.
Long Beach, CA 90806
Walter Vukceovich MD
vladovuk@aol.com
562-424-0931

I have taken some local CE courses that do not cost a lot that being by VRM Institute. Most of my free time outside work,

family, and probation responsibilities has been in studying for the TMOD, and working with the Long Beach Eye Center on clinic issues such as setting up low vision practice services and associated specialized aids for in office ongoing low vision care.

The primary office in which I work two days (usually every tue and thurs) is the above Long Beach Eye Center owned by Walter Vukceovich MD. We have a great professional relationship and I believe he has sent a letter of support on my behalf. I also work every Saturday for doctor Biana Ohanian at her San Fernando office, Affordable Vision Center - my primary contact there is their office manager Olga Zlatin. Olga has also sent a support letter to the Board I believe.

16. The following have been my efforts to continue rehabilitation:

1. Continuing to work on my journal (or book) now half complete concerning life's issues and how I responded to them - and how I achieved freedom from drugs and addiction with help from family and faith.
2. Attending regularly and occasionally leading a 12 Step addiction meeting.
3. I keep in daily contact with my family members that have had an impact on my rehabilitation. This is my Mother, my 4 brothers , my son and daughter and my wife.
4. Attending church and listening to positive messages through music and reading.
5. Studying and reading from journals and online sources related to addiction, spiritual issues and optometry.
6. I really believe that true rehabilitation comes from a change in attitude and outlook. Being thankful for the love of others and the giving of others is what I give thought to. Being forgiven has helped me heal and has given me a spirit of love for others rather than judgment.

17. This past year I have not taken any special courses. The only reason for this is lack of funds. In helping prepare for the TMOD I did take a 120 hour course related to TPA certification at the Optometry school in Florida in the previous year. The Ophthalmologist I presently work with has called me in to observe various procedures he performs and we communicate on special patient cases as they come up daily while working together.

18. These have been my primary source of literature since my

discipline date- they will include sites I regularly use for study online:

reviewofoptometry.com - archive articles
Handbook of Ocular Disease Management
emedicine.medscape.com
bascompalmer.org - usually grand rounds
Digital Journal of Ophthalmology - djo.harvard.edu
eJournal of Ophthalmology
eyeatlas.com
telemedicine.orbis.org

I used the above this past year. Long Beach Eye Center receives several Ophthalmology related journals that I also read.
Google Images

19. The following CE courses have been attended and taken:
I've taken 3 separate 2 hour approved CE classes provided by VMR Institute. I am requesting copies from the VMR institute but have not received them as of yet. I will submit copies of them after receiving them. *Copies should now be enclosed w/ petition. **

20. Most of the following individuals have sent support letters directly.

Walter Vukceovich MD
2572 Atlantic Ave
Long Beach, CA 90806
562-424-0931

David Camuccio OD
21300 Roscoe Blvd.
Canoga Park, CA 91304
818-704-1255

Olga
906 San Fernando Rd.
San Fernando, CA 91304
818-361-1513

Bonnie J Gibson
2645 Kittridge Ave
Colorado Springs, CO 80919
719-434-2993

Ken H Gibson OD
8540 Ryewood Trail
Colorado Springs, CO 80919
719-264-8155

Keith D. Gibson PhD
N 1984 N. Lake Shore Drive
Fontana, WI 53125
262-325-0602

Bryan R. Gibson
2645 Kittridge Ave
Colorado Springs, CO 80919
719-264-1166

Robin B. Gibson
1400 Hi Line Dr.
Dallas Tx 75207
719-235-6514

Tereza Gibson
355 N Maple St
Suite 118
Burbank, CA 91505
818-564-5540

Sincerely,

Brent J. Shindler

8-27-12

TO: WHOM IT MAY CONCERN

RE: Address Change for Brent L. Gibson
Tereza Gibson

Effective 9-1-12 our new
address will be the following:

355 N. Maple St
Suite 118
Burbank, CA 91505

Please use the above address
for all correspondence or
communications.

Brent L. Gibson



Board of Optometry
2420 Del Paso Road, Suite 255, Sacramento, CA 95834-9674
Tel: (916) 575-7170
www.optometry.ca.gov

**CERTIFICATION OF PARTICIPATION IN CONTINUING EDUCATION**

THIS WILL CERTIFY THAT:

GIBSON, BRENT L.
Last Name (Please Print) First MI

Address (Practice Location) Street Number and Name

City State Zip Code

California License No. 10198

Signature of Licensee

ATTENDED: NEW INTRAOCULAR DRUG DELIVERY SYSTEMS
(Course Title)

SPONSORED BY: VMR Institute
(Name of Sponsoring Organization)

AT: 7677 Center Ave. #400, Huntington Beach, CA
Location where course(s) were provided

ON: April 18, 2012 FOR: 2 / 2
Date(s) Hours Credit

COURSE INSTRUCTOR(S): Lawrence P. Chong, MD

Signature of Instructor

Signature of Instructor

NOTE: This ENTIRE form MUST be complete. Please DO NOT send any records of continuing education attendance to the board office unless requested to do so.

State of California - State and Consumer Services Agency

Edmund G. Brown, Jr - Governor



Board of Optometry

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Tel: (916) 575-7170

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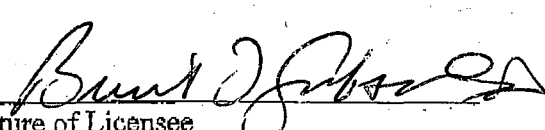
CERTIFICATION OF PARTICIPATION IN CONTINUING EDUCATION

THIS WILL CERTIFY THAT:

GIBSON, BRENT L.
Last Name (Please Print) First MI

Address (Practice Location) Street Number and Name

City State Zip Code

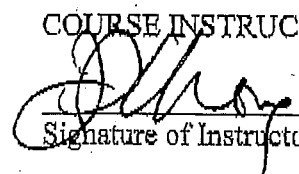
California License No. 10198
Signature of Licensee

ATTENDED: **DIABETIC RETINOPATHY**
(Course Title)

SPONSORED BY: **VMR Institute**
(Name of Sponsoring Organization)

AT: **7677 Center Ave. #400, Huntington Beach, CA 92647**
Location where course(s) were provided

ON: January 18, 2012, FOR: 2 / 2
Date(s) Hours Credit

COURSE INSTRUCTOR(S): Lawrence P. Chong, MD
Signature of Instructor_____
Signature of Instructor

NOTE: This ENTIRE form MUST be complete. Please DO NOT send any records of continuing education attendance to the board office unless requested to do so.

State of California - State and Consumer Services Agency

Edmund G. Brown, Jr - Governor



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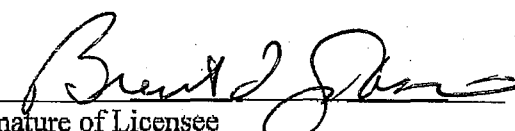
**CERTIFICATION OF PARTICIPATION IN CONTINUING EDUCATION**

THIS WILL CERTIFY THAT:

GIBSON, BRENT L
Last Name (Please Print) First MI

Address (Practice Location) Street Number and Name

City State Zip Code

California License No. 10198
Signature of Licensee

ATTENDED: **ANOMALOUS PVD & FLOATERS**
(Course Title)

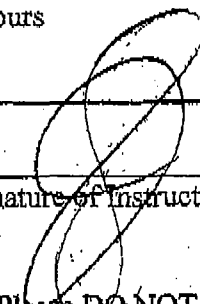
SPONSORED BY: **VMR Institute**
(Name of Sponsoring Organization)

AT: **7677 Center Ave. #400, Huntington Beach, CA 92647**
Location where course(s) were provided

ON: February 21, 2012, FOR: 2 / 2
Date(s) Hours Credit

COURSE INSTRUCTOR(S): J. Sebag, MD

Signature of Instructor


Signature of Instructor

NOTE: This ENTIRE form MUST be complete. Please DO NOT send any records of continuing education attendance to the board office unless requested to do so.

CORPORATE OFFICERS

Scott Taylor
Chief Executive Officer
Board Chairman

Albert M. Sanello
President
Chief Operating Officer

David L. Stone, Ph.D.
Vice President
Chief Financial Officer

William J. Sweeney
Vice President
Chief Marketing Officer



TARZANA TREATMENT CENTERS

Approved by the State of California

Alhambra Hospital • Alhambra Hospital • Alhambra Hospital • Alhambra Hospital

Alhambra Hospital • Alhambra Hospital • Alhambra Hospital • Alhambra Hospital • Alhambra Hospital • Alhambra Hospital

www.TarzanaTC.org

TO: Jessica
Siefferman

COMPLETION LETTER
Deferred Entry of Judgment Program.

Date: April 26, 2012.

To: Brent Gibson

Re: Gibson, Brent
Admission Date: 4-16-07
Completion Date: 2-5-08.

This letter is to confirm that Brent Gibson, DOB 10-3-49, has completed Tarzana Treatment Centers' Deferred Entry of Judgment / PC1000 Program of education and counseling services to raise awareness of substance-use risks and to support diversion from negative consequences through positive behavioral change.

Should there be any questions, please do not hesitate to call the undersigned at (818) 996-1051, extension 1128.

Respectfully,


Stephen Lasicka, CATC.

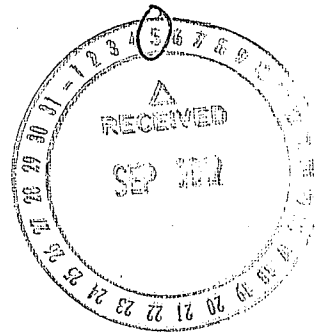
cc: Participant.

SINCE 1972

DETOXIFICATION • RESIDENTIAL • PREVENTION • WOMEN'S SERVICES • COMMUNITY EDUCATION • FAMILY MEDICAL CARE • MENTAL HEALTH
OUTPATIENT • YOUTH SERVICES • SOBER LIVING • HIV/AIDS SERVICES • AFTER CARE • FAMILY SERVICES • DOMESTIC VIOLENCE

8/28/2012

California Board Of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Re: Brent Lee Gibson. OD
CA Lic. # 10198

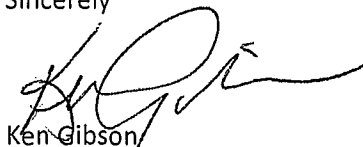


Dear Sirs,

I'm Brent older brother. Brent was a partner with me in our optometric practice in Wisconsin back in the 70's. When he was having drug problems a few years ago, I covered the cost of a treatment program in California and later brought him to live with me in Colorado Springs while getting treatment for his addiction. After almost a year he returned to his family in California and sought work. In the past two years, I've seen him five or six times, question and observed him, and found no evidence of drug use.

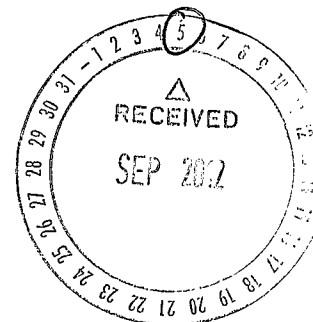
Due to his age, previous history, lack of drug certification as an optometrist, tough economic times, and the fact that he has passed all his 100 or so past drug tests, I ask that you end or reduce the require testing, also saving him significant costs and reducing stress on him. Recently our family of 60 took a family cruise together and because of the potential of being called to take a drug test at any moment, he was unable to join us. Yes, he brought that on himself, but not being able to spend time with his brothers and their families – which has been and is very positive and helps hold him accountable – was a missed opportunity to further assist and encourage him. I trust that you consider dropping the continued requirement of weekly drug testing to assist him and his family. Thank you.

Sincerely


Ken Gibson
LearningRx Inc. CEO



WALTER M. VUKCEVICH, MD
Eye Physician and Surgeon
Certified in Laser Surgery
2572 Atlantic Avenue
Long Beach, CA 90808
Tel. (562) 424-0931
Fax (562) 595-4030



August 29, 2012

To California Board of Optometry members:

My name is Walter Vukceovich, a physician by profession and owner of the Long Beach Eye Center. When searching for optometry services for my center I had the pleasure of meeting and talking with optometrist Brent Gibson. We reviewed and discussed his CV and he presented current probation status with your Board and the reasons for the discipline action. He was open and honest about his previous drug use and I reviewed the discipline order from your Board. Although the probationary license was a concern I liked doctor Gibson's demeanor and believe I had found the right person to see and examine patients in my center.

I enjoy working with him and the patients in my center speak very highly of him. He really enjoys what he does and is always professional. We work and consult together on patients when suggested and he is always trying to learn more. I believe he is a very good optometrist, has a gentle spirit, and is an asset to your profession.

I would add this. We are so happy with doctor Gibson that I am hoping to offer him a full time contract provision before the end of the year. he relates extremely well to colleagues, staff and patients.

I hope the Optometry Board sees fit to serve the public by allowing this doctor serve the public with a license free from probation.

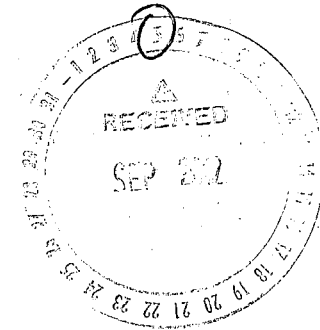
Sincerely,

A handwritten signature in cursive script that reads "Walter Vukceovich".
Walter Vukceovich MD

August 29th, 2012

RE: Brent Gibson

California Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834



To Whom It May Concern:

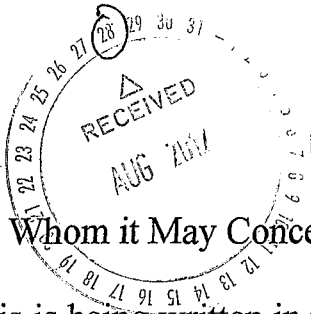
First off, I would like to thank you for your diligence and concern for the public when it comes to a recovering addict whose profession is that of an optometrist. It has been your concern that helped cement his recovery and record the steps he has taken to be who he is again today. My name is Tereza Gibson, I am Brent Gibson's wife of 33 years. I have seen Brent in his highest and lowest of points. I am not someone who stands by allowing myself to be dragged down by someone who puts others in jeopardy by nature. I have always put my children and others first so I can not relate to my husband or his choices. With this I must say I have seen a huge change from when he was an addict and this change came in 2007. Why or what has been a catalyst for his change is beyond me other than faith. Brent's attitude and a recovery is a statistic of its own. He is back to the man I knew, a caring, kind, loving person who has a passion to help others. He has an eye and skill that benefits any patient that comes to him for care. I am writing because as his wife I am someone who is fully involved in his life. I must say you have done all you could do to as a board to see to the public safety and with that in return you have been a benefit to his recovery, however I find that your support is beyond procurement. Brent has been clean for over 5 years. His handling of stress and life's struggles up to this point since 2007 has been of no question to me that he is fully recovered. It is best for the public that his probation be removed because Brent is a highly skilled doctor and is performing at full capacity. Practices that would normally hire Brent by seeing his patient interaction and level of skill only hesitate due to his probation and the affects that it may have on business. Their positive personal and professional opinions doesn't project how the board currently treats Brent's current standings. I would also like to mention regardless of my husband's quality of life due to his kidney failure and/or our lack of funds to pay for his medical expenses, he is still positive and pushing forward without any sign of relapse. Again, I say you have done what you have set out to do in order to be sure of the patients interest and of a practicing doctors recovery. Anything beyond what you have done thus far is not only hurting the quality of life for Brent but also his patients that he has the ability and desire to help.

Thank you,

A handwritten signature in cursive script that reads 'Tereza Gibson'.

Tereza Gibson

818-564-5540



Bonnie J Gibson
2645 Kittridge Ave.
Colorado Springs, CO 80919

To Whom it May Concern:

This is being written in reference to Dr. Brent L Gibson (CA.Lic # 110198). Dr. Gibson has been on probation for a drug violation in 2007 and has been having urine tests. I am requesting the testing be stopped at this time since there has been no drug violation since January, 2008. Dr. Gibson stayed in my home during his rehabilitation in 2008 and there has never once been any inclination to take drugs since 2007. Dr. Gibson is a fine Optometrist and the public is not in any risk whatsoever.

After a year of testing it should be shown there are no drugs involved nor should there be in the future. It has been almost five years since the infraction and he has been absolutely clean.

Yes, I may give God and his family the reason he will never return to cocaine again, EVER..

Bonnie J Gibson

August 17, 2012

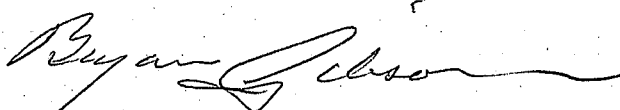
From: Bryan R. Gibson
5085 List Drive Ste 200
Colorado Springs, CO 80919

To: California Board Of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Re: Brent Lee Gibson. OD
CA Lic. # 10198

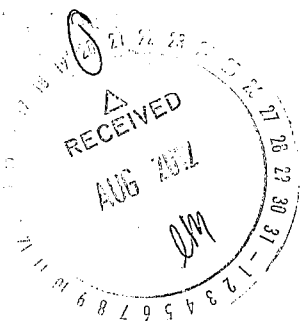
My name is Bryan Gibson. I am one of Brent's brothers and have been close to him all my life. I saw him slip into his drug addiction some 10+ years ago. After several years of denial, and when he finally came to us for help, it took a significant effort on our part, with some up's and downs, to finally assist him in overcoming his addiction. Of course our efforts would have been null if it were not for his commitment to become clean again and remain clean the rest of his life. Having been "to hell and back" has affirmed his commitment to remain clean for over 5 years now. His errors have cost him much of his life and he had been a risk to the public he was serving.

With over 100 drug test for you, and others for us before, without any positive response at all, I believe he has demonstrated clearly his life change and desire to be helpful to others again. I know that serving the public as an Optometrist is of great importance to him as it has been his life's dedication. He wants to again make a positive difference with his life, both professionally and with his family. I believe he is no longer a risk to the public, nor has been for the last 5 years. I would request that you, the California board of Optometry, allow him to continue and fully serve the public to which he is dedicated too, by removing the probation stipulations and status. Thank you for your consideration.

Sincerely,



Bryan R. Gibson - Brother
Directory of Photography
LearningRx, Inc.





David Camuccio, O.D.

21300 Roscoe Blvd.
Canoga Park, CA 91304

(818) 704-1255
FAX (818) 704-1251

Dear Board of Optometry,

Dr. Brent Gibson has worked for me many times over the last seven years. He has been a good doctor, professional, on time, well liked and certainly not harmful in any way to our patients. I wish him good luck in all future professional opportunities. If you have any questions please do not hesitate to call.

Sincerely Yours,

Dr. David Camuccio

California Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Re: Brent Lee Gibson. OD
CA Lic. # 10198

RECEIVED BY
STATE BOARD OF OPTOMETRY
2012 AUG 23 AM 10:21

Members of the California Board of Optometry,

I have been a licensed psychologist over 30 years. As a professional psychologist who has lived and taught professional ethics and the importance of prevention of practice errors, I can clearly understand and appreciate the California Board of Optometry's primary purpose of needing to protect the welfare of the public. Brent's use of drugs six years ago was terribly wrong, in so many ways. Intervention from the Optometry Board and from his family was essential.

There were difficult times six years ago. We didn't know what direction Brent's life would take. But then Brent took the time to carefully examine his life. That self-examination and with help from others, we steadily saw strong positive changes taking place in his life. He was returning to become that wonderful person we knew. I'm so proud of Brent. With what seemed to be insurmountable odds from significant family stress, severe financial stress, and the emotional pain of knowing he went astray; Brent has risen from the ashes of the damage that has occurred. Yet, with many financial stresses still occurring in his life, he has maintained an optimistic outlook. Not only has he been free of any drug use in the past 5 years, Brent has written articles for the purpose of helping others with drug problems. People do have problems, and people can progress beyond those problems. I believe Brent has made tremendous progress and I hope that the Board will carefully consider the need for on-going probation stipulations, especially those that add to Brent's stressful financial situation.

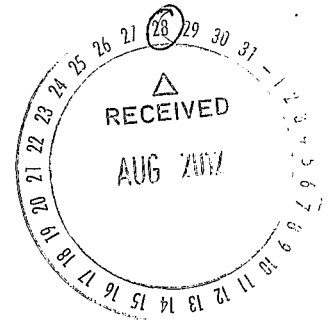


Keith D. Gibson, Ph.D.

N 1984 North Lakeshore Dr.

Fontana, WI 53125

Affordable Vision Center
906 San Fernando RD
San Fernando, CA 91340
(818) 361-1513



To: California Board of Optometry
Attn: Board members
2450 Del Paso Rd. # 105
Sacramento, Ca 95834
Re: Brent Lee Gibson OD
Ca License # 10198

Dear Sir or Madame,

Doctor Gibson has provided professional eye care services for Affordable Vision Center this last year. During this time, while on probation, he has done exceptionally well meeting the needs of our patients. He seems to enjoy seeing patients and they enjoy their experience as well. We have received only positive feedback from our patients and we value that so much for our practice. We have no hesitation in recommending doctor Gibson to provide services to any person who inquires and needs vision services. During this last year doctor has been very dedicated in working with us and we believe that he is an asset to the "vision care patient" community and not a question mark.

Sincerely , Olga Zlatin

A handwritten signature in black ink, appearing to read "Olga Zlatin", with a long horizontal flourish extending to the right.

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

In the Matter of the Accusation Against:

Case No. 2009-125

BRENT LEE GIBSON

OAH No. L-2010091115

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on August 4, 2011

It is so ORDERED July 5, 2011

A handwritten signature in black ink, appearing to be "Brent Lee Gibson", written over a horizontal line.

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. CC-2009-125

11 BRENT LEE GIBSON

12 Respondent.

OAH No. L-2010091115
[REVISED] STIPULATED
13 SETTLEMENT AND DISCIPLINARY
14 ORDER

15
16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19
20 PARTIES

21 1. Mona Maggio ("Complainant") is the Executive Officer of the State Board of
22 Optometry ("Board"). Complainant brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Langston M. Edwards, Deputy Attorney General.

25 2. Respondent Brent Lee Gibson ("Respondent") is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.
27
28

1 3. On or about September 16, 1993, the Board of Optometry issued Optometry
2 Certificate of Registration No. 10198 to Respondent. The Optometry Certificate of Registration
3 was in full force and effect at all times relevant to the charges brought in Accusation No. CC-
4 2009-125 and will expire on October 31, 2011, unless renewed.

5
6 JURISDICTION

7 4. Accusation No. CC-2009-125 was filed before the Board and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent on August 25, 2010. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. CC-2009-125 is attached as Exhibit A and
11 incorporated herein by reference.

12
13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, and understands the charges and allegations in.
15 Accusation No. CC-2009-125. Respondent has also carefully read, and understands the effects of
16 this Stipulated Settlement and Disciplinary Order.

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

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

26 //

27 //

28 //

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. CC-2009-125.

9. Respondent agrees that his Optometry Certificate of Registration is subject to discipline and he agrees to be bound by the Board's Probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

11. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

SEVERABILITY CLAUSE

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

//

//

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 10198 issued to Respondent Brent Lee Gibson (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on Probation for three (3) years on the following terms and conditions.

1. Obey All Laws – Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California.

Respondent shall notify the Board in writing within three calendar days of any incident resulting in his arrest, or charges filed against, or a citation issued against, Respondent.

2. Quarterly Reports – Respondent shall submit Quarterly Reports of compliance under penalty of perjury, on forms to be provided, to the Probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of Probation and shall result in the filing of an accusation and/or a Petition to Revoke Probation against Respondent's Optometrist License. Quarterly Report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly Reports are due for each year of Probation and the entire length of Probation as follows:

* For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

* For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

* For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

* For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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

3. Probation Monitoring Program - Respondent shall comply with requirements of the Board appointed Probation Monitoring Program, and shall, upon reasonable request, report to or appear to a venue as directed.

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

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring.

Monitoring includes, but is not limited to, any violation of any Probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his terms and conditions of Probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of Probation and will result in the filing of an Accusation and/or a Petition to Revoke Probation against Respondent's Optometrist license.

4. Probation Monitoring Costs - All costs incurred for Probation monitoring during the entire Probation shall be paid by the Respondent. The monthly cost may be adjusted

1 as expenses are reduced or increased. Respondent's failure to comply with all terms and
2 conditions may also cause this amount to be increased.

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

6 If Respondent is unable to submit costs for any month, he shall be required, instead, to
7 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
8 submit the costs, including payment amount(s). Supporting documentation and evidence of
9 why the Respondent is unable to make such payment(s) must accompany this submission.
10

11 Respondent understands that failure to submit costs timely is a violation of Probation and
12 submission of evidence demonstrating financial hardship does not preclude the Board from
13 pursuing further disciplinary action. However, Respondent understands that by providing
14 evidence and supporting documentation of financial hardship it may delay further Disciplinary
15 Action.
16

17 In addition to any other Disciplinary Action taken by the Board, an unrestricted license will
18 not be issued at the end of the Probationary period and the Optometrist license will not be
19 renewed, until such time as all Probation Monitoring Costs have been paid. The filing of
20 bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to
21 reimburse the Board for costs incurred.

22 5. Function as an Optometrist – Respondent shall function as an Optometrist for
23 a minimum of 60 hours per month for the entire term of his Probation period.

24 6. Notice to Employer – Respondent shall provide to the board the names,
25 physical addresses, mailing addresses, and telephone number of all employers and supervisors
26 and shall give specific, written consent that the Respondent authorizes the board and the
27
28

1 employers and supervisors to communicate regarding the Respondent's work status,
2 performance and monitoring.

3 Respondent shall be required to inform his employer, and each subsequent employer
4 during the Probation period, of the discipline imposed by this decision by providing his

5 supervisor and director and all subsequent supervisors and directors with a copy of the
6 Decision and Order, and the Accusation in this matter prior to the beginning of or returning to
7 employment or within 14 days from each change in a supervisor or director.

8 The employer will then inform the Board, in writing, that he is aware of the Discipline, on
9 forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
10 obtain additional forms if needed.
11

12 7. Notice to Patients - During the period of Probation, Respondent shall post a
13 notice in a prominent place in his office that is conspicuous and readable to the public. The
14 notice shall state the Respondent's Optometrist license is on Probation and shall contain the
15 telephone number of the State Board of Optometry. Respondent shall also post a notice
16 containing this information prominently on any website related to his Practice of Optometry.
17 The above-described notices shall be approved by the Board within 30 days of the effective
18 date of this decision.
19

20 8. Changes of Employment or Residence - Respondent shall notify the Board,
21 and appointed Probation Monitor, in writing, of any and all changes of employment, location,
22 and address within 14 days of such change. This includes, but is not limited to, applying for
23 employment, termination or resignation from employment, change in employment status, and
24 change in supervisors, administrators or directors.
25

26 Respondent shall also notify his Probation Monitor AND the Board IN WRITING of any
27 changes of residence or mailing address within 14 days. P.O. boxes are accepted for mailing
28

1 purposes; however the Respondent must also provide his physical residence address as well.

2 9. Cost Recovery – Respondent shall pay to the Board a sum not to exceed the

3 costs of the investigation and prosecution of this case. That sum shall be \$5,700.00 and shall

4 be paid in full directly to the Board, in a Board approved payment plan, within 6 months from

5 the end of the Probation term. Cost recovery will not be tolled.

6 If Respondent is unable to submit costs timely, he shall be required instead to submit an

7 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he

8 will be able to submit the costs, including payment amount(s). Supporting documentation and

9 evidence of why the Respondent is unable to make such payment(s) must accompany this

10 submission.

11 Respondent understands that failure to submit costs timely is a Violation of Probation and

12 submission of evidence demonstrating financial hardship does not preclude the Board from

13 pursuing further disciplinary action. However, Respondent understands that by providing

14 evidence and supporting documentation of financial hardship may delay further Disciplinary

15 Action.

16 Consideration to financial hardship will not be given should Respondent violate this term

17 and condition, unless an unexpected AND unavoidable hardship is established from the date of

18 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not

19 relieve the Respondent of his responsibility to reimburse the Board for these costs.

20 10. Take and Pass Licensure Examination(s) – Respondent shall take and pass

21 the California Laws and Regulations Examination (CLRE). Respondent shall pay the

22 established examination fees. If Respondent has not taken and passed the examination within

23 twelve months from the effective date of this decision, Respondent shall be considered to be in

24 Violation of Probation.

25

11. Community Service - Within 30 days of the effective date of this Decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free professional services on a regular basis to a community of charitable facility or agency, amounting to a minimum of 8 hours per month of Probation.

Such services shall begin and end within the time period as designated by the Board.

12. Valid License Status - Respondent shall maintain a current, active and valid license for the entire length of the Probation period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall constitute a Violation of Probation.

13. Tolling for Out-of-State Residence or Practice - Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the Probation period but will not toll the Cost Recovery requirement, nor the Probation Monitoring Costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as an Optometrist is/was provided.

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

14. License Surrender - During Respondent's term of Probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition of Probation, Respondent may surrender his license to the Board. The Board reserves the right to

1 evaluate Respondent's request and exercise its discretion whether to grant the request or to
2 take any other action deemed appropriate and reasonable under the circumstances, without
3 further hearing. Upon formal acceptance of the tendered license and wall certificate,

4 Respondent will no longer be subject to the conditions of Probation. All costs incurred (i.e.,
5 Cost Recovery and Probation Monitoring) are due upon Reinstatement.

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

8
9 15. Violation of Probation – If Respondent violates any term of the Probation in
10 any respect, the Board, after giving Respondent notice and the opportunity to be heard, may

11 revoke Probation and carry out the Disciplinary Order that was stayed. If a Petition to Revoke
12 Probation is filed against Respondent during Probation, the Board shall have continuing
13 jurisdiction and the period of Probation shall be extended until the matter is final. No petition
14 for modification of penalty shall be considered while there is an accusation or petition to
15 Revoke Probation or other penalty pending against Respondent.

16
17 16. Completion of Probation – Upon successful completion of Probation,
18 Respondent's license shall be fully restored. Respondent may Petition for Early Termination of
19 Probation after one (1) year.

20 17. Abstinence from Use of Mood Altering Substances – Respondent shall
21 completely abstain from the possession or use of alcohol, any and all other mood altering
22 drugs, substances and their associated paraphernalia, except when the drugs are lawfully
23 prescribed by a licensed practitioner as part of a documented medical treatment.

24 Respondent shall execute a release authorizing the release of pharmacy and prescribing
25 records as well as physical and mental health medical records. Respondent shall also provide
26 information of treating physicians, counselors or any other treating professional as requested
27
28

1 by the Board.

2 Respondent shall ensure that he is not in the presence of or in the same physical location as
3 individuals, who are using illegal substances, even if Respondent is not personally ingesting
4 the drug(s). Any positive result that registers over the established laboratory cutoff level shall
5 constitute a Violation of Probation and shall result in the filing of an Accusation and/or a
6 Petition to Revoke Probation against Respondent's Optometrist license. Respondent also
7 understands and agrees that any positive result that registers over the established laboratory
8 cutoff level shall be reported to each of Respondent's employers.
9

10 18. **Biological Fluid Testing**— Respondent, at his expense, shall immediately

11 participate in random testing, including but not limited to biological fluid testing (i.e. urine,
12 blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by
13 the Board. The length of time shall be for the entire Probation period. The Respondent will be
14 randomly drug tested at the frequency outlined by the Department of Consumer Affairs
15 Uniform Standards for Substance Abuse #4.

16 Respondent shall be required to make daily contact to determine if he is required to submit
17 a specimen for testing, including weekends and holidays, at a lab approved by the Board.
18 Board representatives may also appear unannounced, at any time to collect a specimen. All
19 collections will be observed.
20

21 At all times Respondent shall fully cooperate with the Board or any of its representatives,
22 and shall, when directed, appear for testing as requested and submit to such tests and samples
23 for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled
24 substances. All alternative testing sites, due to vacation or travel outside of California, must be
25 approved by the Board prior to the vacation or travel.
26

27 If Respondent is unable to provide a specimen in a reasonable amount of time from the
28

request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his Probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating

physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reactivate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of Probation and shall result in the filing of an Accusation and/or a Petition to Revoke Probation against Respondent's Optometrist license.

19. **Participate in Group Support Meetings** – Respondent shall attend at least one (1), but no more than five (5), 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) during each week of Probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of Probation.

20. **Alcohol And Drug Treatment** – Respondent, at his expense shall successfully complete a treatment regime at a recognized and established program in California of at least

1 six months duration and approved by the Board. The treatment program shall be successfully
2 completed within the first nine months of Probation. The program director, psychiatrist or
3 psychologist shall confirm that Respondent has complied with the requirement of this decision
4 and shall notify the Board immediately if he/she believes the Respondent cannot safely
5 practice. Respondent shall execute a release authorizing divulgence of this information to the
6 Board.

7 Respondent shall inform the program director, psychiatrist or psychologist of his
8 Probationary status with the Board, and shall cause that individual to submit monthly reports to
9 the Board providing information concerning Respondent's progress and prognosis. Such
10 reports shall include results of Biological Fluid Testing.
11

12 Positive results shall be reported immediately to the Board and shall be used in
13 Administrative Discipline.

14 21. **Employment Limitations** - Respondent shall not work in any health care
15 setting as a supervisor of Optometrists. The Board may additionally restrict Respondent from
16 supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

17 Respondent shall not work as a faculty member in an approved School of Optometry or as
18 an instructor in a Board approved continuing education program.

19 Respondent shall work only on a regularly assigned, identified and predetermined
20 worksite(s) and shall not work in a float capacity.
21
22

23 //

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometry Certificate of Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 5-9-2011

Brent L Gibson
BRENT LEE GIBSON
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

Dated: May 13, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

Langston M. Edwards
LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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1. EDMUND G. BROWN JR.
 Attorney General of California
 2. GLORIA A. BARRIOS
 Supervising Deputy Attorney General
 3. ~~LANGSTON M. EDWARDS~~
 Deputy Attorney General
 4. ~~State Bar No. 237926~~
 300 So. Spring Street, Suite 1702
 5. Los Angeles, CA 90013
 Telephone: (213) 620-6343
 6. Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. CG-2009-125

BRENT LEE GIBSON
 21616 Califa Street, Unit 308
 Woodland Hills, CA 91367
 Optometry Certificate of Registration No.
 10198

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Optometry.

2. On or about September 16, 1993, the State Board of Optometry ("Board") issued Optometry Certificate of Registration Number 10198 to Brent Lee Gibson ("Respondent"). The Optometry Certificate of Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere."

6. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to ... suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that ... the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

7. Section 3090 states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce

1 and administer this article as to license holders, and the board shall have all the powers granted in
2 this chapter for these purposes, including, but not limited to, investigating complaints from the
3 public, other licensees, health care facilities, other licensing agencies, or any other source
4 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
5 adopted by the board."

6 8. Section 3110 states:

7 "The Board may take action against any licensee who is charged with unprofessional
8 conduct ... In addition to other provisions of this article, unprofessional conduct includes, but is
9 not limited to, the following:

10
11 (k) Conviction of a felony or of any offense substantially related to the qualifications,
12 functions, or duties of an optometrist, in which event the record of the conviction shall be
13 conclusive evidence thereof.

14 (l) Administering to himself or herself any controlled substance or using any of the
15 dangerous drugs specified in Section 4022 ... in a manner, as to be dangerous or injurious to the
16 person ... holding a license under this chapter, or to any other person, or to the public, or, to the
17 extent that the use impairs the ability of the person ... holding a license to conduct with safety to
18 the public the practice authorized by the license."

19
20 REGULATORY PROVISIONS

21 9. California Code of Regulations, title 16, section 1517 states:

22 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
23 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
24 shall be considered to be substantially related to the qualifications, functions, and duties of an
25 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
26 to perform the functions authorized by his/her certificate of registration in a manner consistent
27 with the public health, safety, or welfare . . ."

28 //

CONTROLLED SUBSTANCES

10. "Cocaine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(5) and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

11. Respondent is subject to disciplinary action under section 490 and section 3110, subdivision (k), in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a licensed optometrist as follows:

a. On or about April 13, 2007, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Pen. Code section 484, subdivision (a) [theft], in the criminal proceeding entitled *The People of the State of California v. Brent Lee Gibson* (Super. Ct. Los Angeles County, 2007, No. PA058241). The Court sentenced Respondent to 2 days in jail and placed him on probation for a period of 36 months with certain terms and conditions. The circumstances surrounding the conviction are that on or about January 15, 2007 at approximately 10:55 a.m., while working at his place of employment, Respondent was observed taking an electric shaver from the store shelf and not returning it. Respondent did not pay for the electric shaver.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Dangerous Use of Controlled Substances - Crack Cocaine)

12. Respondent is subject to disciplinary action under section 3110, subdivision (l) in that Respondent committed acts constituting unprofessional conduct by using controlled substances to an extent or in a manner dangerous to herself, other persons, or the public or to the extent that such use of controlled substances impaired his ability to conduct with safety to the public the practice authorized by his license as follows:

a. The circumstances surrounding the conduct are that on or around January 22, 2007 while in his office at his place of employment, Respondent was observed on closed circuit television smoking rock cocaine ("crack cocaine"). When officers from the Los Angeles Police Department entered the Respondent's office, Respondent ducked behind his computer and attempted to conceal both the crack pipe (in his hand) as well as the crack cocaine itself (in his mouth). While taking the Respondent into custody, one officer noticed an "off white" substance on the floor, later identified as "cocaine."

b. The Respondent was charged with one felony count of violating Health & Safety code section 11350, subdivision (a) [possession of a controlled substance], in the criminal proceeding entitled *The People of the State of California v. Brent Lee Gibson* (Super. Ct. Los Angeles County, 2007, No. PA058241). The Respondent received a deferred entry of judgment for 36 months, subject to terms and conditions, was ordered to pay \$440.00 in fines, fees and penalties and to enroll in a drug education program.

c. Respondent admitted smoking crack cocaine on multiple occasions at various times during the period of his licensure.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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PRAYER

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

1. Revoking or suspending Optometry Certificate of Registration Number 10198, issued to Brent Lee Gibson.
2. Ordering Brent Lee Gibson to pay the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/17/2010

Mona C. Maggio
MONA MAGGIO
Executive Officer
Board of Optometry
State of California
Complainant

LA2010502524
accusation.rtf

**STATE BOARD OF OPTOMETRY**

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**§ 1516. Criteria for Rehabilitation.**

(a) When considering the denial of a certificate of registration under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a certificate of registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code; and Section 11522, Government Code.



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STANDARDS FOR REINSTATEMENT OR REDUCTION OF PENALTY

CALIFORNIA STATE BOARD OF OPTOMETRY

In petitioning for reinstatement or reduction of penalty under Government Code Section 11522, the petitioner has the burden of proof demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of optometry within the scope of Current law and accepted standards of practice. In reaching its determination the Board may, but is not limited to, consider the following:

- A. The original violation(s) for which action was taken against the petitioner's license, including:
 - 1. The type, severity, number and length of violation(s).
 - 2. Whether the violation involved intent, negligent or other unprofessional conduct.
 - 3. Actual or potential harm to the public, patients or others.
 - 4. The length of time since the violation(s) was committed.
 - 5. Petitioner's cooperation or lack thereof in the investigation of the original offense.
- B. Prior actions by the Board, any state, local or federal agency or court including:
 - 1. Compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
 - 2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
 - 3. The petitioner's legal and regulatory history prior to and since the violation(s).
- C. The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.
- D. The petitioner's documented rehabilitative efforts including:
 - 1. Efforts to maintain and/or update professional skills and knowledge through continuing education or other methods.
 - 2. Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's optometric practice.
 - 3. Service to the community or charitable groups, non-profit organizations or public agencies.

4. Voluntary restitution to those affected by the original violation(s).
 5. Use of appropriate professional medical or psychotherapeutic treatment.
 6. Participation in appropriate self-help and/or rehabilitation groups.
 7. Use of appropriate peer review mechanisms.
 8. Participation in professional optometric organizations or associations.
- E. Assessment of the petitioner's rehabilitative and corrective efforts including:
1. Whether the efforts relate to the original violation(s).
 2. The date rehabilitative efforts were initiated.
 3. The length, time and expense associated with rehabilitative efforts or corrective actions.
 4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice optometry.
 5. Whether the rehabilitative efforts were voluntary and self-motivated, or imposed by order of a government agency or court of competent jurisdiction and complied with as a condition or term of probation.
 6. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
 7. The nature and status of ongoing and continuing rehabilitative efforts.
 8. The petitioner's compliance or non-compliance with all laws and regulations since the date of the original violation(s).
 9. The petitioner's cooperation or non-cooperation in the Board's investigation of petitioner's Petition for Reinstatement or Reduction of Penalty and the facts surrounding that petition.

Nothing in these guidelines shall be construed to prevent the Board from considering any other appropriate and relevant material not within these guidelines in order to assess the Petition for Reinstatement or Reduction of Penalty.

Any statement which petitioner intends to support his or her petition and all witness statements either party intends to introduce at hearing are preferred by the Board to be in the form of an affidavit or declaration rather than merely a letter or unsworn statement.



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CERTIFICATION


The undersigned, Mona Maggio, hereby certifies as follows:

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

On this fourth day of December 2012, the Executive Officer examined said official records of said Board of Optometry and found that Brent Lee Gibson graduated from Illinois College of Optometry in 1974, and is the holder of Certificate of Registration to Practice Optometry No. 10198, which was granted to him effective September 16, 1993. Said Certificate of Registration is currently in full force and effect and will expire October 31, 2013, unless renewed. The current address of record for said Certificate of Registration is 2572 Atlantic Ave., Long Beach, California 90806.

Said records further reveal that, on or about July 5, 2011, in response to the Board's Accusation #2010091115, the Board placed Brent Lee Gibson's license No. 10198 on probation for three years with certain terms and conditions, effective August 4, 2011.

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this fourth day of December 2012.


Mona Maggio, Executive Officer

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

To: Board Members

Date: December 14, 2012

From: Jessica Sieferman

Telephone: (916) 575-7184

Subject: Agenda Item 4 – Full Board Closed Session

Pursuant to Government Code Section 11126(c) (3), the Board Will Meet in Closed Session for Discussion & Possible Action on Disciplinary Matters

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Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 5 – Welcome – President's Report

Welcome by President Alejandro Arredondo, O.D.

A. Committee Appointments

The Board Member Handbook, Chapter 4. Selection of Officers and Committees, Committee Appointments (Board Policy). The President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in Consultation with the Vice President, Secretary and the Executive Officer. Appointment of non-Board members to a committee is subject to the approval of the Board. At its August 10, 2012 the board elected officers for 2012/2013 and members volunteered for board committees. Committee appointments:

Practice and Education Committee

Alejandro Arredondo, O.D.
Madhu Chawla, O.D.
Fred Dubick, O.D.

Consumer Protection Committee

Monica Johnson
Kenneth Lawenda, O.D.
Donna Burke

Public Relations/Outreach Committee

Donna Burke
Alexander Kim

Legislation and Regulation Committee

Seven members volunteered to serve on this committee. As six members constitute a quorum, it was decided to bring legislative and regulatory issues to the full board for discussion. This does not preclude the President to appoint a committee or workgroup to work on legislative or regulatory issues.

Meetings

Committee meetings are held on an as needed basis. There is no law or board policy that sets a requirement for committees to meet. Due to the board membership being at bare quorum over the past two years, the former board president decided to limit the number of committee meetings and refer issues to the full board for discussion versus holding committee meetings. Additionally, this board, as well as other state agencies, are under Governor's order to restrict travel except for mission critical issues. Staff has had to obtain approval for all travel, just recently has delegation been given to the executive officers to approve mission critical travel. (See agenda item 7 for delegation memo).

B. Other

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To: Board Members

Date: December 14, 2012

From: Krista Eklund
Office Technician

Telephone: (916) 575-7170

Subject: Agenda Item 6 – Approval of Board Meeting Minutes

Board members are asked to review, provide edits and approve the attached meeting minutes

- A. August 10, 2012
- B. August 31, 2012
- C. October 19, 2012



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Draft

MEETING MINUTES

Friday, August 10, 2012
Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Blvd
Fullerton, CA 92831-1699

Members Present

Alejandro (Alex) Arredondo, O.D.
Board Vice President
Monica Johnson
Secretary
Donna Burke, Public Member
Madhu Chawla, O.D.
Alexander (Alex) Kim, M.B.A., Public Member
William (Bill) Kysella, Jr., Public Member
Kenneth (Ken) Lawenda, O.D.
Fred Dubick, O.D.

Staff Present

Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Michael Santiago, Senior Staff Counsel

Guest List

On File

9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order – Roll Call – Establishment of a Quorum

Board Vice President, Alex Arredondo, O.D. called the meeting to order, called roll, and a quorum was established.

2. Welcome – President's Report

Welcome

Dr. Arredondo welcomed everyone in attendance and invited everyone say something about themselves.

Professional Member, Fred Dubick practices optometry in Burbank, California. He and his wife are both optometrists. Dr. Dubick is also the President Elect of the California Optometric Association (COA).

Public Member, Alex Kim works at the Southern California Gas Company which serves natural gas for the Southern California area. He serves in government affairs for the Orange County region and as an Asian affairs manager. Additionally, Mr. Kim is on the board of several different chambers in the area.

Public Member, Donna Burke is retired from public affairs for AT&T. Now Ms. Burke spends her time volunteering in the community.

Professional Member, Ken Lawenda is semi-retired but practices in Beverly Hills, CA. This is his second term with the Board. Dr. Lawenda is also a past president of the COA.

Public Member, Monica Johnson is an attorney and Assistant General Counsel for Ventura Foods. She lives in the Orange County area and has served on the Board since December 2005.

Professional Member, Madhu Chawla grew up in Southern California, and attended an optometry school in New England. She has been practicing for 15 years at Kaiser Permanente in Woodland Hills.

Public Member, Bill Kysella was appointed to the Board by Speaker of the Assembly, John Perez. Mr. Kysella is a Deputy City Attorney in Los Angeles where he advises the Los Angeles Department of Water and Power.

Executive Officer (EO), Mona Maggio has been with the Board for five years and with the Department of Consumer Affairs 27 years. She expressed pleasure in working for the Board.

Ms. Maggio invited staff members to introduce themselves.

Policy Analyst, Andrea Leiva has been with the Board for three years. Her areas of expertise include legislation, regulations, website, etc. Ms. Leiva has a Bachelor of Arts degree in communication studies with a concentration in public relations.

Legal Counsel, Michael Santiago is an attorney for the Board, Legal Affairs Division. He became counsel for the Board at the same time Ms. Maggio became EO. Mr. Santiago also assists the Board of Registered Nursing and the California State Athletic Commission. Additionally, he is the Department's current Ethic's Officer.

Dr. Arredondo invited the guests to introduce themselves.

Reichel Everhart is the Deputy Director of Board Relations for the Department of Consumer Affairs.

Optometrists Mary Cavanaugh and Pam Miller came to observe the meeting.

Harue Marsden, O.D., M.S. is a past president of the COA. Currently Dr. Marsden is a professor and Associate Dean of Clinical Education at the Southern California College of Optometry (SCCO).

Morris Berman, O.D. is a professor and the Vice President and Dean of Academic Affairs at SCCO.

Katheryn Scott is a Contract Lobbyist representing Lenscrafters and EYEXAM of California.

Jason Gabhart is the External Relations Manager for the COA.

President's Report

Dr. Arredondo explained he does not have anything to report since he is filling in until the election of the new Board President.

3. Election of Officers

Committee Appointments

Ms. Maggio reported that Business and Professions Code (BPC) Section 3014, states "The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor".

Prior President, Lee Goldstein's term has ended, therefore it is time to hold elections. Ms. Maggio announced she will be opening up the nominations for each office and she explained how the voting process will work.

Ms. Maggio opened the office of President. Drs Lawenda and Arredondo expressed interest. Nominations were closed, votes were taken and Dr. Arredondo was voted President of the Board.

Ms. Maggio opened the office of Vice President. Dr. Arredondo nominated Ms. Johnson who accepted the nomination. Nominations were closed, votes taken and Ms. Johnson was voted Vice President of the Board.

Ms. Maggio opened the office of Secretary. Dr. Arredondo nominated Mr. Kim who accepted the nomination. Nominations were closed, votes taken and Mr. Kim was voted Secretary of the Board.

Ms. Maggio congratulated the new slate of officers as follows:

- Alex Arredondo, President
- Monica Johnson, Vice President
- Alex Kim, Secretary

Committee Structure

Ms. Maggio introduced the committee structure with all the committees the Board has utilized in the past. She explained that not all committees are currently being utilized and this is mainly because the Board has not been at its full composition.

Ms. Maggio reported as follows:

- The Board currently utilizes a Legislative and Regulations Committee which meets once or twice a year. This committee assists staff in developing the legislative calendar and with regulations that need prior review before presentation to the Members.
- An Education Committee is currently utilized by staff. This committee assists staff by reviewing requests for approval of continuing education (CE) courses and by offering guidance regarding CE issues.
- Public Relations – Outreach Committee is an active committee of the Board. This committee assists with the development of outreach and development of educational materials to the Board's stakeholders. Last year this committee assisted staff with the development of two new brochures and the revision of a brochure.
- It is recommended the Board utilize the same committees since these are currently most useful (from staff's perspective). Additionally, there is the matter of the state's budget condition, which does not allow funds for travel and the development of meeting materials. Furthermore, staff will be somewhat on "lockdown" while preparing for the Sunset Report. In October – February, preparation of this report for the Legislature will be the focus of all staff.

Ms. Maggio requested that two Members be appointed as a workgroup or committee to assist staff with the preparation of the Sunset Review Report for the purpose of assuring that the report is clear, concise, and addresses/answers all of the Legislature's questions/issues.

Ms. Maggio advised that a Strategic Planning Committee will not be necessary until late 2013, early 2014 because the Board is still actively working on the last plan. She suggested bringing this issue to a future meeting.

Ms. Maggio explained that according to the Board Members Handbook, the President, Vice President, and Secretary are responsible for appointing members and establishing committees. She also expressed her desire to assist with the process since there are many new Members. Ms. Johnson agreed and suggested conference-calls versus meetings may be productive in allowing the Board to continue the progress made since the last Sunset Review.

Mr. Santiago clarified that if a committee is composed of only two members it does not need to be publicly noticed. Ms. Johnson replied that the Board needs to be transparent and her concern is making certain this fact does not motivate/influence decisions regarding how the committees are staffed.

Ms. Maggio recommended the President be on the Legislative and Regulation Committee. Dr. Lawenda and Mr. Kysella offered to serve on this committee.

Ms. Maggio, Dr. Arredondo, Ms. Johnson, and Ms. Burke briefly discussed the role and structure of the Education Committee. Ms. Leiva suggested consolidating the Practice and Education Committees into one. Dr. Arredondo agreed. Drs. Arredondo and Dubick offered to serve on this committee.

Ms. Maggio reported that the Board has not utilized the Consumer Protection Committee. She explained that the Board works with the Office of Professional Examination Services (OPES) to make certain the exam is a legally defensible one. Subject Matter Experts (California state licensed optometrists) are also utilized; therefore Ms. Maggio believes this part of the consumer protection process is being handled already.

Mr. Kim inquired if it would make sense (in an effort to save money) to merge this committee with the Public Outreach Committee. Mr. Santiago replied by asking if the Consumer Protection Committee is really enforcement disguised as consumer protection. If so, he does not think it belongs with public outreach. Ms. Leiva agreed noting that public outreach is for the stakeholders as well.

Ms. Johnson and Ms. Leiva briefly discussed Board outreach and to who it is directed.

Ms. Maggio restated that the Consumer Protection Committee has never been used since she began working for the Board. Ms. Johnson responded that regardless of its use or lack of use, she believes it is important for the Board to have a committee that is focused on consumer protection. Ms. Burke, Ms. Johnson, and Dr. Lawenda offered to serve on this committee.

Ms. Maggio restated her recommendation to hold off on the Strategic Planning Committee until it is time to construct a new plan. Ms. Johnson responded she would like to see it filled so at least the appointment part of the process is completed. Ms. Johnson and Ms. Burke offered to serve on the Strategic Planning Committee.

Ms. Maggio reported that the Fiscal Committee has not met before. According to the Board Member Handbook, the Secretary and Executive Officer work together on reviewing the Board's budget. Ms. Maggio explained that the Board's budget is basically set by the Department of Finance and the Board does not have discretion other than in requesting budget change proposals (BPCs). She stated it would be helpful to have Members assist with the BCPs. Ms. Maggio stated that a budget report is provided at every meeting and a budget analyst speaks with the Members usually twice each year. Ms. Maggio asked the Members if they would prefer having a Fiscal Committee or continue with the Administrative Manual and have the Secretary work with her on this. Ms. Burke stated she would support the latter and other Members agreed.

Ms. Maggio reported that the Public Relations – Outreach Committee currently consists of two Members (Ms. Burke and Mr. Kim). Both Ms. Burke and Mr. Kim offered to continue serving on this committee.

Ms. Maggio asked for two Members who would be interested in working with staff on the Sunset Review Report. Ms. Burke and Dr. Arredondo offered to assist.

Ms. Maggio explained she may need to reach out to prior Board Members who may have knowledge of issues that occurred in 2002-2003 when the Board was reconstituted. She explained that when she looks at the 2002-2003 minutes they do not appear to be very complete and she wants to make certain she has a complete historical understanding of the issues that occurred.

Selection of Future Board Meeting Dates

Ms. Maggio announced that a teleconference meeting will need to be held in about 15 days to review and approve a regulation. She explained that the Board was asked (after the agenda) to provide clarifying language. Members and staff discussed dates and Thursday, August 23 at 4:00 p.m. was chosen for this teleconference meeting.

Members discussed possible dates for future Board meetings. The dates were selected as follows:

- September 24, 2012 (11:00 a.m.) Conference - Call
(Review Draft Sunset Report)
- November 1, 2012 Southern California
- February 1, 2012 Southern California

4. Approval of Board Meeting Minutes

Members were asked to approve the minutes of the following meetings:

- May 18, 2012
- March 30, 2012
- March 2, 2012

Monica Johnson moved to approve the May 18, 2012 Meeting Minutes. Donna Burke seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Ms. Burke	X		
Dr. Chawla			X
Mr. Kim	X		
Mr. Kysella			X
Dr. Lawenda	X		
Dr. Dubick			X

Donna Burke moved to approve the March 30, 2012 Meeting Minutes. Monica Johnson seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Ms. Burke	X		
Dr. Chawla			X
Mr. Kim	X		
Mr. Kysella			X
Dr. Lawenda	X		
Dr. Dubick			X

Monica Johnson moved to approve the May 18, 2012 Meeting Minutes. Alex Kim seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Ms. Burke	X		
Dr. Chawla			X
Mr. Kim	X		
Mr. Kysella			X
Dr. Lawenda	X		
Dr. Dubick			X

Ms. Maggio noted that she and Ms. Johnson discussed that in spring 2009 a policy was established requiring the minutes to be completed within 30 days of a meeting, reviewed by staff, then sent to the Secretary for review prior to the next meeting. Ms. Maggio stated she would like this policy to continue with Mr. Kim. Mr. Kim agreed to continue this policy.

5. Executive Officer's Report

Ms. Maggio provided an overview of the following:

A. Budget

The Board's budget for fiscal year (FY) 2011-2012 was \$1,564,598. The year end report reveals expenditures as of June 30, 2012 as 41,270,684, or 81% of the budget. The fiscal year end surplus is \$247,615 or 15.8%. The analysis of the Board's fund condition reveals 4.3 months reserve in the current year and 3.9 months in FY 2012-13.

The Board's budget for FY 2012-2012 is \$1,714,000. This amount is subject to change based on Governor's directives, budget letters and adjustments to the budget.

Ms. Maggio explained that because of the state's budget condition, adjustments are often made to the Board's budget even though we are specially funded and do not receive money from the General Fund. Ms. Maggio announced she will have a budget analyst come to the next Board meeting.

Ms. Maggio reported she submitted two BCPs for an increase to our budget for FY 2012-14. The BCPs requested position authority and funding for an associate governmental program analyst (AGPA) position to serve as the lead in the enforcement program and requested for augmentation to the OE&E budget line to cover the increase in rent due to the office's relocation. Both were denied by the Department of Finance. Due to the increase in rent and the costs of the implementation of BreZE, the Board will have to watch its spending very closely to ensure it does not overspend. And with this, the Board is struggling with a staffing shortage.

Dr. Arredondo noted that in 2010/2011 the state borrowed \$1 million dollars from the Board for the General Fund. Dr. Arredondo inquired about repayment status of this loan. Ms. Maggio replied that a repayment plan has not been set. Ms. Maggio also stated she had talked with the DCA Budgets Office about requesting a repayment plan and was advised not to do this.

Dr. Lawenda inquired and Ms. Maggio confirmed that only in the event that the Board may "go into the red" is a request for repayment considered acceptable.

Ms. Johnson suggested that the doubling of our rent may provide a reason for the Board to request repayment. Ms. Johnson also asked Ms. Maggio if Members can direct the EO to inquire about what would be required in order for the Board to be reimbursed. Ms. Johnson noted this is the second donation for something the Board has worked very hard for.

Ms. Maggio asked Ms. Everhart (as the Board Relations Deputy Director) to address Ms. Johnson's question. Ms. Everhart confirmed the "going in the red" is the only time a board can request reimbursement.

Dr. Arredondo noted for the sake of the new Board Members that we are basically self-sufficient with the fees and dues from the doctors.

Ms. Maggio reported that in March 2012, Budget Letter (BL) 12-13 was issued and required that the departments make necessary adjustments to expenditures and positions. Initially the Board was to give up 1.2 positions. Ms. Maggio was able to appeal this and justify the need to keep our positions. However, the Board did have to give up .6 of a position. This means when we fill the new position, the employee will be required to work 36 hours versus 40 hours per week.

On March 12, 2012, the Board received BL 12-05 which provided guidance for submitting Out of State Travel (OST) Blanket requests. Ms. Maggio reported that the Association of Regulatory Boards of Optometry (ARBO) will be having its 2013 Annual Meeting in San Diego California. With substantial justification, Ms. Maggio is hopeful Members and staff will be able to attend this meeting.

Dr. Lawenda noted that although he understands the budgetary limitations, DCA Budgets needs to understand the importance of ARBO to the Board. Dr. Marsden responded that ARBO does publish a newsletter and the minutes of their meetings. Ms. Maggio committed to contacting ARBO and having information at the next meeting. Ms. Maggio also stated she wants to go on record as clarifying that "although former Board member Dr. Susy Yu is an ARBO Board Member she did not vote on behalf of, nor represent the State Board of Optometry when she was there."

B. Personnel

Ms. Maggio reported that Sonia Huestis has been appointed to serve as the Deputy Director, Bureau Relations for DCA, effective June 21, 2012.

Ms. Maggio requested and Ms. Everhart provided a brief overview of the Department's travel restrictions, the new Deputy Director of Bureau Relations, Ms. Huestis and changes to the structure of the Department. The Department of Real Estate and the Department of Real Estate Appraisers will become DCA Boards/Bureaus.

Board Staffing

Ms. Maggio reported that the Board employed a summer youth aid, Miguel Melendrez who worked in the licensing unit. He assisted in creating license files and collating and matching documents for the licensure evaluation process, and helped in organizing the file/supply room. He has been a great help to the office. Ms. Maggio is hopeful that he may be able to return to the Board after graduating High School.

Ms. Maggio announced she just hired a Staff Services Analyst, Rob Stephanopoulos, for the Enforcement Program. Mr. Stephanopoulos begins August 20, 2012. He is new to state service.

Ms. Maggio explained she is still recruiting to fill the Office Technician position in the Enforcement Program which was formerly filled by Dillon Christensen. Mr. Christensen was in a limited term position which sadly expired on July 11, 2012. Ms. Maggio has been unable to reach Mr. Christensen on a list.

C. Examination and Licensing

Ms. Leiva provided an overview of the Office of Professional Examination Services (OPES) which has been working to obtain a new Computer Based Testing Vendor for the DCA Board's and

Bureau's examination programs. The Board currently utilizes Psychological Services LLC (PSI) for the California Laws and Regulations Examination. Ms Leiva reported that she participated in the selection of PSI. Although unofficial it looks like PSI will be the Board's testing vendor once again.

Ms. Burke inquired and Ms. Leiva responded that having PSI as our testing vendor again is very good news. Ms. Leiva explained that staff's experience with PSI was great. They are open and receptive to accommodating this Board's unique needs as well as the needs of our licensees.

Continuing Optometric Education (CE)

Ms. Maggio reported that staff recently received an inquiry from a member of the Asian American Optometric Society (AAOS), a non-COA affiliated optometric society, about the Board's continuing participation in the review of continuing optometric education (CE) courses. Additionally, staff received an inquiry from the Counsel on Optometric Practitioner Education (COPE) which is under ARBO about having all CE which the Board approves go through COPE. Ms. Maggio is working on having an ARBO – COPE member come to the next meeting to speak to the Board regarding their proposal. Dr. Arredondo shared his concern that not all of the optometrists (invited to give presentations at society meetings) are COPE approved.

Dr. Arredondo opened the floor to comment.

Mr. Kysella shared a concern that the Board would be transferring part of the Board's responsibility over to this organization, and we do not have representation with them. Ms. Maggio confirmed Mr. Kysella's understanding and added that the Board also needs to consider the fiscal impact. There is a fee for the providers that helps support the Board.

Dr. Lawenda inquired as to how the Board will deal with requests for continuing medical education (CME) credit for therapeutic optometrists with the increase in the scope of practice. Ms. Maggio responded this will need to be a future agenda item.

Mr. Kim noted (from a public relations point) that this is an opportunity to reach out to specific ethnic groups (i.e., Asian American optometric society) and he asked if we have a database of other ethnic groups (e.g. Latin American, African American, etc.).

Mr. Kysella restated his concern and urged Members to retain control over the CE and not transfer it to COPE.

Ms. Maggio addressed the Members and explained that (at this time) full discussion and action cannot be taken on this issue since it is not an agenda item. However, she has asked for a speaker from ARBO to attend a future meeting, and at that time full discussion and action can take place. Mr. Santiago confirmed this.

D. Enforcement

Exception Report Update

Ms. Maggio reported that at the last meeting staff had explained that data transfer complications resulted in a 651 page exception report that needed to be cleared or responded to (e.g. ordering rap sheets, etc.). A completion deadline had been set for July 1, 2012. Staff worked diligently and the exception report project was completed a week prior to the deadline. There are a few remaining exceptions (not cleared) that cannot be cleared "in-house" however these exceptions are not impeding the issuance of licenses or renewals. The exception report is now being monitored and maintained daily.

Statistics and Performance Measures

Reports were provided for the Member's review. Ms. Maggio explained that a very high influx is seen in the statistics. This increase was caused by the exception report issue. Although the

Board is now meeting the timeline, the complaints opened from this report must be backdated to the date it was received and not the date opened.

Caseload

Ms. Maggio stated the Board's Enforcement Unit is currently operating with two vacancies. As a result, the three remaining analysts have taken on additional workloads and are struggling to meet the standard performance measures set by DCA's Consumer Protection Initiative. It is predicted the Board may not meet the standards until the two vacant positions are filled and trained.

BreEZE

Ms. Maggio reported that the Board is in Phase II of the BreEZE project. The Licensing Unit participated in the configuring of all the licensing applications. During the testing period some glitches were discovered. Staff asked for the project to be postponed for three weeks while the glitches are being corrected.

Probation

Ms. Maggio explained that staff has become aware of an issue facing probationers. One of the standard conditions is community service. Depending on the violation, probationers are ordered to volunteer either free optometric or non-optometric services. Those ordered to volunteer free optometric services are struggling to find organizations willing to allow probationers to volunteer. Ms. Maggio asked if the Professional Members may have ideas to share about how probationers can fulfill this condition.

Board Website

Ms. Leiva provided an overview of the Board's new website which she participated in developing. The Board of Optometry is the second board to have the new website which is an award winning design.

FULL BOARD CLOSED SESSION

11. Full Board Closed Session

Agenda Item 11 – Full Board Closed Session occurred at this time.

Pursuant to Government Code Section 11126 (c) (3), the Board will Meet in Closed Session for Discussion & Possible Action on Disciplinary Matters.

6. Rulemaking Calendar

Ms. Leiva reported on the rulemaking calendar.

A. Update on California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

The modified text was approved at the last meeting; a 15-day comment period began on June 27, 2012 and ended on July 12, 2012 to allow the public to comment on the changes prompted by the comments received. No further comments were received and staff submitted the package for final review to the DCA on July 31, 2012. During the DCA review, the Legal Office discovered confusing language which makes the Uniform Standards appear discretionary. The package was returned to the Board to clarify the language.

Ms. Leiva presented the modified text which was approved by the DCA. Mr. Santiago clarified that this text removes the appearance of Uniform Standards being discretionary. He added that he knows for certain the Office of Administrative Law (OAL) will approve the modified language and this will not come back to the Board again. Because this is not an action item, the Board will have to make the modification to the language and vote on initiating a 15-day comment period on the August 31, 2012 teleconference.

B. Update on CCR §1508, §1508.1, §1508.2 and 1508.3, Sponsored Free Health Care Events
These were approved at the May 18, 2012 meeting. It has been noticed and is currently in the 45-day comment period for public review and discussion. The hearing for this package is Monday, August 13, 2012.

C. Update on CCR §1514, Renting Space and Practicing on Premises of Commercial (Merchantile) Concern and §1525.1, Fingerprint Requirements

Ms. Leiva explained that because this rulemaking package expired on May 27, 2012, staff submitted the package on April 13, 2012 and worked to obtain an extension. Typically rulemaking packages must be completed and submitted to OAL in one year from the Notice date, or else agencies must start the regulatory process over. In this case, the Board falls under an exception that if the rulemaking file has been submitted to the DCA Director for review and the one-year period expires during that review, the one-year period may be extended for a maximum of 90 days. The rulemaking package is currently in the Department of Finance and the Board has until August 21, 2012 to submit it to OAL. Ms. Leiva added she is hopeful it will be submitted on time.

Mr. Kysella asked and Ms. Leiva clarified that if the rulemaking package is approved, then the regulations will become law. Otherwise, the rulemaking process will have to start over.

Mr. Kysella expressed a concern about the Board's reporting requirements for traffic fines under \$300. He noted that traffic fines have greatly increased and many are well over \$300 now.

D. Discussion and Possible Action to Approve Draft Language and Commence a Rulemaking to Add & Amend Regulations Pertaining to the Department of Consumer Affairs' Consumer Protection Initiative

Ms. Leiva reported there is not any proposed language at this time; however, there are provisions in place, which were identified by the DCA from the Consumer Protection Enforcement Initiative (CPEI). The nine provisions identified by the CPEI were previously a priority for the DCA. On April 11, 2011 the Board voted to separate the Uniform Standards/Guidelines from the CPEI regulations in order to better focus on the Guidelines. The rulemaking package would have been too massive and difficult to develop if the two sets of regulations would have remained together. It was decided to continue to work on the CPEI regulations upon the completion of the Guidelines rulemaking package.

Ms. Leiva explained that staff was able to find authority for almost all of the nine provisions. However, staff wishes to revisit this to assure authority for all nine provisions. Ms. Leiva provided a list of the provisions for the Board Members.

Ms. Leiva clarified that all nine provisions have not been implemented. It is up to the Board which provisions become regulation.

Ms. Leiva asked the Board to review the nine provisions and chose the most appropriate for the Board of Optometry, if any. Since it has been over a year since the Board has discussed this issue, staff would like to develop updated regulations to be presented at a future Board meeting.

Mr. Kysella noted that most of the provisions do not appear to reduce workload and make processes more efficient. He expressed concern that as long as the Board is short staffed, thoughtful reasoning needs to take place. Mr. Santiago clarified that when Senate Bill (SB) 1111 died, the Department was asked to identify which sections of SB 1111 could be accomplished through regulation. This is also a question that will arise during the Sunset Report (What is the status of the SB1111 regulations?). Therefore, this issue is more of a Legislative expectation and not so much the Department.

Mr. Santiago and Mr. Kysella agreed there should be thoughtful deliberation.

Ms. Burke announced areas of interest (4. §720.14 – Confidentiality agreements regarding settlements; 5. §720.16(d) and (f) – Failure to provide documents and §718(d) – Failure to comply with Court; 8. §737 – Failure to provide information or cooperate in an investigation; and 9. §802.1 – Failure to report an arrest, conviction, etc.).

Ms. Burke, Ms. Johnson, and Dr. Dubick discussed which of the nine provisions they feel are relevant and should be pursued.

Dr. Dubick noted that they seem to be applicable across the board to all health boards and he asked if we need to “reinvent the wheel”. Mr. Santiago clarified that if it is a provision another board has pursued, this Board would take a look at their language to see if it is something we can present as well. If it is a provision no other board has initiated, then the Board would have to invent the language.

Mr. Kysella (referencing Provision 2. for example) commented that for many health care professionals, engaging in sexual activity is not just a regulation, it is the law. Ms. Johnson pointed out that an optometrist may be on probation for some past violation of this nature and without the ability to stay the revocation, he/she could be practicing while the Board is waiting for the hearing process to come along. Mr. Kysella and Ms. Johnson debated the significance.

Mr. Kysella restated his desire to have a thoughtful discussion before introducing regulations. Ms. Leiva proposed the Board undergo more research about how each of these pertain to the Board of Optometry (e.g. how this section would help or not help), and then make a decision to choose. Dr. Arredondo referred this issue to the Legislative Committee to begin the discussion there. Ms. Leiva reminded the Board that since this is a Sunset Report question, the Board will have to justify why it has not begun working on it. Ms. Leiva presented the structure that will be used in answering the question.

E. *Discussion and Possible Action to Amend §1566.1, Consumer Information to Update the Board's Address*

Ms. Leiva reported that no action is needed as this is just an update of a minor regulatory change (address change) that will be made by staff using the Section 100 procedure. Section 100 changes do not require a regulatory package, only a brief justification why the change is non-substantive. Ms. Leiva will submit this directly to OAL within the next few weeks.

7. Legislation Update and Possible Board Action

A. Bills that May Impact the Practice of Optometry

Assembly Bill (AB) 761 (R. Hernandez)

AB 761 is sponsored by the COA so Ms. Leiva invited Mr. Gabhart to provide an update. Mr. Gabhart reported that staff and lobbyists met with the California Department of Public Health (CDPH). The CDPH are concerned that the language may be interpreted to mean that optometrists may perform mid – high complexity testing which doctors must generally complete additional specialized training to perform. Mr. Gabhart believes COA has worked out clarity amendments. The bill is still moving forward.

Assembly Bill 778 (Atkins)

Ms. Leiva provided an update. This bill (sponsored by Lens Crafters and Californians for Healthy Vision) would legitimize optometrists and opticians working together in the same location.

Ms. Leiva reported that the author will re-introduce this bill in the next legislative session.

The Board continues to be in opposition of this bill and sent a letter of opposition in June 2011. On June 13, 2012, the litigation between the National Association of Optometrists and Opticians, Lens Crafters, Eye Care Centers of America (Plaintiffs), and the DCA (Defendants), the Ninth Circuit

affirmed the constitutionality of California statutes that prohibit licensed opticians from offering prescription eyewear at the same location in which eye examinations are provided, and from advertising that eyewear and eye examinations are available in the same location.

Ms. Scott commented that there are about four or five models of co-location in existence. She also stated that when the company and their partner decide how they will move forward more public conversations will ensue related to how the model will progress.

Dr. Lawenda asked and Ms. Scott replied that 48 other states have models of co-location. She stated that California is one of the few states where there is prohibition on the direct relationship between an optometrist and an optician.

Assembly Bill 1588 (Atkins)

Ms. Leiva reported that this bill would require boards under DCA to waive professional license renewal fees and continuing education requirements for military reservists called to active duty. This bill has passed the Assembly and is in the Senate Appropriations Committee. She stated it appears this bill will make it to the Governor for signature.

Assembly Bill 1733 (Logue)

Ms. Leiva provided an excerpt of the bill and explained the bill changes the name of “telemedicine” to “telehealth” in the optometry practice act. This bill also prohibits health care service plans, specifically Medi-cal managed care programs and the California Program of All-Inclusive Care for the Elderly (PACE), from requiring in-person contact between a health care provider and a patient before payment is made for covered services appropriately provided through telehealth.

Dr. Lawenda inquired and Ms. Leiva responded that this bill is 80 pages in length because it affects every health profession. Every health professions will use the term “telehealth.”

Assembly Bill 1896 (Chesbro)

Ms. Leiva stated that the bill makes state and federal laws conform to further clarify that persons licensed in other states as health practitioners are exempt from any state licensing requirements if they are employed by a tribal health program. AB 1896 was approved by the Governor on July 13, 2012. Although this bill will become law January 1, 2013, staff learned that a couple of DCA boards opposed the bill because tribal health programs were found to be seeking to treat individuals that were not of tribal descent in order to remedy the shortage of health care providers in rural areas. Staff will continue to monitor the implementation of this bill.

Assembly Bill 1904 (Block)

Ms. Leiva explained that since her printed update of this bill, the language has changed. Now AB 1904 will NOT authorize DCA boards to issue temporary licenses to individuals licensed in other states, and married to an active duty member of the Armed Forces assigned to a duty station in California. It WILL require DCA boards to expedite the process for individuals in this category.

Dr. Lawenda questioned and Ms. Leiva clarified that the language includes “married” and “domestic partner”. Ms. Leiva assured that the public minutes will include this clarification.

Senate Bill (SB) 690 (E. Hernandez)

Ms. Leiva stated that SB 690 is a COA sponsored bill which prohibits provider discrimination in contracting with health plans. Ms. Leiva invited Mr. Gabhart to report on its status.

Mr. Gabhart reported that the Department of Managed Health Care (DMHC) came out in opposition because they believe the bill is premature since the federal government has not issued regulations or guidance. COA staff and DMHC staff met last week. COA is weighing their options and will decide if they want to make amendments and move forward.

Senate Bill 1575

Ms. Leiva reported that SB 1575 is an Omnibus Bill by the Senate Business, Professions & Economic Development Committee. An omnibus bill contains various measures from different boards/bureaus that are typically non-controversial and for clean-up purposes only. This bill amends §3057.5. Eligibility of Graduates from Foreign Universities by switching the word “person” with “graduates of foreign universities.” SB 1575 has passed the Senate and is currently in the Assembly Appropriations Committee.

Ms. Leiva opened the floor to questions or concerns about the bills mentioned.

Ms. Johnson suggested having the Legislation and Regulations Committee meet and look at legislation before it comes to the Board. Ms. Leiva and Ms. Maggio responded that since the Board is becoming increasingly involved in legislation, they have discussed this and plan to schedule legislation meetings as they become necessary.

Dr. Lawenda asked and Ms. Maggio responded that legislative meetings have not been occurring for some time because the Board had very few Members. Now that the Board is almost full, the subcommittees will be meeting again. She added that committee meetings involve a lot of staff work. Therefore, the need/urgency of a committee meeting is taken into consideration.

Dr. Arredondo inquired and Ms. Leiva explained that the legislative session will be over soon. There is not enough time to send letters of support at this time.

B. Discussion and Possible Action to Amend Board Sponsored SB 1215 – Pertaining to Retired Licenses, Retired Licensees with a Volunteer Designation, and Temporary Practice

Ms. Leiva reported that this concern was brought to the Board at the May 18, 2012. The issue came about because the Medical Board of California (MBC) recently lost a court of appeal case related to taking disciplinary action against a licensee that held a retired license. The retired licensee’s attorney alleged the MBC lacked jurisdiction to impose discipline because, as the holder of a retired license, the physician was not permitted to engage in the practice of medicine.

Staff requested the Board consider amending this bill to ensure that it is clear that the Board retains jurisdiction over all licensees, regardless of the status of his or her license. Ms. Leiva reported the Board rejected amending this bill for the following reasons:

- The language is not needed because if retired licensees practice, they will be considered unlicensed practitioners, and that is how the Board can take action against them; and,
- This is a non-issue. There is already enough support for the bill and amending it would be too difficult.

Since then, staff has learned from the DCA Division of Legislative and Policy Review (LPR) that they met with the Governor’s Office, and the Governor’s Office strongly recommended that the Board adopt the language the MBC is using to prevent any loopholes. In order to be proactive, staff submitted language to the Legislative Committee to begin drafting the clarifying language. Ms. Leiva requested the Board approve the amendment.

William Kysella moved to authorize staff to amend the language of SB 1215. Donna Burke seconded. The Board voted unanimously (8 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Ms. Burke	X		
Dr. Chawla			X
Mr. Kim	X		
Mr. Kysella			X
Dr. Lawenda	X		
Dr. Dubick			X

8. Discussion and Possible Action Pertaining to the Board's 2012-13 Sunset Report

Dr. Arredondo invited Ms. Maggio to report on this agenda item. Ms. Maggio provided documents/charts for the Board's review. She explained that the materials she provided are the first rough draft brainstorming session of staff under the different sections of the report. The charts will be completed by staff and the fiscal charts will be completed by the budget office. Ms. Maggio explained that this has been presented just to give the Board the opportunity to see what the report will entail and how staff has been addressing the issues so far. This item will be addressed by the Sunset Review Committee and brought back to the Board at the next Board Meeting.

9. Public Comment for Items Not on the Agenda

The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting {Government Code Sections 11125, 11125.7(a)}.

Dr. Arredondo publicly thanked Dr. Lee Goldstein and Mr. Fred Naranjo (former Members) for their many years of great service. Their service has been greatly appreciated.

Ms. Maggio provided an update regarding Board appointments. She announced the appointment of Dr. Glenn Kawaguchi with Eye Exam (Southern California). The Board now has only two vacancies.

Ms. Maggio reported that she and Dr. Dubick discussed how board materials are provided to the Members. At this time binders packets are sent out. The materials are also placed on our website as a PDF. She suggested some of the Members may have iPads and/or laptops they could use. Ms. Maggio requested that if this is the case to let staff know and a hard binder will not be prepared (unless it is preferred).

10. Suggestions for Future Agenda Items.

No suggestions were made.

11. Full Board Closed Session

This agenda item occurred after agenda item 5.

12. Adjournment

Ken Lawenda moved to adjourn the meeting. Alex Kim seconded. The Board voted unanimously (8 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Ms. Burke	X		
Dr. Chawla			X
Mr. Kim	X		
Mr. Kysella			X
Dr. Lawenda	X		
Dr. Dubick			X

The meeting was adjourned.

Alex Kim, Secretary

Date



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Draft

MEETING MINUTES

Friday, August 31, 2012

Teleconference at the Following Locations:

2675 Saturn Avenue
 Huntington Park, CA 90255

140 C Tower Street
 Beaconsfield, Quebec H9W 6B2

2035 East Katella Avenue
 Anaheim, CA 92806

Kaiser/Dept. of Optometry
 5601 De Soto Avenue
 Woodland Hills, CA 91367

7455 Silva Valley Parkway
 El Dorado Hills, CA 95762

111 North Hope Street, Rm 340
 Los Angeles, CA 90012

3301 E. Main Street, Suite 1006
 Ventura, CA 93003

2450 Del Paso Road, Suite 105
 Sacramento, CA 95834

Members Present

Alex Arredondo, O.D., Board President
 Monica Johnson, Vice President
 Alexander Kim, Secretary
 Ken Lawenda, O.D., Professional Member
 Donna Burke, Public Member
 Madhu Chawla, O.D., Professional Member
 Glen Kawaguchi, O.D., Professional Member
 Bill Kysella, Public Member

Excused Absence

Fred Dubick, O.D., Professional Member

Staff Present

Mona Maggio, Executive Officer
 Andrea Leiva, Policy Analyst
 Michael Santiago, Senior Staff Counsel

Guest List

No guests

4:35 p.m.

FULL BOARD OPEN SESSION

1. Call to Order – Roll Call – Establishment of a Quorum

Board President, Alex Arredondo, O.D. called the meeting to order at 4:35 p.m. Dr. Arredondo called roll and a quorum was established.

2. Agenda Item 2 – Discussion and Possible Action on California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse & Disciplinary Guidelines

Ms. Andrea Leiva, Policy Analyst, provided an overview of this item.

When this rulemaking package was submitted on the Department of Consumer Affairs (DCA) Legal Office for final review, it was found that language in CCR §1575, subsection (a), continued to be unclear and gave the Board discretion on when the uniform standards related to substance abuse should be used. The package was returned to the Board to clarify the language, specifically subsection §1575(a).

Ms. Leiva also recommended removing language that requires a minimum \$100 fee per month in *Condition 4. Probation Monitoring Costs*. Upon review of eight DCA health boards, it was found that none of them have a specific fee in the language of their disciplinary guidelines. These fees change from probationer to probationer, and due to the fluid nature of the fee, the Board should refrain from

requiring a specific minimum monthly fee. Removing the fee will also place the Board in line with the other health professions.

Lastly, Ms. Leiva recommend adding supporting documents to the rulemaking file that were made available after the Board began this rulemaking. Adding the following documents will complete this package in the event the Office of Administrative Law has questions regarding the uniform standards:

- Legislative Counsel Bureau Opinion, October 27, 2011
- Office of the Attorney General Informal Legal Opinion, February 29, 2012
- Department of Consumer Affairs Opinion, April 5, 2012

Dr. Arredondo opened the floor for discussion. There was no further discussion.

Mr. Kysella moved to approve the recommend modified text and added documents, and directed staff to initiate the 15-day public comment period. If after the 15-day public comment period, no adverse comments are received, the Board authorized the Executive Officer to make any non-substantive changes to the proposed regulation before completing the rulemaking process. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Mr. Kim	X		
Dr. Lawenda	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

10. Public Comment for Items Not on the Agenda

There were no public comments.

11. Suggestions for Future Agenda Items

There were no suggestions offered.

12. Adjournment

Dr. Arredondo moved to adjourn the meeting. Bill Kysella seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Mr. Kim	X		
Dr. Lawenda	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

The meeting adjourned at 4:45 p.m.

Alexander Kim, Board Secretary

Date



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



Meeting Minutes

Friday, October 19, 2012

DRAFT

Location 1

Department of Consumer Affairs
1625 N. Market Blvd., El Dorado Room
Sacramento, CA 95834

Location 2

Southern California College of Optometry
2575 Yorba Linda Blvd.,
Fullerton, CA 92831

And via Telephone at the Following Locations:

3301 E Main Street, Suite 1006
Ventura, CA

2675 Saturn Avenue
Huntington Park, CA 90255

140 C Tower Street
Beaconsfield, Quebec H9W 6B2

5500 Military Trail
Jupiter, FL 33458-2869

Members Present

Alex Arredondo, O.D., Board President
Alexander Kim, M.B.A., Secretary
Ken Lawenda, O.D., Professional Member
Madhu Chawla, O.D., Professional Member
Glen Kawaguchi, O.D., Professional Member
Bill Kysella, Public Member
Fred Dubick, O.D., Professional Member

Staff Present

Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Lydia Bracco, Enforcement Analyst
Cheree Kimball, Enforcement Analyst
Rob Stephanopoulos, Enforcement Analyst
Brad Garding, Enforcement Technician
Michael Santiago, Legal Counsel

Excused Absence

Donna Burke, Public Member
Monica Johnson, Vice President

Guests

On File

12:00 p.m.

FULL BOARD OPEN SESSION

1. Call to Order – Roll Call – Establishment of a Quorum

Board President, Alex Arredondo, O.D. called the meeting to order at 12:00 p.m. Dr. Arredondo called roll and a quorum was established. Professional Member, Madhu Chawla, O.D. arrived later.

Dr. Arredondo asked Executive Officer, Mona Maggio at the Southern California College of Optometry (SCCO) location, and her staff at the Department of Consumer Affairs (Sacramento) location to introduce themselves. Staff members present included Andrea Leiva, Policy Analyst; Lydia Bracco, Cheree Kimball and Rob Stephanopoulos, all Enforcement Analysts; and Brad Garding, Enforcement Technician.

Dr. Arredondo invited visitors at the Sacramento location to introduce themselves. The Sacramento guests were California Optometric Association (COA) Executive Director, Bill Howe; COA External Relations Manager, Jason Gabhart; Contract Lobbyist for Lenscrafters – EYEXAM, Kathryn Austin-Scott; and, Consultant for the California State Senate Business, Professions, and Economic Development Committee, Le Ondra Clark.

Dr. Arredondo invited visitors at SCCO to introduce themselves. SCCO's Vice President of Advancement and Marketing, Paul Stover introduced himself.

Dr. Arredondo welcomed everyone in attendance.

2. Discussion & Possible Action on the Draft 2012 Sunset Review Report

Ms. Maggio provided an overview of the draft 2012 Sunset Review Report, which is due to the Senate Committee on November 1, 2012. The draft was sent to the Members prior to the meeting for review. Comments received from the Members have been considered and entered into the report with tracking.

The purpose of today's review is to ensure that staff has answered all of the questions from the Senate Committee completely and to the Board's satisfaction.

Ms. Maggio asked the Members if they have any additional comments or edits to Section 1 - "*Background and Description of the Board and Regulated Profession – History and Function of the Board*". There were no additional comments or edits.

Ms. Maggio directed the Members attention to the make-up and functions of the Board's committees. Changes were made to the Board committee description identifying that the Board has four committees, one additional committee and workgroups are appointed as needed.

Professional Member, Ken Lawenda, O.D. commented on the statement "the committees meeting on an "as needed" basis pursuant to the Board's Administrative Procedure Manual." He requested that the procedure for meeting on an as needed basis be explained in detail.

Ms. Maggio responded that the reason for having the committees meet on an as needed basis would be appropriately discussed at a future meeting. Ms. Maggio explained that this report covers what has been accomplished since the last Sunset Committee review. Ms. Maggio stated that she will place on the next meeting agenda a discussion regarding scheduling out committee meetings for the next year. Dr. Lawenda explained that he brought this up because page 66 implies that committee meetings are normally set when that is not the case. He asked that page 66 be changed to match the language on page 6. Ms. Leiva stated that when she wrote the section on page 66, she was thinking about board meetings. It was just an oversight and she will change the wording to reflect committee information as well.

Ms. Maggio, Ms. Leiva, Staff Counsel, Michael Santiago, and Dr. Arredondo briefly discussed the options on how to deal with edits during this meeting. Mr. Santiago suggested that the Members provide Ms. Leiva with notes of what they want reflected, then she will draft the actual text. The actual text does not need to be discussed at this meeting.

Ms. Maggio stated for the record that Dr. Chawla joined the group and there are now seven Members present.

Professional Member, Glen Kawaguchi, O.D. questioned the mixture of public and professional members on each of the committees and if the numbers reflected what was discussed at the August 10, 2012 Board meeting. He was not present at that meeting. Ms. Maggio clarified that the numbers are capturing what has occurred up until staff began writing this report and this was just the structure of committees in the past. During the August 10, 2012 meeting, Members only expressed interested on what committees they

wanted to participate in. Ms. Maggio explained that the selections have not yet been finalized by the President and Vice President. Dr. Arredondo suggested finalizing the committees at the next meeting.

Public Member, William Kysella Jr. inquired and Ms. Leiva clarified that the language which states committees are comprised of three public and one professional; or, two public and one professional are not rules to determine the composition of the committees and will not be included in the report. The Board can determine the composition of committees however they choose. Ms. Leiva added that she will delete this language and the Members will receive an updated version. She does not want anyone to hold on to that old language because it is not part of the report. Ms. Leiva also noted that she edited the language to reflect that Dr. Kawaguchi did not attend the August 10, 2012 meeting.

Ms. Leiva asked if anyone had questions about current and previous Board members.

Dr. Lawenda asked if it might be helpful to include how often the committees meet in an effort to document to the Senate that this Board is doing a very efficient job. Ms. Maggio responded that an additional table would need to be included if the Members want this information added. She explained that this table is the template which the Senate Committee provided for the Board. Dr. Arredondo stated that if the Senate Committee is satisfied with this template, then he is satisfied with it as well. Ms. Leiva confirmed that it is her understanding that this template has all the information the Senate Committee is seeking. Dr. Arredondo asked if there was additional feedback on this issue. Professional Member, Dr. Dubick, O.D. expressed his satisfaction with the current template. Dr. Arredondo asked and Dr. Lawenda confirmed that he is also okay with this decision. There was no opposition to the decision.

Ms. Maggio requested review of page 21 and asked if there were questions or comments regarding the Board and Committee Member Roster. Dr. Kawaguchi suggested noting that the selections are not finalized. Ms. Leiva agreed and stated that she will make the change.

Next, Ms. Maggio provided a brief overview of page 22 where the question was asked if in the past four years, the Board was unable to hold any meetings due to a lack of quorum. Ms. Maggio explained that there were two occasions in which the Board had to reschedule due to lack of quorum; however, both meetings were successfully rescheduled.

Regarding the next topic, "*Major Changes since the Last Sunset Review*", Ms. Maggio announced that the first issue under this category is the "*Reorganization*" of the Board.

Ms. Leiva explained that in the paragraph describing the reorganization, Public Member, Monica Johnson added a comment to clarify the reason for the increase in staff. The reason for staff increase is due to the Board's number of licensees increasing. Ms. Leiva stated that she will add Ms. Johnson's comment. There are no other changes.

Ms. Maggio reported that after the topic of reorganization, the report contains a chart showing staff increases and decreases since 2002 and provides explanations for the staffing changes.

The next topic is the Board's "*Relocation*" in 2011 to its new office. This topic is followed by "*Change in Leadership*". Ms. Maggio added one comment to the last paragraph where she noted that she started working for the Board in 2008, not 2009.

Ms. Maggio announced the next topic which is "*Strategic Planning*". The report identifies each plan and how the mission statement has changed.

The next topic is "*Legislative Activity*". Ms. Leiva stated that this section lists all legislation which is relevant to the Board. There were no comments from the Members.

Regarding the next topic, "*Regulation Activity*", Ms. Leiva did not receive any comments.

Next, Ms. Leiva reported on the “*Glaucoma Certification Requirements*” regulation. She explained that Dr. Arredondo had requested information be added which explains that upon passage, this regulation was challenged by the California Academy of Eye Physicians and Surgeons (CAEPS) and the California Medical Association. As requested, Ms. Leiva added a portion of text showing that despite the legal challenges, this regulation was upheld, and that the Board continues to implement this regulation without issues. Optometrists are becoming glaucoma certified more efficiently, which is what the Legislature had intended.

“*Pending Regulations*” is the next topic in the report and Ms. Leiva did not receive comments from the Members.

Ms. Maggio suggested changing “The Board anticipates meeting in November” to “meeting on December 14, 2012” since this is the Board’s next scheduled meeting date.

Ms. Maggio announced the next topic, “*Major Studies*”. In 2009 the Board conducted two major studies since the last Sunset Review.

Comprehensive Audit of the National Boards of Examiners in Optometry (NBEO)

In cooperation with the Office of Professional Examination Services (OPES), the Board conducted a comprehensive audit and review of the NBEO to ensure that the licensing examination met the needs of California candidates and covered the requirements to ensure protection of California consumers. The results revealed that the licensing examination of the NBEO did meet all of the professional guidelines and technical standards outlined in Business and Professions Code 139, which covers testing requirements.

Occupational Analysis – Office of Professional Examination Services

An occupational analysis, in cooperation with the OPES, was conducted to confirm that the Board’s California Laws and Regulations Examination (CLRE) is fair, Job-related, and legally defensible.

The next section of the report covers “*National Association Activity*”. The Board is a current member of the Association of Regulatory Boards of Optometry (ARBO); however, despite Board member interest, the Board has not participated in any committees, workshops, working groups, or task forces related to its membership in this national association. This is due to travel constraints associated with California’s ongoing budget shortfalls.

There were no comments from the Members on this section.

Ms. Maggio reported that although the Board is not a member of the COA a good working relationship between the Board and the COA exists. Board staff is invited to three events held by the COA annually:

- *Monterey Symposium* – Typically licensing and enforcement staff attend and answer questions from optometrists, and provide information and guidelines on various topics.
- *Legislative Day* – Staff meet with students and discuss what the Board can provide for them.
- *House of Delegates* – The COA house of Delegates are a ten member board of trustees who govern and consist of COA members from each of the local optometric societies, California optometry schools and colleges, and COA sections. In the past few years staff has not attended due to budget constraints.

Ms. Leiva announced that she received an edit request for clarity on page 30 regarding the COA House of Delegates, and she made the requested change.

The next topic addresses the question: “*If the Board is using a national exam, how is the Board involved in its development, scoring, analysis, and administration?*” Ms. Leiva reported there were some minor edits to the document originally, but she did not receive any more edits from the Members.

Ms. Maggio announced the next section (Section 2 – “*Performance Measures and Customer Satisfaction Surveys*”). Ms. Leiva asked if there were any comments.

Mr. Kysella asked and Ms. Leiva confirmed that the quarterly and annual performance measures have been completed and not overlooked. Dr. Arredondo opened the floor to any further discussion and there was none.

Ms. Maggio reported that the comments received regarding Section 3 – “*Fiscal and Staff*” Issues have been made. She asked if there were any additional comments. There were no comments.

Ms. Maggio added that the organization charts for the past four fiscal years (effective at beginning of the fiscal year) will be added.

Ms. Leiva reported that she did not receive any substantive comments from the Members on *Section 4 – “Performance Measures”* under the Licensing Program section. Ms. Leiva received a clarifying edit from Ms. Johnson. The edit clarifies that the revision of forms was conducted. Ms. Leiva stated that she also made Ms. Johnson’s suggested edits to the fingerprinting question.

Ms. Leiva reported that under the section regarding “*Examinations*”, the space with an empty chart has been completed and she provided completed copy to the members via e-mail. She explained that she needed to update the numbers for the California Laws and Regulations Exam (CLRE) because she needed to separate out the probationers (who also take the CLRE). She assured the numbers are now accurate.

Ms. Leiva explained that the National Examination Data is not broken down by attempts (first, second, and third) as requested. This is because the National Board of Examiners in Optometry (NBEO) reports their data statewide, as the candidates do not know what state they are going to practice in when they take the exam.

Ms. Maggio requested clarification regarding Ms. Johnson’s edit to the fingerprinting question which says. “Have all current licensees been fingerprinted? If not, explain.” Ms. Leiva responded that the justification to the question makes more sense if the paragraphs are flipped, as the second paragraph address the question immediately.

Ms. Leiva stated she did not receive any additional comments for the next section, “*School Approvals*”. Nor did she receive comments for section “*Continuing Education/Competency Requirements*.”

Mr. Kysella and Ms. Maggio requested adding the cities to the California colleges of optometry under the “*Schools Approvals*” section.

The Board then discussed Section 5 – “*Enforcement Program*”. Regarding the issue under this topic “*Formal Discipline*”, Ms. Maggio announced that the target date of 365 days has been changed to 540 days. The change was made for consistency with all of the other DCA boards and bureaus, who have their target date set at 540 days.

Mr. Kysella asked and Mr. Santiago responded that unless the number is adopted at 540 in today’s meeting, it should remain at 365 since the Board previously set 365 as the target date. Ms. Maggio suggested leaving it at 365 and identifying in this report that this Board is the only board using a target date of 365. Ms. Maggio added that this Board can vote on the target date at the next meeting in December. Mr. Kysella recommended voting and adopting the change now since a quorum is present.

Mr. Santiago advised against making any last minute changes now since the Sunset Review Report is a snapshot of how the Board is performing. Therefore, the report (as is) most accurately reflects the Board’s

performance and progress from the last report to the present. Ms. Maggio stated she will bring this issue to the December meeting for discussion. She noted that it is unrealistic to believe this Board will move its formal disciplines through more quickly than the other boards when the other boards are using a 540 target date.

Dr. Lawenda inquired and Ms. Leiva confirmed a typo was made as to the Fiscal Year (FY) dates. Ms. Maggio asked and Ms. Leiva responded that no additional comments were received from the Members related to the "*Enforcement Statistics*."

Dr. Lawenda asked and Ms. Maggio replied that the Board does receive complaints from other governmental agencies and other business entities (e.g. insurance companies). Dr. Lawenda asked and Ms. Maggio responded that when a complaint is received about a Knox-Keene plan, we do not receive those complaints. The complaints we receive are complaints against individual optometrists.

The Board then discussed Section 6 – "*Public Information Policies*." Ms. Leiva reported that she did not receive any additional comments from the Members. She asked the Members if they had any comments now. Dr. Lawenda noticed a typo which Ms. Leiva noted. There were no additional comments.

Regarding Section 7 – "*Online Practice Issues*," Ms. Leiva stated she received one comment from Ms. Johnson who inquired if the word telehealth is one word or should be hyphenated. Ms. Leiva noted this and stated she would research the answer. There were no other comments received.

Dr. Lawenda, Ms. Leiva, and Mr. Kysella briefly discussed when the minutes should ideally be posted to the website for Members review. Ms. Maggio advised that this should be addressed at the next meeting. Dr. Arredondo continued this issue to the December Board Meeting. There were no further comments to Section 7.

Ms. Leiva reported that she received one comment from Public Member, Donna Burke regarding a typo in Section 8 – "*Workforce Development and Job Creation*." There were no other comments received from the Members.

No comments were received regarding Section 9 – "*Current Issues*."

Ms. Maggio provided a brief overview of Section 10 – "*Board Action and Response to Prior Sunset Issues*." The issues/questions in this report derived from the 2003 Sunset Review Report.

Ms. Maggio reported there was some action taken by the Board regarding Issue #5 – Should the Board adopt supervision and training standards for unlicensed optometric assistants? A regulation was drafted but the time allotment for submittal to the Office Administrative Law expired, and the regulation packet was never resubmitted. Ms. Maggio stated that this packet will be brought back to the Board for review and discussion at the December Board Meeting. Ms. Leiva did not receive any additional feedback from the Members regarding this section.

Ms. Maggio provided a brief overview of Section 11 – "*New Issues*". She explained that this is an opportunity for the Board to inform the Senate Committee of solutions to issues identified by the Board and by the Senate Committee. Ms. Leiva stated she did not receive additional comments other than those noted in the report.

Ms. Leiva announced that Ms. Austin-Scott wished to speak to the Board regarding the Registered Dispensing Optician Program issue. This issue discusses the Board and the Medical Board of California's (MBC) interest to transfer the duties, powers, purposes, responsibilities and jurisdiction of the Registered Dispensing Optician (RDO) Program from the purview of the MBC to the Board of Optometry.

The primary problem with current oversight of the RDO program is enforcement. The MBC is tasked with multiple enforcement objectives with finite resources. This transfer will ensure more complete and efficient regulation of individuals with RDO registrations and licenses, and streamline the delivery of government services.

Ms. Scott provided a brief overview of her client's concerns. The National Association of Optometrists and Optician (NAOO) is made up of retail optometrists and opticians comprising of approximately 500 optical stores in California. She stated that she is not aware of any other state in which optometrists and opticians are regulated by the same Board because they are essentially considered competitors. This is a huge concern of the NAOO. Ms. Scott also discussed another concern of the NAOO which is that there is a lawsuit pending related to opticianry and optometry and the relationship between the two. Business and Professions Code 655 prohibits a business relationship between opticians and optometrists. Because of these concerns, the NAOO does not think that the RDO profession should go under the oversight of the Board.

Dr. Arredondo stated that he is interested in obtaining the perspective from the Medical Board as to why they are interesting in transferring jurisdiction. Ms. Maggio responded that the MBC's Executive Officer has shared with her that the MBC is interested in redirecting programs that are not specifically physician related.

Ms. Scott cited examples of instances where various parts of a profession are regulated separately.

Dr. Dubick reiterated that this is a Sunset Review. Since the pending lawsuit related to this issue has been going on for the last ten years, it needs to be included in the report. However, he stated that he does not believe this is the appropriate platform to discuss the details of the issue. Dr. Chawla agreed with Dr. Dubick and suggested addressing this issue at a future meeting.

Dr. Kawaguchi proposed re-evaluating some of the wording within the section (e.g. "this transfer will ensure"). He believes the "will" is an assumption the Board should be careful of, and he suggested using more neutral wording.

Ms. Scott questioned the process. She stated that she believes the Senate Business and Professions Committee does consider this a part of where the Board may want to take new policy.

Mr. Kysella commented that discussion of this issue is necessary. Additionally he explained why this section, as worded, makes it sound as though the issue has already been debated and approved, and can even be viewed by the Senate as the Board's recommendation/endorsement of where it wishes to go with this. If further discussion is to take place, then slightly neutralizing the language may make it clear to the Senate that this issue is on the table and something the Board is discussing and considering.

Ms. Scott stated that because the NAOO is the lead plaintiff in the pending lawsuit, she wants to state for the record that the NAOO is currently opposed to the transfer of oversight. Ms. Clark, from the Senate Business and Professions Committee announced that she will be the one actually reviewing the Board's report. She explained that if something is uncertain, the Board should qualify that fact by stating in the section that the topic is ongoing. If however, there is something the Board wishes the Senate go forward on, this needs to be qualified as well.

Drs. Lawenda and Dubick discussed what qualifies as "ongoing" work (e.g. Member work, staff work) and how it should be qualified. Mr. Kysella reiterated his concerns of using absolute wording like "the transfer will ensure".

Ms. Clark recommended that the Board consult with the MBC regarding their wording because when the report comes before the Senate Committee, it is important that both reports are consistent.

The Members, and Mr. Santiago agreed with Mr. Kysella's comments. Ms. Leiva noted that she will make the language more neutral. Ms. Leiva will also qualify that this issue is an ongoing discussion; as well as work with the MBC on uniform, consistent language.

Ms. Maggio requested a vote to approve the report.

Mr. Santiago asked and Ms. Maggio confirmed that she is requesting the Board approve the draft report as edited; grant the Executive Office authority to make non-substantive changes, and delegate authority to the Board President to approve the final draft.

M - Alexander Kim moved to approve the Board's draft of the Sunset Review as amended by comments given today by Board members. S – Madhu Chawla seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

M - Fred Dubick moved to grant the Executive Office authority to make any non-substantive changes to the Sunset Review Report. S - Alex Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

M – Fred Dubick moved to delegate authority to the Board President to approve the final Sunset Review Report. S – William Kysella seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

3. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment

section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))

There were no comments from Sacramento.

There were no comments from Southern California.

4. Adjournment

M – William Kysella moved to adjourn the meeting. S - Ken Lawenda seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

The meeting was adjourned at 4:15 p.m.

Alexander Kim, Secretary

Date

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

To: Board Members

Date: December 14, 2012

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: Agenda Item 7– Executive Officer’s Report

A. Budget Overview

The Board of Optometry (Board) is a Special Fund California state government agency, which means it supports its operations entirely through fees. The Board’s licensees, pay renewal and application fees that fund operations, including complaint investigation, and licensing examination administration. Renewal fees represent the vast majority of revenue. Application fees and other forms of income (i.e., interest, fines, etc.) make up the remaining balance of the Board’s revenues. The Board does not receive any funds from the state General Fund.

Although categorized as a Special Fund agency, the Board’s budget is incorporated into the Governor’s budget. Upon approval of the Governor’s budget, the Board is permitted to spend its funds. Any increase to the Board’s spending authority is requested through the Budget Change Proposal (BCP) process. BCPs are typically sought for additional staff, to increase in a position’s time base (half time to full time), or funding for a position that was established without funds or to increase spending authority for a special project such as an occupational analysis. BCP requests are prepared a year in advance.

The Board’s expenditures are attributed to three major categories: Personnel, Operating Expenses and Equipment (OE&E), and Enforcement. Personnel expenses include salaries and wages, employee benefits, and board member per diem. Operating Expenses and Equipment (OE&E) includes items such as supplies, postage, examination development, travel, and departmental pro rata (e.g. office rent, IT and data services). Enforcement expenses are comprised of costs associated with the formal disciplinary process and complaint investigations.

2012/2013 Budget

The 2012/2013 budget for the Board is \$1,693,603. As of October 31, 2012, the Board has spent \$594,265 reflecting 34% of the total budget.

B. Personnel

Bradley Garding joined the board in October 2012 as an office technician in the Enforcement Unit. Elizabeth Bradley, office assistant who serves as the receptionist is out on extended medical leave. Approval to hire a temporary intermittent employee to serve as the receptionist has been received, interviews were conducted, and we are awaiting approval of eligibility to hire the selected candidate.

C. Sunset Report

The 2012 Sunset Report was delivered to the Business, Professions & Economic Development Committee on November 1, 2012. Ms. Maggio confirmed with Dr. Leondra Clark, Consultant to the Committee, that hearings will be conducted in March 2013. Staff anticipates receipt of additional questions/issues prior to the hearing.

D. BreEZe Update

The board is scheduled for Release 2, the last report this transition was to occur in April 2013; however, the short of it – there is not a firm Release 1 go-live date at this time. The Release 1 re-planning efforts to reset the R1 Go Live date and baseline the Release 2 work continues. At this time the BreEZe team and vendor Accenture continue to work on evaluating the plan's structure and multiple project areas are being closely monitored.

E. Examination and Licensing Programs **Prepared by Jeff Robinson, Licensing Analyst**

This section is attached under a separate memo.

F. Enforcement Program **Prepared by Jessica Sieferman, Enforcement Analyst/Probation Monitor**

Unlicensed Activity

A Superior Court Judge ordered the owner of Red Sea, a mall clothing store in Tracey, CA to pay the Board \$5,000 for illegally selling cosmetic contact lenses without a prescription. The order came as a result of an undercover operation by Division of Investigations and the Board after receiving a tip from another optometrist. The Board's enforcement unit continues to investigate the illegal selling of cosmetic contact lenses and encourages optometrists and consumers to report any suspicious unlicensed activity to the Board.

Data Clean Up Project

The Enforcement Unit has resumed its data clean-up project in preparation for BreEZe. As previously reported, the Board had identified several areas of "dirty" data in the Board's Consumer Affairs System (CAS) database. To ease the transition to BreEZe and for accurate statistical reporting, the Enforcement Unit created the three phase data clean-up project:

1. Complaints
2. Citations
3. Discipline

In each phase, the unit organizes the physical file and compares it to the CAS data. Data such as action codes, dates, categories, monetary amounts, etc. are corrected and filed based on the Board's retention schedule.

The Enforcement Unit has initiated phase three. Phase three is estimated to take the most time to complete. Each file is organized, the order is scanned, the data is cleaned, and public disclosure information is written (if not already) for posting to our Website and the National Practitioner's Databank.

Probation Program

The DCA is working with Phamatech, the Board's vendor for biological fluid testing, to finalize a new contract. Phamatech's contract, which originally expired in June 2012, was extended through December 2012. The new contract is expected to finalize prior to its expiration.

The BreEZe team requested Jessica Sieferman assist in creating the Phamatech interface. The intent of the interface is to automate data entry from Phamatech to the BreEZe system. This not

only will reduce the amount of time but will also ensure all results, selections, and failures to log in and/or submit to testing are captured in our system.

Fingerprint Program

Prepared by Lydia Bracco, Enforcement Analyst/Fingerprint Coordinator

The October 2012 renewals completed the fingerprint project that the board started in 2010. Licensees with the renewal date of October 21, 2012 were sent renewal notices in July 2012. All licensees were required to submit background checks to the Department of Justice and the Federal Bureau of Investigation.

To date, the Board has received 201 RAP sheets from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) collectively. Staff has worked diligently to investigate the allegations against the optometrists by contacting law enforcement agencies and courts to request documents. Of those Rap Sheets, 25 were not opened due to being investigated previously; 176 were opened; 94 were closed due to exceeding the statute of limitations; 51 were investigated then closed; 7 have final discipline; 8 are pending discipline; and 16 are pending investigation.

As of November 30, 2012, there have been 424 rejected fingerprints for numerous reasons - mainly, the characteristics of their fingerprints were too low to be processed. These individuals must reprint. Once two rejections are received, the board can request a background search by name and other key identifiers.

In January 2013, Board staff will audit the fingerprint program to ensure all licensees have been fingerprinted. Those licensees who have yet to be fingerprinted will be notified of this requirement and if necessary a "hold" will be placed on the license renewal until compliance is received.

Enforcement Statistics and Performance Measures Attachment 3

Attachments

1. Expenditure Report
2. Fund Condition
3. Enforcement Statistics and Performance Measures
4. Delegation Memo for Mission Critical Travel

To: Board Members

Date: December 14, 2012

From: Jeff Robinson
Licensing Analyst

Telephone: (916) 575-7171

Subject: Agenda Item 7E – Examination and Licensing Programs Report

Compiled by Jeff Robinson, Licensing Analyst

A. International (Foreign) Graduate Education Evaluations

Individuals seeking optometrist licensure in the United States are required to take and pass Parts I (Applied Basic Science), II (Patient Assessment and Management), and III (Clinical Skills) of the National Board of Examiners in Optometry (NBEO) examinations. To qualify for those examinations, international (foreign) graduates must be “sponsored” by either a state licensure board in optometry or an accredited academic institution. The California State Board of Optometry is one of the few State Boards left that still provide sponsorship to international graduates.

California Business and Professions (B&P) Code section 3057.5 (c) requires international graduates to have received “...a degree as a doctor of optometry issued by a university located outside of the United States.” California Code of Regulations (CCR) section 1530.1 states that “...satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board; provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency.”

In the past two decades, Board staff has required international graduates of schools/colleges of providers of eye care seeking Board-sponsorship to supply them with a transcript. Those graduates of schools/colleges that issued degrees that appeared to be equal to or greater than that of a *doctor of optometry* degree were deemed to be acceptable. Those that were in question were required to be evaluated by a foreign credentials evaluation service. Over the years we have learned that, although some countries (e.g., the United Kingdom) do not award doctorate degrees, the education received is similar to, if not greater than, those received in other countries. Because of this revelation, staff has required all those seeking sponsorship to have their education evaluated by a foreign credentials evaluation service.

When prompted by a potential applicant seeking sponsorship and a Board-recognized evaluation service, staff has almost always referred to those foreign credentials evaluation services that they were most familiar with like the International Education Research Foundation, Inc. (IERF), and World Education Services, Inc. (WES). It has since become known that IERF and WES are members of the National Association of Credential Evaluation Services (NACES) which has

many other members that provide foreign credentials evaluation services. Staff now refers potential applicants seeking satisfactory evaluation services to NACES.

While this has worked out well we recently received a foreign credentials evaluation from a non-NACES member, International Education Evaluations, Inc. (IEE), which is a member of the Association of International Educators or NAFSA (National Association of Foreign Student Advisors) and the American Association of Collegiate Registrars and Admissions Officers (AACRAO). We also know that accredited schools and colleges can also provide this service. Because of this matter, staff now has a dilemma in trying to determine what is meant in CCR 1530.1 by "...satisfactory evidence..." and "...acceptable to the Board..."

Action Requested: Staff seeks the Board's guidance in determining if any and all credential evaluations received should be accepted, or should our current laws be more specific as to what is deemed as being acceptable?

B. International Graduates Seeking Therapeutic Pharmaceutical Agent (TPA) Certification

Because accredited US schools/colleges of optometry no longer provide 80-hour TPA didactic courses, international graduates who have successfully met the Board's optometrist license standards cannot meet the requirements as listed under B&P 3041.3(b)(1). This is problematic for a few of our new licensees because, not only can they not prescribe therapeutic pharmaceutical agents to their patients, those that have the desire cannot obtain glaucoma certification. Although the percentage of newly-licensed California optometrists educated in schools/colleges located outside of the US is currently very low, we have issued licenses to some and expect the percentage to increase in the future. Staff seeks a possible alternative to the current laws that are in place and seeks the Board members review and recommendation of this matter.

Action Requested: The TPA certification issue has been in question since the schools/colleges of optometry ceased providing didactic courses for previously-licensed optometrists. Staff seeks the Board's guidance on how to manage this issue with, specifically, Board-sponsored international graduates who successfully complete California's requirements for optometrist licensure.

C. Statistics and Performance Measures

Please refer to Attachment 3 for the statistics and performance measures from the end of the last quarter and beginning of this quarter.

Attachment(s)

- 1) B&P 3057.5
- 2) CCR 1530.1
- 3) B&P 3041.3(b)(1)
- 4) Licensing statistics from 5/11/12 - 11/30/12

§1530.1. QUALIFICATIONS OF FOREIGN GRADUATES

Applicants who meet the requirements of Section 3057.5 of the Code shall be admitted to the examination upon furnishing satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board; provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency.

Authority cited: Sections 3023.1 and 3025, Business and Professions Code. **Reference:** Sections 3023.1, 3025, 3047, 3050 and 3057.5, Business and Professions Code.

History

1. New section filed 7-26-72 as an emergency; effective upon filing (Register 72, No. 31).
2. Certificate of Compliance filed 11-22-72 (Register 72, No. 48).
3. Repealer of subsection (d) filed 1-24-80; effective thirtieth day thereafter (Register 80, No. 4).
4. Amendment filed 12-1-83; effective thirtieth day thereafter (Register 83, No. 49).
5. Amendment filed 5-6-86; effective thirtieth day thereafter (Register 86, No. 19).

**§3057.5. ELIGIBILITY OF GRADUATES FROM
FOREIGN UNIVERSITIES**

Notwithstanding any other provision of this chapter, the board shall permit a person who meets all of the following requirements to take the examinations for a certificate of registration as an optometrist:

- (a) Is over the age of 18 years.
- (b) Is not subject to denial of a certificate under Section 480.
- (c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

Added Stats 1987 ch 1473 § 2. Amended Stats 1990 ch 583 § 2 (SB 1104); Stats 1994 ch 26 § 84 (AB 1807), effective March 30, 1994, operative January 1, 1996. Amended Stats 2010 ch 653 § 13 (SB 1489), effective January 1, 2011.

treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5). (c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

§3041.3. CERTIFICATE REQUIREMENTS

(a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis,

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

Added Stats 1996 ch 13 § 9 (SB 668), effective February 21, 1996.
Amended Stats 1996 ch 40 § 2 (SB 890), effective May 6, 1996;
Stats 1997 ch 17 § 6 (SB 947); Stats 2008 ch 33 § 7 (SB 797),
effective June 23, 2008.

Licensing Statistics from 5/11/12 - 11/30/12 to be provided at the meeting.

**BOARD OF OPTOMETRY - 0763
BUDGET REPORT
FY 2012-13 EXPENDITURE PROJECTION**

October 31, 2012

OBJECT DESCRIPTION	FY 2011-12		FY 2012-13				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES (MONTH 13)	EXPENDITURES 10/31/2011	STONE 2012-13	EXPENDITURES 10/31/2012	SPENT	TO YEAR END	BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	336,482	120,525	409,233	104,066	25%	380,984	28,249
Statutory Exempt (EO)	80,473	25,985	81,732	25,985	32%	77,956	3,776
Temp Help Reg (Seasonals)	44,410	10,644	3,628	7,636	210%	44,419	(40,791)
Temp Help (Exam Proctors)							0
Board Member Per Diem	4,300	800	7,353	1,600	24%	4,400	2,953
Committee Members (DEC)							0
Overtime				553		2,000	(2,000)
Staff Benefits	188,222	62,586	257,621	58,073	23%	212,604	45,017
Salary Savings	0		0			0	0
TOTALS, PERSONNEL SVC	653,887	220,540	759,567	198,113	26%	722,363	37,204
OPERATING EXPENSE AND EQUIPMENT							
General Expense	14,900	6,730	14,763	4,445	30%	15,000	(237)
Fingerprint Report	8,779	1,938	5,306	1,715	32%	9,000	(3,694)
Minor Equipment	311		5,050	0	0%	0	5,050
Printing	9,560	1,509	11,621	2,693	25%	11,000	621
Communications	5,136	1,105	5,615	1,431	25%	5,200	415
Postage	14,879	5,262	14,650	3,985	27%	15,000	(350)
Insurance			0				0
Travel In State	26,743	3,581	13,987	2,243	16%	27,000	(13,013)
Travel, Out-of-State			0				0
Training	1,790	900	1,099	159	14%	1,800	(701)
Facilities Operations	80,305	61,698	58,676	103,854	177%	112,608	(53,932)
Utilities			0				0
C & P Services - Interdept.	1,712	12	2,943	32	1%	1,800	1,143
C & P Services - External	21,608	46,955	12,000	33,171	276%	48,650	(36,650)
DEPARTMENTAL SERVICES:							
OIS Pro Rata	96,935	26,668	128,852	65,350	51%	128,852	0
Admin Pro Rata	96,936	33,317	101,475	51,966	51%	101,475	0
Interagency Services	0		146	0	0%	146	0
IA w/ OER	27,720		0			24,264	(24,264)
DOI-Pro Rata	3,267	1,281	4,111	2,080	51%	4,111	0
Public Affairs Pro Rata	6,525	2,574	5,810	2,942	51%	5,810	0
CCED Pro Rata	6,878	1,565	7,146	3,610	51%	7,146	0
INTERAGENCY SERVICES:							
Consolidated Data Centers	791	295	31,542	74	0%	800	30,742
DP Maintenance & Supply	115	115	1,009	0	0%	400	609
Central Admin Svc-Pro Rata	77,237	19,309	80,753	20,188	25%	77,237	3,516
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight	0		484	0	0%	0	484
Exam Site Rental							0
C/P Svcs-External Expert Administrative	1,050	150				1,050	(1,050)
C/P Svcs-External Expert Examiners	0		25,703	0	0%	0	25,703
C/P Svcs-External Subject Matter	16,429	5,513				16,500	(16,500)
ENFORCEMENT:							
Attorney General	108,693	27,180	229,055	23,923	10%	130,000	99,055
Office Admin. Hearings	36,324	4,358	37,930	80	0%	36,000	1,930
Court Reporters	2,296	286		143		2,300	(2,300)
Evidence/Witness Fees	2,178	1,478	35,921	10,200	28%	18,000	17,921
DOI - Investigations			104,389	61,668	59%	80,000	24,389
Major Equipment			0			0	0
Special Items of Expense							0
Other (Vehicle Operations)							0
TOTALS, OE&E	669,097	253,779	940,036	396,152	42%	881,149	58,887
TOTAL EXPENSE	1,322,984	474,319	1,699,603	594,265	68%	1,603,512	96,091
Reimb. - State Optometry Fund	(2,400)			(800)			0
Sched. Reimb. - Fingerprints	(9,115)	(2,805)	(6,000)	(2,695)	45%	(6,000)	0
Sched. Reimb. - Other	(4,505)	(1,900)		(1,685)			0
Unsched. Reimb. - Investigative Cost Recover	(35,033)	(11,803)		(5,662)			0
Unsched. Reimb. - ICR - Prob Monitor	(1,247)	(547)					0
NET APPROPRIATION	1,270,684	457,264	1,693,603	583,423	34%	1,597,512	96,091
SURPLUS/(DEFICIT):							5.7%

0763 - State Board of Optometry Analysis of Fund Condition

Prepared 12/4/12

(Dollars in Thousands)

	Actual 2011-12	CY 2012-13	Governor's Budget BY 2013-14
NOTE: \$1 Million Dollar General Fund Repayment Outstanding			
BEGINNING BALANCE	\$ 1,514	\$ 961	\$ 1,016
Prior Year Adjustment	\$ 8	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,522	\$ 961	\$ 1,016
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 26	\$ 28	\$ 29
125700 Other regulatory licenses and permits	\$ 140	\$ 145	\$ 149
125800 Renewal fees	\$ 1,534	\$ 1,561	\$ 1,592
125900 Delinquent fees	\$ 9	\$ 15	\$ 15
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 2	\$ -	\$ -
150300 Income from surplus money investments	\$ 4	\$ 3	\$ 3
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -
161400 Miscellaneous revenues	\$ 1	\$ -	\$ -
Totals, Revenues	\$ 1,717	\$ 1,752	\$ 1,788
Transfers from Other Funds			
GF loan per item 1110-001-0763 BA of 2011 (repay)	\$ -	\$ -	\$ 1,000
Transfers to Other Funds			
GF loan per item 1110-001-0763 BA of 2011	\$ -1,000	\$ -	\$ -
Totals, Revenues and Transfers	\$ 717	\$ 1,752	\$ 2,788
Totals, Resources	\$ 2,239	\$ 2,713	\$ 3,804
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	\$ 2	\$ 2	\$ -
8880 Financial Information System for CA (State Operations)	\$ 5	\$ 1	\$ 8
1110 Program Expenditures (State Operations)	\$ 1,271	\$ 1,694	\$ 1,841
Total Disbursements	\$ 1,278	\$ 1,697	\$ 1,849
FUND BALANCE			
Reserve for economic uncertainties	\$ 961	\$ 1,016	\$ 1,955
Months in Reserve	6.8	6.6	12.5

NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2012-13 AND ON-GOING.
- ASSUMES INTEREST RATE AT .30%.
- ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

Enforcement Statistical Overview

Fiscal Year	2009/2010	2010/2011	2011/2012	2012/2013*
Complaints				
Complaints Received	194 <u>197</u>	259 <u>295</u>	428 <u>318</u>	86
Complaints Pending	62 <u>66</u>	96 <u>134</u>	449 <u>171</u>	112
Complaints Closed	262 <u>264</u>	226 <u>227</u>	103 <u>281</u>	145
Subsequent Arrest Reports Received	24 <u>24</u>	24 <u>56</u>	45 <u>92</u>	26
Cases Referred to Division of Investigation (DOI)	3	38	27 <u>29</u>	10
Cases Pending at DOI	2	20 <u>19</u>	26	24
Cases Referred to Expert	14	6	3 <u>25</u>	2
Cases referred to the Office of the Attorney General (AG)	40 <u>6</u>	8 <u>9</u>	3 <u>14</u>	7
Cases Pending at the AGs Office	13 <u>14</u>	13	8 <u>17</u>	20
Citations Issued	5	2	1	0
Accusations Filed	9 <u>6</u>	8 <u>9</u>	1	5
Statement of Issues Filed	1	0	0	0
Interim Suspension Orders (PC 23)	1	0	0	0
Notice of Warnings Issued	0	0	0	0
Disciplinary Decision Outcomes**				
Revoked	0	4	1	0
Revoked, Stayed, Suspension & Probation	1	0	0	0
Probation Revoked	0	0	0	0
Revoked, Stayed & Probation	4	4	2	1
Surrender of License	1	1	1	0
License Issued on Probation	0	0	0	0
Public Reprimand	0	0	0	0
Other Decision	0	0	0	0
Decisions by Violation Type				
Fraud	0	0	0	0
Gross Negligence/Incompetence	1	1	1	1
Sexual Misconduct	0	0	0	0
Personal Conduct (Alcohol/Substance Abuse)	2	4	3	0
Unprofessional Conduct	1	0	0	0
Probation Violation	2	4	0	0
Other		0	0	0

*July 1, 2012 through December 4, 2012

** Subject to change after data cleanup completion



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN, JR.
Executive Office
1625 N. Market Blvd., S308, Sacramento, CA, 95834
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MEMORANDUM

DATE	October 8, 2012
TO	ALL Board Executive Officers, Bureau Chiefs and Deputy Directors/Senior Executive Management
FROM	Sandra Mayorga, Deputy Director Office of Administrative Services <i>Sandra Mayorga</i>
SUBJECT	Delegation Authority/Responsibility Chart – Travel Expense Claims

The DCA Executive Office is providing you delegated authority to approve in-service travel requests deemed as mission-critical pursuant to Executive Order B-06-11. Effective immediately, you will no longer be required to seek DCA Executive level approval under the following conditions:

- Travel to conduct investigations, inspections, probation monitoring and other essential enforcement activities
- Travel to Board and Committee meetings if the board or committee has submitted a request to the Department that includes information regarding essential matters to be decided, number of employees who will be attending, and location of the Board meeting
- Travel related to examination development that can only be performed in person
- Travel related to administration of examinations including proctors
- Travel to fulfill required statutorily mandated training (Board Member Orientation, New manager/supervisory training, etc.)
- Travel related to employee discipline matters and other litigation involving Department
- Travel related to the maintenance and installation of information technology

The Office of Administrative Services, Travel Unit has prepared the attached Delegation Authority/Responsibility chart for your use. All travel exceptions will continue to require executive level review and approval as identified in the attached chart.

Attachment

DELEGATED AUTHORITY

The delegation of authority allows departments to become more accountable for the administration of their travel program. Departments develop an exception process to document and justify the internal approval of the exception. Departments are then responsible and accountable for assuring that all criteria and common sense issues have been met when approving an exception, just as it would had the exception been reviewed by DPA.

DELEGATION BY DPA OR MOU	BOARD/ BUREAU	DCA EXEC	FISCAL (M) Management (T) Travel	OHR	COMMENTS
The reimbursement of travel meals and lodging within 50 miles of, but not at, the home or headquarters location.		X			Delegated via PML 93-28, also delegated for Excluded employees in 599.619
Attending Conventions, Conferences, or Business Meetings where: <ul style="list-style-type: none"> Registration fees exceed \$50 More than two individuals (officers or employees) from the same department are attending 		X			Per DPA rule 599.635
Lodging up to \$110 for attendance at State sponsored conferences/conventions (in a room contracted for by the conference sponsors).			X (M) (Must have approval to attend conference)		Incorporated into most MOUs (previously delegated by DPA) DPA rule 599.635.1 for Excluded employees
Non-State sponsored conference/convention lodging rates in excess of the State maximum for the area in a room contracted for by the conference sponsors.			X (M) (Must have approval to attend conference)		Attendance and lodging at above the state rate is at the discretion of the appointing authority.
Continuation of travel reimbursements for more than 3 days if an employee becomes ill while on travel status.		X			599.633, delegated via PML 93-28, also delegated in 599.633.1
Excess lodging on short term travel — Excluded Employees Only			X (M)		DPA rule 599.619
Extension of short term travel reimbursement beyond 30 days.		X			
Travel expenses for persons who are called to interview for positions in State service — Non State Employees				X	DPA Rule 599.634, delegated in PML 93-28

Board/Bureau — Executive Officer/Division Chief
DCA Exec — Deputy Director
Fiscal — (M) Management or (T) Travel Unit Staff
OHR — Personnel Officer

Staff must be named in writing (name, title and signature must be on file with the accounting office and the SCO Audits section) by the appointing authority in order to approve exceptions to the travel/relocation rules, and only for exceptions which have been delegated.

RESPONSIBILITY IN APPROVING TRAVEL EXPENSES

SEC. 599.638. EXPENSE ACCOUNT FORM.

(a) No travel expense account shall be paid unless submitted on a Travel Expense Claim, Standard Form 262 or some other form approved by the Controller. All expense accounts shall be itemized, accompanied by the necessary vouchers and approved by the authorized officer. It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed.

RESPONSIBILITY	BOARD/ BUREAU	DCA EXEC	FISCAL (M) Management (T) Travel	CONSIDERATIONS
Necessity for and duration of Travel	X	*		Must be pre-approved
Method of Travel	X	*		Must be in the best interest of the State, considering both direct expense as well as the officer's or employee's time. ^{1/3}
Approve Short-Term Vehicle Justification	X	*		Form must be completed to substantiate the rental of vehicles exceeding the contracted rate or occurrence of refueling charges.
Approve Expenses	X	*		Verify time and expenses claimed are reasonable and appropriate for authorized travel ^{2/3} ; all required receipts are provided; and any required approvals were obtained, e.g. exceptions to travel rules.
Approve Business Expense of more than \$25			X (M)	Business expenses incurred for purchase of items that could normally be purchased through Business Services or with the CalCard should only be purchased in emergency situations when it is not possible to use the normal procurement process due to circumstances beyond the employee's control.
Audit TEC for completeness and compliance with Rules and Regulations			X (T)	Only receipts required by CalHR (DPA) or MOUs should be required for presentation with the Travel Expense Claim. Documents to support the expense itself may also be required (e.g. certificates of completion or agendas to support reimbursement of training or conference fees). Receipts or other documentation should not be required solely to determine the reasonableness of the expense (e.g. certificates of completion and map quest printouts to support mileage claimed).

^{1/} Staff choosing to use an alternate mode of transportation must be preapproved by the supervisor for reimbursement of transportation costs. Documentation must be kept for auditing purposes.

^{2/} The approving official may request any additional documentation necessary to support the expenses being claimed (e.g. certificates of completion, map quest printouts, etc.)

^{3/} Any unusual circumstances or use of a method of travel that is in the best interest of the State, but is not the usual method of travel for a trip of comparable location and duration should be explained on the Travel Expense Claim in order to reduce questions and/or requests for documentation from the Travel Unit.

Board/Bureau — Designated Approving Official

DCA Exec — Deputy Director *Approve for Board President, Division and Bureau Chiefs

Fiscal — (M) Management or (T) Travel Unit Staff

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

To: Board of Optometry Members

Date: December 14, 2012

From: Lydia Bracco
Enforcement Analyst

Telephone: (916) 575-7183

Subject: Agenda Item 8 - Review and Possible Approval of the Records Retention Schedule

Records Management is the professional management and control of the records of an organization from the time they are created or received up to their eventual disposal. This may include processing, distribution, organization, retrieval, classification, storing, securing, and destruction (or in some cases, archival preservation) of records.

The Records Retention Schedule (RRS), Amendment 1 was approved by the Board at the September 16, 2011 meeting. Since that meeting, staff found the RRS needed to be amended to add Criminal Cases to document additional criminal activity.

The policy recommends Enforcement Records reflect a description of files in certain categories, i.e., Non-Jurisdictional, No Violation, Non-Disciplinary Action Taken and Disciplinary File. These categories have specific years of retention attached to them, thus making the files more organized and convenient when the maximum specified retention period is reached and it is time to purge the documents.

Following the DCA Business Services Guidelines, a Records Retention Schedule has been updated and will be maintained throughout the years.

Action:

Staff requests Board members review and approve the Records Retention Schedule, Amendment 2.

Attachment:

Records Retention Schedule (prior RRS & current)

UPDATED RETENTION SCHEDULE

STD.73 (REV. 6/)
RECORDS RETENTION SCHEDULE

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
 STATE RECORDS PROGRAM

Submit three copies to: Department of General Services, California Records and Information Management, 707 Third St. 2nd Fl., W. Sacramento, CA 95605.

A CalRIM Consultant may be reached by phone at (916) 375-4404, by fax at (916) 375-4408 or by email at CalRIM@dgs.ca.gov

(1) DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs		(2) AGENCY BILLING CODE 57190		(3) PAGE 1 OF 6 PAGES	
(4) DIVISION/ BRANCH/ SECTION Board of Optometry		(5) ADDRESS 2450 Del Paso Rd., Suite 105, Sacramento, CA 95834			
CHECK THE APPROPRIATE BOX					
(6) <input type="checkbox"/> New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]					
(7) <input type="checkbox"/> Revising a previous schedule. [Complete boxes (13) – (16)] (A new approval number will be assigned)					
(8) <input checked="" type="checkbox"/> Amending some pages of a previous schedule. [Complete boxes (13) – (16)] (The original approval number will remain in effect.)					
NEW SCHEDULE INFORMATION (If applicable)		(9) SCHEDULE NUMBER BO-4 A2	(10) SCHEDULE DATE 12/5/12	(11) NUMBER OF PAGES 6	(12) CUBIC FEET (Total Schedule) 566.75
PREVIOUS SCHEDULE INFORMATION (If applicable)		(13) SCHEDULE NUMBER BO-4 A1	(14) APPROVAL NUMBER 11-051	(15) APPROVAL DATE (S) 10/14/11	(16) PAGE NUMBER(S) REVISED 3
(17) MISSION/FUNCTIONAL STATEMENT: The mission of the California State Board of Optometry is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers and to ensure high quality care.					
PART I – AGENCY STATEMENTS					
As the program manager (or person authorized to sign for the program manager) directly responsible for the records listed on this records retention schedule, I certify that all records listed are necessary and that each retention period is correct. For revisions, all items on the previous schedule are included or accounted for on the recapitulation. Vital records identified by this schedule are protected. If protection is not currently provided but plans are underway, the details of such plans are shown in Column 45, Remarks.					
(18) SIGNATURE - MANAGER RESPONSIBLE FOR THE RECORDS		(19) TITLE		(20) PHONE NUMBER	(21) DATE SIGNED
In accordance with Government Code 14755, approval of this Records Retention Schedule by the Department of General Services is hereby requested. Retention periods shown have been established in accordance with the criteria set forth by Section 1667 of the State Administrative Manual.					
(22) SIGNATURE- RECORDS MGMT. ANALYST		(23) CLASSIFICATION	(24) NAME (Printed or Typed)	(25) PHONE NUMBER	(26) DATE SIGNED
PART II – DEPARTMENT OF GENERAL SERVICES APPROVAL (Per Government Code Section 14755)					
(27) SIGNATURE – CalRIM CONSULTANT			(28) APPROVAL NUMBER	(29) DATE SIGNED	(30) EXPIRATION DATE
PART III – ARCHIVAL SELECTION (Per Government Code Section 14755)					FOR ARCHIVES' STAMP
THE ATTACHED RECORDS RETENTION SCHEDULE:					
(31) <input type="checkbox"/> Contains no material subject to further review by the California State Archives					
(32) <input type="checkbox"/> Contains material subject to archival review. Items stamped "NOTIFY ARCHIVES" may not be destroyed without clearance by the California State Archives. (Per Section 1671 of the State Administrative Manual.)					
(33) SIGNATURE – CHIEF OF ARCHIVES OR DESIGNATED REPRESENTATIVE				(34) DATE SIGNED	

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

PROGRAM MANAGEMENT

1	3		Applicant Examination License File (applications, forms, letters, transcripts, score reports, requests)	PM		C+5			C+5	X,I	PRA; IPA - GC6254 – Law requires these records remain confidential. Current (C) until last time candidate sat for license examination then merge into Licensed Optometrist file. Scores are only applicable for 5 years per B & P Code 3054
2	4		Foreign Optometry School/College Graduate Sponsorship File (letters, diplomas, transcripts, score reports/results, requests)	PM		C			C	X,I	PRA; IPA - GC6254 – Law requires these records remain confidential. Current until foreign graduate applies for California licensure then merge into Licensed Optometrist file.
3	6		California Laws & Regulations Examination (CLRE) Materials (booklets, answer keys, reports, results)	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Confidential destruct (CD). Active for historical reference until policy change.
4	331		Licensed Optometrist File (applications, certificates, approval documents, Fingerprint forms, corporation licenses, branch office licenses, Nat'l Bd. of Examiners in Optometry score reports)	P		A			A	X,I	PRA, IPA - GC6254 – Law requires these records remain confidential. CD Active until licensee is deceased, after Board is notified of death, move to deceased file storage, keep for 5 years then destroy.
5	4		Licensed Optometrist File (deceased) (application, license, correspondence)	P		C+5			C+5	X	PRA - GC6254 – Law requires these records remain confidential. CD Current, combine with Licensed Optometrist file and keep 5 years. Notify Archives
6	15		Fictitious Name Permit File (application, correspondence)	P		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Active until licensee is deceased then

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

											combine with Licensed Optometrist file until destruction.
7	21		Licensed Optometrist File (cancelled)	P		C +25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of last renewal. CD
8	.5		Fictitious Name Permit File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
9	1.5		Branch Office License File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
10	.75		Corporation License File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
11	63		Disciplinary File (Dept. of Investigation (D of I) or other investigation court/hearing documents, related correspondence, mail votes)	PM		C			C	X	PRA - GC6254 - Law requires these records remain confidential. Current for 75 years from date of closure or until board is notified of death. CD
12	21		Criminal Cases (Dept. of Investigation (D of I) or other investigation police/court documents, related correspondence)	PM		C+25			C+25	XI	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of closure. CD
13	4		Open Complaint File (original complaint, requests for DOI/other investigation documents & resulting findings, related correspondence)	PM		A			A	X	PRA - GC6254 - Law requires these records remain confidential. Active until investigation is complete. Outcome of investigation will determine placement of file in other category.
14	16		Non-jurisdictional, Referred to Another Agency Complaint File and similar types of closure (original complaint, complaint opening/closing documents)	PM		C+2			C+2		Current for 2 years from date of closure then destroy. Recycle (R)

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

15	10		No Violation, Closed Without Merit Complaint File and similar types of closure (original complaint, complaint opening/closing documents)	PM		C+5			C+5		Current for 5 years from date of closure then destroy. R
16	23		Non-Disciplinary Action Taken, Insufficient Evidence, Administrative Action Taken Complaint File and similar types of closure (original complaint, D of I investigation document, possibly court documents)	PM		C+5			C+5		Current for 5 years from date of closure then destroy. R
17	2		Consumer Complaint Statistics (surveys, logs, reports)	PM		A			A		Active for historical reference until policy change. R
18	4		Board Statistics (reports, license information)	PM		A			A		Active for historical reference until policy change. R
19	4		Continuing Education Course File (approvals/denials)	PM		A+3			A+3		Active for 3 years from course date then destroy. R
20	1		License verification letters from applicants	P		C+3			C+3		Current for 3 years from verification request date then destroy. R
21	2		License Print Audit Control Reports	PM		A+3			A+3		Active for 3 years from course date then destroy. CD
22	3		Rules & Regulations (rulemaking files, amended/changed regulations)	PM		A			A		Active for historical reference until policy change. Notify Archives
23	2		Legislative Analysis & Proposed Legislation	PM		A			A	X	PRA - GC6254 -- Law requires these records remain confidential. CD Active for historical reference until policy change. Notify Archives

ADMINISTRATIVE MANAGEMENT

24	1		Executive Officer general correspondence	PM		A			A		Active for historical reference until policy change. Notify Archives
25	6		Board/Committee meeting minutes	PM		A			A	X	PRA - GC6254 -- Law requires these records remain confidential. CD Active for historical reference until policy change. Notify Archives
26	2		Board Policy	PM		A			A		Active for historical reference until policy change. Notify Archives

(36)

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

SUMMARY OF CHANGES

This RRS BO-4 A2 revises BO-4 A1 (approval date (10/14/2011). The item number (not page number, unless indicated by "Page") changes are as follows:

<u>BO-4 A1 (amended)</u>	<u>BO-4 A2</u>
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#12	13
#13	14
#14	15
#15	16
#16	17
#17	18
#18	19
#19	20
#20	21
#21	22
#22	23
#23	24
#24	25
#25	26
#26	27
#27	28
#28	29
#29	30
#30	31
#31	32
#32	33

Item #12 – additional verbiage

- indicates items moved

PRIOR RETENTION SCHEDULE

STD.73 (REV. 6/11)
RECORDS RETENTION SCHEDULE

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
STATE RECORDS PROGRAM

Submit three copies to: Department of General Services, California Records and Information Management, 707 Third St. 2nd Fl., W. Sacramento, CA 95605.

A CalRIM Consultant may be reached by phone at (916) 375-4404, by fax at (916) 375-4408 or by email at CalRIM@dgs.ca.gov

(1) DEPARTMENT, BOARD OR COMMISSION Department of Consumer Affairs		(2) AGENCY BILLING CODE 57190	(3) PAGE 1 OF 6 PAGES
(4) DIVISION/ BRANCH/ SECTION Board of Optometry		(5) ADDRESS 2450 Del Paso Rd., Suite 105, Sacramento, CA 95834	

CHECK THE APPROPRIATE BOX

- (6) ☐ New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]
- (7) ☐ Revising a previous schedule. [Complete boxes (13) – (16)] (A new approval number will be assigned)
- (8) ☒ Amending some pages of a previous schedule. [Complete boxes (13) – (16)] (The original approval number will remain in effect.)

NEW SCHEDULE INFORMATION (If applicable)	(9) SCHEDULE NUMBER BO-4 A1	(10) SCHEDULE DATE	(11) NUMBER OF PAGES 6	(12) CUBIC FEET (Total Schedule) 545.75
PREVIOUS SCHEDULE INFORMATION (If applicable)	(13) SCHEDULE NUMBER BO-4	(14) APPROVAL NUMBER 11-051	(15) APPROVAL DATE (S) 4/13/11	(16) PAGE NUMBER(S) REVISED 1, 2, 3, 4, 5, 6

(17) MISSION/FUNCTIONAL STATEMENT:

The mission of the California State Board of Optometry is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers and to ensure high quality care.

PART I – AGENCY STATEMENTS

As the program manager (or person authorized to sign for the program manager) directly responsible for the records listed on this records retention schedule, I certify that all records listed are necessary and that each retention period is correct. For revisions, all items on the previous schedule are included or accounted for on the recapitulation. Vital records identified by this schedule are protected. If protection is not currently provided but plans are underway, the details of such plans are shown in Column 45, Remarks.

(18) SIGNATURE - MANAGER RESPONSIBLE FOR THE RECORDS <i>Mona C. Morgan</i>	(19) TITLE <i>Executive Officer</i>	(20) PHONE NUMBER 916-575-7174	(21) DATE SIGNED 10-11-2011
---	--	-----------------------------------	--------------------------------

In accordance with Government Code 14755, approval of this Records Retention Schedule by the Department of General Services is hereby requested. Retention periods shown have been established in accordance with the criteria set forth by Section 1667 of the State Administrative Manual.

(22) SIGNATURE - RECORDS MGMT. ANALYST <i>Haidee</i>	(23) CLASSIFICATION <i>Agenda Item C</i>	(24) NAME (Printed or Typed) <i>Wesley Aguilar</i>	(25) PHONE NUMBER 916-574-7260	(26) DATE SIGNED 10-12-11
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PART II – DEPARTMENT OF GENERAL SERVICES APPROVAL (Per Government Code Section 14755)

(27) SIGNATURE – CalRIM CONSULTANT <i>James C. Sanchez</i>	(28) APPROVAL NUMBER 11-051	(29) DATE SIGNED 10/14/2011	(30) EXPIRATION DATE 5/12/2016
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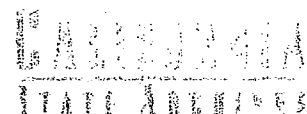
PART III – ARCHIVAL SELECTION (Per Government Code Section 14755)

THE ATTACHED RECORDS RETENTION SCHEDULE:

- (31) ☐ Contains no material subject to further review by the California State Archives
- (32) ☒ Contains material subject to archival review. Items stamped "NOTIFY ARCHIVES" may not be destroyed without clearance by the California State Archives. (Per Section 1671 of the State Administrative Manual.)

Key # 30768

(33) SIGNATURE – CHIEF OF ARCHIVES OR DESIGNATED REPRESENTATIVE <i>Jessica A. Henrich, Archivist</i>	(34) DATE SIGNED 10/21/2011
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101-05

ITEM # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items) (40)	MEDIA (41)	VITAL (42)	RETENTION				PRA (Exempt) & IPA (47)	REMARKS (48)
						OFFICE (43)	DEPT. (44)	SRC (45)	TOTAL (46)		

PROGRAM MANAGEMENT

1	3		Applicant Examination License File (applications, forms, letters, transcripts, score reports, requests)	PM		C+5			C+5	X,I	PRA; IPA-- GC6254 – Law requires the records remain confidential. Current (C) until last time candidate sat for license examination then merge into Licensed Optometrist file. Scores are only applicable for 5 years p B & P Code 3054
2	4		Foreign Optometry School/College Graduate Sponsorship File (letters, diplomas, transcripts, score reports/results, requests)	PM		C			C	X,I	PRA; IPA - GC6254 – Law requires the records remain confidential. Current until foreign graduate applies for California licensure then merge into Licensed Optometrist file.
3	6		California Laws & Regulations Examination (CLRE) Materials (booklets, answer keys, reports, results)	PM		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Confidential destruct (CD). Active for historical reference until policy change.
4	331		Licensed Optometrist File (applications, certificates, approval documents, Fingerprint forms, corporation licenses, branch office licenses, Nat'l Bd. of Examiners in Optometry score reports)	P		A			A	X,I	PRA, IPA - GC6254 – Law requires the records remain confidential. CD Active until licensee is deceased, after Board is notified of death, move to deceased file storage, keep for 5 years then destroy.
5	4	NOTIFY ARCHIVES	Licensed Optometrist File (deceased) (application, license, correspondence)	P		C+5			C+5	X	PRA - GC6254 – Law requires these records remain confidential. CD Current, combine with Licensed Optometrist file and keep 5 years. Notify Archives
6	15		Fictitious Name Permit File (application, correspondence)	P		A			A	X	PRA - GC6254 – Law requires these records remain confidential. Active until licensee is deceased then

101-051

(36)

Page 3 of 6

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
											combine with Licensed Optometrist file until destruction.
7	21		Licensed Optometrist File (cancelled)	P		C +25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of last renewal. CD
8	.5		Fictitious Name Permit File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
9	1.5		Branch Office License File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
10	.75		Corporation License File (cancelled)	P		C+25			C+25	X,I	PRA - GC6254 - Law requires these records remain confidential. Current for 25 years from date of cancellation notice. CD
11	63		Disciplinary File (Dept. of Investigation (D of I) or other investigation court/hearing documents, related correspondence, mail votes)	PM		C			C	X	PRA - GC6254 - Law requires these records remain confidential. Current for 75 years from date of closure or until board is notified of death. CD
12	4		Open Complaint File (original complaint, requests for DOI/other investigation documents & resulting findings, related correspondence)	PM		A			A	X	PRA - GC6254 - Law requires these records remain confidential. Active until investigation is complete. Outcome of investigation will determine placement of file in other category.
13	16		Non-jurisdictional, Referred to Another Agency Complaint File and similar types of closure (original complaint, complaint opening/closing documents)	PM		C+2			C+2		Current for 2 years from date of closure then destroy. Recycle (R)
14	10		No Violation, Closed Without Merit Complaint File and similar types of closure (original complaint, complaint opening/closing documents)	PM		C+5			C+5		Current for 5 years from date of closure then destroy. R

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
15	23		Non-Disciplinary Action Taken, Insufficient Evidence, Administrative Action Taken Complaint File and similar types of closure (original complaint, D of I, investigation document, possibly court documents)	PM		C+5			C+5		Current for 5 years from date of closure then destroy. R
16	2		Consumer Complaint Statistics (surveys, logs, reports)	PM		A			A		Active for historical reference until polic change. R
17	4		Board Statistics (reports, license information)	PM		A			A		Active for historical reference until polic change. R
18	4		Continuing Education Course File (approvals/denials)	PM		A+3			A+3		Active for 3 years from course date then destroy. R
19	1		License verification letters from applicants	P		C+3			C+3		Current for 3 years from verification request date then destroy. R
20	2		License Print Audit Control Reports	PM		A+3			A+3		Active for 3 years from course date then destroy. CD
21	3	NOTIFY ARCHIVES	Rules & Regulations (rulemaking files, amended/changed regulations)	PM		A			A		Active for historical reference until polic change. Notify Archives
22	2	NOTIFY ARCHIVES	Legislative Analysis & Proposed Legislation	PM		A			A	X	PRA - GC6254 - Law requires these records remain confidential. CD
											Active for historical reference until polic change. Notify Archives

ADMINISTRATIVE MANAGEMENT

23	1	NOTIFY ARCHIVES	Executive Officer general correspondence	PM		A			A		Active for historical reference until polic change. Notify Archives
24	6	NOTIFY ARCHIVES	Board/Committee meeting minutes	PM		A			A	X	PRA - GC6254 - Law requires these records remain confidential. CD
25	2	NOTIFY ARCHIVES	Board Policy	PM		A			A		Active for historical reference until polic change. Notify Archives
26	1	NOTIFY ARCHIVES	Legal Opinions (Attorney General and DCA legal)	PM		A			A		Active for historical reference until polic change. Notify Archives
27	6		Budget (Dept. of Finance/DCA submissions, Annual Financial Plans, CALSTARS reports)	PM		A			A		Active for historical reference until polic change. Notify Archives
											Active for historical reference until polic change. R

[illegible]

11-051

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

SUMMARY OF CHANGES

This RRS BO-4 revises BO-4 (approval date 4/13/2011). The item number (not page number, unless indicated by "Page") changes are as follows:

BO-4 BO-4/2011 (amended)

#7	11
#8	12
#9	13
#10	14
#11	15
#12	16
#13	17
#14	18
#15	19
#16	20
#17	21
#18	22
#19	23
#20	24
#21	25
#22	26
#23	27
#24	28
#25	29
#26	30
#27	31
#28	32

*7	new
*8	new
*9	new
*10	new

Item #5, 11, 12, 13, 14, 15, 23 - 26, 28 -
change in language/verbiage

- indicates items moved
* - indicates items that are new

* Provide total of office and departmental

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

To: Board Members

Date: December 14, 2012

From: Andrea Leiva and Jessica Sieferman
Policy Analyst Enforcement Analyst

Telephone: (916) 575-7170

Subject: Agenda Item 9 - Rulemaking Calendar

A. Update on California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

This rulemaking package updates the Board's disciplinary guidelines to reflect the current enforcement and probationary environment, and adds the mandatory Uniform Standards Related to Substance Abuse pursuant to Senate Bill 1441 (Ridley-Thomas, Ch. 548, Stats. 2008). These two documents are incorporated by reference in CCR §1575.

The package was submitted to the Department of Consumer Affairs (DCA) for final review on October 1, 2012. Since this package was set to expire on October 21, 2012, staff was able to obtain an extension of 90 days to complete the final review period. January 16, 2013 is the new date for final submission to the Office of Administrative Law (OAL). This package has yet to be approved by DCA, the Department of Finance, and the State and Consumer Services Agency.

B. Update on CCR §1514, Renting Space and Practicing on Premises of Commercial (Mercantile) Concern and §1525.1, Fingerprint Requirements

This rulemaking package amends CCR §1514 to clarify that a space rented by an optometrist in a commercial or mercantile concern must have a sign that specifically designates that it is occupied by an optometrist. CCR §1525.1 was amended to clarify that all optometrists initially licensed prior to April 1, 2007 must furnish fingerprints to the Department of Justice and the Federal Bureau of Investigation.

The package was approved by OAL on September 25, 2012 and the regulations became effective October 25, 2012. Attachment 1 contains the final language.

C. Discussion and Possible Action on Comments Received During the 45-Day Comment Period for CCR §1508, §1508.1, §1508.2, and §1508.3, Sponsored Free Health Care Events

Background:

At its May 18, 2012 meeting, the Board approved proposed regulatory language to implement Business and Professions Code (BPC) §901 which requires out-of-state optometrists to obtain authorization from the Board prior to participating in a sponsored free health-care event in California. The proposed regulatory language was noticed on the Board's website and mailed to interested parties on June 29, 2012, initiating the 45-day public comment period. The comment period began on June 29, 2012 and ended on August 13, 2012. One comment was received from the California Academy of Eye Physicians and Surgeons.

Comments:

California Academy of Eye Physicians and Surgeons (CAEPS)

These comments are directed at the Board and the Medical Board of California. The Board will only be considering and responding to the comments related to the Board's regulations.

- 1) BPC §4040 (a)(1)(D) states that a medication prescription must contain the prescriber's license classification. BPC §2541.1 (a)(4) states that a prescription for spectacle lenses must include the prescriber's license number.

Does the exemption from licensure granted by BPC §901 and these regulations also exempt out-of-state optometrists from complying with the above sections when they issue a prescription at a sponsored free health-care event? Should the regulations stipulate that, since these individuals will not be issued license numbers? We would not want out-of-state optometrists to not be able to write prescriptions, as this is a frequent request at health fairs.

Proposed Board Response: The Board should reject this comment. The exemption from licensure does not exempt an out-of-state optometrist from complying with California law. Out-of-state optometrists must certify on Form 901-B (OPT/2011) "Request for Authorization to Practice without a California License at a Sponsored Free Health-Care Event" that they will have knowledge of and comply with California law, and only practice within their, and/or within the scope of practice of California-licensed optometrists. Thus, the out-of-state optometrist will need to include in the prescription (for both medications and spectacle or contact lenses) their state's license number and/or classification. According to BPC §4005(b), California pharmacies are permitted to fill written and oral prescriptions for medications from out-of-state prescribers, and must verify the prescription before they do so. This also applies to California opticians, optometrists, and ophthalmologists filling out-of-state prescriptions for both medications and spectacle or contact lenses.

- 2) CCR §1508.2 (a) states that out-of-state practitioners may request authorization to participate in sponsored events and provide health-care services as would be permitted if the applicant were **licensed** by the Board to provide those services.

Since certifications exist in optometry (i.e., therapeutic pharmaceutical agents (TPA)) and they are above and beyond licensure, would the word "certification" need to be included to clarify that fact in the regulation and authorization form, or is that legally part of licensure?

Proposed Board Response: The Board should reject this comment. Certifications are considered a part of licensure, so it is not necessary to specify this in the regulation. The Board does not consider certifications above and beyond licensure.

3) Form 901-B (OPT/2011) includes language in Part 5 – Acknowledgement/Certification stating the following:

- Practice of the regulated profession in California without proper licensure and/or authorization will subject me to potential administrative, civil and/or criminal penalties.
- The Board may notify the licensing authority of my home jurisdiction and/or appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.

While we don't disagree with the content, the language in the form doesn't explicitly say:
(I acknowledge that) the services provided in relation to this event are subject to review and discipline of the SBO.

This verbiage implies that discipline is possible, but not definitively. Does the regulation need to say this explicitly, or does the incorporation by reference handle that?

The Board should also consider adding language to its form similar to the Medical Board where the above points are not just acknowledged and certified by the applicant but “declared under penalty of perjury under the laws of the State of California.”

Proposed Board Response: The Board should reject this comment in part. It is clear that discipline is possible if out-of-state practitioners do not comply with the requirements of BPC §901, these regulations, and forms incorporated by reference.

First, BPC §901 (a)(2) states that a health practitioner is defined as any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division. BPC §901 (j)(1) states that the Board may terminate authorization for a health-care practitioner to provide health-care services if they fail to comply with BPC §901, any regulations adopted pursuant to that division, or for any act that would be grounds for discipline if done by a licensee of the Board. BPC §901 (j)(3) states that any health practitioner who provides health-care services in violation of this paragraph shall be deemed to be practicing health-care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided by this division.

Second, CCR §1508.3, Termination of Authorization and Appeal describes in depth the kind of actions that the California Board can take against offending out-of-state practitioners. Ultimately, discipline must be administered by the out-of-state practitioner's respective state board if that board determines their licensee committed acts that also violate their state laws.

Lastly, CCR §20 (e) states that where a regulation which incorporates a document by reference is approved by OAL and filed with the Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all provisions on the Administrative Procedure Act. Thus, any language on the form is part of the regulations and must be complied with as law.

Adding the “under penalty of perjury” language similar to the Medical Board to the authorization form, while not necessary, is the decision of the Board.

See Attachment 2 for the final propose language of the regulations and the incorporated documents, and Attachment 3 for the comment received from CAEPS.

Action Requested:

- 1) Review the comments, proposed responses, and approve the proposed responses. If no changes are made to the regulations and incorporated documents, then direct staff to complete the rulemaking process.

If changes are made to the regulations and incorporated documents, then direct staff to initiate the 15-day public comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation before completing the rulemaking process.

- 2) Review the comments, proposed responses, and reject the proposed responses. If the proposed responses are rejected, the Board must discuss other responses to the comments in order to fully address the comments.

Upon completion of editing the responses to the comments, the Board must approve the responses as amended.

If changes to the regulation and incorporated documents result due to the edits of the proposed responses, the Board must direct staff to initiate the 15-day public comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation before completing the rulemaking process.

D. Discussion and Possible Action to Draft Language and Commence a Rulemaking to Add and Amend Regulations Pertaining to DCA's Consumer Protection Initiative

Background:

In 2010, DCA sponsored Senate Bill 1111 to provide health boards with the necessary tools to implement the Consumer Protection Enforcement Initiative (CPEI) and streamline the enforcement and disciplinary process. The bill failed in the Senate Business, Professions and Economic Development Committee on April 19, 2010. Despite this outcome, DCA identified nine provisions from Senate Bill 1111 that could be implemented via regulation to meet DCA's goal of completing cases in 12-18 months. Staff was able to find the statutory authority to implement eight of the nine provisions and worked with DCA and legal counsel to draft proposed language. The Board initially decided to initiate a rulemaking package that contained the CPEI regulations along with the Uniforms Standards Related to Substance Abuse and the Disciplinary Guidelines (Guidelines).

On April 11, 2011 the Board voted to separate the Guidelines from the CPEI regulations in order to better focus on the Guidelines. The rulemaking package would have been too massive and difficult to develop if the two sets of regulations would have remained together. It was decided to continue work on the CPEI regulations upon the completion of the Guidelines rulemaking package.

In late 2010 and early 2011, the CPEI regulations were a priority for DCA, but now that there is a new administration, it has been left to the boards to decide what CPEI provisions are appropriate for implementation. DCA believes the regulations would be helpful, and are not deeming them mandatory.

Issue:

Now that the Guidelines rulemaking package is in the final stages of review, staff would like to reintroduce this issue to the Board for consideration. About 13 DCA boards have either completed rulemaking packages implementing some of the CPEI regulations or are in the process of working on rulemaking packages.

See Attachment 4 for the full discussion and proposed language.

Action Requested:

- 1) Review the nine provisions to determine which ones would be the most appropriate for the Board's use.
- 2) Review, discuss, and makes changes to the proposed language of the chosen provisions for implementation and vote to initiate a rulemaking if the language is to the Board's satisfaction.

or

- 3) If all or some of the provisions are rejected, discuss why they are not necessary at this time.

E. Discussion and Possible Action to Draft Language to Clarify the Fees for the Board's Retired License Statutes

Background:

Board sponsored Senate Bill 1215 (Emmerson, Ch. 359, Stats. 2012) was signed by the Governor on September 17, 2012 and will be effective January 1, 2013. This bill adds a retired license status and a volunteer retired license status as follows:

Retired (BPC §3151)

- One-time application fee (\$25);
- No renewal required;
- No continuing education required;
- Can no longer practice for any reason;
- Earn the designation of retired versus inactive, cancelled, or delinquent;
- If decide to return to practice, creates a process to do so; and
- Can use the titles "retired optometrist" or "optometrist, retired."

Retired Volunteer (BPC §3151.1)

- Application fee (\$50);
- Biennial renewal required (\$50);
- Continuing education, dependant on certification type, required for renewal;
- Can only practice optometry as a volunteer who provides unpaid services at health fairs, vision screenings, and public service eye programs;
- Earn the designation of retired with a volunteer designation versus inactive, cancelled, or delinquent;
- If you decide to return to practice in order to receive payment for your services, creates a process for you to do so; and
- Can use the titles "retired optometrist" or "optometrist, retired."

For both of the statuses above, only doctors with current and active licenses will be permitted to apply. The Board will continue to have jurisdiction over retired licensees (BPC §3090).

Issue:

Senate Bill 1215 established three new fees for the retired license statuses in BPC §3152 (q), (r), and (s). In order for the Board to utilize these fees, they must be written into regulation since the statute only gives ranges of how much a fee can be. Staff is proposing to implement the fees via CCR §1524, Fees. Without this regulation, the Board can implement the retired licenses. See Attachment 5 for the proposed language.

Action Requested:

- 1) Review and discuss the proposed language, and then approve the language and direct staff to initiate the rulemaking process.
- 2) Review and discuss the proposed language, and then reject the language, and then work with staff to amend the language to the Board's satisfaction. Once the language is amended, approve the proposed language as amended and direct staff to initiate the rulemaking process.

F. Discussion and Possible Action to Draft Language for the Training of Assistants

Background:

Senate Bill 929 (Polanco, Ch. 676, Stats. 2000) expanded the scope of practice for optometrists and expanded the duties that an unlicensed assistant could perform under the direct responsibility and supervision of an optometrist (See Attachment 6 for language added). In light of this law change, during the Board's 2002 Sunset Review period, the Joint Legislative Sunset Review Committee (JLSRC) and DCA recommended that the Board conduct an occupational analysis for assistants working in an optometrist's office to identify the tasks they could perform, and the training and skill level required. The JLSRC and DCA believed that an occupational analysis should be developed before unlicensed assistants were permitted to engage in practices that until the law change required licensure as an optometrist. The Board was then instructed to promulgate regulations clarifying the level of training and supervision of assistants following the occupational analysis.

Senate Bill 929 reclassified technicians, who previously were only authorized to fit contact lenses, to assistants who can perform various testing procedures including glaucoma testing, visual perception testing, measurement of the thickness of the cornea, screening of the corneal curvature, administering topical agents, and performing sonograms to measure the length of the eye and structures of the eye, generally used for surgical procedures and may involve direct contact with the eye.

Due to this significant scope expansion of assistants, the JLSRC and DCA requested that the Board expedite the adoption of clarifying regulations establishing training standards to ensure consumers were not placed at risk. They stressed that without these regulations, individual practitioners in the field could interpret the law in a variety of ways, resulting in the possibility of assistants not having the adequate knowledge and skill.

In an effort to comply with the JLSRC and DCA's recommendations, the Board submitted a budget change proposal (BCP) in 2003 to obtain spending authority to conduct an occupational analysis for assistants. The BCP was denied; therefore the occupational analysis was never conducted. At the Board's January 16, 2004 meeting, the prior Executive Officer reported the denial of the BCP and indicated that due to the current budget situation, it was unlikely that the Board would be granted additional funds to conduct the analysis any time soon. Despite this set-back, the Executive Officer presented proposed regulatory language, and the Board voted to approve it and initiate the rulemaking process. A public hearing was conducted on November 16, 2004 to solicit comments from the public, and the Board received support from the California Optometric Association (COA). After two 15-day modified text comment periods prompted by comments from DCA in May 2005, and later, the COA in August 2005, the final proposed regulatory language was ready. See Attachment 6 for the proposed language.

Also in April 2005, for the rulemaking package's fiscal analysis, the staff conducted a survey of 100 optometrists who utilized assistants to determine the costs of supervising and training them (See Attachment 7 for a sample of the survey distributed). Based on the survey results, the average initial training time for procedures authorized in BPC §2544 is 122.8 hours, with estimated optometrist/non-optometrist staff time costs of \$4,882.65. Annual refresher training time totals 35.5 hours with related staff time costs of \$1,169.93.

Unfortunately, the second 15-day modified text comment period to address COA's recommendations started on September 26, 2005 and ended on October 11, 2005. This rulemaking package was noticed on October 1, 2004, so pursuant to the Administrative Procedures Act, it expired October 1, 2005. After this date, the Board did not discuss this rulemaking package again.

Issue:

This Sunset Review period has brought the issue back to the Board. Since this is an old issue from a prior Sunset Review that was never completed by the Board, the Board must consider it now and follow the instruction of the JLSRC.

Action Requested:

- 1) Approve proposed regulation as it is now; or
- 2) Take back to the Board to develop new language; or
- 3) Discuss the possibility of conducting a full occupational analysis* for assistants with the assistance of the Office of Professional Examination Services*.

*At this time, the Board's funds are limited, and to increase funds, a BCP would need to be developed and approved. An occupational analysis would cost the Board between \$40,000 and \$50,000 (2009 Occupational Analysis for optometrists cost \$44,996.00). The Board is not confident that a BCP will be approved now for this purpose, considering that the 2003 BCP was rejected, even with the backing of the legislature. Typically, if a task requires funds to complete and it is legislatively mandated, a BCP has a higher chance of being approved.

Upon review of this issue, the Office of Professional Examination Services strongly recommended an occupational analysis for best results.

BOARD OF OPTOMETRY

ORDER OF ADOPTION

Amend sections 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises and shall have a sign designating that the rented space is occupied by an optometrist or optometrists.

(c) All signs, advertising, and display shall likewise be separate and distinct from that of the other occupants and have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code.

Reference: Sections 651 and 3025, Business and Professions Code.

§ 1525.1, FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to ~~January 1, 1998~~ April 1, 2007, ~~or for whom an electronic record of the submission of fingerprints no longer exists,~~ such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

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(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Note: Authority cited: Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code.

Reference: Section 3110, Business and Professions Code; and Section 11105, Penal Code.

**BOARD OF OPTOMETRY
PROPOSED LANGUAGE**

Add Article 2.5 and Sections 1508, 1508.1, 1508.2 and 1508.3 to Division 15 of Title 16 of the California Code of Regulations to read as follows:

Article 2.5 Sponsored Free Health-Care Events - Requirements for Exemption

§1508. Definitions

For the purposes of Section 901 of the Code:

(a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of optometry but who holds a current, active and valid license or certificate in good standing in another state, district, or territory of the United States to practice optometry.

(c) "In good standing" means that a person:

- (1) Is not currently the subject of any investigation by any governmental entity or has not been charged with an offense for any act substantially related to the practice of optometry by any public agency.
- (2) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person's professional conduct or practice, including any voluntary surrender of license; or,
- (3) Has not been the subject of an adverse judgment resulting from the practice of optometry that the Board determines constitutes evidence of a pattern of incompetence or negligence.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§1508.1. Sponsoring Entity Registration and Recordkeeping Requirements.

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health-care services at a sponsored event under section 901 of the Code shall register with the Board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the Board by submitting to the Board a completed "Registration of Sponsoring Entity under Business and Professions Code Section 901," Form 901-A (DCA/2011), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The Board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process "Registration of Sponsoring Entity under Business and Professions Code Section 901," Form 901-A (DCA/2011) on behalf of the Board. The Board or its delegatee shall inform the sponsoring entity in writing

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within 15 calendar days of receipt of Form 901-A (DCA/2011) that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by Section 901 as well as a copy of the authorization for participation issued by the Board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five (5) years following the provision of health-care services. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the Board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by Section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the Board. In addition, the sponsoring entity shall provide copies of any record required to be maintained by Section 901 of the Code to any representative of the Board within 15 calendar days of the request.

(d) Notice. A sponsoring entity shall place a notice visible to patients at every station where patients are being seen by an optometrist. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

NOTICE

Optometrists providing health-care services at this health fair are either licensed and regulated by the California State Board of Optometry or hold a current valid license from another state and have been authorized to provide health-care services in California only at this specific health fair.

For more information, or if you have a complaint or concern please contact the California State Board of Optometry at 1-916-575-7170; www.optometry.ca.gov.

(e) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval of such practitioner from the Board.

(f) Report. Within 15 calendar days following the provision of health-care services, the sponsoring entity shall file a report with the Board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

- (1) The date(s) of the sponsored event;
- (2) The location(s) of the sponsored event;
- (3) The type(s) and general description of all health-care services provided at the sponsored event; and

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- (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the Board to participate in a sponsored event and provide such health-care services at the sponsored event as would be permitted if the applicant were licensed by the Board to provide those services. Authorization shall be obtained for each sponsored event in which the applicant seeks to participate.

(1) An applicant shall request authorization by submitting to the Board a completed "Request for Authorization to Practice Without a California License at a Sponsored Free Health-Care Event," Form 901-B (OPT/2011), which is hereby incorporated by reference, accompanied by a non-refundable and non-transferable processing fee of \$40.00.

(2) The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the Board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history check. This requirement shall apply only to the first application for authorization that is submitted by the applicant.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the Board shall notify the sponsoring entity or local government entity and the applicant whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The Board shall deny a request for authorization to participate if:

(A) The submitted Form 901-B (OPT/2011) is incomplete and the applicant has not responded within seven (7) calendar days to the Board's request for additional information; or

(B) The applicant has not graduated from an accredited school or college of optometry approved or recognized by the Board; or

(C) The applicant does not possess a current, active and valid license in good standing as defined in Section 1508; or

(D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial under Section 480 of the Code of an application for licensure by the Board; or

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(E) The Board has been unable to obtain a timely report of the results of the criminal history check.

(2) The Board may deny a request for authorization to participate if:

(A) The request is received less than 20 calendars days before the date on which the sponsored event will begin; or

(B) The applicant has been previously denied a request for authorization by the Board to participate in a sponsored event; or

(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the Board.

(D) The applicant has participated in three (3) or more sponsored events during the 12 month period immediately preceding the current application.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1508.3.

(e) Notice. An out-of-state practitioner who receives authorization to practice optometry at a sponsored event shall place a notice visible to patients at every station at which that person will be seeing patients. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

NOTICE

I hold a current valid license to practice optometry in a state other than California. I have been authorized by the California State Board of Optometry to provide health-care services in California only at this specific health fair.

California State Board of Optometry

916-575-7170

www.optometry.ca.gov

Note: Authority cited: Sections 144, 901, and 3025, Business and Professions Code.

Reference: Sections 144, 480 and 901, Business and Professions Code.

§1508.3. Termination of Authorization and Appeal.

(a) Grounds for Termination. The Board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the Board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the Board.

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(3) The Board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The Board shall provide both the sponsoring entity or local government entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the Board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the Board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the Board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act.

(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer or his or her designee may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within 10 days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

Note: Authority cited: Sections 901, and 3025, Business and Professions Code.
Reference: Section 901, Business and Professions Code.

SPONSORED FREE HEALTH CARE EVENTS

REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code section 901(d), a non-government organization administering an event to provide health-care services to uninsured and underinsured individuals at no cost, may include participation by certain health-care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization **at least 90 calendar days prior to the sponsored event.** *Note that the information required by Business and Professions Code section 901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.*

PART 1 – ORGANIZATIONAL INFORMATION

1. Organization Name: _____

2. Organization Contact Information (*use principal office address*):

Address Line 1 _____

Phone Number of Principal Office _____

Address Line 2 _____

Alternate Phone _____

City, State, Zip _____

Website _____

County _____

Organization Contact Information in California (*if different*):

Address Line 1 _____

Phone Number _____

Address Line 2 _____

Alternate Phone _____

City, State, Zip _____

County _____

3. Type of Organization:

Is the organization operating pursuant to section 501(c)(3) of the Internal Revenue Code? Yes No

If not, is the organization a community-based organization*?

____ Yes ____ No

Organization's Tax Identification Number _____

If a community-based organization, please describe the mission, goals, and activities of the organization (*attach separate sheet(s) if necessary*): _____

* A "community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

PART 2 – RESPONSIBLE ORGANIZATION OFFICIALS

Please list the following information for each of the principal individual(s) who is the officer(s) or official(s) of the organization responsible for operation of the sponsoring entity.

Individual 1:

Name

Address Line 1

Address Line 2

City, State, Zip

County

Title

Phone

Alternate Phone

E-mail address

Individual 2:

Name

Address Line 1

Address Line 2

City, State, Zip

County

Title

Phone

Alternate Phone

E-mail address

Individual 3:

Name

Title

Address Line 1

Phone

Address Line 2

Alternate Phone

City, State, Zip

E-mail address

County

(Attach additional sheet(s) if needed to list additional principal organizational individuals)

PART 3 – EVENT DETAILS

1. Name of event, if any: _____

2. Date(s) of event (not to exceed ten calendar days): _____

3. Location(s) of the event (be as specific as possible, including address):

4. Describe the intended event, including a list of all types of health-care services intended to be provided (*attach additional sheet(s) if necessary*): _____

5. Attach a list of all out-of-state health-care practitioners who you currently believe intend to apply for authorization to participate in the event. The list should include the name, profession, and state of licensure of each identified individual.

___ *Check here to indicate that list is attached.*

Note:

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application to the applicable licensing Board or Committee.
- The organization will be notified in writing whether authorization for an individual out-of-state practitioner has been granted.

This form, any attachments, and all related questions shall be submitted to:

Department of Consumer Affairs
Attn: Sponsored Free Health-Care Events
Legislative and Policy Review Division
1625 North Market Blvd., Ste. S-204
Sacramento, CA 95834

Tel: (916) 574-7800
Fax: (916) 574-8655
E-mail: lpdivision@dca.ca.gov

- I understand that I must maintain records in either electronic or paper form both at the sponsored event and for five (5) years in California, per the recordkeeping requirements imposed by California Business and Professions Code section 901 and the applicable sections of Title 16, California Code of Regulations, for the regulatory bodies with jurisdiction over the practice to be engaged in by out-of-state practitioners
- I understand that our organization must file a report with each applicable Board or Committee within fifteen (15) calendar days of the completion of the event.

I certify under penalty of perjury under the laws of the State of California that the information provided on this form and any attachments is true and current, and that I am authorized to sign this form on behalf of the organization:

Name Printed

Title

Signature

Date

PERSONAL INFORMATION COLLECTION, ACCESS AND DISCLOSURE

Disclosure of your personal information is mandatory. The information on this form is required pursuant to Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete. The information provided will be used to determine compliance with the requirements promulgated pursuant to Business and Professions Code section 901. The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the applicable Board or Committee, unless the records are exempted from disclosure by section 1798.40 of the Civil Code. An individual may obtain information regarding the location of his or her records by contacting the Deputy Director of the Legislative and Policy Review Division at the address and telephone number listed above.



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



REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A CALIFORNIA LICENSE AT A SPONSORED FREE HEALTH-CARE EVENT

In accordance with California Business and Professions Code Section 901 any optometrist licensed and in good standing in another state, district, or territory in the United States may request authorization from the California State Board of Optometry (Board) to participate in a free health-care event offered by a local government entity or a sponsoring entity, registered with the Board under this Section, for a period not to exceed ten (10) days.

PART 1 - APPLICATION INSTRUCTIONS

Applicants must complete all parts of this form and enclose the following:

- A processing fee of \$40, made payable to the California State Board of Optometry.
Note: If submitting fingerprint cards instead of using Live Scan, please submit an additional \$49 fee, payable to the California State Board of Optometry, to process your fingerprint cards for a total fee of \$89. The applicant must pay any costs for furnishing the fingerprints and conducting the criminal history record check. See additional information below.
- A copy of all valid and active licenses and/or certificates authorizing the applicant to practice optometry issued by any state, district, or territory of the United States.
- A letter of verification of license status from each state's Board of Optometry where the applicant is currently practicing.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- A copy of a valid transcript to prove you graduated from an accredited school or college of optometry that is approved or recognized by the Board.
- A full set of fingerprints or a Live Scan inquiry. This will be used to establish your identity and to conduct a criminal history record check. However, this requirement shall apply only to the first application for authorization that you submit.

Live Scan is only available in California for residents or visitors. A listing of California Live Scan sites can be found at <http://ag.ca.gov/fingerprints/publications/contact.htm>. Only Live Scan fingerprints completed in California can be accepted. You must fill out a *Request for Live Scan Service* form, which can be obtained from the Board's website at www.optometry.ca.gov.

Procedure: You must take the completed form to the service location, pay a fee and your fingerprints will be taken on a glass without ink. The fingerprints will then be transmitted electronically to the Department of Justice, who then forwards a report to the Board. There is a low rate of rejection with this method and it will take two days to complete.

Ink on Fingerprint Cards (hard cards). If you are unable to get your fingerprints completed in California via Live Scan, you may contact the Board in writing to obtain an "8X8" fingerprint card (FD-258). Other States' resident hard cards will not be accepted. Be sure to type or print legibly in black ink in all the areas on the card asking for personal

information, that the card is dated and signed by the official taking the fingerprints, and that your signature is on the card.

Procedure: You must take the hard card to a qualified fingerprint office, e.g., law enforcement, where they will roll your prints, and pay a fee. From the Board's website, obtain a *Fingerprint Certification Form*, complete the form, sign, and date it. Include the completed card and certification in your application to participate in a sponsored free health-care event with a \$49 non-refundable processing fee. Reports from the Department of Justice on some hard cards are received within a month after submission. If you need to repeat the fingerprinting process because of unreadable prints or factors beyond the Board's control, this process may take multiple months, so please plan accordingly.

The Board shall not grant authorization until this form has been completed in its entirety, all required enclosures have been received by the Board, and any additional information requested by the Board has been provided by the applicant and received by the Board.

The Board shall process this request and notify the sponsoring entity listed in this form whether the request is approved or denied within 20 calendar days of receipt. If the Board requires additional or clarifying information, the Board will contact the applicant directly. Written approval or denial of requests will be provided directly to the sponsoring entity. It is the applicant's responsibility to maintain contact with their sponsoring entity.

PART 2 – GENERAL INFORMATION

1. Applicant Name: _____
First Middle Last

2. Social Security Number: ____ - ____ - ____ **Date of Birth:** _____

Note: The applicant's social security number shall be kept confidential in accordance with all applicable California and federal law.

3. Applicant's Contact Information*:

Address Line 1

Phone

Address Line 2

Alternate Phone

City, State, Zip

E-mail address

(*If an authorization is issued, this address information will be considered your "address of record" with the Board and will be made available to the public upon request.)

4. Applicant's Employer: _____

Employer's Contact Information:

Address Line 1

Phone

Address Line 2

Facsimile

City, State, Zip

E-mail address (if available)

5. Name and Location of school/college of optometry from which Applicant Graduated:

PART 3 – LICENSURE INFORMATION

1. Do you hold a valid current active license, in good standing issued by a state, district, or territory of the United States authorizing the unrestricted practice of optometry in your jurisdiction(s)?

No ☐ If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

Yes ☐ If yes, list all current licenses, certificates, and registrations authorizing the practice of optometry in the following table. If there are not enough boxes to include all the relevant information, please attach an addendum to this form. **Please also attach a copy of each of your current licenses, certificates, and registrations.**

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date

2. Have you ever had a license or certification to practice optometry revoked or suspended?
___ Yes ___ No

3. Have you ever been subject to any disciplinary action or proceeding by an applicable licensing body?
___ Yes ___ No

4. Have you ever allowed any license or certification to practice optometry expire without renewal?
___ Yes ___ No

5. If you answered “Yes” to any of questions 2-3, please explain (*attach additional page(s) if necessary*): _____

PART 4 – SPONSORED EVENT

1. Name and address of local government entity, non-profit, or community-based organization hosting the free health-care event (the “sponsoring entity”): _____

2. Name of event: _____

3. Date(s) & Location(s) of the event: _____

4. Date(s) & Location(s) Applicant will be performing health-care services (if different):

5. Please specify the health-care services you intend to provide: _____

6. Name and phone number of contact person with sponsoring entity or local government entity:

PART 5 – ACKNOWLEDGMENT/CERTIFICATION

I, the undersigned, certify and acknowledge that:

- I have not committed any act or been convicted of a crime constituting grounds for denial of licensure by the Board.
- I am in good standing with the licensing authority or authorities of all jurisdictions in which I hold licensure and/or certification to practice optometry.
- I am responsible for knowing and complying with all applicable practice requirements and standards required of licensed optometrists by the California Business and Professions Code and all regulations of the Board while participating in a sponsored event located in California.
- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed optometrists.
- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
- I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity or local government entity listed herein and only on the dates and at the locations listed herein for a period not to exceed ten (10) calendar days.
- I will provide a written notice to each patient or prospective patient prior to performing any services pursuant to California Code of Regulations, Title 16, Section 1508.2(e).
- Practice of a regulated profession in California without proper licensure and/or authorization will subject me to potential administrative, civil and/or criminal penalties.
- The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.

- All information provided by me in this application is true and complete to the best of my knowledge, and the Board may, at its discretion, audit and/or verify any information provided by me. By submitting this application and signing below, I am granting permission to the Board to perform such verification and background investigation pertaining to the information I have provided as the Board deems necessary.

My signature on this application, or copy thereof, authorizes the National Practitioner Data Bank and the Federal Drug Enforcement Agency to release any and all information required by the California State Board of Optometry.

Signature

Date

Name Printed: _____

Note: Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

NOTICE OF COLLECTION OF PERSONAL INFORMATION

Disclosure of your personal information is mandatory. The information on this application is required pursuant to Title 16, California Code of Regulations Section 1508.3 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete or denied. The information provided will be used to determine compliance with Article 2.5 of Division 15 of Title 16 of the California Code of Regulations (beginning at Section 1508). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.

From: CaEyeMDs@aol.com
Sent: Monday, August 13, 2012 4:07 PM
To: Schunke, Kevin@MBC; Leiva, Andrea@DCA; Maggio, Mona@DCA
Cc: kschultz@coavision.com; jlang@lhom.com
Subject: Regulations on Sponsored Free Health Care Events

Follow Up Flag: Follow up
Flag Status: Completed

Members of the Medical Board of California and the California State Board of Optometry:

First of all, we strongly support the efforts by both Boards to implement Section 901 of the Business and Professions Code as we believe improved access to healthcare by the uninsured to be of major importance.

The following comments are related to the above referenced regulations you are each promulgating. They are intended to avoid potential glitches that might present that would unnecessarily delay the availability or applicability of the services of the Boards' respective providers should they be found valid and require addressing.

Although we reviewed the regulations of the Medical Board as they moved through its process, the issues we will raise were not noted until of review of the Board of Optometry's version. With minor exception, they generally apply to both sets of practitioners.

Given comment period on the MBC's version appears to have expired, these comments should be considered a request to the Medical Board to take appropriate steps to further modify the current regulations as needed if that is possible (or initiate future changes if it is not).

Medication Prescription Authority

Section 4040 of the B&P code says (in pertinent part, emphasis added):

4040. (a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, **his or her license classification**, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either Section 4052.1 or 4052.2.

Questions: Does the "exemption" from licensure granted by Section 901 make someone ELIGIBLE to "claim" a "license classification" required to issue a valid prescription here? Do both sets of regulations need to stipulate that (or can they)?

Oddly, a prescription does not seem to require a "license number" but that could ALSO be a problem if a pharmacist [elsewhere in the B&P code, we couldn't find] is required to collect that information to process a prescription. This is explicitly a problem in the next section.

Prescription Authority -- Spectacle Lenses

Section 2541.1 says in pertinent part (emphasis added):
2541.1. (a) A spectacle lens prescription shall include all of the following:

- (1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form "copy lenses currently worn" instead.
- (2) The expiration date of the prescription.
- (3) The date of the issuance of the prescription.
- (4) The name, address, telephone number, **prescriber's license number**, and signature of the prescribing optometrist or physician and surgeon.

Questions: Does the "exemption" from licensure granted by Section 901 make a prescription written under this section "valid" WITHOUT the specific statutory requirement to furnish the "number" (that likely won't be issued since a license isn't being issued?) required to issue a valid prescription here? Do both sets of regulations need to stipulate that (or can they)? We would not want either out-of-state ophthalmologists or optometrists to not be able to write these prescriptions as that is a frequent request at health fairs.

Certification vs. Licensure

Both regulations have the following language (emphasis added):

[Section #] Out-of-State Practitioner Authorization to Participate in Sponsored Event

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the Board to participate in a sponsored event and provide such health-care services at the sponsored event as would be permitted if the applicant were **licensed** by the Board to provide those services. Authorization shall be obtained for each sponsored event in which the applicant seeks to participate.

Also the acknowledgement statement makes the same point.

Question? This applies only to the SBO, but since certifications exist and they are above and beyond "licensure," would the word "certification" need to be included to clarify that fact (both in the regulation and form) or is that legally "part" of licensure?

Discipline

Both the MBC and SBO forms for this (which are incorporated "by reference") have similar statements about this, but the regulations themselves are silent.

Board of Optometry:

I, the undersigned, certify and acknowledge that (PERTINENT PART):

Practice of a regulated profession in California without proper licensure and/or authorization will subject me to potential administrative, civil and/or criminal penalties.

The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.

Medical Board of California:

I, the undersigned, declare under penalty of perjury under the laws of the State of California and acknowledge that: (PERTINENT PART)

• Practice of a regulated profession in California without proper licensure and/or authorization may subject me to potential administrative, civil and/or criminal penalties.

• The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.

Questions: While we don't disagree with the content (not sure of the significance of the "perjury" part, but the SBO might consider adding it), the language doesn't just come out (in either version) and say:

(I acknowledge that) the **services provided in relation to this event are subject to review and discipline of the MBC/SBO**.

Assuming you choose to make that explicit (the statement about reporting them to their home jurisdiction, etc., seems to "imply" that discipline is possible, but why be so obtuse?), does the regulation need to say this (or does the incorporation by reference handle that)?

Again, we are very supportive of both sets of proposed regulations, but want to ensure they can be implemented such that the services that might be provided are not hampered by administrative glitches.

To the degree a clean-up bill might be needed to handle any of the above, we would be supportive of such changes.

Please let me know if you have questions.

Craig

Craig H. Kliger, MD
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Department of Consumer Affairs (DCA) SB 1111 Proposed Changes through Regulations

Board of Optometry – Proposed Language

DCA Provision (1)

(1) Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender license: Permits the Board to delegate to the Executive Officer the authority to adopt a “stipulated settlement” if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement.

Background:

This change would only affect Stipulated Settlements that result in revocation, surrender or interim suspension of a license.

Currently, when an Accusation is filed for a revocation, surrender or interim suspension of a license, if the licensee submits a Notice of Defense to the Board, it will trigger Stipulated Settlement discussions.

A Stipulated Settlement is a legal document that typically contains admissions by the licensee to one or more violations of law and sets forth a proposal for discipline. Stipulated Settlements are faster than formal hearings and a less expensive method of case resolution. The Board members may vote to adopt or reject a Stipulated Settlement where the licensee has agreed to revocation, surrender or interim suspension, or discuss it further before making a final decision.

Problem, Rationale for Change:

There have been instances of undue delays during the period when a fully signed Stipulated Settlement has been received by the Board’s office and when it has been placed on the Board’s meeting agenda for a vote. Delegating authority to the Executive Officer to adopt Stipulated Settlements for the revocation, surrender or interim suspension of a license will result in those cases resolving much faster. Consumers would be better protected because the risk of these licensees practicing and harming more patients during the “waiting” period for the Board to make a decision could be reduced. A licensee that is up for revocation, surrender, or interim suspension is clearly a danger to the public and should be dealt with as quickly as possible. The Board would continue to have involvement in these cases because the Executive Officer would provide summary reports of all Stipulated Settlements. The Board would be able to provide constant review and feedback so that policies can be established and adjusted as necessary.

It must also be taken into consideration that the Board is being encouraged by the Department and the Legislature to meet in the most inexpensive manner possible. This is resulting in reduced meeting opportunities to discuss Stipulated Settlements, so it only makes sense to have the option to allow the Executive Officer to resolve cases where the licensee has already agreed to the highest penalty. This leaves more time to deal with cases that absolutely need the Board’s consideration and vote.

Recommendation:

If the Board chooses to make this amendment, it is recommended that this change be made via regulation.

Proposed Regulatory Language:

1502. Delegation of Certain Functions

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to adopt settlement agreements for the revocation, surrender or interim suspension of a license, which shall not include disciplinary decisions where revocation is ordered and stayed; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Section 3027 and 3090, Business and Professions Code.

DCA Provision (2)

(2) Sexual misconduct: Currently defined in BPC Section 726. Define in regulation that sexual misconduct is unprofessional misconduct.

Background:

BPC section 726 defines the commission of any act of sexual abuse, misconduct, or relations with a patient, client or, customer as unprofessional conduct and grounds for disciplinary action.

BPC section 3110(m) allows the Board to take action against a licensee and revoke a license if they commit or solicit an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

In the Board's Disciplinary Guidelines, the minimum discipline recommended for sexual misconduct is revocation.

None of the above specifically defines sexual misconduct as unprofessional conduct.

Problem/Rationale for Change:

Some acts of sexual misconduct may not be considered crimes, but when it comes to licensees, it can be argued that they should be. The possibility that an act of sexual misconduct will not be unprofessional conduct will result in no discipline on the licensee, and that should be prevented. Acts of sexual misconduct reflect poorly on a licensee's common sense and professional judgment, which are essential to the practice of optometry, and tend to undermine the public's confidence in and respect for the optometric profession (Griffiths v. Super. Court, 96 Cal. App. 4th 757 (2002)).

One of the Board's responsibilities as a consumer protection agency is to proactively look for ways to prevent consumer harm before it happens. Specifically stating that sexual misconduct is unprofessional conduct will ensure that any acts of sexual misconduct will affect the license.

Recommendation

If the Board chooses to make this change, a legislative proposal is recommended. The Board does not have authority to implement this provision via regulation.

Proposed Legislative Language:

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.
- (b) Gross negligence.
- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.
- (d) Incompetence.
- (e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

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

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) Committing or soliciting an act punishable as a sexually related crime, committing or soliciting an act of sexual abuse, or sexual misconduct with a patient, or soliciting or engaging in sexual relations with a patient, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

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

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041.

DCA Provision (3)

(3) Revocation for sexual misconduct: Require an Administrative Law Judge who has issued a decision finding that a licensee engaged in an act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

Background:

Currently, when an Accusation is filed against a licensee stating that they engaged in an act of sexual contact with a patient, or that they have committed or were convicted of sexual misconduct, the Board will recommend the minimum penalty for those acts, which is revocation. An Administrative Law Judge will then review the case and make the final determination in a proposed decision whether to revoke the license or take another appropriate action. The Administrative Law Judge is not mandated to revoke a license for these acts. In the event that an Administrative Law Judge does not revoke a license for these acts and the Board strongly believes the license should be revoked, the Board has authority to non-adopt the Administrative Law Judge's decision and successfully pursue revocation of the license.

Problem, Rationale for Change:

The purpose of this provision is to remove the Board and the Administrative Law Judge's discretion when determining if a license should be revoked and not be stayed for sexual misconduct. This would establish a zero-tolerance policy on these types of acts resulting in what can be argued to be enhanced consumer protection. This provision is preventative, similar to Provision 2 above, and would reduce the amount of time the Board spends on these cases because there would only be one outcome for sexual misconduct. It is important to note that these kinds of violations encompass a variety of situations with patients of all ages, so some cases may be more egregious than others. The Board must consider the appropriateness of applying the same punishment to every situation.

This section is similar to language which currently exists for physicians (BPC Section 2246), for psychologists (BPC Section 2960.1), for respiratory care therapists (BPC Section 3752.7), for marriage and family therapists (BPC Section 4982.26), and for clinical social workers (BPC Section 4992.33).

Recommendation:

It is recommended that if the Board would like to make this change, it may be implemented through regulation as part of the Board's disciplinary guidelines.

Proposed Regulatory Language:

1575. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" (DG-3, 5-99) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of

the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

As used in this section, the term "sex offense" shall mean any of the following:

(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act;

(b) Any offense defined in Sections 261.5, 313.1, 647b, 243.4(a)-(d), or 647 subsections (a), or; (d) of the Penal Code or a finding that a person committed such an act;

(c) Any attempt to commit any of the offenses specified in this section; and

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and 11420.21, Government Code. Reference: Sections 480, 729, 3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, ~~11400.24~~ and 11425.50(e), Government Code.

DCA Provision (4)

(4) Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

Background:

Currently, the Board has authority to deny the application for licensure of a registered sex offender and revoke the license of a licensee who is a registered sex offender, but it is not mandatory. The applicant and licensee must go through the regular disciplinary process before the license can be revoked.

Problem, Rationale for Change:

This language is for preventative purposes, similar to the same reasons of Provisions 2 and 3 above. This section is similar to language which currently exists for physicians (BPC Section 2221(d) and Section 2232), for dentists (BPC Section 1687), for physical therapists (BPC Section 2660.5) and for psychologists (BPC Section 2964.3).

Recommendation:

If the Board chooses to make this change, it is recommended to amend the regulations pertaining to applicant requirements and disciplinary guidelines.

Proposed Regulatory Language

Section 1575.1 is added to Article 12 of Division 15 to read as follows:

1575.1. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Board shall have the discretion to:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 3090, Business and Professions Code. Reference: Sections 480, 3025, 3056, 3110, and 3120, Business and Professions Code.

DCA Provisions (5-8)

(5) Confidentiality agreements regarding settlements (Gag Clauses): Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.

Background:

Currently, gag clauses persist and could be used in settlement agreements involving optometrists. According to the Center for Public Interest Law:

"Regulatory gag clauses cause many serious problems - both for the agency and for consumers. Most healthcare agencies learn about civil malpractice settlements under the state's existing mandatory reporting law, but can do nothing with that information unless the patient/victim cooperates with the agency. Securing that cooperation from a victim who has signed a settlement agreement including a gag clause creates delay in the investigative process (while the practitioner continues to practice) and additional expense for the agency, and - if the victim refuses to cooperate - precludes the agency from being able to take appropriate disciplinary action. These gag clauses also affect unsuspecting consumers who continue to be exposed to unscrupulous and/or incompetent healthcare licensees because their regulators cannot take appropriate disciplinary action against them - the very antithesis of the purpose of regulatory agencies."

Problem, Rationale for Change:

Confidentiality agreements in settlements can cause delay and hinder a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. This section is similar to language which currently exists for physicians (BPC Section 2220.7). Assembly Bill 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. The Governor vetoed this bill because he believed it would have a negative effect on the California economy by creating uncertainty regarding litigation. When parties who are in dispute agree to settle, there should be some assurance that the dispute has been resolved in a satisfactory and final manner for both parties.

The Center for Public Interest Law and the Department continue to strongly believe that all health professionals should be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus preventing a Board from receiving information about a practitioner who may have violated the law. According to the author of Assembly Bill 249, gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a healthcare professional.

Recommendation:

If the Board chooses to make this amended, it is recommended to define the use of gag clauses as being unprofessional conduct in a new regulation.

(6) Failure to provide documents and failure to comply with court order: Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records.

Background:

Currently, the Board has no authority to discipline licensees who have pending disciplinary action against them for not complying with a request for medical records or court order issued in enforcement of a subpoena for medical records.

Problem, Rationale for Change:

When a Board or the Attorney General is trying to obtain important documents and medical records pursuant to a disciplinary action on a licensee, there have been some occasions where the licensee has chosen to be uncooperative. Medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to the board; and, (2) the Board or the Attorney General have sought a court order and the court has issued a subpoena mandating the release of the records. It would be a very useful for the Board to be permitted to issue penalties for both circumstances if the records are not supplied by those who have both possession and control over the records, since at this time, the Board has not found any other way to compel these individuals to comply. Licensees who may not be responsible for medical records or have no access or control over these records would be protected from any action by the Board.

Language regarding the failure to provide documents currently exists for physicians and surgeons and podiatrists (BPC Sections 2225 and 2225.5). Language regarding the failure to comply with a court order currently exists for dentists and psychologists (BPC Sections 1684.5 and 2969).

Recommendation:

If the Board chooses to make this amendment, it is recommended to define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.

Failure to provide information or cooperate in an investigation: Make it unprofessional conduct for a licensee who fails to furnish information in a timely manner or cooperate in a disciplinary investigation.

Background:

Currently, the Board has no authority to discipline licensees who fail to furnish information in a timely manner or cooperate in a disciplinary investigation.

Problem, Rationale for Change:

The Board has had many instances where licensees have been uncooperative during a disciplinary investigation. This requirement was recommended by the Attorney General's Office. According to the Attorney General, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the Board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required licensees to cooperate with investigation being conducted by disciplinary authorities. The Attorney General argues that the enactment of this requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation. This section is similar to other state's statutes and to BPC section 6068(i) (State Bar).

Recommendation:

If the Board chooses to adopt this change, it is recommended to define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.

Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.

Background:

Currently, the Board has no authority to discipline licensees who fail to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.

Problem, Rationale for Change:

Since current law does not allow for timely reporting of a felony indictment or charge of any felony or misdemeanor conviction, this will enable the Board to more quickly investigate the underlying allegations and offenses and act accordingly to provide better consumer protection.

Recommendation:

If the Board chooses to make this change, it is recommended to define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.

Proposed Regulatory Language:

Section 1575.2 is added to Article 12 of Division 15 to read as follows:

1575.2. Unprofessional Conduct.

In addition to the conduct described in Section 3110 of the Code, “unprofessional conduct” also includes, but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee’s practice, whether the agreement is made before or after the filing of an action;

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the Board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the Board.

(b) Failure to provide to the Board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any Board investigation pending against the licensee. Whenever the Board is conducting an investigation, an optometrist or a candidate for licensure shall respond to the Board’s requests for information and/or evidence in writing within 30 days of the date mailed to or personally delivered on the optometrist or candidate for licensure. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee’s practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the reseal of records to the Board.

NOTE: Authority cited: Section 3090 and 3110, Business and Professions Code. Reference: Sections 480, 3010.1, 3010.5, 3024, and 3025, Business and Professions Code.

DCA Provision (9)

(9) Psychological or medical evaluation of applicant: Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice.

Background:

Currently, the Board only has the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action.

Problem, Rationale for Change:

The Board lacks the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one of mental illness or other physical illness.

Recommendation:

Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required or if authority is needed, draft legislation similar to the Board of Psychology.

Proposed Regulatory Language:

1523. Licensure and Examination Requirements.

(a)(1) Application for licensure as an optometrist shall be made on a form prescribed by the Board (Form 39A-1. Rev. 3-96), which is hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(2) Application for licensure by an out of state licensed optometrist as defined in Business and Professions Code Section 3057, shall be made on forms prescribed by the Board (Form OLA-2, Rev. 11/07 and Form LBC-4, rev. 2/07), which are hereby incorporated by reference, and shall show that the applicant is at least 18 years of age.

(b) An application shall be accompanied by the following:

(1) The fees fixed by the Board pursuant to Section 1524 in this Article.

(2) Satisfactory evidence of graduation from an optometry school approved by the Board.

(3) One classifiable set of fingerprints on a form provided by the Board.

(c) Completed applications for examination shall be filed with the Board not later than 30 days prior to the date set for the beginning of the examination for which application is made.

(d) An incomplete application shall be returned to the applicant together with a statement setting forth the reason(s) for returning the application and indicating the amount of money, if any, which will be refunded.

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Draft 6 (12-14-2012)

(e) Permission to take the Patient Management and California Laws and Regulations examination sections shall be granted to those applicants who have paid the necessary fees and who meet the educational qualifications to take the examination.

(f) Once the applicant has passed the examination, an official notice will be sent with instructions for submission of the licensure fee. Licensure shall be contingent on the applicant's passing the clinical demonstration portion of the National Board of Examiners in Optometry examination as provided in Section 1531 in this Article.

(g) Admission into the examination shall not be construed to limit the Board's authority to seek from an applicant such other information as may be deemed necessary to evaluate the applicant's qualifications for licensure.

(h) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice optometry safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the Board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The applicant shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant.

Note: Authority cited: Sections 3025, 3044, 3045, 3057, Business and Professions Code.
Reference: Sections 3044, 3045 and 3057, Business and Professions Code.

Proposed Legislative Language:

3046. Eligibility Requirements for Licensure

- a) In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examinations for licensure, and not have met any of the grounds for denial established in Section 480. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- b) The Board may refuse to issue any license or certification whenever it appears that an applicant may be unable to practice optometry safely due to mental illness, or physical illness affecting competency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or certification pursuant to this section.

BOARD OF OPTOMETRY

PROPOSED LANGUAGE

Amend section 1524 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1524. FEES

The following fees are established:

(a) Application fee for certificate of registration as an optometrist by examination.....	\$275
(b) Biennial renewal of a certificate of registration as an optometrist.....	\$425
(c) Delinquency fee for failing to renew a certificate of registration timely.....	\$50
(d) Application fee for a branch office license.....	\$75
(e) Annual renewal of a branch office license.....	\$75
(f) Penalty fee for failure to renew a branch office license timely.....	\$25
(g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration.....	\$25
(h) Application fee for a fictitious name permit.....	\$50
(i) Annual renewal of a fictitious name permit.....	\$50
(1) Delinquency fee for failure to renew a fictitious name permit timely.....	\$25
(j) Application fee for a statement of licensure.....	\$40
(1) Biennial renewal of a statement of licensure.....	\$40
(2) Penalty fee for failure to renew a statement of licensure timely.....	\$20
(k) Application fee for a certificate to use therapeutic pharmaceutical agents.....	\$25
(l) Application fee for approval of a continuing education course.....	\$50
(m) Application fee for a certificate to treat primary open angle glaucoma.....	\$35
(n) Application fee for a certificate to perform lacrimal irrigation and dilation.....	\$25
<u>(o) Application fee for a retired license.....</u>	<u>\$25</u>
<u>(p) Application fee for a retired license with a volunteer designation.....</u>	<u>\$50</u>

Agenda Item 9, Attachment 5

(q) Biennial renewal for a retired license with a volunteer designation.....\$50

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3075, 3078, 3152 and 3152.5, Business and Professions Code.

Fitting of Lenses; Additional Procedures by Assistant

Business and Professions Code 2544

(a) Notwithstanding any other provision of law, an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of an ophthalmologist or optometrist, an assistant in any setting where optometry or ophthalmology is practiced may also do the following:

- (1) Prepare patients for examination.
- (2) Collect preliminary patient data, including taking a patient history.
- (3) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.
- (4) Perform automated visual field testing.
- (5) Perform ophthalmic photography and digital imaging.
- (6) Perform tonometry.
- (7) Perform lensometry.
- (8) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.
- (9) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

(b) For the purposes of this section, "setting" includes, but is not limited to, any facility licensed by the State Department of Public Health or the State Department of Social Services.

(c) Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400.

BOARD OF OPTOMETRY

PROPOSED LANGUAGE

Amend section 1508 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

1508. Optometric Assistants

As used in this regulation:

(a) An optometric assistant is an individual working in an office of an optometrist and acting under the optometrist's direct responsibility and supervision.

(b) Supervision by an optometrist of an optometric assistant means the supplying or providing of direction, control, instruction and evaluation, to include personal review of, and responsibility for the results of testing.

(c) Prior to the assignment of a task or procedure, an optometric assistant must first demonstrate to the satisfaction of the supervising optometrist that he/she possesses the necessary understanding of, and ability to perform such tasks that may lawfully be assigned in a safe manner.

There shall be a written policy outlining what procedures can be done and by whom that is approved by the supervising optometrist which is to be maintained in his/her office. The written policy must also state that no exercise of professional judgment or interpretation of data by an optometric assistant which exceeds his/her scope of practice as authorized by Section 2544 of the Business and Professions Code is permitted.

Note: Authority cited: Section 3025, Business and Professions Code, Reference: Section 2544 and 3042, Business and Professions Code.

Key - Regular text signifies the proposed language originally drafted by the Board
Italic text signifies the recommendations from DCA
Underlined text signifies the recommendations from COA



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OPTOMETRIC ASSISTANT SUPERVISION/TRAINING COST QUESTIONNAIRE

The Board requests that you complete the following information in order to estimate practitioner costs associated with the utilization of assistants in optometric practices. Please use your best judgement for estimated hourly professional time required to personally train assistants. If assistants are sent or required to obtain independent training, please provide the name of the course, provider, topics covered, and cost. Also, the Board would appreciate any additional comments you believe to be relevant to the information requested. Provide attachments if necessary.

Type of Task/Test	Who Provided Training? OD Owner, OD Associate, or Non-OD Staff.	Initial Training Hours Required	Annual Hours of Refresher or New Task Training	Estimated Hourly Cost of Training
Fitting Rx Lenses	10.6	10.6		
Patient Preparation	16.8	16.8		
Preliminary Patient Data and History		9		
V.A., Pupil, & Ocular Motility Testing		14		
Automated Field Vision Testing		4.3		
Ophthalmic Photos & Digital Imaging		4		
Tonometry		8.8		
Lensometry		6		
Non-subjective Auto Refraction		5.7		
Administering Diagnostic Pharmaceutical Agents		11		
Pachymetry		2		
Keratometry		5.6		
A & B Scans		16		
Electrodiagnostic Testing		9		

Final Question: Stated in hours, how long would it take for you to prepare a written office policy that provides the training and supervision standards for assistant staff?

Total Hours: _____

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 2544

Assistant in the Office of a Physician and Surgeon or Optometrist

2544. An assistant in the office of a physician and surgeon or optometrist acting under the direct responsibility and supervision of the physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of the ophthalmologist or optometrist, an assistant in the office of an ophthalmologist or optometrist may also do the following:

- (a) Prepare patients for examination.
 - (b) Collect preliminary patient data, including taking a patient history.
 - (c) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.
 - (d) Perform automated visual field testing.
 - (e) Perform ophthalmic photography and digital imaging.
 - (f) Perform tonometry.
 - (g) Perform lensometry.
 - (h) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.
 - (i) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
 - (j) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.
- (Amended by Statute 2000, Ch. 676)

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To: Board Members

Date: December 14, 2012

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 10 - Legislation

A. Update on Legislation the Board is Following

Below is a summary of bills that staff was monitoring which have now been signed by the Governor. All these bills will be effective on January 1, 2013.

Assembly Bill 761 (Hernández) – CLIA Testing

This bill would allow optometrists to perform certain diagnostic tests in the office, rather than ordering them from a lab. Licensees must go to the Department of Public Health website for information on how to obtain a Clinical Laboratory Certificate for Waived testing (See Attachment 1).

Next Steps: The Board is ensuring that licensees are aware of what must be done to obtain the Clinical Laboratory Certificate for Waived testing. Information is posted on the Board's website.

Assembly Bill 1588 (Atkins) - Reservist Licensees: Fees and Continuing Education

This bill would require boards under the Department of Consumer Affairs, with certain exceptions, to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the Board, if any are applicable, of any licensee who is called to active duty as a member of the United States Armed Forces or the California National Guard if certain requirements are met. Practice is prohibited during this waiver, and renewal requirements will be required to reinstate the license upon the discharge from active duty (See Attachment 2).

Next Steps: The Board will need to consider at a future meeting if regulations will be needed to implement this legislation further.

Assembly Bill 1896 (Chesbro) – Tribal Health Programs: Health Practitioners

This bill conforms state law to a federal law that permits health practitioners who are employed by tribal health programs to be exempt, if licensed in any state, from the licensing requirements of the state in which the tribal health program performs specified services (See Attachment 3).

Next Steps: None needed.

Assembly Bill 1904 (Block) – Professions and Vocations, Military Spouses, Expedited Licensure

This bill requires boards under the Department of Consumer Affairs to expedite the licensure process for military spouses and domestic partners of military members on active duty in California (See Attachment 4).

Next Steps: The Board will need to consider at a future meeting if regulations will be needed to implement this legislation further.

Senate Bill 951 (Hernandez) & Assembly Bill 1453 (Monning) – Essential Health Benefits

These bills set the level of essential health benefits that will be offered by the California Health Benefit Exchange starting in 2014. This bill also follows the Kaiser Foundation Health Plan Small Group HMO 30 plan for most services, except pediatric vision. Pediatric vision essential benefits will be based on the largest vision plan for federal workers. This bill does not have any impact on payment or contracting rules with providers (See Attachment 5).

Next Steps: None needed.

Senate Bill 1215 (Emmerson) – Retired License Statuses and Temporary Practice Defined

This bill, sponsored by the Board, establishes a retired license status, and volunteer retired license status. This bill also defines temporary practice and clarifies when it is required to obtain a Statement of Licensure (See Attachment 6).

Next Steps: For the retired licenses - establish fees via regulation, develop applications, fact sheets and frequently asked questions, and ensure the Board's licensing system (includes BreZE) is configured to issue these licenses. For temporary practice – ensure licensees are aware of this change in law. For both of these changes in law, the Board wrote an article in its Winter 2012 newsletter, which is still being designed by DCA's publications unit.

Action Requested:

None.

B. Discussion and Possible Action on Possible Proposals for Legislation for 2013-2014

To meet the legislature's deadlines, the Board must complete development of its legislative packages by the end of December, and begin searching for an author the first week of January. Part of that package includes the bill's language, and that must be submitted to the Legislature's counsel for drafting by the last day of January. The last day to officially introduce a bill is around February 24, 2013. A 2013-2014 Legislative Calendar will be provided as soon as it is available for more specific planning and dates.

1) Transfer of RDO program from the Medical Board of California to the California State Board of Optometry

In the Board's 2012 Sunset Review report submitted to the Senate on November 1, 2012, the Board included as a recommendation that the Board should consider transferring RDO program from the Medical Board to the Board of Optometry. The Medical Board also included the same recommendation in their 2012 Sunset Review report. See Attachment 7 for the Board's draft legislative proposal.

Ms. Maggio voiced her support for the transition of the RDO program at the Medical Board's October 2012 Board meeting. Also at that meeting, the members of the Medical Board agreed that the RDO program did not belong under the Medical Board's jurisdiction.

Action Requested:

Staff requests that the Board discuss this legislative proposal, make edits if any, approve/disapprove the proposal, and initiate the legislative process if the proposal is approved.

2) Omnibus Bill: Optometrist License Name

An omnibus bill enacts, amends, or repeals a number of provisions from different boards. The changes are primarily non-controversial and are intended to clarify, update and strengthen the law. If at any time, provisions in the bill become controversial, they will be removed.

Identification of Problem:

Throughout the Optometry Practice Act, the name of an optometrist's license is used many different ways. BPC section 3024 refers to the license as a "certificate of registration" and BPC sections 3044, 3045, 3046, and 3055 refer to an optometrist license as a license. Other names include: Optometry License, Certificate of Registration to Practice of Optometry, and Optometrist Certificate of Registration.

Also, the official optometry license provided to licensees reads: "John Doe is hereby granted this certificate as a licensed optometrist."

This is confusing, especially since the Board also has certifications (TPA, TPG, etc.) in addition to an optometrist license. An example of the confusion was presented by the Board's Deputy Attorney General when she brought to the Board's attention that the name of an optometrist's license is used in different ways in various pleadings.

Proposed Solution:

For the purposes of reducing confusion and increasing consistency throughout the Optometry Practice Act and any documents required to name an optometrist license, it would be beneficial to propose amendments that will uniformly name an optometrist license. The preferred name for a license is "optometrist license" and the preferred name for certifications (TPA, TPG, etc.) is "optometrist certifications."

Action Requested:

Staff requests that the Board discuss this legislative proposal, approve/disapprove the proposal, and initiate the legislative process if the proposal is approved.

3) SB 1111 Provisions – Define Sexual Misconduct in BPC 3110 as Unprofessional Conduct

See Agenda Item 9.

Assembly Bill No. 761

CHAPTER 714

An act to amend Sections 1206.5, 1209, and 3041 of the Business and Professions Code, relating to optometrists.

[Approved by Governor September 28, 2012. Filed with
Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 761, Roger Hernández. Optometrists.

Existing law provides for the regulation and licensure of clinical laboratories and clinical laboratory personnel by the State Department of Public Health. Existing law prohibits the performance of a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 unless the test or examination is performed under the overall operation and administration of a laboratory director, as defined, and is performed by specified persons, including certain health care personnel. Existing law provides for the licensure and regulation of optometrists by the State Board of Optometry, and requires certification by the board for a licensed optometrist to use therapeutic pharmaceutical agents. Existing law authorizes a licensed optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions.

This bill would expand the category of persons who may perform clinical laboratory tests or examinations that are classified as waived to include licensed optometrists, and would provide that a laboratory director may include a licensed optometrist serving as the director of a laboratory which only performs specified clinical laboratory testing, for purposes of waived examinations. The bill would authorize a licensed optometrist certified to use therapeutic pharmaceutical agents to additionally perform specified clinical laboratory tests or examinations classified as waived that are necessary for the diagnosis of conditions and diseases of the eye or adnexa, which the bill would define to mean ocular adnexa.

This bill would also incorporate changes to Section 1206.5 of the Business and Professions Code proposed by SB 1481 that would become operative only if SB 1481 and this bill are chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Section 1241, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

- (1) A licensed physician and surgeon holding a M.D. or D.O. degree.
- (2) A licensed podiatrist, a licensed dentist, or a licensed naturopathic doctor, if the results of the tests can be lawfully utilized within his or her practice.
- (3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.
- (4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.
- (5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.
- (6) A person licensed under Chapter 6 (commencing with Section 2700).
- (7) A person licensed under Chapter 6.5 (commencing with Section 2840).
- (8) A perfusionist if authorized by and performed in compliance with Section 2590.
- (9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).
- (10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.
- (11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052, or if performing skin puncture in the course of performing routine patient assessment procedures in compliance with Section 4052.1.
- (12) A naturopathic assistant, as defined in Sections 3613 and 3640.2, if the waived test is performed pursuant to a specific authorization meeting the requirements of Sections 3613 and 3640.2.
- (13) A licensed optometrist as authorized under Chapter 7 (commencing with Section 3000).
- (14) Other health care personnel providing direct patient care.
- (15) Any other person performing nondiagnostic testing pursuant to Section 1244.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory

director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

- (1) A licensed physician and surgeon holding a M.D. or D.O. degree.
- (2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.
- (3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.
- (4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.
- (5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.
- (6) A person licensed under Chapter 6 (commencing with Section 2700).
- (7) A perfusionist if authorized by and performed in compliance with Section 2590.
- (8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).
- (9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.
- (10) Any person if performing blood gas analysis in compliance with Section 1245.
- (11) (A) A person certified or licensed as an “Emergency Medical Technician II” or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840), or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.
- (B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with

results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a “preceptor program” means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient’s physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person’s licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person’s certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 1.5. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Sections 1206.6 and 1241, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist, a licensed dentist, or a licensed naturopathic doctor, if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with paragraph (2) of subdivision (a) of Section 4052.1 or paragraph (2) of subdivision (a) of Section 4052.2, or if performing skin puncture in the course of performing routine patient assessment procedures in compliance with Section 4052.1.

(12) A naturopathic assistant, as defined in Sections 3613 and 3640.2, if the waived test is performed pursuant to a specific authorization meeting the requirements of Sections 3613 and 3640.2.

(13) A licensed optometrist as authorized under Chapter 7 (commencing with Section 3000).

(14) Other health care personnel providing direct patient care.

(15) Any other person performing nondiagnostic testing pursuant to Section 1244.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section

107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified or licensed as an “Emergency Medical Technician II” or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840), or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a “preceptor program” means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient’s physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with paragraph (2) of subdivision (a) of Section 4052.1 or paragraph (2) of subdivision (a) of Section 4052.2.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory

director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

- (1) A licensed physician and surgeon holding a M.D. or D.O. degree.
 - (2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.
 - (3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.
 - (4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.
 - (5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or 3535.
 - (6) A perfusionist if authorized by and performed in compliance with Section 2590.
 - (7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).
 - (8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.
 - (9) Any person if performing blood gas analysis in compliance with Section 1245.
 - (10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.
- (d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:
- (1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.
 - (2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 2. Section 1209 of the Business and Professions Code is amended to read:

1209. (a) As used in this chapter, "laboratory director" means any person who is a duly licensed physician and surgeon, or, only for purposes of a clinical laboratory test or examination classified as waived, is a duly licensed naturopathic doctor, or a duly licensed optometrist serving as the director of a laboratory which only performs clinical laboratory tests authorized in paragraph (10) of subdivision (e) of Section 3041 that are classified as waived, or is licensed to direct a clinical laboratory under this chapter and who substantially meets the laboratory director qualifications under CLIA for the type and complexity of tests being offered by the laboratory. The laboratory director, if qualified under CLIA, may perform the duties of the technical consultant, technical supervisor, clinical consultant, general supervisor, and testing personnel, or delegate these responsibilities to persons qualified under CLIA. If the laboratory director reapportions performance of those responsibilities or duties, he or she shall remain responsible for ensuring that all those duties and responsibilities are properly performed.

(b) (1) The laboratory director is responsible for the overall operation and administration of the clinical laboratory, including administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with this act and CLIA. He or she shall be responsible for the proper performance of all laboratory work of all subordinates and shall employ a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and this chapter.

(2) Where a point-of-care laboratory testing device is utilized and provides results for more than one analyte, the testing personnel may perform and report the results of all tests ordered for each analyte for which he or she has been found by the laboratory director to be competent to perform and report.

(c) As part of the overall operation and administration, the laboratory director of a registered laboratory shall document the adequacy of the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for personnel, in addition to any CLIA requirements relative to the education or training of personnel.

(d) As part of the overall operation and administration, the laboratory director of a licensed laboratory shall do all of the following:

(1) Ensure that all personnel, prior to testing biological specimens, have the appropriate education and experience, receive the appropriate training for the type and complexity of the services offered, and have demonstrated that they can perform all testing operations reliably to provide and report accurate results. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for, and the type of procedures that may be performed by, personnel in addition to any CLIA requirements relative to the education or training of personnel. Any regulations adopted pursuant to this section that specify the type of procedure that may be performed by testing personnel shall be based on the skills, knowledge, and tasks required to perform the type of procedure in question.

(2) Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to ensure that they are competent and maintain their competency to process biological specimens, perform test procedures, and report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve skills.

(3) Specify in writing the responsibilities and duties of each individual engaged in the performance of the preanalytic, analytic, and postanalytic phases of clinical laboratory tests or examinations, including which clinical laboratory tests or examinations the individual is authorized to perform, whether supervision is required for the individual to perform specimen processing, test performance, or results reporting, and whether consultant, supervisor, or director review is required prior to the individual reporting patient test results.

(e) The competency and performance of staff of a licensed laboratory shall be evaluated and documented by the laboratory director, or by a person who qualifies as a technical consultant or a technical supervisor under CLIA depending on the type and complexity of tests being offered by the laboratory.

(1) The procedures for evaluating the competency of the staff shall include, but are not limited to, all of the following:

(A) Direct observations of routine patient test performance, including patient preparation, if applicable, and specimen handling, processing, and testing.

(B) Monitoring the recording and reporting of test results.

(C) Review of intermediate test results or worksheets, quality control records, proficiency testing results, and preventive maintenance records.

(D) Direct observation of performance of instrument maintenance and function checks.

(E) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(F) Assessment of problem solving skills.

(2) Evaluation and documentation of staff competency and performance shall occur at least semiannually during the first year an individual tests biological specimens. Thereafter, evaluations shall be performed at least annually unless test methodology or instrumentation changes, in which case, prior to reporting patient test results, the individual's performance shall be reevaluated to include the use of the new test methodology or instrumentation.

(f) The laboratory director of each clinical laboratory of an acute care hospital shall be a physician and surgeon who is a qualified pathologist, except as follows:

(1) If a qualified pathologist is not available, a physician and surgeon or a clinical laboratory bioanalyst qualified as a laboratory director under subdivision (a) may direct the laboratory. However, a qualified pathologist shall be available for consultation at suitable intervals to ensure high quality service.

(2) If there are two or more clinical laboratories of an acute care hospital, those additional clinical laboratories that are limited to the performance of blood gas analysis, blood electrolyte analysis, or both, may be directed by a physician and surgeon qualified as a laboratory director under subdivision (a), irrespective of whether a pathologist is available.

As used in this subdivision, a qualified pathologist is a physician and surgeon certified or eligible for certification in clinical or anatomical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology.

(g) Subdivision (f) does not apply to any director of a clinical laboratory of an acute care hospital acting in that capacity on or before January 1, 1988.

(h) A laboratory director may serve as the director of up to the maximum number of laboratories stipulated by CLIA, as defined under Section 1202.5.

SEC. 3. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including

lenses that may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).

(2) For purposes of this section, “treat” means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

(1) Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.

(2) Topical lubricants.

(3) Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient’s condition worsens 21 days after diagnosis.

(4) Topical and oral anti-inflammatories. In using steroid medication for:

(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.

(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.

(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).

(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.

(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines.

(10) Prescription oral nonsteroidal anti-inflammatory agents.

(11) Oral antibiotics for medical treatment of ocular disease.

(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(12) Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(13) Oral analgesics that are not controlled substances.

(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

- (1) Corneal scraping with cultures.
- (2) Debridement of corneal epithelia.
- (3) Mechanical epilation.
- (4) Venipuncture for testing patients suspected of having diabetes.
- (5) Suture removal, with prior consultation with the treating physician and surgeon.
- (6) Treatment or removal of sebaceous cysts by expression.
- (7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.
- (8) Use of an auto-injector to counter anaphylaxis.
- (9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, tear fluid analysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.
- (10) A clinical laboratory test or examination classified as waived under CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.
- (11) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
- (12) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

(13) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.

(14) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.

(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. “Substantially completed” means both of the following:

(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.

(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.

(5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.

(g) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(h) The practice of optometry does not include performing surgery. “Surgery” means any procedure in which human tissue is cut, altered, or

otherwise infiltrated by mechanical or laser means. “Surgery” does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist’s authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

(i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.

(j) For purposes of this chapter, “glaucoma” means either of the following:

- (1) All primary open-angle glaucoma.
- (2) Exfoliation and pigmentary glaucoma.

(k) For purposes of this chapter, “adnexa” means ocular adnexa.

(l) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 1206.5 of the Business and Professions Code proposed by both this bill and Senate Bill 1481. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 1206.5 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 1481, in which case Section 1 of this bill shall not become operative.

Assembly Bill No. 1588

CHAPTER 742

An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 29, 2012. Filed with
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards within the Department of Consumer Affairs and for the licensure or registration of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards described above, with certain exceptions, to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, of any licensee or registrant who is called to active duty as a member of the United States Armed Forces or the California National Guard if certain requirements are met. The bill would, except as specified, prohibit a licensee or registrant from engaging in any activities requiring a license while a waiver is in effect. The bill would require a licensee or registrant to meet certain renewal requirements within a specified time period after being discharged from active duty service prior to engaging in any activity requiring a license. The bill would require a licensee or registrant to notify the board of his or her discharge from active duty within a specified time period.

The people of the State of California do enact as follows:

SECTION 1. Section 114.3 is added to the Business and Professions Code, to read:

114.3. (a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

(1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.

(2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.

(3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

(b) (1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.

(2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.

(c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.

(d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.

(e) A board may adopt regulations to carry out the provisions of this section.

(f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

Assembly Bill No. 1896

CHAPTER 119

An act to amend the heading of Article 10 (commencing with Section 710) of Chapter 1 of Division 2 of, and to add Section 719 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor July 13, 2012. Filed with
Secretary of State July 13, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1896, Chesbro. Tribal health programs: health care practitioners.

Under existing federal law, licensed health professionals employed by a tribal health program are required to be exempt, if licensed in any state, from the licensing requirements of the state in which the tribal health program performs specified services. A tribal health program is defined as an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the Indian Health Service.

Existing law provides for the licensure and regulation of health care practitioners by various healing arts boards within the Department of Consumer Affairs.

This bill would codify that federal requirement by specifying that a person who is licensed as a health care practitioner in any other state and is employed by a tribal health program is exempt from this state's licensing requirements with respect to acts authorized under the person's license where the tribal health program performs specified services.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 10 (commencing with Section 710) of Chapter 1 of Division 2 of the Business and Professions Code is amended to read:

Article 10. Federal Personnel and Tribal Health Programs

SEC. 2. Section 719 is added to the Business and Professions Code, to read:

719. (a) A person who is licensed as a health care practitioner in any other state and is employed by a tribal health program, as defined in Section 1603 of Title 25 of the United States Code, shall be exempt from any licensing requirement described in this division with respect to acts authorized under the person's license where the tribal health program

performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. Sec. 450 et seq.).

(b) For purposes of this section, “health care practitioner” means any person who engages in acts that are the subject of licensure or regulation under the law of any other state.

O

Assembly Bill No. 1904

CHAPTER 399

An act to add Section 115.5 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 20, 2012. Filed with
Secretary of State September 20, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1904, Block. Professions and vocations: military spouses: expedited licensure.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Existing law authorizes a licensee to reinstate an expired license without examination or penalty if, among other requirements, the license expired while the licensee was on active duty as a member of the California National Guard or the United States Armed Forces.

This bill would require a board within the department to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

The people of the State of California do enact as follows:

SECTION 1. Section 115.5 is added to the Business and Professions Code, to read:

115.5. (a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

- (b) A board may adopt regulations necessary to administer this section.

O

Senate Bill No. 951

CHAPTER 866

An act to add Section 10112.27 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 30, 2012. Filed with
Secretary of State September 30, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 951, Hernandez. Health care coverage: essential health benefits.

Commencing January 1, 2014, existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health insurance issuer that offers coverage in the small group or individual market to ensure that such coverage includes the essential health benefits package, as defined. PPACA requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers. PPACA defines a qualified health plan as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange (the Exchange) to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers by January 1, 2014.

Existing law provides for the regulation of health insurers by the Department of Insurance and requires health insurance policies to cover various benefits.

This bill would require an individual or small group health insurance policy issued, amended, or renewed on or after January 1, 2014, to cover essential health benefits, which would be defined to include the health benefits covered by particular benchmark plans. The bill would prohibit treatment limits imposed on these benefits from exceeding the corresponding limits imposed by the benchmark plans and would generally prohibit an insurer from making substitutions of the benefits required to be covered. The bill would specify that these provisions apply regardless of whether the policy is offered inside or outside the Exchange but would provide that they do not apply to grandfathered plans or plans that cover excepted benefits, as specified. The bill would prohibit a health insurer, when issuing, delivering, renewing, offering, selling, or marketing a policy, from indicating or implying that the policy covers essential health benefits unless the policy covers essential health benefits as provided in the bill. The bill would authorize the Department of Insurance to adopt emergency regulations implementing these provisions until March 1, 2016, and enact other related provisions.

These provisions would only be implemented to the extent essential health benefits are required pursuant to PPACA. The bill would provide that it shall become operative only if AB 1453 is also enacted.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) Commencing January 1, 2014, the federal Patient Protection and Affordable Care Act (PPACA) requires a health insurance issuer that offers coverage to small employers or individuals, both inside and outside of the California Health Benefit Exchange, with the exception of grandfathered plans as defined under Section 1251 of PPACA, to provide minimum coverage that includes essential health benefits, as defined.

(b) It is the intent of the Legislature to comply with federal law and consistently implement the essential health benefits provisions of PPACA and related federal guidance and regulations, by adopting the uniform minimum essential benefits requirement in state-regulated health care coverage regardless of whether the policy or contract is regulated by the Department of Managed Health Care or the Department of Insurance and regardless of whether the policy or contract is offered to individuals or small employers inside or outside of the California Health Benefit Exchange.

SEC. 2. Section 10112.27 is added to the Insurance Code, to read:

10112.27. (a) An individual or small group health insurance policy issued, amended, or renewed on or after January 1, 2014, shall, at a minimum, include coverage for essential health benefits pursuant to PPACA and as outlined in this section. This section shall exclusively govern what benefits a health insurer must cover as essential health benefits. For purposes of this section, “essential health benefits” means all of the following:

(1) Health benefits within the categories identified in Section 1302(b) of PPACA: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care.

(2) (A) The health benefits covered by the Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan was offered during the first quarter of 2012, as follows, regardless of whether the benefits are specifically referenced in the plan contract or evidence of coverage for that plan:

(i) Medically necessary basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code and in Section 1300.67 of Title 28 of the California Code of Regulations.

(ii) The health benefits mandated to be covered by the plan pursuant to statutes enacted before December 31, 2011, as described in the following sections of the Health and Safety Code: Sections 1367.002, 1367.06, and

1367.35 (preventive services for children); Section 1367.25 (prescription drug coverage for contraceptives); Section 1367.45 (AIDS vaccine); Section 1367.46 (HIV testing); Section 1367.51 (diabetes); Section 1367.54 (alpha fetoprotein testing); Section 1367.6 (breast cancer screening); Section 1367.61 (prosthetics for laryngectomy); Section 1367.62 (maternity hospital stay); Section 1367.63 (reconstructive surgery); Section 1367.635 (mastectomies); Section 1367.64 (prostate cancer); Section 1367.65 (mammography); Section 1367.66 (cervical cancer); Section 1367.665 (cancer screening tests); Section 1367.67 (osteoporosis); Section 1367.68 (surgical procedures for jaw bones); Section 1367.71 (anesthesia for dental); Section 1367.9 (conditions attributable to diethylstilbestrol); Section 1368.2 (hospice care); Section 1370.6 (cancer clinical trials); Section 1371.5 (emergency response ambulance or ambulance transport services); subdivision (b) of Section 1373 (sterilization operations or procedures); Section 1373.4 (inpatient hospital and ambulatory maternity); Section 1374.56 (phenylketonuria); Section 1374.17 (organ transplants for HIV); Section 1374.72 (mental health parity); and Section 1374.73 (autism/behavioral health treatment).

(iii) Any other benefits mandated to be covered by the plan pursuant to statutes enacted before December 31, 2011, as described in those statutes.

(iv) The health benefits covered by the plan that are not otherwise required to be covered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, to the extent otherwise required pursuant to Sections 1367.18, 1367.21, 1367.215, 1367.22, 1367.24, and 1367.25 of the Health and Safety Code, and Section 1300.67.24 of Title 28 of the California Code of Regulations.

(v) Any other health benefits covered by the plan that are not otherwise required to be covered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(B) Where there are any conflicts or omissions in the plan identified in subparagraph (A) as compared with the requirements for health benefits under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code that were enacted prior to December 31, 2011, the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code shall be controlling, except as otherwise specified in this section.

(C) Notwithstanding subparagraph (B) or any other provision of this section, the home health services benefits covered under the plan identified in subparagraph (A) shall be deemed to not be in conflict with Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(D) For purposes of this section, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) shall apply to a policy subject to this section. Coverage of mental health and substance use disorder services pursuant to this paragraph, along with any scope and duration limits imposed on the benefits, shall be in compliance with the Paul Wellstone and Pete Domenici Mental Health

Parity and Addiction Equity Act of 2008 (Public Law 110-343), and all rules, regulations, and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26).

(3) With respect to habilitative services, in addition to any habilitative services identified in paragraph (2), coverage shall also be provided as required by federal rules, regulations, or guidance issued pursuant to Section 1302(b) of PPACA. Habilitative services shall be covered under the same terms and conditions applied to rehabilitative services under the policy.

(4) With respect to pediatric vision care, the same health benefits for pediatric vision care covered under the Federal Employees Dental and Vision Insurance Program vision plan with the largest national enrollment as of the first quarter of 2012. The pediatric vision care services covered pursuant to this paragraph shall be in addition to, and shall not replace, any vision services covered under the plan identified in paragraph (2).

(5) With respect to pediatric oral care, the same health benefits for pediatric oral care covered under the dental plan available to subscribers of the Healthy Families Program in 2011–12, including the provision of medically necessary orthodontic care provided pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009. The pediatric oral care benefits covered pursuant to this paragraph shall be in addition to, and shall not replace, any dental or orthodontic services covered under the plan identified in paragraph (2).

(b) Treatment limitations imposed on health benefits described in this section shall be no greater than the treatment limitations imposed by the corresponding plans identified in subdivision (a), subject to the requirements set forth in paragraph (2) of subdivision (a).

(c) Except as provided in subdivision (d), nothing in this section shall be construed to permit a health insurer to make substitutions for the benefits required to be covered under this section, regardless of whether those substitutions are actuarially equivalent.

(d) To the extent permitted under Section 1302 of PPACA and any rules, regulations, or guidance issued pursuant to that section, and to the extent that substitution would not create an obligation for the state to defray costs for any individual, an insurer may substitute its prescription drug formulary for the formulary provided under the plan identified in subdivision (a) as long as the coverage for prescription drugs complies with the sections referenced in clauses (ii) and (iv) of subparagraph (A) of paragraph (2) of subdivision (a) that apply to prescription drugs.

(e) No health insurer, or its agent, producer, or representative, shall issue, deliver, renew, offer, market, represent, or sell any product, policy, or discount arrangement as compliant with the essential health benefits requirement in federal law, unless it meets all of the requirements of this section. This subdivision shall be enforced in the same manner as Section 790.03, including through the means specified in Sections 790.035 and 790.05.

(f) This section shall apply regardless of whether the policy is offered inside or outside the California Health Benefit Exchange created by Section 100500 of the Government Code.

(g) Nothing in this section shall be construed to exempt a health insurer or a health insurance policy from meeting other applicable requirements of law.

(h) This section shall not be construed to prohibit a policy from covering additional benefits, including, but not limited to, spiritual care services that are tax deductible under Section 213 of the Internal Revenue Code.

(i) Subdivision (a) shall not apply to any of the following:

(1) A policy that provides excepted benefits as described in Sections 2722 and 2791 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-21; 42 U.S.C. Sec. 300gg-91).

(2) A policy that qualifies as a grandfathered health plan under Section 1251 of PPACA or any binding rules, regulation, or guidance issued pursuant to that section.

(j) Nothing in this section shall be implemented in a manner that conflicts with a requirement of PPACA.

(k) This section shall be implemented only to the extent essential health benefits are required pursuant to PPACA.

(l) An essential health benefit is required to be provided under this section only to the extent that federal law does not require the state to defray the costs of the benefit.

(m) Nothing in this section shall obligate the state to incur costs for the coverage of benefits that are not essential health benefits as defined in this section.

(n) An insurer is not required to cover, under this section, changes to health benefits that are the result of statutes enacted on or after December 31, 2011.

(o) (1) The commissioner may adopt emergency regulations implementing this section. The commissioner may, on a one-time basis, readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial emergency regulations and the readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(3) The commissioner shall consult with the Director of the Department of Managed Health Care to ensure consistency and uniformity in the development of regulations under this subdivision.

(4) This subdivision shall become inoperative on March 1, 2016.

(p) Nothing in this section shall impose on health insurance policies the cost sharing or network limitations of the plans identified in subdivision (a) except to the extent otherwise required to comply with provisions of this code, including this section, and as otherwise applicable to all health insurance policies offered to individuals and small groups.

(q) For purposes of this section, the following definitions shall apply:

(1) “Habilitative services” means medically necessary health care services and health care devices that assist an individual in partially or fully acquiring or improving skills and functioning and that are necessary to address a health condition, to the maximum extent practical. These services address the skills and abilities needed for functioning in interaction with an individual’s environment. Examples of health care services that are not habilitative services include, but are not limited to, respite care, day care, recreational care, residential treatment, social services, custodial care, or education services of any kind, including, but not limited to, vocational training. Habilitative services shall be covered under the same terms and conditions applied to rehabilitative services under the policy.

(2) (A) “Health benefits,” unless otherwise required to be defined pursuant to federal rules, regulations, or guidance issued pursuant to Section 1302(b) of PPACA, means health care items or services for the diagnosis, cure, mitigation, treatment, or prevention of illness, injury, disease, or a health condition, including a behavioral health condition.

(B) “Health benefits” does not mean any cost-sharing requirements such as copayments, coinsurance, or deductibles.

(3) “PPACA” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

(4) “Small group health insurance policy” means a group health care service insurance policy issued to a small employer, as defined in Section 10700.

SEC. 3. This act shall become operative only if Assembly Bill 1453 of the 2011–12 Regular Session is also enacted and becomes operative.

Assembly Bill No. 1453

CHAPTER 854

An act to add Section 1367.005 to the Health and Safety Code, relating to health care coverage.

[Approved by Governor September 30, 2012. Filed with
Secretary of State September 30, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1453, Monning. Health care coverage: essential health benefits.

Commencing January 1, 2014, existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health insurance issuer that offers coverage in the small group or individual market to ensure that such coverage includes the essential health benefits package, as defined. PPACA requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers. PPACA defines a qualified health plan as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange (the Exchange) to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers by January 1, 2014.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime.. Existing law requires health care service plan contracts to cover various benefits.

This bill would require an individual or small group health care service plan contract issued, amended, or renewed on or after January 1, 2014, to cover essential health benefits, which would be defined to include the health benefits covered by particular benchmark plans. The bill would prohibit treatment limits imposed on these benefits from exceeding the corresponding limits imposed by the benchmark plans and would generally prohibit a plan from making substitutions of the benefits required to be covered. The bill would specify that these provisions apply regardless of whether the contract is offered inside or outside the Exchange but would provide that they do not apply to grandfathered plans, specialized plans, or Medicare supplement plans, as specified. The bill would prohibit a health care service plan from issuing, delivering, renewing, offering, selling, or marketing a plan contract as compliant with the federal essential health benefits requirement satisfies the bill's requirements. The bill would authorize the Department of Managed Health Care to adopt emergency regulations implementing these provisions until March 1, 2016, and would enact other related provisions.

These provisions would only be implemented to the extent essential health benefits are required pursuant to PPACA. The bill would provide that it shall become operative only if SB 951 is also enacted.

Because a willful violation of the bill's provisions with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) Commencing January 1, 2014, the federal Patient Protection and Affordable Care Act (PPACA) requires a health insurance issuer that offers coverage to small employers or individuals, both inside and outside of the California Health Benefit Exchange, with the exception of grandfathered plans as defined under Section 1251 of PPACA, to provide minimum coverage that includes essential health benefits, as defined.

(b) It is the intent of the Legislature to comply with federal law and consistently implement the essential health benefits provisions of PPACA and related federal guidance and regulations, by adopting the uniform minimum essential benefits requirement in state-regulated health care coverage regardless of whether the policy or contract is regulated by the Department of Managed Health Care or the Department of Insurance and regardless of whether the policy or contract is offered to individuals or small employers inside or outside of the California Health Benefit Exchange.

SEC. 2. Section 1367.005 is added to the Health and Safety Code, to read:

1367.005. (a) An individual or small group health care service plan contract issued, amended, or renewed on or after January 1, 2014, shall, at a minimum, include coverage for essential health benefits pursuant to PPACA and as outlined in this section. For purposes of this section, "essential health benefits" means all of the following:

(1) Health benefits within the categories identified in Section 1302(b) of PPACA: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care.

(2) (A) The health benefits covered by the Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan was offered during the first quarter of

2012, as follows, regardless of whether the benefits are specifically referenced in the evidence of coverage or plan contract for that plan:

(i) Medically necessary basic health care services, as defined in subdivision (b) of Section 1345 and in Section 1300.67 of Title 28 of the California Code of Regulations.

(ii) The health benefits mandated to be covered by the plan pursuant to statutes enacted before December 31, 2011, as described in the following sections: Sections 1367.002, 1367.06, and 1367.35 (preventive services for children); Section 1367.25 (prescription drug coverage for contraceptives); Section 1367.45 (AIDS vaccine); Section 1367.46 (HIV testing); Section 1367.51 (diabetes); Section 1367.54 (alpha feto protein testing); Section 1367.6 (breast cancer screening); Section 1367.61 (prosthetics for laryngectomy); Section 1367.62 (maternity hospital stay); Section 1367.63 (reconstructive surgery); Section 1367.635 (mastectomies); Section 1367.64 (prostate cancer); Section 1367.65 (mammography); Section 1367.66 (cervical cancer); Section 1367.665 (cancer screening tests); Section 1367.67 (osteoporosis); Section 1367.68 (surgical procedures for jaw bones); Section 1367.71 (anesthesia for dental); Section 1367.9 (conditions attributable to diethylstilbestrol); Section 1368.2 (hospice care); Section 1370.6 (cancer clinical trials); Section 1371.5 (emergency response ambulance or ambulance transport services); subdivision (b) of Section 1373 (sterilization operations or procedures); Section 1373.4 (inpatient hospital and ambulatory maternity); Section 1374.56 (phenylketonuria); Section 1374.17 (organ transplants for HIV); Section 1374.72 (mental health parity); and Section 1374.73 (autism/behavioral health treatment).

(iii) Any other benefits mandated to be covered by the plan pursuant to statutes enacted before December 31, 2011, as described in those statutes.

(iv) The health benefits covered by the plan that are not otherwise required to be covered under this chapter, to the extent required pursuant to Sections 1367.18, 1367.21, 1367.215, 1367.22, 1367.24, and 1367.25, and Section 1300.67.24 of Title 28 of the California Code of Regulations.

(v) Any other health benefits covered by the plan that are not otherwise required to be covered under this chapter.

(B) Where there are any conflicts or omissions in the plan identified in subparagraph (A) as compared with the requirements for health benefits under this chapter that were enacted prior to December 31, 2011, the requirements of this chapter shall be controlling, except as otherwise specified in this section.

(C) Notwithstanding subparagraph (B) or any other provision of this section, the home health services benefits covered under the plan identified in subparagraph (A) shall be deemed to not be in conflict with this chapter.

(D) For purposes of this section, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) shall apply to a contract subject to this section. Coverage of mental health and substance use disorder services pursuant to this paragraph, along with any scope and duration limits imposed on the benefits, shall be in compliance with the Paul Wellstone and Pete Domenici Mental Health

Parity and Addiction Equity Act of 2008 (Public Law 110-343), and all rules, regulations, or guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26).

(3) With respect to habilitative services, in addition to any habilitative services identified in paragraph (2), coverage shall also be provided as required by federal rules, regulations, and guidance issued pursuant to Section 1302(b) of PPACA. Habilitative services shall be covered under the same terms and conditions applied to rehabilitative services under the plan contract.

(4) With respect to pediatric vision care, the same health benefits for pediatric vision care covered under the Federal Employees Dental and Vision Insurance Program vision plan with the largest national enrollment as of the first quarter of 2012. The pediatric vision care benefits covered pursuant to this paragraph shall be in addition to, and shall not replace, any vision services covered under the plan identified in paragraph (2).

(5) With respect to pediatric oral care, the same health benefits for pediatric oral care covered under the dental plan available to subscribers of the Healthy Families Program in 2011–12, including the provision of medically necessary orthodontic care provided pursuant to the federal Children’s Health Insurance Program Reauthorization Act of 2009. The pediatric oral care benefits covered pursuant to this paragraph shall be in addition to, and shall not replace, any dental or orthodontic services covered under the plan identified in paragraph (2).

(b) Treatment limitations imposed on health benefits described in this section shall be no greater than the treatment limitations imposed by the corresponding plans identified in subdivision (a), subject to the requirements set forth in paragraph (2) of subdivision (a).

(c) Except as provided in subdivision (d), nothing in this section shall be construed to permit a health care service plan to make substitutions for the benefits required to be covered under this section, regardless of whether those substitutions are actuarially equivalent.

(d) To the extent permitted under Section 1302 of PPACA and any rules, regulations, or guidance issued pursuant to that section, and to the extent that substitution would not create an obligation for the state to defray costs for any individual, a plan may substitute its prescription drug formulary for the formulary provided under the plan identified in subdivision (a) as long as the coverage for prescription drugs complies with the sections referenced in clauses (ii) and (iv) of subparagraph (A) of paragraph (2) of subdivision (a) that apply to prescription drugs.

(e) No health care service plan, or its agent, solicitor, or representative, shall issue, deliver, renew, offer, market, represent, or sell any product, contract, or discount arrangement as compliant with the essential health benefits requirement in federal law, unless it meets all of the requirements of this section.

(f) This section shall apply regardless of whether the plan contract is offered inside or outside the California Health Benefit Exchange created by Section 100500 of the Government Code.

(g) Nothing in this section shall be construed to exempt a plan or a plan contract from meeting other applicable requirements of law.

(h) This section shall not be construed to prohibit a plan contract from covering additional benefits, including, but not limited to, spiritual care services that are tax deductible under Section 213 of the Internal Revenue Code.

(i) Subdivision (a) shall not apply to any of the following:

(1) A specialized health care service plan contract.

(2) A Medicare supplement plan.

(3) A plan contract that qualifies as a grandfathered health plan under Section 1251 of PPACA or any rules, regulations, or guidance issued pursuant to that section.

(j) Nothing in this section shall be implemented in a manner that conflicts with a requirement of PPACA.

(k) This section shall be implemented only to the extent essential health benefits are required pursuant to PPACA.

(l) An essential health benefit is required to be provided under this section only to the extent that federal law does not require the state to defray the costs of the benefit.

(m) Nothing in this section shall obligate the state to incur costs for the coverage of benefits that are not essential health benefits as defined in this section.

(n) A plan is not required to cover, under this section, changes to health benefits that are the result of statutes enacted on or after December 31, 2011.

(o) (1) The department may adopt emergency regulations implementing this section. The department may, on a one-time basis, readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial emergency regulations and the readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(3) The director shall consult with the Insurance Commissioner to ensure consistency and uniformity in the development of regulations under this subdivision.

(4) This subdivision shall become inoperative on March 1, 2016.

(p) For purposes of this section, the following definitions shall apply:

(1) “Habilitative services” means medically necessary health care services and health care devices that assist an individual in partially or fully acquiring or improving skills and functioning and that are necessary to address a health condition, to the maximum extent practical. These services address the skills and abilities needed for functioning in interaction with an individual’s

environment. Examples of health care services that are not habilitative services include, but are not limited to, respite care, day care, recreational care, residential treatment, social services, custodial care, or education services of any kind, including, but not limited to, vocational training. Habilitative services shall be covered under the same terms and conditions applied to rehabilitative services under the plan contract.

(2) (A) “Health benefits,” unless otherwise required to be defined pursuant to federal rules, regulations, or guidance issued pursuant to Section 1302(b) of PPACA, means health care items or services for the diagnosis, cure, mitigation, treatment, or prevention of illness, injury, disease, or a health condition, including a behavioral health condition.

(B) “Health benefits” does not mean any cost-sharing requirements such as copayments, coinsurance, or deductibles.

(3) “PPACA” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

(4) “Small group health care service plan contract” means a group health care service plan contract issued to a small employer, as defined in Section 1357.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act shall become operative only if Senate Bill 951 of the 2011–12 Regular Session is also enacted.

Senate Bill No. 1215

CHAPTER 359

An act to amend Sections 3070, 3090, 3147, 3147.6, and 3152 of, and to add Sections 3151 and 3151.1 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor September 17, 2012. Filed with
Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1215, Emmerson. Optometry.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of the practice of optometry by the State Board of Optometry. A violation of the act is a crime. Existing law requires a healing arts board to issue, upon specified application and payment, an inactive license to a current holder of an active license whose license is not suspended, revoked, or otherwise restricted. Existing law prohibits the holder of an inactive license from engaging in any activity requiring a license.

This bill would require the board to issue, upon application and payment of a specified fee not to exceed \$25, a retired license to an optometrist with a current and active license. The bill would prohibit the holder of a retired license from engaging in the practice of optometry. The bill would authorize the holder of a retired license to use only certain titles and would also authorize the holder of such a license to reactivate the license to active status if certain requirements have been met, including the payment of a reactivation fee to be determined by the board. The bill would also require the board to issue, upon application certifying the completion of specified continuing education hours and the payment of a fee not to exceed \$50, a retired license with a volunteer service designation to an optometrist with a retired or current and active license. The bill would make a retired license with a volunteer service designation subject to biennial renewal requirements including the payment of a fee not to exceed \$50 and the certification of, among other things, completion of the required continuing education hours. Because the bill would direct the deposit of these fees into the Optometry Fund, a continuously appropriated fund, the bill would make an appropriation.

Existing law authorizes the board to take action against all persons guilty of violating this act and requires the board to enforce and administer specified disciplinary provisions with respect to licenseholders.

This bill would specify that, for purposes of the above provisions, licenseholders include those who hold a retired license, a license with a retired volunteer designation, or an inactive license.

Under existing law, a licensed optometrist is required to notify the board of, among other things, the address or addresses where he or she is to engage or intends to engage in the practice of optometry. Existing law imposes specified issuance, biennial renewal, and delinquency fees concerning a statement of licensure. Existing law exempts a licensed optometrist from this address notification requirement if he or she engages in the temporary practice of optometry, as defined by the board, in certain specified settings.

This bill would eliminate the requirement that a licensed optometrist provide that notification with respect to where he or she intends to engage in the practice of optometry. The bill would also require a licensed optometrist, except as specified, to obtain a statement of licensure from the board to be placed in specified practice locations. The bill would define temporary practice as the practice of optometry at locations other than the optometrist's principal place of practice for limited periods, as specified, and would require a licensed optometrist in temporary practice to submit an application for a statement of licensure if the time period for that practice needs to be extended, as specified.

The bill would make other nonsubstantive, technical and conforming changes.

Because the bill would specify additional requirements under the Optometry Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3070 of the Business and Professions Code is amended to read:

3070. (a) Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage in the practice of optometry and, also, of any changes in his or her place of practice. After providing the address or addresses and place of practice information to the board, a licensed optometrist shall obtain a statement of licensure from the board to be placed in all practice locations other than an optometrist's principal place of practice. Any licensed optometrist who holds a branch office license is not required to obtain a statement of licensure to practice at that branch office. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

(b) A licensed optometrist is not required to provide the notification described in subdivision (a) if he or she engages in the temporary practice

of optometry. “Temporary practice” is defined as the practice of optometry at locations other than the optometrist’s principal place of practice for not more than five calendar days during a 30-day period, and not more than 36 days within a calendar year. This limitation shall apply to all practice locations where the licensed optometrist is engaging in temporary practice, not to each practice location individually. If the time period of the temporary practice needs to be extended for any reason, the licensed optometrist shall submit an application for a statement of licensure to the board pursuant to Section 1506 of Title 16 of the California Code of Regulations.

(c) Notwithstanding Section 3075, an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall carry and present upon demand evidence of his or her licensure but shall not be required to post his or her current license or other evidence of current license status issued by the board.

(d) In addition to the information required by Section 3076, a receipt issued to a patient by an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall contain the address of the optometrist’s primary practice location and the temporary practice location where the services were provided.

SEC. 2. Section 3090 of the Business and Professions Code is amended to read:

3090. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, including those who hold a retired license, a license with a retired volunteer designation, or an inactive license issued pursuant to Article 9 (commencing with Section 700) of Chapter 1, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

SEC. 3. Section 3147 of the Business and Professions Code is amended to read:

3147. Except as otherwise provided by Section 114, an expired license may be renewed at any time within three years after its expiration, and a retired license issued for less than three years may be reactivated to active status, by filing an application for renewal or reactivation on a form prescribed by the board, paying all accrued and unpaid renewal fees or reactivation fees determined by the board, paying any delinquency fees prescribed by the board, and submitting proof of completion of the required number of hours of continuing education for the last two years, as prescribed by the board pursuant to Section 3059. Renewal or reactivation to active status under this section shall be effective on the date on which all of those requirements are satisfied. If so renewed or reactivated to active status, the license shall continue as provided in Sections 3146 and 3147.5.

SEC. 4. Section 3147.6 of the Business and Professions Code is amended to read:

3147.6. Except as otherwise provided by Section 114, a license that is not renewed within three years after its expiration may be restored, and a retired license issued for more than three years may be reactivated to active status, if no fact, circumstance, or condition exists that, if the license were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired license or retired license is not subject to denial of a license under Section 480.

(b) The holder of the expired license or retired license applies in writing for its restoration or reactivation on a form prescribed by the board.

(c) The holder of the expired license or retired license pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time.

(d) The holder of the expired license or retired license satisfactorily passes both of the following examinations:

(1) The National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board.

(2) The board's jurisprudence examination.

(e) After taking and satisfactorily passing the examinations identified in subdivision (d), the holder of the expired license or retired license pays a restoration fee equal to the sum of the license renewal fee in effect on the last regular renewal date for licenses or a reactivation fee determined by the board, and any delinquency fees prescribed by the board.

SEC. 5. Section 3151 is added to the Business and Professions Code, to read:

3151. (a) The board shall issue, upon application and payment of the fee described in Section 3152, a retired license to an optometrist who holds a license that is current and active.

(b) A licensee who has been issued a retired license is exempt from continuing education requirements pursuant to Section 3059. The holder of a retired license shall not be required to renew that license.

(c) The holder of a retired license shall not engage in the practice of optometry.

(d) An optometrist holding a retired license shall only be permitted to use the titles "retired optometrist" or "optometrist, retired."

(e) The holder of a retired license issued for less than three years may reactivate the license to active status if he or she meets the requirements of Section 3147.

(f) The holder of a retired license issued for more than three years may reactivate the license to active status if he or she satisfies the requirements in Section 3147.6.

SEC. 6. Section 3151.1 is added to the Business and Professions Code, to read:

3151.1. (a) The board shall issue, upon application and payment of the fee described in Section 3152, a license with retired volunteer service

designation to an optometrist who holds a retired license or a license that is current and active.

(b) The applicant shall certify on the application that he or she has completed the required number of continuing education hours pursuant to Section 3059.

(c) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(d) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision (c).

SEC. 7. Section 3152 of the Business and Professions Code is amended to read:

3152. The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).

(d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).

(h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).

(j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).

(k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).

(l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).

(m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).

(n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).

(o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).

(p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).

(q) The fee for a retired license shall not exceed twenty-five dollars (\$25).

(r) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).

(s) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



CALIFORNIA STATE BOARD OF OPTOMETRY

Request for Approval of
Proposed Legislation
DRAFT 2

CONFIDENTIAL-Government Code §6254(I)	
Department: Department of Consumer Affairs	Governor's Office #
Agency Log #	
Subject/Title: Optometry: Registered Dispensing Optician Administration	

SUMMARY

This proposal would transfer the administrative duties and oversight of the Registered Dispensing Optician Program (Program) from the Medical Board of California (Medical Board) to the California State Board of Optometry (Optometry Board).

IDENTIFICATION OF PROBLEM

The primary problem with current oversight of the Program is enforcement. The Medical Board is tasked with multiple enforcement objectives and with finite resources, it must prioritize the investigation of complaints and administrative actions. For this reason the Medical Board frequently focuses on cases relating to physician misconduct where lives have been lost or threatened. As a result, addressing complaints relating to registered dispensing opticians are often delayed.

Additionally, the Optometry Board receives 20 to 30 calls a month from consumers who believe they received services from an optometrist, when in reality they received services from a registered dispensing optician. Typically, these calls are complaints that relate to a combination of services a consumer receives from a registered dispensing optician, optometrist, and/or an optometric assistant. Despite this, the Optometry Board must refer complaints related to registered dispensing opticians to the Medical Board, forcing both agencies to discipline their respective licensees separately.

Departments Which May Be Affected: Department of Consumer Affairs	Approved Author:
Suggested Author:	Governor's Office Use Only: _____ To Legislative Counsel Only By/Date:
Department Director/Date: Denise D. Brown	Governor's Office Use Only: Final _____ Approved _____ Disapproved By: _____ Date: _____
Agency Secretary/Date: Anna M. Caballero	

If the Optometry Board had jurisdiction over the Registered Dispensing Optician Program, a more efficient and comprehensive investigation of the complaint could be conducted by one regulatory body.

PROPOSED SOLUTION

Transfer the Program from the Medical Board to the Optometry Board.

This solution ensures more complete and efficient regulation of individuals and businesses with registered dispensing optician registrations and licenses, streamlining the delivery of government services.

JUSTIFICATION

This proposal creates more consistent oversight and enforcement of the optometric industry.

PROGRAM BACKGROUND/LEGISLATIVE HISTORY

Under existing law, the Medical Board licenses and regulates the following registered dispensing optician businesses and individuals:

- **Registered Dispensing Optician:** This registration is required for individuals, corporations, and firms engaged in the business of filling prescriptions by physicians and surgeons licensed by the Medical Board or optometrists licensed by the Optometry Board.
- **Registered Spectacle Lens Dispenser:** This licensee is authorized to fit and adjust spectacle lenses at any place of business holding a registered dispensing optician certificate provided that the certificate of the registered spectacle lens dispenser is displayed in a conspicuous place at the place of business where he or she is fitting and adjusting.
- **Registered Contact Lens Dispenser:** This licensee is authorized to fit and adjust contact lenses at any place of business holding a registered dispensing optician certificate, provided that the certificate of the registered contact lens dispenser is displayed in a conspicuous place at the place of business where he or she is fitting and adjusting.
- **Registered Nonresident Contact Lens Seller:** This registration is required for individuals, partnerships, and corporations located outside California that ship, mail, or deliver in any manner, contact lenses at retail to a patient at a California address.

Individuals seeking licensure as a spectacle or contact lens dispensers must take and pass the following exams:

- The National Opticianry Competency Examination, administered by the American Board of Opticianry.
- The Contact Lens Registry Examination, administered by the National Contact Lens Examiners.

The American Board of Opticianry and the National Contact Lens Examiners are national non-profit organizations, which administer volunteer certification examinations for dispensing opticians and contact lens technicians. Twenty-two states require this examination for licensure.

Individuals, corporations and firms in the business of filling prescriptions of physicians and surgeons, must only complete an application to become a registered dispensing optician in California. They must also employ a spectacle lens or contact lens dispenser.

Non-resident contact lens sellers must only complete an application to provide services to Californians. They must also comply with Business and Professions Code sections 2546-2546.10 (i.e., toll-free number, license to dispense in another state, notarized signatures, etc.).

All California registered dispensing optician licenses are renewed biennially, and do not require any continuing education.

The day-to-day functions of the Program are currently run by one individual who is a Staff Services Analyst. As of Fiscal Year 2011-2012 there are a total of 4,376 individuals licensed and registered by the Medical Board as registered dispensing opticians, registered spectacle or contact lens dispensers, and registered nonresident contact lens sellers. This number is roughly half the number of licensed optometrists in California.

Ophthalmologists are regulated by the Medical Board and optometrists are regulated by the Optometry Board. Both licensees are authorized to prescribe and dispense contacts and spectacle lenses, and both use registered dispensing opticians for the dispensing of these products. However, optometrists are more likely to employ registered dispensing opticians or work more closely with them.

Both, a registered dispensing optician and an optometrist can fit and dispense contact lenses and spectacles. Although these professions have different functions, this similarity has consumers incorrectly assuming that optometrists and registered dispensing opticians are the same profession, resulting in confusion as to which licensing board a complaint should be filed with.

A registered dispensing optician is considered an allied health care profession by the Medical Board. Allied health professions are part of health care teams and provide a range of technical, therapeutic and direct patient care and support services to other health professionals. An optometrist is considered a primary care practitioner who examines and tests the eyes for diseases and treats visual disorders. Optometrists are permitted to use diagnostic and therapeutic drugs to treat certain ocular diseases, including glaucoma.

The Optometry Board was created via legislation in 1913 to safeguard the public's health, safety and welfare through regulation of the practice of optometry. Per Business and Professions Code section 3010.1, protection of the public is the highest priority for the Optometry Board when exercising its licensing, regulatory and disciplinary functions. The Optometry Board currently oversees approximately 8,000 individuals in the optometric industry.

The Medical Board was created via legislation in 1876 and is responsible for regulating physicians and a number of other allied health professions. The Board's responsibilities include issuing licenses and certificates to various health care professionals and enforcing the disciplinary and criminal provisions of the Medical Practice Act. The Medical Board currently oversees approximately 1,170 registered dispensing opticians, 948 contact lens dispensers, and 2,258 contact lens dispensers.

ARGUMENTS PRO AND CON

Pro:

- Ensures comprehensive enforcement of optometry profession.
- Likely to increase enforcement response times to registered dispensing optician complaints.

Con:

- Thorough administration of registered dispensing opticians will cost the state additional resources.

PROBABLE SUPPORT AND OPPOSITION

Support:

- Medical Board of California

Opposition:

- Luxottica/LensCrafters/EyeExam

Other Organizations with Unknown Positions:

- Center for Public Interest Law
- California Optometric Association
- Consumer Protection Groups (i.e. Consumer Federation of California)
- American Board of Opticianry and the National Contact Lens Examiners
- California Association of Dispensing Opticians
- California Academy of Eye Physicians and Surgeons

FISCAL IMPACT:

This proposal would require a Legislative Budget Change Proposal to move one position from the Medical Board to the Optometry Board.

In addition, the Optometry Board will need an additional position for administration. This position will cost \$101,000 in Fiscal Year 2014-15 and \$94,000 in ongoing fiscal years.

ECONOMIC IMPACT

N/A

COMPARISON WITH OTHER STATES

See "State-wide regulation of RDO" chart.

Twenty-three states, including California, regulate registered dispensing opticians and require the passage of the national examinations administered by the American Board of Opticianry and the National Contact Lens Examiners.

Registered Spectacle Lens Dispenser & Contact Lens Dispenser

Unlike California, twenty of these states require a spectacle and contact lens dispenser to complete some form of apprenticeship before being permitted to independently practice in each state. Education completed at a recognized school of opticianry can be used in place of the apprenticeship requirement. Eighteen states require continuing education for renewal of a license and/or registration/certification, ranging between seven to twenty hours annually or biennially. California does not require continuing education for renewal.

Registered Dispensing Optician

Similar to California, other states require these kinds of businesses to register with their respective regulatory agencies. All must employ a contact lens dispenser and/or spectacle lens dispenser in order to provide the services of a registered dispensing optician. Like California, many states do not require the owners of these businesses to be spectacle or contact lens

dispensers. Unlike California, some states permit registered and/or contact lens dispensers to obtain branch office licenses as a way to expand their businesses. A couple of states require owners of businesses to specifically be registered spectacle or contact lens dispenser.

PERFORMANCE INDICATORS

N/A

OTHER AFFECTED AGENCIES AND THEIR ROLES/VIEWS

The Medical Board will be affected by this proposal. Departmental conversation with the Medical Board staff indicates that they are supportive of this proposal.

APPOINTMENTS

N/A

DRAFT LANGUAGE

The following Business and Professions Code sections should be amended to read:

2550. Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Division of Licensing of the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the ~~Division of Licensing of the Medical Board of California~~ State Board of Optometry.

2550.1. All references in this chapter to the board ~~or the Board of Medical Examiners or division~~ shall mean the ~~Medical Board of California~~ State Board of Optometry.

2552. Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied.

The applicant shall furnish such additional information or proof, oral or written, which the division may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

The ~~division~~ Board shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified or registered mail. Within 30 days of the applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified or registered mail if the board requires additional documents or information.

~~This section shall become operative on January 1, 1988.~~

2553. If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing optician. A separate certificate of registration shall be required for each address where the business is to be conducted.

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560).

Each certificate shall be at all times displayed in a conspicuous place at the certified place of business. The certificate shall not be transferable, but on application to the ~~division~~ Board there may be registered a change of address of the certificate.

~~This section shall become operative on January 1, 1988.~~

2555. Certificates issued hereunder may in the discretion of the ~~division~~ Board be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant

or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.

2555.1. In the discretion of the ~~Division of Licensing Board~~, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

The proceeding under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

~~This section shall become operative on January 1, 1988.~~

2558. (a) Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment.

The ~~Division of Licensing of the Medical Board of California~~ may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter.

(b) The board shall adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures to initially implement this chapter as it goes into effect on January 1, 2014. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State in accordance with the Administrative Procedure Act.

2559. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this chapter, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the ~~Division of Licensing of the Medical Board of California~~, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

2559.2. (a) An individual shall apply for registration as a registered spectacle lens dispenser on forms prescribed by the **division Board**. The **division Board** shall register an individual as a registered spectacle lens dispenser upon satisfactory proof that the individual has passed the registry examination of the American Board of Opticianry or any successor agency to that board. In the event the **division Board** should determine, after hearing, that the registry examination is not appropriate to determine entry level competence as a spectacle lens dispenser or is not designed to measure specific job performance requirements, the division may thereafter prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses within the last five years then the **division Board** may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination prescribed or administered by the division shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The **division Board** is authorized to contract for administration of an examination.

(b) The **division Board** may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(c) The **division Board** shall issue a certificate to each qualified individual stating that the individual is a registered spectacle lens dispenser.

~~(d) Any individual who had been approved as a manager of dispensing operations of a registered dispensing optician under the provisions of Section 2552 as it existed before January 1, 1988, and who had not been subject to any disciplinary action under the provisions of Section 2555.2 shall be exempt from the examination requirement set forth in this section and shall be issued a certificate as a registered spectacle lens dispenser, provided an application for that certificate is filed with the division on or before December 31, 1989.~~

(e)(d) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at any place of business holding a certificate of registration under Section 2553 provided that the certificate of the registered spectacle lens dispenser is displayed in a conspicuous place at the place of business where he or she is fitting and adjusting.

2559.3. A certificate issued to a registered spectacle lens dispenser may, in the discretion of the **division Board**, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the **division Board** shall have all the powers granted therein.

2561. An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the **division Board**. The **division Board** shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the **division Board** should ever find after hearing that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the **division Board** may thereafter from time to time prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five

years then the division may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination administered by the **division Board** shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The **division Board** is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at least twice each year on dates publicly announced at least 90 days before the examination dates.

The **division Board** may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

The **division Board** shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser.

A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

2563. A certificate issued to a registered contact lens dispenser may in the discretion of the **division Board** be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the **division Board** shall have all the powers granted therein.

2565. The amount of fees prescribed in connection with the registration of dispensing opticians shall be as set forth in this section unless a lower fee is fixed by the **division Board**:

- (a) The initial registration fee is one hundred dollars (\$100).
- (b) The renewal fee is one hundred dollars (\$100).
- (c) The delinquency fee is twenty-five dollars (\$25).
- (d) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).

~~This section shall become operative on January 1, 1988.~~

2566. The amount of fees prescribed in connection with certificates for contact lens dispensers, unless a lower fee is fixed by the **division Board**, is as follows:

- (a) The application fee for a registered contact lens dispenser shall be one hundred dollars (\$100).
- (b) The biennial fee for the renewal of certificates shall be fixed by the **division Board** in an amount not to exceed one hundred dollars (\$100).
- (c) The delinquency fee is twenty-five dollars (\$25).
- (d) The division may by regulation provide for a refund of a portion of the application fee to applicants who do not meet the requirements for registration.
- (e) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).

~~This section shall become operative on January 1, 1988.~~

2566.1. The amount of fees prescribed in connection with certificates for spectacle lens dispensers shall be as set forth in this section unless a lower fee is fixed by the **division Board**:

- (a) The initial registration fee is one hundred dollars (\$100).
- (b) The renewal fee shall be one hundred dollars (\$100).

(c) The delinquency fee is twenty-five dollars (\$25).

(d) The fee for replacement of a lost, stolen or destroyed certificate is twenty-five dollars (\$25).

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the ~~Contingent Fund of the Medical Board of California~~ Optometry Fund.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

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www.optometry.ca.gov

To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 11 – Public Comment for Items Not on the Agenda

The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)].

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To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 12 – Suggestions for Future Agenda Items

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

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To: Board Members

Date: December 14, 2012

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 13 – Adjournment

Adjournment