



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

# **Board Meeting**

Friday, May 10, 2013

Western University of Health Sciences,  
College of Optometry  
Pomona, CA



**MEMBERS OF THE BOARD**

*Alejandro Arredondo, OD, President*  
*Monica Johnson, JD, Vice President*  
*Alexander Kim, MBA, Secretary*  
*Donna Burke*  
*Madhu Chawla, OD*  
*Fred Dubick, OD, MBA, FAAO*  
*Glenn Kawaguchi, OD*  
*William Kysella, Jr.*  
*Kenneth Lawenda, OD*



**QUARTERLY BOARD MEETING AGENDA**

Western University of Health Sciences, College of Optometry  
309 E. Second Street  
Health Education Center (HEC Building), 2<sup>nd</sup> Floor, Vision Science Lab 2205  
Pomona, CA 91766  
(909) 469-8477 (directions only)

**Friday, May 10, 2013**  
**9:00 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 and Establishment of a Quorum
2. Welcome – President's Report
3. Approval of Board Meeting Minutes
  - A. December 14, 2012
  - B. March 6, 2013
4. Executive Officer's Report
  - A. Budget
  - B. Personnel
  - C. Sunset Report
  - D. BreEZe
  - E. Examination and Licensing Programs
  - F. Enforcement Program
  - G. Strategic Planning
  - H. Other
5. Discussion and Possible Action on Regulations Affecting the Board of Optometry
  - A. SB 1111 Provisions and April 30, 2013 Committee Meeting
  - B. California Code of Regulations (CCR) §1575 Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
  - C. CCR §1508, §1508.1, §1508.2, and §1508.3 Sponsored Free Health Care Events
  - D. CCR 1524 Fees for Retired License Statuses
6. Discussion and Possible Action on Legislation Affecting the Board of Optometry
  - A. Assembly Bill 186 (Maienschein) Military
  - B. Assembly Bill 213 (Logue) Military – Veterans Health Care Workforce Act of 2013
  - C. Assembly Bill 258 (Chávez) Veterans
  - D. Assembly Bill 480 (Calderon) Service Contracts
  - E. Assembly Bill 512 (Rendon) Licensure Exemption
  - F. Assembly Bill 1003 (Maienschein) Professional Corporations – Healing Arts Practitioners

- G. Assembly Bill 1057 (Medina) Military
- H. Senate Bill 305 (Price) Healing Arts Boards
- I. Senate Bill 430 (Wright) Pupil Health
- J. Senate Bill 492 (Hernandez) Optometrist: Practice: Licensure
- K. Senate Bill 532 (De León) Military
- L. Senate Bill 723 (Correa) Veterans
- M. Senate Bill 724 (Emmerson) Charitable Vision Screenings
- N. Senate Bill 809 (DeSaulnier & Steinberg) Controlled substances: reporting

7. 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)]*

8. Suggestions for Future Agenda Items

9. Disciplinary Process – Conflict of Interest, When to Recuse

*Presented by Anahita Crawford, Deputy Attorney General, Board Liaison*

10. Petitions for Reduction of Early Termination of Probation

- A. Dr. Susanne Anderson, O.D., OPT 6613
- B. Dr. Svetlana Fisher, O.D., OPT 9936

**FULL BOARD CLOSED SESSION**

11. 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**

12. 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](http://www.optometry.ca.gov)

**To:** Board Members

**Date:** May 10, 2013

**From:** Alejandro Arredondo O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 1 – Call to Order and Establishment of Quorum**

---

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, JD, Board Vice President, Public Member

Alexander Kim, MBA, Board Secretary, Public Member

Donna Burke, Public Member

Madhu Chawla, O.D., Professional Member

Fred Dubick, O.D., MBA, FAAO, Professional Member

Glenn Kawaguchi, O.D., Professional Member

William Kysella, Jr., Public Member

Kenneth Lawenda, O.D., Professional Member



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

**To:** Board Members

**Date:** May 10, 2013

**From:** Alejandro Arredondo, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 2 – Welcome – President's Report

---

Welcome by President Alejandro Arredondo, O.D.

**A. Other**

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Krista Eklund  
Office Technician

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 3 – Approval of Board Meeting Minutes

---

A. December 14, 2012

B. March 6, 2013



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



**DRAFT**

## MEETING MINUTES

Friday, December 14, 2012  
 Southern California College of Optometry  
 Blake Room  
 2575 Yorba Linda Blvd  
 Fullerton, CA 92831-1699

Members Present	Staff Present
Alex Arredondo, O.D., Board President	Mona Maggio, Executive Officer
Monica Johnson, Board Vice President	Andrea Leiva, Policy Analyst
Alex Kim, Board Secretary, Public Member, M.B.A.	Jessica Sieferman, Probation Monitor
Ken Lawenda, O.D., Professional Member	
Madhu Chawla, O.D., Professional Member	
Donna Burke, Public Member	
William Kysella, Public Member	
Fred Dubick, O.D., Professional Member, M.B.A.	Guest List
Glenn Kawaguchi, O.D., Professional Member	On file

9:30 a.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 9:30 a.m. Dr. Arredondo called roll and a quorum was established.

#### **2. Disciplinary Process – Overview**

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

The California State Board of Optometry was created by the Legislature in 1973, for the purpose of protecting the public's health, safety and welfare. Therefore, protection of the public is the responsibility, and highest priority, of the Board. Part of the purpose of the Board is the institution of disciplinary actions for violations of the law, and regulations governing the practice of optometry. State agencies are permitted to regulate the practice of licensees through their general powers and licensing laws, and state boards were created by the state to regulate such practice.

The licensing agency has an ***Enforcement Program/Unit*** which is responsible for enforcing the applicable laws, rules and regulations; and which, receives complaints (i.e. patients, other licensees, concerned parties, etc.).

Once a ***complaint*** is received, a ***preliminary review and assessment***, is performed to confirm appropriate jurisdiction. After jurisdiction is confirmed, the agency has to make a ***determination*** of whether or not they have enough information to proceed or if the complaint needs to be referred to the Department of Investigation (DOI) for further investigation. The agency will also make a determination of ***handling priority***. For example if it is determined that there exists an immediate public risk the determination would be expedited handling priority. The agency's investigations may be handled several ways. If insufficient information is obtained, the investigation may be referred to DOI, or if enough information is received, the complaint may be sent straight to an expert for review of violations

of laws. Additionally, the agency may correspond with licensees and other important sources of information via questionnaires and declarations.

Possible determinations derived from the investigatory process include the following:

- No violation of law has occurred and the case is closed;
- There may be a violation but there is insufficient evidence to determine a violation;
- There has been a violation but of such a minimal and non-serious nature and the licensee enters into an agreement to remain compliant. This type of case will be closed but with merit;
- There is a violation, but it does not quite rise to the level of revoking the license or placing the licensee on probation. In these instances the agency may decide to issue a citation or fine;
- An accusation is warranted. This is the beginning of the formal disciplinary process and the entire investigation file is sent to the Attorney General's (AG) Office.

The AG's office then reviews the case to determine if the evidence within the file can support the filing of a pleading against the licensee. An action for denial of license case; in which, the applicant requests a **Hearing** is also sent to the AG's Office. This is called a **Statement of Issues** which includes the facts surrounding the denial and the laws by which denial is based. The burden-of-proof is on the applicant.

In an **Accusation** (action to revoke or suspend a license) for a serious violation, the burden-of-proof is on the Complainant, and supported by clear and convincing evidence. The Respondent must file a **Notice of Defense** within 15 days of being served by the AG's office. Otherwise, the license is revoked by default.

A **Petition for Revocation of Probation** occurs when a licensee on probation violates a term of his/her probation. The AG's office files a petition to revoke the probation. Once a Petition is filed and a Notice of Defense is provided, a decision must be made for disposal of the case. This will either occur by **Settlement or Trial**. In the instance of a Settlement, the Administrative Procedures Act (APA) allows agencies to issue a settlement decision without conducting a Hearing. Once an agency has filed an Accusation or a Statement of Issues, the case may be resolved by way of a **Stipulated Settlement** (written statement between the parties which agrees that a particular disciplinary order may become imposed). Settlements are the most cost effective means of disposing of cases.

In the case of a Stipulated Settlement the respondent must provide the Agency with documentation demonstrating the respondent's rehabilitation and fitness to practice, and any mitigating circumstance information. The terms are negotiated between staff and the AG's Office; however, final acceptance of the settlement rests with the Board. If the Board does not vote to adopt the stipulation, the stipulation becomes void. The Stipulated Settlement is transmitted to the Board by a letter (from the AG's Office) which includes a case assessment of the weaknesses and strengths of the case and why the Stipulated Settlement is a fair resolution of the case. Typically, the AG's office is never allowed to influence decision making of cases by the Board, however, this type of resolution is one exception to that rule.

The terms of the Stipulated Settlement are confined to the **Disciplinary Guidelines**. The AG's Office cannot deviate from the Disciplinary Guidelines. If a Stipulated Settlement cannot be negotiated, the case goes to Hearing before an Administrative Law Judge (**ALJ**). These are proceedings administered by the Office of Administrative Hearings (OAH). The facts are determined and a decision is made based on those facts. Individuals who are denied a license by the state agency or licensees who are opposing a disciplinary action have the right to a Hearing before the Board takes any formal action. Hearings are heard by the ALJ or the ALJ and the agency. The ALJ presides over the Hearing, rule on the admissibility of evidence, act as legal advisors and provide a **Proposed Decision** to the Board. Ultimately it is the Board's decision to accept or not accept the proposed decision. If the Board decides to reject the decision, the Board must do one of the following:

- 1) Reject decision and refer case back to the ALJ to take additional evidence on certain issues;

- 2) Reject decision and decide case itself. The Board may hear some additional evidence but if so, the Board must hear additional evidence on both sides.

In most instances proposed decisions are adopted by the Board.

Any person who has had their license revoked may petition for reinstatement of their license after meeting certain requirements. Any person suspended or on probation may petition for modification of their penalty or early termination. The AG's office represents public interest at these Hearings, and aids in the fact finding. Both the AG's office and the petitioner must be given an opportunity to present oral or written argument to the Board, and the petitioner must provide evidence to a clear and convincing standard that he/she is entitled to the relief sought. The Board's decision should include the reasons for the decision and conditions for licenses being reinstated (**probation**).

Board Vice President, Monica Johnson asked who decides to petition the ALJ to compel a psychological evaluation (agency or AG's office)? Ms. Crawford explained that the agency makes this decision, which is usually the result of a complaint or arrest report coming to the agency's attention that someone is behaving bizarrely or doing something that may indicate a mental health problem. Ms. Johnson requested a chart or outline which walks through the complaint process, which Probation Monitor, Jessica Sieferman agreed to provide.

Dr. Arredondo inquired and Ms. Crawford clarified that there is no right for a jury trial in the case of administrative hearings. Additionally, there is no right to a trial before a superior court judge. These cases are the jurisdiction of the OAH. If the petitioner decides to appeal the decision, the case would then go before the Superior Court. The case can be moved up from there to the Appellate Court.

Professional Member, Ken Lawenda, O.D. asked and Ms. Crawford explained that the decision to revoke a license due to a mental illness is based on how the licensee's conduct may demonstrate a likelihood of harm occurring to a patient. A licensee with a mental illness that is properly managed with medication would not be something the Board would be looking at unless they have a history of going off of their medication, acting bizarrely and possibly hurting patients. Dr. Lawenda inquired and Ms. Crawford reported that more times than not, the AG's Office becomes aware of these types of cases because the licensee was acting in some bizarre manner and someone reported it.

Public Member, William Kysella asked and Ms. Crawford responded that in cases where there are two credible expert witnesses, the ALJ must provide an explanation as to why the opinion of one witness was chosen over the other. If the ALJ does not provide an explanation, the Board has the option of rejecting the decision. There were no further questions signaling the conclusion of Ms. Crawford's presentation.

Staff and guests were asked to introduce themselves. The staff members included Executive Officer, Mona Maggio, Policy Analyst, Andrea Leiva, Probation Monitor Jessica Sieferman, and Legal Counsel, Don Chang. The guests included Executive Director, Bill Howe and Jason Gabhart with the California Optometric Association, Michelle Peña with the University of San Diego, Mary Cavanaugh, O.D., and Academic Dean of the Southern California College of Optometry, Morris Berman, O.D.

### **3. Petitions for Reduction of Penalty or Early Termination of Probation**

#### **A. Dr. Susanne Anderson, OPT 6613**

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

Administrative Law Judge, Jennifer Russell presided over the hearing. Board members heard the following petition:

**B. Dr. Brent Gibson,**

Dr. Brent Gibson, O.D., License Number OPT 10198

Agency Case Number: CC-2009-125

To avoid any appearance of any impropriety or bias, Professional Member, Glenn Kawaguchi, O.D. recused himself from this proceeding and will take no part whatsoever in the decision. Dr. Kawaguchi used to work with Dr. Gibson.

**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.**

The Board convened into closed session to deliberate on the following petition:

Dr. Brent Gibson, O.D., License Number OPT 10198

Agency Case Number: CC-2009-125

**FULL BOARD OPEN SESSION**

**5. Welcome – President's Report**

**A. Committee Appointments**

At the August 10, 2012 meeting the Board elected officers for 2012/2013 and members volunteered for Board committees. The appointments are as follows:

Practice and Education Committee

Alex Arredondo, O.D.

Madhu Chawla, O.D.

Fred Dubick, O.D.

Consumer Protection Committee

Monica Johnson

Ken 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. Dr. Arredondo announced that since the interest in this committee is so large, legislative and regulatory issues will be brought to the full Board for discussion.

Meetings

Dr. Arredondo reported that committee meetings should be held on an "as needed" basis since there is no law or Board policy mandating a set requirement for committees to meet.

Ms. Maggio requested to address a question brought to her at the last Board meeting about why the committees had not been meeting. During the last two years the Board membership was at a bare quorum of six members. Therefore, the former Board President, Dr. Lee Goldstein, O.D., decided to limit the number of committee meetings and refer issues to the full Board for discussion versus holding committee meetings. Only workgroups in glaucoma were appointed. Board policy is that this is the discretion of the Board President. Another factor is that, this Board, as well as other state agencies, is under the Governor's order to restrict travel except for mission critical issues. Ms. Maggio has to obtain approval from the Department of Consumer Affairs, for all travel including mission critical Board and committee meetings. Additionally, Ms. Maggio stated that it is difficult to set committee dates throughout the year until there are topics to discuss.



Dr. Lawenda inquired and Ms. Maggio responded that holding the committee meetings in this manner would not render the Board unable to vote on a disciplinary matter because disciplinary matters are mission critical; therefore the Board would meet. Additionally, if a decision on a proposed decision had to be made by the deadline and the Board was not scheduled or able to meet, a mail ballot would be conducted.

**B. Other**

Dr. Arredondo reported that he attended a very fascinating meeting on collagen and cross linking to stop the development of Keratoconus. Dr. Arredondo often sees Keratoconus cases in his practice. He described the process of how the treatment is performed.

**6. Approval of Board Meeting Minutes**

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

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

**Ken Lawenda moved to approve the August 10, 2012 Meeting Minutes as edited. Alex Kim seconded. The Board voted unanimously (9-0) to pass the motion.**

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

**Donna Burke moved to approve the August 31, 2012 Meeting Minutes as edited. Monica Johnson seconded. The Board voted: 8-Aye, 0-No, and 1-Abstention to pass the motion.**

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

Fred Dubick moved to approve the October 19, 2012 Meeting Minutes as edited. Madhu Chawla seconded. The Board voted: 6-Aye, 0-No, and 2-Abstention to pass the motion.

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

## 7. Executive Officer's Report

Ms. Maggio provided an overview of the following:

### A. Budget

The Board of Optometry is a Special Fund California state government agency, which means it supports its operations entirely through fees charged to licensees and applicants. 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 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.

In April 2013, staff will begin drafting the BCPs for 2014. These will include a possible BCP for an Occupational Analysis, and a BCP for the Board's operations line. There are a few operational areas in need of additional funding such as printing and postage because the printing and mailing of a newsletter is one of the principal ways the Board communicates with licensees. Each time a newsletter is sent, it goes to a percentage of licensees and counties selected. Staff would like to send these newsletters to all of the Board's licensees.

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. Ms. Maggio reported that she will have the budget analyst attend the February meeting to answer Member's questions.

### B. Personnel

Bradley Garding joined the Board in October 2012 as an Enforcement Technician in the Enforcement Unit. Rob Stephanopoulos joined the Board in September 2012 as an Enforcement Analyst. The Board's receptionist, Elizabeth Bradley has been out on extended medical leave. Staff is currently in the process of hiring a seasonal clerk to serve as the receptionist. Additionally, staff hopes to hire an AARP staff person in the next few weeks.

**C. Sunset Report**

The 2012 Sunset Report was delivered to the Business, Professions & Economic Development Committee on its due date, November 1, 2012. Ms. Maggio confirmed with Dr. Leondra Clark, Consultant to the Committee, that hearings will be conducted in March 2013. Staff anticipates but has not yet received additional questions/issues prior to the hearing.

**D. BreEZe Update**

The Board is scheduled for Release 2. This is the transition from two archaic database systems to the one new system. This transition was to occur in April 2013; however, there is not a firm "go-live" date at this time. Staff is currently performing a huge manual data clean-up due to erroneous entry by former department staff, long ago.

**E. Examination and Licensing Programs**

**A. International (Foreign) Graduate Education Evaluations**

It has been decided that this issue needs further background research and discussion, and will be brought back to the Board at a future meeting.

**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 Business & Professions (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. Staff wishes to refer this issue to the Education and Practice Committee for guidance, then bring this back to the Board at a future meeting.

**F. Enforcement Program**

Probation Monitor, Jessica Sieferman provided an overview of the Enforcement Program.

The Board had another case where a Superior Court Judge ruled and took action against a cosmetic lens dispenser who did not have a license to prescribe cosmetic lenses. The District Attorney Office pressed charges and the Board received \$5,000, which is equivalent to what the Board would receive for a citation. Mr. Kysella inquired and Ms. Sieferman clarified that the total fine was \$20,000. There were conditions that allowed the respondent to pay only a portion of the fine if he met the conditions. Regardless, he had to pay the \$5,000 to the Board for the costs involved in the investigation. Ms. Burke asked and Ms. Sieferman responded that patients who purchased illegal lenses are contacted and informed that they may return the lenses (and if they bring a receipt) have their money returned. Dr. Lawenda questioned and Ms. Sieferman explained that the distributors, who supply the illegal lenses to the sellers the Board takes action against, are also investigated.

Ms. Sieferman reported that staff is now in phase III of the data clean-up project. The clean-up project had been broken down into three parts (phase I - complaints, phase II - citations, and phase III - disciplinary). The complaints and citations moved along fairly quickly because the bulk of it was off of the retention schedule. The phase III disciplinary project is much more involved and will take significantly more time because these remain on the retention schedule for 75 years.

The Board's contract with Phamatech (drug testing provider) expired in June. However, it is known that Phamatech has been chosen again and will continue to be the Board's drug testing vendor. The new contract should be issued fairly soon. Additionally, Ms. Sieferman is working

with the BreEZe team to develop an interface with Phamatech so their data can automatically be added into our database.

Ms. Sieferman provided a brief overview of the fingerprint program which is overseen by Fingerprint Coordinator, Lydia Bracco. So far 201 rap sheets have been received. Out of these, 25 were not opened because they were previously investigated, 176 were opened and 94 were closed because they exceeded the Board's Statute of Limitations. When a case has exceeded the Statute of Limitations, the initial license application is reviewed because if the optometrist failed to provide disclosure on the initial application, the Statute of Limitations no longer applies. Fifty-one cases were investigated and subsequently closed. Seven have had final discipline imposed. Eight are pending discipline and 16 are still being investigated. Ms. Johnson asked and Ms. Sieferman responded that the Statute of Limitations is seven years from the date of occurrence, or three years from the date the Board learns of the misconduct. There are some exceptions. For example there is no Statute of Limitations for sexual misconduct.

Ms. Sieferman reported that there have been 424 rejected fingerprints. This does not mean that 424 people's fingerprints were rejected as an optometrist's fingerprints can be rejected up to three times before the Department of Justice (DOJ) will perform a name search. In January 2013 the Board will conduct an audit of the fingerprint program to ensure all optometrists have complied with the fingerprint requirement.

Licensing statistical data documents were provided to the Board members. Dr. Lawenda inquired and Ms. Maggio explained that the reason only 18% (14 out of 75 new applications for licensure received) have been issued is due to the fact that applicants submit their application before taking the law exam. The applicant sometimes waits as long as a full year before submitting the remaining documents. Transcripts are usually the last to arrive.

#### **8. Discussion and Possible Action on Retention Schedule**

Ms. Sieferman provided an overview of the Board's retention schedule.

The Records Retention Schedule specifies how long the Board will maintain fiscal and electronic files. With regards to enforcement, the schedule is based on how cases are closed. Ms. Sieferman explained that a licensee may obtain a DUI (for example) and based on how the case is closed may be purged in five years. The problem comes in when this licensee obtains another DUI after the previous records have been purged. This makes it difficult to show a pattern of DUIs or substance abuse. Courts and police records, for DUIs, are also purged after five years. Staff is recommending that the retention schedule for conviction cases be changed to 25 years for maintaining records.

**Monica Johnson moved to change the retention schedule as advised. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.**

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

#### **9. Rulemaking Calendar**

Ms. Leiva reported on the following:

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

The package was submitted to 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). Staff is confident about meeting this completion date.

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

The package was approved by OAL on September 25, 2012 and the regulations became effective October 25, 2012. This regulation is for clarification purposes. It does not contain many substantial changes.

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

Ms. Leiva introduced the issue, explaining that this regulatory action is regarding the process for out-of-state optometrists to obtain authorization from the Board prior to participating in a sponsored free health-care event in California. One comment, which contained three comments, was received from the California Academy of Eye Physicians and Surgeons. This comment was directed at the Board and the Medical Board of California, but the Board only considered and responded to the comments related to the Board's regulations. Ms. Leiva presented all the comments and provided proposed responses to the members for consideration.

For the first comment regarding prescriptions and whether explicit language needed to be included in the regulations to specify that out-of-state optometrists would be permitted to prescribe:

**Fred Dubick moved to accept the proposed response to the comment as written. Monica Johnson seconded. The Board voted unanimously (9-0) 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. Dubick	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

For the second comment regarding certifications and whether certifications were considered above and beyond licensure:

**Fred Dubick moved to accept the proposed response to the comment as written. Madhu Chawla seconded. The Board voted unanimously (9-0) 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. Dubick	X		

<b>Dr. Kawaguchi</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		

For the third comment regarding discipline by the Board and incorporation by reference:

Ms. Johnson requested that some language be added to the proposed response that it is clear that any actions the Board takes in referring a matter to the practitioners home licensure state could subject him or her to administrative penalties. She commented that the comment is misplaced and does not make sense.

Mr. Kysella asked the Board's legal counsel about the appropriateness of adding language similar to the Medical Board to the Board's form. Mr. Chang responded that for the purposes of this form, the current language is adequate. If an out-of-state optometrist self certifies falsely, the Board would have authority to take action for fraud on the form, which is typically what a Board does in this situation. The Board decided to leave the statement as written on the form.

**Ken Lawenda moved to accept the proposed response as amended. Fred Dubick seconded. The Board voted unanimously (9-0) to pass the motion.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstention</b>
<b>Dr. Arredondo</b>	<b>X</b>		
<b>Ms. Johnson</b>	<b>X</b>		
<b>Mr. Kim</b>	<b>X</b>		
<b>Dr. Lawenda</b>	<b>X</b>		
<b>Ms. Burke</b>	<b>X</b>		
<b>Dr. Chawla</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		
<b>Dr. Kawaguchi</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		

Staff was instructed to move forward with this rulemaking package.

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

Senate Bill (SB) 1111 was introduced in 2010 but failed in the Senate Business, Professions and Economic Development Committee on April 19, 2010. The goal of SB 1111 was to provide health boards with the necessary tools to implement the Consumer Protection Enforcement Initiative (CPEI) and streamline the enforcement and disciplinary processes. When this bill failed, DCA identified nine provisions from SB 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. Initially the Board decided to initiate a rulemaking package that contained the CPEI regulations along with the Uniform 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. 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, but are not deeming them mandatory. Ms. Leiva noted that this issue was brought up in question(s) from the Sunset Review Report. Also she has heard through the grapevine that SB 1111 may be introduced again.



Staff is requesting the Board do the following:

- 1) Review the nine provisions to determine which ones would be the most appropriate for the Board's use;
- 2) Review, discuss, and make 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;
- 3) If all or some of the provisions are rejected, discuss why they are not necessary at this time.

Dr. Goldstein, the Board's former Board President and guest, suggested giving the provisions a fair amount of thought as to how to proceed. He advised that once the decision is made to move forward with a regulation package, the clock starts ticking so if a provision is deemed to be an immediate priority, it may be wise to hold off on the regulation process time clock.

Ms. Johnson asked why this needs to be done right now. Ms. Leiva explained that this is one of the topics of interest to the Legislature in the Sunset Review process and the Board must explain why these regulations were not implemented. Also, at the prior Board meeting Ms. Leiva was asked to provide a better explanation as to why these regulations need to be implemented, instead of responding that it's because other DCA boards are doing it. To facilitate the discussion, the Board is being presented with how the Board does things now, how each SB1111 provision will change the Board's current processes, followed by discussion by the Board considering if the provisions are necessary? Mr. Kysella contended that he is not sure there is enough time this afternoon to give these due diligence and discussion. Additionally, with SB 1111 possibly being introduced again, it would make sense to table this to February and perhaps by that time we will know if there is actually legislation making this superfluous. Ms. Johnson concurred.

Legal counsel, Don Chang responded to the question with a historical context of how this issue came about. The CPEI regulation proposals (which came about two years ago) were in result to negative criticism against the Nursing Board and their enforcement processes. The legislature strongly supported the CPEI regulations. Mr. Chang noted that for a board which is currently undergoing Sunset Review, one of the questions the legislature will ask is where the Board is in the CPEI regulatory process. Mr. Chang advised that the Board be prepared with a very adequate response as to where the Board is currently, what the Board intends to do and why.

Mr. Kysella suggested that this issue would be perfect for a committee to work on. Additionally he voiced his opinion that it should be a reasonable explanation to the Legislature to say "our committee is working on this, these are tough issues," especially in the context of stating that we are proposing legislation to double our workload by taking on the opticians.

Dr. Arredondo asked the Board members who would be interested in working on the CPEI regulation proposals as a committee. Those who expressed interest were Drs. Chawla, Lawenda, and Dubick, Ms. Burke and Mr. Kysella.

**Monica Johnson moved to create a committee of the five interested Members of the Board of Optometry to review the SB 1111 proposed regulation and report back to the full Board at the February 1, 2013 Board Meeting with their recommendations, and that the Board Members be prepared to provide guidance to staff at that time. Bill Kysella seconded. The Board voted unanimously (9-0) 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		

<b>Dr. Dubick</b>	<b>X</b>		
<b>Dr. Kawaguchi</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		

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

Board sponsored SB 1215 (Emmerson) 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. However the fees must be set via regulation before the Board can collect monies. Staff requests the Board review and discuss the proposed language, and then approve the language and direct staff to initiate the rulemaking process.

**Bill Kysella moved to adopt the proposed language and directed staff to initiate the rulemaking process. Glenn Kawaguchi seconded. The Board voted unanimously (9-0) to pass the motion.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstention</b>
<b>Dr. Arredondo</b>	<b>X</b>		
<b>Ms. Johnson</b>	<b>X</b>		
<b>Mr. Kim</b>	<b>X</b>		
<b>Dr. Lawenda</b>	<b>X</b>		
<b>Ms. Burke</b>	<b>X</b>		
<b>Dr. Chawla</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		
<b>Dr. Kawaguchi</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		

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

SB 929 reclassified technicians to assistants and by doing so increased the scope of practice regarding the kind of testing procedures these individuals may perform (i.e. glaucoma testing, visual perception testing etc.). Due to this significant scope expansion of assistants, the Joint Legislative Sunset Review Committee (JLSRC) and the DCA requested that the Board expedite the adoption of clarifying regulations establishing training standards to ensure consumers were not placed at risk.

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. Despite this set-back, the Executive Officer at the time presented proposed regulatory language, and the Board voted to approve it and initiate the rulemaking process. As the Board was addressing comments and the modified text periods, the rulemaking package expired on October 1, 2005. After this date, the Board did not discuss the rulemaking package again.

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.

Staff requests the following:

- 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

Monica Johnson moved to direct staff to prepare a budget change proposal requesting funds to do an occupational analysis for optometric assistants. Alex Kim seconded. The Board voted unanimously (9-0) 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. Dubick	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

## 10. Legislation

### A. *Update on Legislation the Board is Following*

Ms. Leiva provided a summary of the bills that staff have been monitoring which have now been signed by the Governor. All these bills will be effective on January 1, 2013.

#### Assembly Bill 761 (Hernandez) – CLIA Testing

This bill would allow optometrists to perform certain diagnostic tests in the office, rather than ordering them from a lab. They can also become a lab director. Licensees will obtain a Clinical Laboratory Certificate for Waived Testing from the Department of Public Health. The Board's responsibility is to ensure that licensees are aware of what must be done to obtain the CLIA 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 DCA, 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. 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. No action is needed by the Board other than to monitor and ensure this bill is serving the public well.

#### Assembly Bill 1904 (Block) – Professions and Vocations, Military Spouses, Expedited Licensure

This bill requires boards under the DCA to expedite the licensure process for military spouses and domestic partners of military members on active duty in California. 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 are related to the California Health Benefit Exchange starting in 2014. It will establish pediatric vision essential benefits which will be based on the largest vision plan for federal workers. No action is needed by the Board. This is only for informational purposes.

#### Senate Bill 1215 (Emmerson) – Retired Licenses Statuses and Temporary Practice Defined

The next steps for retired licenses are to establish fees (via regulation), develop applications and fact sheets, and issue these licenses. For temporary practice the next steps are to 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 the DCA's Publications unit.

**B. Discussion and Possible Action on Possible Proposals for Legislation for 2013-2014**

Ms. Leiva provided an overview of the legislative process.

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.

The 2013-2014 Legislative proposals are as follows:

*1) Transfer of Registered Dispensing Optician (RDO) program from the Medical Board of California to the California State Board of Optometry*

The Board made a recommendation to transfer the RDO program in its Sunset Report. The Medical Board made the same recommendation in its Sunset Report. 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 does not belong under the Medical Board's jurisdiction.

Dr. Lawenda inquired if there has ever been any consideration of developing an opticianry board versus having the RDO's come under the Board's jurisdiction. Ms. Maggio explained this would be up to the Legislature and this option was not discussed.

Dr. Arredondo voiced his opinion that the only appropriate place for the RDO program is with the Board of Optometry. Dr. Lawenda contended that in 1938 there existed an issue arising out of the relationship between optometry and opticianry. This problem that arose initiated the Legislature placing RDO jurisdiction with the Medical Board.

Former Board President, Lee Goldstein, O.D. provided a background on this issue for the Members. The question of RDO jurisdiction evolved out of discussions regarding the Lenscrafters issue and lawsuit and based on the fact that the Medical Board is interested in divesting itself of this program. Last January – February the Board met with Assembly woman (Atkins) who was carrying the Lenscrafters legislation. The Lenscrafters issue was discussed as well as the fact that corporate practices of side-by-side optometry and opticianry, which comply with the law, are increasing rather than decreasing, probably relative to the total number of practice opportunities and how this type of practice should be regulated. Nothing specific arose from the discussion except for the idea that perhaps it is the Department of Managed Health Care (DMHC) who should be responsible for overseeing opticians. A few months later, Dr. Goldstein, Ms. Maggio, five individuals from the AG's Office, and seven individuals from the DMHC met together to discuss how the various optometric and opticianry organizations exist under the DMHC. From this discussion, the Board learned that the DMHC only regulates plans and not doctors.

Dr. Lawenda expressed a concern about what would happen if down the road opticianry wanted to increase its scope of practice and how this might affect the Board. Would the Board be open to the idea of having opticians sit on the Board? Dr. Arredondo asked and Members responded that opticians do not sit on the Medical Board. Ms. Maggio clarified that no radical changes are proposed, rather simply to move the regulation over, issue the

licenses, educate, and enforce (just as the Board does for optometry). Ms. Maggio also asserted that staff is already doing the work because the Medical Board refers its RDO program callers to the California State Board of Optometry contending that we know more about opticianry than they do.

Professional Member, Madhu Chawla voiced her opinion that from a consumer protection standpoint this is where we would have the impact. She stated that regardless of what happened in 1938, it is now 2012 and she does not believe that we cannot work together but from a consumer protection standpoint, it makes more sense.

Ms. Leiva added that consumers are already suffering because complaints are submitted but not dealt with. Ms. Leiva spoke with a representative from the California Association of Dispensing Opticians (CADO) who informed her that they are frustrated. They do not get the attention needed, and have trouble scheduling meetings to talk about the issues with the Medical Board. People have come to the association explaining that they submitted a complaint to the Medical Board and then received a letter stating there were not enough resources to assist them with their complaint.

Mr. Kysella inquired and Ms. Leiva explained that the Medical Board's budget allotted to the RDO program, as well as their single staff member working on the program, would be transferred to the Board. Ms. Leiva also pointed out that the RDO program has about 4,000 licensees, and that's half of this Board's licensee population. This Board has 13 staff that deals with 8,000 optometrists, and the Medical Board only has one person dealing with 4,000 licensees. Mr. Kysella contended that this sounds like a resource problem. He suggested that whoever takes charge of the RDO program will need to hire about six people very quickly to prevent its own program(s) from failing while its resources are being drained away. He believes that the Board should mainly focus on its own issues and ensure there are resources for that before attempting to take on another program.

Ms. Leiva shared that CADO submitted a letter of opposition to the idea of transferring the RDO program from the Medical Board to the Board of Optometry. She also noted that there were errors in the letter, and that should be kept in consideration by the Board. All sides need to work on educating each other.

Ms. Burke and Ms. Johnson stated they are inclined to put the needs of the consumer first with regards to this issue. Ms. Burke stated the RDO program has great synergy with what we do and this legislation has her support. Ms. Johnson suggested that along with moving forward, the Board consider adding additional resources down the road in terms of dollars and people. Dr. Dubick and Dr. Chawla agreed.

Ms. Maggio cautioned that she believes more research is needed and that more information should be brought before the Board. She also shared that a lot of the opposition against this proposal deals with the competition between RDO's and optometrists in the marketplace. There was a video by 60 Minutes where Luxottica is interviewed and the President of Luxottica does not state that optometrists are their main competition, rather it's the big box stores like Costco. She also requested a status on the Lenscrafters' lawsuit.

Contract Lobbyist for Lenscrafters – EYEXAM, Kathryn Austin-Scott provided an update for Ms. Maggio. The National Association of Optometrists and Opticians (NAOO) appealed to the US Supreme Court. Briefs were filed by the Plaintiffs (such as the NAOO) in mid November 2012. The state declined to file a brief in response. In late November the state was asked by the US Supreme Court to file a brief and was given an additional 30 days to file. Early to mid February, the status of the case should be known. Ms. Austin-Scott also voiced the concerns of opticians (NAOO) she represents which are as follows:

- A move is premature to what is determined by the lawsuit. Should the Board be moving forward with legislation to regulate that industry when the outcome of the litigation is not yet known?
- Assuring that moving forward with legislation does not preclude conversations about consumer protection
- Acknowledgment that there exists tension between optometrists and opticians since they are natural competitors

Additionally, Ms. Scott questioned whether this would be a priority of the Board's time and resources since during the Sunset Report, mention was made of other goals.

Ms. Johnson asserted that she would still like to see the Board move forward on this as consumers are currently receiving no protection. Ms. Scott explained the Board's right to move forward with emergency regulations. Mr. Kysella concurred and supports moving forward.

Dr. Kawaguchi agreed consumer protection is paramount but questioned if the Board of Optometry is the correct entity to regulate RDOs. Dr. Kawaguchi would be interested in hearing how the RDOs feel about ensuring consumer protection. Members and staff concluded that public comment is the means by which this type of information will become better understood. Members, staff and guests continued to discuss and voice opinions about moving forward, or not moving forward with legislation. Dr. Arredondo requested a motion to direct Board staff to continue with the proposal's concept and research the issue further.

**Dr. Dubick moved to continue with this legislative concept. Donna Burke seconded. The Board voted: 6-Aye, 2-No, and 0-Abstentions 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. Dubick	X		
Dr. Kawaguchi		X	
Mr. Kysella	X		

## 2) *Omnibus Bill: Optometrist License Name*

Omnibus Bills are primarily non-controversial and are intended to clarify language and strengthen the law. A problem has been identified that can cause confusion. Throughout the Optometry Practice Act, the name of an optometrist's license is used many different ways. For example, BPC section 3024 refers to an optometrist license as a license. Other names include: Optometry License, Certificate of Registration to Practice 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. Staff is requesting to clean up the language in our Practice Act and have everything read "optometrist license and certifications."



**Monica Johnson moved to direct staff to pursue an Omnibus Bill to clarify optometrist license names. Donna Burke seconded. The Board voted unanimously (9-0) 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. Dubick	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

**11. Public Comment for Items Not on the Agenda**

Board members and staff discussed possible future meeting dates. Upcoming meetings were decided upon as follows:

- February 1, 2013 at Western University of Health Sciences School of Optometry
- May 10, 2013, Location TBD
- August 16, 2013, Location TBD
- November 1, 2013, Location TBD
- January 10, 2014, Location TBD

**12. Suggestions for Future Agenda Items**

Ms. Johnson requested that Board counsel provide a presentation that clarifies when Board members are required to recuse themselves from a vote.

Dr. Kawaguchi requested the Board research and consider supporting the development of legislation which would require that kids receive an eye examination prior to beginning kindergarten. Ms. Leiva advised that the California Optometric Association (COA) prepared such a bill and it just needs to be introduced. Members and staff agreed that an update on the COA bill should be provided. Dr. Goldstein suggested and Members agreed that the Board of Optometry should sponsor such a bill as it just looks better coming from a consumer standpoint.

SCCO Professor and Associate Dean, Clinical Education, Harue Marsden asked Board Members to discuss, decide, and clarify if a student who fails the injectables component of the NBEO Part III, yet passes every other part, should be required to retake and pass this component. Dr. Arredondo advised that this issue will be brought up to the Education Committee for research and discussion.

**13. Adjournment**

**Monica Johnson moved to adjourn the meeting. Alex Kim seconded. The Board voted unanimously (9-0) to pass the motion.**

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

<b>Dr. Chawla</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		
<b>Dr. Kawaguchi</b>		<b>X</b>	
<b>Mr. Kysella</b>	<b>X</b>		

\_\_\_\_\_  
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  
 Wednesday, March 6, 2013**

**DRAFT**

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

**And Via Teleconference at the Following Locations:**

Southern California College  
 of Optometry  
 TVCI Room

2575 Yorba Linda Blvd.  
 Fullerton, CA 92831

140 C Tower Street  
 Beaconsfield, Quebec  
 H9W 6B2

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

6035 Belleau Wood Lane  
 Sacramento, CA 95822

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

1919 S. State College Blvd.  
 Anaheim, CA 92806

3808 Riverside Drive, Suite 100  
 Burbank, CA 91505

<u>Members Present</u>		<u>Staff Present</u>
Alex Arredondo, O.D., Board President		Mona Maggio, Executive Officer
Monica Johnson, Vice President		Andrea Leiva, Policy Analyst
Ken Lawenda, O.D., Professional Member		Don Chang, Legal Counsel
Madhu Chawla, O.D., Professional Member		
Donna Burke, Public Member		
Glenn Kawaguchi, O.D., Professional Member		
Bill Kysella, Public Member		
Fred Dubick, O.D., M.B.A. Professional Member		
<u>Excused Absence</u>		<u>Guests</u>
Alex Kim, M.B.A., Secretary		On File

**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 9:03 a.m. Dr. Arredondo called roll and a quorum was established. The meeting then went into recess until 9:30 a.m. to ensure a member of the public representing the Center for Public Interest Law (CPIL) was able to arrive at the Southern California College of Optometry (SCCO) location. The meeting was called to order once again at 9:30 a.m. Dr. Arredondo asked all guests to introduce themselves at the Sacramento and SCCO locations.

**2. Sunset Review Report: Discussion of Questions/Comments from the Sunset Review Committee and Approval of Responses to Questions/Comments**

Ms. Maggio introduced this agenda item and explained that the board received a total of seven sunset issues that require a response to the Senate Committee on Business, Professions and Economic Development (Committee). Of the seven, the Board is being asked to address four (#1, #4, #5 and #6) at the Board's Sunset Review hearing on Monday, March 11, 2013. Ms. Maggio shared that she will be presenting before the Committee with Dr. Arredondo, Ms. Burke, and Ms. Leiva. The hearing may need to continue on March 12, 2013. In the event the Board has to present on the second day, Ms. Burke will be available to step in for Dr. Arredondo.

Staff has completed draft responses to all issues for the Board's consideration. Upon the Board's approval, staff must finalize the responses and submit a final copy to the Committee. Senate Bill 304 (Price) has been introduced and proposes to extend the Board's Sunset date from January 1, 2014 to January 1, 2018. Ms. Maggio anticipates the Board's Sunset date will be extended.

Ms. Maggio requested that the members review, make edits, if any, and approve the Board's draft Sunset Issue responses. Ms. Maggio also requested that the members direct staff to finalize the draft Sunset Issue responses and submit them to the legislature by the hearing date.

Ms. Leiva introduced the first issue. The Committee recommended that the Board conduct an occupational analysis for optometric assistants as was directed at the Board's last Sunset Review in 2002. The proposed Board response states that the Board agrees with the Committee's recommendation and has already started working to obtain the funds necessary to conduct the occupational analysis. On January 25, 2013, the Board met with the Department of Consumer Affairs' Office of Professional Examination Services (OPES) to discuss the history of this issue, the project objectives and expected outcomes of an occupational analysis for optometric assistants, the project plan (i.e., start dates, major events), and projected costs. The total projected OPES costs are \$40,882.00. The Board's projected costs are \$25,828.92. The total cost to the Board will be \$66,710.92.

The Board will work with DCA to draft a Budget Change Proposal (BCP) to pay for the occupational analysis. If the proposal is approved, work will begin in Fiscal Year 2014-2015. OPES' proposed completion date is June 30, 2015. At that time, the Board will review the results and OPES' recommendations and determine next steps. Possible outcomes include developing regulations to implement the analysis' recommendations, or the need to create a certification process under the Board's oversight for optometric assistants. The latter outcome would require legislation and a permanent Staff Services Analyst.

Dr. Arredondo opened the floor for comments and questions. There were none and the members agreed with the proposed response.

Ms. Maggio introduced the second issue. The Committee recommended that the Board should work with the Department of Consumer Affairs (DCA) to ensure they are provided funds to apply for the National Practitioner Databank (NPDB) and the Health Integrity and Protection Databank (HIPDB). The proposed Board response states that the Board agrees with the Committee recommendation and will work with DCA to obtain the necessary resources. This may include drafting additional BCPs for funds and staffing, or increasing licensing fees via legislation or the regulatory process.

Dr. Arredondo opened the floor for comments and questions.

Ms. Johnson commented that she is surprised that the Board is not checking these databases and is glad that staff will be working on obtaining resources to do so. Mr. Kysella asked whether the Board can start using the databases now for newer applicants. Ms. Maggio responded that without funding, using the databases is not possible, even for newer applicants. Ms. Maggio explained that if a BCP was approved to obtain funding, work would begin July 2014. She is not confident that a BCP of this nature will be approved in this economic climate.

Ms. Burke and Ms. Johnson asked what could be done in the meantime. Ms. Maggio responded that currently the Board has a mechanism in place to examine an applicant's professional background and criminal history. All applicants are fingerprinted and out-of-state applicants must provide a letter from their respective Board that they are in good standing. Ms. Johnson asked that this information be included in the Board's responses to the Committee.

Dr. Harue Marsden from SCCO suggested that the Board could have the applicants submit their own background check and the Board would not incur any costs. That is what they do at SCCO. Ms. Maggio replied that while that is a good idea, legislation would be necessary to implement it.

There were no further comments on the second issue.

Ms. Maggio introduced the third issue which is based on circumstances that have led to the time lag in cases being referred to the Attorney General for processing. The Committee recommends that the Board specify what additional measures can be taken to expedite processing of enforcement cases. The Board's response is a specific assessment of what staff is currently doing, the number of parties involved, and how staff is working with the other parties to expedite cases. Ms. Maggio also noted that last year's numbers were high due to the fingerprint issue (discussed at prior meetings) where the information coming in from the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) was not interfacing with the Board's database.

When Board staff identified the technical issue, there were a number of fingerprint results that had been held up and not received by the Board. Some of these fingerprint results included conviction histories that needed to be investigated. Board staff made the decision to use the date that the fingerprint results were released to the Board by the DOJ rather than the more recent date after the results were received by the Board staff. This allowed for more technically accurate statistics, but significantly elevated the case processing times shown in the statistics.

Dr. Arredondo opened the floor for comments and questions.

Mr. Kysella asked for an explanation of what PC23 Orders are (4<sup>th</sup> page, second to last paragraph of the Agenda). Legal Counsel, Don Chang defined PC23 Orders as a temporary suspension of license as a condition of probation. When a licensee is facing criminal charges, the Board's representative(s) have the authority to enter the proceedings and request this. Mr. Kysella and Mr. Chang briefly discussed alternate text, for clarification purposes, of PC23 Orders. Staff agreed to amend the text to read "Penal Code 23" (PC23) Orders".

Ms. Johnson expressed a concern. She explained that because the Board's staffing increased significantly from 2009 to 2012, and this increase is noted simultaneously in the same section, she would not want a conclusion to be made that during the highest staffing year, the Board was still unable to move cases to the Attorney General. She requested that this information be clarified. Staff agreed to comply.

Ms. Leiva introduced the fourth issue which is a discussion to determine if the Board should be granted the authority to inspect an optometrist's practice. The Committee requested that the Board provide a plan for increasing the workload of its enforcement officers considering the existing budget and staffing constraints. The Board's proposed response is that in order for the Board to successfully implement inspection authority in a way that would benefit public safety, the Board would need to request a new position. The new position would have to be an inspector classification, and the candidate would need to be an optometrist. The current staff at the Board is not qualified to perform inspection duties because they are not optometrists and are needed to perform the job duties they currently have. If current staff were to attempt to take on this increased workload, it would cause a negative ripple effect on all enforcement activities because current

duties would be neglected. Also, since they are not specialists in the practice related issues, it would be a waste of resources because they would not be as effective as an optometrist in spotting issues. The Board will need to submit a BCP to obtain the inspector position and spending authority, or an augmentation to its budget line to contract with an optometrist to conduct inspections.

In the meantime, the Board plans to continue handling cases that require an investigator the same way they have been handled in the past. That involves enforcement staff conducting a desk investigation and identifying the types of violations that require an inspection. Then, Board staff requests that an investigator be sent into the field from the Department of Investigation (DOI). If DOI needs an optometrist to develop an investigative plan, one of the Board's experts will be called upon to assist. Additionally, the Board will meet with other healing arts boards that currently have inspection authority to learn about and evaluate their programs. Based on the information collected from other programs, the Board will develop its BCP and strengthen the justification for the need to obtain inspection authority for the profession of optometry.

Ms. Maggio added that inspection authority for particular circumstances will be included. For example, if an optometrist is on probation for insurance fraud, a monitor would be in place to inspect patient files for billing purposes. Or if there is an issue of that falls under Infection Control Guidelines, an optometrist would inspect the office to ensure that the probationer has complied with all infection control – patient safety requirements.

Dr. Arredondo expressed his concern about having someone randomly inspect an office without a solid justification for doing an inspection. In response, Ms. Johnson asked when an inspection would be required. Ms. Maggio responded that this issue will be brought before the Legislation and Regulation Committee. The Committee will need to create a statute that must go through the legislative process and be signed into law by the Governor, and then regulations could be developed to identify criteria for inspections taking place. Although the Board currently does not have a defining statute, inspections are taking place as part of investigations when allegations of unprofessional conduct have been made, and as part of probation. Mr. Kysella asked and Mr. Chang confirmed that several other boards have statute authority for random inspections.

Dr. Arredondo stated that optometrists who wish to be on any kind of insurance plan are already having their offices inspected by the insurance groups. Therefore it may be a red flag if an optometrist is not on any insurance plan; otherwise, these inspections are already being done. Dr. Arredondo reiterated his dislike of the idea of random inspections. Mrs. Burke commented that her interpretation is that something has to have occurred which warrants an inspection before one is performed.

Ms. Maggio explained that she was not aware that insurance companies perform inspections as this is not information that is shared with the Board. She added that if this Board was to follow the model of the pharmacy and dental boards, a licensed individual would perform the inspections. She explained that when a DOI investigator is utilized, Board staff contracts with one of its experts to assist the DOI investigator in what to look for.

Dr. Dubick shared his belief that the point of issue # 4 really ties back to issue # 3 which is: It is taking too long for the Board to process enforcement files. The Board does not have control over DOI investigators; therefore, if the Board had an inspector (already trained in what to look for) this would give the Board control over the timeline and prioritization of what needs to get done, making the entire process more efficient. He added that this is the bottom line of what consumer protection is all about. Mr. Kysella agreed.



Dr. Arredondo asked Ms. Maggio how the Board should proceed. Ms. Maggio replied that staff will make clear in the response that more research (with other boards) and more discussions on this issue will take place.

Ms. Maggio introduced the fifth issue which asks why the Board's BCP was denied. Ms. Maggio reported that this issue has to do with staffing and resources. Staff recommendations include that the Board should inform the Committee of its plan to continue carrying out its various duties if no additional staff is allocated for the Board. The Board may want to explore the possibility of hiring temporary or part-time staff to assist with completing critical tasks. The Board response explains that this possibility has already been explored; however, the Board's budget does not have sufficient funding for re-direction of resources that would support hiring of temporary or part-time permanent staff, and an assessment of actions the Board plans to take.

Ms. Leiva introduced the sixth issue which deals with license portability for military personnel and their spouse. Ms. Leiva reported that currently many bills are being introduced to assist military personnel and their families. Committee staff recommends the Board make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses if called to active duty and they have to relocate to California. The Board should also consider waiving the fee for reinstating the license of an active duty military licensee. The Board agrees with the Committee and currently complies with BPC § 114 and 115, which requires the Board to reinstate the license of an optometrist without examination or penalty, who's license expired while he or she was on active duty in the California National Guard or the United States Armed Forces. Ms. Leiva explained that waiving the fees for reinstating a license would require legislation or regulation. This discussion will be brought to the May 2013 Board meeting unless the Board wishes to have a special Legislation and Regulation Committee Meeting for the purpose of this discussion.

Ms. Leiva reported that the Board has been in compliance with other statutes that have been in law for twenty years. An example would be the exception of continuing education requirements for licensees serving in the military. Also if their license expires while in the military, they can make their license active and current without any penalties or examination if they meet certain requirements. Dr. Arredondo opened the floor for comments and questions. There were none.

Dr. Arredondo introduced the seventh issue with asks if the current Board should continue to license and regulate optometrists. Ms. Leiva reported that Committee staff recommends that optometrists continue to be regulated by the current Board and be renewed again in four years. Mr. Kysella inquired and the Boards consultant from the Assembly Business and Professions Committee explained that all the professions have their extensions set at four years. This is the guideline. Ms. Maggio opened the floor for additional comments. There were no other comments.

**Monica Johnson moved to approve the proposed responses to the Sunset Committee's questions with edits. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.**

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

**3. Discussion and Possible Action Pertaining to California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

Ms. Leiva reported on this item. This regulation was approved by the Office of Administrative Law (OAL) without issue on February 27, 2013 and it will become effective on April 1, 2013. This agenda item was a place holder in the event there was an issue with this rulemaking package. A full update will be provided at the Board's May 10, 2013, meeting. Ms. Maggio and Members expressed gratitude for Ms. Leiva's excellent work on the rulemaking package.

**4. Public Comment for Items Not on the Agenda**

Dr. Arredondo opened the floor to comments not on the agenda.

Public guest at the Southern California College of Optometry (SCCO) location, Michelle Penya commented that the Anaheim location on the agenda was not accessible. Ms. Maggio explained the unforeseen circumstances which caused this occurrence.

**5. Suggestions for Future Agenda Items**

Dr. Arredondo asked if any Members had suggestions for future agenda items.

Ms. Johnson suggested having a committee meeting discuss the Agenda Item 2 discussions. Ms. Maggio stated that a committee meeting will be scheduled to address Senate Bill 1111 provisions. Agenda Item 2 issues may possibly be discussed at that time as well.

Dr. Arredondo requested that his concerns regarding the Board obtaining a professional inspector be discussed at length to prevent overbearing authority.

Dr. Marsden announced that legislation is being introduced which would add certain components to screenings of children's vision. The added components would make school vision screenings more comprehensive.

**6. Adjournment**

The meeting was adjourned at 10:39 a.m.

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

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

---

Alexander Kim, Board Secretary

---

Date

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Mona Maggio  
Executive Officer

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 4– 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 April 30, 2013, the Board has spent \$1,064,920 reflecting 63% of the total budget. It is projected that the Board will spend \$1,550,714, leaving an unencumbered balance of \$142,889, a surplus of 8.44%. Any surplus funds are reverted to the Board's reserve fund. The Board's fund condition has 6.1 months in reserve.

The Board's DCA budget analyst will attend the April 16, 2013 board meeting and present the Board's budget for the 2013/2014 fiscal year and answer any questions regarding the budget.

## B. Personnel

The Board's organization consists of 10.4 authorized positions and 3 temporary staff positions:

### Executive Officer

- Mona Maggio

### Administration

- Andrea Levia, Associate Governmental Program Analyst
- Krista Eklund, Office Technician
- Elizabeth Bradley, Office Assistant
- Pricilla Torres-Fuentes, Seasonal Clerk
- Linda Victorino, AARP Staff

### Licensing

- Jeff Robinson, Staff Services Analyst
- Nancy Day, Management Services Technician (0.5 employee)
- Elvia Melendrez, Seasonal Clerk

### Enforcement

- Jessica Sieferman, Associate Governmental Program Analyst
- Lydia Bracco, Staff Services Analyst
- Robert Stephanopoulos, Staff Services Analyst
- Cheree Kimball, Staff Services Analyst
- Bradley Garding, Office Technician (0.9 employee)

Elvia Melendrez and Pricilla Torres-Fuentes salaries are paid from blanket funds; Linda Victorino is paid directly from AARP. Seasonal staff can only work 1580 hours per year and AARP staff can work 20 hours per work until the grant funds run out or until the employee finds permanent work.

Elizabeth Bradley, office assistant who serves as the receptionist is out on extended medical leave. Ms. Torres-Fuentes was hired to serve as the receptionist during Ms. Bradley's absence. Ms. Torres-Fuentes is performing an outstanding job for the Board.

Jessica Sieferman was promoted to an Associate Governmental program Analyst effective April 30, 2013.

A request to hire a Youth Aid (high school student) to perform basic clerical support for the licensing program will be submitted for consideration. If approved, the Youth Aid will work for approximately six weeks during the summer.

## **C. Sunset Report**

The Board's Sunset Hearing was held on March 11, 2013 before the Senate Business, Professions and Economic Committee, Chaired by Senator Curran Price, and Co-Chair Assemblymember Richard Gordon. Dr. Alejandro Arredondo, Ms. Donna Burke and Mona Maggio presented the Board's report. Andrea Leiva and Jessica Sieferman also attended. The Committee thanked the Board for its work, its service and efforts in upholding its mandate to protect the public and the responses to the Committee's questions were clear, concise and thorough. We are awaiting the final report with actions to be completed by the next Sunset Hearing or sooner if directed by the Committee.

Kudos to Ms. Leiva for the outstanding job she did in writing the Sunset Report. Though many of us contributed draft sections for the report, Ms. Leiva wrote much of the report herself and made our additions into "one voice." She also developed the action plan to meet our submittal deadline. The Committee expressed how well written it was a few times during our hearing.

## **D. BreEZe Update**

The BreEZe system will allow DCA licensees to apply for, renew, pay, and track their licensing requests online. Additionally, it will dramatically increase the capabilities of the DCA boards, bureaus, and

oversight programs to isolate unscrupulous practitioners and empower California consumers to make more informed decisions when they hire licensees.

The Board's initial BreEZe implementation date was January 2012. However, due to several ongoing problems with the Release 1 phase, the date has been continuously pushed. It is estimated that the new implementation date for Release 2 (our release phase) is in 2014.

Board staff has worked closely with the BreEZe team (DCA staff, Accenture, and Iron Data) to complete configuration interviews and the conference room pilots. Based on those interviews, Board staff was given profile reports for each license type to review, develop, and finalize language for each online licensing section. However, the profile reports did not accurately reflect the most recent changes identified in subsequent configuration interviews. Therefore, Board staff is waiting for an updated version of the profile reports to move forward with the licensing portion.

Enforcement is scheduled to meet with the BreEZe team on Monday, May 13, 2013 to discuss how enforcement codes in the Consumer Affairs System will transport to BreEZe.

In addition, the BreEZe team has initiated the Data Conversion process. This process is comprised of three parts: Data Mapping, Data Conversion, and Data Verification as explained below. They have requested 1-2 Subject Matter Experts (SMEs) to participate in this process.

Data Mapping (Step 1)

### *Definition*

Data Mapping is the part of the process by which the Data Conversion team works with you, the Board and Bureau members, to determine how legacy data (ATS/CAS/Workaround Databases) will be translated over into the new system. Legacy data may include, but not be limited to: Complaints , Application , Business relationships , Education history, Exams , Application modifiers, License status, and Cash fees.

### *Estimated amount of SME involvement*

Data Mapping is the MOST critical building block of a successful system which is based off of a legacy system. SMEs will directly help determine where and how legacy data is stored in the new BreEZe system. **Between 45%-60% participation spanning between 1-2 months** (there will be "busy weeks" and "quiet weeks"). SMEs should expect to attend several meetings with the vendor, ranging from partial day to all-day sessions, and expect to be on call for Q&A

Data Conversion (Step 2)

### *Definition*

The Data Conversion is when the vendor creates data conversion programs that will convert the legacy ATS/CAS/Workaround Database data into BreEZe, using the mappings that we have created together.

### *Estimated amount of project involvement*

Data Conversion is predominantly lead and executed by the vendor. The SMEs role will be *much* less involved. SMEs are occasionally needed for their knowledge, to clarify mapping, business processes, and answer questions as they arise.

**Between 5-10% participation spanning 4 or more months.**

Data Verification (Step 3)

### *Definition*

Data Verification is the process of inspecting and evaluating the accuracy of the data subjected to the conversion processes. The Vendor and DCA will mutually agree on a representative data set (for example 300 records) which contains a selection of simple, moderate, and complex translation

scenarios to serve as the data sample to be used in Verification. This data set will be utilized by the SMEs to examine data in both the legacy system as well as BreEZe to verify data accuracy.

### *Estimated amount of project involvement*

Get ready for some heavy lifting. This will require the greatest amount of time and participation between the 3 steps. Data Validation will take place off-and-on throughout Data Conversion, and can require a tremendous amount of involvement from the SMEs. Only the SMEs have the business knowledge to verify that the data is being converted successfully and accurately.

**Between 60-75% participation spanning 4 or more months.**

In addition, User Acceptance Testing (UAT) will commence shortly. During UAT, the SMEs who participated in the licensing configurations will test the system by running through detailed scripts and other business processes. Essentially, the SMEs will do what they can to identify potential problems with the system prior to accepting BreEZe.

Due to limited Board staff, the licensing process will be severely hindered during the Data Conversion and UAT processes. Unless the Board is granted temporary "fill-in" staff, all licenses will be delayed.

## **E. Examination and Licensing Programs**

### **Prepared by Jeff Robinson, Licensing Analyst**

See Attachment 4

## **F. Enforcement Program**

### **Prepared by Jessica Siefertman, Enforcement Analyst/Probation Monitor**

#### New Disciplinary Guidelines

The 2012 Disciplinary Guidelines (DGs), effective April 1, 2013, have been distributed throughout the Enforcement Unit, Attorney General's (AG) Office, and other DCA contacts. The DGs are also available online at [http://www.optometry.ca.gov/formspubs/uniform\\_standards.pdf](http://www.optometry.ca.gov/formspubs/uniform_standards.pdf).

The AG's Office has updated the DGs in ProLaw (their database) and will no longer use the 1999 version. The DGs include factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and specialty probationary terms and conditions.

The DGs were designed for use by Administrative Law Judges, attorneys from the Office of the Attorney General, licensees, Board staff and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board.

#### Data Clean Up Project

As previously reported, the Enforcement Unit is hard at work cleaning the "dirty" data in the Board's Consumer Affairs System (CAS) database. The three phase project (Complaints, Citations, and Discipline) is set to be completed by June 30, 2013 just in time for the fourth quarter Performance Measures. As a reminder our enforcement stats will continue to change until the clean up project is completed.

#### The Data Banks

In the 2012 Sunset Report, the Legislative Committee (Committee) inquired as to why the Board does not check the National Practitioners Data Bank (NPDB) and the Healthcare Integrity & Protection Data Bank (HIPDB) prior to issuing or renewing a license. The Board explained it was due to the cost to initiate the continuous query (\$6.50 per licensee per year) and the staffing to manually enter licensees and applicants into the databanks.

The Committee expressed its concern “with the protection of the public and the effective operation of the profession. As Such, it is imperative that methods, such as utilizing the NPDB and HIPDB, be employed to thoroughly examine a potential licensee’s professional background and criminal history.” The Committee recommended that “[t]he Board should work with DCA to ensure that they are provided funds to apply for the NPDB and HIPDB.”

Effective May 6, 2013, NPDB and HIPDB merged into one data bank. Now, instead of two fees (one for each data bank) per licensee, there is only one fee (\$4.75 One-Time fee per use or \$3.25 Continuous fee per year).

In addition, Board staff was previously informed that each licensee would have to be manually entered into NPDB in order to initiate the continuous query. However, it appears there is a more efficient and effective way to import data from our system (CAS) into NPDB. Ms. Sieferman is working with NPDB staff to determine the necessary process and will provide an update on the feasibility of the continuous query at the August 2013 Board meeting.

#### Enforcement Statistics and Performance Measures Attachment 5

##### **G. Strategic Planning**

On March 13, 2013, Mona Maggio and Andrea Levia met with Shelly Menzel and Terrie Meduri with the DCA, SOLID Training Solutions to discuss the development of the Board Strategic Plan. We agreed to create a 5 year strategic plan for the period of 2014 – 2018. A preliminary schedule of the Optometry Strategic Plan Schedule has been drafted and is attached. The Board session is scheduled for October 25, 2013.

##### **H. Other**

##### Attachments

1. Fund Condition
2. Expenditure Report
3. BreEZe
4. Licensing Statistics
5. Enforcement Statistics

# 0763 - State Board of Optometry Analysis of Fund Condition

Prepared 12/7/12

(Dollars in Thousands)

Governor's Budget 2013-14	Governor's Budget				
	Actual 2011-12	CY 2012-13	BY 2013-14	BY+1 2014-15	BY+4 2015-16
NOTE: \$1 Million Dollar General Fund Repayment Outstanding					
<b>BEGINNING BALANCE</b>	\$ 1,514	\$ 961	\$ 1,008	\$ 947	\$ 857
Prior Year Adjustment	\$ 6	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,520	\$ 961	\$ 1,008	\$ 947	\$ 857
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
125600 Other regulatory fees	\$ 26	\$ 28	\$ 29	\$ 29	\$ 29
125700 Other regulatory licenses and permits	\$ 140	\$ 145	\$ 149	\$ 149	\$ 149
125800 Renewal fees	\$ 1,534	\$ 1,560	\$ 1,592	\$ 1,592	\$ 1,592
125900 Delinquent fees	\$ 9	\$ 15	\$ 15	\$ 15	\$ 15
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 2	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 4	\$ 3	\$ 3	\$ 3	\$ 2
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 1	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,717	\$ 1,751	\$ 1,788	\$ 1,788	\$ 1,787
Transfers from Other Funds					
GF loan per item 1110-001-0763 BA of 2011 (repay)	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers to Other Funds					
GF loan per item 1110-001-0763 BA of 2011	\$ -1,000	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 717	\$ 1,751	\$ 1,788	\$ 1,788	\$ 1,787
Totals, Resources	\$ 2,237	\$ 2,712	\$ 2,796	\$ 2,735	\$ 2,644
<b>EXPENDITURES</b>					
Disbursements:					
0840 State Controller (State Operations)	\$ 2	\$ 2	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 4	\$ 9	\$ 8	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 1,270	\$ 1,693	\$ 1,841	\$ 1,878	\$ 1,916
Total Disbursements	\$ 1,276	\$ 1,704	\$ 1,849	\$ 1,878	\$ 1,916
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$ 961	\$ 1,008	\$ 947	\$ 857	\$ 728
Months in Reserve	6.8	6.5	6.1	5.4	4.5

## 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.



**CALIFORNIA STATE BOARD OF OPTOMETRY**  
**EXPENDITURE PROJECTION**  
As of 4/30/2013

OBJECT DESCRIPTION	FY 2011-12		FY 2012-13				
	ACTUAL + ENCUMBRANCE (MONTH 13)	PY + ENCUMBRANCE YTD	BUDGET ALLOTMENT	CY + ENCUMBRANCE YTD	PERCENT OF BUDGET SPENT YTD	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
Civil Service - Permanent	\$ 416,955	\$ 315,317	\$ 490,965	\$ 315,423	64%	\$ 426,563	\$ 64,402
Civil Service - Permanent	\$ 336,482	\$ 255,276	\$ 409,233	\$ 256,956	63%	\$ 342,607	\$ 66,626
Statutory-Exempt (EO)	\$ 80,473	\$ 60,040	\$ 81,732	\$ 58,467	72%	\$ 78,365	\$ 3,367
Civil Service - Temporary	\$ 44,410	\$ 30,719	\$ 3,628	\$ 16,898	466%	\$ 25,347	\$ (21,719)
Appointed Per Diem	\$ 4,300	\$ 1,900	\$ 7,353	\$ 3,800	52%	\$ 8,600	\$ (1,247)
Staff Benefits	\$ 188,222	\$ 139,384	\$ 257,621	\$ 139,356	54%	\$ 183,182	\$ 74,439
OPERATING EXPENSES AND EQUIPMENT							
Fingerprint Report	\$ 8,779	\$ 5,202	\$ 5,306	\$ 2,969	56%	\$ 5,011	\$ 295
General Expense	\$ 14,900	\$ 10,636	\$ 25,763	\$ 7,644	30%	\$ 12,171	\$ 13,592
Minor Equipment	\$ 311	\$ -	\$ 5,050	\$ -	0%	\$ 6,000	\$ (950)
Printing	\$ 9,560	\$ 4,549	\$ 11,621	\$ 5,114	44%	\$ 6,901	\$ 4,720
Communications	\$ 5,136	\$ 3,153	\$ 5,615	\$ 3,152	56%	\$ 5,748	\$ (133)
Postage	\$ 14,879	\$ 10,166	\$ 14,650	\$ 9,735	66%	\$ 13,151	\$ 1,499
Insurance	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
In-State Travel	\$ 26,743	\$ 15,079	\$ 2,987	\$ 11,791	395%	\$ 21,163	\$ (18,176)
Out-Of-State Travel	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Training	\$ 1,790	\$ 1,790	\$ 1,099	\$ 287	26%	\$ 1,037	\$ 62
Facilities	\$ 80,305	\$ 112,555	\$ 58,676	\$ 104,488	178%	\$ 112,608	\$ (53,932)
Utilities	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
C/P Internal	\$ 1,712	\$ 14,772	\$ 2,943	\$ 32	1%	\$ 4,498	\$ (1,555)
C/P External	\$ 21,608	\$ 48,647	\$ 12,000	\$ 36,571	305%	\$ 54,857	\$ (42,857)
Examinations	\$ 17,329	\$ 15,382	\$ 26,187	\$ 8,031	31%	\$ 8,663	\$ 17,524
Departmental Distributed	\$ 210,541	\$ 153,769	\$ 247,394	\$ 185,473	75%	\$ 247,394	\$ -
Department Services	\$ 27,720	\$ 27,720	\$ 146	\$ 24,264	16619%	\$ 24,410	\$ (24,264)
Consolidated Data Centers	\$ 791	\$ 574	\$ 31,542	\$ 643	2%	\$ 964	\$ 30,578
Data Processing	\$ 115	\$ 115	\$ 1,009	\$ -	0%	\$ -	\$ 1,009
Statewide Prorata	\$ 77,237	\$ 57,928	\$ 80,753	\$ 60,565	75%	\$ 80,753	\$ -
Enforcement	\$ 149,491	\$ 65,622	\$ 407,295	\$ 173,234	43%	\$ 307,693	\$ 99,602
Replacement Equipment	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Additional Equipment	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Other Items of Expense	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Vehicle Operations	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Special Items of Expense	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
TOTAL	\$ 1,322,835	\$ 1,034,980	\$ 1,699,603	\$ 1,109,470	65%	\$ 1,556,714	\$ 142,889
Scheduled Reimbursements	\$ (16,020)	\$ (11,528)	\$ (6,000)	\$ (12,341)	206%	\$ (6,000)	\$ -
Unscheduled Reimbursements	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
Investigative Cost Recovery	\$ (36,280)	\$ (32,725)	\$ -	\$ (32,209)	0%	\$ -	\$ -
GRAND TOTAL	\$ 1,270,536	\$ 990,727	\$ 1,693,603	\$ 1,064,920	63%	\$ 1,550,714	\$ 142,889

Surplus/Deficit 8.44%

## 5.7.1 Implementation Strategy Guiding Principles

### V.3.11.a Project Constraints

The following items have been identified as project constraints:

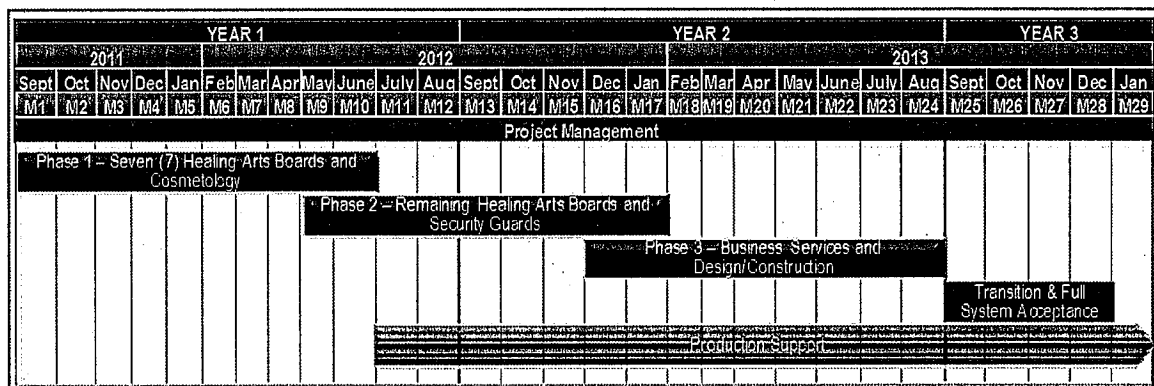
- a. In order to reduce project risks, the implementation approach must include, at a minimum, three (3) implementation phases grouped by boards and bureaus. The DCA's default phasing assignments have been identified in Appendix C, Form C-2b. The specific DCA entities to be included within each phase will be finalized by the State, in consultation with the selected Contractor, after contract award.

#### 5.7.1.1 THREE-PHASED IMPLEMENTATION STRATEGY

Our project schedule includes a phased implementation strategy consisting of three major implementation phases, or "releases." We built our schedule and work plan based on the guidance provided in the RFP, as well as our analysis of other factors such as legislative mandates, legacy system capabilities, business cycle timing (i.e., renewal cycles), common characteristics of license types for groupings (by implementation phase), and our experience implementing similar license types in other regulatory agencies.

Each of the three major releases will be roughly 10 months in length, with some overlapping. Assuming a project start of September 2011, the first release will be rolled out after 10 months, in July 2012. The second release will be deployed in February 2013, and the final release will go live in September 2013. While Accenture has implemented the Versa Software Suite faster than the proposed 10 months for Release 1, we believe, considering all factors, the 10 month timeline is the best balance of risk and benefits. Figure 5-119 shows our high-level release schedule.

In accordance with the RFP, the first release includes seven Healing Arts boards: Registered Nursing, Medical Board, Behavioral Sciences, Psychology, Physician Assistant, Osteopathic Medical Board, and Podiatric Medicine. We chose these boards so that they would realize the earliest benefits of the system (e.g., reducing backlogs, streamlining processes, and automating manual tasks) to support the DCA's Consumer Protection Enforcement Initiative. The first release also includes Barbering and Cosmetology, which allows the DCA to broaden the base of regulated entities that will gain these early benefits, while minimizing risk by deploying a board with relatively lower complexity of configuration requirements.



BreEZe 032

Figure 5 – 119. Our phased release approach draws from multiple successful regulatory system implementations and provides a proven method for delivering transformational systems on time and on budget



During this first release, we will update BreEZe Project Management Plan documents (e.g., Communications Plan, Quality Assurance Plan, etc.), and create additional plans such as the System Configuration and Development Plan, Test Plan, Technology Architecture Plan, and the other plans required by the Statement of Work (SOW).

In the first release, we will also install and configure the necessary hardware and software to run the BreEZe System, and key interfaces, such as with the third-party payment processor, and address validation will be built. We will use the Versa Software Suite's standard document management capabilities during the first release.

During the **second release**, we will implement the real-time interface with the iCenter Enterprise Content Management system, as well as roll out the BreEZe System to the remaining 13 Healing Arts boards, plus the Bureau of Security and Investigative Services. Adding Security Guards to this release further expands the base of regulated entities while minimizing risk, and will allow the DCA to be able to take the existing OLPL system off-line when Release 2 goes live.

We recognize the importance of bringing all Healing Arts boards onto the new system early. We also think it is important to include other boards in the first two releases so that we are engaging business SMEs from across the DCA's diverse body of regulating entities, so that design and implementation decisions are not made with only Healing Arts needs in mind. We also want to verify that we are implementing license types that have sufficient complexity (e.g., multi-step licensing processes, external interfaces, inspections, and complaints) to allow us to refine the implementation process, from configuration interviews to system testing to UAT to deployment.

Another benefit of implementing Cosmetology and Security Guards in the first two releases is that a larger population of licensees will experience the benefits of the BreEZe System earlier. For Licensing, this means that a larger number of applicants and licensees will be able to use new self-service functions, and the DCA licensing staff will realize earlier benefits of the system to automate processes such as continuing education (CE), exams, and background checks for a larger number of licensees. For Enforcement, this means that the DCA enforcement staff will get more information sooner to better identify unlicensed activity, respond to complaints, and decrease enforcement case backlogs.

The **third and final release** will include the remaining 13 DCA boards and bureaus. The boards and bureaus included in this release are part of the Business Services and Design/Construction areas, and will build on the momentum established in the first two releases. This release does not introduce any new technology components, resulting in lower overall delivery risks. The release does include more complex boards such as Accountancy and the Contractors State License Board, resulting in the risks associated with implementing these boards to be deferred to the last release when project procedures are well established.

In accordance with the RFP, "Prior to Full System Acceptance, the Contractor shall be responsible for all maintenance responsibilities, in accordance with the accepted Maintenance Plan (Deliverable 9.1)." Our work plan includes the resources and time necessary to support the Production BreEZe System from Release 1 Deployment to Full System Acceptance.

We will work with the DCA Release after contract award to jointly confirm the appropriateness of each board and bureau's placement in the release schedule.



Figure 5-120 shows a detailed list of which boards we propose should be migrated to BreZe in each respective release. In addition, we have listed the system interfaces to be implemented in each release in Figure 5-121. Note that I-1.4.07 (Kodak Visual Information System) is not listed in this table, as RFP-DCA-10-051 Questions – Set 04 (released December 23, 2010) indicated that this system will be replaced by BreZe.

<b>Implementation Phase/Release</b>	<b>Roll Out Date</b>	<b>DCA Entities rolled out to BreZe</b>
Implementation Phase 1: Seven (7) Healing Arts Boards and Cosmetology	Month 11: July 2012	<b>Healing Arts:</b> <ul style="list-style-type: none"> <li>Registered Nursing, Board of</li> <li>Medical Board of California</li> <li>Behavioral Sciences, Board of</li> <li>Psychology, Board of</li> <li>Physician Assistant Committee</li> <li>Osteopathic Medical Board of California</li> <li>Podiatric Medicine, California Board of</li> </ul> <b>Business Services:</b> <ul style="list-style-type: none"> <li>Barbering and Cosmetology, Bureau of</li> </ul>
Implementation Phase 2: Remaining Healing Arts Boards and Security Guards	Month 18: Feb 2013	<b>Healing Arts:</b> <ul style="list-style-type: none"> <li>Pharmacy, California State Board of</li> <li>Vocational Nursing and Psychiatric Technicians, Board of</li> <li>Dental Board of California</li> <li>Board of Chiropractic Examiners</li> <li>Physical Therapy Board of California</li> <li>Veterinary Medical Board and Veterinary Technician Examining Committee</li> <li>Speech-Language Pathology and Audiology Board</li> <li>Respiratory Care Board</li> <li>Dental Hygiene Committee of California</li> <li>Occupational Therapy, California Board of</li> <li>Optometry, State Board of</li> <li>Acupuncture Board</li> <li>Telephone Medical Advice Services Bureau</li> </ul> <b>Business Services:</b> <ul style="list-style-type: none"> <li>Bureau of Security and Investigative Services</li> </ul>
Implementation Phase 3: Business Services and Design/Construction	Month 25: Sept 2013	<b>Business Services:</b> <ul style="list-style-type: none"> <li>Automotive Repair, Bureau of</li> <li>Accountancy, California Board of</li> <li>Electronic, Appliance Repair, Home Furnishings and Thermal Insulation, Bureau of</li> <li>Cemetery and Funeral Bureau</li> <li>Court Reporters Board of California</li> <li>Athletic Commission, California State</li> <li>Private Postsecondary Education, Bureau for</li> <li>Professional Fiduciaries Bureau</li> <li>Guide Dogs State Board</li> </ul> <b>Design/Construction:</b> <ul style="list-style-type: none"> <li>Contractors State License Board</li> <li>Engineers and Land Surveyors, Board for Professional</li> <li>Architects Board, California</li> <li>Structural Pest Control Board</li> </ul>

**Figure 5 – 120. The BreZe System will be rolled out to the DCA's Board and Bureaus in three releases. We base the release groupings on our experience and knowledge of DCA's business**

## Licensing Statistics

License Type	Total Number of Licenses	Therapeutic Pharmaceutical Agent Certifications (Optometrists <u>only</u> )	Lacrimal Irrigation and Dilation Certifications (Optometrists <u>only</u> )	Glaucoma Certifications (Optometrists <u>only</u> )	New Applications Received (12/01/12 – 05/01/13)	New Applications Pending (As of 05/01/13)	Licenses/ Permits Issued (12/01/12 - 05/01/13)
OPTOMETRIST	<b>7,104</b>	<b>5,047</b>	<b>#</b>	<b>1,574*</b>	<b>204</b>	<b>204</b>	<b>40</b>
Statements of Licensure	<b>1,037</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>104</b>	<b>30</b>	<b>121</b>
BRANCH OFFICE LICENSES	<b>456</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>20</b>	<b>13</b>	<b>13</b>
FICTITIOUS NAME PERMITS	<b>1,404</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>91</b>	<b>30</b>	<b>37</b>

# This number was unavailable at the time this document was printed.

\* The glaucoma certified optometrist breakdown is as follows:

1. **204** of the certifications were earned under SB 929 which required licensed optometrists to co-manage 50 patients over a two-year period with a Medical Board of California-certified ophthalmologist as preceptor
2. **585** of the certifications have been obtained under SB 1406 which provides licensed optometrists with various options which include co-management or course completion at one of the three (3) California schools/colleges of optometry
3. The remaining **785** certificate holders are those who graduated from an accredited school/college of optometry on or after May 1, 2008

### Enforcement Statistical Overview

Fiscal Year	2009/2010	2010/2011	2011/2012	2012/2013*
<b>Complaints</b>				
Complaints Received	<del>194</del> 197	<del>259</del> 295	<del>428</del> 318	151
Complaints Pending	<del>62</del> 66	<del>96</del> 134	<del>449</del> 171	107
Complaints Closed	<del>262</del> 264	<del>226</del> 227	<del>103</del> 281	255
Subsequent Arrest Reports Received	<del>24</del> 24	<del>24</del> 56	<del>45</del> 92	44
Cases Referred to Division of Investigation (DOI)	3	38	<del>27</del> 29	15
Cases Pending at DOI	2	<del>20</del> 19	26	21
Cases Referred to Expert	14	6	<del>3</del> 25	3
Cases referred to the Office of the Attorney General (AG)	<del>40</del> 6	<del>8</del> 9	<del>3</del> 14	15
Cases Pending at the AGs Office	<del>13</del> 14	13	<del>8</del> 17	25
Citations Issued	5	2	1	3
Accusations Filed	<del>9</del> 6	<del>8</del> 9	1	15
Statement of Issues Filed	1	0	0	1
Interim Suspension Orders (PC 23)	1	0	0	0
Notice of Warnings Issued	0	0	0	0
<b>Disciplinary Decision Outcomes**</b>				
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	2
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
<b>Decisions by Violation Type</b>				
Fraud	0	0	0	0
Gross Negligence/Incompetence	1	1	1	2
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 April 30, 2013

\*\* Subject to change after data cleanup completion

# California State Board of Optometry

## Performance Measures

### Q3 Report (January - March 2013)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

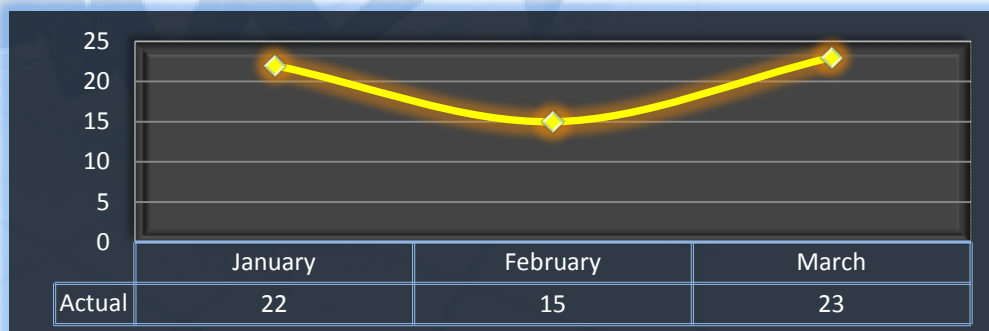
#### Volume

Number of complaints and convictions received.

**Q3 Total: 60**

*Complaints: 53   Convictions: 7*

**Q3 Monthly Average: 20**

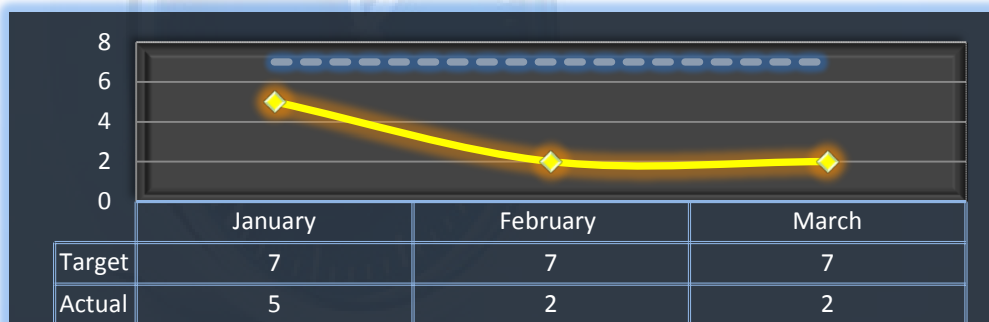


#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 7 Days**

**Q3 Average: 3 Days**

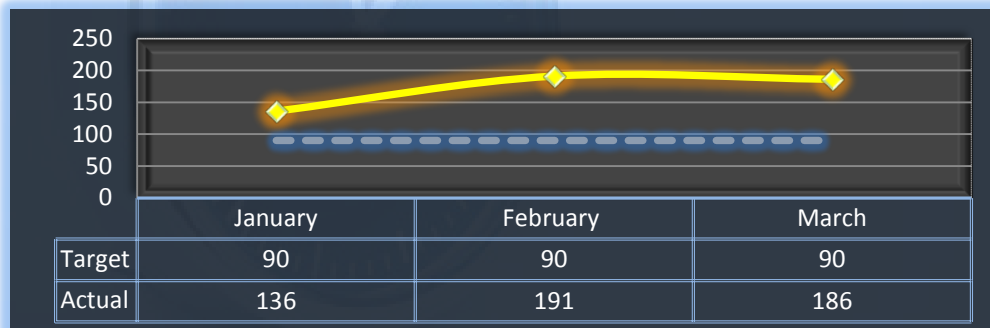


## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 90 Days**

**Q3 Average: 171 Days**

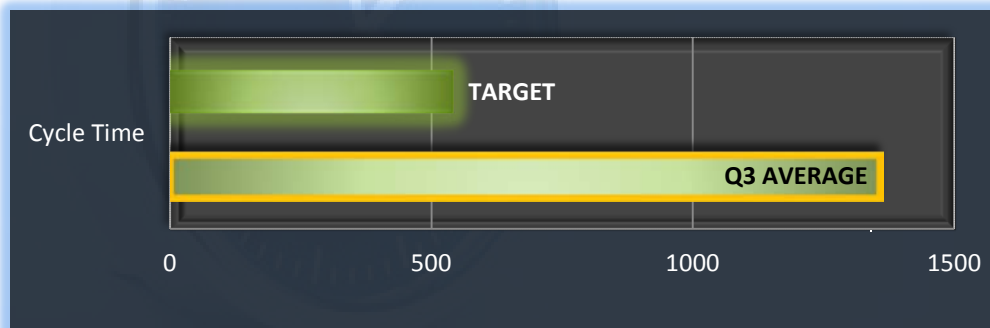


## Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

**Target: 540 Days**

**Q3 Average: 1,356 Days**

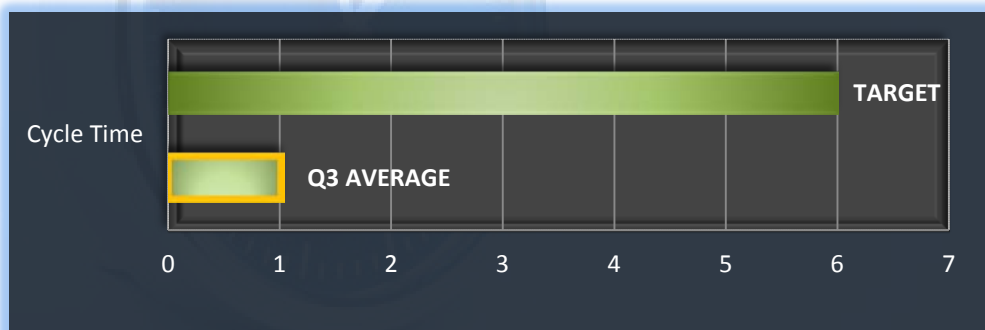


## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 6 Days**

**Q3 Average: 1 Day**





## Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 8 Days**

**Q3 Average: N/A**

*The Board did not handle any probation violations this quarter.*

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7182

**Subject:** **Agenda Item 5 – Discussion and Possible Action on Regulations Affecting the Board of Optometry**

---

## **A. SB 1111 Regulations and April 30, 2013 Committee Meeting**

**Action Requested:** It is requested that the Board consider the nine regulations, and the committees' recommendations for each regulation. It is also requested that after review and discussion, the Board decide which regulations to implement. Upon a final decision, the Board must direct staff to begin the regulatory process.

**Background:** On April 30, 2013 the SB 1111 Regulations Committee met in Los Angeles to discuss nine enforcement related regulations that were created by the Department of Consumer Affairs (DCA) to streamline enforcement and disciplinary processes. The specific goal of the nine regulations is to reduce the average enforcement completion timelines from three years or more to between 12 and 18 months. The Board has authority to implement all the regulations if they choose to.

These regulations came from the DCA sponsored Senate Bill 1111 (Negrete McLeod), which was a component of the Consumer Protection Enforcement Initiative (CPEI). The bill, which failed in the legislature in 2010, and the CPEI were a direct result of a 2008 incident with the Board of Registered Nursing which garnered various media outlets reporting that DCA was continuing to license various practitioners despite having committed serious criminal acts, having been convicted, and having been incarcerated. Licensees were allegedly renewing their licenses, identified as licenses "In Good Standing", and, in some cases, continuing to practice their profession without any restrictions or disciplinary actions. DCA responded by directing all healing arts boards to seek the regulatory changes necessary to require all new applicants to be fingerprinted, as well as any existing licensee who has never been fingerprinted (Fingerprint regulations became effective June 21, 2010 for the Board of Optometry).

Since DCA continues to be scrutinized in news articles, annual reports, and audits, which identify various program issues, deficiencies, and shortcomings, DCA continues its efforts to address the root causes of these problems. DCA has attempted to implement the CPEI, add and train staff, streamline business operations, and improve coordination and communication between various governmental entities. These efforts have been met with modest success.

As one of its efforts to meet its goal to implement portions of the CPEI, DCA identified nine provisions from Senate Bill 1111 that could be implemented via regulation by the healing arts boards. Many of them are modeled after laws that are currently in effect and utilized by the Medical Board, the Dental Board, the Board of Psychology, and Pharmacy Board to name a few.

The committee is composed of:

- 1) Donna Burke, Public Member
- 2) Madhu Chawla, OD, Professional Members (not present)
- 3) Fred Dubick, OD, MBA, FAAO, Professional Member
- 4) William Kysella, Public Member, Chair of Committee**
- 5) Kenneth Lawenda, OD (not present)

**Recommendations of the SB 1111 Regulations Committee:** The committee's review of the nine regulations resulted in the following recommendations to the Board:

PROVISION	COMMITTEE RECOMMENDATION
<p><b>(1) Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license:</b> Permit 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. (CCR 1502 (g))</p> <p>Also delegate to the Executive Officer the ability to compel a licensee to submit to a mental and/or physical examination to determine the licensee's fitness to practice. (CCR 1502 (h))</p>	<p>The committee recommends not implementing these provisions. What is currently in law is effective to deal with these kinds of issues. The Board should be involved in all stipulated settlements and retain its direct authority to compel licensees to submit to a mental/physical examination.</p> <p><b><u>Rationale</u></b></p> <ul style="list-style-type: none"> <li>• The Board is being prevented from weighing in.</li> <li>• The Board is able to swiftly handle these kinds of stipulated settlements through e-mail votes if they are unable to meet.</li> <li>• Since these types of stipulated settlements don't come to the Board in large quantities like a larger board, the Board should hear these stipulated settlements.</li> <li>• Delegating to the Executive Officer authority to compel a licensee to a mental/physical examination is not part of the SB 1111 provisions, so it should not be implemented.</li> </ul>
<p><b>(2) Revocation for sexual misconduct:</b> 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. (CCR 1575)</p>	<p>The committee recommends only implementing this language for registered sex offenders. The rest should be left to the Board's discretion and current law is effective to deal with these kinds of issues.</p> <p><b><u>Rationale</u></b></p> <ul style="list-style-type: none"> <li>• Too extreme because some cases are more egregious than others and all should not be applied the same punishment.</li> <li>• Not comfortable with the zero-tolerance aspect.</li> <li>• The Board should be permitted to weigh in with thoughtful deliberation.</li> </ul>
<p><b>(3) Denial of application for registered sex offender:</b> Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.</p>	<p>The committee recommends not implementing this provision. The Board should retain its discretion and what is currently in law is effective to deal with these kinds of issues.</p>

	<p><b><u>Rationale:</u></b></p> <ul style="list-style-type: none"> <li>• The Board does not deal with a large quantity of registered sex offenders.</li> <li>• The Board has authority to deny applications and revoke licenses for registered sex offenders which allows for discretion.</li> <li>• The regulation is contradictory. It asks for zero tolerance, but then exempts certain registered sex offenders.</li> </ul>
<p><b>(4) Confidentiality agreements regarding settlements (Gag Clauses):</b> Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.</p>	<p>None. Implemented for all boards by AB 2570 (Leno, Chapter 561, Statutes of 2012).</p>
<p><b>(5) Failure to provide documents and failure to comply with court order:</b> Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records.</p>	<p>The committee recommends implementing the portion of this provision related to complying with a court order. This is needed by Board staff.</p> <p>For the portion of this provision related to complying with a request for medical records, there is no recommendation. The Board already has authority to do this pursuant to BPC section 3110 (x), which mirrors Health and Safety Code 123110.</p>
<p><b>(6) Psychological or medical evaluation of applicant:</b> 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.</p>	<p>The committee recommends adopting this provision and asks the Board to discuss the possibility of making the regulation more specific by establishing criteria of when an evaluation should be given to an applicant.</p> <p><b><u>Rationale:</u></b></p> <ul style="list-style-type: none"> <li>• Since this language mirrors a code section already in law that applies to licensees and various boards have had this language approved by the Office of Administrative Law, it will work for this Board.</li> <li>• Adding this language will bypass costly administrative procedures, which include issuing a license to an applicant so they become a licensee the Board has jurisdiction over, placing them on probation, and then compelling them to take the psychological or medical evaluation. This will allow the Board to bypass this process and be upfront with the applicants.</li> </ul>
<p><b>(7) Sexual misconduct:</b> Currently defined in BPC Section 726. Define in regulation that sexual misconduct is unprofessional</p>	<p>The committee recommends not implementing this provision. What is currently in law is effective to deal with these kinds of issues.</p>

misconduct.	<p><b><u>Rationale:</u></b></p> <ul style="list-style-type: none"> <li>BPC 3110 (m) and 726 already deal with sexual misconduct.</li> </ul>
<p><b>(8) Failure to provide information or cooperate in an investigation:</b> Make it unprofessional conduct for a licensee who fails to furnish information in a timely manner or cooperate in a disciplinary investigation.</p>	<p>The committee recommends adopting this provision.</p> <p><b><u>Rationale:</u></b></p> <ul style="list-style-type: none"> <li>This is necessary to assist the staff.</li> </ul>
<p><b>(9) Failure to report an arrest, conviction, etc.:</b> Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.</p>	<p>The committee recommends deleting the language pertaining to arrests, adding clarifying language that any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government of the United State military should be related to the practice of optometry, and discussing with the Board if the language pertaining to misdemeanors should be kept in the regulation.</p> <p><b><u>Rationale:</u></b></p> <ul style="list-style-type: none"> <li>The language pertaining to arrests is too broad.</li> <li>Every state has a different definition of what warrants disciplinary action so what's in the regulation is too broad. The Board should only be concerned with disciplinary actions related to the practice of optometry.</li> <li>There are over 100 misdemeanors and some should not be reported to the Board because they are not relevant to an optometrist's professional practice or demeanor.</li> <li>Licensees are required to report biennially on their renewal form if they have committed a crime or been disciplined in any jurisdiction of the United States. The Board will learn about these occurrences no matter what if an optometrist forgets to report.</li> </ul>

**Attachments:**

- 1) Proposed regulatory language per the committee's recommendations
- 2) April 30, 2013 SB 1111 Committee Meeting Materials
- 3) Comments from Dr. Lawenda
- 4) Comments from California Optometric Association
- 5) Chart of DCA entities who have SB 1111 provisions in current law or have implemented via regulation

## **Board of Optometry SB 1111 Committee Meeting Recommended Proposed Language**

### **DCA Provision (2)**

**(2) 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.

### **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 offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of license

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 Provisions (8) and (9)**

**(8) 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.

**(9) 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.

### **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) Failure to cooperate and participate in any Board investigation pending against the licensee. This includes, but is not limited to, failure to respond to a Board request for information or evidence 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 information within this time period for good cause. 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.
- (b) 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 conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
  - (3) 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 that is related to the practice of optometry.
- (c) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release 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 (6)**

**(6) 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.

### **Proposed Regulatory Language:**

#### **§ 1516. Application Review and Criteria for Rehabilitation.**

(a) In addition to any other requirements for licensure, whenever it appears that an applicant may be unable to practice optometry safely because he or she's ability to practice may be impaired due to mental 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 the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

~~(a)~~(b) When considering the denial of a ~~certificate of registration license~~ 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 license~~, 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)~~(c) When considering the suspension or revocation of a ~~certificate of registration license~~ on the grounds that the ~~registrant licensee~~ has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/or 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)~~(d) When considering a petition for reinstatement of a ~~certificate of registration~~ license 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,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

# **SB 1111 Regulations Committee Meeting**

Tuesday, April 30, 2013

Office of Administrative Hearings



**MEMBERS OF THE BOARD**

Alejandro Arredondo, OD, President  
Monica Johnson, JD, Vice President  
Alexander Kim, MBA, Secretary  
Donna Burke  
Madhu Chawla, OD  
Fred Dubick, OD, MBA, FAAO  
Glenn Kawaguchi, OD  
William Kysella, Jr.  
Kenneth Lawenda, OD



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

**SB 1111 COMMITTEE MEMBERS**

Donna Burke  
Madhu Chawla, OD  
Fred Dubick, OD, MBA, FAAO  
William Kysella, Jr.  
Kenneth Lawenda, OD

**Tuesday, April 30, 2013**  
**9:30 a.m. – 2:30 p.m.**  
(or until conclusion of business)

Office of Administrative Hearings  
The Junipero Serra Building  
320 West Fourth Street, Suite 630  
Los Angeles, CA 90013

**ORDER OF ITEMS SUBJECT TO CHANGE**

1. Call to Order – Roll Call of Committee Members; Selection of Committee Chair
2. Discussion Pertaining to Consumer Protection Enforcement Initiative (SB 1111) Regulations
3. Public Comment for Items Not on the Agenda  
*Note: The Committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]*
4. Suggestions for Future Agenda Items
5. Adjournment

***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.***

**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 Committee may discuss any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers.

**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](http://www.optometry.ca.gov)

**To:** Committee Members

**Date:** April 30, 2013

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 1 – Call to Order – Roll Call of Committee Members

---

**Action Requested:**

A Chair should be selected for this committee. The Chair will be responsible for calling roll call and the meeting to order. The Chair leads the discussion during the meeting and ensures smooth transitions between agenda items. The Chair will also present at Board meetings the committee's recommendations to the Board.

The Chair of the committee will call the meeting to order and call roll.

**Committee Members:**

Donna Burke, Public Member

Madhu Chawla, OD, Professional Member

Fred Dubick, OD, MBA, FAAO, Professional Member

William Kysella Jr., Public Member

Kenneth Lawenda, OD, Professional Member

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

**To:** Committee Members

**Date:** April 30, 2013

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7182

**Subject:** **Agenda Item 2 – Discussion Pertaining to Consumer Protection Enforcement Initiative (SB 1111) Regulations**

---

## **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 all nine of the 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. At the December 14, 2012, the Board created the SB 1111 Committee to further discuss these regulations.

These regulations continue to be a priority for the Department, the Legislature, and were a topic of discussion at the recent Sunset Review Hearings in March 2013. Furthermore, the Board is asked to report weekly to the State and Consumer Services Agency Secretary on the status of these regulations. The Secretary reports directly to the Governor, who is monitoring the implementation of these regulations closely.

## **Issue:**

Now that the Guidelines have been approved and went into effect on April 1, 2013, staff would like to reintroduce this issue to the committee for consideration so that the committee can make a recommendation to the Board. 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.

These regulations are intended to streamline and expedite the Board's enforcement process. All the provisions should be viewed as tools to be added to the Board's enforcement tool box. If there are certain provisions that the Board feels should not be utilized at all times, it is possible for the Board to create a policy in where these provisions are only used in emergency situations.

See Attachment 1 for additional discussion points and proposed language. See Attachment 2 for a glossary of code sections referenced in the regulations. See attachment 3 to see AB 2570.

**Action Requested:**

- 1) Review the nine provisions to determine which ones would be the most appropriate for the Board's use. If it will be recommended that certain provisions not be implemented, rationale must be provided as to why they are not necessary at this time.
- 2) If needed, propose amendments to the proposed language of the chosen provisions.

# 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.

Also delegates authority to the Executive Officer to compel a licensee to submit to a mental and/or physical examination pursuant to BPC section 820 to determine the licensee’s fitness to practice.

#### Background:

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. 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.

BPC section 820 allows a licensing agency to compel a licensee to submit to a mental and/or physical examination to determine the licensee’s fitness to practice.

#### Problem, Rationale for Change:

##### **Revocation, surrender, or interim suspension:**

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.

##### **Mental or physical examination pursuant to BPC section 820:**

Delegating authority to the Executive Officer to compel a licensee to submit to a mental and/or physical examination pursuant to BPC section 820 would also assist the Board in resolving cases more quickly. It would benefit the Board to determine if the patient harm caused by the licensee was truly due to a mental or physical issue prior to filing the Accusation because the licensee could be removed from practice faster, reducing the risk for more patient harm.

Recommendation:

If the Board chooses to make these amendments, it is recommended they be made via regulation.

**Proposed Regulatory Language:**

**1502. Delegation of Certain Functions**

The following powers and discretion conferred by law upon the Board are hereby delegated to and conferred upon the Executive Officer:

- (a) ~~†~~To receive and file accusations;
- (b) ~~i~~Issue notices of hearing, statements to respondent and statements of issues;
- (c) ~~†~~Receive and file notices of defense;
- (d) ~~d~~Determine the time and place of hearings under Section 11508 of the Government Code;
- (e) ~~i~~Issue subpoenas and subpoenas duces tecum;
- (f) ~~s~~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;
- (g) To approve settlement agreements for the revocation, surrender or interim suspension of a license;
- (h) To order an examination pursuant to Section 820 of the Business and Professions Code; and
- (i) ~~†~~The certification and delivery or mailing of copies of decisions under Section 11518 of ~~said the Government eCode, are hereby delegated to and conferred upon the executive officer.~~

Note: Authority cited: Sections 820, and 3025, Business and Professions Code. Reference: Section 3027 and 3090, Business and Professions Code.



## **DCA Provision (2)**

**(2) 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 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 243.4(a)-(d), 261.5, 313.1, 647(a), (b), and (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 (3)**

**(3) 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 and aside from a few exemptions, would make it mandatory that the Board deny the application for licensure of a registered sex offender and revoke the license of a licensee who is required to register as a sex offender. 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:

(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 individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided; however, that nothing in this paragraph shall prohibit the Board from exercising its discretion to deny or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) 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 (4), (5), and (7-9)**

**(4) Confidentiality agreements regarding settlements (Gag Clauses):** Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.

Implemented for all boards by AB 2570 (Leno, Chapter 561, Statutes of 2012).

**(5) 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.

The Board already has authority to do this pursuant to BPC section 3110 (x), which mirrors Health and Safety Code 123110.

**(7) 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. 4<sup>th</sup> 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 these amendments, it is recommended they be made via regulation.

**(8) 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 fails to 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 cooperate in an investigation is unprofessional conduct.

**(9) 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, licensees are not required to self report any felony indictment or charge or any felony or misdemeanor conviction against them. Likewise, the Board has no authority to discipline licensees who fail to report such occurrences. Existing law for physicians and surgeons, osteopathic physician and surgeons, and doctors of podiatric medicine requires them to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

Problem, Rationale for Change:

Since current optometric law does not allow for timely reporting of a felony indictment or charge of any felony or misdemeanor conviction, requiring a licensee to self report these occurrences 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) Failure to cooperate and participate in any Board investigation pending against the licensee. This includes, but is not limited to, failure to respond to a Board request for information or evidence 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 information within this time period for good cause. 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.

(b) The commission of any act of sexual abuse or misconduct.

(c) 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.

(d) 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 (6)**

**(6) 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 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 give the Board authority to compel an applicant to take such examinations and deny a license based on the results. This will solidify the Board's ability 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 review that a psychological or medical evaluation may be required if the Board is suspicious of mental or physical illness.

### **Proposed Regulatory Language:**

#### **§ 1516. Application Review and Criteria for Rehabilitation.**

(a) In addition to any other requirements for licensure, whenever it appears that an applicant may be unable to practice optometry safely because he or she's ability to practice may be impaired due to mental 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 the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

(a) When considering the denial of a ~~certificate of registration license~~ 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 license~~, 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~~ license on the grounds that the ~~registrant~~ licensee has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/or 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~~ license 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,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.

## GLOSSARY OF CODE SECTIONS REFERENCED IN SB 1111 PROPOSED REGULATIONS

### **Business and Professions Code Section 729.**

(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense.

However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

### **Business and Professions Code Section 820. Mental Illness or Physical Illness**

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licensee and may be received as direct evidence in proceedings conducted pursuant to Section 822.

### **Business and Professions Code Section 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, 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.

## **CHAPTER 5. Administrative Adjudication: Formal Hearing [11500. - 11529.]**

### **Government Code Section 11500.**

In this chapter unless the context or subject matter otherwise requires:

(a) "Agency" includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency, and wherever the words "agency itself" are used the power to act shall not be

delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Administrative law judge" means an individual qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

**Government Code Section 11501.**

(a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) This chapter applies to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise.

(c) Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.

**Government Code Section 11502.**

(a) All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. This subdivision applies to a hearing required to be conducted under this chapter that is conducted under the informal hearing or emergency decision procedure provided in Chapter 4.5 (commencing with Section 11400).

(b) The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

**Government Code Section 11503.**

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

**Government Code Section 11504.**

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

**Government Code Section 11504.5.**

In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

**Government Code Section 11505.**

(a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

**Government Code Section 11506.**

(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

- (1) Request a hearing.
- (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.
- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.
- (4) Admit the accusation in whole or in part.
- (5) Present new matter by way of defense.
- (6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

#### **Government Code Section 11507.**

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

#### **Government Code Section 11507.3.**

(a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

#### **Government Code Section 11507.5.**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**Government Code Section 11507.6.**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements. Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

**Government Code Section 11507.7.**

- (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.
- (b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.
- (c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.
- (d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section



11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

**Government Code Section 11508.**

(a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

**Government Code Section 11509.**

The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at the hour of \_\_\_\_, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

**Government Code Section 11511.**

On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

**Government Code Section 11511.5.**

(a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

- (1) Exploration of settlement possibilities.
- (2) Preparation of stipulations.
- (3) Clarification of issues.
- (4) Rulings on identity and limitation of the number of witnesses.
- (5) Objections to proffers of evidence.
- (6) Order of presentation of evidence and cross-examination.
- (7) Rulings regarding issuance of subpoenas and protective orders.
- (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
- (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.
- (10) Motions for intervention.
- (11) Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).
- (12) Any other matters as shall promote the orderly and prompt

conduct of the hearing.

(c) The administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

(d) With the consent of the parties, the prehearing conference may be converted immediately into alternative dispute resolution or an informal hearing. With the consent of the parties, the proceeding may be converted into alternative dispute resolution to be conducted at another time. With the consent of the agency, the proceeding may be converted into an informal hearing to be conducted at another time subject to the right of a party to object to use of the informal hearing procedure as provided in Section 11445.30.

(e) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

**Government Code Section 11511.7.**

(a) The administrative law judge may order the parties to attend and participate in a settlement conference. The administrative law judge shall set the time and place for the settlement conference, and shall give reasonable written notice to all parties.

(b) The administrative law judge at the settlement conference shall not preside as administrative law judge at the hearing unless otherwise stipulated by the parties. The administrative law judge may conduct all or part of the settlement conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

**Government Code Section 11512.**

(a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's

proposed decision in the proceeding.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a substitute qualified to act may be appointed by the appointing authority.

(d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

### **Government Code Section 11513.**

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the

evidence over objection in civil actions.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

**Government Code Section 11514.**

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

**Government Code Section 11515.**

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party

shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.

**Government Code Section 11516.**

The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

**Government Code Section 11517.**

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt

the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

**Government Code Section 11518.**

Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

**Government Code Section 11518.5.**

(a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

**Government Code Section 11519.**

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.



(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

**Government Code Section 11519.1.**

(a) A decision rendered against a licensee under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code may include an order of restitution for any financial loss or damage found to have been suffered by a person in the case.

(b) The failure to make the restitution in accordance with the terms of the decision is separate grounds for the Department of Motor Vehicles to refuse to issue a license under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code, and constitutes a violation of the terms of any applicable probationary order in the decision.

(c) Nothing in this section is intended to limit or restrict actions, remedies, or procedures otherwise available to an aggrieved party pursuant to any other provision of law.

**Government Code Section 11520.**

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating

the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

**Government Code Section 11521.**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

**Government Code Section 11522.**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

**Government Code Section 11523.**

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

**Government Code Section 11524.**

(a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof,

the party shall, within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply to the Department of Alcoholic Beverage Control.

**Government Code Section 11526.**

The members of an agency qualified to vote on any question may vote by mail or another appropriate method.

**Government Code Section 11527.**

Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the funds of the agency.

**Government Code Section 11528.**

In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or administrative law judge has power to administer oaths and affirmations and to certify to official acts.

**Government Code Section 11529.**

(a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licensee shall, at a minimum, have the following rights:

- (1) To be represented by counsel.
- (2) To have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of any reasonable charges associated with the record.
- (3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

- (4) To present oral argument.
- (e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

- (1) There is a reasonable probability that the petitioner will prevail in the underlying action.
- (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

- (g) Where an interim order is issued, a written decision shall be

prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

#### **Penal Code 243.4. (a)-(d)**

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

#### **Penal Code 261.5.**

- (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.
- (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.
- (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.
- (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.
- (e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:
- (A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).
- (B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).
- (C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).
- (D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).
- (2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.
- (3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

#### **Penal Code 290.**

- (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.
- (b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.
- (c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

**Penal Code 290.5.**

(a) (1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

(A) Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 220, except assault to commit mayhem.

(C) Section 243.4, provided that the offense is a felony.

(D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 266, provided that the offense is a felony.

(G) Section 266c, provided that the offense is a felony.

(H) Section 266j.

(I) Section 267.

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(R) Subdivision (i) or (j) of Section 289.

(S) Section 647.6.

(T) The attempted commission of any of the offenses specified in this paragraph.

(U) The statutory predecessor of any of the offenses specified in this paragraph.

(V) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.



(b) (1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

### **Penal Code 313.1.**

(a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4. It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or to perform related activities in providing telephone services.

(b) Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.

(c) (1) Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(2) Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county that restricts the display of material that is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a

defense in any prosecution for a violation of this subdivision that the video rental store failed to post a sign, reasonably visible to all customers, delineating the provisions of this subdivision.

(g) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant previously has issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(h) It shall be a defense in any prosecution for a violation of paragraph (2) of subdivision (c) that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification card to the vending machine after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the card of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the card is no longer desired.

(2) Required the person receiving the harmful matter to use a token in order to utilize the vending machine after taking reasonable measures to ascertain that the person was 18 years of age or older.

(i) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (g) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

#### **Penal Code 314.**

Every person who willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,
2. Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Every person who violates subdivision 1 of this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in state prison.

#### **Penal Code 647.(a), (b), and (d)**

Except as provided in subdivision (l), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

## **Assembly Bill No. 2570**

### **CHAPTER 561**

An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 25, 2012. Filed with  
Secretary of State September 25, 2012.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2570, Hill. Licensees: settlement agreements.

Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency. Existing law prohibits a physician and surgeon from including specified provisions in an agreement to settle a civil dispute arising from his or her practice. Except as specified, existing law authorizes any interested person to petition a state agency requesting the adoption of a regulation.

This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program, except as specified. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil action to pay additional moneys to the benefit of any plaintiff in the civil action.

This bill would authorize a board, bureau, or program within the Department of Consumer Affairs to adopt a regulation exempting agreements to settle certain causes of action from these provisions.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 143.5 is added to the Business and Professions Code, to read:

143.5. (a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

(b) Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

(c) As used in this section, “board” shall have the same meaning as defined in Section 22, and “licensee” means a person who has been granted a license, as that term is defined in Section 23.7.

(d) Notwithstanding any other law, upon granting a petition filed by a licensee or authorized agent of a licensee pursuant to Section 11340.6 of the Government Code, a board, bureau, or program within the Department of Consumer Affairs may, based upon evidence and legal authorities cited in the petition, adopt a regulation that does both of the following:

(1) Identifies a code section or jury instruction in a civil cause of action that has no relevance to the board’s, bureau’s, or program’s enforcement responsibilities such that an agreement to settle such a cause of action based on that code section or jury instruction otherwise prohibited under subdivision (a) will not impair the board’s, bureau’s, or program’s duty to protect the public.

(2) Exempts agreements to settle such a cause of action from the requirements of subdivision (a).

(e) This section shall not apply to a licensee subject to Section 2220.7.

SEC. 2. (a) Nothing in Section 143.5 of the Business and Professions Code shall be construed as limiting the discretion of a board, bureau, or program to decline to grant a petition or adopt a regulation.

(b) Nothing in Section 143.5 of the Business and Professions Code shall be construed as prohibiting a licensee from including in an agreement to settle a civil dispute any provision that is otherwise not prohibited.

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

**To:** Committee Members

**Date:** April 30, 2013

**From:** Committee Chair

**Telephone:** (916) 575-7170

**Subject: Agenda Item 3 – Public Comment for Items Not on the Agenda**

---

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

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

**To:** Committee Members

**Date:** April 30, 2013

**From:** Committee Chair

**Telephone:** (916) 575-7170

**Subject: Agenda Item 4 – Suggestions for Future Agenda Items**

---

Members of the Committee and the public may suggest items for staff research and discussion at future meetings.

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

**To:** Committee Members

**Date:** April 30, 2013

**From:** Committee Chair

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 5 – Adjournment

---

Adjournment



## **SB 1111 Regulations**

### **Questions and Comments from Dr. Lawenda**

#### Provision 1: Board delegation to the Executive Officer

##### Comments:

- While in favor of expediting enforcement procedures to increase consumer protection, still leaning towards not being in favor of this regulation.
- May not be a good idea to put all the responsibility on one person to make a decision for the whole Board. What if the decision made turns out to be wrong and a Respondent's attorney points that out and there is a backlash to the Board as a whole?
- Feels it's very important for the Board to discuss revocations, surrenders, or interim suspensions. Also, although it rarely happens, what if the Board disagrees with a settlement and wants a chance to discuss the issue? This provision would not allow discussion.
- It could benefit the Board to hold a one hour conference call every three weeks, or once a month to discuss enforcement issues, in between Board meetings to expedite matters. The Board should be given the option to review accusations before-hand and vote.
- For interim suspensions, perhaps the Board should create an Executive Committee of Board Members so that quick decisions can be made when it is determined that a licensee needs to cease practice.
- Wants to make sure that in addition to protecting the public, the doctors and the Board are protected.
- What are the Medical, Dental and Pharmacy Boards doing? Although it's good to see that many allied health professions have adopted these provisions, he wants to make sure the Board is in line with physicians and surgeons and pharmacists. If these Boards are on board with this provision, it would be easier to adopt it. Wants to make sure we aren't treading on completely new ground.

#### Provision 2: Revocation for sexual misconduct

##### Comments:

- Approves of this provision. Zero tolerance is very important for these kinds of issues.
- Would like to be in line with the Medical, Dental and Pharmacy Boards.
- Would like the same, exact language as these three boards.

##### Questions:

1. Can an accusation be the same as a conviction? Would like there to be proof, not just an accusation.

#### Provision 3 denial of application for registered sex offender:

##### Comments:

- Approves of this provision.

##### Questions:

1. How does the Board get this information? Does the Board have the ability to access a database to learn about this information nation-wide? Does not want to take people just at their word. There needs to be a way for the Board to collect this information, in the event a licensee is wrongly accused. In this case perhaps the Board's attorney should be consulted.

#### Provisions 4, 5, 7-9

##### Comments:

- Approves of this regulation but would like further clarification on consenting patients.
- Does not agree with the penalty for not self reporting a misdemeanor charge. A felony and/or a misdemeanor conviction should absolutely be reported, but a misdemeanor conviction, i.e., shoplifting, not paying a parking citation. Charges or hearsay aren't at the same level as convictions or felonies. Would like some more examples and rationale as to why this should be added. The Board may be swamped with this kind of reporting. The same goes with accusations. The Board's attorney should be advised and involved in filtering accusations if need be.

##### Questions:

- What if a licensee has a romantic relationship with a consenting patient, but when that ends negatively, the patient retaliates by invoking BPC 726? Will the licensee be punished and the act considered unprofessional conduct, or can there be an exemption for consenting patients? This is a major gray area that could lead to major problems.

Note: There is current law that deals with this issue. Staff will provide a copy once it is found.

#### Provision 6: Psychological or medical evaluation of applicant

##### Comments:

- Maybe the Board should think about establishing guidelines to assist in determining when a medical/psychological evaluation is needed.

##### Questions:

- What do other boards do?
- Who is the Board to determine that a person needs a medical/psychological evaluation? Board staff and members are not psychologists.
- What would prompt this? Would there need to be evidence that the applicant has mental issues before the Board can even do this?

#### Final Comments:

- Recommends Bill Kysella be the Chair of the committee.
- Strongly believes in what these regulations are trying to do, which is expedite the enforcement process to increase consumer protection, but would like to make sure that what the regulations are doing is clear to everyone, that all questions be answer and

issues discussed, and that other boards such as MBC, Pharmacy, and Dental are also implementing similar regulations. All health boards should be in line with each other.



## California Optometric Association

2415 K Street Sacramento, California 95816  
916.441.3990 800.877.5738 Fax 916.448.1423 [www.coavision.org](http://www.coavision.org)

April 24, 2013

Andrea Leiva, Policy Analyst  
California State Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
[andrea.leiva@dca.ca.gov](mailto:andrea.leiva@dca.ca.gov)

### **VIA E-MAIL**

### **RE: Comment Letter on Possible Regulations Pertaining to Department of Consumer Affair's Consumer Protection Enforcement Initiative**

Dear Ms. Leiva:

The California Optometric Association (COA) would like to extend our appreciation for the opportunity to comment on the above-cited possible regulations, which seek to streamline the California State Board of Optometry's (SBO) enforcement and disciplinary process. The COA strongly supports the intent of the regulations, which we believe is to increase patient safety; however, we have concerns with a few of the proposals (see below) and request that the SBO eliminate those proposals from the regulation package entirely. The specific proposals that we request be eliminated are:

#### **1. Mental or physical examination pursuant to BPC section 820**

This section will delegate the authority to the Executive Director to compel a licensee to submit to a mental and/or physical examination pursuant to BPC section 820. The proposed language does not include a guideline or other substantiated basis upon which to base an initial suspicion or determination that the licensee may have a physical or mental illness that could impair that person's ability to practice optometry competently.

In addition, the section does not set forth a guideline or criteria that must be followed by the Executive Director in making a determination following an exam as to whether the applicant is capable of practicing competently. This latter ambiguity makes it difficult to ensure that the considerations and protections afforded an applicant by the Americans with Disabilities Act, the California Fair Employment and Housing Act and the state Prudence Kay Poppink Act will not be violated. We suggest the SBO establish guidelines to determine whether an applicant might be impaired due to a mental disability or physical illness and for final post-examination determination of an applicant's fitness to practice.

#### **2. Revocation for sexual misconduct**

Under this proposal, the SBO and an Administrative Law Judge will no longer have discretion when determining if a license should be revoked for sexual misconduct. We believe that current law, which allows for a discretionary review of facts, is sufficient. Each misconduct case should be viewed independent from the other cases, and the specific facts of each case should be weighed by the SBO and the judge in order to determine the most appropriate punishment.

“Setting the standard in eyecare”



## California Optometric Association

2415 K Street Sacramento, California 95816

916.441.3990 800.877.5738 Fax 916.448.1423 [www.coavision.org](http://www.coavision.org)

### 3. Denial of application for registered sex offender

Currently, the SBO has the 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; however, the revocation is not mandatory. This proposal seeks to *require* the SBO to deny or revoke a license of a registered sex offender. The COA believes that the SBO's current authority, which allows for some objective discretion, is sufficient to protect the public's safety.

### 6. Psychological or medical evaluation of applicant

This proposal would authorize the SBO to order an applicant to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice due to a physical or mental illness. Please see the comments in section one, Mental or physical examination pursuant to BPC section 820, for our concerns.

### 8. Failure to provide information or cooperate in an investigation

This proposal will make it unprofessional conduct for a licensee who fails to furnish information in a timely manner or cooperate in a disciplinary investigation. We believe that the language "(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" is vague. It is unclear what a "disciplinary action" means and, as such, it may be difficult for doctors of optometry to comply. Further, the undefined disciplinary actions would constitute unprofessional conduct. For clarity purposes, COA suggests that "disciplinary action" be defined as "the suspension or revocation of a license, or the placement on probation or reprimand of a licensee."

We respectfully ask that SBO consider the impact that these proposals will have on the practice of optometry, as we believe that the proposals are unnecessary. While we understand the intent, and the need for patient safety, we believe the current authority given to the SBO is sufficient, and additional regulations are not the solution.

As always, we appreciate your consideration of our views. Please don't hesitate to call if we can provide additional information to support our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Redman".

Dave Redman, OD  
Chair, COA Legislation & Regulation Committee

"Setting the standard in eyecare"

**DCA ENTITY SB 1111 (Enforcement) Regulation - Completed  
As of 4.5.2013**

<u>Entity</u>	<u>Status</u>										
<u>Submitted</u>	Division of Legislative and Policy Review (LPR)										
		1	2	3	4	5	6	7	8	9	
Behavioral Sciences	Effective 7.1.2013	Y	Y	Y	Y	Y			Y	Y	
Dental Board	Effective 3.9.2012			Y	Y	Y	Y	Y		Y	
Occupational Therapy Board	Effective 9.28.2012	Y	Y		Y	Y	Y		Y	Y	EO for 820
Physical Therapy Board	Effective 8.16.2012	Y		Y	Y	Y			Y	Y	
Physician Assistant Committee	Effective 11.5.2011	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Psychology Board	Effective 8.22.2012	Y	Y		Y	Y	Y		Y	Y	EO for 820
Respiratory Care Board	Effective 6.24.2012		Y		Y						
Speech-Language	Effective 7.1.2013	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Vocational Nursing/Psychiatric Technicians Board	Effective 6.3.2012	Y		Y	Y	Y	Y		Y	Y	
Pharmacy Board	Pending			Y	Y	Y					
Board of Optometry	Pending	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Medical Board			Y	Y	Y	Y	Y	Y	Y	Y	

1 – Delegation to EO

2 – Revocation for Sexual Misconduct

3 – Denials for Registered Sex Offenders

4 – Confidentiality Agreements (All – AB 2570)

5 – Failure to Provide Documents/Comply with Court Order

6 – Psychological/Medical Evaluation of Applicants

7 – Sexual Misconduct

8 – Failure to Cooperate with an Investigation

9 – Failure to Report an Arrest/Conviction

**Notes:**

MBC has 3-9 in law. 1-2 are statutory fixes.

Psychology has 6 in law.

Other Boards who didn't implement certain provisions as indicated in the chart may already have the provisions in current law.

## **B. California Code of Regulations (CCR) § 1575 Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Guidelines)**

**Action Requested:** None.

**Status:** This regulation was approved by the Office of Administrative Law and became effective April 1, 2013.

**Background:** This regulation updates the Board's Disciplinary Guidelines, which had not been updated since 1999, and adds the Uniform Standards Related to Substance Abuse pursuant to Senate Bill 1441.

On June 30, 2008, the Medical Board of California was scheduled to sunset its Diversion Program and reverted to disciplinary action as the only means of addressing physicians with substance abuse problems. The sunset was primarily due to the program's failure of its fifth audit, conducted by the Center for Public Interest Law (the Medical Board's Enforcement Monitor), for overall ineffectiveness, lack of standards and failure to protect the public from harm. At the same time, there was extensive media coverage citing deficiencies in the Medical Board's Diversion Program, including patients harmed by physicians who continued to practice even after testing positive for drugs. On January 24, 2008, with the sunset of its Diversion Program imminent, the Medical Board held a Diversion Summit to discuss other options for physicians with substance abuse problems.

On March 10, 2008, the Senate Business, Professions and Economic Development Committee (Senate Committee) held a hearing to review physician's and health practitioner's substance abuse programs. The resulting legislation, authored by the Senate Committee Chair, Senator Ridley-Thomas, was Senate Bill (SB) 1441: Healing arts practitioners: substance abuse (Chapter 548, Statutes of 2008).

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the DCA establish a Substance Abuse Coordination Committee (Committee) subject to the Bagley-Keene Open Meeting Act comprised of the Executive Officers of DCA's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director DCA. The Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. DCA is committed to ensuring that licensees who are confirmed to be abusing drugs and/or alcohol, and who pose a risk to the public, are not diverted from an enforcement action or public disclosure of that action. DCA is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice. The Committee developed sixteen uniform standards as required by SB 1441. The Board implemented Uniform Standards 1-12 in its Disciplinary Guidelines Uniform Standards 13, 14, and 15 only apply to Boards with diversion programs and were not incorporated in these guidelines because the Board of Optometry does not have a diversion program. Uniform Standard 16 was also omitted because it is each Board's reporting criteria to DCA and not pertinent to the Disciplinary Guidelines.

Other Amendments/Deletions: The Board had not updated the standards and terms in its Disciplinary Guidelines in 12 years. The disciplinary and probationary environment has changed significantly since 1999 and the Board's changes are meant to address this. Many of the changes are based on best practices exemplified by the DCA's various Boards and Bureaus that have proven to be effective and in the best interest for consumers and the licensees receiving discipline.

**Next Steps:** The Board's enforcement staff has already starting utilizing the updated Guidelines. Also, Board staff worked with DCA's Office of Publications, Design and Editing (PDE) to make the Guidelines into a booklet. Each member received a copy with their Board meeting folder for this meeting.

### **Attachments:**

- 1) Disciplinary Guidelines Booklet (mail to Board members with meeting materials)

### **C. CCR § 1508, § 1508.1, § 1508.2, and § 1508.3 Sponsored Free Health Care Events**

**Action Requested:** None.

**Status:** These regulations were approved by the Office of Administrative Law and became effective April 15, 2013.

**Background:** These regulations exempt out-of-state optometrists from licensure solely for the purposes of participating in a sponsored free health-care event. These regulations establish a process for this to take place, which includes application and registration requirements, disciplinary requirements, and recordkeeping requirements.

On September 23, 2010, Governor Arnold Schwarzenegger signed AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting Business and Professions Code (BPC) Section 901, which took effect January 1, 2011.

According to the author of AB 2699, "Thousands of low-income children, families, and individuals in California are uninsured or underinsured and do not receive basic health, vision, and dental care and screenings. Lack of basic services and preventive care may lead to more serious and costly health, dental, and vision problems. In August 2009, the Remote Area Medical (RAM) Volunteer Corps conducted an eight-day health event in Los Angeles County. Volunteer medical, dental and other health-care practitioners provided \$2.9 million in free services to over 14,000 individuals during the event.

While the event was extremely successful, RAM experienced a shortage of volunteer medical, dental, and vision providers because of restrictions in state laws which prohibit volunteer out-of-state licensed medical personnel from providing short-term services. As a result, thousands of residents needing services were turned away."

To prevent future volunteer shortages at sponsored free health-care events such as RAM, AB 2699 was introduced to permit health-care providers licensed in other states who are willing to help the ability to practice in California for a limited time.

**Next Steps:** Board staff is working to implement these regulations. Information about the process and the applications will be posted on the Board's website in the next few weeks. Staff will be ready to process these requests starting June 1, 2013.

**Attachment:**

- 1) Final Approved Language and Forms



## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2013-0307-015	

ENDORSED FILED  
IN THE OFFICE OF

2013 APR 15 PM 1:39

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Board of Optometry

AGENCY FILE NUMBER (If any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE
			2012, 26-2	6-29-2012

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Sponsored Free Health Care Events	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	Article 2.5, Sections 1508, 1508.1, 1508.2, and 1508.3
	AMEND
TITLE(S)	REPEAL
16	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
None.

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	---	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) Denise D. Brown, Director, Department of Consumer Affairs <i>Denise D. Brown</i>		

7. CONTACT PERSON Andrea Leiva, Policy Analyst	TELEPHONE NUMBER 916-575-7182	FAX NUMBER (Optional) 916-575-7292	E-MAIL ADDRESS (Optional) andrea.leiva@dca.ca.gov
---	----------------------------------	---------------------------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Mona Maggio</i>	DATE 3/7/2013
TYPED NAME AND TITLE OF SIGNATORY Mona Maggio, Executive Officer, California State Board of Optometry	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 15 2013

Office of Administrative Law

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Optometry**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Regulatory Action:**

**Government Code Section 11349.3**

**Title 16, California Code of Regulations**

**OAL File No. 2013-0307-01 S**

**Adopt sections:** 1508, 1508.1, 1508.2,  
1508.3

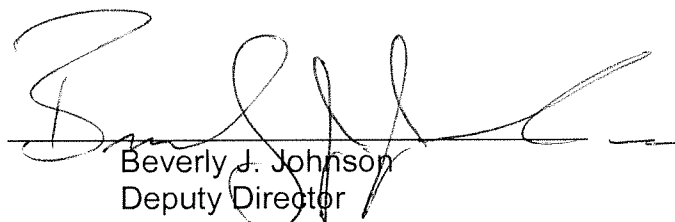
**Amend sections:**

**Repeal sections:**

This rulemaking by the Board of Optometry adopts Title 16, Division 15, Article 2.5, which includes four new sections, 1508, 1508.1, 1508.2, and 1508.3, as well as two forms, incorporated by reference, 901-A (DCA/2011) and 901-B (OPT/2011). These new regulations implement AB 2699, enacting Business and Professions Code section 901.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/15/2013.

**Date:** 4/15/2013

  
Beverly J. Johnson  
Deputy Director

**For:** DEBRA M. CORNEZ  
Director

**Original:** Mona Maggio  
**Copy:** Andrea Leiva

## **BOARD OF OPTOMETRY ORDER OF ADOPTION**

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

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](http://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

- (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

(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](http://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.

(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](mailto: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](http://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.



#### **D. CCR § 1524 Fees for Retired License Statuses**

**Action Requested:** Direct staff to continue with the rulemaking package for CCR § 1524 which establishes fees for the retired license statuses, since no comments were received during the 45-day comment period.

**Background:** On September 17, 2012, Governor Jerry Brown signed Senate Bill 1215 (Emmerson, Chapter 359, Statutes of 2012), creating two retired licenses for the Board of Optometry, which took effect January 1, 2013. Prior to this enactment, the Board did not have the authority to issue retired licenses. The first retired license is for optometrists who are at retirement age and ready to retire and stop working. The second retired license is for optometrists who are at retirement age, ready to retire, but want to provide their services in a volunteer capacity only. This statute also establishes fee ranges for these retired licenses, and the range for the renewal fee for the retired license with a volunteer designation. The Board cannot implement this statute without first establishing the final fees via regulation.

At its December 14, 2012 meeting, the Board voted to initiate a rulemaking to establish the retired license status fees. The rulemaking action was printed in the California Regulatory Notice Register on March 1, 2013, and the 45-day comment period for the public started on March 1, 2013 and ended on April 15, 2013. The hearing was on the same date. No comments were received from the public.

**Attachment:**

- 1) Proposed Language
- 2) Initial Statement of Reasons

**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>
<u>(q) Biennial renewal for a retired license with a volunteer designation.....</u>	<u>\$50</u>

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3075, 3078, 3151, 3151.1, 3152 and 3152.5, Business and Professions Code.

# BOARD OF OPTOMETRY

## INITIAL STATEMENT OF REASONS

**Hearing Date:** April 15, 2013

**Subject Matter of Proposed Regulations:** Retired License Status Fees

**Section(s) Affected:** Amend section 1524 of Division 15 of Title 16 of the California Code of Regulations (CCR).

### **Introduction:**

On September 17, 2012, Governor Jerry Brown signed Senate Bill 1215 (Emmerson, Chapter 359, Statutes of 2012), creating two retired licenses for the Board of Optometry (hereafter Board), which took effect January 1, 2013. Prior to this enactment, the Board did not have the authority to issue retired licenses. The first retired license is for optometrists who are at retirement age and ready to retire and stop working. The second retired license is for optometrists who are at retirement age, ready to retire, but want to provide their services in a volunteer capacity only. This statute also establishes fee ranges for these retired licenses, and the range for the renewal fee for the retired license with a volunteer designation.

### **Specific Purpose of each adoption, amendment, or repeal:**

1. Problem being addressed:  
This proposed regulation would make specific the application fee for the retired licenses, and the renewal fee for the retired license with volunteer designation statuses. Without an established fee, the Board cannot issue the retired licenses.
2. Anticipated benefits from this regulatory action:  
Establishing fees for these new licenses will permit the Board to implement Senate Bill 1215, and issue the retired license, and retired license with a volunteer designation.

Previously, when licensed optometrists retired from practice, they could either be placed on inactive status or allow their license to expire. By requesting to be placed on inactive status, licensees had to pay a biennial fee of \$425 and were not permitted to practice in California. In addition, they were exempt from complying with continuing education requirements. If optometrists allowed their license to expire, then they paid no fee to the Board, and their license would go into delinquent status and be cancelled after three years.

There were two major complaints among licensees regarding the license status options available to them upon retirement. First, renewing under inactive status requires licensees to pay the renewal fee every two years when they have no intention of ever practicing again. Secondly, if licensees choose to not pay the fees and have their license expire, they are considered delinquent until the license is cancelled after three years. Delinquency implies that the licensee is non-compliant with Board requirements, such as past due fees or not fulfilling the continuing education requirements. It is unacceptable that licensees should be given a delinquent status and have their reputations tarnished when they simply are retired.

Licensed optometrists also requested that the Board create a retired license with volunteer designation. This would permit retired optometrists to provide optometric

services without compensation at health fairs, vision screenings, and public service eye programs. Many charitable organizations need volunteer optometrists on a temporary or permanent basis, and this license status would make it easier for these organizations to obtain these services. Moreover, simplifying the process of obtaining a retired license with volunteer designation will encourage retired optometrists to volunteer, increasing access to care for many underserved communities.

### **Factual Basis/Rationale:**

Section 1524(o) – Adds a \$25 application fee for a retired license.

#### *Factual Basis/Rationale:*

BPC section 3152(q) establishes a fee range for the retired license status that shall not exceed \$25. The Board determined that \$25 is the adequate fee because it will cover the cost of developing the process to issue this license and staff time for subsequent requests. This is a one time fee, since this license does not need to be renewed. The Board also took into consideration the tasks, and length of time to complete each task, associated with issuing this license, and the salary of each staff member processing these requests (See Retired License Status Fees Analysis (02-12-13)).

The intent behind the creation of this license status is so that optometrists who are serious about retiring have the ability to do so permanently. This will give licensees a designation they can be proud of, save them money because they will no longer have to pay \$425 for an active or inactive license biennially, and eliminate the risk of going into a delinquent status.

Section 1524(p) – Adds a \$50 application fee for a retired license with a volunteer designation.

#### *Factual Basis/Rationale:*

BPC section 3152(r) establishes a fee range for the retired license status with a volunteer designation that shall not exceed \$50. The Board determined that \$50 is the adequate fee because it will cover the cost of developing the process to issue this license status and staff time for subsequent requests. The Board also took into consideration the tasks, and length of time to complete each task, associated with issuing this license status, the salary of each staff member processing these requests, and the cost to print a license (See Retired License Status Fees Analysis (02-12-13)). The fee for this license status is \$25 more than the regular retired license status because these optometrists are still permitted to practice. This means that the Board may receive a complaint against a retired volunteer that will require an investigation and maybe even discipline, both costs to the Board. BPC section 3090 authorizes the Board to take action against all persons guilty of violating the optometry practice act or any regulations adopted by the Board, including license holders of retired licenses with a volunteer designation.

Furthermore, retired optometrists volunteering with this license status will still need to have a physical license they can present as proof that they are licensed to practice. The cost to issue such a license is \$25, another cost to the Board. Similar to the retired license, this will give licensees a designation they can be proud of, save them money because they will no longer have to pay \$425 for an active or inactive license biennially, and eliminate the risk of going into a delinquent status. The low fee for this license status may also encourage optometrists at retirement age to volunteer their time more readily. These health professionals have a lifetime of experience that could serve thousands of low-income individuals and families who are uninsured or underinsured and may not receive basic vision care.

Section 1524(q) – Adds a \$50 application fee for the biennial renewal of a retired license with a volunteer designation.

*Factual Basis/Rationale:*

BPC section 3152(s) establishes a fee range for the biennial renewal of a retired license status with a volunteer designation. The Board determined that \$50 is the adequate fee because it will cover the cost of developing the process to re-issue this license status, staff time for subsequent renewals, and the cost to print a license (See Retired License Status Fees Analysis (02-12-13)). Renewal is necessary because optometrists with this license status will still be practicing, thus they need to prove their competence by completing continuing education. Compared to the biennial \$425 renewal fee for an active or inactive license paid by optometrists who considered themselves “retired,” this is a low fee that will allow optometrists to be retired by law and continue to provide their services in a volunteer capacity.

The fee for this license status is \$50, like the initial issuance of a retired volunteer license status, because these optometrists are still permitted to practice. This means that the Board may receive a complaint against retired volunteers that will require an investigation and maybe even discipline, both costs to the Board. BPC section 3090 authorizes the Board to take action against all persons guilty of violating the optometry practice act or any regulations adopted by the Board, including license holders of retired licenses with a volunteer designation. Furthermore, these licensees are subject to continuing education audits, another cost to the Board.

**Underlying Data:**

1. Senate Bill 1215 (Emmerson, Chapter 359, Statutes of 2012)
2. Retired License Status Fees Analysis (02-12-13)

**Business Impact:**

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following:

An optometrist retires because he or she chooses to retire. If the optometrist owns a business, it may either be sold, or closed. If the optometrist works for a business, they will leave that place of employment, and it is the employer’s responsibility to hire a replacement. While a high level of experience and knowledge is lost when an optometrist retires, it is necessary and opens up new opportunities to the incoming workforce and businesses. It is also important to note that prior to SB 1215 and the creation of the retired license status for this profession, optometrists have been considering themselves retired and taking the above steps. The only difference is that in the past, instead of having a retired designation, they were active, inactive or delinquent.

Also, the Board does not anticipate a large number of optometrists suddenly legally retiring because this option is available. An optometrist’s average retirement age is 70 years old. There are currently 781 optometrists at retirement age broken down as follows:

<b>Active</b>	313
<b>Inactive</b>	51
<b>Delinquent &gt; 3 years</b>	286
<b>Delinquent &lt; 3 years</b>	131

The Board estimates that 25% (about 195 optometrists) will choose to retire. The same estimate applies to optometrists that choose to retire with volunteer designation. For both of these license statuses, it is unknown when these licensees will choose to retire, if at all. For those licensees who are in delinquent status that are seeking to retire with either status, there will be additional

delinquency fees that must be paid prior to the issuance of the retired licenses. BPC section 3151 and 3151.1 require that licensees applying for these licenses hold a current and active optometrist license to apply. These fees are calculated on a case-by-case basis and may go up to \$3,000 once all delinquent and outstanding renewal fees have been calculated pursuant to BPC sections 3146 – 3147.7.

Optometrists that own a business will need to ensure that their patient records are either transferred appropriately to the optometrist purchasing the business, destroyed if warranted and in compliance with current law, or stored in a secure location and accessible to their previous patients as required by law.

The only possible alternative which would lessen any significant adverse impact on business (which includes small business) is for an optometrist not to retire.

### **Economic Impact Assessment:**

This regulatory proposal will have the following effects:

- It will create and eliminate jobs within the State of California because: 1) optometrists will be retiring, which means they may be closing a business that would result in their employees losing their jobs. If the optometrist is employed, they will be leaving their place of employment, which will require their employer to fill the position; 2) Retired optometrists open up opportunities for the new workforce and businesses.
- It will create new business and eliminate existing businesses within the State of California because optometrists that retire may close their business, or sell their business. If the business is permanently closed, and the new workforce does not open another business, that results in a loss. If the business remains open and is transferred to another optometrist, or is successfully sold to another industry, some sort of new business will be initiated.
- It may affect the expansion of businesses currently doing business within the State of California due to the possibility of an increase in retired optometrists with volunteer designation. Businesses that are involved in health fairs, vision screenings, and public service eye programs could receive more assistance from these retired optometrists, which could expand their services.
- This regulatory proposal benefits the health and welfare of California residents, specifically, uninsured or under-insured Californians that are currently unable to receive optometric care due to lack of funding and resources. If there is an increase in retired optometrist that volunteer at health fairs, vision screenings, and public service eye programs, these types of services would increase, in turn increasing access to care.
- This regulatory proposal does not affect worker safety because the focus of this regulation is to establish appropriate fees so that optometrists can retire pursuant to BPC section 3151 and 3151.1.
- This regulatory proposal does not affect the state's environment because the focus of this regulation is to establish appropriate fees so that optometrists can retire pursuant to BPC section 3151 and 3151.1.

### **Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7182

**Subject:** **Agenda Item 6 – Discussion and Possible Action on Legislation Affecting the Board of Optometry**

---

**Action Requested:** The following bills, as currently written, affect the Board's functions and the practice of optometry. Staff requests that the Board discuss each bill and determine if they would like to establish a formal position on each bill. The Board can support, oppose or remain neutral towards a bill. Supporting or opposing a bill means that Board staff, on the Board's behalf, will write letters of support or opposition and communicate the Board's concerns or additional recommendations to the author's office to possibly influence the bill's direction. Remaining neutral means that staff will not take any action and the Board can continue to monitor the bill's progress. See 2013 Legislative Calendar (next page).

**Attachments:**

- 1) 2013 Legislative Calendar
- 2) AB 186 Proposed Language
- 3) AB 213 Proposed Language
- 4) Letter from Armed Forces/National Guard related to AB 213
- 5) AB 258 Proposed Language
- 6) AB 480 Proposed Language
- 7) AB 512 Proposed Language
- 8) AB 1003 Proposed Language
- 9) AB 1000 Proposed Language (merged with AB 1003)
- 10) AB 1057 Proposed Language
- 11) SB 305 Proposed Language
- 12) SB 430 Proposed Language
- 13) SB 492 Proposed Language
- 14) SB 492 Bill Analysis
- 15) SB 532 Proposed Language
- 16) SB 723 Proposed Language
- 17) SB 724 Proposed Language
- 18) SB 809 Proposed Language
- 19) SB 809 Bill Analysis



2013 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE

November 20, 2012

DEADLINES

JANUARY						
S	M	T	W	TH	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

FEBRUARY						
S	M	T	W	TH	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

MARCH						
S	M	T	W	TH	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

APRIL						
S	M	T	W	TH	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

MAY						
S	M	T	W	TH	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

- Jan. 1

Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 7

Legislature Reconvenes (J.R. 51(a)(1)).
- Jan. 10

Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 21

Martin Luther King, Jr. Day.
- Jan. 25

Last day to submit **bill requests** to the Office of Legislative Counsel.
- Feb. 18

President’s Day.
- Feb. 22

Last day for **bills to be introduced** (J.R. 61(a)(1)), (J.R. 54(a)).
- Mar. 21

Spring Recess begins at end of this day’s session (J.R. 51(a)(2)).
- Mar. 29

Cesar Chavez Day.
- Apr. 1

Legislature Reconvenes from Spring Recess (J.R. 51(a)(2)).
- May 3

Last day for **policy committees** to hear and report to Fiscal Committees **fiscal bills** introduced in their house (J.R. 61(a)(2)).
- May 10

Last day for **policy committees** to hear and report to the Floor **non-fiscal bills** introduced in their (J.R. 61(a)(3)).
- May 17

Last day for **policy committees** to meet prior to June 3 (J.R. 61(a)(4)).
- May 24

Last day for **fiscal committees** to hear and report to the Floor bills introduced in their house (J.R. 61(a)(5)). Last day for **fiscal committees** to meet prior to June 3 (J.R. 61(a)(6)).
- May 27

Memorial Day.
- May 28-May 31 Floor Session Only.

No committee may meet for any purpose (J.R. 61(a)(7)).
- May 31

Last day for bills to be **passed out of the house of origin** (J.R. 61(a)(8)).

JUNE						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

JULY						
S	M	T	W	TH	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST						
S	M	T	W	TH	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER						
S	M	T	W	TH	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

- Jun. 3

Committee meetings may resume (J.R. 61(a)(9)).
- Jun. 15

Budget must be passed by midnight (Art. IV, Sec. 12(c)(3)).
- Jul. 4

Independence Day.
- Jul. 12

Last day for policy committees to meet and report bills (J.R. 61(a)(10)).  
Summer recess begins at the end of this day’s session, provided the Budget Bill has been passed (J.R. 51(a)(3)).
- Aug. 12

Legislature Reconvenes from Summer Recess (J.R. 51(a)(3)).
- Aug. 30

Last day for Fiscal Committees to meet and report bills to Floor (J.R. 61(a)(11)).
- Sep. 2

Labor Day.
- Sep. 6

Last day to amend bills on the floor (J.R. 61(a)(13)).
- Sep. 3-13

Floor Session Only. No Committees, other than conference committees and Rules committee, may meet for any purpose (J.R. 61(a)(12)).
- Sep. 13

Last day for each house to pass bills (J.R. 61(a)(14)).  
Interim Study Recess begins at the end of this day’s session (J.R. 51(a)(4)).

IMPORTANT DATES OCCURRING DURING INTERIM STUDY RECESS

- 2013

Oct. 13

Last day for Governor to sign or veto bills passed by the Legislature on or before Sep. 13 and in the Governor’s possession after Sep. 13 (Art. IV, Sec.10(b)(1)).
- 2014

Jan. 1

Statutes take effect (Art. IV, Sec. 8(c)).

Jan. 6

Legislature reconvenes (J.R. 51 (a)(4)).

## **A. Assembly Bill 186 (Maienschein)**

**Subject:** Professions and vocations: military spouses: temporary licenses

**Version:** Amended April 22, 2013

**Sponsor:** Author sponsored

### **Existing Law:**

- 1) Requires a board within the Department of Consumer Affairs (DCA) to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being 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 California under official active military orders. (Business and Professions Code (BPC) §115.5)).

### **This Bill:**

- 1) Would require the Board to issue a temporary license to an applicant in the process of obtaining an expedited license pursuant to BPC § 115.5 that holds an optometrist license in another jurisdiction and who supplies satisfactory evidence of being married to, or in a domestic partnership or 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.
- 2) Would require the license to expire 12 months after issuance, upon issuance of the expedited license, or upon denial of the application for expedited licensure by the Board.
- 3) Would allow the Board to conduct an investigation for the purposes of denying or revoking a temporary license, and would authorize a criminal background check as part of the investigation.
- 4) Requires the applicant to submit a written verification from the applicant's original licensing jurisdiction that their license is in good standing and fingerprints for the purposes of conducting a criminal background check.
- 5) Prohibits a temporary license from being issued to any applicant who has committed an act in any jurisdiction that would constitute grounds for denial, suspension or revocation of a license, or has been disciplined by a licensing entity in another jurisdiction, or is the subject of an unresolved complaint or other disciplinary procedure.

### **Comments:**

- 1) **Author's Intent.** According to the author's office, "Current law allows spouses of active duty members, who have been stationed in California from another state, to get an expedited professional license if they have a valid professional license in another state. Still, the wait time for this can be very long, and spouses can't even begin seeking employment [in their professional occupation] until their license has been approved? The unemployment rate among military spouses is estimated to be about 26% - three times the national average. AB 186 would provide military spouses who have a valid professional license in another state, an 12-month temporary license from the [appropriate licensing board under] DCA. This [bill] would allow them to immediately look for employment while taking all the necessary steps to apply [for] and receive a [permanent] license from the state."
- 2) **Federal efforts to facilitate occupational licensure of military spouses.** The U.S. Department of Treasury (Treasury Department) and the U.S. Department of Defense (DOD) issued a joint report in 2012 highlighting the impact of state occupational licensing requirements on the careers of military spouses who frequently move across state lines. Released in February 2012, the report, "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines" revealed that approximately 35% of military spouses work in professions that require

state licensure or certification and that military spouses are ten times more likely to have moved to another state in the last year compared to their civilian counterparts.

### 3) **Additional Considerations from Assembly Bill Analysis (04/29/13)**

Board licensing authority. Licensing boards under DCA operate semi-autonomously and have specified statutory authority to license and regulate their professions. This bill would restrict a board's discretionary authority to issue, deny, suspend, or revoke a license by automatically requiring a temporary license with full practice privileges to be granted to a specific category of individuals - military spouses and domestic partners - that is not currently offered for military members, veterans, or other civilians. This bill may also be difficult for boards to implement if they do not now issue temporary licenses, or have supplemental requirements unique to California.

Consumer protection issues. In addition, this bill may raise consumer protection concerns if military spouses or domestic partners ultimately do not need to meet state licensure standards before practicing in this state. This would create two categories of active licensees who have full practice privileges - those who have met state licensure requirements and those who are military spouses or domestic partners who have not yet met standards. This may result in confusion among consumers, who would expect that any licensed professional has fulfilled state requirements.

Funding for the temporary licenses. This bill does not provide a funding mechanism for the issuance of temporary licenses. The Legislature has historically approved license fees for each board, and without a statute that sets the fee for the temporary license, this would be an unfunded mandate for boards that would have to issue the temporary fee and absorb the costs.

Conflict with boards that offer temporary licenses. Some boards, such as the BRN and the Board for Professional Engineers, Land Surveyors, and Geologists already have a process under existing law to issue temporary licenses to out-of-state applicants that expire within a specified time frame. This bill would conflict with those laws.

Unclear need for this bill. Licensing boards under DCA have been required to expedite the applications of military spouse and domestic partners since January 1, 2013. It is unclear how many military spouses or domestic partners have applied for licensure and have been unable to obtain a license in a timely manner.

Effect on processing times. The goal of this bill is to expedite licensure. However, requiring all boards to issue temporary licenses would increase the total number of licenses that would need to be processed, and could therefore delay the processing time for permanent licensure, which is contrary to the author's intent.

- 4) **Staff Comments.** This bill would require the Board to create a new license status type in its current licensing system or BreEZe. If the Board is operating in the BreEZe system, which is the most likely scenario, the costs to add this temporary license status will start at \$20,000. Costs will also be incurred in the development of applications, the temporary certification that will be issued, a process to issue the license, establishing a fee, developing a tracking mechanism to ensure that temporary licenses are cancelled and destroyed upon issuance of the optometric license, and enforcement considerations in the event of violations.

### 5) **Support and Opposition.**

Support:

- California Architects Board
- California Association for Health Services at Home
- Department of Defense (DOD)
- National Military Family Association
- San Diego Military Advisory Council

Opposition:

- American Association for Marriage and Family Therapy, California Division
- Board for Professional Engineers, Land Surveyors, and Geologists
- California Nurses Association

**6) History.**

**2013**

- Apr. 30 From committee: Do pass and re-refer to Com. on APPR. (Ayes 10. Noes 1.) (April 30). Re-referred to Com. on APPR.
- Apr. 23 Re-referred to Com. on B.,P. & C.P. In committee: Set, first hearing. Hearing canceled at the request of author.
- Apr. 22 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.
- Apr. 2 Re-referred to Com. on B.,P. & C.P.
- Apr. 1 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.
- Feb. 7 Referred to Com. on B.,P. & C.P.
- Jan. 29 From printer. May be heard in committee February 28.
- Jan. 28 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 186**

---

**Introduced by Assembly Member Maienschein**  
**(Principal coauthor: Assembly Member Hagman)**  
**(Coauthors: Assembly Members *Chávez*, *Dahle*, *Donnelly*, *Beth***  
***Gaines*, *Grove*, *Harkey*, *Olsen*, and *Patterson*)**  
**(Coauthors: Senators Fuller and Huff)**

January 28, 2013

---

An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

### LEGISLATIVE COUNSEL'S DIGEST

AB 186, as amended, Maienschein. Professions and vocations: military spouses: temporary licenses.

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 requires that the licensing fees imposed by certain boards within the department be deposited in funds that are continuously appropriated.* Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being 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 California under official active duty military orders.

~~This bill would authorize a board within the department to issue a provisional license to an applicant who qualifies for an expedited license pursuant to the above-described provision. The~~

*This bill would require a board within the department to issue a temporary license to an applicant who qualifies for, and requests, expedited licensure pursuant to the above-described provision if he or she meets specified requirements. The bill would require the temporary license to expire 12 months after issuance, upon issuance of the expedited license, or upon denial of the application for expedited licensure by the board, whichever occurs first. The bill would authorize a board to conduct an investigation of an applicant for purposes of denying or revoking a temporary license, and would authorize a criminal background check as part of that investigation. The bill would require an applicant seeking a temporary license to submit an application to the board that includes a signed affidavit attesting to the fact that he or she meets all of the requirements for the temporary license and that the information submitted in the application is accurate, as specified. The bill would also require the application to include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing.*

*This bill would prohibit a ~~provisional~~ temporary license from being provided to any applicant who has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license at the time the act was ~~committed, or committed~~. The bill would provide that a violation of the above-described provision may be grounds for the denial or revocation of a temporary license. The bill would further prohibit a temporary license from being provided to any applicant who has been disciplined by a licensing entity in another jurisdiction, or is the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction. ~~The bill would require the board to approve a provisional license based on an application that includes an affidavit that the information submitted in the application is accurate and that verification documentation from the other jurisdiction has been requested. The bill would require the provisional license to expire after 18 months or at the issuance of the expedited license. The bill would~~*

*require an applicant, upon request by a board, to furnish a full set of fingerprints for purposes of conducting a criminal background check.*

~~By creating provisional licenses for which a fee may be collected and deposited into a continuously appropriated fund, this bill would make an appropriation.~~

*Because the bill would authorize the expenditure of continuously appropriated funds for a new purpose, the bill would make an appropriation.*

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 115.5 of the Business and Professions  
2 Code is amended to read:

3 115.5. (a) A board within the department shall expedite the  
4 licensure process for an applicant who meets both of the following  
5 requirements:

6 (1) Supplies evidence satisfactory to the board that the applicant  
7 is married to, or in a domestic partnership or other legal union  
8 with, an active duty member of the Armed Forces of the United  
9 States who is assigned to a duty station in this state under official  
10 active duty military orders.

11 (2) Holds a current license in another state, district, or territory  
12 of the United States in the profession or vocation for which he or  
13 she seeks a license from the board.

14 ~~(b) (1) For each applicant who is eligible for an expedited~~  
15 ~~license pursuant to subdivision (a) and meets the requirements in~~  
16 ~~paragraph (2), the board shall provide a provisional license while~~  
17 ~~the board processes the application for licensure. The board shall~~  
18 ~~approve a provisional license based on an application that includes~~  
19 ~~an affidavit that the information submitted in the application is~~  
20 ~~accurate and that verification documentation from the other~~  
21 ~~jurisdiction has been requested. The provisional license shall expire~~  
22 ~~18 months after issuance or upon issuance of the expedited license.~~

23 *(b) (1) A board shall, after appropriate investigation, issue a*  
24 *temporary license to an applicant who is eligible for, and requests,*  
25 *expedited licensure pursuant to subdivision (a) if the applicant*  
26 *meets the requirements described in paragraph (3). The temporary*  
27 *license shall expire 12 months after issuance, upon issuance of*



1 *the expedited license, or upon denial of the application for*  
2 *expedited licensure by the board, whichever occurs first.*

3 *(2) The board may conduct an investigation of an applicant for*  
4 *purposes of denying or revoking a temporary license issued*  
5 *pursuant to this subdivision. This investigation may include a*  
6 *criminal background check.*

7 *(3) (A) An applicant seeking a temporary license issued*  
8 *pursuant to this subdivision shall submit an application to the*  
9 *board which shall include a signed affidavit attesting to the fact*  
10 *that he or she meets all of the requirements for the temporary*  
11 *license and that the information submitted in the application is*  
12 *accurate, to the best of his or her knowledge. The application shall*  
13 *also include written verification from the applicant's original*  
14 *licensing jurisdiction stating that the applicant's license is in good*  
15 *standing in that jurisdiction.*

16 ~~*(2) (A)–*~~

17 *(B) The applicant shall not have committed an act in any*  
18 *jurisdiction that would have constituted grounds for denial,*  
19 *suspension, or revocation of the license under this code at the time*  
20 *the act was committed. A violation of this subparagraph may be*  
21 *grounds for the denial or revocation of a temporary license issued*  
22 *by the board.*

23 ~~*(B)*~~

24 *(C) The applicant shall not have been disciplined by a licensing*  
25 *entity in another jurisdiction and shall not be the subject of an*  
26 *unresolved complaint, review procedure, or disciplinary proceeding*  
27 *conducted by a licensing entity in another jurisdiction.*

28 *(D) The applicant shall, upon request by a board, furnish a full*  
29 *set of fingerprints for purposes of conducting a criminal*  
30 *background check.*

31 *(c) A board may adopt regulations necessary to administer this*  
32 *section.*

## **B. Assembly Bill 213 (Logue)**

**Subject:** Healing arts: licensure and certification requirements: military experience

**Version:** Amended April 18, 2013

**Sponsor:** Author sponsored

### **Existing Law:**

- 1) Requires the rules and regulation of DCA healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board.
- 2) Requires the Department of Public Health (DPH) to license and regulate specified other healing arts professions and vocations.
- 3) In some instances, DCA boards and DPH approve schools offering educational course credit for meeting licensing or certification qualifications and requirements.
- 4) The Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans.
- 5) The Chancellor of the California State University and the Chancellor of the California Community Colleges have specified powers and duties relating to statewide health education programs.

### **This Bill:**

- 1) Would require the State Department of Public Health, upon the presentation of evidence by an applicant for licensure or certification, to accept education, training, and practical experience completed by an applicant in military service toward the qualifications and requirements to receive a license or certificate for specified professions and vocations if that education, training, or experience is equivalent to the standards of the department.
- 2) If a board within DCA or DPH accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, it would be required, not later than January 1, 2015, those schools seeking accreditation or approval to have procedures in place to evaluate an applicant's military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification, as specified.
- 3) With respect to complying with the bill's requirements and obtaining specified funds to support compliance with these provisions, it would be required that the Department of Veterans Affairs, the Chancellor of the California State University, and the Chancellor of the California Community Colleges provide technical assistance to the healing arts boards within the Department of Consumer Affairs, the State Department of Public Health, and to the schools offering, or seeking to offer, educational course credit for meeting licensing qualifications and requirements.
- 4) Clarifies that a board that requires a school to be accredited by a national organization shall not impose requirements on the school that conflict with the standards of the national organization.
- 5) Clarifies that nothing in this section shall interfere with any educational, certification or licensing requirement or standards set by the Board, to practice health care in the state.

### **Comments:**

- 1) **Author's Intent.** In order to honor the service of our nation's returning heroes and address California's healthcare workforce needs, this bill would ensure that veterans with healthcare education, training, and practical experience are expedited into civilian employment as healthcare professionals. This bill would break down barriers facing returning veterans and allow them to

quickly complete the additional coursework necessary for licensure.

- 2) Report to the California State Legislature: Acceptance of Military Experience & Education Toward Licensure.** Because of similarities in training and experience compared to their civilian counterparts, individuals with military training and experience in health care may be well-positioned to meet the state's health care needs upon their separation from service. Both DCA and DPH were required to submit a report to the Legislature in October 2012 detailing how professional licensure programs under their respective jurisdictions address military experience. The results, described below, suggest that while DCA boards generally have sufficient authority to accept military service towards licensure, DPH may not.

The Legislative Analyst's Office "Supplemental Report of the 2012-13 Budget" directed DCA to prepare a report to the Legislature on the implementation of BPC § 35, which requires DCA to credit military experience and education towards licensure. DCA presented its "Report to the California State Legislature: Acceptance of Military Experience & Education Toward Licensure" on October 1, 2012, which provided a list of boards that accept military experience and a description of the statutes and regulations that authorize the acceptance of military experience towards licensure.

DCA reports that the following healing arts programs have some statutes, rules, or regulations for accepting military experience or education from veterans towards licensure:

- a) Board of Pharmacy;
- b) Physical Therapy Board of California;
- c) Board of Registered Nursing;
- d) Respiratory Care Board; and
- e) Board of Vocational Nursing and Psychiatric Technicians.

DCA indicated that the following healing arts programs do not have specific statutes, rules, or regulations for accepting military credit from veterans. Instead, these programs have broad authority and discretion to accept experience or education towards licensure:

- a) Dental Board of California;
- b) Medical Board of California;
- c) California Board of Occupational Therapy;
- d) Osteopathic Medical Board of California;
- e) Physician Assistants Committee;
- f) Psychology Board;
- g) Veterinary Medical Board;
- h) Board of Behavioral Sciences
- i) Dental Hygiene Committee of California;
- j) Board of Optometry;**
- aa) Board of Podiatric Medicine; and,
- bb) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

DCA reports that the following programs do not accept military credit towards licensure and there does not appear to be similar military job classifications available:

- a) Acupuncture Board
- b) Naturopathic Committee

DCA was not asked as part of the report, nor does it currently track, which schools accredited or approved by boards have procedures in place to evaluate and accept military education and experience. DCA also does not track the effectiveness of the current statutes and regulations toward licensing former members of the military.

### **3) Additional Considerations from Assembly Bill Analysis (04/08/13)**

Questions for the committee. The Committee may wish to inquire of the author and sponsor as to what may be considered "satisfactory evidence" of education, training, and practical experience gained while in military service. In considering the criteria, it may be worthwhile to consider accepting, among other evidence, the DD Form 2586, "Verification of Military Experience and Training." This is automatically created from individuals' records from the Army, Navy, Air Force, and Marine Corps and lists military job experience and training history, recommended college credit information, and civilian equivalent job titles. It remains unclear beyond anecdotal evidence to what extent veterans actually experience difficulty translating their military experience to California licensure or certification. It is also unclear whether or not such difficulties are attributable to flaws in the regulatory framework, to a lack of DCA/DPH outreach and education about California's licensing system, or some other cause. The Committee may wish to consider whether it might be useful to request that DCA and DPH actually track the efficacy of their existing programs, and suggest improvements based on actual data. The Committee may also wish to consider whether the six months allotted by this bill gives schools sufficient time to implement the requirements of this bill.

Suggested technical amendments. The author may wish to consider clarifying the reference to "completed by the applicant as a member of the United States Armed Forces?" because that could encompass classes/experience gained in civilian life while the applicant was an active duty serviceperson. For example, the current language would require course credit given to an active duty military member who is not a Clinical Laboratory Scientist in his or her military capacity but who took a class after work, unapproved by DPH, to become a Clinical Laboratory Scientist after his or her separation from the military. To ensure that the experience and education submitted is from military service directly, the phrase "completed as part of the applicant's military service" or similar language may be more accurate.

- 4) Staff Comments:** In California, there is no known experience earned in the military that would exempt an individual from having to attend optometry school or take the accepted national licensure examination. For an individual to be eligible to obtain a license to practice optometry, they must have graduated from an accredited school or college of optometry approved by the Board, and passed the required licensure examination (National Board of Examiners in Optometry Exam) (BPC § 3046). The Board has delegated its accreditation duties to the Accreditation Council on Optometric Education (ACOE) (BPC § 3023 and 3025.2) who accredits all optometry schools nation-wide. The Board would need to contact the California schools and colleges of optometry and ACOE to determine if anything can be done for individuals who are not already optometrists and were involved in health care related assignments in the military. Currently, optometrists are hired by the military to provide optometric services, but are required to have a current and active optometrist license from their respective jurisdiction.

## **5) Support and Opposition.**

### **Support:**

- American Legion-Department of California
- AMVETS - Department of California
- Association of California Healthcare Districts
- California Association of County Veterans Service Officers
- California Association for Health Services at Home
- California State Commanders Veterans Council
- Office of the Deputy Assistant Secretary of Defense, Military
- Community and Family Policy
- VFW Department of California
- Vietnam Veterans of America - California State Council

### **Opposition:**

- California Society of Radiologic Technologists

## 6) History

### 2013

May 1 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 30). Re-referred to Com. on APPR.

Apr. 22 Re-referred to Com. on V.A.

Apr. 18 From committee chair, with author's amendments: Amend, and re-refer to Com. on V.A. Read second time and amended.

Apr. 16 Re-referred to Com. on V.A.

Apr. 15 Read second time and amended.

Apr. 11 From committee: Do pass as amended and re-refer to Com. on V.A. (Ayes 13. Noes 0.) (April 9).

Apr. 2 Re-referred to Com. on B.,P. & C.P.

Apr. 1 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.

Feb. 7 Referred to Coms. on B.,P. & C.P. and V.A.

Feb. 1 From printer. May be heard in committee March 3.

Jan. 31 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 213**

---

**Introduced by Assembly Member Logue  
(Principal coauthor: Assembly Member Pan)  
(Coauthors: Assembly Members Conway, Beth Gaines, Harkey,  
Jones, Morrell, Nestande, and Wilk)**

January 31, 2013

---

An act to add Section 712 to the Business and Professions Code, and to add Section 131136 to the Health and Safety Code, relating to healing arts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 213, as amended, Logue. Healing arts: licensure and certification requirements: military experience.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Existing law requires the rules and regulations of these healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board. Under existing law, specified other healing arts professions and vocations are licensed or certified and regulated by the State Department of Public Health. In some instances, a board with the Department of Consumer Affairs or the State Department of Public

Health approves schools offering educational course credit for meeting licensing or certification qualifications and requirements.

This bill would require the State Department of Public Health, upon the presentation of evidence by an applicant for licensure or certification, to accept education, training, and practical experience completed by an applicant in military service toward the qualifications and requirements to receive a license or certificate for specified professions and vocations if that education, training, or experience is equivalent to the standards of the department. If a board within the Department of Consumer Affairs or the State Department of Public Health accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the bill would, not later than January 1, 2015, require those schools seeking accreditation or approval to have procedures in place to evaluate an applicant's military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification, as specified.

Under existing law, the Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans. Under existing law, the Chancellor of the California State University and the Chancellor of the California Community Colleges have specified powers and duties relating to statewide health education programs.

With respect to complying with the bill's requirements and obtaining specified funds to support compliance with these provisions, this bill would require the Department of Veterans Affairs, the Chancellor of the California State University, and the Chancellor of the California Community Colleges to provide technical assistance to the healing arts boards within the Department of Consumer Affairs, the State Department of Public Health, and to the schools offering, or seeking to offer, educational course credit for meeting licensing qualifications and requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Veterans Health Care Workforce Act of 2013.
- 3 SEC. 2. (a) The Legislature finds and declares all of the
- 4 following:

1 (1) Lack of health care providers continues to be a significant  
2 barrier to access to health care services in medically underserved  
3 urban and rural areas of California.

4 (2) Veterans of the United States Armed Forces and the  
5 California National Guard gain invaluable education, training, and  
6 practical experience through their military service.

7 (3) According to the federal Department of Defense, as of June  
8 2011, one million veterans were unemployed nationally and the  
9 jobless rate for post-9/11 veterans was 13.3 percent, with young  
10 male veterans 18 to 24 years of age experiencing an unemployment  
11 rate of 21.9 percent.

12 (4) According to the federal Department of Defense, during the  
13 2011 federal fiscal year, 8,854 enlisted service members with  
14 medical classifications separated from active duty.

15 (5) According to the federal Department of Defense, during the  
16 2011 federal fiscal year, 16,777 service members who separated  
17 from active duty listed California as their state of residence.

18 (6) It is critical, both to veterans seeking to transition to civilian  
19 health care professions and to patients living in underserved urban  
20 and rural areas of California, that the Legislature ensures that  
21 veteran applicants for licensure by healing arts boards within the  
22 Department of Consumer Affairs or the State Department of Public  
23 Health are expedited through the qualifications and requirements  
24 process.

25 (b) It is the intent of the Legislature to ensure that boards within  
26 the Department of Consumer Affairs and the State Department of  
27 Public Health and schools offering educational course credit for  
28 meeting licensing qualifications and requirements fully and  
29 expeditiously recognize and provide credit for an applicant's  
30 military education, training, and practical experience.

31 SEC. 3. Section 712 is added to the Business and Professions  
32 Code, to read:

33 712. (a) Not later than January 1, 2015, if a board under this  
34 division accredits or otherwise approves schools offering  
35 educational course credit for meeting licensing qualifications and  
36 requirements, the board shall require a school seeking accreditation  
37 or approval to submit to the board proof that the school has  
38 procedures in place to evaluate, upon presentation of satisfactory  
39 evidence by the applicant, the applicant's military education,  
40 training, and practical experience toward the completion of an



1 educational program that would qualify a person to apply for  
2 licensure if the school determines that the education, training, or  
3 practical experience is equivalent to the standards of the board. A  
4 board that requires a school to be accredited by a national  
5 organization shall not impose requirements on the school that  
6 conflict with the standards of the national organization.

7 (b) With respect to ~~complying~~ *compliance* with the requirements  
8 of this section, including the determination of equivalency between  
9 the education, training, or practical experience of an applicant and  
10 the board's standards, and obtaining state, federal, or private funds  
11 to support compliance with this section, the Department of Veterans  
12 Affairs, the Chancellor of the California State University, and the  
13 Chancellor of the California Community Colleges shall provide  
14 technical assistance to the boards under this division and to the  
15 schools under this section.

16 (c) *Nothing in this section shall interfere with an educational,*  
17 *certification, or licensing requirement or standard set by a*  
18 *licensing entity or certification board or other appropriate healing*  
19 *arts regulatory agency or entity, to practice health care in the*  
20 *state.*

21 SEC. 4. Section 131136 is added to the Health and Safety Code,  
22 to read:

23 131136. (a) Notwithstanding any other provision of law, the  
24 department shall, upon the presentation of satisfactory evidence  
25 by an applicant for licensure or certification in one of the  
26 professions described in subdivision (b), accept the education,  
27 training, and practical experience completed by the applicant as a  
28 member of the United States Armed Forces or Military Reserves  
29 of the United States, the national guard of any state, the military  
30 reserves of any state, or the naval militia of any state, toward the  
31 qualifications and requirements for licensure or certification by  
32 the department if the department determines that the education,  
33 training, or practical experience is equivalent to the standards of  
34 the department.

35 (b) The following professions are subject to this section:

36 (1) Medical laboratory technician as described in Section 1260.3  
37 of the Business and Professions Code.

38 (2) Clinical laboratory scientist as described in Section 1261 of  
39 the Business and Professions Code.

1 (3) Radiologic technologist as described in Chapter 6  
2 (commencing with Section 114840) of Part 9 of Division 104.

3 (4) Nuclear medicine technologist as described in Chapter 4  
4 (commencing with Section 107150) of Part 1 of Division 104.

5 (5) Certified nurse assistant as described in Article 9  
6 (commencing with Section 1337) of Chapter 2 of Division 2.

7 (6) Certified home health aide as described in Section 1736.1.

8 (7) Certified hemodialysis technician as described in Section  
9 1247.61 of the Business and Professions Code.

10 (8) Nursing home administrator as described in Section 1416.2.

11 (c) Not later than January 1, 2015, if the department accredits  
12 or otherwise approves schools offering educational course credit  
13 for meeting licensing and certification qualifications and  
14 requirements, the department shall require a school seeking  
15 accreditation or approval to submit to the board proof that the  
16 school has procedures in place to fully accept an applicant's  
17 military education, training, and practical experience toward the  
18 completion of an educational program that would qualify a person  
19 to apply for licensure or certification if the school determines that  
20 the education, training, or practical experience is equivalent to the  
21 standards of the department. If the department requires a school  
22 to be accredited by a national organization, the requirement of the  
23 department shall not, in any way, conflict with standards set by  
24 the national organization.

25 (d) With respect to complying with the requirements of this  
26 section including the determination of equivalency between the  
27 education, training, or practical experience of an applicant and the  
28 department's standards, and obtaining state, federal, or private  
29 funds to support compliance with this section, the Department of  
30 Veterans Affairs, the Chancellor of the California State University,  
31 and the Chancellor of the California Community Colleges shall  
32 provide technical assistance to the department, to the State Public  
33 Health Officer, and to the schools described in this section.

34 (e) *Nothing in this section shall interfere with an educational,*  
35 *certification, or licensing requirement or standard set by a*  
36 *licensing entity or certification board or other appropriate healing*  
37 *arts regulatory agency or entity, to practice health care in*  
38 *California.*

O

-----Original Message-----

From: Martin, William L 1LT MIL US NG CA ARNG [<mailto:william.lee.martin@us.army.mil>]  
Sent: Friday, June 29, 2012 3:11 PM  
To: Maggio, Mona@DCA  
Subject: Optometry question

Ms. Maggio,

I apologize for the delay in getting an answer to you concerning optometry positions in the Armed Forces/National Guard. Please see a response from an optometry officer in the California National Guard below.

Respectfully,  
1st Lt. Will Martin  
Public Affairs Officer  
California Military Department  
& 49th Military Police Brigade  
Sacramento, CA  
Office: (916) 854-3304  
DSN: (312) 466-3304  
BlackBerry: (916) 799-9525

Follow me on Twitter: [twitter.com/#!/WMartin89](https://twitter.com/#!/WMartin89)

Facebook: <http://www.facebook.com/CaGuard>  
YouTube: <http://www.youtube.com/CaNationalGuard>  
Flickr: <http://www.flickr.com/photos/CaGuard>  
Twitter: <http://www.twitter.com/theCaGuard>

\*\*\*\*\*

My understanding is that the military, in all its branches, will commission as health care provider officers ONLY individuals who already possess an unrestricted license to practice in one of the 50 states, for all medical professional, licensed fields, to include optometry (OD) as well as MD, DO, DPM, DDS, PA and RN, and others like dietician, physical therapist, etc.

There is no formal or on-the-job-training (OJT) program that I am aware of that would prepare a non-licensed military member, enlisted or officer, to directly qualify for licensure by any state in optometry or any other of these fields. I believe the requirement for licensure for all states first states that the person must have graduated from an accredited college or school of optometry. The training provided to enlisted Air Force optometry/ophthalmology technicians might possibly be accepted by a school of optometry in lieu of specific courses in the curriculum. I don't know of any other way that training provided to an optometry or ophthalmology technician would meet any of the requirements of the state for licensure as an optometrist, without the person also attending an accredited school of optometry.

The various certification programs for opticians and ophthalmic assistants and technicians might have requirements that might be met by the military's formal training and OJT for the optometric/ophthalmic technician. Requirements to become certified or registered would vary by the state and/or supervising body. From my experience, optometry/ophthalmology techs have used their Air Force experience and training to meet some of these requirements.

For a medical technician, the formal schools and on the job training can qualify the individual to meet some or all of the the LVN (Licensed Vocational Nurse) prerequisites and allow the individual to opt out of at least some further civilian training/experience. The same might be true for CNA (certified nurse assistant) certification. I am not fully aware of the requirements for each program and state.

Similar to optometry, I have never heard of a person testing directly out of the State of California's RN educational requirements. A military enlisted member can enroll in an accredited school that may accept military formal training and OJT for some of their classroom curriculum requirements. Travis AFB has an on-base, civilian-run RN education program that was designed to accomodate enlisted medical technician LVN's who wished to become Associate degree RN's, and then to take that AS-degree RN to a BS-degree RN. Perhaps Travis AFB/David Grant MC's Training Office would have more specific info on this program (I think it's Pacific Union College). This might be one way that the BRN gets involved with military experience and training evaluation.

I hope this provides some direction to Ms Maggio in investigating this further.

Lori E. Marion, Col, CSMR  
Executive Officer, Medical Directorate  
Optometrist

## **C. Assembly Bill 258 (Chávez)**

**Subject:** State Agencies: Veterans

**Version:** Amended April 23, 2013

**Sponsor:** Author sponsored

### **Existing Law:**

- 1) Provides for the governance and regulation of state agencies, as defined.
- 2) Provides certain benefits and protections for members of the Armed Forces of the United States.

### **This Bill:**

- 1) Requires, on or after July 1, 2014, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in the following manner: "Have you ever served in the United States military?"

### **Comments:**

- 1) **Author's Intent.** In 2011, the most recent data available from the United States Department of Veterans Affairs (USDVA), California veterans received an average compensation and pension amount of \$1,929. This was less than the national average of \$2,104 dollars. Increasing the participation rate for California veterans would benefit the veterans and the economy of the State.

According to the author when residents are asked if they are a veteran many will incorrectly answer in the negative. Currently California residents are simply asked, "Are you a veteran?" Although a very simple question, many veterans believe they are not true veterans because they have never served in combat or, most commonly, because they are women. In 2011 the California Research Bureau conducted a survey on women, 63 of the 843 respondents (7.4%), marked that they were not a veteran then included comments such as, "I served in the Air Force," additionally the women stated "I thought veteran benefits were only for men."

Furthermore, when the CRB held the ICV (Interagency Council on Veterans) meetings in December 2011, and Jan. and Feb. 2012 both women in the services repeatedly stated that the, "Are you a veteran?" question was insufficient for identifying female veterans and men who had not served in combat.

Veterans who do not identify themselves can lose out on many Federal Benefits for which they are entitled. Such benefits include the GI Bill, disability compensation and pension, access to free or reduced cost medical care, vocational rehab, unemployment benefits, veteran home loans, burial benefits, and survivor benefits.

The bill seeks a small change which will increase veterans' participation in benefits and services they have earned, aiding them and the economy. Further, it provides a reasonable phase-in period to allow time for changes in digital and printed materials without waste or creating a crisis. Finally, for all veterans, but with particular respect to female veterans, as stated by the author:

"It is a shame that many of our female veterans do not believe they are entitled to the same benefits as their male counterparts. AB 258 is a small change that will positively impact our female veterans and ensure they have access to the benefits they deserve."

- 2) **Staff Comments.** Adding this question to the Board's forms will not be a significant workload or cost.

### **3) Support/Opposition.**

Support:

- American Association of University Women- California
- American Federation of State, County and Municipal Employees,
- AFL-CIO

Opposition:

- None on file.

#### **4) History.**

##### **2013**

Apr. 29 In Senate. Read first time. To Com. on RLS. for assignment.  
 Apr. 29 Read third time. Passed. Ordered to the Senate.  
 Apr. 25 From consent calendar. Ordered to third reading.  
 Apr. 24 Read second time. Ordered to consent calendar.  
 Apr. 23 Read second time and amended. Ordered to second reading.  
 Apr. 22 From committee: Do pass as amended. To consent calendar. (Ayes 17.  
 Noes 0.) (April 17).  
 Apr. 4 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9.  
 Noes 0.) (April 2). Re-referred to Com. on APPR.  
 Mar. 11 Referred to Com. on V.A.  
 Feb. 8 From printer. May be heard in committee March 10.  
 Feb. 7 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 23, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 258**

---

**Introduced by Assembly Member Chávez**

February 7, 2013

---

An act to add Section 11019.11 to the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL’S DIGEST

AB 258, as amended, Chávez. State agencies: veterans.

Existing law provides for the governance and regulation of state agencies, as defined. Existing law provides certain benefits and protections for members of the Armed Forces of the United States.

This bill would require, *on or after July 1, 2014*, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11019.11 is added to the Government  
2     Code, to read:  
3     11019.11. (a) Every state agency that requests on any written  
4     form or written publication, or through its Internet Web site,  
5     whether a person is a veteran, shall request that information only  
6     in the following format: “Have you ever served in the *United States*  
7     military?”

- 1 (b) This section shall apply only to a written form or written
- 2 publication that is newly printed on or after ~~January~~ *July* 1, 2014.



## **D. Assembly Bill 480 (Calderon)**

**Subject:** Service Contracts

**Version:** Amended March 21, 2013

**Sponsor:** New Asurion

### **Existing Law:**

- 1) Electronic and Appliance Repair Dealer Registration Law, regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances, and makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- 2) A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefore subject to specified criminal penalties.

### **This Bill:**

- 1) Includes in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement or repair of optical products thereby making administrators and sellers of those contracts subject to registration with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (BEARHFTI) and other requirements of the act.
- 2) Defines optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.

### **Comments:**

- 1) **Author's Intent.** "Optical products are not included in the definition of service contracts, so the BEARHFTI does not have the ability to authorize the sale of service contracts covering optical products. Optical service contracts have become a popular product in virtually every state with one in three customers opting to purchase coverage. This national trend underscores the need for the inclusion of optical products within the definition of service contracts so that a wider range of products commonly purchased by consumers may be protected against damage or loss."
- 2) **Staff Comments.** This bill is in the Assembly Appropriations suspense file. The suspense file is a holding place for bills which carry appropriations over \$50,000 or more. This bill would add approximately 7,600 or more additional licensees, which would add \$200,000 per year of ongoing costs to the BEARHFTI Fund, which would be fully offset by fees.

There are many possible ways for a bill to get out of suspense. One such way is for a majority of the committee to vote to move the bill forward, and another way is to amend the bill to lower its appropriations below \$50,000. At this time, it is unknown if that will take place for this bill. Last year, a similar bill, AB 1926 (Solorio), was also held in the Senate Appropriations Committee suspense file and died there.

### **3) Support/Opposition.**

Support:

- New Asurion

Opposition:

- None on file.

### **4) History.**

**2013**

Apr. 17 In committee: Set, first hearing. Referred to APPR. Suspense file.  
Apr. 2 From committee: Do pass and re-refer to Com. on APPR. (Ayes 13.  
Noes 0.) (April 2). Re-referred to Com. on APPR.  
Apr. 1 Re-referred to Com. on B.,P. & C.P.  
Mar. 21 From committee chair, with author's amendments: Amend, and re-refer  
to Com. on B.,P. & C.P. Read second time and amended.  
Feb. 28 Referred to Com. on B.,P. & C.P.  
Feb. 20 From printer. May be heard in committee March 22.  
Feb. 19 Read first time. To print.

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 480**

---

**Introduced by Assembly Member Ian Calderon**

February 19, 2013

---

An act to amend Section 9855 of the Business and Professions Code, relating to service contracts.

LEGISLATIVE COUNSEL’S DIGEST

AB 480, as amended, Ian Calderon. Service contracts.

Existing law, the Electronic and Appliance Repair Dealer Registration Law, regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances, and makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefore subject to specified criminal penalties.

This bill would include in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the bureau and other requirements of the act. By expanding the definition of service contract, the bill would expand the scope of a crime and, thus, would impose a state-mandated local program. *The bill would also define optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.*

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9855 of the Business and Professions  
2 Code is amended to read:

3 9855. The definitions used in this section shall govern the  
4 construction and terms as used in this chapter:

5 (a) "Service contract" means a contract in writing to perform,  
6 over a fixed period of time or for a specified duration, services  
7 relating to the maintenance, replacement, or repair of an electronic  
8 set or appliance, as defined by this chapter, and their accessories  
9 or of furniture, jewelry, lawn and garden equipment, power tools,  
10 fitness equipment, telephone equipment, small kitchen appliances  
11 and tools, optical products, or home health care products, and may  
12 include provisions for incidental payment of indemnity under  
13 limited circumstances, including, but not limited to, power surges,  
14 food spoilage, or accidental damage from handling. "Service  
15 contract" does not include a contract in writing to maintain  
16 structural wiring associated with the delivery of cable, telephone,  
17 or other broadband communications services.

18 (b) "Service contract administrator" or "administrator" means  
19 a person who performs or arranges the collection, maintenance,  
20 or disbursement of moneys to compensate any party for claims or  
21 repairs pursuant to a service contract, and who also performs or  
22 arranges any of the following activities on behalf of service contract  
23 sellers:

24 (1) Providing service contract sellers with service contract forms.

25 (2) Participating in the adjustment of claims arising from service  
26 contracts.

27 (3) Arranging on behalf of service contract sellers the insurance  
28 required by Section 9855.2.

29 A service contract administrator shall not be an obligor on a  
30 service contract unless all service contracts under which the service

1 contract administrator is obligated to perform are insured under a  
2 service contract reimbursement insurance policy.

3 (c) (1) “Service contract seller” or “seller” means a person who  
4 sells or offers to sell a service contract to a service contractholder,  
5 including a person who is the obligor under a service contract sold  
6 by the seller, manufacturer, or repairer of the product covered by  
7 the service contract.

8 (2) “Service contract seller” or “seller” also means a third party,  
9 including an obligor, who is not the seller, manufacturer, or repairer  
10 of the product. However, a third party shall not be an obligor on  
11 a service contract unless the obligor obtains a service contract  
12 reimbursement insurance policy for all service contracts under  
13 which the third party is obligated under the terms of a service  
14 contract.

15 (3) “Service contract seller” or “seller” shall not include the  
16 following:

17 (A) A bank or bank holding company, or the subsidiary or  
18 affiliate of either, or a financial institution, licensed under state or  
19 federal law, selling or offering to sell a service contract unless that  
20 entity is financially and legally obligated under the terms of a  
21 service contract.

22 (B) An electrical device manufacturer or electrical contractor  
23 who constructs, installs, or services electrical devices, which  
24 include any unit of an electrical system intended to carry electrical  
25 energy as part of a building’s electrical system, including raceways,  
26 conductors, invertors, conduit, wires, switches, or other similar  
27 devices.

28 (d) “Service contractholder” means a person who purchases or  
29 receives a service contract from a service contract seller.

30 (e) “Service contractor” means a service contract administrator  
31 or a service contract seller.

32 (f) “Service contract reimbursement insurance policy” means  
33 a policy of insurance issued by an insurer admitted to do business  
34 in this state providing coverage for all obligations and liabilities  
35 incurred by a service contract seller under the terms of the service  
36 contracts sold in this state by the service contract seller to a service  
37 contractholder. The service contract reimbursement insurance  
38 policy shall either cover all service contracts sold or specifically  
39 cover those contracts sold to residents of the State of California.

1 (g) “Obligor” is the entity financially and legally obligated under  
2 the terms of a service contract.

3 (h) “*Optical products*” means *prescription and nonprescription*  
4 *eyewear. “Optical products” shall not include contact lenses of*  
5 *any kind.*

6 ~~(h)~~

7 (i) The terms “consumer goods,” “manufacturer,” “retail seller,”  
8 “retailer,” and “sale” shall have the same meanings ascribed to  
9 them in Section 1791 of the Civil Code.

10 SEC. 2. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

## **E. Assembly Bill 512 (Rendon)**

**Subject:** Healing arts: Licensure exemption

**Version:** Introduced February 20, 2013

**Sponsor:** County of Los Angeles

### **Existing Law:**

- 1) Provides an exemption from licensure requirements for a health care practitioner licensed in another state that offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.
- 2) Provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified.
- 3) Requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

### **This Bill:**

- 1) Deletes the January 1, 2014, date of repeal, and instead allows the exemption to operate until January 1, 2018.

### **Comments:**

- 1) **Author's Intent.** "Healing arts boards were required to promulgate regulations before out-of-state practitioners were allowed to volunteer and the boards can also deny permission to the health care provider from volunteering for failure to comply with California's stringent practicing requirements. The Medical Board of California promulgated the regulations in August 2012. The regulations, however, were not done in time to allow out-of-state practitioners to volunteer at the CareNow Health Even in Los Angeles last fall. The statute that provided for these regulations now is set to expire. This program needs more time to demonstrate its success.

#### **2) Comments in Support/Opposition.**

##### **Support:**

The County of Los Angeles states, "There are more than two million uninsured persons in Los Angeles County. Even with the beginning of health care reform implementation in January 2014, there will still remain a residually uninsured population who will continue to benefit from the health sponsored events, such as the Care Harbor Health Events in Los Angeles. An extension date of AB 2699 will continue to provide access to needed health care and dental services to uninsured and underinsured persons."

##### **Opposition:**

The California Nurses Association states, "The scope of services provided at the free events targeted by the law is broad, and may include several invasive procedures. Un- and underinsured patients deserve to have the protection of state enforcement when undergoing any procedures. It is simply unfair to burden un- and underinsured patients with the costs and challenges of suing a practitioner who lives in another state. These patients should have the same rights as everyone else to seek help from the appropriate state regulatory board if they have been harmed or injured by

a healing arts practitioner, or if they believe that the practitioner has otherwise not practiced in accordance with our state laws."

**3) Staff Comments.** The Board has implemented the regulations and they became effective April 15, 2013.

**4) Support/Opposition.**

Support:

- Los Angeles County
- Association of Healthcare Districts

Opposition:

- California Nurses Association
- American Nurses Association of California

**5) History.**

**2013**

Apr. 25 In Senate. Read first time. To Com. on RLS. for assignment.  
Apr. 25 Read third time. Passed. Ordered to the Senate. (Ayes 74. Noes 0. Page 1111.)  
Apr. 18 Read second time. Ordered to third reading.  
Apr. 17 From committee: Do pass. (Ayes 16. Noes 0.) (April 17).  
Apr. 9 From committee: Do pass and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (April 9). Re-referred to Com. on APPR.  
Mar. 4 Referred to Com. on B.,P. & C.P.  
Feb. 21 From printer. May be heard in committee March 23.  
Feb. 20 Read first time. To print.



**ASSEMBLY BILL**

**No. 512**

---

**Introduced by Assembly Member Rendon**

February 20, 2013

---

An act to amend Section 901 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 512, as introduced, Rendon. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

Existing law provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. Existing law also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing

board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

This bill would delete the January 1, 2014, date of repeal, and instead allow the exemption to operate until January 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 901 of the Business and Professions Code  
2 is amended to read:

3 901. (a) For purposes of this section, the following provisions  
4 apply:

5 (1) “Board” means the applicable healing arts board, under this  
6 division or an initiative act referred to in this division, responsible  
7 for the licensure or regulation in this state of the respective health  
8 care practitioners.

9 (2) “Health care practitioner” means any person who engages  
10 in acts that are subject to licensure or regulation under this division  
11 or under any initiative act referred to in this division.

12 (3) “Sponsored event” means an event, not to exceed 10 calendar  
13 days, administered by either a sponsoring entity or a local  
14 government, or both, through which health care is provided to the  
15 public without compensation to the health care practitioner.

16 (4) “Sponsoring entity” means a nonprofit organization  
17 organized pursuant to Section 501(c)(3) of the Internal Revenue  
18 Code or a community-based organization.

19 (5) “Uninsured or underinsured person” means a person who  
20 does not have health care coverage, including private coverage or  
21 coverage through a program funded in whole or in part by a  
22 governmental entity, or a person who has health care coverage,  
23 but the coverage is not adequate to obtain those health care services  
24 offered by the health care practitioner under this section.

25 (b) A health care practitioner licensed or certified in good  
26 standing in another state, district, or territory of the United States  
27 who offers or provides health care services for which he or she is  
28 licensed or certified is exempt from the requirement for licensure  
29 if all of the following requirements are met:

30 (1) Prior to providing those services, he or she does all of the  
31 following:

1 (A) Obtains authorization from the board to participate in the  
2 sponsored event after submitting to the board a copy of his or her  
3 valid license or certificate from each state in which he or she holds  
4 licensure or certification and a photographic identification issued  
5 by one of the states in which he or she holds licensure or  
6 certification. The board shall notify the sponsoring entity, within  
7 20 calendar days of receiving a request for authorization, whether  
8 that request is approved or denied, provided that, if the board  
9 receives a request for authorization less than 20 days prior to the  
10 date of the sponsored event, the board shall make reasonable efforts  
11 to notify the sponsoring entity whether that request is approved or  
12 denied prior to the date of that sponsored event.

13 (B) Satisfies the following requirements:

14 (i) The health care practitioner has not committed any act or  
15 been convicted of a crime constituting grounds for denial of  
16 licensure or registration under Section 480 and is in good standing  
17 in each state in which he or she holds licensure or certification.

18 (ii) The health care practitioner has the appropriate education  
19 and experience to participate in a sponsored event, as determined  
20 by the board.

21 (iii) The health care practitioner shall agree to comply with all  
22 applicable practice requirements set forth in this division and the  
23 regulations adopted pursuant to this division.

24 (C) Submits to the board, on a form prescribed by the board, a  
25 request for authorization to practice without a license, and pays a  
26 fee, in an amount determined by the board by regulation, which  
27 shall be available, upon appropriation, to cover the cost of  
28 developing the authorization process and processing the request.

29 (2) The services are provided under all of the following  
30 circumstances:

31 (A) To uninsured or underinsured persons.

32 (B) On a short-term voluntary basis, not to exceed a  
33 10-calendar-day period per sponsored event.

34 (C) In association with a sponsoring entity that complies with  
35 subdivision (d).

36 (D) Without charge to the recipient or to a third party on behalf  
37 of the recipient.

38 (c) The board may deny a health care practitioner authorization  
39 to practice without a license if the health care practitioner fails to

1 comply with this section or for any act that would be grounds for  
2 denial of an application for licensure.

3 (d) A sponsoring entity seeking to provide, or arrange for the  
4 provision of, health care services under this section shall do both  
5 of the following:

6 (1) Register with each applicable board under this division for  
7 which an out-of-state health care practitioner is participating in  
8 the sponsored event by completing a registration form that shall  
9 include all of the following:

10 (A) The name of the sponsoring entity.

11 (B) The name of the principal individual or individuals who are  
12 the officers or organizational officials responsible for the operation  
13 of the sponsoring entity.

14 (C) The address, including street, city, ZIP Code, and county,  
15 of the sponsoring entity's principal office and each individual listed  
16 pursuant to subparagraph (B).

17 (D) The telephone number for the principal office of the  
18 sponsoring entity and each individual listed pursuant to  
19 subparagraph (B).

20 (E) Any additional information required by the board.

21 (2) Provide the information listed in paragraph (1) to the county  
22 health department of the county in which the health care services  
23 will be provided, along with any additional information that may  
24 be required by that department.

25 (e) The sponsoring entity shall notify the board and the county  
26 health department described in paragraph (2) of subdivision (d) in  
27 writing of any change to the information required under subdivision  
28 (d) within 30 calendar days of the change.

29 (f) Within 15 calendar days of the provision of health care  
30 services pursuant to this section, the sponsoring entity shall file a  
31 report with the board and the county health department of the  
32 county in which the health care services were provided. This report  
33 shall contain the date, place, type, and general description of the  
34 care provided, along with a listing of the health care practitioners  
35 who participated in providing that care.

36 (g) The sponsoring entity shall maintain a list of health care  
37 practitioners associated with the provision of health care services  
38 under this section. The sponsoring entity shall maintain a copy of  
39 each health care practitioner's current license or certification and  
40 shall require each health care practitioner to attest in writing that

1 his or her license or certificate is not suspended or revoked pursuant  
2 to disciplinary proceedings in any jurisdiction. The sponsoring  
3 entity shall maintain these records for a period of at least five years  
4 following the provision of health care services under this section  
5 and shall, upon request, furnish those records to the board or any  
6 county health department.

7 (h) A contract of liability insurance issued, amended, or renewed  
8 in this state on or after January 1, 2011, shall not exclude coverage  
9 of a health care practitioner or a sponsoring entity that provides,  
10 or arranges for the provision of, health care services under this  
11 section, provided that the practitioner or entity complies with this  
12 section.

13 (i) Subdivision (b) shall not be construed to authorize a health  
14 care practitioner to render care outside the scope of practice  
15 authorized by his or her license or certificate or this division.

16 (j) (1) The board may terminate authorization for a health care  
17 practitioner to provide health care services pursuant to this section  
18 for failure to comply with this section, any applicable practice  
19 requirement set forth in this division, any regulations adopted  
20 pursuant to this division, or for any act that would be grounds for  
21 discipline if done by a licensee of that board.

22 (2) The board shall provide both the sponsoring entity and the  
23 health care practitioner with a written notice of termination  
24 including the basis for that termination. The health care practitioner  
25 may, within 30 days after the date of the receipt of notice of  
26 termination, file a written appeal to the board. The appeal shall  
27 include any documentation the health care practitioner wishes to  
28 present to the board.

29 (3) A health care practitioner whose authorization to provide  
30 health care services pursuant to this section has been terminated  
31 shall not provide health care services pursuant to this section unless  
32 and until a subsequent request for authorization has been approved  
33 by the board. A health care practitioner who provides health care  
34 services in violation of this paragraph shall be deemed to be  
35 practicing health care in violation of the applicable provisions of  
36 this division, and be subject to any applicable administrative, civil,  
37 or criminal fines, penalties, and other sanctions provided in this  
38 division.

39 (k) The provisions of this section are severable. If any provision  
40 of this section or its application is held invalid, that invalidity shall

1 not affect other provisions or applications that can be given effect  
2 without the invalid provision or application.  
3 (l) This section shall remain in effect only until January 1, ~~2014~~,  
4 2018, and as of that date is repealed, unless a later enacted statute,  
5 that is enacted before January 1, ~~2014~~, 2018, deletes or extends  
6 that date.

O

## **F. Assembly Bill 1003 (Maienschein)**

**Subject:** Professional corporations: healing arts practitioners.

**Version:** Amended April 1, 2013

**Sponsor:** Author sponsored

### **Existing Law:**

- 1) The Moscone-Knox Professional Corporation Act provides for the organization of a corporation under certain existing law for the purposes of qualifying as a professional corporation under that act and rendering professional services.
- 2) The act defines a professional corporation as a corporation organized under the General Corporation Law or pursuant to specified law that is engaged in rendering professional services in a single profession, except as otherwise authorized in the act, pursuant to a certificate of registration issued by the governmental agency regulating the profession and that in its practice or business designates itself as a professional or other corporation as may be required by statute.
- 3) The act authorizes specified listed types of healing arts practitioners to be shareholders, officers, directors, or professional employees of a designated professional corporation, subject to certain limitations relating to ownership of shares.

### **This Bill:**

- 1) Specifies that those provisions do not limit the employment by a professional corporation to only those specified licensed professionals.
- 2) Would authorize any person duly licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to be employed to render professional services by a professional corporation.

### **Comments:**

**1) Author's Intent.** N/A

**2) Staff Comments.** This bill has been merged with AB 1000. Even after the merge, the bill expands who may be employed by a professional corporation that provides health services. Originally, only specific health practitioners could be employed, but this bill would allow anyone licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act. Other professions licensed under the Business and Professions Code include Accountants, Barbers and Cosmetologists, Security Guards, Contractors, and Architects, to name a few. It should be considered if all these professional services should be permitted to be owned by all kinds of professionals and under the same professional corporation.

**3) Support/Opposition.** N/A

**4) History.**

#### **2013**

Apr. 30 In committee: Set, second hearing. Hearing canceled at the request of author.  
Apr. 23 In committee: Set, first hearing. Hearing canceled at the request of author.  
Apr. 2 Re-referred to Com. on B.,P. & C.P.  
Apr. 1 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.  
Mar. 7 Referred to Com. on B.,P. & C.P.  
Feb. 25 Read first time.  
Feb. 24 From printer. May be heard in committee March 26.  
Feb. 22 Introduced. To print.

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1003**

---

**Introduced by Assembly Member Maienschein**

February 22, 2013

---

An act to amend 13401.5 of the Corporations Code, relating to professional corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1003, as amended, Maienschein. Professional corporations: healing arts practitioners.

The Moscone-Knox Professional Corporation Act provides for the organization of a corporation under certain existing law for the purposes of qualifying as a professional corporation under that act and rendering professional services. The act defines a professional corporation as a corporation organized under the General Corporation Law or pursuant to specified law that is engaged in rendering professional services in a single profession, except as otherwise authorized in the act, pursuant to a certificate of registration issued by the governmental agency regulating the profession and that in its practice or business designates itself as a professional or other corporation as may be required by statute. The act authorizes specified listed types of healing arts practitioners to be shareholders, officers, directors, or professional employees of a designated professional corporation, subject to certain limitations relating to ownership of shares.

~~This bill would delete professional employees from that authorization, and, instead, would provide that those provisions do not limit the employment of persons duly licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render professional~~



~~services, by a designated professional corporation, to the listed licensed professionals specified in the provisions~~ *specify that those provisions do not limit the employment by a professional corporation to only those specified licensed professionals. The bill would authorize any person duly licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to be employed to render professional services by a professional corporation.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 13401.5 of the Corporations Code is  
2     amended to read:  
3     13401.5. Notwithstanding subdivision (d) of Section 13401  
4     and any other provision of law, the following licensed persons  
5     may be shareholders, officers, directors, or professional employees  
6     of the professional corporations designated in this section so long  
7     as the sum of all shares owned by those licensed persons does not  
8     exceed 49 percent of the total number of shares of the professional  
9     corporation so designated herein, and so long as the number of  
10    those licensed persons owning shares in the professional  
11    corporation so designated herein does not exceed the number of  
12    persons licensed by the governmental agency regulating the  
13    designated professional corporation. *This section does not limit*  
14    *the employment by a professional corporation designated in this*  
15    *section to only those licensed professionals listed under each*  
16    *subdivision. Any person duly licensed under the Business and*  
17    *Professions Code, the Chiropractic Act, or the Osteopathic Act*  
18    *may be employed to render professional services by a professional*  
19    *corporation designated in this section.*  
20    (a) Medical corporation.  
21    (1) Licensed doctors of podiatric medicine.  
22    (2) Licensed psychologists.  
23    (3) Registered nurses.  
24    (4) Licensed optometrists.  
25    (5) Licensed marriage and family therapists.  
26    (6) Licensed clinical social workers.  
27    (7) Licensed physician assistants.  
28    (8) Licensed chiropractors.

- 1 (9) Licensed acupuncturists.
- 2 (10) Naturopathic doctors.
- 3 (11) Licensed professional clinical counselors.
- 4 (b) Podiatric medical corporation.
- 5 (1) Licensed physicians and surgeons.
- 6 (2) Licensed psychologists.
- 7 (3) Registered nurses.
- 8 (4) Licensed optometrists.
- 9 (5) Licensed chiropractors.
- 10 (6) Licensed acupuncturists.
- 11 (7) Naturopathic doctors.
- 12 (c) Psychological corporation.
- 13 (1) Licensed physicians and surgeons.
- 14 (2) Licensed doctors of podiatric medicine.
- 15 (3) Registered nurses.
- 16 (4) Licensed optometrists.
- 17 (5) Licensed marriage and family therapists.
- 18 (6) Licensed clinical social workers.
- 19 (7) Licensed chiropractors.
- 20 (8) Licensed acupuncturists.
- 21 (9) Naturopathic doctors.
- 22 (10) Licensed professional clinical counselors.
- 23 (d) Speech-language pathology corporation.
- 24 (1) Licensed audiologists.
- 25 (e) Audiology corporation.
- 26 (1) Licensed speech-language pathologists.
- 27 (f) Nursing corporation.
- 28 (1) Licensed physicians and surgeons.
- 29 (2) Licensed doctors of podiatric medicine.
- 30 (3) Licensed psychologists.
- 31 (4) Licensed optometrists.
- 32 (5) Licensed marriage and family therapists.
- 33 (6) Licensed clinical social workers.
- 34 (7) Licensed physician assistants.
- 35 (8) Licensed chiropractors.
- 36 (9) Licensed acupuncturists.
- 37 (10) Naturopathic doctors.
- 38 (11) Licensed professional clinical counselors.
- 39 (g) Marriage and family therapist corporation.
- 40 (1) Licensed physicians and surgeons.

- 1 (2) Licensed psychologists.
- 2 (3) Licensed clinical social workers.
- 3 (4) Registered nurses.
- 4 (5) Licensed chiropractors.
- 5 (6) Licensed acupuncturists.
- 6 (7) Naturopathic doctors.
- 7 (8) Licensed professional clinical counselors.
- 8 (h) Licensed clinical social worker corporation.
- 9 (1) Licensed physicians and surgeons.
- 10 (2) Licensed psychologists.
- 11 (3) Licensed marriage and family therapists.
- 12 (4) Registered nurses.
- 13 (5) Licensed chiropractors.
- 14 (6) Licensed acupuncturists.
- 15 (7) Naturopathic doctors.
- 16 (8) Licensed professional clinical counselors.
- 17 (i) Physician assistants corporation.
- 18 (1) Licensed physicians and surgeons.
- 19 (2) Registered nurses.
- 20 (3) Licensed acupuncturists.
- 21 (4) Naturopathic doctors.
- 22 (j) Optometric corporation.
- 23 (1) Licensed physicians and surgeons.
- 24 (2) Licensed doctors of podiatric medicine.
- 25 (3) Licensed psychologists.
- 26 (4) Registered nurses.
- 27 (5) Licensed chiropractors.
- 28 (6) Licensed acupuncturists.
- 29 (7) Naturopathic doctors.
- 30 (k) Chiropractic corporation.
- 31 (1) Licensed physicians and surgeons.
- 32 (2) Licensed doctors of podiatric medicine.
- 33 (3) Licensed psychologists.
- 34 (4) Registered nurses.
- 35 (5) Licensed optometrists.
- 36 (6) Licensed marriage and family therapists.
- 37 (7) Licensed clinical social workers.
- 38 (8) Licensed acupuncturists.
- 39 (9) Naturopathic doctors.
- 40 (10) Licensed professional clinical counselors.

- 1 (l) Acupuncture corporation.
- 2 (1) Licensed physicians and surgeons.
- 3 (2) Licensed doctors of podiatric medicine.
- 4 (3) Licensed psychologists.
- 5 (4) Registered nurses.
- 6 (5) Licensed optometrists.
- 7 (6) Licensed marriage and family therapists.
- 8 (7) Licensed clinical social workers.
- 9 (8) Licensed physician assistants.
- 10 (9) Licensed chiropractors.
- 11 (10) Naturopathic doctors.
- 12 (11) Licensed professional clinical counselors.
- 13 (m) Naturopathic doctor corporation.
- 14 (1) Licensed physicians and surgeons.
- 15 (2) Licensed psychologists.
- 16 (3) Registered nurses.
- 17 (4) Licensed physician assistants.
- 18 (5) Licensed chiropractors.
- 19 (6) Licensed acupuncturists.
- 20 (7) Licensed physical therapists.
- 21 (8) Licensed doctors of podiatric medicine.
- 22 (9) Licensed marriage and family therapists.
- 23 (10) Licensed clinical social workers.
- 24 (11) Licensed optometrists.
- 25 (12) Licensed professional clinical counselors.
- 26 (n) Dental corporation.
- 27 (1) Licensed physicians and surgeons.
- 28 (2) Dental assistants.
- 29 (3) Registered dental assistants.
- 30 (4) Registered dental assistants in extended functions.
- 31 (5) Registered dental hygienists.
- 32 (6) Registered dental hygienists in extended functions.
- 33 (7) Registered dental hygienists in alternative practice.
- 34 (o) Professional clinical counselor corporation.
- 35 (1) Licensed physicians and surgeons.
- 36 (2) Licensed psychologists.
- 37 (3) Licensed clinical social workers.
- 38 (4) Licensed marriage and family therapists.
- 39 (5) Registered nurses.
- 40 (6) Licensed chiropractors.

1 (7) Licensed acupuncturists.

2 (8) Naturopathic doctors.

3 ~~SECTION 1. Section 13401.5 of the Corporations Code is~~  
4 ~~amended to read:~~

5 ~~13401.5. (a) Notwithstanding subdivision (d) of Section 13401~~  
6 ~~and any other provision of law, the following licensed persons~~  
7 ~~may be shareholders, officers, or directors of the professional~~  
8 ~~corporations designated in this section so long as the sum of all~~  
9 ~~shares owned by those licensed persons does not exceed 49 percent~~  
10 ~~of the total number of shares of the professional corporation so~~  
11 ~~designated herein, and so long as the number of those licensed~~  
12 ~~persons owning shares in the professional corporation so designated~~  
13 ~~herein does not exceed the number of persons licensed by the~~  
14 ~~governmental agency regulating the designated professional~~  
15 ~~corporation:~~

16 ~~(1) Medical corporation:~~

17 ~~(A) Licensed doctors of podiatric medicine:~~

18 ~~(B) Licensed psychologists:~~

19 ~~(C) Registered nurses:~~

20 ~~(D) Licensed optometrists:~~

21 ~~(E) Licensed marriage and family therapists:~~

22 ~~(F) Licensed clinical social workers:~~

23 ~~(G) Licensed physician assistants:~~

24 ~~(H) Licensed chiropractors:~~

25 ~~(I) Licensed acupuncturists:~~

26 ~~(J) Naturopathic doctors:~~

27 ~~(K) Licensed professional clinical counselors:~~

28 ~~(2) Podiatric medical corporation:~~

29 ~~(A) Licensed physicians and surgeons:~~

30 ~~(B) Licensed psychologists:~~

31 ~~(C) Registered nurses:~~

32 ~~(D) Licensed optometrists:~~

33 ~~(E) Licensed chiropractors:~~

34 ~~(F) Licensed acupuncturists:~~

35 ~~(G) Naturopathic doctors:~~

36 ~~(3) Psychological corporation:~~

37 ~~(A) Licensed physicians and surgeons:~~

38 ~~(B) Licensed doctors of podiatric medicine:~~

39 ~~(C) Registered nurses:~~

40 ~~(D) Licensed optometrists:~~

- 1 ~~(E) Licensed marriage and family therapists.~~
- 2 ~~(F) Licensed clinical social workers.~~
- 3 ~~(G) Licensed chiropractors.~~
- 4 ~~(H) Licensed acupuncturists.~~
- 5 ~~(I) Naturopathic doctors.~~
- 6 ~~(J) Licensed professional clinical counselors.~~
- 7 ~~(4) Speech-language pathology corporation.~~
- 8 ~~(A) Licensed audiologists.~~
- 9 ~~(5) Audiology corporation.~~
- 10 ~~(A) Licensed speech-language pathologists.~~
- 11 ~~(6) Nursing corporation.~~
- 12 ~~(A) Licensed physicians and surgeons.~~
- 13 ~~(B) Licensed doctors of podiatric medicine.~~
- 14 ~~(C) Licensed psychologists.~~
- 15 ~~(D) Licensed optometrists.~~
- 16 ~~(E) Licensed marriage and family therapists.~~
- 17 ~~(F) Licensed clinical social workers.~~
- 18 ~~(G) Licensed physician assistants.~~
- 19 ~~(H) Licensed chiropractors.~~
- 20 ~~(I) Licensed acupuncturists.~~
- 21 ~~(J) Naturopathic doctors.~~
- 22 ~~(K) Licensed professional clinical counselors.~~
- 23 ~~(7) Marriage and family therapist corporation.~~
- 24 ~~(A) Licensed physicians and surgeons.~~
- 25 ~~(B) Licensed psychologists.~~
- 26 ~~(C) Licensed clinical social workers.~~
- 27 ~~(D) Registered nurses.~~
- 28 ~~(E) Licensed chiropractors.~~
- 29 ~~(F) Licensed acupuncturists.~~
- 30 ~~(G) Naturopathic doctors.~~
- 31 ~~(H) Licensed professional clinical counselors.~~
- 32 ~~(8) Licensed clinical social worker corporation.~~
- 33 ~~(A) Licensed physicians and surgeons.~~
- 34 ~~(B) Licensed psychologists.~~
- 35 ~~(C) Licensed marriage and family therapists.~~
- 36 ~~(D) Registered nurses.~~
- 37 ~~(E) Licensed chiropractors.~~
- 38 ~~(F) Licensed acupuncturists.~~
- 39 ~~(G) Naturopathic doctors.~~
- 40 ~~(H) Licensed professional clinical counselors.~~

- 1    ~~(9) Physician assistants corporation.~~
- 2    ~~(A) Licensed physicians and surgeons.~~
- 3    ~~(B) Registered nurses.~~
- 4    ~~(C) Licensed acupuncturists.~~
- 5    ~~(D) Naturopathic doctors.~~
- 6    ~~(10) Optometric corporation.~~
- 7    ~~(A) Licensed physicians and surgeons.~~
- 8    ~~(B) Licensed doctors of podiatric medicine.~~
- 9    ~~(C) Licensed psychologists.~~
- 10   ~~(D) Registered nurses.~~
- 11   ~~(E) Licensed chiropractors.~~
- 12   ~~(F) Licensed acupuncturists.~~
- 13   ~~(G) Naturopathic doctors.~~
- 14   ~~(11) Chiropractic corporation.~~
- 15   ~~(A) Licensed physicians and surgeons.~~
- 16   ~~(B) Licensed doctors of podiatric medicine.~~
- 17   ~~(C) Licensed psychologists.~~
- 18   ~~(D) Registered nurses.~~
- 19   ~~(E) Licensed optometrists.~~
- 20   ~~(F) Licensed marriage and family therapists.~~
- 21   ~~(G) Licensed clinical social workers.~~
- 22   ~~(H) Licensed acupuncturists.~~
- 23   ~~(I) Naturopathic doctors.~~
- 24   ~~(J) Licensed professional clinical counselors.~~
- 25   ~~(12) Acupuncture corporation.~~
- 26   ~~(A) Licensed physicians and surgeons.~~
- 27   ~~(B) Licensed doctors of podiatric medicine.~~
- 28   ~~(C) Licensed psychologists.~~
- 29   ~~(D) Registered nurses.~~
- 30   ~~(E) Licensed optometrists.~~
- 31   ~~(F) Licensed marriage and family therapists.~~
- 32   ~~(G) Licensed clinical social workers.~~
- 33   ~~(H) Licensed physician assistants.~~
- 34   ~~(I) Licensed chiropractors.~~
- 35   ~~(J) Naturopathic doctors.~~
- 36   ~~(K) Licensed professional clinical counselors.~~
- 37   ~~(13) Naturopathic doctor corporation.~~
- 38   ~~(A) Licensed physicians and surgeons.~~
- 39   ~~(B) Licensed psychologists.~~
- 40   ~~(C) Registered nurses.~~

1 ~~(D) Licensed physician assistants.~~  
2 ~~(E) Licensed chiropractors.~~  
3 ~~(F) Licensed acupuncturists.~~  
4 ~~(G) Licensed physical therapists.~~  
5 ~~(H) Licensed doctors of podiatric medicine.~~  
6 ~~(I) Licensed marriage and family therapists.~~  
7 ~~(J) Licensed clinical social workers.~~  
8 ~~(K) Licensed optometrists.~~  
9 ~~(L) Licensed professional clinical counselors.~~  
10 ~~(14) Dental corporation.~~  
11 ~~(A) Licensed physicians and surgeons.~~  
12 ~~(B) Dental assistants.~~  
13 ~~(C) Registered dental assistants.~~  
14 ~~(D) Registered dental assistants in extended functions.~~  
15 ~~(E) Registered dental hygienists.~~  
16 ~~(F) Registered dental hygienists in extended functions.~~  
17 ~~(G) Registered dental hygienists in alternative practice.~~  
18 ~~(15) Professional clinical counselor corporation.~~  
19 ~~(A) Licensed physicians and surgeons.~~  
20 ~~(B) Licensed psychologists.~~  
21 ~~(C) Licensed clinical social workers.~~  
22 ~~(D) Licensed marriage and family therapists.~~  
23 ~~(E) Registered nurses.~~  
24 ~~(F) Licensed chiropractors.~~  
25 ~~(G) Licensed acupuncturists.~~  
26 ~~(H) Naturopathic doctors.~~  
27 ~~(b) This section does not limit the employment of persons duly~~  
28 ~~licensed under the Business and Professions Code, the Chiropractic~~  
29 ~~Act, or the Osteopathic Act to render professional services, by a~~  
30 ~~professional corporation designated in the section, to the licensed~~  
31 ~~professionals listed under each paragraph of subdivision (a).~~



AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1000**

---

**Introduced by Assembly ~~Member~~ Members Wieckowski and  
Maienschein**

February 22, 2013

---

An act to amend Sections ~~2620~~ 2406 and 2660 of, and to add ~~Section~~  
*Sections 2406.5 and 2620.1* to, the Business and Professions Code, *and*  
*to amend Section 13401.5 of the Corporations Code*, relating to ~~physical~~  
*therapy: healing arts*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1000, as amended, Wieckowski. Physical therapists: direct access  
~~to services: services: professional corporations~~.

Existing law, the Physical Therapy Practice Act, creates the Physical  
Therapy Board of California and makes it responsible for the licensure  
and regulation of physical therapists. ~~The act defines the term “physical~~  
~~therapy” for its purposes as, among other things, including physical~~  
~~therapy evaluation, treatment planning, instruction, and consultative~~  
~~services.~~ The act makes it a crime to violate any of its provisions. The  
act authorizes the board to suspend, revoke, or impose probationary  
conditions on a license, certificate, or approval issued under the act for  
unprofessional conduct, as specified.

~~This bill would revise the definition of “physical therapy” to instead~~  
~~include examination and evaluation to determine a physical therapy~~  
~~diagnosis, as defined, prognosis, treatment plan, instruction, or~~  
~~consultative service.~~

This bill would specify that patients may access physical therapy treatment directly and would, in those circumstances, require a physical therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient has a condition requiring treatment or services beyond that scope of practice *or if the patient is not progressing*, to disclose to the patient any financial interest he or she has in treating the patient, and, with the patient's written authorization, to notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient. *The bill would prohibit a physical therapist from treating a patient who initiated services directly for the lesser of more than 45 calendar days or 12 visits, except as specified, and would prohibit a physical therapist from performing services on that patient before obtaining the patient's signature on a specified notice regarding these limitations on treatment.* The bill would provide that failure to comply with these provisions constitutes unprofessional conduct subject to disciplinary action by the board.

Because the bill would specify additional requirements under the Physical Therapy Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

*The Moscone-Knox Professional Corporation Act provides for the organization of a corporation under certain existing law for the purposes of qualifying as a professional corporation under that act and rendering professional services. The act authorizes specified healing arts practitioners to be shareholders, officers, directors, or professional employees of a designated professional corporation, subject to certain limitations relating to ownership of shares. Existing law also defines a medical corporation or podiatry corporation that is authorized to render professional services as long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physician assistants, are in compliance with the act.*

*This bill would specify that those provisions do not limit employment by a professional corporation of only those specified licensed professionals. The bill would authorize any person duly licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to be employed to render professional services by a professional corporation. The bill would add physical therapists to the list of healing arts professionals who may be professional employees*

*of a medical corporation or podiatry corporation. The bill would also provide that specified healing arts licensees may be shareholders, officers, directors, or professional employees of a physical therapy corporation. The bill would also require a practitioner who refers a patient to a physical therapist who is employed by a medical corporation or podiatry corporation to make a specified disclosure to the patient.*

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that an  
2 individual's access to early intervention to physical therapy  
3 treatment may decrease the duration of a disability, reduce pain,  
4 and lead to a quicker recovery.

5 ~~SEC. 2. Section 2620 of the Business and Professions Code is~~  
6 ~~amended to read:~~

7 ~~2620. (a) Physical therapy means the art and science of~~  
8 ~~physical or corrective rehabilitation or of physical or corrective~~  
9 ~~treatment of any bodily or mental condition of any person by the~~  
10 ~~use of the physical, chemical, and other properties of heat, light,~~  
11 ~~water, electricity, sound, massage, and active, passive, and resistive~~  
12 ~~exercise, and shall include examination and evaluation to determine~~  
13 ~~a physical therapy diagnosis, prognosis, treatment plan, instruction,~~  
14 ~~or consultative service. The practice of physical therapy includes~~  
15 ~~the promotion and maintenance of physical fitness to enhance the~~  
16 ~~bodily movement related health and wellness of individuals through~~  
17 ~~the use of physical therapy interventions. The use of roentgen rays~~  
18 ~~and radioactive materials, for diagnostic and therapeutic purposes,~~  
19 ~~and the use of electricity for surgical purposes, including~~  
20 ~~cauterization, are not authorized under the term "physical therapy"~~  
21 ~~as used in this chapter, and a license issued pursuant to this chapter~~  
22 ~~does not authorize the diagnosis of disease.~~

23 ~~(b) For the purposes of this section, "physical therapy diagnosis"~~  
24 ~~means a systematic examination process that culminates in~~

1 assigning a diagnostic label identifying the primary dysfunction  
2 toward which physical therapy treatment will be directed, but shall  
3 not include a medical diagnosis or a diagnosis of disease.

4 (e) ~~Nothing in this section shall be construed to restrict or~~  
5 ~~prohibit other healing arts practitioners licensed or registered under~~  
6 ~~this division from practice within the scope of their license or~~  
7 ~~registration.~~

8 *SEC. 2. Section 2406 of the Business and Professions Code is*  
9 *amended to read:*

10 2406. A medical corporation or podiatry corporation is a  
11 corporation ~~which~~ *that* is authorized to render professional services,  
12 as defined in Sections 13401 and 13401.5 of the Corporations  
13 Code, so long as that corporation and its shareholders, officers,  
14 ~~directors~~ *directors*, and employees rendering professional services  
15 who are physicians ~~and surgeons~~, psychologists, registered nurses,  
16 optometrists, podiatrists, ~~chiropractors~~, ~~acupuncturists~~,  
17 ~~naturopathic doctors~~, ~~physical therapists~~, ~~occupational therapists~~,  
18 or, in the case of a medical corporation only, physician assistants,  
19 ~~marriage and family therapists~~, ~~clinical counselors~~, or ~~clinical~~  
20 ~~social workers~~, are in compliance with the Moscone-Knox  
21 Professional Corporation Act, the provisions of this ~~article~~ *article*,  
22 and all other statutes and regulations now or hereafter enacted or  
23 adopted pertaining to the corporation and the conduct of its affairs.

24 With respect to a medical corporation or podiatry corporation,  
25 the governmental agency referred to in the Moscone-Knox  
26 Professional Corporation Act is the ~~Division of Licensing~~ *board*.

27 *SEC. 3. Section 2406.5 is added to the Business and Professions*  
28 *Code, to read:*

29 2406.5. *When a physician and surgeon, podiatrist, or other*  
30 *referring practitioner refers a patient to receive services by a*  
31 *physical therapist employed by a professional corporation as*  
32 *defined in Sections 13401 and 13401.5 of the Corporations Code,*  
33 *the referring practitioner shall comply with Article 6 (commencing*  
34 *with Section 650) of Chapter 1, and shall provide notice of the*  
35 *following to the patient, orally and in writing, in at least 14-point*  
36 *type and signed by the patient:*

37 (a) *That the patient may seek physical therapy treatment services*  
38 *from a physical therapy provider of his or her choice who may not*  
39 *necessarily be employed by the medical or podiatry corporation.*

1     ***(b) If the patient chooses to be treated by an employed physical***  
2     ***therapist, any financial interest the referring practitioner has in***  
3     ***the corporation.***

4     ~~SEC. 3.~~

5     SEC. 4. Section 2620.1 is added to the Business and Professions  
6     Code, to read:

7     2620.1. (a) In addition to receiving ~~wellness and evaluation~~  
8     ~~services from a physical therapist, those services authorized by~~  
9     Section 2620, a person may initiate physical therapy treatment  
10    directly from a licensed physical therapist if the treatment is within  
11    the scope of practice of physical therapists, as defined in Section  
12    2620, and all of the following conditions are met:

13    (1) If, at any time, the physical therapist has reason to believe  
14    that the patient has signs or symptoms of a condition that requires  
15    treatment beyond the scope of practice of a physical therapist *or*  
16    *the patient is not progressing toward documented treatment goals*  
17    *as demonstrated by objective, measurable, or functional*  
18    *improvement*, the physical therapist shall refer the patient to a  
19    person holding a physician and surgeon's certificate issued by the  
20    Medical Board of California or by the Osteopathic Medical Board  
21    of California or to a person licensed to practice dentistry, podiatric  
22    medicine, or chiropractic.

23    (2) The physical therapist shall *comply with Section 2633, and*  
24    *shall* disclose to the patient any financial interest he or she has in  
25    treating the patient *and, if working in a physical therapy*  
26    *corporation, shall comply with Article 6 (commencing with Section*  
27    *650) of Chapter 1.*

28    (3) With the patient's written authorization, the physical  
29    therapist shall notify the patient's physician and surgeon, if any,  
30    that the physical therapist is treating the patient.

31    (4) *The physical therapist shall not continue treating the patient*  
32    *beyond 45 calendar days or 12 visits, whichever occurs first,*  
33    *without receiving, from a person holding a physician and surgeon's*  
34    *certificate from the Medical Board of California or the Osteopathic*  
35    *Medical Board of California or from a person holding a certificate*  
36    *to practice podiatric medicine from the California Board of*  
37    *Podiatric Medicine and acting within his or her scope of practice,*  
38    *a dated signature on the physical therapist's plan of care indicating*  
39    *approval of the physical therapist's plan of care. Approval of the*  
40    *physical therapist's plan of care shall include an in-person patient*

1 examination and evaluation of the patient's condition and, if  
2 indicated, testing by the physician and surgeon or podiatrist.

3 (b) The conditions in ~~paragraphs (1), (2), and (3)~~ paragraph (4)  
4 of subdivision (a) do not apply to a physical therapist when *he or*  
5 *she is only providing evaluation or wellness physical therapy*  
6 services to a patient as described in subdivision (a) of Section  
7 2620.

8 (c) This section does not expand or modify the scope of practice  
9 for physical therapists set forth in Section 2620, including the  
10 prohibition on a physical therapist diagnosing a disease.

11 (d) This section does not require a health care service plan or  
12 insurer to provide coverage for ~~direct access to treatment by a~~  
13 ~~physical therapist.~~ *services rendered to a patient who directly*  
14 *accessed the services of a physical therapist.*

15 (e) *When a person initiates physical therapy treatment services*  
16 *directly, pursuant to this section, the physical therapist shall not*  
17 *perform physical therapy treatment services without first providing*  
18 *the following notice to the patient, orally and in writing, in at least*  
19 *14-point type and signed by the patient:*

20  
21 *Direct Physical Therapy Treatment Services*  
22

23 *You are receiving direct physical therapy treatment services*  
24 *from an individual who is a physical therapist licensed by the*  
25 *Physical Therapy Board of California.*

26 *Under California law, you may continue to receive direct*  
27 *physical therapy treatment services for a period of up to 45*  
28 *calendar days or 12 visits, whichever occurs first, after which time*  
29 *a physical therapist may continue providing you with physical*  
30 *therapy treatment services only after receiving, from a person*  
31 *holding a physician and surgeon's certificate issued by the Medical*  
32 *Board of California or by the Osteopathic Medical Board of*  
33 *California, or from a person holding a certificate to practice*  
34 *podiatric medicine from the California Board of Podiatric*  
35 *Medicine and acting within his or her scope of practice, a dated*  
36 *signature on the physical therapist's plan of care indicating*  
37 *approval of the physical therapist's plan of care and that an*  
38 *in-person patient examination and evaluation was conducted by*  
39 *the physician and surgeon or podiatrist.*

*Patient's Signature/Date*

**SEC. 4.**

SEC. 5. Section 2660 of the Business and Professions Code is amended to read:

2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (a) Advertising in violation of Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Procuring or aiding or offering to procure or aid in criminal abortion.
- (d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- (e) Habitual intemperance.
- (f) Addiction to the excessive use of any habit-forming drug.
- (g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.
- (h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.
- (i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
- (j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.
- (k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.
- (l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient

1 to licensee. In administering this subdivision, the board shall  
2 consider referencing the standards, regulations, and guidelines of  
3 the State Department of Public Health developed pursuant to  
4 Section 1250.11 of the Health and Safety Code and the standards,  
5 regulations, and guidelines pursuant to the California Occupational  
6 Safety and Health Act of 1973 (Part 1 (commencing with Section  
7 6300) of Division 5 of the Labor Code) for preventing the  
8 transmission of HIV, hepatitis B, and other bloodborne pathogens  
9 in health care settings. As necessary, the board shall consult with  
10 the Medical Board of California, the California Board of Podiatric  
11 Medicine, the Dental Board of California, the Board of Registered  
12 Nursing, and the Board of Vocational Nursing and Psychiatric  
13 Technicians of the State of California, to encourage appropriate  
14 consistency in the implementation of this subdivision.

15 The board shall seek to ensure that licensees are informed of the  
16 responsibility of licensees and others to follow infection control  
17 guidelines, and of the most recent scientifically recognized  
18 safeguards for minimizing the risk of transmission of bloodborne  
19 infectious diseases.

20 (m) The commission of verbal abuse or sexual harassment.

21 (n) Failure to comply with the provisions of Section 2620.1.

22 *SEC. 6. Section 13401.5 of the Corporations Code is amended*  
23 *to read:*

24 13401.5. Notwithstanding subdivision (d) of Section 13401  
25 and any other provision of law, the following licensed persons  
26 may be shareholders, officers, directors, or professional employees  
27 of the professional corporations designated in this section so long  
28 as the sum of all shares owned by those licensed persons does not  
29 exceed 49 percent of the total number of shares of the professional  
30 corporation so designated herein, and so long as the number of  
31 those licensed persons owning shares in the professional  
32 corporation so designated herein does not exceed the number of  
33 persons licensed by the governmental agency regulating the  
34 designated professional ~~corporation~~: corporation. *This section*  
35 *does not limit employment by a professional corporation designated*  
36 *in this section of only those licensed professionals listed under*  
37 *each subdivision. Any person duly licensed under the Business*  
38 *and Professions Code, the Chiropractic Act, or the Osteopathic*  
39 *Act may be employed to render professional services by a*  
40 *professional corporation designated in this section.*



- 1 (a) Medical corporation.
- 2 (1) Licensed doctors of podiatric medicine.
- 3 (2) Licensed psychologists.
- 4 (3) Registered nurses.
- 5 (4) Licensed optometrists.
- 6 (5) Licensed marriage and family therapists.
- 7 (6) Licensed clinical social workers.
- 8 (7) Licensed physician assistants.
- 9 (8) Licensed chiropractors.
- 10 (9) Licensed acupuncturists.
- 11 (10) Naturopathic doctors.
- 12 (11) Licensed professional clinical counselors.
- 13 (b) Podiatric medical corporation.
- 14 (1) Licensed physicians and surgeons.
- 15 (2) Licensed psychologists.
- 16 (3) Registered nurses.
- 17 (4) Licensed optometrists.
- 18 (5) Licensed chiropractors.
- 19 (6) Licensed acupuncturists.
- 20 (7) Naturopathic doctors.
- 21 (c) Psychological corporation.
- 22 (1) Licensed physicians and surgeons.
- 23 (2) Licensed doctors of podiatric medicine.
- 24 (3) Registered nurses.
- 25 (4) Licensed optometrists.
- 26 (5) Licensed marriage and family therapists.
- 27 (6) Licensed clinical social workers.
- 28 (7) Licensed chiropractors.
- 29 (8) Licensed acupuncturists.
- 30 (9) Naturopathic doctors.
- 31 (10) Licensed professional clinical counselors.
- 32 (d) Speech-language pathology corporation.
- 33 (1) Licensed audiologists.
- 34 (e) Audiology corporation.
- 35 (1) Licensed speech-language pathologists.
- 36 (f) Nursing corporation.
- 37 (1) Licensed physicians and surgeons.
- 38 (2) Licensed doctors of podiatric medicine.
- 39 (3) Licensed psychologists.
- 40 (4) Licensed optometrists.

- 1 (5) Licensed marriage and family therapists.
- 2 (6) Licensed clinical social workers.
- 3 (7) Licensed physician assistants.
- 4 (8) Licensed chiropractors.
- 5 (9) Licensed acupuncturists.
- 6 (10) Naturopathic doctors.
- 7 (11) Licensed professional clinical counselors.
- 8 (g) Marriage and family therapist corporation.
- 9 (1) Licensed physicians and surgeons.
- 10 (2) Licensed psychologists.
- 11 (3) Licensed clinical social workers.
- 12 (4) Registered nurses.
- 13 (5) Licensed chiropractors.
- 14 (6) Licensed acupuncturists.
- 15 (7) Naturopathic doctors.
- 16 (8) Licensed professional clinical counselors.
- 17 (h) Licensed clinical social worker corporation.
- 18 (1) Licensed physicians and surgeons.
- 19 (2) Licensed psychologists.
- 20 (3) Licensed marriage and family therapists.
- 21 (4) Registered nurses.
- 22 (5) Licensed chiropractors.
- 23 (6) Licensed acupuncturists.
- 24 (7) Naturopathic doctors.
- 25 (8) Licensed professional clinical counselors.
- 26 (i) Physician assistants corporation.
- 27 (1) Licensed physicians and surgeons.
- 28 (2) Registered nurses.
- 29 (3) Licensed acupuncturists.
- 30 (4) Naturopathic doctors.
- 31 (j) Optometric corporation.
- 32 (1) Licensed physicians and surgeons.
- 33 (2) Licensed doctors of podiatric medicine.
- 34 (3) Licensed psychologists.
- 35 (4) Registered nurses.
- 36 (5) Licensed chiropractors.
- 37 (6) Licensed acupuncturists.
- 38 (7) Naturopathic doctors.
- 39 (k) Chiropractic corporation.
- 40 (1) Licensed physicians and surgeons.

- 1 (2) Licensed doctors of podiatric medicine.
- 2 (3) Licensed psychologists.
- 3 (4) Registered nurses.
- 4 (5) Licensed optometrists.
- 5 (6) Licensed marriage and family therapists.
- 6 (7) Licensed clinical social workers.
- 7 (8) Licensed acupuncturists.
- 8 (9) Naturopathic doctors.
- 9 (10) Licensed professional clinical counselors.
- 10 (l) Acupuncture corporation.
- 11 (1) Licensed physicians and surgeons.
- 12 (2) Licensed doctors of podiatric medicine.
- 13 (3) Licensed psychologists.
- 14 (4) Registered nurses.
- 15 (5) Licensed optometrists.
- 16 (6) Licensed marriage and family therapists.
- 17 (7) Licensed clinical social workers.
- 18 (8) Licensed physician assistants.
- 19 (9) Licensed chiropractors.
- 20 (10) Naturopathic doctors.
- 21 (11) Licensed professional clinical counselors.
- 22 (m) Naturopathic doctor corporation.
- 23 (1) Licensed physicians and surgeons.
- 24 (2) Licensed psychologists.
- 25 (3) Registered nurses.
- 26 (4) Licensed physician assistants.
- 27 (5) Licensed chiropractors.
- 28 (6) Licensed acupuncturists.
- 29 (7) Licensed physical therapists.
- 30 (8) Licensed doctors of podiatric medicine.
- 31 (9) Licensed marriage and family therapists.
- 32 (10) Licensed clinical social workers.
- 33 (11) Licensed optometrists.
- 34 (12) Licensed professional clinical counselors.
- 35 (n) Dental corporation.
- 36 (1) Licensed physicians and surgeons.
- 37 (2) Dental assistants.
- 38 (3) Registered dental assistants.
- 39 (4) Registered dental assistants in extended functions.
- 40 (5) Registered dental hygienists.

- 1 (6) Registered dental hygienists in extended functions.
- 2 (7) Registered dental hygienists in alternative practice.
- 3 (o) Professional clinical counselor corporation.
- 4 (1) Licensed physicians and surgeons.
- 5 (2) Licensed psychologists.
- 6 (3) Licensed clinical social workers.
- 7 (4) Licensed marriage and family therapists.
- 8 (5) Registered nurses.
- 9 (6) Licensed chiropractors.
- 10 (7) Licensed acupuncturists.
- 11 (8) Naturopathic doctors.
- 12 (p) *Physical therapy corporation.*
- 13 (1) *Licensed physicians and surgeons.*
- 14 (2) *Licensed doctors of podiatric medicine.*
- 15 (3) *Licensed acupuncturists.*
- 16 (4) *Naturopathic doctors.*
- 17 (5) *Licensed occupational therapists.*
- 18 (6) *Licensed speech-language therapists.*
- 19 (7) *Licensed audiologists.*
- 20 (8) *Registered nurses.*
- 21 (9) *Licensed psychologists.*
- 22 (10) *Licensed physician assistants.*

23 ~~SEC. 5.~~

24 SEC. 7. No reimbursement is required by this act pursuant to  
 25 Section 6 of Article XIII B of the California Constitution because  
 26 the only costs that may be incurred by a local agency or school  
 27 district will be incurred because this act creates a new crime or  
 28 infraction, eliminates a crime or infraction, or changes the penalty  
 29 for a crime or infraction, within the meaning of Section 17556 of  
 30 the Government Code, or changes the definition of a crime within  
 31 the meaning of Section 6 of Article XIII B of the California  
 32 Constitution.

33

34

35 CORRECTIONS:

36 Text—Page 16

37

O

## **G. Assembly Bill 1057 (Medina)**

**Subject:** Professions and vocations: licenses: military service.

**Version:** Amended April 9, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.
- 2) Authorizes a licensee or registrant whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces to, upon application, reinstate his or her license without penalty and without examination, if certain requirements are satisfied, unless the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, as specified.

### **This Bill:**

- 1) Would require each board, commencing January 1, 2015, to inquire in every application for licensure if the applicant is serving in, or has previously served in, the military.

### **Comments:**

- 1) **Author's Intent.** This bill requires every licensing board under DCA to affirmatively inquire in every license application if the applicant is serving in, or has previously served in, the military, in order to better identify and assist active military members and veterans applying for professional licensure. While the Bureau of Security and Investigative Services' (BSIS) application allows for applicants to indicate whether they are military veterans, not all license applications currently allow applicants to indicate whether they have current or prior military service.

According to the author's office, "Thousands of military veterans return to California from service in the United States (U.S.) Armed Forces each year. For many veterans, finding civilian employment can be difficult. Most veterans possess valuable professional and occupational skills that [are] highly sought by California employers and consumers. Ensuring a successful transition from military to civilian life includes creating an efficient process for licensing veterans in professional careers who have learned valuable work skills while in the military. "Most of DCA's licensing programs already have some process for accepting military service credit towards licensure for one or all of its license types. However, there is nothing on the application for licensure that identifies military experience. This bill will allow DCA to identify veterans in the application process and to count military credit towards licensure."

- 2) **State focus on military families.** In August 2011, Governor Edmund G. Brown, Jr. created the Interagency Council on Veterans (Council) through the issuance of Executive Order B-9-11. DCA, the Department of Veteran Affairs (DVA), and the California Military Department (MD), along with several other state agencies, are members of the Council, which is tasked with improving veterans' services that are coordinated across local, state, and federal agencies and transitioning veterans from military to civilian life.
- 3) **Tracking active military members and veterans in license applications.** Despite existing provisions under the BPC that facilitate to the licensure of veterans and active military members, the majority of license applications do not ask applicants if they serve or have previously served in the military. This means that some applicants must proactively inform the appropriate licensing board if he or she is an active military member who may be exempt from license renewal fees or CE requirements, or a veteran eligible to apply military credit towards initial licensure, as provided for under existing law. In addition, DCA's licensing programs do not currently track licensure approvals or denials of applicants with military service. Given the recent amount of attention devoted to

assisting military families and veterans with obtaining professional licensure, it may be helpful for DCA to gather accurate data on how many applicants serve, or have served in the military in order to better assist those applicants. This bill would not impact veterans who have already obtained initial licensure. The information collected by this bill will assist licensing boards in identifying applicants who may be eligible for streamlined licensure and permit DCA to compile data on the number of military applicants it serves.

#### **4) Additional Considerations from Assembly Bill Analysis (04/01/13)**

Suggested committee amendments. Currently, DCA is in the process of implementing BreEZe, a new database and Web site system that centralizes the licensing and enforcement functions of all the licensing programs under DCA. That implementation is scheduled to take place over an 18-month span during 2013-14. Once completed, individuals will be able to apply and pay for initial or renewal licenses and consumers can file complaints using a single Web site as a "one-stop shop".

In order to ensure that the requirement created by this bill does not disrupt the ongoing rollout of the BreEZe system, the Committee and author may wish to consider the following amendment to delay the effective date of this bill by one year so that DCA will have sufficient time to update the system accordingly:

On page 2, line 1, strike the word "Each" and insert: "Beginning on January 1, 2015, each"

- 5) Staff Comments.** Costs should be minor and absorbable within existing resources to implement this bill. BreEZe is a huge consideration for Board staff and it's appreciated that this bill will take that into consideration.

- 6) Support and Opposition.** None on file.

#### **7) History.**

##### **2013**

Apr. 29	In Senate. Read first time. To Com. on RLS. for assignment.
Apr. 29	Read third time. Passed. Ordered to the Senate.
Apr. 25	From consent calendar. Ordered to third reading.
Apr. 18	Read second time. Ordered to consent calendar.
Apr. 17	From committee: Do pass. To consent calendar. (Ayes 17. Noes 0.) (April 17).
Apr. 10	Re-referred to Com. on APPR.
Apr. 9	Read second time and amended.
Apr. 8	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (April 2).
Mar. 7	Referred to Com. on B.,P. & C.P.
Feb. 25	Read first time.
Feb. 24	From printer. May be heard in committee March 26.
Feb. 22	Introduced. To print.

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1057**

---

**Introduced by Assembly Member Medina**

February 22, 2013

---

An act to add Section 114.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1057, as amended, Medina. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a licensee or registrant whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces to, upon application, reinstate his or her license without penalty and without examination, if certain requirements are satisfied, unless the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, as specified.

This bill would require each board, *commencing January 1, 2015*, to inquire in every application for licensure if the applicant is serving in, or has previously served in, the military.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 114.5 is added to the Business and
- 2     Professions Code, to read:
- 3     114.5. ~~Each~~ *Commencing January 1, 2015, each* board shall
- 4     inquire in every application for licensure if the applicant is serving
- 5     in, or has previously served in, the military.



## **H. Senate Bill 305 (Price)**

**Subject:** Healing arts: boards

**Version:** Amended April 25, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Requires specified regulatory boards within the Department of Consumer Affairs to require an applicant for licensure to furnish to the board a full set of fingerprints in order to conduct a criminal history record check.
- 2) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. This act authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2014 and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

### **This Bill:**

- 1) Would additionally authorize DCA boards to request and receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and would authorize a local or state agency to provide those records to the board upon request.
- 2) Extends the operation of the Optometry Board's provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.
- 3) This bill also extends the sunset dates and makes changes to the Practice Acts for Osteopathic Physicians and Surgeons, Naturopathic Doctors, and Respiratory Care Doctors.

### **Comments:**

- 1) **Author's Intent.** This bill is one of six "sunset review bills" authored by the Chair of this Committee. Unless legislation is carried this year to extend the sunset dates for the Naturopathic Medicine Committee, the Respiratory Care Board of California and the California State Board of Optometry, they will be repealed on January 1, 2014. This bill will allow all DCA boards to receive certified records from a local or state agency of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation.

Oversight Hearings and Sunset Review of Licensing Boards and Commission of DCA. In 2013, this Committee conducted oversight hearings to review 14 regulatory boards within the DCA. The Committee began its review of these licensing agencies in March and conducted three days of hearings. This bill, and the accompanying sunset bills, is intended to implement legislative changes as recommended in the Committee's Background/Issue Papers for all of the agencies reviewed by the Committee this year.

- 2) **Rationale for Amendment Pertaining to Local Agency Records.**

During Sunset Review, it was found that the Respiratory Care Board (RCB) and other boards have been having difficulty obtaining local agency records.

Background: It is customary for most boards and bureaus to obtain complete arrest, conviction and other related documentation as part of an applicant's or licensee's investigation. As such, boards rely on various authorities and local law enforcement agencies to provide documentation. Lately the RCB, as well as others at the DCA, have been refused access to records, with local government agencies justifying this refusal based on the RCB's perceived lack of authorization to obtain records without approval by the individual in question. This situation causes delays in investigations and can

even potentially prevent the RCB from taking appropriate disciplinary action. The RCB states that it is crucial to its consumer safety mission to be able to access all arrest, court and other related documentation through the course of an applicant or licensee investigation. The RCB believes that requiring an authorization to release such information impedes the ability of licensing entities to efficiently take appropriate disciplinary action or thoroughly investigate applicants.

The RCB cites a recent example where a local agency required the RCB's staff to obtain authorization from the licensee for the RCB to access the information. In that case, the RCB ended up getting the records from the district attorney. The RCB also states that it has had issues with some local agencies requiring a fee from the RCB prior to their releasing of records which also slows down the process. In one situation, a local government agency provided the following language to the RCB when it refused to produce records:

"The arrest record(s) cannot be released pursuant to Section 432.7(g)(1) of the Labor Code which reads that "no peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post trial diversion program, to any person not authorized by law to receive that information."

Recommendation. Committee staff recommended that Section 144.5 be added to the Business and Professions Code.

**3) Staff Comments.** This Board has also had similar issues obtaining records from local agencies.

#### **4) Support and Opposition.**

Support:

- Association of Regulatory Boards of Optometry
- California Naturopathic Doctors Association
- California Optometric Association
- California State Board of Optometry
- National Board of Examiners in Optometry
- Osteopathic Physicians & Surgeons of California
- SEIU California
- Western University of Health Sciences

Opposition:

None on file as of April 24, 2013.

#### **5) History.**

##### **2013**

May 3	Set for hearing May 13.
Apr. 30	From committee: Do pass and re-refer to Com. on APPR. (Ayes 10. Noes 0. Page 733.) (April 29). Re-referred to Com. on APPR.
Apr. 25	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 15	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 5	Set for hearing April 29.
Feb. 28	Referred to Com. on B., P. & E.D.
Feb. 19	From printer. May be acted upon on or after March 21.
Feb. 15	Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 305**

---

**Introduced by Senator Price**

(Principal coauthor: Assembly Member Gordon)

February 15, 2013

---

An act to amend Sections 2450, 2450.3, ~~2569~~, 3010.5, 3014.6, 3685, 3686, 3710, 3716, and ~~3765~~ *of*, 3765 *of*, and to add Section 144.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 305, as amended, Price. Healing arts: boards.

Existing law requires specified regulatory boards within the Department of Consumer Affairs to require an applicant for licensure to furnish to the board a full set of fingerprints in order to conduct a criminal history record check.

This bill would additionally authorize those boards to request and receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and would authorize a local or state agency to provide those records to the board upon request.

Existing law, the Osteopathic Act, provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature. The bill would require that the review be performed as if these provisions were scheduled to be repealed as of January 1, 2018.

Existing law, the Naturopathic Doctors Act, until January 1, 2014, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law also specifies that the repeal of the committee subjects it to review by the appropriate policy committees of the Legislature.

This bill would extend the operation of these provisions until January 1, 2018, and make conforming changes.

~~Existing law provides for the regulation of dispensing opticians, as defined, by the Medical Board of California.~~

~~This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature. The bill would require that the review be performed as if these provisions were scheduled to be repealed as of January 1, 2018.~~

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. The Respiratory Care Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Each of those acts authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2014 and subjects the boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the boards to review by the appropriate policy committees of the Legislature.

The Respiratory Care Act also prohibits a person from engaging in the practice of respiratory care unless he or she is a licensed respiratory care practitioner. However, the act does not prohibit specified acts, including, among others, the performance of respiratory care services in case of an emergency or self-care by a patient.

This bill would additionally authorize the performance of pulmonary function testing by persons who are currently employed by Los Angeles county hospitals and have performed pulmonary function testing for at least 15 years.

This bill would make legislative findings and declarations as to the necessity of a special statute for the persons described above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 144.5 is added to the Business and  
2 Professions Code, to read:

3     144.5. Notwithstanding any other law, a board described in  
4 Section 144 may request, and is authorized to receive, from a local  
5 or state agency certified records of all arrests and convictions,  
6 certified records regarding probation, and any and all other related  
7 documentation needed to complete an applicant or licensee  
8 investigation. A local or state agency may provide those records  
9 to the board upon request.

10    SEC. 2. Section 2450 of the Business and Professions Code is  
11 amended to read:

12    2450. There is a Board of Osteopathic Examiners of the State  
13 of California, established by the Osteopathic Act, which shall be  
14 known as the Osteopathic Medical Board of California which  
15 enforces this chapter relating to persons holding or applying for  
16 physician's and surgeon's certificates issued by the Osteopathic  
17 Medical Board of California under the Osteopathic Act.

18    Persons who elect to practice using the term of suffix "M.D.,"  
19 as provided in Section 2275, shall not be subject to this article,  
20 and the Medical Board of California shall enforce the provisions  
21 of this chapter relating to persons who made the election.

22    Notwithstanding any other law, the powers and duties of the  
23 Osteopathic Medical Board of California, as set forth in this article  
24 and under the Osteopathic Act, shall be subject to review by the  
25 appropriate policy committees of the Legislature. The review shall  
26 be performed as if this chapter were scheduled to be repealed as  
27 of January 1, 2018.

28    SEC. 3. Section 2450.3 of the Business and Professions Code  
29 is amended to read:

30    2450.3. There is within the jurisdiction of the Osteopathic  
31 Medical Board of California a Naturopathic Medicine Committee  
32 authorized under the Naturopathic Doctors Act (Chapter 8.2  
33 (commencing with Section 3610)). This section shall become  
34 inoperative on January 1, 2018, and, as of that date is repealed,  
35 unless a later enacted statute that is enacted before January 1, 2018,  
36 deletes or extends that date. Notwithstanding any other provision  
37 of law, the repeal of this section renders the Naturopathic Medicine

1 Committee subject to review by the appropriate policy committees  
2 of the Legislature.

3 ~~SEC. 4. Section 2569 of the Business and Professions Code is~~  
4 ~~amended to read:~~

5 ~~2569. Notwithstanding any other law, the powers and duties~~  
6 ~~of the board, as set forth in this chapter, shall be subject to review~~  
7 ~~by the appropriate policy committees of the Legislature. The review~~  
8 ~~shall be performed as if this chapter were scheduled to be repealed~~  
9 ~~as of January 1, 2018.~~

10 ~~SEC. 5:~~

11 ~~SEC. 4.~~ Section 3010.5 of the Business and Professions Code  
12 is amended to read:

13 3010.5. (a) There is in the Department of Consumer Affairs  
14 a State Board of Optometry in which the enforcement of this  
15 chapter is vested. The board consists of 11 members, five of whom  
16 shall be public members.

17 Six members of the board shall constitute a quorum.

18 (b) The board shall, with respect to conducting investigations,  
19 inquiries, and disciplinary actions and proceedings, have the  
20 authority previously vested in the board as created pursuant to  
21 Section 3010. The board may enforce any disciplinary actions  
22 undertaken by that board.

23 (c) This section shall remain in effect only until January 1, 2018,  
24 and as of that date is repealed, unless a later enacted statute, that  
25 is enacted before January 1, 2018, deletes or extends that date.  
26 Notwithstanding any other law, the repeal of this section renders  
27 the board subject to review by the appropriate policy committees  
28 of the Legislature.

29 ~~SEC. 6:~~

30 ~~SEC. 5.~~ Section 3014.6 of the Business and Professions Code  
31 is amended to read:

32 3014.6. (a) The board may appoint a person exempt from civil  
33 service who shall be designated as an executive officer and who  
34 shall exercise the powers and perform the duties delegated by the  
35 board and vested in him or her by this chapter.

36 (b) This section shall remain in effect only until January 1, 2018,  
37 and as of that date is repealed, unless a later enacted statute, that  
38 is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 7.~~

*SEC. 6.* Section 3685 of the Business and Professions Code is amended to read:

3685. Notwithstanding any other law, the repeal of this chapter renders the committee subject to review by the appropriate policy committees of the Legislature.

~~SEC. 8.~~

*SEC. 7.* Section 3686 of the Business and Professions Code is amended to read:

3686. This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 9.~~

*SEC. 8.* Section 3710 of the Business and Professions Code is amended to read:

3710. (a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

~~SEC. 10.~~

*SEC. 9.* Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 11.~~

*SEC. 10.* Section 3765 of the Business and Professions Code is amended to read:

3765. This act does not prohibit any of the following activities:

1 (a) The performance of respiratory care that is an integral part  
2 of the program of study by students enrolled in approved  
3 respiratory therapy training programs.

4 (b) Self-care by the patient or the gratuitous care by a friend or  
5 member of the family who does not represent or hold himself or  
6 herself out to be a respiratory care practitioner licensed under the  
7 provisions of this chapter.

8 (c) The respiratory care practitioner from performing advances  
9 in the art and techniques of respiratory care learned through formal  
10 or specialized training.

11 (d) The performance of respiratory care in an emergency  
12 situation by paramedical personnel who have been formally trained  
13 in these modalities and are duly licensed under the provisions of  
14 an act pertaining to their speciality.

15 (e) Respiratory care services in case of an emergency.  
16 “Emergency,” as used in this subdivision, includes an epidemic  
17 or public disaster.

18 (f) Persons from engaging in cardiopulmonary research.

19 (g) Formally trained licensees and staff of child day care  
20 facilities from administering to a child inhaled medication as  
21 defined in Section 1596.798 of the Health and Safety Code.

22 (h) The performance by a person employed by a home medical  
23 device retail facility or by a home health agency licensed by the  
24 State Department of Health Services of specific, limited, and basic  
25 respiratory care or respiratory care related services that have been  
26 authorized by the board.

27 (i) The performance of pulmonary function testing by persons  
28 who are currently employed by Los Angeles County hospitals and  
29 have performed pulmonary function testing for at least 15 years.

30 ~~SEC. 12.~~

31 *SEC. 11.* The Legislature finds and declares that a special law,  
32 as set forth in Section ~~44~~ 10 of this act, is necessary and that a  
33 general law cannot be made applicable within the meaning of  
34 Section 16 of Article IV of the California Constitution because of  
35 the unique circumstances relating to persons who are currently  
36 employed by Los Angeles County hospitals and have performed  
37 pulmonary function testing for at least 15 years.



## **I. Senate Bill 430 (Wright)**

**Subject:** Pupil health: vision appraisal: binocular function.

**Version:** Amended April 18, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Requires, upon first enrollment in a California school district of a child at a California elementary school, and at least every 3rd year thereafter until the child has completed the 8th grade, the child's vision to be appraised by the school nurse or other authorized person, as specified.
- 2) Requires this appraisal to include tests for visual acuity and color vision.
- 3) 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:**

- 1) Would require the appraisal to also include a screening test for binocular function.
- 2) Would provide that the binocular function appraisal need not begin until the pupil has reached the 3rd grade and would authorize the binocular function appraisal to include a validated symptom survey, as specified.
- 3) By requiring a school nurse or other authorized person to test for binocular function, the bill would impose a state-mandated local program.
- 4) This bill would also make non-substantive changes to this provision.
- 5) This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

### **Comments:**

- 1) **Author's Intent.** According to the author, "School vision testing relates to distance vision, basic refraction, and eye health but does not address vision needs for reading which are closer to the face. Also, current testing is one eye at a time, which cannot reveal problems of eye coordination that can impact reading. We have a significant number of students who are not identified and cannot tell us they have reading problems. The result is less reading, more time to do homework, behavior problems and possibly poorer grades. The best teachers in the world cannot help this student."

Binocular function. This term generally refers to the ability of both eyes to function together. Current law limits the types of professionals who conduct vision appraisals in schools. Questions that may be better suited for the discussion of this bill in the Senate Health Committee include: Will training be necessary for the people authorized to conduct vision appraisals? What other measures of binocular function may be used other than the National Institute of Health's symptom survey?

Frequency of appraisal. Current law requires, upon first enrollment in an elementary school, and at least every third year thereafter until the child has completed grade 8, the vision of students to be appraised, including tests for visual acuity and color vision. The evaluation of color vision is to be appraised once and only on male students, and need not begin until the male student has reached grade 1. This bill provides that appraisals of binocular function need not begin until the student has reached grade 3; therefore, the binocular function of students would be appraised in grade 3 and grade 6.

Fiscal impact. According to the Assembly Appropriations Committee analysis of similar but broader legislation that included additional appraisals and training (see AB 1095 below), "expanding the current eye appraisal could result in annual General Fund (Prop 98) costs to school districts of approximately \$2.9 million. This assumes a marginal cost of approximately \$2 per pupil, with approximately 1.4 million pupils eligible each year for an eye exam, and training costs of approximately \$50,000."

Prior Legislation.

AB 1095 (Wright, 2001) would have required every student, within 90 days of entering grade 1, to undergo a comprehensive eye exam that includes, in addition to ocular health and distance and near visual acuity, additional evaluations of visual skills such as eye teaming, focusing and tracking that may impact a child's ability to read. AB 1095 was held in the Senate Appropriations Committee's suspense file.

AB 1096 (Wright, 2001) would have established a pilot program for schools scoring in the bottom 20% on state achievement tests, to administer to poor readers a comprehensive eye screening and remedial vision training. AB 1096 died on the Senate Floor's inactive file.

SB 606 (Vasconcellos, 2001) would have required the existing student eye examination to include screening for binocular function, ocular alignment, ocular motility, and near visual acuity. SB 606 was held on the Assembly Appropriations Committee's suspense file.

- 2) **Staff Comments.** This bill would be beneficial to many students with eye problems that are currently going undiagnosed and affecting their ability to learn.

3) **Support and Opposition.**

Support:

- California Teachers Association
- Congress of Racial Equality of California
- Hales Corners Lutheran Church and Schools
- Small School Districts' Association
- Individuals

Opposition:

None on file.

4) **History.**

**2013**

May 3	Set for hearing May 13.
May 2	From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (May 1). Re-referred to Com. on APPR.
Apr. 23	Set for hearing May 1.
Apr. 18	Read second time and amended. Re-referred to Com. on HEALTH.
Apr. 17	From committee: Do pass as amended and re-refer to Com. on HEALTH. (Ayes 9. Noes 0. Page 484.) (April 10).
Mar. 15	Set for hearing April 10.
Mar. 11	Referred to Coms. on ED. and HEALTH.
Feb. 22	From printer. May be acted upon on or after March 24.
Feb. 21	Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 18, 2013

**SENATE BILL**

**No. 430**

---

**Introduced by Senator Wright**

**(Coauthor: Senator Hancock)**

~~(Coauthor: Assembly Member~~ *Coauthors: Assembly Members Mitchell  
and John A. Pérez)*

February 21, 2013

---

An act to amend Section 49455 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 430, as amended, Wright. Pupil health: vision appraisal: binocular function.

Existing law requires, upon first enrollment in a California school district of a child at a California elementary school, and at least every 3rd year thereafter until the child has completed the 8th grade, the child's vision to be appraised by the school nurse or other authorized person, as specified. Existing law requires this appraisal to include tests for visual acuity and color vision.

This bill would require the appraisal to also include a *screening* test for binocular function. The bill would provide that the binocular function appraisal need not begin until the pupil has reached the 3rd grade and would authorize the binocular function appraisal to include a validated symptom survey, as specified. By requiring a school nurse or other authorized person to test for binocular function, the bill would impose a state-mandated local program.

This bill would also make nonsubstantive changes to this provision.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 49455 of the Education Code is amended  
2     to read:  
3     49455. (a) Upon first enrollment in a California school district  
4     of a pupil at a California elementary school, and at least every  
5     third year thereafter until the pupil has completed the 8th grade,  
6     the pupil's vision shall be appraised by the school nurse or other  
7     authorized person under Section 49452. This appraisal shall include  
8     *screening* tests for visual acuity, binocular function, and color  
9     vision; however, color vision shall be appraised once and only on  
10    male pupils, and the results of the appraisal shall be entered in the  
11    health record of the pupil. Color vision appraisal need not begin  
12    until the male pupil has reached the first grade. Binocular function  
13    appraisal need not begin until the pupil has reached the ~~3rd~~ *third*  
14    grade. Gross external observation of the pupil's eyes, visual  
15    performance, and perception shall be done by the school nurse and  
16    the classroom teacher. The appraisal may be waived, if the pupil's  
17    parents so desire, by their presenting of a certificate from a  
18    physician and surgeon, a physician assistant practicing in  
19    compliance with Chapter 7.7 (commencing with Section 3500) of  
20    Division 2 of the Business and Professions Code, or an optometrist  
21    setting out the results of a determination of the pupil's vision,  
22    including visual acuity, binocular function, and color vision.  
23    (b) This section shall not apply to a pupil whose parents or  
24    guardian file with the principal of the school in which the pupil is  
25    enrolling, a statement in writing that they adhere to the faith or  
26    teachings of any well-recognized religious sect, denomination, or  
27    organization and in accordance with its creed, tenets, or principles  
28    depend for healing upon prayer in the practice of their religion.

1 (c) The binocular function appraisal required by subdivision (a)  
2 may include a validated symptom survey developed during a  
3 National Institute of ~~Health~~ *Health's* clinical trial and published  
4 for use in the public domain.

5 SEC. 2. If the Commission on State Mandates determines  
6 that this act contains costs mandated by the state, reimbursement  
7 to local agencies and school districts for those costs shall be made  
8 pursuant to Part 7 (commencing with Section 17500) of Division  
9 4 of Title 2 of the Government Code.

## **K. Senate Bill 492 (Hernandez)**

**Subject:** Optometrist: Practice: Licensure

**Version:** Amended April 24, 2013

**Sponsor:** Author sponsored

### **Existing Law:**

- 1) The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice.
- 2) Defines the practice of optometry to include, among other things, 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 doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses.
- 3) Authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests.
- 4) Requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.

### **This Bill:**

- 1) Would add the provision of habilitative optometric services to the definition of the practice of optometry.
- 2) Would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided.
- 3) Would also delete limitations on what kinds of diagnostic tests an optometrist could order and instead would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests.
- 4) Would expand requirement of being held to the same standard of care as physicians and surgeons to include other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's education and training.

### **Comments:**

- 1) **Author's Intent.** According to the Author, SB 492 is intended to allow optometrists to practice to the full extent of their education and training in order to expand access to the health care delivery system for the millions of Californians who will have new access to coverage through the implementation of the federal Patient Protection and Affordable Care Act (ACA). The bill will allow optometrists to diagnose, treat and manage specific eye disorders and common diseases such as diabetes, hypertension and hyperlipidemia. The bill will also expand the drugs optometrists can prescribe and it will permit optometrists to administer immunizations and to perform surgical and non-surgical procedures. (See Attached Bill Analysis for more detail)
- 2) **Staff Comments.**
  - Addition of Habilitative Services: Possible new complaints and services enforcement staff must become familiar with. Appears to be something already taught at the schools/colleges

of optometry. This is one of the Affordable Care Act Essential Benefits. Generally includes physical therapy or speech-language services. However, unlike rehabilitative services, which aim to recover capacities lost, habilitative services help people acquire, maintain, or improve skills and functioning for daily living.

- Removes all referral requirements to a physician and surgeon except for when there is a condition that is out of the scope of the optometrist. Enforcement staff must become familiar with these new procedures. A physician and surgeon may be needed as an expert to assist staff. Do the schools/colleges teach optometrists how to perform procedures without referrals?
- Deletes language stating that if a patient requests to be referred to a physician and surgeon, an optometrist must do so. Is this a standard of care that does not need to be in law?
- Deletion of limitations and referral language pertaining to treatment of the eye. Are optometrists taught all conditions of the eye at optometry school?
- Addition of eyelid disorders. Does this language add new disorders and are optometrists taught how to treat these disorders in school? Eye disorders include blepharitis, hordeolum (stye), chalazion, eyelid edema, eyelid tumors, etc.
- For the expansion of TPAs approved by the Federal Drug Administration (FDA); will there be guidance on how to obtain a list? Licensees are always calling the Board to ask if there is a list, and now the proposed language references the FDA. Staff attempted to find a list and could not.
- For the addition of Schedule II-V drugs: Will there be a list to reference even if it's not included in law? No limitation on prescription of new drugs. There may be a potential for abuse by the patient and the optometrist. This will greatly impact enforcement.
- For the addition of Schedule II-V drugs – Should it be clarified that optometrists are required to obtain a DEA number for CURES tracking?
- Deletes language of how it should be documented in a patient's chart that the optometrist consulted with a physician and surgeon. Is this a standard of care that does not need to be in law?
- The language regarding ordering appropriate laboratory and diagnostic imaging tests is vague. Possible amendment: "Ordering appropriate laboratory and diagnostic imaging test, including clinical laboratory tests or examinations classified as waived under CLIA necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter."
- Immunizations language – are optometrists already trained to give immunizations, or must they go through training. If so, what is the training? If there is no training, the Board will need to implement regulations to establish training criteria.
- Diagnosis of disease with ocular manifestations; diabetes, hypertension, hyperlipidemia. Are optometrists already trained to treat these conditions in school? If so, what is the training? If there is no training, the Board will need to implement regulations to establish training criteria.
- Approve the addition to BPC 3041.1 that an optometrist shall consult with a physician and surgeon or other health care provider if a situation or condition occurs that is beyond the optometrist's education and training.

### 3) Support and Opposition.

#### Support:

- Bay Area Council
- Blue Shield of California
- California Optometric Association
- California Pharmacists Association/ California Society of
- Health-System Pharmacists
- Californians for Patient Care
- United Nurses Associations of California/Union of Health Care
- Professionals
- Western University of Health Sciences
- 57 individuals

#### Support if Amended:

- California Association of Physician Groups
- California Hospital Association

#### Opposition:

- California Medical Association
- Blind Children's Center
- California Academy of Eye Physicians & Surgeons
- California Association for Medical Laboratory Technology
- California Society of Anesthesiologists
- Canvasback Missions Inc.
- Here4Them
- Lighthouse for Christ Mission Eye Center
- Union of American Physicians and Dentists
- American College of Emergency Physicians- California Chapter
- California Society of Plastic Surgeons
- Over 100 letters from employees and parents of children of the Blind
- Children's Center
- Hundreds of individuals

### 4) History.

#### 2013

Apr. 25	Set for hearing April 29.
Apr. 24	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 23	Set for hearing April 29.
Apr. 22	Hearing postponed by committee.
Apr. 16	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 5	Set for hearing April 22.
Apr. 3	Re-referred to Com. on B., P. & E.D.
Apr. 1	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
Mar. 11	Referred to Com. on RLS.
Feb. 22	From printer. May be acted upon on or after March 24.
Feb. 21	Introduced. Read first time. To Com. on RLS. for assignment. To print.



AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

## SENATE BILL

**No. 492**

---

### Introduced by Senator Hernandez

February 21, 2013

---

An act to ~~repeal and add Sections 3041 and 3041.2~~ *amend Sections 3041 and 3041.1* of the Business and Professions Code, relating to optometry.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. Optometrist: practice: licensure.

The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, 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 doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. ~~Existing law provides that the State Board of Optometry is required, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests.~~ Any violation of the act is a crime.

~~This bill would delete the definition of the practice of optometry and would instead provide that a licensed optometrist would be authorized to perform certain health-related services, including, but not limited to, examining, preventing, diagnosing, and treating any disease, condition, or disorder of the visual system, the human eye, and adjacent and related structures of the visual system, prescribing appropriate drugs, including narcotics, and administering immunizations and to diagnose other common primary care conditions that have ocular manifestations. The bill would also authorize an optometrist, who is operating under a protocol with a physician and surgeon or a health care facility, or participating in a specified system of care in which the patient is being otherwise treated, to initiate treatment and manage medications for those diagnosed conditions. The bill would require the board to require applicants for licensure to successfully complete specified examinations; and would authorize the board to require the passage of additional examinations with regard to competency to utilize diagnostic and therapeutic pharmaceutical agents, if not covered by the required examinations.~~

*This bill would add the provision of habilitative optometric services to the definition of the practice of optometry. The bill would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided. The bill would also delete limitations on what kinds of diagnostic tests an optometrist could order and instead would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests.*

*Existing law requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.*

*This bill would expand this requirement to include other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's education and training.*

Because this bill would change the definition of a crime, it would create 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3041 of the Business and Professions  
2     Code is amended to read:

3     3041. (a) The practice of optometry includes the prevention  
4     and diagnosis of disorders and dysfunctions of the visual system,  
5     and the treatment and management of certain disorders and  
6     dysfunctions of the visual system, as well as the provision of  
7     *habilitative or* rehabilitative optometric services, and is the doing  
8     of any or all of the following:

9     (1) The examination of the human eye or eyes, or its or their  
10    appendages, and the analysis of the human vision system, either  
11    subjectively or objectively.

12    (2) The determination of the powers or range of human vision  
13    and the accommodative and refractive states of the human eye or  
14    eyes, including the scope of its or their functions and general  
15    condition.

16    (3) The prescribing or directing the use of, or using, any optical  
17    device in connection with ocular exercises, visual training, vision  
18    training, or orthoptics.

19    (4) The prescribing of contact and spectacle lenses for, or the  
20    fitting or adaptation of contact and spectacle lenses to, the human  
21    eye, including lenses that may be classified as drugs or devices by  
22    any law of the United States or of this state.

23    (5) The use of topical pharmaceutical agents for the purpose of  
24    the examination of the human eye or eyes for any disease or  
25    pathological condition.

26    (b) (1) An optometrist who is certified to use therapeutic  
27    pharmaceutical agents, pursuant to Section 3041.3, may also  
28    diagnose and treat the human eye or eyes, or any of its or their  
29    appendages, for all of the following conditions:

1 (A) Through medical treatment, infections of the anterior  
2 segment and ~~adnexa, excluding the lacrimal gland, the lacrimal~~  
3 ~~drainage system, and the sclera in patients under 12 years of age.~~  
4 *adnexa.*

5 (B) Ocular allergies of the anterior segment and adnexa.

6 (C) ~~Ocular inflammation, nonsurgical in cause except when~~  
7 ~~comanaged with the treating physician and surgeon, limited to~~  
8 ~~inflammation resulting from traumatic iritis, peripheral corneal~~  
9 ~~inflammatory keratitis, episcleritis, and unilateral nonrecurrent~~  
10 ~~nongranulomatous idiopathic iritis in patients over 18 years of age.~~  
11 ~~Unilateral nongranulomatous idiopathic iritis recurring within one~~  
12 ~~year of the initial occurrence shall be referred to an~~  
13 ~~ophthalmologist. An optometrist shall consult with an~~  
14 ~~ophthalmologist or appropriate physician and surgeon if a patient~~  
15 ~~has a recurrent case of episcleritis within one year of the initial~~  
16 ~~occurrence. An optometrist shall consult with an ophthalmologist~~  
17 ~~or appropriate physician and surgeon if a patient has a recurrent~~  
18 ~~case of peripheral corneal inflammatory keratitis within one year~~  
19 ~~of the initial occurrence.~~ *inflammation.*

20 (D) Traumatic or recurrent conjunctival or corneal abrasions  
21 and erosions.

22 (E) Corneal surface disease and dry eyes.

23 (F) ~~Ocular pain, nonsurgical in cause except when comanaged~~  
24 ~~with the treating physician and surgeon, associated with conditions~~  
25 ~~optometrists are authorized to treat.~~ *pain.*

26 (G) Pursuant to subdivision ~~(f)~~; *(e)*, glaucoma in patients over  
27 18 years of age, as described in subdivision ~~(j)~~; *(i)*.

28 (H) *Eyelid disorders.*

29 (2) For purposes of this section, “treat” means the use of  
30 therapeutic pharmaceutical agents, as described in subdivision (c),  
31 and the procedures described in subdivision ~~(e)~~ *(d)*.

32 (c) In diagnosing and treating the conditions listed in subdivision  
33 (b), an optometrist certified to use therapeutic pharmaceutical  
34 agents pursuant to Section 3041.3 may use all ~~of the following~~  
35 ~~therapeutic pharmaceutical agents:~~ *therapeutic pharmaceutical*  
36 *agents approved by the United States Food and Drug*  
37 *Administration for use in treating eye conditions set forth in this*  
38 *chapter, including narcotic substances other than those listed in*  
39 *Schedule I.*

1     ~~(1) Pharmaceutical agents as described in paragraph (5) of~~  
2     ~~subdivision (a), as well as topical miotics.~~

3     ~~(2) Topical lubricants.~~

4     ~~(3) Antiallergy agents. In using topical steroid medication for~~  
5     ~~the treatment of ocular allergies, an optometrist shall consult with~~  
6     ~~an ophthalmologist if the patient's condition worsens 21 days after~~  
7     ~~diagnosis.~~

8     ~~(4) Topical and oral anti-inflammatories. In using steroid~~  
9     ~~medication for:~~

10    ~~(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis~~  
11    ~~or episcleritis, an optometrist shall consult with an ophthalmologist~~  
12    ~~or appropriate physician and surgeon if the patient's condition~~  
13    ~~worsens 72 hours after the diagnosis, or if the patient's condition~~  
14    ~~has not resolved three weeks after diagnosis. If the patient is still~~  
15    ~~receiving medication for these conditions six weeks after diagnosis,~~  
16    ~~the optometrist shall refer the patient to an ophthalmologist or~~  
17    ~~appropriate physician and surgeon.~~

18    ~~(B) Peripheral corneal inflammatory keratitis, excluding~~  
19    ~~Moorens and Terriens diseases, an optometrist shall consult with~~  
20    ~~an ophthalmologist or appropriate physician and surgeon if the~~  
21    ~~patient's condition worsens 72 hours after diagnosis.~~

22    ~~(C) Traumatic iritis, an optometrist shall consult with an~~  
23    ~~ophthalmologist or appropriate physician and surgeon if the~~  
24    ~~patient's condition worsens 72 hours after diagnosis and shall refer~~  
25    ~~the patient to an ophthalmologist or appropriate physician and~~  
26    ~~surgeon if the patient's condition has not resolved one week after~~  
27    ~~diagnosis.~~

28    ~~(5) Topical antibiotic agents.~~

29    ~~(6) Topical hyperosmotics.~~

30    ~~(7) Topical and oral antiglaucoma agents pursuant to the~~  
31    ~~certification process defined in subdivision (f).~~

32    ~~(A) The optometrist shall refer the patient to an ophthalmologist~~  
33    ~~if requested by the patient or if angle closure glaucoma develops.~~

34    ~~(B) If the glaucoma patient also has diabetes, the optometrist~~  
35    ~~shall consult with the physician treating the patient's diabetes in~~  
36    ~~developing the glaucoma treatment plan and shall inform the~~  
37    ~~physician in writing of any changes in the patient's glaucoma~~  
38    ~~medication.~~

39    ~~(8) Nonprescription medications used for the rational treatment~~  
40    ~~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~~

1 the ophthalmologist, the ophthalmologist's response, and any other  
2 relevant information. Upon the consulting ophthalmologist's  
3 request and with the patient's consent, the optometrist shall furnish  
4 a copy of the record to the ophthalmologist.

5 (e)

6 (d) An optometrist who is certified to use therapeutic  
7 pharmaceutical agents pursuant to Section 3041.3 may also perform  
8 all of the following:

9 (1) Corneal scraping with cultures.

10 (2) Debridement of corneal epithelia.

11 (3) Mechanical epilation.

12 (4) Venipuncture for testing patients suspected of having  
13 diabetes.

14 (5) Suture removal, ~~with prior consultation with the treating~~  
15 ~~physician and surgeon.~~

16 (6) Treatment or removal of sebaceous cysts by expression.

17 (7) Administration of oral fluorescein to patients suspected as  
18 having diabetic retinopathy.

19 (8) Use of an auto-injector to counter anaphylaxis.

20 (9) Ordering of smears, cultures, sensitivities, complete blood  
21 count, mycobacterial culture, acid fast stain, urinalysis, tear fluid  
22 analysis, and X-rays necessary for the diagnosis of conditions or  
23 diseases of the eye or adnexa. An optometrist may order other  
24 types of images subject to prior consultation with an  
25 ophthalmologist or appropriate physician and surgeon *appropriate*  
26 *laboratory and diagnostic imaging tests.*

27 (10) A clinical laboratory test or examination classified as  
28 waived under CLIA and designated as waived in paragraph (9)  
29 necessary for the diagnosis of conditions and diseases of the eye  
30 or adnexa, or if otherwise specifically authorized by this chapter.

31 (11)

32 (10) Punctal occlusion by plugs, excluding laser, diathermy,  
33 cryotherapy, or other means constituting surgery as defined in this  
34 chapter.

35 (12)

36 (11) The prescription of therapeutic contact lenses, including  
37 lenses or devices that incorporate a medication or therapy the  
38 optometrist is certified to prescribe or provide.

39 (13)

1 (12) Removal of foreign bodies from the cornea, eyelid, and  
2 conjunctiva with any appropriate instrument other than a scalpel  
3 ~~or needle~~. Corneal foreign bodies shall be nonperforating, be no  
4 deeper than the midstroma, and require no surgical repair upon  
5 removal.

6 ~~(14)~~

7 (13) For patients over 12 years of age, lacrimal irrigation and  
8 dilation, excluding probing of the nasal lacrimal tract. The board  
9 shall certify any optometrist who graduated from an accredited  
10 school of optometry before May 1, 2000, to perform this procedure  
11 after submitting proof of satisfactory completion of 10 procedures  
12 under the supervision of an ophthalmologist as confirmed by the  
13 ophthalmologist. Any optometrist who graduated from an  
14 accredited school of optometry on or after May 1, 2000, shall be  
15 exempt from the certification requirement contained in this  
16 paragraph.

17 (14) *Immunizations for influenza and shingles and additional*  
18 *immunizations that may be necessary to protect public health*  
19 *during a declared disaster or public health emergency.*

20 (15) *In addition to diagnosing and treating conditions of the*  
21 *visual system pursuant to subdivision (a), diagnoses of diabetes*  
22 *mellitus, hypertension, and hyperlipidemia.*

23 ~~(f)~~

24 (e) The board shall grant a certificate to an optometrist certified  
25 pursuant to Section 3041.3 for the treatment of glaucoma, as  
26 described in subdivision ~~(j)~~ (i), in patients over 18 years of age  
27 after the optometrist meets the following applicable requirements:

28 (1) For licensees who graduated from an accredited school of  
29 optometry on or after May 1, 2008, submission of proof of  
30 graduation from that institution.

31 (2) For licensees who were certified to treat glaucoma under  
32 this section prior to January 1, 2009, submission of proof of  
33 completion of that certification program.

34 (3) For licensees who have substantially completed the  
35 certification requirements pursuant to this section in effect between  
36 January 1, 2001, and December 31, 2008, submission of proof of  
37 completion of those requirements on or before December 31, 2009.

38 “Substantially completed” means both of the following:



1 (A) Satisfactory completion of a didactic course of not less than  
2 24 hours in the diagnosis, pharmacological, and other treatment  
3 and management of glaucoma.

4 (B) Treatment of 50 glaucoma patients with a collaborating  
5 ophthalmologist for a period of two years for each patient that will  
6 conclude on or before December 31, 2009.

7 (4) For licensees who completed a didactic course of not less  
8 than 24 hours in the diagnosis, pharmacological, and other  
9 treatment and management of glaucoma, submission of proof of  
10 satisfactory completion of the case management requirements for  
11 certification established by the board pursuant to Section 3041.10.

12 (5) For licensees who graduated from an accredited school of  
13 optometry on or before May 1, 2008, and not described in  
14 paragraph (2), (3), or (4), submission of proof of satisfactory  
15 completion of the requirements for certification established by the  
16 board pursuant to Section 3041.10.

17 ~~(g)~~

18 (f) Other than for prescription ophthalmic devices described in  
19 subdivision (b) of Section 2541, any dispensing of a therapeutic  
20 pharmaceutical agent by an optometrist shall be without charge.

21 ~~(h)~~

22 (g) The practice of optometry does not include performing  
23 surgery. "Surgery" means any procedure in which human tissue  
24 is cut, altered, or otherwise infiltrated by mechanical or laser  
25 means. "Surgery" does not include those procedures specified in  
26 subdivision—(e) (d). Nothing in this section shall limit an  
27 optometrist's authority to utilize diagnostic laser and ultrasound  
28 technology within his or her scope of practice.

29 ~~(i)~~

30 (h) An optometrist licensed under this chapter is subject to the  
31 provisions of Section 2290.5 for purposes of practicing telehealth.

32 ~~(j)~~

33 (i) For purposes of this chapter, "glaucoma" means either of the  
34 following:

35 (1) All primary open-angle glaucoma.

36 (2) Exfoliation and pigmentary glaucoma.

37 ~~(k)~~

38 (j) For purposes of this chapter, "adnexa" means ocular adnexa.

39 ~~(t)~~

(k) 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. 2. Section 3041.1 of the Business and Professions Code is amended to read:

3041.1. With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease or other diseases shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. *An optometrist shall consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition occurs that is beyond the optometrist's education and training.*

SECTION 1. ~~Section 3041 of the Business and Professions Code is repealed.~~

SEC. 2. ~~Section 3041 is added to the Business and Professions Code, to read:~~

3041. ~~(a) An optometrist license authorizes the holder to do all of the following:~~

(1) ~~Examine, prevent, diagnose, and treat any disease, condition, or disorder of the visual system, the human eye, and adjacent and related structures of the visual system.~~

(2) ~~The use or prescription of appropriate drugs, including narcotic substances other than those listed in Schedule 1.~~

(3) ~~The performance of minor surgical and nonsurgical primary eye care procedures requiring no more than topical or local anesthetic, or both, consistent with an optometrist's education and training.~~

(4) ~~The use or prescription of visual therapy, ocular exercises or vision habilitation, and rehabilitation services.~~

(5) ~~The performance or ordering of appropriate laboratory and diagnostic imaging tests.~~

(b) ~~An optometrist may administer immunizations.~~

(c) ~~In addition to diagnosing and treating conditions of the visual system pursuant to subdivision (a), an optometrist may diagnose other common primary care conditions that have ocular manifestations.~~

(d) ~~In addition to the authority provided in subdivisions (a) to (c), inclusive, an optometrist who is operating under a protocol with a physician and surgeon or a health care facility, or~~

1 participating in a medical home, accountable care organization,  
2 or other system of care in which the patient is being otherwise  
3 treated, may initiate treatment and manage medications for  
4 conditions diagnosed pursuant to subdivision (c).

5 SEC. 3. Section 3041.2 of the Business and Professions Code  
6 is repealed.

7 SEC. 4. Section 3041.2 is added to the Business and Professions  
8 Code, to read:

9 3041.2. (a) The State Board of Optometry shall establish, by  
10 regulation, educational and examination requirements for licensure  
11 to ensure the competence of optometrists to practice.

12 (b) On and after January 1, 2014, the board shall require each  
13 applicant for licensure to successfully complete the Part I, Part II,  
14 and Part III examinations of the National Board of Examiners in  
15 Optometry.

16 (c) On and after January 1, 2014, the board shall require each  
17 applicant for licensure to successfully complete an examination  
18 in California law and ethics developed and administered by the  
19 board.

20 (d) On and after January 1, 2014, the board may require passage  
21 of additional examinations to ensure the competency of licentiates  
22 to utilize diagnostic and therapeutic pharmaceutical agents, if not  
23 otherwise covered by the examinations required pursuant to  
24 subdivisions (a) and (b).

25 SEC. 5.

26 SEC. 3. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

## BILL ANALYSIS

Hearing Date: April 29, 2013.	Bill No: SB
	492

SENATE COMMITTEE ON BUSINESS, PROFESSIONS  
AND ECONOMIC DEVELOPMENT  
Senator Curren D. Price, Jr., Chair

Bill No: SB 492 Author: Hernandez  
As Amended: April 24, 2013 Fiscal: Yes

SUBJECT: Optometrist; practice; licensure.

SUMMARY: Permits an optometrist to diagnose, treat and manage additional conditions with ocular manifestations; directs the California Board of Optometry to establish educational and examination requirements and permits optometrists to perform vaccinations and surgical and non-surgical primary care procedures.

Existing law:

- 1) Establishes the California Board of Optometry (Board), within the Department of consumer Affairs, which licenses optometrists and regulates the practice of optometry. (BPC § 3010.5)
- 2) Authorizes the Board to establish educational and examination requirements for licensure. (BPC § 3041.2)
- 3) Defines the practice of optometry as follows: (BPC § 3041)
  - a) The prevention and diagnosis of disorders and dysfunctions of the visual system;
  - b) Treatment and management of certain disorders and dysfunctions of the visual systems;
  - c) Provision of rehabilitative optometric services;
  - d) Examination of the human eyes;
  - e) Determination of the powers or range of human vision;
  - f) The prescribing or directing the use of any optical device in connection with ocular exercises, visual training, vision training or orthoptics;
  - g) Prescribing of contact lenses and glasses; and
- h) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.
- 4) Specifies that an optometrist who is certified to use therapeutic pharmaceutical agents may also diagnose and treat the human eye or eyes or any of its appendages for the following conditions: (BPC § 3041(b)(1))
  - a) Infections;
  - b) Ocular allergies;
  - c) Ocular inflammation, non-surgical in cause except when co-managed with the treating physician and surgeon;
  - d) Traumatic or recurrent conjunctival or corneal abrasions and erosions;
  - e) Corneal surface disease and dry eyes;
  - f) Ocular pain, non-surgical in cause except when co-managed with the treating physician and surgeon; and
  - g) Glaucoma in patients over the age of 18.
- 5) Permits optometrists to use the following therapeutic pharmaceutical agents: (BPC § 3041(c))
  - a) Topical miotics;
  - b) Topical lubricants;
  - c) Anti-allergy agents;
  - d) Topical and oral anti-inflammatories;
  - e) Topical antibiotic agents;
  - f) Topical hyperosmotics;
  - g) Topical and oral anti-glaucoma agents;
  - h) Non-prescription medications;
  - i) Oral antihistamines;
  - j) Prescription oral non-steroidal anti-inflammatory agents;
  - aa) Oral antibiotics for treatment of ocular disease;
  - bb) Topical and oral antiviral medication for treatment of:
    - i) Herpes.
    - ii) Viral Keratitis.
    - iii) Herpes Simplex Viral conjunctivitis.
    - iv) Periocular herpes simplex viral dermatitis.
    - v) Varicella zoster viral keratitis.
    - vi) Varicella zoster viral conjunctivitis.

SB 492  
Page 2

- vii) Periorcular varicella zoster viral dermatitis.
- cc) Oral analgesics that are not controlled substances; and

SB 492  
Page 3

- dd) Codeine with compounds and hydrocodone with compounds with specific restrictions regarding usage timeframe.
- 6) Specifies that an optometrist who is certified to use therapeutic pharmaceutical agents may also perform the following:
- a) Corneal scraping with cultures;
  - b) Debridement of corneal epithelia;
  - c) Mechanical epilation;
  - d) Venipuncture for testing patients suspected of having diabetes;
  - e) Suture removal, with prior consultation with the treating physician and surgeon;
  - f) Treatment or removal of sebaceous cysts by expression;
  - g) Administration of oral fluorescein to patients suspected as having diabetic retinopathy;
  - h) Use of an auto-injector to counter anaphylaxis;
  - i) 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;
  - j) A clinical laboratory test or examination classified as waived under CLIA necessary for the diagnosis of conditions and diseases of the eye or adnexa;
  - aa) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy or other means constituting surgery;
  - bb) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide;
  - cc) Removal of foreign bodies from the cornea, eyelid and conjunctiva with any appropriate instrument other than a scalpel or needle; and
  - dd) Lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract for patients over 12 years of age.

This bill:

- 1) Adds the provision of habilitative optometric services to the definition of the practice of optometry.
- 2) Allows an optometrist who is TPA certified to treat the lacrimal gland, lacrimal drainage system and the sclera in patients under 12 years of age.

SB 492  
Page 4

- 3) Allows an optometrist to treat ocular inflammation via surgical or non-surgical means and deletes the requirement to co-manage the treatment with the patient's treating physician and surgeon.
- 4) Allows an optometrist to treat ocular pain via surgical or non-surgical means and deletes the requirement to co-manage the treatment with the patient's treating physician and surgeon.
- 5) Permits optometrists to treat eye lid disorders.
- 6) Allows an optometrist to use all therapeutic pharmaceutical agents approved by the FDA for use in treating eye conditions including narcotic substances other than Schedule I drugs.
- 7) Removes the requirement for optometrists to only utilize specific TPAs.
- 8) Allows TPA certified optometrists to remove sutures without prior consultation with the treating physician and surgeon.
- 9) Removes the restriction that optometrists can only administer oral fluorescein to patients suspected as having diabetic retinopathy.
- 10) Deletes the list of specific tests optometrists are permitted to order and permits optometrists to order any laboratory and diagnostic imaging tests.
- 11) Adds the provision that optometrists can administer immunizations for influenza and shingles and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency.
- 12) Permits optometrists to diagnose diabetes, hypertension and hyperlipidemia.
- 13) Specifies that an optometrist diagnosing or treating eye

or other disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.

- 14) Allows an optometrist to consult with and refer to a physician and surgeon or appropriate health care provider if a situation or condition occurs that is beyond the optometrist's education and training.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by

SB 492  
Page 5

Legislative Counsel.

COMMENTS:

1. Purpose. This bill is sponsored by the Author. According to the Author, SB 492 is intended to allow optometrists to practice to the full extent of their education and training in order to expand access to the health care delivery system for the millions of Californians who will have new access to coverage through the implementation of the federal Patient Protection and Affordable Care Act (ACA). The bill will allow optometrists to diagnose, treat and manage specific eye disorders and common diseases such as diabetes, hypertension and hyperlipidemia. The bill will also expand the drugs optometrists can prescribe and it will permit optometrists to administer immunizations and to perform surgical and non-surgical procedures.

2. Background.

- a) The Patient Protections and Affordable Care Act. On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (ACA) into federal statute. The ACA, which states will begin implementing in 2014, represents one of the most significant government expansions and regulatory overhauls of the United States health care system since the passage of Medicare and Medicaid in 1965. The ACA is aimed at increasing the rate of health insurance coverage for Americans and reducing the overall costs of health care. It provides a number of mechanisms including mandates, subsidies and tax credits to employers and individuals in order to increase the coverage rate. Additional reforms aim to improve health care outcomes and streamline the delivery of health care. One salient provision is the requirement for insurance companies to cover all applicants and offer the same rates regardless of pre-existing medical conditions.

Opponents of the ACA turned to the federal courts to challenge its constitutionality. On June 28, 2012, the United States Supreme Court upheld the constitutionality of most of ACA in the case of *National Federation of Independent Business vs. Sebelius*.

Specifically, the Supreme Court upheld the mandate for individuals to purchase health insurance if not covered by their employers on the basis that it is a tax rather than protection under the Commerce Clause. However, the Supreme Court determined that states could not be forced to participate in the expansion of Medicaid. As such, all provisions of the ACA will continue in

SB 492  
Page 6

effect or will take effect as scheduled subject to states determination on Medicaid expansion. In California, efforts are well underway to implement the ACA including Medicaid expansion, also referred to as "Medi-Cal" in California, by 2014.

- b) Primary Care Workforce Shortage. As a result of implementation of the ACA, about 4.7 million additional Californians will be eligible for health insurance beginning in 2014. It is anticipated that the newly insured will increase demand for health care on an already strained system. For example, according to estimates obtained from the Council on Graduate Medical Education (CGME), the number of primary care physicians actively practicing in California is far below the state's need. The distribution of these primary care physicians is also poor. In 2008, there were 69,460 actively practicing primary care physicians in California, of which only 35 percent reported they actually practiced primary care. This equates to 63 active primary care physicians per 100,000 persons. However, according to the CGME, 60 to 80 primary care physicians are needed per 100,000 persons in order to adequately meet the needs of the population. When the same metric is applied regionally, only 16 of California's 58 counties fall within the needed supply range for primary care physicians. In other words, less than one third of Californians live in a community where they have access to adequate health care services.
- c) Shortage of Optometrists. According to a report prepared by the Center for the Health Professions at the University of California San Francisco, the number of optometrist licenses in California has declined, but the number of licensees with a secondary practice location has increased. According to the

California Board of Optometry, there are approximately 9000 optometrists in California, the largest population of optometrists in the United States. These optometrists are generally concentrated in coastal counties, the Bay Area and counties in the Sacramento region. Several counties have no licensed optometrists with an address of record in those counties, and a number of other counties have ratios that indicate there is approximately one optometrist for every 10,000 people.

- d) Optometry and Ophthalmology. This bill would expand the types of procedures an optometrist is authorized to execute. This would include some tasks that have been traditionally performed by ophthalmologists. This bill would also require optometrists to consult with ophthalmologists as needed. As such, the current

SB 492  
Page 7

education, training and scope of each profession is outlined below.

i) Optometrist Education, Training and Scope. After completion of an undergraduate degree, optometrists complete four years of and accredited optometry college after which they are awarded the Doctor of Optometry degree. Some optometrists also undertake an optional one year non-surgical residency program to enhance their experience in a particular area. Students graduate with 2500-3000 patient encounters; these include a mix of post-surgical, medical and routine visits.

Optometrists are trained to diagnose mild to severe eye problems such as serious eye infections, inflammations of the eye, trauma, foreign bodies and glaucoma. They also examine the eye for vision prescription and corrective lenses. Optometrists may apply for certification to administer therapeutic pharmaceutical agents (TPA); to perform lacrimal irrigation and dilation (TPL); and to diagnose and treat primary open angle glaucoma (TLG).

ii) Ophthalmologist Education, Training and Scope. After obtaining an undergraduate degree, ophthalmologists complete four years at an accredited medical school and earn a Medical Degree. This is followed by a one year internship and a three or four year surgical residency. Many ophthalmologists pursue additional fellowship training in specialized areas such as retina, glaucoma or cornea. Ophthalmologists may become certified by the American Board of Ophthalmology, which requires, serving as primary surgeon or first assistant to the primary surgeon on a minimum of 364 eye surgeries.

The central focus of ophthalmology is surgery and management of complex eye diseases. An ophthalmologist specializes in the refractive, medical and surgical care of the eyes and visual system and in the prevention of disease and injury.

- e) Current and Proposed Scope of Practice for Optometrists. This bill would expand the scope of practice for optometrists. The following chart illustrates some of the salient changes that would be made to the current scope of practice for optometrists.

-----  
over 20 states by optometry associations to expand the scope of

f) Other States. Since 1997, there have been over 45 atte

SB 492  
Page 8

practice for optometrists including legislating surgery privileges. However, with the exception of Oklahoma and West Virginia, most states continue to prohibit optometrists from performing surgery, and their statutes specify that the license to practice optometry does not include the right to practice medicine. States such as Colorado and North Carolina specifically exclude surgery from their definition of the practice of optometry. Other states have statutes that delineate between laser and non-laser surgery.

- 3.Arguments in Support. Blue Shield of California supports the bill. In their letter they state, "Expanding the range of services that these practitioners are able to provide will improve access and quality of care as they are well trained and highly educated professionals that are already providing integral health services."

The Bay Area Council also supports the bill. They note that the bill would expand the range of services optometrists can perform to help ensure that the citizens of our state have access to high-quality primary care.

Californians for Patient Care also supports the bill. In their letter they note, "It is widely noted that there are not enough trained medical professionals to appropriately care for the influx of new patients. We believe it is important that qualified, educated and trained optometrists be allowed to practice to the extent of

their licenses to best serve California's patient population throughout the state."

The California Pharmacists Association wrote a joint letter with the California Society of Health-System Pharmacists. They write, "CSHP and CPHA believe that it is vital to better utilize all health care providers consistent with their training and education to address current workforce shortages. By empowering nurse practitioners to provide additional services with greater flexibility, SB 492 is an important part of the equation to meet health system demand."

The California Optometric Association believes that this legislation, "addresses the health care provider gap by expanding the scope of practice of optometry. Optometrists are positioned and prepared to be part of the solution to meeting the additional health care needs upon enactment of the ACA in 2014."

The United Nurses Associations of California/ Union of Health Care Professionals supports the bill. In their letter they indicate, "SB 492 would allow optometrists to practice to the full extent of their education and training in order to expand access to the health care

SB 492  
Page 9

delivery system for the millions of Californians who will have new access to coverage through implementation of the federal ACA."

4. Support if Amended. The California Hospital Association has taken a support if amended position. They indicate, "Doctors of optometry are extensively trained and educated according to national standards. Optometrists provide valuable services in the community and have an opportunity to be an integral component in the new clinical delivery systems of the future. For this reason, CHA supports these provisions and sees value in offering amendments to promote safe and effective care delivery by and optometrist. Our proposed amendments would address issues specifically related to the medical acts performed by an optometrist in the new provisions, and assurance that appropriate safeguards and quality mechanisms are embedded in the SB 492 provisions to protect the public safety."

The California Association of Physician Groups supports the bill if it is amended. They propose the following amendments:

Section 3041(a)(2) is overbroad and should be amended to state: "drugs for the treatment of ocular problems including narcotic pain medications for the treatment of pain related to ocular problems."

Section 3041(a)(3) is problematic because most eye surgery is performed with topical or local anesthetic. Cataract surgery, for instance, is done with topical/local anesthesia. Perhaps this section can be better defined, such as, "primary care procedures on the lids, and conjunctiva and cornea that only require topical or local anesthesia."

Section (5)(b). Because there can be complications from the administration of certain vaccines, notably live vaccines, we suggest that this scope expansion requires an optometrist to have more knowledge of the patient than is reasonable given the limited access to patient records under independent practice, when outside of an integrated, coordinated care system. We recommend against this section under independent practice.

Section (5)(c)(a). As written, this would allow for the treatment of diabetes; not the ocular manifestations of diabetes, but the illness itself. Temporal Arteritis is another very serious illness, for example, with ocular manifestations. We suggest a similar limitation as outlined in the preceding section.

SB 492  
Page 10

1. Arguments in Opposition. The California Medical Association opposes the bill. They outline several concerns in their letter. Included is the provision of primary care services that optometrists would be permitted to do if the bill passed. CMA believes that this is "beyond the existing scope of practice related to visual disorders and could result in serious harm to patients." They also note that optometrists "do not have the training and experience necessary to provide comprehensive primary care. In addition, "SB 492 would allow optometrists to practice medicine without being subject to the Medical Practice Act. Currently, optometrists are licensed by the Board of Optometry. Under SB 492, the scope of practice for optometrists would be expanded to the point where they would be practicing as ophthalmologists, who are required to have a medical

license, without being subject to the controls and oversight of the Medical Practice Act."

The California Association for Medical Laboratory Technology also opposes the bill. They note in their letter, "While we recognize the ability of optometrists to perform certain waived tests limited to



their scope of practice, we have concerns about the broad range of testing contained in this bill. Of greater concern is whether or not optometrists receive the proper education and training to perform as a laboratory director."

The California Academy of Eye Physicians & Surgeons is concerned about the expanded scope of practice for optometrists permitted by SB 492. Specifically, they are concerned about the provisions that would allow optometrists to conduct eye surgeries and prescribe medications by all routes with no additional training."

The Union of American Physicians and Dentists shares the Author's concerns regarding expanding health care access to residents of the State of California. However, SB 492 is a questionable solution. SB 492 rolls out an uncertain health care delivery system with patients subject to unintended consequences of the bill. Medical supervision over optometrists is critical to safe patient outcomes. SB 492 raises serious patient safety concerns in allowing optometrists to prescribe medication and perform surgical procedures without and medical supervision."

The Blind Children's Center notes, "While we support some increased role for optometrists in helping to provide health care, we question whether optometrists, with only a 4-year optometry school education, have the training, education and experience to perform the procedures authorized by the bill. Many of these procedures should only be performed by experts with many more years of training and

SB 492  
Page 11

experience."

The Lighthouse for Christ Mission Eye Center and the Canvasback Missions, Inc. oppose the bill and state in their letters, "The bill would give optometrists greatly increased privileges, including the ability to treat any disease that might have a "manifestation" in the eye without additional specific training requirements. The Board of Optometry, whose members have no experience doing surgery or treating the added diseases would be allowed to decide those training requirements."

Here4Them Inc., provides aid to children and adults who have been abandoned, orphaned, disadvantaged, threatened or are in high risk situations. They oppose the bill and note, "Since we have organized cataract surgery projects, we are well aware of the importance of skilled professionals for eye surgeries. When one is used to highly qualified medical ophthalmologists with 100% success rates in surgery, how could the possibility of less trained professionals even be a consideration? It is important to provide more access to health care, but not at the cost of the best possible care."

The California Society of Anesthesiologists also opposes SB 492. In their letter they argue, "SB 492 would allow the diagnosis and initiation of treatment of any condition with ocular manifestation. This is a broad and unclear authorization that has not attained scientific consensus. It is not a sufficient basis to authorize comprehensive primary care. Also, by granting full drug prescribing authority to optometrists, the bill would add a new category of authorized controlled substance prescribers at a time when more controls are being sought over excessive prescribing."

The California Chapter of the American College of Emergency Physicians writes, "While we share the legitimate concern about the lack of access to care, which currently exists and which may be exacerbated by the implementation of the affordable care act, we are adamantly opposed to any solution which would allow health care practitioners to treat patients well outside their areas of training and expertise."

The California Society of Plastic Surgeons believes that the practice of optometry does not include performing surgery. They state that optometrists do not have the training or education to be performing these types of medical procedures nor do they have training in the administration of local anesthesia.

SB 492  
Page 12

2. Oppose Unless Amended. The Osteopathic Physicians & Surgeons of California (OPSC) have taken an oppose unless amended position on SB 492. They state, "While optometrists play an important role in the provision of health care to patients in California, their current education and training requirements fall far short of the knowledge base necessary to safely and appropriately treat the complete health of patients. OPSC finds it unconscionable that a health care provider with education and training limited to a specific area of the body be given broad authority to provide treatment that has implications for health of the entire body."

The California Academy of Family Physicians also has an oppose unless

amended position.

They note, "Physicians see many benefits from working collaboratively with other health care professionals to meet patient care demand, but the framework of care delivery should be within the scope of practice that each health care professional is qualified to perform. Arbitrarily allowing allied health care professionals to independently practice medicine or to render services that are beyond a providers scope can lead to increased costs through over utilization of tests, over prescribing of medications and excess referrals to specialists."

3. Current Related Legislation. SB 491 (Hernandez, 2013) deletes the requirement that Nurse Practitioners perform certain tasks pursuant to standardized procedures and/or consultation with a physician or surgeon and authorizes a Nurse Practitioner to perform those tasks independently. Also requires, after July 1, 2016, that Nurse Practitioners possess a certificate from a national certifying body in order to practice. ( Note : The bill is up for consideration before the BP&ED Committee today)

SB 493 (Hernandez, 2013) authorizes a pharmacist to administer drugs and biological products that have been ordered by a prescriber. Expands other functions pharmacists are authorized to perform, and authorizes pharmacists to order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies and to independently initiate and

administer routine vaccinations. Also establishes board recognition for an advanced practice pharmacist. ( Note : The bill is up for consideration before the BP&ED Committee today)

4. Prior Related Legislation. SB 668 (Polanco, Chapter 13, Statutes of 1996) expanded the scope of practice of optometrists to provide for

SB 492  
Page 13

the diagnosis and treatment of specified conditions or diseases of the human eye or its appendages, and to use other therapeutic pharmaceutical agents.

SB 929 (Polanco, Chapter 676, Statutes of 2000) expanded the scope of lawful practice for optometrists by specifying additional diseases and conditions that optometrists may treat (in particular certain types of glaucoma) with specified medications, and by specifying the extent of physician involvement that is required under various circumstances.

SB 1406 (Correa, Chapter 352, Statutes of 2008) specified permissible procedures for certified optometrists, and created the Glaucoma Diagnosis and Treatment Advisory Committee to establish glaucoma certification requirements.

9. Author's Amendments. The following amendments reflect the Author's efforts to address many of the concerns of the opposition that are highlighted in the opposition's comments above. The amendments do the following: (See the mock-up of amendments attached.)

Specifies the eyelid disorders that can be treated by an optometrist including: hypotrichosis and blepharitis.

Removes the provision for optometrists to treat ocular inflammation and ocular pain that is the result of surgery and restores the requirement for optometrists to consult with a physician and surgeon for treatment of these conditions.

Specifies FDA approved drugs that TPA certified optometrist can prescribe including codeine with compounds and hydrocodone with compounds and limits the use of these agents to three days.

Permits an optometrist to order appropriate laboratory or diagnostic imaging test for specified conditions.

Removes the provision for an optometrist to treat the lacrimal gland, the lacrimal drainage system and the sclera in patients under 12 years of age.

Only permits an optometrist to use a clinical laboratory test or examination classified as CLIA-waived for the diagnosis of conditions and diseases of the eye or adnexa.

Allows an optometrist to diagnose and treat conditions of the

SB 492  
Page 14

visual system and test for and diagnose diabetes mellitus, hypertension and hypercholesterolemia.

Requires an optometrist to notify the treating physician and surgeon if sutures are removed from a patient.

Specifies record keeping requirements for consultations

between optometrists and physicians and surgeons.

SUPPORT AND OPPOSITION:

Support:

Bay Area Council  
Blue Shield of California  
California Optometric Association  
California Pharmacists Association/ California Society of  
Health-System Pharmacists  
Californians for Patient Care  
United Nurses Associations of California/Union of Health Care  
Professionals  
Western University of Health Sciences  
57 individuals

Support if Amended:

California Association of Physician Groups  
California Hospital Association

Opposition:

California Medical Association  
Blind Children's Center  
California Academy of Eye Physicians & Surgeons  
California Association for Medical Laboratory Technology  
California Society of Anesthesiologists  
Canvasback Missions Inc.  
Here4Them  
Lighthouse for Christ Mission Eye Center  
Union of American Physicians and Dentists  
American College of Emergency Physicians- California Chapter  
California Society of Plastic Surgeons  
Over 100 letters from employees and parents of children of the Blind  
Children's Center  
Hundreds of individuals

SB 492  
Page 15

Oppose Unless Amended:

California Academy of Family Physicians  
Osteopathic Physicians & Surgeons of California

Consultant: Le Ondra Clark, Ph.D.

## **K. Senate Bill 532 (De León) Military**

**Subject:** Professions and vocations: military spouses: temporary licenses

**Version:** Introduced February 21, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Requires a board within DCA to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being 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 California under official active duty military orders.

### **This Bill:**

- 1) This bill would make a technical, nonsubstantive change to that provision.

### **Comments:**

- 1) **Author's Intent.** n/a
- 2) **Staff Comments.** There has been no movement with this bill since its introduction. It may be a spot bill and will be monitored for changes.
- 3) **Support and Opposition.** N/A
- 4) **History.**

#### **2013**

Mar. 11	Referred to Com. on RLS.
Feb. 22	From printer. May be acted upon on or after March 24.
Feb. 21	Introduced. Read first time. To Com. on RLS. for assignment. To print.

**Introduced by Senator De León**

February 21, 2013

---

An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 532, as introduced, De León. Professions and vocations: military spouses: temporary licenses.

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. Under existing law, licensing fees imposed by certain boards within the department are deposited in funds that are continuously appropriated. Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being 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 California under official active duty military orders.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 115.5 of the Business and Professions  
2     Code is amended to read:  
3     115.5. (a) A board within the department shall expedite the  
4     licensure process for an applicant who meets both of the following  
5     requirements:  
6     (1) Supplies evidence satisfactory to the board that the applicant  
7     is married to, or in a domestic partnership or other legal union  
8     with, an active duty member of the Armed Forces of the United  
9     States who is assigned to a duty station in this state under official  
10    active duty military orders.  
11    (2) Holds a current license in another state, district, or territory  
12    of the United States in the profession or vocation for which he or  
13    she seeks a license from the board.  
14    (b) A board may adopt *any* regulations necessary to administer  
15    this section.

## **L. Senate Bill 723 (Correa)**

**Subject:** Veterans

**Version:** Amended April 23, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Requires the Employment Development Department, in consultation and coordination with veterans' organizations and veteran service providers, to research the needs of veterans throughout the state and develop a profile of veterans' employment and training needs and to seek federal funding for those purposes.

### **This Bill:**

- 1) Would require the Employment Development Department and the Department of Consumer Affairs, on or before January 1, 2015, jointly to present a report to the Legislature containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.

### **Comments:**

- 1) **Author's Intent.** According to the author, veterans are held back, prevented, or discouraged from finding or securing employment when either colleges or state boards establish policies that do not recognize military education and training. The author argues that working with the Department of Consumer Affairs (DCA) and the California Community Colleges Chancellor's Office; equivalent course work for training in the military could be established to ensure that service members would not have to repeat requirements or lower-level remedial classes to obtain academic credit for an occupational certificate or specific license. The author cites the SOR brief to highlight the fact that there are approximately 24 states that have created alternative forms of licensing to assist military spouses. According to the author, creating pathways for out-of-state licenses to be temporarily recognized, utilizing multistate licensing procedures, or expediting the licensing process for military spouses have been demonstrated to be successful in many states to ensure a smoother transition for those service spouses of deployed or transferred members. With this bill, the author hopes CA would also be able to provide a more streamlined process to help military members.

- 2) **Staff Comments.** The bill will most likely be implemented by DCA. The Board will be required to participate.

- 3) **Support and Opposition.**

Support:

- California Labor Federation, AFL-CIO

Opposition:

None on file.

- 4) **History.**

#### **2013**

May 3 Set for hearing May 13.

Apr. 30 From committee: Do pass and re-refer to Com. on APPR. (Ayes 10. Noes 0. Page 734.) (April 29). Re-referred to Com. on APPR.

Apr. 23 From committee with author's amendments. Read second time and Amended. Re-referred to Com. on B., P. & E.D.

Apr. 16 Set for hearing April 29.

Apr. 10 From committee: Do pass and re-refer to Com. on B., P. & E.D. (Ayes 5. Noes 0. Page 487.) (April 10). Re-referred to Com. on B., P & E.D.

Mar. 19	Set for hearing April 10.
Mar. 11	Referred to Coms. on L. & I.R. and B., P. & E.D.
Feb. 25	Read first time.
Feb. 24	From printer. May be acted upon on or after March 26.
Feb. 22	Introduced. To Com. on RLS. for assignment. To print.



AMENDED IN SENATE APRIL 23, 2013

**SENATE BILL**

**No. 723**

**Introduced by Senator Correa**  
*(Coauthors: Senators Leno and Lieu)*

February 22, 2013

---

An act to add Section 325.51 to the Unemployment Insurance Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 723, as amended, Correa. Veterans.

Existing law requires the Employment Development Department, in consultation and coordination with veterans' organizations and veteran service providers, to research the needs of veterans throughout the state and develop a profile of veterans' employment and training needs and to seek federal funding for those purposes.

This bill would require the Employment Development Department and the Department of Consumer Affairs, on or before January 1, 2015, jointly to present a report to the Legislature ~~addressing specified matters relating to military training programs and state credentialing programs~~ *containing best practices by state governments around the nation in facilitating the credentialing of veterans by using their documented military education and experience.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 325.51 is added to the Unemployment~~
- 2     ~~Insurance Code, to read:~~

1     ~~325.51.—The~~

2     SECTION 1. *Section 325.51 is added to the Unemployment*  
3 *Insurance Code, immediately following Section 325.5, to read:*

4     325.51. *The Employment Development Department and the*  
5 *Department of Consumer Affairs, on or before January 1, 2015,*  
6 *jointly shall present a report to the Legislature containing all of*  
7 *the following:*

8     ~~(a) Best best~~ practices by state governments around the nation  
9 in facilitating the credentialing of veterans by using their  
10 documented military education and experience.

11     ~~(b) Military occupational specialties within all branches of the~~  
12 ~~United States Armed Forces that readily transfer to high-demand~~  
13 ~~civilian jobs.~~

14     ~~(c) The departments' past and current efforts to collaborate with~~  
15 ~~key public and private sector stakeholders to address the gaps~~  
16 ~~between military training programs and state credentialing~~  
17 ~~programs with respect to at least five specific vocations or~~  
18 ~~professions that are credentialed or licensed by the Department of~~  
19 ~~Consumer Affairs.~~

## **M. Senate Bill 724 (Emmerson)**

**Subject:** Liability. Charitable Vision Screenings

**Version:** Amended April 29, 2013

**Sponsor:** Author sponsored.

### **Existing Law:**

- 1) Provides immunity to a food facility that donates edible food for any damage or injury resulting from the consumption of the donated food, and to any nonprofit charitable organization or food bank that receives and distributes edible food for any injury or death due to the food, except as specified.

### **This Bill:**

- 1) Would limit the liability of a nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening and, if applicable, the provision of donated or recycled eyeglasses, if specified conditions are met.
- 2) Would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.

### **Comments:**

- 1) **Author's Intent.** N/A
- 2) **Staff Comments.** This bill regulates a much needed service for underserved populations. This bill ensures eye care professionals are providing supervision to ensure a level of quality that will effectively assist these populations.
- 3) **Support and Opposition.** N/A
- 4) **History.**

#### **2013**

Apr. 29	From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
Apr. 26	Set for hearing May 7.
Mar. 11	Referred to Com. on JUD.
Feb. 25	Read first time.
Feb. 24	From printer. May be acted upon on or after March 26.
Feb. 22	Introduced. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 29, 2013

**SENATE BILL**

**No. 724**

---

**Introduced by Senator Emmerson**

February 22, 2013

---

An act to add Section 1714.26 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as amended, Emmerson. Liability: charitable vision screenings.

Existing law provides immunity to a food facility that donates edible food for any damage or injury resulting from the consumption of the donated food, and to any nonprofit charitable organization or food bank that receives and distributes edible food for any injury or death due to the food, except as specified.

This bill would ~~provide immunity to a church,~~ *limit the liability of a* nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening ~~and the distribution~~ *and, if applicable, the provision* of donated or recycled eyeglasses, if specified conditions are met. *The bill would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1714.26 is added to the Civil Code, to read:

1714.26. (a) Except for *damage or injury* resulting from gross negligence or a willful act, there is no liability for any damage or injury on the part of ~~a church~~, a nonprofit charitable organization that provides vision screenings ~~and distributes~~ *and, if applicable, provides* donated or recycled eyeglasses, or a participating licensed optometrist, ophthalmologist, or *trained* volunteer who works with such a nonprofit charitable organization *in the performance of vision screenings*, if all of the following conditions are met:

(1) The vision screening is provided to address ocular health concerns and, *if applicable*, to provide a temporary solution in the form of donated or recycled eyeglasses until the patient can get a full examination and eyeglasses.

(2) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist.

(3) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist.

(4) Each vision screening is supervised by ~~a~~ *an attending* licensed optometrist or ophthalmologist.

(5) The eyeglass prescription determinations and ocular health recommendations are provided by ~~a~~ *an attending* licensed optometrist or ophthalmologist.

(6) A written prescription is not provided to the patient.

(7) The eyeglasses provided to the patients are a close or approximate match, within tolerances *allowed by the attending licensed optometrist or ophthalmologist*, to the prescription determined during the vision screening.

(8) The vision screening ~~services~~ and eyeglasses are provided without a charge.

(9) *The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses.*

1     (10) *The nonprofit charitable organization provides procedural,*  
2 *risk management, and quality control training, as applicable, to*  
3 *the participating optometrist, ophthalmologist, or volunteer who*  
4 *provides the vision screening or eyeglasses.*

5     (b) *The limitation of liability provided in subdivision (a) is not*  
6 *applicable if an action is brought by an officer of a state or local*  
7 *government pursuant to state or local law.*

8     (c) *The limitation of liability provided in subdivision (a) is not*  
9 *applicable if the conduct of the nonprofit charitable organization,*  
10 *optometrist, ophthalmologist, or volunteer includes any of the*  
11 *following types of misconduct:*

12         (1) *A crime of violence.*

13         (2) *A hate crime.*

14         (3) *An act involving a sexual offense.*

15         (4) *An act involving misconduct in violation of federal or state*  
16 *civil rights laws.*

17         (5) *An act performed while the defendant was under the*  
18 *influence of drugs or alcohol.*

19     ~~(b)~~

20     (d) *For the purposes of this section, “nonprofit:*

21         (1) *“Nonprofit charitable organization” means an organization*  
22 *exempt from federal income tax as an organization described in*  
23 *Section 501(c)(3) of the Internal Revenue Code.*

24         (2) *“Vision screening” means a test or examination of an*  
25 *individual using a portion of the usual examination procedures in*  
26 *a comprehensive eye examination and refraction, that are selected*  
27 *or directed by an attending licensed optometrist or*  
28 *ophthalmologist, and are within the guidelines of the nonprofit*  
29 *charitable organization.*

## **N. Senate Bill 809 (DeSaulnier & Steinberg)**

**Subject:** Controlled substances: reporting

**Version:** Amended May 1, 2013

**Sponsor:** California Attorney General Kamala Harris

### **Existing Law:**

- 1) Classifies certain controlled substances into designated schedules.
- 2) Requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.
- 3) Requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.
- 4) Permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care.
- 5) Authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.
- (6) Imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

### **This Bill:**

- 1) Would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.
- 2) Would require the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine to increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized to prescribe or dispense controlled substances, by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified.
- 3) Would also require the California State Board of Pharmacy to increase the licensure, certification, and renewal fees charged to wholesalers, nonresident wholesalers, and veterinary food-animal drug retailers under their supervision by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified.
- 4) Would require licensed health care practitioners, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care, and, upon the happening of specified events, to access and consult that information prior to prescribing or dispensing Schedule II, Schedule III, or Schedule IV controlled substances.

- 5) Would impose a tax upon qualified manufacturers, as defined. The tax would be collected by the State Board of Equalization pursuant to the procedures set forth in the Fee Collection Procedures Law.
- 6) Would require the board to deposit all taxes, penalties, and interest collected pursuant to these provisions in the CURES Fund, as provided.
- 7) Would also allow specified insurers, as defined, to voluntarily contribute to the CURES Fund, as described. Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.
- 8) This bill would take place immediately as an urgency statute.

### **Comments:**

- 1) **Author's Intent.** See attached bill analysis.
- 2) **Staff Comments.** With the potential scope expansion of optometrists (SB 492) which may possibly allow optometrists to prescribe Schedule II-V without limits, it must be made clear that optometrists must obtain a DEA number to participate in this important tracking tool. At this time, the Board does not have a tracking mechanism of which TPA certified optometrists are utilizing their current limited privilege to prescribe codeine and hydrocodone with compounds. As a result, all optometrists that are TPA certified will be affected by the increased licensure renewal fee of 1.16%. Thus, initial application fees would go up \$3.19 and license renewal fees would go up \$4.93.

### **3) Support and Opposition.**

#### Support:

- California Attorney General Kamala Harris (Sponsor)
- California Narcotics Officers Association
- California Pharmacists Association
- California Police Chiefs Association
- California State Sheriffs' Association
- Center for Public Interest Law (CPIL)
- City and County of San Francisco
- Healthcare Distribution Management Association
- Troy and Alanna Pack Foundation
- University of California

#### Support if Amended:

- California Medical Association

#### Opposition:

- Pharmaceutical Research and Manufacturers of America (PhRMA)

### **4) History.**

#### **2013**

May 1	From committee with author's amendments. Read second time and amended. Re-referred to Com. on GOV. & F.
Apr. 24	Set for hearing May 8.
Apr. 16	From committee: Do pass and re-refer to Com. on GOV. & F. (Ayes 7. Noes 2. Page 564.) (April 15). Re-referred to Com. on GOV. & F.
Mar. 28	Set for hearing April 15.
Mar. 11	Referred to Coms. on B., P. & E.D. and GOV. & F.



Feb. 25	Read first time.
Feb. 24	From printer. May be acted upon on or after March 26.
Feb. 22	Introduced. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE MAY 1, 2013

**SENATE BILL**

**No. 809**

---

**Introduced by Senators DeSaulnier and Steinberg**  
**(Coauthors: Senators Hancock, Lieu, Pavley, and Price)**  
(Coauthor: Assembly Member Blumenfield)

February 22, 2013

---

An act to add Section 805.8 to the Business and Professions Code, to amend Sections 11165 and 11165.1 of the Health and Safety Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as amended, DeSaulnier. Controlled substances: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would require the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine to increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized to prescribe or dispense controlled substances, by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified. This bill would also require the California State Board of Pharmacy to increase the licensure, certification, and renewal fees charged to wholesalers, nonresident wholesalers, and veterinary food-animal drug retailers under their supervision by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified.

(2) Existing law permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care. Existing law also authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

This bill would require licensed health care practitioners, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care, and, upon the happening of specified events, to access and consult that information prior to prescribing or dispensing Schedule II, Schedule III, or Schedule IV controlled substances.

(3) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax upon qualified manufacturers, as defined; ~~for the privilege of doing business in this state, as specified. This bill would also impose a tax upon specified insurers, as defined, for the privilege of doing business in this state, as specified.~~ The tax would be administered by the State Board of Equalization and would be collected *by the State Board of Equalization* pursuant to the procedures set forth

in the Fee Collection Procedures Law. The bill would require the board to deposit all taxes, penalties, and interest collected pursuant to these provisions in the CURES Fund, as provided. *This bill would also allow specified insurers, as defined, to voluntarily contribute to the CURES Fund, as described.* Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(4) 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.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Controlled Substance Utilization Review and Evaluation
- 4 System (CURES) is a valuable investigative, preventive, and
- 5 educational tool for law enforcement, regulatory boards,
- 6 educational researchers, and the health care community. Recent
- 7 budget cuts to the Attorney General's Division of Law Enforcement
- 8 have resulted in insufficient funding to support the CURES
- 9 Prescription Drug Monitoring Program (PDMP). The PDMP is
- 10 necessary to ensure health care professionals have the necessary
- 11 data to make informed treatment decisions and to allow law
- 12 enforcement to investigate diversion of prescription drugs. Without
- 13 a dedicated funding source, the CURES PDMP is not sustainable.
- 14 (b) Each year CURES responds to more than 60,000 requests
- 15 from practitioners and pharmacists regarding all of the following:
- 16 (1) Helping identify and deter drug abuse and diversion of
- 17 prescription drugs through accurate and rapid tracking of Schedule
- 18 II, Schedule III, and Schedule IV controlled substances.
- 19 (2) Helping practitioners make better prescribing decisions.
- 20 (3) Helping reduce misuse, abuse, and trafficking of those drugs.

(c) Schedule II, Schedule III, and Schedule IV controlled substances have had deleterious effects on private and public interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death. It is the intent of the Legislature to work with stakeholders to fully fund the operation of CURES which seeks to mitigate those deleterious effects, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.

SEC. 2. Section 805.8 is added to the Business and Professions Code, to read:

805.8. (a) (1) The Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine shall increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized pursuant to Section 11150 of the Health and Safety Code to prescribe or dispense Schedule II, Schedule III, or Schedule IV controlled substances by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the purpose of regulating prescribers and dispensers of controlled substances licensed or certificated by these boards.

(2) The California State Board of Pharmacy shall increase the licensure, certification, and renewal fees charged to wholesalers and nonresident wholesalers of dangerous drugs, licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9, by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the purpose of regulating wholesalers and nonresident wholesalers of dangerous drugs licensed or certificated by that board.

(3) The California State Board of Pharmacy shall increase the licensure, certification, and renewal fees charged to veterinary food-animal drug retailers, licensed pursuant to Article 15 (commencing with Section 4196) of Chapter 9, by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the

1 purpose of regulating veterinary food-animal drug retailers licensed  
2 or certificated by that board.

3 (b) The funds collected pursuant to subdivision (a) shall be  
4 deposited in the CURES accounts, which are hereby created, within  
5 the Contingent Fund of the Medical Board of California, the State  
6 Dentistry Fund, the Pharmacy Board Contingent Fund, the  
7 Veterinary Medical Board Contingent Fund, the Board of  
8 Registered Nursing Fund, the Osteopathic Medical Board of  
9 California Contingent Fund, the Optometry Fund, and the Board  
10 of Podiatric Medicine Fund. Moneys in the CURES accounts of  
11 each of those funds shall, upon appropriation by the Legislature,  
12 be available to the Department of Justice solely for maintaining  
13 CURES for the purposes of regulating prescribers and dispensers  
14 of controlled substances. All moneys received by the Department  
15 of Justice pursuant to this section shall be deposited in the CURES  
16 Fund described in Section 11165 of the Health and Safety Code.

17 SEC. 3. Section 11165 of the Health and Safety Code is  
18 amended to read:

19 11165. (a) To assist law enforcement and regulatory agencies  
20 in their efforts to control the diversion and resultant abuse of  
21 Schedule II, Schedule III, and Schedule IV controlled substances,  
22 and for statistical analysis, education, and research, the Department  
23 of Justice shall, contingent upon the availability of adequate funds  
24 in the CURES accounts within the Contingent Fund of the Medical  
25 Board of California, the Pharmacy Board Contingent Fund, the  
26 State Dentistry Fund, the Board of Registered Nursing Fund, the  
27 Osteopathic Medical Board of California Contingent Fund, the  
28 Veterinary Medical Board Contingent Fund, the Optometry Fund,  
29 the Board of Podiatric Medicine Fund, and the CURES Fund,  
30 maintain the Controlled Substance Utilization Review and  
31 Evaluation System (CURES) for the electronic monitoring of, and  
32 Internet access to information regarding, the prescribing and  
33 dispensing of Schedule II, Schedule III, and Schedule IV controlled  
34 substances by all practitioners authorized to prescribe or dispense  
35 these controlled substances.

36 (b) The reporting of Schedule III and Schedule IV controlled  
37 substance prescriptions to CURES shall be contingent upon the  
38 availability of adequate funds for the Department of Justice for  
39 the purpose of finding CURES. The department may seek and use  
40 grant funds to pay the costs incurred from the reporting of

1 controlled substance prescriptions to CURES. The department  
2 shall make information about the amount and the source of all  
3 private grant funds it receives for support of CURES available to  
4 the public. Grant funds shall not be appropriated from the  
5 Contingent Fund of the Medical Board of California, the Pharmacy  
6 Board Contingent Fund, the State Dentistry Fund, the Board of  
7 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the  
8 Osteopathic Medical Board of California Contingent Fund to pay  
9 the costs of reporting Schedule III and Schedule IV controlled  
10 substance prescriptions to CURES.

11 (c) CURES shall operate under existing provisions of law to  
12 safeguard the privacy and confidentiality of patients. Data obtained  
13 from CURES shall only be provided to appropriate state, local,  
14 and federal persons or public agencies for disciplinary, civil, or  
15 criminal purposes and to other agencies or entities, as determined  
16 by the Department of Justice, for the purpose of educating  
17 practitioners and others in lieu of disciplinary, civil, or criminal  
18 actions. Data may be provided to public or private entities, as  
19 approved by the Department of Justice, for educational, peer  
20 review, statistical, or research purposes, provided that patient  
21 information, including any information that may identify the  
22 patient, is not compromised. Further, data disclosed to any  
23 individual or agency, as described in this subdivision, shall not be  
24 disclosed, sold, or transferred to any third party.

25 (d) For each prescription for a Schedule II, Schedule III, or  
26 Schedule IV controlled substance, as defined in the controlled  
27 substances schedules in federal law and regulations, specifically  
28 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21  
29 of the Code of Federal Regulations, the dispensing pharmacy or  
30 clinic shall provide the following information to the Department  
31 of Justice on a weekly basis and in a format specified by the  
32 Department of Justice:

33 (1) Full name, address, and telephone number of the ultimate  
34 user or research subject, or contact information as determined by  
35 the Secretary of the United States Department of Health and Human  
36 Services, and the gender, and date of birth of the ultimate user.

37 (2) The prescriber's category of licensure and license number,  
38 the federal controlled substance registration number, and the state  
39 medical license number of any prescriber using the federal

1 controlled substance registration number of a government-exempt  
2 facility.

3 (3) Pharmacy prescription number, license number, and federal  
4 controlled substance registration number.

5 (4) National Drug Code (NDC) number of the controlled  
6 substance dispensed.

7 (5) Quantity of the controlled substance dispensed.

8 (6) International Statistical Classification of Diseases, 9th  
9 revision (ICD-9) Code, if available.

10 (7) Number of refills ordered.

11 (8) Whether the drug was dispensed as a refill of a prescription  
12 or as a first-time request.

13 (9) Date of origin of the prescription.

14 (10) Date of dispensing of the prescription.

15 (e) The CURES Fund is hereby established within the State  
16 Treasury. The CURES Fund shall consist of all funds made  
17 available to the Department of Justice for the purpose of funding  
18 CURES. Money in the CURES Fund shall, upon appropriation by  
19 the Legislature, be available for allocation to the Department of  
20 Justice for the purpose of funding CURES.

21 SEC. 4. Section 11165.1 of the Health and Safety Code is  
22 amended to read:

23 11165.1. (a) (1) A licensed health care practitioner eligible  
24 to prescribe Schedule II, Schedule III, or Schedule IV controlled  
25 substances or a pharmacist shall provide a notarized application  
26 developed by the Department of Justice to obtain approval to access  
27 information stored on the Internet regarding the controlled  
28 substance history of a patient maintained within the Department  
29 of Justice, and, upon approval, the department shall release to that  
30 practitioner or pharmacist, the electronic history of controlled  
31 substances dispensed to an individual under his or her care based  
32 on data contained in the CURES Prescription Drug Monitoring  
33 Program (PDMP).

34 (A) An application may be denied, or a subscriber may be  
35 suspended, for reasons which include, but are not limited to, the  
36 following:

37 (i) Materially falsifying an application for a subscriber.

38 (ii) Failure to maintain effective controls for access to the patient  
39 activity report.



1 (iii) Suspended or revoked federal Drug Enforcement  
2 Administration (DEA) registration.

3 (iv) Any subscriber who is arrested for a violation of law  
4 governing controlled substances or any other law for which the  
5 possession or use of a controlled substance is an element of the  
6 crime.

7 (v) Any subscriber accessing information for any other reason  
8 than caring for his or her patients.

9 (B) Any authorized subscriber shall notify the Department of  
10 Justice within 10 days of any changes to the subscriber account.

11 (2) To allow sufficient time for licensed health care practitioners  
12 eligible to prescribe Schedule II, Schedule III, or Schedule IV  
13 controlled substances and a pharmacist to apply and receive access  
14 to PDMP, a written request may be made, until July 1, 2012, and  
15 the Department of Justice may release to that practitioner or  
16 pharmacist the history of controlled substances dispensed to an  
17 individual under his or her care based on data contained in CURES.

18 (b) Any request for, or release of, a controlled substance history  
19 pursuant to this section shall be made in accordance with guidelines  
20 developed by the Department of Justice.

21 (c) (1) Until the Department of Justice has issued the  
22 notification described in paragraph (3), in order to prevent the  
23 inappropriate, improper, or illegal use of Schedule II, Schedule  
24 III, or Schedule IV controlled substances, the Department of Justice  
25 may initiate the referral of the history of controlled substances  
26 dispensed to an individual based on data contained in CURES to  
27 licensed health care practitioners, pharmacists, or both, providing  
28 care or services to the individual.

29 (2) Upon the Department of Justice issuing the notification  
30 described in paragraph (3) and approval of the application required  
31 pursuant to subdivision (a), licensed health care practitioners  
32 eligible to prescribe Schedule II, Schedule III, or Schedule IV  
33 controlled substances and pharmacists shall access and consult the  
34 electronic history of controlled substances dispensed to an  
35 individual under his or her care prior to prescribing or dispensing  
36 a Schedule II, Schedule III, or Schedule IV controlled substance.

37 (3) The Department of Justice shall notify licensed health care  
38 practitioners and pharmacists who have submitted the application  
39 required pursuant to subdivision (a) when the department  
40 determines that CURES is capable of accommodating the mandate

contained in paragraph (2). The department shall provide a copy of the notification to the Secretary of the State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel, and shall post the notification on the department's Internet Web site.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the Department of Justice pursuant to this section shall be considered medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a prescriber or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.

SEC. 5. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. CONTROLLED SUBSTANCE UTILIZATION  
REVIEW AND EVALUATION SYSTEM (CURES) TAX LAW

42001. For purposes of this part, the following definitions apply:

(a) "Controlled substance" means a drug, substance, or immediate precursor listed in any schedule in Section 11055, 11056, or 11057 of the Health and Safety Code.

(b) "Insurer" means ~~a health insurer licensed pursuant to Part 2 (commencing with Section 10110) of Division 2 of the Insurance Code, a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), and a workers' compensation insurer licensed pursuant to Part 3 (commencing with Section 11550) of Division 2~~ *an admitted insurer writing health insurance, as defined in Section 106 of the Insurance Code, and an admitted insurer writing workers' compensation insurance, as defined in Section 109 of the Insurance Code.*

(c) “Qualified manufacturer” means a manufacturer of a controlled substance ~~doing business in this state, as defined in Section 23101,~~ but does not mean a wholesaler or nonresident wholesaler of dangerous drugs, regulated pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code, a veterinary food-animal drug retailer, regulated pursuant to Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, or an individual regulated by the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, or the California Board of Podiatric Medicine.

42003. (a) For the privilege of doing business in this state, an annual tax is hereby imposed on all qualified manufacturers in an amount of ~~\_\_\_\_\_ dollars (\$\_\_\_\_\_)~~ *determined pursuant to Section 42005*, for the purpose of establishing and maintaining enforcement of the Controlled Substance Utilization Review and Evaluation System (CURES), established pursuant to Section 11165 of the Health and Safety Code.

~~(b) For the privilege of doing business in this state, a tax is hereby imposed on a one-time basis on all insurers in an amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), for the purpose of upgrading CURES.~~

~~(b) The Department of Justice may seek grant moneys from insurers for the purpose of upgrading and modernizing the CURES. Insurers may contribute by submitting their payment to the Controller for deposit into the CURES Fund established pursuant to subdivision (e) of Section 11165 of the Health and Safety Code. The department shall make information about the amount and the source of all private grant funds it receives for support of CURES available to the public.~~

42005. ~~Each qualified manufacturer and insurer shall prepare and file with the board a return, in the form prescribed by the board, containing information as the board deems necessary or appropriate for the proper administration of this part. The return shall be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the board for the amount of tax due for that period.~~

~~42007. The board shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) to “fee” shall include the tax imposed by this part and references to “feepayer” shall include a person required to pay the tax imposed by this part.~~

*42005. (a) The board shall collect the annual tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, a reference in the Fee Collection Procedures Law to a “fee” shall include this tax and a reference to a “feepayer” shall include a person liable for the payment for the taxes collected pursuant to that law.*

*(b) (1) The board shall not accept or consider a petition for redetermination that is based on the assertion that a determination by the Department of Justice incorrectly determined that a qualified manufacturer is subject to the tax or that a determination by the Department of Justice improperly or erroneously calculated the amount of that tax. The board shall forward to the Department of Justice any appeal of a determination that asserts that a determination by the Department of Justice incorrectly determined that a qualified manufacturer is subject to the tax or that a determination by the Department of Justice improperly or erroneously calculated the amount of that tax.*

*(2) The board shall not accept or consider a claim for refund that is based on the assertion that a determination by the Department of Justice improperly or erroneously calculated the amount of a tax, or incorrectly determined that the qualified manufacturer is subject to the tax. The board shall forward to the Department of Justice any claim for refund that asserts that a determination by the Department of Justice incorrectly determined that a qualified manufacturer is subject to the tax or that a determination by the Department of Justice improperly or erroneously calculated the amount of that tax.*

*42007. (a) The Department of Justice shall determine the annual tax by dividing the cost to establish and maintain enforcement of CURES by the number of qualified manufacturers. For calendar year 2014, the CURES cost shall be four million two hundred thousand dollars (\$4,200,000). Beginning with the 2015*

1 *calendar year, and for each calendar year thereafter, the*  
2 *Department of Justice shall adjust the rate annually to reflect*  
3 *increases or decreases in the cost of living during the prior fiscal*  
4 *year, as measured by the California Consumer Price Index for all*  
5 *items.*

6 *(b) The Department of Justice shall provide to the board the*  
7 *name and address of each qualified manufacturer that is liable*  
8 *for the annual tax, the amount of tax, and the due date.*

9 *(c) All annual taxes referred to the board for collection pursuant*  
10 *to Section 42005 shall be paid to the board.*

11 42009. All taxes, interest, penalties, and other amounts  
12 collected pursuant to this part, less refunds and costs of  
13 administration, shall be deposited into the CURES Fund.

14 42011. The board shall prescribe, adopt, and enforce rules and  
15 regulations relating to the administration and enforcement of this  
16 part.

17 SEC. 6. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

26 SEC. 7. This act is an urgency statute necessary for the  
27 immediate preservation of the public peace, health, or safety within  
28 the meaning of Article IV of the Constitution and shall go into  
29 immediate effect. The facts constituting the necessity are:

30 In order to protect the public from the continuing threat of  
31 prescription drug abuse at the earliest possible time, it is necessary  
32 this act take effect immediately.

## BILL ANALYSIS

Hearing Date: April 15, 2013

Bill No: SB  
809SENATE COMMITTEE ON BUSINESS, PROFESSIONS  
AND ECONOMIC DEVELOPMENT  
Senator Curren D. Price, Jr., ChairBill No: SB 809 Author: De Saulnier and Steinberg  
As Introduced: February 22, 2013 Fiscal: Yes

SUBJECT: Controlled substances: reporting.

SUMMARY: An urgency measure which makes various changes to the funding and operation of the Controlled Substances Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP). Establishes the CURES Fund in the State Treasury. Requires practitioners who prescribe Schedule II, III and IV controlled substances and pharmacists to enroll in and consult the CURES PDMP. Increases licensing fees for prescribing health practitioners, dispensers and wholesalers of controlled substances for the purpose of providing ongoing funding to maintain the CURES PDMP. Levies a one-time tax assessment on health insurance plans and workers compensation insurers to fund the CURES modernization upgrade. Imposes annual taxes on drug manufacturers of Schedule II, III, and IV controlled substances doing business in California to maintain the CURES PDMP.

Existing law, the Health and Safety Code (HSC), establishes the California Uniform Controlled Substances Act which regulates controlled substances. (HSC §§ 11000-11651)

## 1) Defines drug as:

- a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them.
- b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or

SB 809  
Page 2

animals.

- c) Substances (other than food) intended to affect the structure or any function of the body of man or animals. (Health and Safety Code (HSC) § 11014)
- 2) Defines opiate as any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. (HSC § 11020)
  - 3) Classifies controlled substances in five schedules according to their danger and potential for abuse. (HSC § 11054-11058)
  - 4) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to \$20,000, or both. (HSC § 11153)
  - 5) Requires special prescription forms for controlled substances to be

obtained from security printers approved by DOJ, establishes certain criteria for features on the forms and requires controlled substance prescriptions to be made on the specified form. (HSC §§ 11161.5, 11162.1, 11164)

- 6) Establishes the Controlled Substances Utilization Review and Evaluation System (CURES) for electronic monitoring of Schedule II, III and IV controlled substance prescriptions. CURES provides for the electronic transmission of Schedule II, III and IV controlled substance prescription information to the Department of Justice (DOJ) at the time prescriptions are dispensed. (HSC § 11165)
- 7) States that the purpose of CURES is to assist law enforcement and regulatory agencies in controlling diversion and abuse of Schedule II, III and IV controlled substances and for statistical analysis, education and research. Specifies that DOJ shall maintain CURES, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund and the Osteopathic Medical Board of California Contingent Fund. (HSC § 11165 (a))
- 8) Provides that the reporting of Schedule III and IV controlled substance prescriptions to CURES is contingent upon availability of

SB 809  
Page 3

adequate funds from DOJ and authorized DOJ to seek and use grant funds for costs incurred but specifies that monies cannot be used from the Funds outlined above for this purpose. (HSC § 11165 (b))

- 9) Establishes privacy protections for patient data and specifies that CURES data can only be accessed by appropriate state, local and federal persons or public agencies for disciplinary, civil or criminal actions. Specifies that CURES data shall also only be provided, as determined by DOJ, to other agencies or entities for educating practitioners and others, in lieu of disciplinary, civil or criminal actions. Authorizes non-identifying CURES data to be provided to public and private entities for education, research, peer review and statistical analysis. (HSC § 11165 (c))
- 10) Provides that pharmacies or clinics, in filling a controlled substance prescription, shall provide weekly information to DOJ including the patient's name, date of birth, the name, form, strength and quantity of the drug, and the pharmacy name, pharmacy number and the prescribing physician information. (HSC § 11165 (d))
- 11) Provides that a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, may apply to participate in the CURES Prescription Drug Monitoring Program (PDMP). Authorizes DOJ to deny an application or suspend a subscriber for materially falsifying an application, failing to maintain effective controls for access to the patient activity report, suspended or revoked DEA registration, arrest for a controlled substance arrest or accessing information for any reason other than patient care. Under the PDMP, the participating (subscribing) practitioner or pharmacist may access using the Internet, the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in CURES. Provides that an authorized subscriber shall notify DOJ within 10 days of any changes to the subscriber account. (HSC § 11165.1 (a))
- 12) Provides that any request for, or release of, a controlled substance history shall be made in accordance with guidelines developed by DOJ. (HSC § 11165.1 (b))
- 13) Provides that the DOJ may initiate the referral of the history controlled substances dispensed to an individual, based on the CURES data, to licensed health care practitioners and pharmacists, as specified. (HSC § 11165.1 (c))

SB 809  
Page 4

- 14) Provides that the history of controlled substances dispensed to a patient based on CURES data that is received by a practitioner or pharmacist shall be considered medical information, subject to provisions of the Confidentiality of Medical Information Act. (HSC § 11165.1 (d))
- 15) Provides that DOJ may audit the PDMP system and its users. Authorizes DOJ to establish, through regulations, a system for issuing a citation to a PDMP subscriber. Provides that the citation may contain an order or abatement to pay a fine if the subscriber is in violation of the CURES PDMP statutes or regulations. Terminates a subscriber account if a citation is not contested and a fine is not paid. Provides that administrative fines shall be deposited in the CURES Program Special Fund, available upon appropriation to support costs associated with informal and formal hearings, maintenance and updates to the CURES PDMP. (HSC § 11165-2)
- 16) Requires health practitioners who prescribe or administer a controlled substance classified in Schedule II to make a record containing the name and address of the patient, date, and the character, name, strength, and quantity of the controlled substance prescribed, as well as the pathology and purpose for which the controlled substance was administered or prescribed. (HSC § 11190 (a) and (b))
- 17) Requires prescribers who are authorized to dispense Schedule II, III or IV controlled substance in their office or place of practice to record and maintain information for three years for each such prescription that includes the patient's name, address, gender, and date of birth, prescriber's license and license number, federal controlled substance registration number, state medical license number, NDC number of the controlled substance dispensed, quantity dispensed, diagnosis code, if available, and original date of dispensing. Requires that this information be provided to DOJ on a monthly basis. (HSC § 11190 (c))

Existing law, the Business and Professions Code (BPC):

- 1) Establishes the Medical Practice Act which provides for the licensing and regulation of physicians and surgeons by the Medical Board of California (MBC) within the Department of Consumer Affairs (DCA).
- 2) Establishes the Dental Practice Act which provides for the licensing and regulation of dentists by the Dental Board of

SB 809  
Page 5

California within DCA.

- 3) Establishes the Veterinary Medicine Practice Act which provides for the licensing and regulation of veterinarians and registered veterinary technicians by the Veterinary Medical Board within DCA.
- 4) Establishes the Nursing Practice Act which provides for the certification and regulation of registered nurses, nurse practitioners and advanced practice nurses by the Board of Registered Nursing within DCA.
- 5) Provides that a certified nurse-midwife may furnish or order drugs or devices, including controlled substances, if furnished or ordered incidentally to the provision of family planning services, routine health care or perinatal care, or care rendered consistent with the certified nurse-midwife's practice; occurs under physician and surgeon supervision; and is in accordance with standardized procedures or protocols as specified. (BPC § 2746.51)
- 6) Provides that a nurse practitioner may furnish or order drugs or devices, including controlled substances, if it is consistent with a nurse practitioner's educational preparation or for which clinical competency has been established and maintained; occurs under physician and surgeon supervision; and is in accordance with



standardized procedures or protocols as specified. (BPC § 2836.1)

- 7) Establishes the Physician Assistant Practice Act which provides for the licensing of physician assistants by the Physician Assistant Committee, under the MBC, within the DCA.
- 8) Provides that a physician assistant while under the supervision of a physician and surgeon may administer or provide medication to a patient, or transmit orally or in writing a drug order under specified conditions and protocols adopted by the supervising physician and surgeon. (BPC § 3502.1)
- 9) Establishes the Osteopathic Act which provides for the licensing and regulation of osteopathic physicians and surgeons by the Osteopathic MBC within DCA.
- 10) Establishes the Naturopathic Doctors Act which provides for the licensing of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California within DCA.
- 11) Establishes the Optometry Practice Act which provides for the

SB 809  
Page 6

licensure of optometrists by the California State Board of Optometry within DCA.

- 12) Establishes the Podiatric Act which provides for the licensure of doctors of podiatric medicine by the California Board of Podiatric Medicine within the DCA.
- 13) Establishes the Pharmacy Law which provides for the licensure and regulation of pharmacies, pharmacists and wholesalers of dangerous drugs or devices by the Board of Pharmacy within the DCA.
- 14) Specifies certain requirements regarding the dispensing and furnishing of dangerous drugs and devices, and prohibits a person from furnishing any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor. (BPC § 4059)

This bill:

- 1) States the following findings and declarations:
  - a) CURES is a valuable investigative, preventive, and educational tool for law enforcement, regulatory boards, educational researchers, and the health care community.
  - b) Recent budget cuts to the Attorney General's Division of Law Enforcement (DLE) have resulted in insufficient funding to support the CURES PDMP.
  - c) The PDMP is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate diversion of prescription drugs and without a dedicated funding source, the CURES PDMP is not sustainable.
  - d) Each year CURES responds to more than 60,000 requests from practitioners and pharmacists helping identify and deter drug abuse and diversion of prescription drugs through accurate and rapid tracking of Schedule II, Schedule III, and Schedule IV controlled substances, helping practitioners make better prescribing decisions, helping reduce misuse, abuse, and trafficking of those drugs.
  - e) Schedule II, Schedule III, and Schedule IV controlled substances have had deleterious effects on private and public

SB 809  
Page 7

interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death.

- f) The Legislature intends to work with stakeholders to fully fund the operation of CURES which seeks to mitigate those deleterious effects, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.
- 1) Requires the following health practitioner boards to increase licensure, certification and renewal fees for licensees under their supervision authorized to prescribe controlled substances by up to 1.16 percent annually and clarifies that in no case shall the fee increase exceed the reasonable costs association with maintaining CURES:
- a) Medical Board of California
  - b) Dental Board of California
  - c) California State Board of Pharmacy
  - d) Veterinary Medical Board
  - e) Board of Registered Nursing
  - f) Physician Assistant Committee of the Medical Board of California
  - g) Osteopathic Medical Board of California
  - h) State Board of Optometry
  - i) California Board of Podiatric Medicine
- 1) Requires the Board of Pharmacy to increase licensure, certification and renewal fees for wholesalers, out-of-state wholesalers of dangerous drugs and veterinary food-animal drug retailers up to 1.16 percent annually. Clarifies that in no case shall the fee increase exceed the reasonable costs association with maintaining CURES.
- 2) Creates CURES accounts within the Contingent Fund of the MBC, the State Dentistry Fund, the Pharmacy Board Contingent Fund, the Veterinary Medical Board Contingent Fund, the Board of Registered

SB 809  
Page 8

Nursing Fund, the Osteopathic Medical Board of California Contingent Fund, the Optometry Fund and the Board of Podiatric Medicine Fund. Provides that the monies collected from licensing fees for CURES shall be deposited into the CURES account in each fund.

- 3) Provides that monies in the various CURES accounts shall be deposited into the CURES Fund, established within the State Treasury, consisting of all funds made available to DOJ to maintain CURES.
- 4) Requires DOJ to provide public notice of the amount and source of all private grant funds it receives for support of CURES.
- 5) Requires a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, to provide a notarized application to participate in the CURES PDMP. Requires DOJ, upon approval of the practitioner or pharmacist subscriber, to release the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES PDMP. Requires DOJ to notify applicants, the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly and the Legislative when CURES is upgraded and can handle the amount of new system users and include notification on the DOJ website.

- 6) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES) Tax Law with the following definitions:
- a) "Controlled substance" is a drug, substance or immediate precursor in Schedule II, Schedule III or Schedule IV.
  - b) "Insurer" means a health insurer licensed by the Department of Insurance, a health care service plan licensed by the Department of Managed Health Care or a workers' compensation insurer.
  - c) "Qualified manufacturer" is a manufacturer of a controlled substance doing business in California which is not a wholesaler or out-of-state wholesaler of dangerous drugs, a veterinary food-animal drug retailer or a licensee of any of the above-mentioned boards.
- 1) Imposes an annual tax on all qualified manufacturers for the purpose of establishing and maintaining enforcement of CURES.

SB 809  
Page 9

- 2) Imposes a one-time tax on all insurers for the purpose of upgrading CURES.
- 3) Requires each qualified manufacturer and insurer to prepare a return to be filed with the State Board of Equalization (BOE) and file the return on or before the last day of the month, along with a remittance for the amount of tax due for the quarter.
- 4) Requires BOE to administer and collect the taxes. Provides that all taxes, interest, penalties and other amounts, less refunds and cost of administration, shall be deposited into the CURES Fund. Authorizes BOE to create rules and regulations to administer and enforce the collection of these taxes.
- 5) States that this is an urgency measure, necessary to take effect immediately so that the public is protected from the continuing threat of prescription drug abuse at the earliest possible time.
- 6) Makes various technical changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. Purpose. This bill is sponsored by California Attorney General Kamala Harris. According to the Author, the automated prescription drug management program (PDMP) within the CURES program is a valuable investigative, preventative, and educational tool for law enforcement, regulatory boards, and health care providers, but recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support the CURES PDMP. The Author states that the PDMP is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate prescription drug diversion. Without a dedicated funding source, the CURES PDMP is not sustainable and will be suspended July 1, 2013. To keep the program going and increase its effectiveness, SB 809 includes an urgency clause and establishes funds to upgrade the system to be fully modernized and provides dedicated ongoing funding to ensure the program is sustainable.
2. Controlled Substances. Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The act ranks into five schedules those drugs known to have potential for

SB 809  
Page 10

physical or psychological harm, based on three considerations: (a) their potential for abuse; (b) their accepted medical use; and, (c) their accepted safety under medical supervision.

Schedule I controlled substances have a high potential for abuse and no generally accepted medical use such as heroin, ecstasy, and LSD.

Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin.

Schedule III and IV controlled substances have a currently accepted medical use in treatment, less potential for abuse but are known to be mixed in specific ways to achieve a narcotic-like end product. Examples include drugs include Vicodin, Zanax, Ambien and other anti-anxiety drugs.

Schedule V drugs have a low potential for abuse, a currently accepted medical use and are available over the counter.

The three classes of prescription drugs that are most commonly abused are: opioids, which are most often prescribed to treat pain; central nervous system (CNS) depressants, which are used to treat anxiety and sleep disorders and; stimulants, which are prescribed to treat the sleep disorder narcolepsy and attention-deficit hyperactivity disorder (ADHD). Each class can induce euphoria, and when administered by routes other than recommended, such as snorting or dissolving into liquid to drink or inject, can intensify that sensation. Opioids, in particular, act on the same receptors as heroin and, therefore, can be highly addictive. Common opioids are: hydrocodone (Vicodin), oxycodone (OxyContin), propoxyphene (Darvon), hydromorphone (Dilaudid), meperidine (Demerol), and diphenoxylate (Lomotil).

3. Prescription Drug Abuse. For the past number of years, abuse of prescription drugs (taking a prescription medication that is not prescribed for you, or taking it for reasons or in dosages other than as prescribed) to get high has become increasingly prevalent. Federal data shows the past year abuse of prescription pain killers now ranks second, just behind marijuana, as the nation's most widespread illegal drug problem. According to the 2008 National

SB 809  
Page 11

Survey on Drug Use and Health (NSDUH), approximately 52 million Americans aged 12 or older reported non-medical use of any psychotherapeutic at some point in their lifetimes, representing 20.8% of the population aged 12 or older. The National Institute on Drug Abuse's (NIDA) research report Prescription Drugs: Abuse and Addiction states that the elderly are among those most vulnerable to prescription drug abuse or misuse because they are prescribed more medications than their younger counterparts. Persons 65 years of age and above comprise only 13 percent of the population, yet account for approximately one-third of all medications prescribed in the United States. Older patients are more likely to be prescribed long-term and multiple prescriptions, which could lead to unintentional misuse. The report also notes that studies suggest that women are more likely (in some cases, 55 percent more likely) than men to be prescribed an abusable prescription drug, particularly narcotics and anti-anxiety drugs. A 2010 report, Monitoring the Future Study, showed that as many as 4 percent of high school students and 3 percent of young adults say they have used OxyContin in the past year.

Abuse can stem from the fact that prescription drugs are legal and potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. NIDA data states that in actuality, prescription drugs act directly or indirectly on the same brain systems affected

by illicit drugs, thus, their abuse carries substantial addiction liability and can lead to a variety of other adverse health effects.

The Senate Committee on Labor held a hearing on March 20, 2013 entitled Opioids and the Workers Compensation System: A Discussion on Mitigating Abuse and Ensuring Access during which the committee reviewed a series of studies conducted by the California Workers' Compensation Institute (CWCI) which highlighted a rise in opioid prescriptions by physicians in the state workers' compensation system. The studies identified trends in widespread, potent use of Schedule II drugs by patients with low back pain, significant growth in the prescribing of all Schedule II drugs in the workers' compensation system and found that 6.7 percent of all prescriptions in the system for the first half of 2011 alone were for opioids.

4. Prescription Drug Deaths. A recent Centers for Disease Control (CDC) analysis found that drug overdose deaths increased for the

SB 809  
Page 12

11th consecutive year in 2010 and prescription drugs, particularly opioid analgesics, are the top drugs leading the list of those responsible for fatalities. According to CDC, 38,329 people died from a drug overdose in 2010, up from 37,004 deaths in 2009, and 16,849 deaths in 1999. CDC found that nearly 60 percent of the overdose deaths in 2010, involved pharmaceutical drugs, with opioids associated with approximately 75 percent of these deaths. Nearly three out of four prescription drug overdoses are caused by opioid pain relievers. CDC recommends the use of PDMPs with a focus on both patients at highest risk in terms of prescription painkiller dosage, numbers of prescriptions and numbers of prescribers, as well as prescribers who deviate from accepted medical practice and those with a high proportion of doctor shoppers among their patients. CDC also recommends that PDMPs link to electronic health records systems so that the information is better integrated into health care providers' day-to-day practices. CDC believes that state benefits programs like Medicaid and workers' compensation should consider monitoring prescription claims information and PDMP data for signs and inappropriate use of controlled substances. The organization also acknowledges the value of PDMPs in taking regulatory action against health care providers who do operate outside the limits of appropriate medical practice when it comes to prescription drug prescribing.

A current Los Angeles Times series, "Dying For Relief," has highlighted the role of prescription drugs in overdose deaths as determined through the examination of coroners' reports. Reporters conducted an analysis of coroners' reports for over 3000 deaths occurring in four counties (Los Angeles, Orange, Ventura and San Diego) where toxicology tests found a prescription drug in the deceased's system, usually a painkiller, anti-anxiety drug or other narcotic; coroners' investigators reported finding a container of the same medication bearing the doctor's name, or records of a prescription; the coroner determined that the drug caused or contributed to the death. The analysis found that in nearly half of the cases where prescription drug toxicity was listed as the cause of death, there was a direct connection to a prescribing physician. The Times created a database, the first of its kind, linking overdose deaths to the doctors who prescribed drugs. They also found that more than 80 of the doctors whose names were listed on prescription bottles found at the home of or on the body of a decedent had been the prescribing physician for 3 or more dead patients. Their analysis found that one doctor was linked to as many as 16 dead patients. The approach that these reporters have taken is unique in that they are specifically talking about abuse and subsequent death to patients taking drugs prescribed by their

SB 809  
Page 13

doctors.

5. Prescription Drug Monitoring and CURES. With rising levels of abuse, PDMPs are a critical tool in assisting law enforcement and regulatory bodies with their efforts to reduce drug diversion. 49 states currently have monitoring programs (Missouri is the only state currently without a PDMP. California has the oldest prescription drug monitoring program in the nation. Of these 50 programs throughout the nation, seven are or will be housed at the state's Department of Justice, 18 are or will be housed at a state Department of Health or substance abuse agency and 25 are or will be housed at a state Board of Pharmacy or state professional licensing agency. There is currently momentum to share data across these programs from state to state.

In California, the Controlled Substance Utilization Review and Evaluation System (CURES) is an electronic tracking program that reports all pharmacy (and specified types of prescriber) dispensing of controlled drugs by drug name, quantity, prescriber, patient, and pharmacy.

AB 3042 (Takasugi, Chapter 738, Statutes of 1996) established a three year pilot program, beginning in July 1997, for the electronic monitoring of prescribing and dispensing of Schedule II controlled substances. Subsequent legislation (SB 1308, Committee on Business and Professions, Chapter 655, Statutes of 1999) extended the sunset date on the CURES program to July 1, 2003 and required DOJ to submit annual status reports on the program to the Legislature. In 2002, the Legislature passed AB 2655 (Matthews, Chapter 345, Statutes of 2002) which extended the CURES program to 2008 and provided access to CURES data by licensed health care providers. Finally, in 2003, SB 151 (Burton, Chapter 406, Statutes of 2003) made the program permanent. In 2009, then Attorney General Brown launched an online CURES system at DOJ to replace the previous system that required mailing or faxing written requests for information, giving health professionals (doctors, pharmacists, midwives, and registered nurses), law enforcement agencies and medical profession regulatory boards instant computer access to patients' controlled-substance records.

Data from CURES is managed by DOJ to assist state law enforcement and regulatory agencies in their efforts to reduce prescription drug diversion. CURES provides information that offers the ability to identify if a person is "doctor shopping" (when a prescription-drug addict visits multiple doctors to obtain multiple prescriptions for drugs, or uses multiple pharmacies to obtain prescription drugs). Information tracked in the system contains

SB 809  
Page 14

the patient name, prescriber name, pharmacy name, drug name, amount and dosage, and is available to law enforcement agencies, regulatory bodies and qualified researchers. The system can also report on the top drugs prescribed for a specific time period, drugs prescribed in a particular county, doctor prescribing data, pharmacy dispensing data and is a critical tool for assessing whether multiple prescriptions for the same patient may exist. In addition to the Board, CURES data can be obtained by the MBC, Dental Board of California, Board of Registered Nursing, Osteopathic Medical Board of California and Veterinary Medical Board.

Since 2009, more than 8,000 doctors and pharmacists have signed up to use CURES, which has more than 100 million prescriptions. The system also has been accessed more than 1 million times for patient activity reports and has been key in investigations of doctor shoppers and nefarious physicians. According to the AG's office, CURES assisted in targeting the top 50 doctor shoppers in the state, who averaged more than 100 doctor and pharmacy visits to collect massive quantities of addictive drugs and the crackdown led to the arrest of dozens of suspects. CURES also provided information with the prescribing history of a Southern California physician accused of writing hundreds of fraudulent prescriptions to feed his patients' drug addictions, seven of whom died from prescription-drug overdoses. The system has also been successful in alerting law enforcement and licensed medical professionals to signs of illegal drug diversions, including a criminal ring that stole the identities of eight doctors, illegally wrote prescriptions, stole the identities of dozens of innocent citizens who they designated as patients in order to fill the fraudulent

prescriptions, resulting in the group obtaining more than 11,000 pills of highly addictive drugs like OxyContin and Vicodin.

While California has the largest number of practitioners, pharmacies and patients, the DOJ reports that without a dedicated funding source, the CURES PDMP is not sustainable and will be suspended by July 1, 2013. Specifically, the California Budget Act of 2011 imposed budget cuts to the DLE and eliminated all General Fund support for CURES and the PDMP, which included funding for system support, staff support and related operating expenses. Currently, to perform the minimum critical functions and to avoid shutting down the program, DOJ opted to assign staff to perform temporary dual job assignments on a part time basis. Although some tasks are being performed, the program is faced with a constant backlog, including a four-week timeframe to process new user applications, six-week response time on emails, twelve week backlog

SB 809  
Page 15

on voicemails and other significant delays in productivity.

According to DOJ, the only funding currently available for CURES is through one grant and renewable contracts with the MEC, Dental Board of California, Board of Registered Nursing, Osteopathic Medical Board of California and Veterinary Medical Board. As a result, funding for CURES and PDMP in state fiscal year 2012-13 consists of \$296,000 that can be used only for PDMP system data and maintenance. DOJ reports that it will use California Justice Information Services (CJIS) general fund monies to keep the current PDMP running at minimal capacity through June 30, 2013.

The Medical Board of California and Board of Pharmacy held a "Joint Forum to Promote Appropriate Prescribing and Dispensing" on February 21-22, 2013 at which the boards addressed public policy issues relating to prescription drugs, including the CURES PDMP. Pharmacists, doctors, prosecutors, investigators, and board representatives all weighed in on the current and future direction of the CURES program. Several speakers and most of the public commenters opined that the CURES user interface is outdated, slow, and difficult to navigate, which discourages prescribers and dispensers from using it. Despite the current shortcomings of the program, the boards called upon the Legislature to fund CURES and provide for its improvement. Stakeholders and the boards noted that the CURES system is a key tool for identifying patients who are engaging in doctor or pharmacy shopping, where the patient uses multiple doctors or pharmacies to facilitate access to prescription drugs beyond the patient's medical needs, either to feed the patient's personal addiction or to supply drugs to others. It was reported that the CURES system also has the potential to be used to identify over-prescribing practitioners and over-dispensing pharmacies. The boards noted that they are interested in using CURES PDMP to identify patterns of prescribing and dispensing that indicate a licensee might be engaging in prohibited behavior. Some proposed changes to improve the efficacy of the CURES system discussed at the forum include technological updates and making prescriber participation mandatory. To the boards and stakeholders, making participation in CURES mandatory, and requiring every prescriber to check a patient's CURES report prior to prescribing a controlled substance, may be an important method of identifying potential problems and avoiding prescribing more drugs than are medically necessary.

6. CURES 2.0. DOJ is proposing a modernization program for CURES, CURES 2.0 which "seeks to quickly and efficiently serve the state's large medical practitioner community as well as meet the demanding

SB 809  
Page 16

analytical and information requirements of the criminal justice community".

DOJ reports in CURES 2.0: An Integrated Approach to Preventing Drug Abuse and Diversion that the current CURES PDMP demands heavy personnel resources for information processing and dissemination. The system also requires the equivalent of seven IT staff but is slow, frequently freezes and is not capable of accommodating a large influx of new users. The current registration process for the program is time intensive and requires manual data entry and work. DOJ also notes that the system is currently reactive in nature and has limited reporting and analytical capabilities, as well as underutilized, with only 3.6 percent of the eligible prescriber and pharmacist licensee field registered as users of CURES. The current system also has discrepancies between its two data sources that can result in unreliable information.

A modernized system as outlined by DOJ will result in fewer staff required to maintain the PDMP as well as increased analytical capabilities for regulatory boards and law enforcement to investigate and prevent drug diversion. According to DOJ, CURES 2.0 will provide a streamlined program, system and enrollment process; integration with current major health information systems; timely Patient Activity Reports to prescribers and dispensers; inquiry capabilities to law enforcement and regulatory boards; and, a method of secure data exchange among PDMP users and DOJ. According to DOJ, the modernized PDMP will enhance information sharing about prescription drug dispensing and prescribing while "promoting legitimate medical practice and quality patient care" and implement two "newly created State of California Regional Investigative Prescription Teams (SCRIPT), a collaborative effort to significantly diminish the availability and use of illegally obtained prescription drugs through education, training and apprehending those responsible for the distribution and diversion of prescription drugs". The modernization effort would take approximately 12 to 16 months to complete once funding has been secured and system design efforts begin. The costs associated with CURES 2.0, as provided by DOJ, are as follows:

PDMP Modernization One-Time Cost - Two Year Period	
Item	Amount
Hardware (Server, storage and network)	\$520,541
Software (Licensing and maintenance)	\$542,102
Design, Development, and Implementation (Consultant contract based on 4 contract staff working an estimate of 8600 hours at \$120 per hour)	\$1,032,000
Estimated One-Time Cost	\$2,090,643

SB 809  
Page 17

The \$2,090,643 cost above would be for modernizing the Prescription Drug Monitoring Program (PDMP) to meet the needs of medical practitioners and law enforcement.

Transitional System Cost - Two Year Period	
System	
Information Technology Staff (7)	\$1,300,000
Electronic Data Service (to obtain pharmacy data)	\$260,000
Maintenance (hardware,	\$270,000



software)	
Estimated Cost to Operate System During Two Year Period:	\$1,830,000

The \$1,830,000 cost identified above would be necessary to operate and maintain the current PDMP until data could be migrated to the modernized PDMP. This bill seeks to fund the modernization effort and transitional system through the proposed onetime tax assessment on health insurance plans and workers compensation insurers.

SB 809  
Page 18

CURES 2.0 Program and System Cost Ongoing - Year Three	
Program	
CURES Support Staff (9)	\$ 776,554
Travel/Training (system registration outreach; training system users; stakeholder meetings)	\$15,000
System	
Information Technology Staff (5)	\$500,000
Electronic Data Service (to obtain pharmacy data)	\$130,000
Maintenance (hardware, software)	\$200,000
Total:	\$1,621,554

The \$1,621,554 cost identified above would be the cost of staffing, operating, and maintaining the modernized PDMP on a yearly basis. This cost would include any necessary hardware and/or software upgrades. This bill seeks to fund this effort through the proposed 1.16 percent increase in licensing fees for prescribers, pharmacists and wholesalers. As proposed, this fee increase would result in approximately:

- \$9 increase on the current \$808 licensing fee for physicians and surgeons
- \$4 increase on the current \$365 licensing fee for dentists
- \$2 increase on the current \$150 licensing fee for pharmacists
- \$7 increase on the current \$600 licensing fee for wholesalers, including out-of-state wholesalers
- \$5 increase on the current \$405 licensing fee for veterinary retailers

SB 809  
Page 19

- \$3 increase on the current \$290 licensing fee for veterinarians
- \$2 increase on the current \$140 licensing fee for nurse midwives
- \$2 increase on the current \$140 licensing fee for

nurse practitioners  
 \$3 increase on the current \$300 licensing fee for  
 physician assistants  
 \$5 increase on the current \$400 licensing fee for  
 osteopathic physicians and surgeons  
 \$5 increase on the current \$425 licensing fee for  
 optometrists  
 \$10 increase on the current \$900 licensing fee for  
 permanent doctors of podiatric medicine

-----  
Statewide SCRIPT Team

Program - SCRIPT Team (19)	\$ 4,307,343
Total: \$	4,307,343

-----

The \$4,307,343 cost identified above would fund two State of California Regional Investigative Prescription Teams (SCRIPT), with one team located in Northern California and one in Southern California. These SCRIPT teams would be tasked with investigating prescription drug diversion, coordinating cases with the MBC, as well as the coordination of state, federal and local law enforcement efforts. These teams would provide statewide jurisdiction for cases involving organized diversion and the misuse of scheduled medication. This bill seeks to fund the SCRIPT teams through an annual tax levy on narcotic drug manufacturers who do business in this state.

7. Related Legislation. SB 62 (Price) requires coroners' reports to be transmitted to various health practitioner boards in the event that cause of death is determined to be prescription drug overdose. The bill is also up for consideration in this Committee today.

SB 670 (Steinberg) provides the Medical Board of California with additional authority to inspect medical records and to limit the

SB 809  
 Page 20

prescribing ability of physicians during a pending investigation if there is a reasonable suspicion the physician has engaged in overprescribing of controlled substances that resulted in a patient's death. The bill is also up for consideration in this Committee today.

SB 616 (DeSaulnier) of 2012 would have increased fees, up to \$10 per licensee that is authorized to prescribe or dispense controlled substances, to fund CURES. The measure failed passage in the Assembly Committee on Business, Professions and Consumer Protection.

SB 360 (DeSaulnier, Chapter 418, Statutes of 2011) updates CURES to reflect the new PDMP and authorizes DOJ to initiate administrative enforcement actions to prevent the misuse of confidential information collected through CURES.

SB 1071 (DeSaulnier) of 2010 would have imposed a tax on manufacturers or importers of Schedule II, III and IV controlled substances to pay for ongoing costs of the CURES program. Fees would have been collected by the BOE, at the rate of \$0.0025 per pill included in Schedule II, III, and IV. The bill was held in the Senate Committee on Health.

AB 2986 (Mullin, Chapter 286, Statutes of 2006) required designated prescription forms for controlled substances and prescriptions for controlled substances to contain additional information identifying the final consumer and any refill information.

SB 734 (Torlakson, Chapter 487, Statutes of 2005) authorized tamper resistant online access to the CURES system for authorized physicians, pharmacists and law enforcement, pending the acquisition of private funding.

SB 151 (Burton, Chapter 406, Statutes of 2004) makes CURES permanent, among other provisions.

AB 3042 (Takasugi, Chapter 738, Statutes of 1996) establishes CURES as a three-year pilot program.

8. Arguments in Support. California Attorney General Kamala Harris (AG) writes in support of this bill, noting that without the funding it provides, the AG will be forced to disband the CURES program later this year, making California one of only two states in the nation without a PDMP and that closing the CURES program would "exacerbate a prescription drug diversion problem that is

SB 809  
Page 21

already the fastest growing drug problem in the United States".

According to the Healthcare Distribution Management Association, this bill outlines a fair and equitable approach to funding CURES. The group believes that PDMPs are worthwhile and can be effective in the fight against abuse of controlled substances and other prescription drugs.

9. Arguments of California Medical Association (CMA). CMA writes in a "Support if Amended" position to this bill, stating that that while physicians are strong supporters of the CURES database and recognize its potential to ensure appropriate prescribing, CMA would like the bill to:

Ensure that the CURES funding mechanism is "equitable and protects the Medical Board's resources to adequately regulate its licensees."

Remove the requirement that the database be checked before a prescriber writes a prescription.

Clarify the use of CURES data for investigative and regulatory purposes so that when allegations of inappropriate prescribing based on CURES data are made, there is medical review conducted by physicians to evaluate the occurrence of inappropriate prescribing.

1. Arguments in Opposition. Pharmaceutical Research and Manufacturers of America (PhRMA) states that this bill creates an open-ended and permanent funding requirement on manufacturers to finance a "strike-team" to enforce California's anti-drug efforts. PhRMA supports the use of PDMPs and believes these and related enforcement programs should be funded with state General Fund dollars, federal grant monies or other fiscal resources rather than a tax on the industry.

NOTE : Double-referral to Senate Committee on Governance and Finance second.

#### SUPPORT AND OPPOSITION:

##### Support:

California Attorney General Kamala Harris (Sponsor)  
California Narcotics Officers Association

SB 809  
Page 22

California Pharmacists Association  
California Police Chiefs Association  
California State Sheriffs' Association  
Center for Public Interest Law (CPIL)  
City and County of San Francisco  
Healthcare Distribution Management Association  
Troy and Alanna Pack Foundation

University of California  
Support If Amended:

California Medical Association (CMA)

Opposition:

Pharmaceutical Research and Manufacturers of America (PhRMA)

Consultant: Sarah Mason

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Alejandro Arredondo O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 7 – 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)].

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Alejandro Arredondo O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 8 – Suggestions for Future Agenda Items**

---

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

# Memo

---

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

**To:** Board Members

**Date:** May 10, 2013

**From:**

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 9 – Disciplinary Process – Conflict of Interest - When to Recuse

---

**Notes:**

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Jessica Sieferman  
Probation Monitor, Enforcement Analyst

**Telephone:** (916) 575-7170

**Subject: Agenda Item 10A. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation**

---

Dr. Susanne Anderson, O.D. (Petitioner) was issued Optometrist License Number 6613 by the Board on September 5, 1979. On November 9, 2010, the Board filed an Accusation against Petitioner charging her with violations of laws and regulations based on allegations of criminal convictions based on alcohol use. In a stipulated settlement agreed to by Petitioner, on October 12, 2011, Petitioner's license was revoked, the revocation stayed and was placed on five (5) 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.

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. Certification of Licensure



RECEIVED BY  
STATE BOARD OF OPTOMETRY  
Consumer  
Affairs  
2012 NOV 20 AM 2:57

**Board of Optometry**  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
(916) 575-7170/(866) 585-2666  
[www.optometry.ca.gov](http://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.			
Susanne Wilch Anderson (aka: Krout)	OPT 6613 TPG			
2. ADDRESS (NUMBER) (STREET)	DATE OF BIRTH			
P.O. Box 1300	09/28/1950			
(CITY) (STATE) (ZIP CODE)	TELEPHONE			
Nipomo California 93444	(805) 929-2020			
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5'4" 110 Blue Blond				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
Southern California College of Optometry				
ADDRESS (NUMBER) (STREET)				
2575 Yorba Linda Boulevard				
(CITY) (STATE) (ZIP CODE)				
Fullerton California 92631				
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	VC violations were 2007, 2010
Sold Nipomo, CA Practice and	my last day in Nipomo or any		(over 5 years from last patient)
was not working as an O.D.	Optometry or M.D. practice was	06/30/01	I took sabbatical in 2001
Practice had been during:	09/28/79	06/30/01	Had been solo O.D. office

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) only those vehicle code violations in CA that led to current 10/12/2011 action against my optometry license. See exhibits A & B attached ☒ 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) See exhibit B: Bench (unsupervised) probation through 13/29/2013 for latter of above California vehicle code violations. ☒ YES ☐ NO
12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? See exhibit C: Only this current action in California; I hold no other licenses in other states. ☒ YES ☐ NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS. Please see exhibits A, B, C and attached answers for #s 10,11,12

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION  
Please see attached pages with answers for 13, 14, 15, 16, 17, 18, 19, and 20

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action. Action effective October 12, 2011; please see effective date on lower part, page 1, exhibit C
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 November 16, 2012

Signature Dusane Wilk Anderson  
(aka: Kroat)

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 2450 Del Paso Road, Suite 105, 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.

10. I have only pled no contest to those vehicle code violations in California that are the basis of my present probation by the Board of Optometry, documentation of which The Board already has in its possession to wit: California Vehicle Code 23103.5, Vehicle Code 23152(B), and Vehicle Code 23103(A).

Please refer to exhibits "A" and "B" attached hereto.

11. I am on bench (unsupervised) probation in California through 29 March, 2013 for California Vehicle Code 23103(A) as described in a document which the Board possesses.

Please refer to exhibit "B" attached hereto.

12. I have had disciplinary action effective 12 October, 2011 taken against my optometric license in California, and am on Probation in California, the only state in which I am licensed. Full details are described in The Probation Orientation Meeting Notice of 9/26/2011.

Please refer to exhibit "C" attached hereto.

13. The Board's Decision, Stipulated Settlement and Disciplinary Order, and Accusation (hereinafter referred to as the "Order") which became effective on October 12, 2011 comprises the disciplinary action taken against my license. The Board has this document in its possession. The document which caused the Order to go into actual effect is the Probation Orientation Meeting Notice dated September 26, 2011 (hereinafter referred to as the "Notice") and which is attached hereto. The provisions of the Notice established October 12 2011, as the effective date when the terms and conditions of the Order were to go into effect, as is stated in the lower portion of the first page of the Notice.

Please see Exhibit "C" attached hereto.

14. I believe that my license should be restored to its prior non probationary status as I have dutifully and fully fulfilled all of the conditions of my probation over which I have had control. I have taken all of the necessary classes, attended the proper support group sessions regularly, visited with a Board approved PhD Psychologist every two weeks, paid my fees regularly, maintained my office in San Luis Obispo since August, 2011, called on a daily basis for and passed all of my biological fluid tests, and complied with quarterly reports of all of the foregoing, on a timely basis. I have always responded to my probation monitor immediately. I have kept up with my continuing education.

Having been inhibited by a "probated" license has in effect prevented me from completing my community service volunteer work, the remaining portion of which I am in the process of proactively and creatively working to complete. The difficulty is compounded by having a "probated" license as described herein below.

On or about October 15, 2011 I submitted by FAX my proposed alternative community service arrangement comprising a properly signed form from the San Luis Obispo Lion's Club. Not having received a response from the Board by October 23, I emailed the Board inquiring about the proposed community service arrangement and was informed that the FAX had not been received. I then mailed the materials as well as two checks for my probation monitoring and fee recovery. I know that this mailing was received by the Board because the checks were negotiated soon thereafter.

Having sent my proposal for community service to the Board, and knowing it had been received, I was awaiting a response as to whether it was acceptable. I received a phone call on April 14, 2012 from the Board informing me that the Board was having difficulty in

communicating with the proper representative of the Lion's Club. I then called the Lion's Club and learned from them that they did not have enough hours available for me to fulfill my community service requirements. This resulted in a six month delay in my search for proper venue for the performance of my community service work.

The foregoing notwithstanding, I did in mid-August of 2012 submit for approval community service with the San Luis Obispo Literacy Council and was approved for that service by the Board and the Literacy Council. I have since then just completed September and October service hours (12 each month) with the Literacy Council. However, I am as of the present not receiving current referrals from that organization. Apparently what has occurred is that the vision screenings are voluntary on the part of the Literacy Council's clients and only those clients who wish to undergo vision screening are referred to me.

Prior to that, in June of 2012, in order be proactive in completing my community service requirement, I worked with the senior health program for the Community Action Partnership of San Luis Obispo, (hereinafter "CAPSLO"), under the Director Heather Murphy, R.N. I was able to complete a number of hours working at different senior centers and had hopes that this arrangement would enable me to fulfill my community service requirement. When, however, Mrs. Murphy was contacted by the Board of Optometry and learned that I was on probation, she took the position that CAPSLO did not want me to continue working because, as she stated in an E-mail to me, a copy of which went to the Board: "...we don't use these types of volunteers under our program..." She thus made it clear to both myself and the Board that it was my probationary status that precluded me from being able to continue doing the work that I had been doing for those months, helping to screen eyes and clarify different visually related questions for which the seniors were seeking answers. I had been very kindly referred to her county organization by a doctor who had been arranging the Lion's Club school screenings and who I have known for years. I had not mentioned my probationary condition to Mrs. Murphy ahead of time, given the difficulty that I was having in being accepted as a volunteer that no organization wanted. Mrs. Murphy was very pleased with my work at the different senior centers, appreciative of the fact that I had been able to develop the program for screening seniors. However when she learned that I was on probation, she stated that she no longer wanted or needed my services. My probationary status was the sole cause of my inability to continue working with the seniors in the CAPSLO program.

The 6 month delay in the approval of any immediate community service was partly due to a communication glitch that was not within my control, my having submitted to the Board my Lion's Club signed form for approval of community service prior to October 24, 2011, well before my November deadline, only to find out through a phone call from the Board's representative on April 24, 2012, 6 months later than my mailed in form, that "phone tag" was taking place with unanswered messages with Del Dingus, Secretary of the Lion's Club, and that I needed to attend to facilitating the approval of my heretofore timely submission of my signed

community service paper, signed by a Lion's Club administrator, obviously based upon my previous long standing good name and generous service. As it turned out, the Lion's Club was unable to offer to me an adequate number of hours. It was only after the handicap of this six months' time delay that it became apparent to me that my probationary status was inhibiting my completion of my community service and that I needed to be very proactive and creative in lining up different venues. It had always been my experience that volunteers were welcome additions to a community, particularly professionals who were very knowledgeable, proficient, experienced, and multilingual (I am proficient in Spanish, as my practice for 23 years was comprised of approximately 20% Hispanic patients). In my past I had always been welcomed as a volunteer but that has not been the case since I was placed on probation.

When I tried to work for the NOOR Foundation (refer Exhibit "F" attached hereto) at the end of April 2011 (just prior to my efforts with CAPSLO), the staff was excited and had told me that they could use someone, especially someone who was multilingual, and that I should get a tuberculosis test. I received the test, and it was negative. Despite having done what the staff asked, when the doctor in charge returned from his Guatemala volunteer mission and learned that I was on probation, he told me that he did not want me to work at the local clinic. It was made clear to me that were I not on probation they would very much have liked to have me working with them. Given that I speak Guatemalan Spanish fluently, the doctor in charge also stated they could have used me on the volunteer mission, had I not been tied down from travel due to biological fluid testing requirements that have been consistently negative for over one year. My Board's ALCOHOLIC'S ANONYMOUS support group requirements and the psychological counseling obligations would also have prevented my participation in the volunteer mission since it involved travel outside of the area for a minimum necessary length of time, which was 6 weeks.

Because The California vision Foundation does not have enough people for them here to be able to make use of my services as determined by a Board employee who herself made inquiries attempting to assist me in fulfilling my community service requirements, I am in a quandary as to how I will satisfy that requirement. My last hope, the Literacy Council does not appear to be providing the number hours I had originally hoped to receive.

My inability to find outlets for community service is ironic in that my optometric career has itself, comprised a preponderance of community service from the local senior citizen centers to the schools by way of lecturing 5<sup>th</sup> graders studying the eye and Lion's Club screenings in my early practice development years to international service (LIGA International Flying Doctors of Mercy in Mexico and "Mission to Moscow" in Russia) in my later years of practicing. It was while working with LIGA that I was in a plane crash on November 2, 1991 in Mexico. (Refer to exhibit "H" attached hereto.) This crash resulted in permanent injury to a facial nerve causing speech and blepharospasm problems, a corneal cut to my eye's surface, an orbital injury affecting the musculature and pupillary reaction of the eyes, a concussion, and broken ribs.

The current urine testing and meeting with support groups and the psychological counseling requirements of my probation are preventing my ability to offer the gracious and quality care of needy people here at home and around the world as I have in the past. In addition it is also inhibiting my professional growth as it impinges on my being able to attend local continuing education offered by local doctors and the California Optometric Association (hereinafter referred to as "COA") events where the timing of such events does not fit in exactly with my fluid testing, support groups, or psychological counseling.

My request to have my license restored to its prior non-probated status is based upon my having cooperated fully with all of the probationary conditions to understandably insure to the public that only quality doctors are functioning in the profession (even though I, however, was never functioning in a non-quality status). As I have always been a laudable doctor of optometry, a fact to which my strong references attest, I have come to the point at which my post one year probationary status is about to negatively impact and inhibit my providing of excellent care for the visual needs of the public in my community and my ability to practice in community service venues. In addition I am unable to volunteer to help out other doctors who because of injury or death require assistance in their practices. My probationary status prevents me from treating Medicare or insurance patients. I am unable to work as a volunteer in overseas volunteer work. I am unable to fully participate in my own optometric education and development.

As an example the affect of my probationary status on my professional education, last year I lost a day of the November, 2011 California Optometric Association Monterey Symposium that I have participated in since it was started, due to a biological fluid test requirement. (I have never failed to call in nor have I ever had a negative result in over a year.)

The opposite of the my probationary status is now becoming manifest—the public is losing the time, skill, knowledge, selfless devotion and educated enthusiasm of an excellent practitioner due to my many hours lost to probationary matters and attentions. My previous Medicare patients wonder why I cannot take them; doing so is illegal for a non-Medicare provider, and I cannot be a Medicare provider because I am on probation. I cannot treat my patients that have insurance because insurance companies will not accept Doctors that are on probation in their plans. My Hispanic patients are frustrated and unhappy, as there are very few Optometrists that are bilingual and thus they have to travel to find a bilingual doctor.

My community service obligation and the payment of the cost recovery are the only remaining requirements that I need to fulfill to satisfy my probation requirements. As should be apparent I have made a number of attempts to complete my community service requirements and although, I would truly and sincerely like to complete this obligation, it has been made clear to me that I will be unable to do so if I continue to be in a "Probationary" status. I also need to have my

probationary status removed for business reasons, as it prevents me from seeing insurance and Medicare patients, a major component of my former practice. (*especially Vision Service Plan*)

The Board's present description of "Disciplinary Actions" in its website which states: "...repeated negligent acts..." would imply to anyone reading it that I had been practicing optometry while consuming alcoholic beverages. In fact I took a sabbatical from practice on June 30, 2001 after I had sold my practice. I had not seen any patients since that time and until I was placed on probation by this Board. Thus my misdemeanor offenses took place six years and nine years after I begun my sabbatical and six years and nine years after I had seen my last patient before beginning my sabbatical. The description on the Board's website borders on libel by implication in that it creates the impression that I was in practice and exposing patients to harm treating them while consuming alcohol. The foregoing notwithstanding, in order for me to complete the requirement of community service I need to have my probation terminated and the website entry eliminated.

I have now been on probation since October 12, 2011; I have had 100 bodily fluid tests. I called in daily without fail, attended every test when asked to attend, and every test has been negative. I have attended all of the alcohol education classes I have been required to attend. I have undergone all of the psychological counseling required by the terms of my probation. I have passed the California Optometry Laws and Regulations Examination (FILE ID: 1551) I have paid all of my probation monitoring fees. I have paid all installments pursuant to the required fee recovery condition. I have fully complied with all of the conditions of my probation, save and except for one.

The only condition I have not fully fulfilled is the community service requirement. There are two fundamental reasons why this is true:

The first is that my being on probation creates a "red flag" for any organization that might consider availing themselves of my services as was the case with CAPSLO and the SLO Noor Foundation. Once the person in charge learns that I am on probation, they want nothing to do with me.

The second reason why this is true is that when any organization considering my services examines the Board's web site and its comments about me, I am instantly transformed from the respected Dr. Anderson, O.D. who has practiced in the community for 22 years, with not one complaint by any patient and with not one instance of practice below the standard of care, into a persona non grata who is a threat to any person finding themselves in my chair. Someone in my AA group said, "... You must have done something really bad." I live in a small community.

If I ever at any time in the past had done what is attributed to me on the web site, I could well understand the need to disclose that information to an otherwise unsuspecting public. The fact is however, I had not ever seen a patient during the time of my aberrational behavior and the last patient I saw prior to such time was more than 5 years earlier, prior to that act. My aberrational act was totally isolated from my professional life and brought on by the two events of physical pain from which I was suffering. My conduct since the occasions of my aberrational act proves



that those isolated occurrences where just that, isolated occurrences that will never repeat themselves.

I therefore respectfully request that the Board correct the erroneous statements on its web site and enter into a final agreement with me terminating my probation, subject to conditions subsequent, to which I will stipulate, that require me to complete the remainder of my community service and pay the balance of the recovery fee and if for any reason I fail to fulfill these conditions, probation will be re-imposed with such conditions as the Board may deem necessary and appropriate under the circumstances.

If the Board will end my probation, I will sign an agreement with Board to insure the completion of the community service requirement and I will also pay the balance of the cost recovery that I owe to the Board. At this point there is no reason to continue my probation as I have shown over the last year by my continued abstinence from alcohol that the offenses that brought my probation about were aberrations cause by circumstances that are fully explained in the answer to item number 16, herein below.

15. Since September of 2011 I have been self-employed in my practice in San Luis Obispo, California that I started one month prior to that date in order to comply with the conditions of my probation. In addition I volunteered to perform the community service I was permitted to perform as described in the paragraph 14 hereinabove. I also complied with all of my probation requirements, passed the California Laws and Regulations Examination, and at the same time I continued to maintain all of my continuing education requirements. In addition, starting in January of 2011 and continuing through the present, I am working with my daughter in developing and completing her Utility Patent Application Number 13/373,457, patent pending, concerning an ophthalmic instrument for use in monitoring macular degeneration and other more rare retinal disorders. I have also, for my own intellectual advancement and related to the practice of Optometry, taken on a personal investigative project of reading literature concerning blood supply to the optic nerve head, as related to the progression of low tension glaucoma.

16. I have taken all of the Board required education classes in addition to the extensive rehabilitative classes required by the terms of the Court and the Department of Motor Vehicles. As per the Court imposed probation requirements, I attended required regular ALCOHOLIC'S ANONYMOUS support group meetings and have met and counseled with a Board approved psychologist on a regular basis. I followed all of the required procedures related to compliance with all of the foregoing. I should note however that my personal decision to cease any consumption of alcohol was made immediately after my last violation. I never had a drink again since that date, January 2010.

Since January of 2010, I personally made a commitment not to consume any alcohol and have abided by that fully. Prior to January, 2010 I did not consume alcohol in any form on a regular basis other than a glass of wine or champagne at a wedding or on holidays. That social

behavior, as slight as it was, no longer takes place as I now consume no alcohol at all. I had made a personal decision to never consume alcohol again prior to the Board's action.

The foregoing notwithstanding, the circumstances leading to the imposition of the present probation by the Board are replete with mitigating factors that should be considered and made known to the Board. In addition neither of the two offenses which are the basis of my present probation took place when I was functioning as an Optometrist or seeing patients and in fact I had been on sabbatical for more than five years. In this regard the Board's statement about me on its website of "Disciplinary Actions" which states: "...repeated negligent acts..." would imply to anyone reading it that I had been practicing optometry and treating patients while consuming alcoholic beverages, which in fact is totally untrue and borders on libel per se. These circumstances comprise a further reason to end my probation as the acts which have caused me to be placed on probation took place completely outside and unrelated to the practice of Optometry. Further as I will show hereinbelow they were aberrations from what has been my usual behavior, and explainable by mitigating circumstances.

On the two occasions comprising my Motor Vehicle Code Violations, I used alcohol as a substitute for pain killers. On the occasion of my first violation in 2007, more than five years after having sold my practice to take a sabbatical, (and not having engaged in the practice of Optometry at any location) I had consumed a small amount of alcohol in order to relax in the evening, after having functioned all day with a splinted, smashed finger that I had injured earlier that day when the finger got caught in a closing electric gate on my property. At the time of my arrest, my blood alcohol level was .06 or .02 under the presumptive level of .08. I had been driving through a construction zone and my vision was compromised due to what I later learned was a cataract, and which was causing me to experience multiple monocular images in the glaring construction lights out of my right eye. This caused my driving pattern to appear to be slightly irregular. After I was stopped by an Officer and asked to perform roadside field sobriety tests, I functioned poorly on the pupillary, and saccade test due to the left eye orbital injury I had suffered in the LIGA International volunteer mission plane crash in 1991 (described hereinabove). In addition I was unable to balance properly, also as a result of injuries suffered in the same plane crash.

At the end of September in 2009 while a pedestrian in Rouen, France, and walking along the side of a city street in the late evening I was knocked down and severely injured by a speeding automobile that failed to stop to render assistance. The accident cut my head, forced my left upper teeth through my right lower lip, broke my left collarbone, tore my left knee medial collateral ligament, and broke 2 or 3 metatarsals in my left foot which the car ran over when it knocked me down. I was still receiving treatment and therapy for these injuries in January of 2010.

On the occasion of my second motor vehicle code violation in January of 2010 I had some alcohol in the evening to alleviate my pain after having had my first physical therapy appointment for the above-described injuries. That same day I was seen by my doctor for the removal of the left side braces on my foot, my knee and thigh—(that had been in place since the accident) and collarbone, and had also undergone an intense regimen of physical therapy for the first time. I was in physical pain. I had some alcohol and displayed bad judgment by driving after having consumed the alcohol. I realized my bad judgment when, within a few miles of my house I recognized that it would not be safe for me to be driving on a freeway and was in the process of attempting to turn around when I was stopped by an Officer. I later learned that someone in the neighborhood had observed me making a U-turn and had called the authorities. While I should not have been driving at all, I at least had the foresight to recognize that driving on the freeway would have only exacerbated the situation. I have fully paid the penalties for my poor judgment. My previous actions will never be repeated, as I will never display similar poor judgment in the future under any circumstances. I no longer consume any alcohol and never will as I truly want to function at my fullest capacity one hundred percent of the time and resume the practice of Optometry. In this context I would respectfully request the Board to end my probation, remove the misleading comments it has posted on its website. (Please refer to Exhibit "G" attached hereto.) The comments to which I refer in Exhibit G are misleading because my Motor Vehicle Code offenses were totally unrelated to the practice of Optometry in that, at no time was any member of the public subjected to any ill-treatment by me. In this regard it is clear that no evidence exists that I was ever treating members of the public in a compromised condition and further my record confirms that neither the Board nor any third party provider has ever received any complaint or communication from any member of the public or any third party alleging that I have ever provided treatment that was not consistent with the standards of care applicable to the Optometric profession. There is in fact a very good reason why the Board has never received any complaint or communication concerning this issue and that reason is that I did not consume alcohol in any amount when I was in practice and the incidents which have resulted in this proceeding are aberrations as shown by the circumstances I have set forth in this document. Further, the letters of recommendation that are provided as part of my response to Item Number 20 herein, confirm that the other members of the profession and a Board Certified Ophthalmologist hold myself and my practice of Optometry over the last 22 years in the highest regard.

## 17. POST-GRADUATE OR REFRESHER COURSES

I completed the "Treatment and Management of Glaucoma" program from 2009 through 2012, passing all exams and receiving a certificate from Southern California College of Optometry.

The program was offered as a comprehensive program comprised of the following courses in a package for its completion (**55 hours**):

Treatment & Management of Glaucoma—**24 Hour Didactic Course with exam** (pass)

Friday-Sunday, August 21-23, 2009 at the Fullerton Campus

Glaucoma Phase II—**15 hour with exam** (pass), Dr. Sawamura

August 20, 2011, Southern California College of Optometry, Fullerton Campus

Glaucoma Grand Rounds—**16 graduate hours with oral exam** (pass), Dr. Sendrowski, O.D.

January 14, 2012 at Southern California College of Optometry, Fullerton Campus

In addition, at the Southern California College of Optometry I attended and received credit for

**"Ocular Disease parts I and II. Each part was 18 hours, comprising 36 hours altogether.**

THE TWO POST-GRADUATE PROGRAMS AT SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY TOTALED **91 UNITS--55 FOR THE FIRST AND 36 FOR THE SECOND**

I attended all three days of The Monterey Symposium of November 9 through November 11, 2012 as I have each year since the COA started the program in 1980. *I worried all weekend about the need for a biological fluid test as the weekend testing in Monterey is impossible so that I would have had to cancel my program in Monterey, CA at the Convention Center.*

In addition I attended three days of The Monterey Symposium November 10-13, 2011 (*Unfortunately I missed a part of the Sunday program due to biological fluid test*) for which I had to drive 4 hours home to San Luis Obispo County

**EACH OF THE ABOVE MONTEREY SYMPOSIUMS COMPRISES APPROXIMATELY 20 CONTNUING EDUCATION UNITS SUBJECT TO CLASS AVAILABILITY AND ATTENDANCE FOR APPROXIMATELY 40 POST-GRADUATE EDUCATION UNITS.**

**THE 91 SCCO POST GRADUATE UNITS AND THE MONTEREY SYMPOSIUM UNITS OF 40 =131**

## 18. OPTOMETRIC LITERATURE

I traditionally have always read "Review of Optometry," "California Optometry," and "Optometric Physician." I have always subscribed to and read these and have found them to be very informative monthly magazines which feature cutting edge and educational articles related to the profession.

Optometric Literature that I have studied during the last year is well beyond the scope of my listing all of it. I read everything pertinent to macular degeneration to help my daughter in the development of her utility patent for her portable ophthalmic device, study for which began about January, 2011. I also read everything that I could find concerning blood supply to the optic nerve with the intention of developing an instrument to measure blood supply to the optic nerve in an office or clinic setting, as I felt and still do that glaucoma is a lot more involved than just eye pressure, a major factor being blood supply to the optic nerve and vascular perfusion. I later learned that my instrumentation idea was already under research in a university hospital near the French-Swiss border, therefore I never took it any further. However, the reading that I did covered a number of articles, learning more than what was offered in my continuing education classes.

For blood supply to the optic nerve, the subject of my readings covered areas including: sleep apnea, glaucoma suspect demographic and ethnicity studies, confocal studies, to physics papers on Doppler lasers, wavelengths of light, fiber optic cables, and endoscopic cameras. My reading included several other studies about glaucoma and retinal anatomy and physiology. Investigative research has been accomplished with laser Doppler velocimeter and haemorrhage—laser Doppler flowmetry used to determine optic nerve head relative blood velocity, volume, and flow. The foregoing studies showed a strong correlation with the advancement of low eye pressure glaucoma and blindness. My goal had been to miraculously devise a means by which blood flow to the optic nerve as it enters the eye could be measured routinely by an instrument within the setting of a typical eye-doctor office or eye clinic. The ability to make such a diagnosis within that setting would change the course of early glaucoma discovery, treatment, and management so as to fend off even the early stages of a vision threatening disease.

In working on the utility patent for the portable ophthalmic instrument, the articles that I read dealt with current and research ophthalmic instrumentation for the detection and monitoring of macular degeneration by means of different methods around the world. In addition the articles addressed the macular degeneration disease itself including its types, stages, treatments, current care, and potential future care. I studied testing devices and current research on testing devices by way of on line articles and studies from foreign university studies. The articles that I read addressed other rare retinal diseases as well. I was seeking to ascertain in the context of developing the invention, the retina's visual responses to different colors of filtered light, thus enabling its use in testing for diseases other than macular degeneration with changes in color filters or pattern configuration. Below is a very brief list of references concerning macular

degeneration, blood supply to the optic nerve, and various studies from universities around the world on the diseases and instruments relating to these subjects, all of which I had to review in the context of my work with the utility patent and in the context of my proposed development of the instrument to measure blood supply to the optic nerve:

---

ALLERGAN 2010. "Eye Map Picture", used in Figure 2. (

Optometry Continuing Education Course)

[http://www.allergan.com/products/eye\\_care/index.htm](http://www.allergan.com/products/eye_care/index.htm)

Burress, J. (2008). "Macular Degeneration Study Links Behavior, Visual Improvement"

pbaOnline 11 Dec. 2008, 4.27.2010

(<http://www.publicbroadcasting.net/wabe/news.newsmain/article/0/0/1436692/Atlanta/M>

[acular.Degeneration.Study.Links.Behavior..Visual.Improvement\)](#)

Nassar, M. (1996). Threshold Amsler grid testing to detect reserving power of the macula and optic nerve. *Bull Ophthalmol Soc. Egypt*, 89 (6), 97-101.

Gale et. al (Ophthalmology and Visual Science: 2003)

Delcourt et. al. (POLA Study) (Investigative Ophthalmology and Visual Science: 2006)

Tan et. al. (BLUE MOUNTAIN Study) (American Academy of Ophthalmology: 2008)

AREDS Report 22 (Archives of Ophthalmology: 2007)

O' Connel & Nolan et. al (Am. Journal of Clinical nutrition 2008, Science Direct & IOVS

2006/07)

---

Simple Anatomy of the Retina

Web vision-"The Organization of the Retina and Visual System"

Dr. Helga Kolb, Dr. Eduardo Fernandez, Dr. Ralph Nelson

Webmaster: Dr. Brian W. Jones

Updated: October, 2003

IU First To Isolate Method To Track Blood Flow To Optic Disc, Nerve

I.U. School of Medicine

Released: February 28, 1997

Author: Alon Harris, PhD., Director

[http://www.medicine.indiana.edu/news\\_releases/archive\\_97/2elapcoms.htm](http://www.medicine.indiana.edu/news_releases/archive_97/2elapcoms.htm)

Study of Ocular Blood Flow Using Laser Doppler Flowmetry in Patients with Glaucoma and/or Obstructive Sleep Apnea Syndrome

University Hospital, CHU de Grenoble, Grenoble, France

Last updated April 2, 2009

Study Chair: Christophe Chiquet, Professor, MD, PhD

Study Director: Jean-Louis Pepin, Professor, MD, PhD

[http://clinicaltrials.gov/ct2/show/study/NCT00874913?show\\_desc=Y](http://clinicaltrials.gov/ct2/show/study/NCT00874913?show_desc=Y)

## **19. CONTINUING EDUCATION COURSES**

Please see attached copies of continuing education certificates which represent CE from several different venues: California Optometric Association, Tri-County Optometric Society, Shepard Eye Center, and Southern California College of Optometry.

Please refer to exhibit "D" attached hereto.

### California Optometric Association

Monterey Symposium 2012	Nov. 9 through Nov. 11, 2012	20 units
Monterey Symposium 2011	Nov. 19 through Nov. 13, 2011	17 units

### Tri-County Optometric Society

Sycamore Mineral Springs Event	Oct. 13, 2012	4 units
Firestone Event	July 24, 2011	4 units

<u>Shepard Eye Center</u>	Oct. 11, 2012	2 units
	Feb. 17, 2011	2 units

<u>Southern California College of Optometry</u>	Jan. 14, 2012	16 units
---	---------------	----------

Total 65 units

20. **Letters of Recommendation:**

Please refer to exhibit "E" attached hereto.

Dr. Steven S. Jio, O.D.  
2098 9<sup>th</sup> Street, Suite A  
P.O. Box 6336  
Los Osos, CA 93412-6336

(805)528-2237

Dr. Greg Kaiser, O.D.      This is the home address from which Dr. Kaiser often mails items.  
661 Woodland Dr.  
Los Osos, CA 93402-3817

Dr. Greg W. Kaiser, O.D.  
Central Coast Optometric Center  
800 Quintana Rd., 1d  
Morrow Bay, CA 93442

(805)772-6166

Dr. Paul T. Stallman, M.D.  
2 James Way, Suite 203  
Pismo Beach, CA 93449

(805)481-3733



CRIMINAL DOCKET - MISDEMEANOR  
SAN LUIS OBISPO COUNTY SUPERIOR COURT  
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, } DOCKET NO: M000398637  
PLAINTIFF, } MISDEMEANOR CHARGE(S) PLEA/DISPO  
001 VC23152(A) M NGP /DISM  
002 VC23103(A) M NOLO/NOLO

VS.  
KROUT, SUSANNE WILCH / 001

DEFENDANT,

DA CASE NO=070001320 ID=0000367877/000  
MNID: D000301416

AGENCY: CA HIGHWAY PATROL SLO  
CASE= M00374507 CT= M1  
ATTY: STEIN, JEFFREY R-RETAINED  
PROB OFFICER:  
BLOOD ALCOHOL RESULTS: BLOOD .06  
INTERPRETER REQUIRED:  
REV=CO25  
DATE ACTION FILED WITH COURT 02/01/07  
VIOLATION DATE: 01/04/07

DATE	PROCEEDINGS	
AA/AA/AA	** ALL PURPOSE ASSIGNMENT: JUDGE	SYS
01/09/07	BLOOD ALCOHOL RESULTS: BLOOD .06	
01/29/07	***** BOOK/RELEASE #	
02/01/07	JUDGE CRAWFORD; CLK GUERRA; DDA VAN ROOGEN; ATTY STEIN; DEFT	
02/14/07	NOT PRESENT AT NO FILING; CASE CONT TO 02/14/07; 8:30; D7.	
	ARRN 02/14/2007 0830 DEPARTMENT 7	
	JUDGE CRAWFORD; CLK CARDWELL; DDA VAN ROOYEN; DEFT NOT PRES;	
	ATTY STEIN PRES FOR DEFT @ ARR; ARR HELD; DEFT ENTERS NGP;	
	WTT	
	FILED: O/R (NOT SIGNED)	
	PT 03/05/2007 0830 DEPARTMENT 7	
03/05/07	***** O.R. NOT SIGNED #	
	JUDGE CRAWFORD; CLK CARDWELL; DDA VAN ROOYEN; ATTY STEIN	
	PRES FOR DEFT @ PT. WTT.	
	FILED: STIPULATION AND ORDER FOR TRANSPORTATION AND ANALYSIS	
	OF BLOOD SAMPLE.	
	PT 04/02/2007 0830 DEPARTMENT 7	
04/02/07	***** O.R. NOT SIGNED #	
	JUDGE CRAWFORD; CLK MCCUTCHEON; DDA VAN ROOYEN;	
	DEFT NOT PRES; ATTY STEIN PRES FOR DEFT AT PT.	
	WTT.	
	PT 04/25/2007 0830 DEPARTMENT 7	
04/25/07	***** O.R. NOT SIGNED #	
	JUDGE CRAWFORD; CLK STIMAC; DDA VAN ROOYEN, ATTY STEIN,	
	DEFT NOT PRES @ PT, PLED NOLO CT2, CT1 DISM, WT/SENT; PC1385	
	FILED: TAHL WAIVER, DA SUBS CHARGES	
	SENT: 001 SAN LUIS OBISPO BY JUDGE CRAWFORD	
	CT 001 M VC23152(A)	DISM 04/25/2007
	CT 002 M VC23103(A)/23103.5	NOLO 04/25/2007
	PROBATION BENCH 18 MO ENDS 10/25/2008	
	OBEY ALL LAWS	
	WET RECKLESS PROGRAM CONTACT/ENROLL WITHIN 21 DA	
	COMPLETE WITHIN 180 DA BY 10/22/2007	
	FINE: \$825 (INCLUDES \$20 SECURITY FEE)	
	\$825 DUE BY 05/15/2007 OR IF AR FEE OF \$30	
	IS PAID BY 05/15/2007 PAYMENTS OF \$75 PER MONTH	
	BEGINNING 06/15/2007 UNTIL PAID IN FULL.	
	FINE	
	PROBATION	
	ALCOHOL OR DRUG RELATED 23103 CONVICTION	
	DUI CONDITIONS ARE AS FOLLOWS:	
	SHALL NOT: COMMIT CRIMINAL OFFENSE; REFUSE BLOOD	
	ALCOHOL TEST; DRIVE VEHICLE WITH BLOOD ALCOHOL ABOVE	
	.00 %; OBEY ALL LAWS; DRIVE ONLY IF LICENSED AND	
	INSURED	
04/30/07	NOTIFIED: CHPS, ALSV	
05/02/07	AR	
05/09/07	DOJ 8715 NOTIFICATION SENT	
05/10/07	RECEIVED \$830.00 PAYOR # 82407 KROUTANDERSON, SUSANNE	

CONTINUED ON PAGE: 2

LSL114-M169

DATE	** ALL PURPOSE ASSIGNMENT: JUDGE PROCEEDINGS	SYS CLERK
05/14/07	AR PAID IN FULL RECEIPT NUMBER S 142971 DMV NOTIFIED	
05/16/07	FILED: PROOF OF ENROLLMENT INTO WET RECKLESS DDP	
05/24/07	FILED: PROOF OF ENROLLMENT INTO WET RECKLESS	
07/03/07	RECD: REQ FOR COPIES FROM BD OF OPTOMETRY, SACRAMENTO CA	
07/10/07	MAILED: CERT COPIES AS REQUESTED TO BOARD OF OPTOMETRY SASE	
	FILED: PROOF OF COMPLETION FROM WET RECKLESS DDP	

LSL114-M169 219

I hereby certify that the annexed document  
is a true and correct printout of the data as it  
appeared on our court computer as of

October 22, 2012

Susan Matherly  
Court Executive Officer

By

*[Signature]*



CRIMINAL DOCKET - MISDEMEANOR  
SAN LUIS OBISPO COUNTY SUPERIOR COURT

STATE OF CALIFORNIA  
GROVER BEACH BRANCH  
DOCKET NO: M000442962  
THE PEOPLE OF THE STATE OF CALIFORNIA, ) MISDEMEANOR CHARGE(S) PLEA/DISPO  
PLAINTIFF, ) 001 VC23152(A) M NGP /DISM  
P01 VC23103(A) M DENY/ADMT  
002 VC23152(B) M NGP /NOLO

VS.  
KROUT, SUSANNE WILCH / 001

DEFENDANT,

DA CASE NO=100001329 ID=0000367877/000  
MNID: D000301416

AGENCY: CA HIGHWAY PATROL SLO  
CASE= M02974510 CT= MG  
ATTY: ONEILL, GEORGE B-RETAINED  
PROB OFFICER:  
BLOOD ALCOHOL RESULTS: .17 BL  
INTERPRETER REQUIRED:  
REV=CO25 TARGET DATE: 05/25/10  
DATE ACTION FILED WITH COURT 01/11/10  
VIOLATION DATE: 01/11/10

DATE	PROCEEDINGS	
AA/AA/AA	** ALL PURPOSE ASSIGNMENT: JUDGE JAC CRAWFORD	SYS
01/11/10	BLOOD ALCOHOL RESULTS: .17 BL	
01/19/10	ARRN 02/09/2010 0830 GROVER BEACH DEPT 1	#HRGS: 1
02/01/10	***** BOOK/RELEASE #	
	ATTY GEO ONEILL REO CASE RESE	
	** VACATED: ARRAIGNMENT 02/09/2010, RESET	
	ARRN 02/23/2010 0830 GROVER BEACH DEPT 1	#HRGS: 1
	***** BOOK/RELEASE #	
02/23/10	JUDGE CRAWFORD; CLERK DUCKWORTH; DDA BAIRD; ATTY G. ONEILL PRES FOR DEFT; ARRD; NGP; DENIES PRIORS; WTT	
	PT 03/16/2010 0830 GROVER BEACH DEPT 1	#HRGS: 2
	***** COURT O/R CONDITIONAL SEARCH AND SEIZURE, CHEMICAL TESTING, NOT USE OR POSSESS, STAY AWAY FROM PLACES WHERE ALCOHOL IS SERVED #	
03/16/10	JUDGE CRAWFORD; CLERK DUCKWORTH; DDA K. WILSON; ATTY O'NEILL PRES FOR DEFT; WTT	
	TSC 03/29/2010 0830 GROVER BEACH DEPT 1	#HRGS: 3
	***** COURT O/R CONDITIONAL #	
03/29/10	REC'D: COPY REQUEST FROM BOARD OF OPTOMETRY JUDGE J. CRAWFORD; CLK DUCKWORTH; DDA BAIRD; DEFT NOT PRES; ATTY G. ONEILL PRES FOR DEFT @ TSC; NOLO CT2; CT 1 DISM; PRIOR ADMITTED; WJT; FACTUAL BASIS FOR PLEA; WT/JDGMT CRT DOES NOT ORDER IMPOUND/REGISTRATION SHOWS 2005 LEXUS IS COMMUNITY PROPERTY FILED: TAHL WAIVER SENT: 001 GROVER BEACH BRANCH BY JUDGE CRAWFORD CT 001 M VC23152(A) DISM 03/29/2010 CT 002 M VC23152(B) NOLO 03/29/2010 CT P01 M VC23103(A) ADMT 03/29/2010 PROBATION BENCH 3 YR ENDS 03/29/2013 JAIL: 40 DA, CREDIT FOR 2 JAIL DAYS SERVED SURRENDER DATE: 05/28/2010 7 PM OBEY ALL LAWS SB38 2ND OFFENDER DWI PGM CONTACT/ENROLL WITHIN 21 DA COMPLETE WITHIN 21 MO BY 12/29/2011 MAY DO IN ANY CALIF COUNTY FINE: \$2100 (INCLUDES SECURITY AND CONVICTION FEES) \$2100 DUE BY 04/15/2010 OR IF AR FEE OF \$30 IS PAID BY 04/15/2010 PAYMENTS OF \$85 PER MONTH BEGINNING 05/01/2010 UNTIL PAID IN FULL. FINE PROBATION JAIL, PRISON, OR CYA REFERRED TO DUI 2ND OFFENDER PROGRAM DUI CONDITIONS ARE AS FOLLOWS: SHALL NOT: COMMIT CRIMINAL OFFENSE; REFUSE BLOOD ALCOHOL TEST; DRIVE VEHICLE WITH BLOOD ALCOHOL ABOVE .00 %; OBEY ALL LAWS; DRIVE ONLY IF LICENSED AND INSURED	

CONTINUED ON PAGE: 2

LSL114-M169

EXHIBIT B

DATE	** ALL PURPOSE ASSIGNMENT: JUDGE JAC CRAWFORD PROCEEDINGS	SYS CLERK
04/01/10	REC'D CK \$2100 FINE PD RECEIVED \$2100.00 PAYOR # 268702 KROUT, SUSANNE WILCH	
04/05/10	FILED: PROOF OF ENROLLMENT: DAS 2ND CHANCE PRGM REC'D: CERTIFIED COPY REQ FROM DEFT	
04/09/10	MAILED: CERTIFIED COPIES TO BOARD OF OPTOMETRY MAILED: CERTIFIED COPIES TO DEFT	
04/23/10	RECEIVED \$27.00 PAYOR # 268702 KROUT, SUSANNE WILCH NOTIFIED: CHPS, ALSV	
05/05/10	<<<<< DMV ABSTRACT UPDATED VIA LINK >>>>>	
05/05/10	DOJ 8715 NOTIFICATION SENT	
01/03/12	FILED: NOTICE OF COMPLETION: DAS 2ND CHANCE PRGM	

LSL114-M169 H18

IN REPLY OF CLERK'S 06/01/10 LETTER 100710

06/01/10

JAC CRAWFORD  
JUDGE



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

CALIFORNIA STATE BOARD OF  
**OPTOMETRY****PROBATION ORIENTATION MEETING**  
**CERTIFIED MAIL**

September 26, 2011

Dr. Susanne Anderson, O.D.  
P. O. Box 1300  
Nipomo, CA 93444-1300

Re: CC 2006-121

Dear Dr. Anderson:

This letter will serve as notice to you of your probation interview and provide you with information regarding your probation. As your probation monitor, I will be conducting your orientation interview, which has been scheduled for **October 14, 2011 at 1:00 PM at 1625 North Market Blvd., Third Floor – Monterey Room, Ste. 322, Sacramento, CA 95834.**

In order to expedite the probation interview, I have enclosed documents that need your immediate attention. Please complete all documents and submit them on the dates specified on the attached list of due dates. All forms due on October 12, 2011 can be submitted at your orientation. Please bring your valid California Identification card and the completed Data Report Form to your orientation.

In addition, your first opportunity to take the California Laws and Regulations Exam will be immediately following your orientation interview. Pursuant to Condition #10 of your Stipulated Settlement and Disciplinary Order, you must take and pass this exam within the first 12 months of your probation. There is a six month waiting period between exams, so you will have three chances to pass the exam before the 12 month period is over.

A copy of the Board's Decision, Stipulated Settlement and Disciplinary Order, and Accusation has already been sent to you for your review. This decision will become effective on October 12, 2011

Please feel free to contact me with any questions or concerns at (916) 575-7184.

Sincerely,

  
Jessica Sieferman  
Probation Monitor  
Jessica.Sieferman@dca.ca.gov

EXHIBIT C

**Due Dates**  
**Dr. Susanne Anderson, O.D.**  
**CC 2006-121**

Biological Fluid Testing	Pursuant to Condition #18, you are to submit to Biological fluid testing <b><u>immediately</u></b> . Phamatech will contact you shortly to arrange for your testing to start on <b><u>October 12, 2011</u></b> .
Quarterly Probation Report	Your first quarterly report, covering October 12 <sup>th</sup> through December 31, 2011, is due by <b><u>January 7, 2012</u></b> . A sample of the <i>Quarterly Report of Compliance</i> form and your quarterly report schedule is included for your review.
Probation Monitoring Costs	Pursuant to Condition #4, your first Probation Monitoring Cost payment, in the amount of \$100.00 is due on <b><u>October 12, 2011</u></b> . Each payment thereafter is due on the first of each month.
Notice to Employer	Pursuant to Condition #6, you "shall provide to the Board the names, physical address, mailing address, and telephone number of all of your employers and supervisors..." Please complete the attached <i>Release of Confidential Information</i> form and submit it by <b><u>October 12, 2011</u></b> . In addition, have your employer complete the <i>Notice to Employer</i> form. Your employer must submit the notice by <b><u>October 12, 2011</u></b> or prior to you returning to work.
Notice to Patients	Pursuant to Condition #7, your Notice to Patients must be approved by <b><u>November 11, 2011</u></b> . Please submit your proposed Notice to Patients by <b><u>October 12, 2011</u></b> to ensure you receive approval by the due date.
Cost Recovery	Pursuant to Condition #9, you shall pay the Board \$3,320.00 in full within six months from the end of your probationary term. Should you wish to set up a payment plan, your first payment will be due <b><u>October 12, 2011</u></b> . Please review the attached proposed <i>Cost Recovery Payment Plan</i> . If this is acceptable to you, please complete this form and submit it by <b><u>October 12, 2011</u></b> .
California Laws and Regulations Exam	Pursuant to Condition #10, you must take and pass the California Laws and Regulations Examination by <b><u>October 12, 2012</u></b> .
Community Service	Pursuant to Condition #11, you must submit a community service program in which you provide free professional services on a regular basis to a community or charitable facility or agency, amounting to a minimum of 10 hours per month by <b><u>November 11, 2011</u></b> .
Group Support Meetings	Pursuant to Condition #19, you are to attend at least one 12-step recovery meetings during each week of probation. Attendance should start <b><u>immediately</u></b> . Please complete the attached <i>Group Support Attendance</i> form for each month of probation. Your first attendance forms are due on <b><u>January 7, 2012</u></b> with your first Quarterly Report.
Alcohol and Drug Treatment	Pursuant to Condition #20, you must complete a Board approved drug and alcohol treatment of at least 6 months duration by <b><u>July 10, 2012</u></b> .
Continuing Education	Pursuant to Condition #21, you must submit for approval a 4-hr (minimum) education program or

**Due Dates**

**Dr. Susanne Anderson, O.D.**

**CC 2006-121**

	course in the areas of drug and alcohol addiction by <b>January 10, 2012.</b>
Psychotherapy or Counseling Program	Pursuant to Condition #22, you must submit for approval the name and qualifications of a psychotherapist to perform treatment by <b>December 12, 2011.</b>



**BOARD OF OPTOMETRY**  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
(916) 575-7170 Fax: (916) 575-7292

## Quarterly Report of Compliance

(Return to the address shown above)

(PLEASE PRINT OR TYPE)

NAME:	Last	First	Middle	License No.
RESIDENCE ADDRESS:	Number	Street	City	State Phone
OFFICE ADDRESS:	Number	Street	City	State Phone
NAME OF EMPLOYER, PARTNER, OR ASSOCIATE (if any, and as may be appropriate):				
	Last	First	Middle	
ADDRESS:	Number	Street	City	State Phone
Name of your probation surveillance officer:				
Since the last quarterly report have you had any problem securing or maintaining employment? (YES) (NO)				
Explain in Detail, If answer is Yes:				



Since the last quarterly report, have you:

(Circle Yes or No)

1. Been arrested, charged, or convicted of any violation of Federal, State and local laws?..... (YES) (NO)
2. Complied with every condition of the terms of your probation? ..... (YES) (NO)
3. Complied with all optometry laws? ..... (YES) (NO)
4. If required, have you paid the Board any Cost Recovery? If so, how much \_\_\_\_\_ (YES) (NO)
5. Participated in any continuing education program? If so, please complete the following:

Course: \_\_\_\_\_ Date: \_\_\_\_\_ Certificate Attached: (YES) (NO)

Course: \_\_\_\_\_ Date: \_\_\_\_\_ Certificate Attached: (YES) (NO)

Course: \_\_\_\_\_ Date: \_\_\_\_\_ Certificate Attached: (YES) (NO)

(Note: Original certificate of completion must be attached for compliance credit – originals will be returned)

6. Please attach copies of complete patient records for 6 patient encounters. These are not to be of the same patient type, i.e. 3 for patients under 40 years of age, 3 for patients over 40 years of age with varying ranges of refractive and eye health characteristics.

Explain any YES answer to question 1 and any NO answer to question 2 or 3:

---

---

I hereby submit this Quarterly Report as required by the California Department of Consumer Affairs, Board of Optometry and its order of probation thereof, and declare under penalty of perjury the laws of the State of California that I have read the foregoing report in its entirety and know its contents and that all statements made are true in every respect, and understand that misstatements of omissions of material fact may be cause for revocation of probation.

\_\_\_\_\_  
Probationer Signature

\_\_\_\_\_  
Date



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

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



**Quarterly Report Schedule**  
**Anderson, Susanne O.D.**

**CC 2006-121**

Probationary Period	Due Date
Oct. 12, 2011 – Dec. 31, 2011	Jan. 7, 2012
Jan. 1, 2012– March 31, 2012	April 7, 2012
April 1, 2012– June 30, 2012	July 7, 2012
July 1, 2012 – Sept. 30, 2012	Oct. 7, 2012
Oct. 1, 2012 – Dec. 31, 2012	Jan. 7, 2013
Jan. 1, 2013– March 31, 2013	April 7, 2013
April 1, 2013– June 30, 2013	July 7, 2013
July 1, 2013 – Sept. 30, 2013	Oct. 7, 2013
Oct. 1, 2013 – Dec. 31, 2013	Jan. 7, 2014
Jan. 1, 2014 – March 31, 2014	April 7, 2014
April 1, 2014 – June 30, 2014	July 7, 2014
July 1, 2014 – Sept. 30, 2014	Aug. 4, 2014
Oct. 1, 2014 – Dec. 31, 2014	Jan. 7, 2015
Jan. 1, 2015 – March 31, 2015	April 7, 2015
April 1, 2015 – June 30, 2015	July 7, 2015
July 1, 2015 – Sept. 30, 2015	Aug. 4, 2015
Oct. 1, 2015 – Dec. 31, 2015	Jan. 7, 2016
Jan. 1, 2016 – March 31, 2016	April 7, 2016
April 1, 2016 – June 30, 2016	July 7, 2016
July 1, 2016 – Oct. 12, 2016	Oct. 12, 2016

CALIFORNIA STATE BOARD OF  
**OPTOMETRY****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](http://www.optometry.ca.gov)**RELEASE OF CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_, License No. \_\_\_\_\_, authorize  
(Full name of Probationary Optometrist)

Person or entity: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

to disclose all records and information, confidential or otherwise, and to answer any questions pertaining to my compliance with all federal, state and local laws, and rule and regulations of the Board of Optometry, including my employment, drug and or alcohol rehabilitation, physical and or mental health status, to the Board of Optometry, Probation Program Monitor, Probation Program staff, and or designated representative(s). All information requested should be sent to or directed to:

**Board of Optometry  
ATTN: Jessica Siefertman  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834**

This authorization shall be valid immediately and shall expire only after I successfully complete my probation term with the Board, or after I am terminated from the Probation Program early due to a successful petition outcome, or after my optometrist license is revoked or surrendered by the Board.

\_\_\_\_\_  
Signature of Probationary Optometrist\_\_\_\_\_  
Date

CALIFORNIA STATE BOARD OF  
**OPTOMETRY****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](http://www.optometry.ca.gov)**Probationer:** Dr. Susanne Anderson, O.D.**License Number:** OPT 6613**Case Number:** CC 2006-121**NOTICE TO EMPLOYER****Employer Name:** \_\_\_\_\_ **License Number:** \_\_\_\_\_**Phone Number:** \_\_\_\_\_ **ext.:** \_\_\_\_\_**Address:** \_\_\_\_\_**Probationer's date of hire:** \_\_\_\_\_

I, \_\_\_\_\_, certify that I am Dr. Susanne Anderson's employer. I further certify that, on \_\_\_\_\_, said probationer provided me a copy the Decision, Order, and Statement of Issues against her. I have read and I am aware of the discipline imposed by said Decision.

Further, I understand that the Board may communicate with me in regards to said probationer's work status, performance, and monitoring.

\_\_\_\_\_  
**Employer's Signature**

\_\_\_\_\_  
**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.govCALIFORNIA STATE BOARD OF  
**OPTOMETRY****COST RECOVERY PAYMENT PLAN**Name Susanne Anderson, O.D. License No. OPT 6613Decision / Stipulation No. CC 2006-121 Probation Condition: 9Payment Terms: Paid in full 6 mo. prior to end of term Current Amount Due: \$3,320

In accordance with my probation requirement, I propose to make payment(s) to the Board as follows:

I will make an initial payment of \$60.50 by October 12, 2011.

Thereafter, I will make 53 payments in the amount of \$61.50 by the first of each month thereafter, until the total is paid in full.

***I understand that if I fail to make any payment(s) as described within this payment plan, I will be in violation of my probation requirements and possible face further disciplinary action against my license to practice optometry. I am also aware of Business and Professions Code Section 125.3(g) that allows the Board to deny me renewal of my license for failure to pay these costs.***

\_\_\_\_\_  
Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Probation Monitor\_\_\_\_\_  
Date

Payments must be in the form of a cashier's check, money order, or personal check drawn from an account with sufficient funds. To ensure that your payment is credited to the correct account, **please write: "COST RECOVERY CASE NO. CC 2006-121"** on the front of your payment document. Make your checks payable to: California State Board of Optometry.

Mail your payment to:

Board of Optometry  
Attention: Jessica Sieferman  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834



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



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

## GROUP SUPPORT ATTENDANCE

NAME: Dr. Susanne Anderson, O.D.

MONTH/YEAR \_\_\_\_\_

You must obtain verification of attending Support Group Meetings such as AA, NA, ALANON, ACA, Recovery. The person you select to verify your attendance at such meetings must completely fill in one row on this form, for each meeting that they are verifying your attendance. ~~You are to turn in this form to your Probation Monitor for each month at the end of each quarter with your Quarterly Report.~~

You are required to attend **1-5** Support Group Meeting per week.

Week	Date	Time of Meeting	Type or Name of Meeting	Verifying Name/Initial
1				
2				
3				
4				
5				

From: events <events@coavision.org>  
To: sande80328 <sande80328@aol.com>  
Subject: California Optometric Association - purchase confirmation  
Date: Tue, Oct 9, 2012 3:05 pm  
Attachments: MS2012\_Registration\_Info.pdf (39K)

---

You are registered for the following:

Susanne W. Anderson, O.D. (4175)  
Charged to CC: XXXXXXXXXXXX8981

Total charges include everything paid for in this event registration transaction. If you have questions or need to make any changes to your registration, please call COA at 800.877.5738.

= Event & Functions =====

Event Title: Monterey Symposium 2012 (MS2012)  
Event Total: \$575.00

OD Option 1 Online Registration  
Function Price: \$575.00

Saturday Lunch Voucher-  
Nov 10, 2012 12:00 PM to Nov 10, 2012 3:00 PM  
Function Price: n/a

Friday Lunch Voucher-  
Nov 9, 2012 12:00 PM to Nov 9, 2012 3:00 PM  
Function Price: n/a

\$50 COA Bucks  
Function Price: n/a

FF2 - Food for Thought: Presbyopic? • Take It One Day At  
Nov 9, 2012 6:45 AM to Nov 9, 2012 7:45 AM  
Function Price: n/a

103 - Retina Review: Top Ten Reasons to Request a Retina  
Nov 9, 2012 8:00 AM to Nov 9, 2012 9:40 AM  
Function Price: n/a

105 - Ocular Manifestations of Systemic Disease:  
Nov 9, 2012 10:00 AM to Nov 9, 2012 11:40 AM  
Function Price: n/a

109 - New Perspectives in Glaucoma, Cataracts and  
Nov 9, 2012 3:00 PM to Nov 9, 2012 3:50 PM  
Function Price: n/a

113 - Abuse of Prescription and Non-Prescription Drugs  
Nov 9, 2012 4:00 PM to Nov 9, 2012 4:50 PM  
Function Price: n/a

116 - Fun with Herpes: HEDS I, II and You  
Nov 9, 2012 5:00 PM to Nov 9, 2012 5:50 PM  
Function Price: n/a

201 - Interactive Therapeutics: My Most Challenging  
Nov 10, 2012 8:00 AM to Nov 10, 2012 9:40 AM  
Function Price: n/a

204 - Ocular Side-Effects of Systemic Medications  
Nov 10, 2012 10:00 AM to Nov 10, 2012 11:40 AM

EXHIBIT D

Function Price: n/a

209 - Role of Vascular Disease in Glaucoma  
Nov 10, 2012 3:00 PM to Nov 10, 2012 3:50 PM  
Function Price: n/a

210 - Rapid Fire Ophthalmic Surgical Update  
Nov 10, 2012 4:00 PM to Nov 10, 2012 5:40 PM  
Function Price: n/a

FF3 - Food for Thought: Overview of RESTASIS®  
Nov 10, 2012 6:45 AM to Nov 10, 2012 7:45 AM  
Function Price: n/a

CLW1 -Unraveling The Mysteries of CLIA: Enhancing Patient  
Nov 11, 2012 8:00 AM to Nov 11, 2012 9:40 AM  
Function Price: n/a

304 - Optometric Role in Treating Glaucoma  
Nov 11, 2012 10:00 AM to Nov 11, 2012 11:40 AM  
Function Price: n/a

306 - Steroids and Controlled Substances  
Nov 11, 2012 12:00 PM to Nov 11, 2012 12:50 PM  
Function Price: n/a

Please keep a copy of this confirmation for your records.

Cancellation Policy:

Please review the attached document for important OptoWest information including our registration cancellation policy.

Thanks,  
California Optometric Association

RECEIVED  
10/11/12



Tri-County Optometric Society  
1255 14<sup>th</sup> St.  
Los Osos, CA 93402  
805-801-5567

## Certificate of Participation in Continuing Education

### Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.  
Address P.O. Box 1300, NIPOMO, CA 93444  
Lic# OPT 6613 TPG SS# 399 48 2338

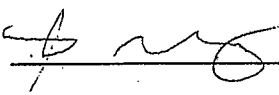
### Course Information:

Location: Sycamore Mineral Springs Resort  
1215 Avila Beach Drive  
San Luis Obispo, CA 93401

Date: Saturday, October 13, 2012

Course Title	Credit Hours
"Corneal Inlays and Lasik Outliers" John Davidson, M.D.	1.0
"Periocular Malpositions and Involutional Changes" Noelene Pang, M.D.	1.0
"Interesting Cases of Vitreoretinal Pathology" Nathan Steinle, M.D.	1.0
"Update on Vitreoretinal Pharmacology" Dilsher Dhoot, M.D.	1.0
<b>TOTAL HOURS</b>	<b>4.0</b>

Official certificate or record when signature and seal are affixed.

Approving Officer: 

Official Seal



**SHEPARD**  
EYE CENTER

**Better Vision for a Better Life**

Dennis Shepard, MD   Stephen Bylsma, MD   Rami Zarnegar, MD   Dan Shepard, MD   Randall Goodman, MD  
James Franta, OD   Ken Kendall, OD   Felicia Lew, OD

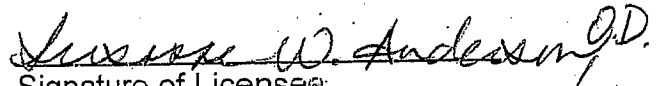
*General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery  
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration  
BOTOX • Primary Eye Care • Contact Lenses • Low Vision*

## Certification of Participation in Continuing Education

*This will certify that:*

Susanne Anderson OD  
P.O Box 1300  
Nipomo Ca 93444

OD license No. 6613T   Social Security No. 399-48-2338

  
Signature of Licensee

Attended the following courses:

- Common Post Op Complications
- Glaucoma Surgical Implants

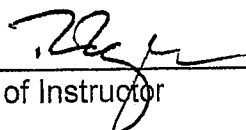
Sponsored by:

Shepard Eye Center  
1414 East Main Street  
Santa Maria, CA 93454

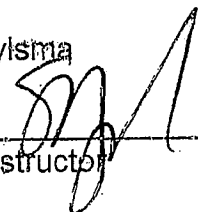
On October 11th, 2012, Approved for 2.0 CME hours.

Course Instructors:

Dr. Rami Zarnegar

  
Signature of Instructor

Dr. Stephen Bylsma

  
Signature of Instructor

Anderson Susanne W OD  
P.O. Box 1300  
Nipomo, CA 93444

Southern California College of Optometry  
2575 Yorba Linda Boulevard  
Fullerton, CA 92631-1699

License#: 6613

Report date: 17-Oct-12

Page 2 of 2

COURS	DATE	TITLE	INSTRUCTOR	HOURS	GRADE	LOCATION
Current Term		33.00				
Cumulative		204.00				
Continuing Education 2012						
COE1849 14-Jan-2012		Glaucoma Grand Rounds	Dr. Sendrowski...	16.00	P	SCCO
Graduate		HOURS				
Current Term		16.00				
Cumulative		220.00				

END OF TRANSCRIPT

Date

*Damon S. P. [Signature]*  
Registrar

Anderson Susanne W OD  
P.O. Box 1300  
Nipomo, CA 93444

Southern California College of Optometry  
2575 Yorba Linda Boulevard  
Fullerton, CA 92631-1699

License#: 6613

Report date: 17-Oct-12

Page 1 of 2

COURSE	DATE	TITLE	INSTRUCTOR	HOURS	GRADE	LOCATION
COB011	04-Mar-1994	Tri-County Optometric Society TRA	Various	100.00	P	Ventura
Graduate						
Current Term				100.00		
Cumulative				100.00		
COB1838	11-Aug-2002	OCOS PATHOLOGY SYMPOSIUM	BOSSE/CONDELL	6.00	P	SCCO
Graduate						
Current Term				6.00		
Cumulative				106.00		
COB1834	21-Mar-2004	Pediatric Optometry	Barnhardt	7.00	P	SCCO
Graduate						
Current Term				7.00		
Cumulative				113.00		
COB1831	05-Mar-2005	3rd Annual Ocular Disease Program		9.00	P	SCCO
Graduate						
Current Term				9.00		
Cumulative				122.00		
COB1831	11-Jul-2009	Ocular Disease Part 2	DreastineTooma	18.00	P	SCCO
Graduate						
Current Term				24.00	P	SCCO
Cumulative				42.00		
COB1843	14-Mar-2010	Scleral GP Contact Lens	Dr. B. Larson	7.00	P	SCCO
Graduate						
Current Term				7.00		
Cumulative				171.00		
COB1814	20-Aug-2011	Glaucoma Phase II 15 hr Certification	Dr. Sawamura	15.00	P	SCCO
Graduate						
Current Term				18.00	P	SCCO
Cumulative				18.00		

\* \* \* CONTINUED ON NEXT PAGE \* \* \*

Date

*Susanne W. Anderson*  
Registrar



# California Optometric Association

2415 K Street, Sacramento, CA 95816  
Tel: (916) 441-3890 Toll-Free: (800) 877-5738  
Fax: (916) 448-1423

License: 06613

Susanne W. Anderson, O.D.  
P.O. Box 1300  
Nipomo, CA 93444-1300

## CONTINUING EDUCATION TRANSCRIPT

California Optometric Association  
Monterey Symposium 2011  
Monterey, CA  
November 10 - 13, 2011

### Code Listing

TPA - ANY OF THE FOLLOWING  
(Glaucoma, Ocular Infection, Inflammation, Systemic Meds,  
Pain Medications)  
O - OTHER(Binocular Vision, Contact Lenses, Low Vision,  
Vision Therapy)  
PM - PRACTICE MANAGEMENT  
ABO - American Board of Opticianry - Approved  
NCLE - National Contact Lens Examiners Approved  
AOA- AOA Approved only

COURSE TITLE	DATE	SPEAKER	HRS	CATEGORY	COPE
100- Clinical Challenges in Uveitis	11/11/11	David P. Sendrowski, OD, FAAO	2.00	TPA	COPE# 30943-SD
105- Systemic Antibiotic Management of Infection and Ocular	11/11/11	Blair Lonsberry, MS, OD, MEd, FAAO	2.00	TPA	COPE# 28669-PH
108- Diagnosing and Mngng Ocular Urg and Emergencies	11/11/11	Blair Lonsberry, MS, OD, MEd, FAAO	2.00	TPA	COPE# 24959-SD
112- Infection Protection: An Antibiotic Update	11/11/11	Alan Kabat, OD, FAAO	1.00	TPA	COPE# 27812-PH
202- The Latest in Management of AS Disorders	11/12/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31935-AS
207- The Latest in Management of PS Disorders	11/12/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31936-PS
211- Imaging in Glaucoma Today	11/12/11	George William Comer, OD, MBA	2.00	TPA	COPE # 32904-GL
301- Update on Retinal Vascular Disease	11/13/11	John H. Nishimoto, OD, MBA, FAAO	2.00	TPA	COPE# 31937-GO
309- High Performance High Wrap Rx - Easy!	11/13/11	Mark Mattison-Shupnick, ABOM, BS	1.00	OTH/ABO/AO	COPE# 31707-PM
F3- Increase Patients While Building a Successful Rx	11/12/11	Peter Kehoe, O.D.	1.00	NO CREDIT	
216- Picking Through Ophthalmology's Trash	11/12/11	Alan Kabat, OD, FAAO	1.00	PM	COPE # 27800-AS

This is your verification of course attendance at Monterey Symposium 2011.  
Please keep for your records. Please note that Practice Management course hours do not count towards license renewal.

Tri-County Optometric Society  
1700 N. Rose Ave  
Oxnard, C.A. 93030  
805-983-0700

Certificate of Participation in Continuing Education

Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.  
Address P.O. BOX 1300, NIPOMO, CA 93444  
Lic# 6613TPG SS# 399-48-2338

Course Information:

Location: Firestone Brewery  
620 McMurray Rd.  
Buellton, CA 93427

Date: Sunday, July 24, 2011

Course Title	Credit Hours
"Ocular Trauma" Steve S. Couvillion, M.D.	1.0
"Diagnostic and Surgical Differences in Eyelid Surgery" Randall L. Goodman, M.D.	1.0
"Diabetic Education for the Optometric Patient" Paula Vetter, R.N., FNP	2.0
<b>TOTAL HOURS</b>	<b>4.0</b>

Official Certificate or record when signature and seal are affixed.

Approving Officer: 

Official Seal



SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education  
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699  
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Suzanne Anderson, OD  
P. O. Box 1300  
Nipomo CA 93444-1300

---

## CERTIFICATION OF CONTINUING EDUCATION CREDIT

---

This will certify that: **Suzanne Anderson, OD**  
Opt. License No: 6613 T

Attended: **Ocular Disease Program, Part I**  
Date: **Saturday & Sunday, March 12 & 13, 2011**

**Instructor(s):**

**Saturday, March 12, 2011 • Day One - 9 Hours**

Diagnosing and Managing Ocular Urgencies & Emergencies - Blair Lonsberry, M.S., O.D., MEd.  
What Makes a Patient a Glaucoma Suspect Versus an Ocular Hypertensive? - Gayle Howard, M.D., Ph.D.  
Early Management of Intraocular Pressure in Glaucoma - Gayle Howard, M.D., Ph.D.  
When Diplopia is more than Double Vision - Ray Chu, O.D., M.S.  
Ocular Dermatology - Dawn Pewitt, O.D.  
Differential Diagnosis of Headaches in Children - Sue Cotter, O.D., M.S.  
Anterior Segment Review - Jeffrey Austin, O.D.

**Sunday, March 13, 2011 • Day Two - 9 Hours**

Ocular Surface Disorders and Blepharitis - David Sendrowski, O.D.  
Episcleritis and Scleritis: Simple Approaches to Diagnosis and Management - David Sendrowski, O.D.  
Retinal Vascular Update - John Nishimoto, O.D., M.B.A.  
Macular Disease - Steve Ferrucci, O.D.  
Optometric Co-Management of Retinal Procedures - Steve Ferrucci, O.D.  
Eye Care: Cases from the Field - Jay Rofsky, O.D.  
Clinical Optometry and the Law - Stephen Eap, O.D., J.D.  
Ophthalmic Drug Update 2011 from A to Z - Judy Tong, O.D.  
Current and Future Treatments of Corneal Dystrophies - Loren Rude, O.D.

Sponsored and Administered by:

The Department of Continuing Education Southern California College of Optometry

Total Continuing Education Credits Earned: **18**

---

Sue Atkinson  
Director, Department of Continuing Education  
Southern California College of Optometry



**Better Vision for a Better Life**

Dennis Shepard, MD   Stephen Bylsma, MD   Rami Zarnegar, MD   Dan Shepard, MD   Randall Goodman, MD  
James Franta, OD   Ken Kendall, OD   Jason Chang, OD

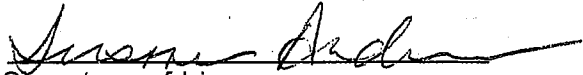
*General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery  
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration  
BOTOX • Primary Eye Care • Contact Lenses • Low Vision*

## **Certification of Participation in Continuing Education**

*This will certify that:*

Susanne Anderson  
P.O Box 1300  
Nipomo Ca 93444

California License No. 6613T   Social Security No. 399-48-2338

  
Signature of Licensee

Attended the following courses:

- Sudden Painless Loss of Vision
- Recent Advancements in Diagnosis and Treatment of the Anterior Segment

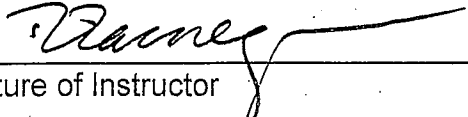
Sponsored by:

Shepard Eye Center  
1414 East Main Street  
Santa Maria, CA 93454

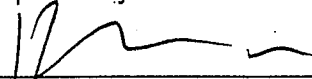
On February 17, 2011, Approved for 2.0 CME hours.

Course Instructors:

Dr. Rami Zarnegar

  
Signature of Instructor

~~Dr. Stephen Bylsma~~ ~~Dr. Randall Goodman~~

  
Signature of Instructor





## California Optometric Association

2415 K Street, Sacramento, CA 95816  
Tel: (916) 441-3990 Toll-Free: (800) 877-5738  
Fax: (916) 448-1423

License Number: 06613

Susanne W. Anderson, O.D.  
P.O. Box 1300  
Nipomo, CA 93444-1300

### CONTINUING EDUCATION TRANSCRIPT

California Optometric Association  
Monterey Symposium 2010  
Monterey, CA - November 5-7, 2010

### COPE Event # 101278

#### Code Listing

TPA - ANY OF THE FOLLOWING  
(Glaucoma, Ocular Infection, Inflammation, Systemic  
Medic, Pain Medications)  
O - OTHER (Binocular Vision, Contact Lenses, Low  
Vision, Vision Therapy)  
PM - PRACTICE MANAGEMENT  
ABO - American Board of Opticianry - Approved  
NCELE - National Contact Lens Examiners Approved  
AOA - AOA Approved only

COURSE TITLE	Date	Speaker	CE HRS	Category	COPE
• 102- Retinal Disease Update on New Treatment and Referral	11/5/10	Jay Haynie, OD, FAAO	2.00	TPA	COPE: 21277-PS
• 106- Adventures in Anterior Segment	11/5/10	Paul M. Karpecki, OD, FAAO	2.00	TPA	COPE: 25511-AS
• 108- Corneal Surgery Comanagement	11/5/10	Maynard L. Pohl, OD, FAAO	2.00	TPA	COPE: 18258-PO
• 113- Ocular Health and Wine	11/5/10	Paul M. Karpecki, OD, FAAO	1.00	TPA/AOA ON	COPE: 22351-CL
• 200- Glaucoma Grand Rounds	11/6/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 21046-GL
• 206- Neuro Grand Rounds	11/6/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 24898-NO
• 208- The Role of Gender in Glaucoma Therapy	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 25765-GL
• 211- What's Eating You? Diagnosis & Trtmt. of Corneal Ulcers	11/6/10	Louise Sclafani, OD, FAAO	2.00	TPA	COPE: 26371-AS
• 213- Controversies in Glaucoma	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 26717-GL
• 300- Secondary Glaucomas	11/6/10	J. James Thimons, OD, FAAO	1.00	TPA	COPE: 26718-GL
• 301- It's Not What Your Country Can Do For You - CL Advanc	11/7/10	Louise Sclafani, OD, FAAO	1.00	OTHER	COPE: 22750-GL
• 304- Glaucoma An Obsession with Progression	11/7/10	Joseph Sowka, OD, FAAO	2.00	TPA	COPE: 24034-GL
• 308- Refractive Surgery Problem Solving	11/7/10	William Tullo, OD, FAAO	2.00	OTHER	COPE: 21521-RS

Tri-County Optometric Society  
7605 Morro Road  
Atascadero, CA 93422  
805-466-3777

Certificate of Participation in Continuing Education

Participant Information:

Name DR. SUSANNE W. ANDERSON, O.D.  
Address P.O. BOX 1300, NIPOMO, CA 93444  
Lic# OPT 6613 TPG SS# 399-48-2338

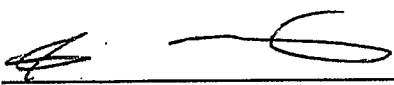
Course Information:

Location: Et Voila  
12304 Los Osos Valley Road  
San Luis Obispo, CA 93405

Date: Saturday, October 16, 2010

Course Title	Credit Hours
"Advantages of Descemet Stripping Automated Endothelial Keratoplasty (DSAEK)" John Cotter, M.D.	1.0
"Diagnosis and Treatment of Conjunctival and Corneal Neoplastic Diseases" Mark Sherman, M.D.	1.0
"Update on Myasthenia Gravis" Mary Amir, M.D.	1.0
"Adult Strabismus" Adam Abrams, M.D.	1.0
<b>TOTAL HOURS</b>	<b>4.0</b>

Official Certificate or record when signature and seal are affixed.

Approving Officer: 

Official Seal



**SHEPARD**  
EYE CENTER

**Better Vision for a Better Life**

Dennis Shepard, MD   Stephen Bylsma, MD   Rami Zarnegar, MD   Dan Shepard, MD   Randall Goodman, MD  
James Franta, OD   Ken Kendall, OD   Jason Chang, OD   Gregg Duisternars, OD

*General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery  
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration  
BOTOX • Primary Eye Care • Contact Lenses • Low Vision*

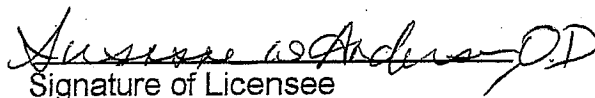
## **Certification of Participation in Continuing Education**

*This will certify that:*

Susanne Andersen, OD  
P.O. Box 1300  
Nipomo, CA, 93444

California License No. 6613T

Social Security No. 399-48-2338

  
Signature of Licensee

Attended the following courses:

- Eyelid Tumors
- When to Refer to Retina

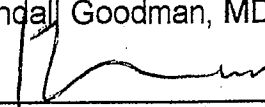
Sponsored by:

Shepard Eye Center  
1414 East Main Street  
Santa Maria, CA 93454

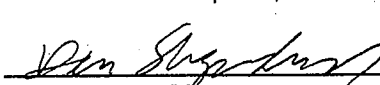
On October 14, 2010, Approved for 2.0 CME hours.

Course Instructors:

Dr. Randall Goodman, MD

  
Signature of Instructor

Dr. Daniel Shepard, MD

  
Signature of Instructor



SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education  
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699  
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Susanne Anderson, O.D.  
Po Box 1300  
Nipomo CA 93444

---

CERTIFICATION OF CONTINUING EDUCATION CREDIT

---

This will certify that: **Susanne Anderson, O.D.** Opt. License No: 6613T

Attended: **Getting Comfortable Prescribing Scleral GP Contact Lenses CE Program**

Date: **Sunday, March 14th, 2010**

**Instructor(s):**

Dr. T. Edrington – Intralimbal GP Contact Lenses for the Management of Irregular Corneas  
Dr. C Sindt – RGP Lens Categories and Fitting Principles  
Dr. G. Chiu – Scleral Lenses Overview – Tips and Tricks  
Drs. C Sindt, B. Larson & G. Chiu – Scleral Fitting Grand Rounds  
Drs. C Sindt, B. Larson & G. Chiu – Scleral Hands-On Workshop

Sponsored and Administered by: The Department of Continuing Education  
Southern California College of Optometry

Total Continuing Education Credits Earned: 7

A handwritten signature in cursive script, reading "Susan Atkinson".

---

**Susan Atkinson**  
Director, Department of Continuing Education  
Southern California College of Optometry



**Better Vision for a Better Life**

Dennis Shepard, MD   Stephen Bylsma, MD   Rami Zarnegar, MD   Dan Shepard, MD   Randall Goodman, MD  
James Franta, OD   Ken Kendall, OD   Jason Chang, OD   Gregg Duisternars, OD

*General Ophthalmology • Cataract • Glaucoma • Strabismus • LASIK • Implant Refractive Surgery • Eyelid Plastic Surgery  
Retina Specialist • Vitreoretinal Surgery • Diabetic Eye Care • Macular Degeneration  
BOTOX • Primary Eye Care • Contact Lenses • Low Vision*

## Certification of Participation in Continuing Education

*This will certify that:*

Susanne Anderson, OD  
P.O. Box 1300  
Nipomo, CA 93444

California License No. 6613T

Social Security No. 399-48-2338

  
Signature of Licensee

Attended the following courses:

- Using Ribioflavin & UV to treat Keratoconus
- Posterior Capsule Opacification in Toric Intraocular Lenses ( One (1) Credit hour approval pending)

Sponsored by:

Shepard Eye Center  
1414 East Main Street  
Santa Maria, CA 93454

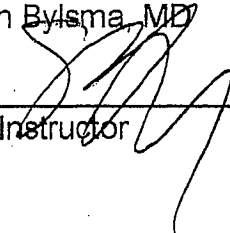
On February 18, 2010, approved for one (1) credit hour.

Course Instructors:

Dr. Rami Zarnegar, MD

  
\_\_\_\_\_  
Signature of Instructor

Dr. Stephen Bylsma, MD

  
\_\_\_\_\_  
Signature of Instructor

DR. STEVEN S. JIO  
OPTOMETRIST  
2098 9TH STREET, SUITE A  
P.O. BOX 6336  
LOS OSOS, CALIFORNIA 93412-6336  
TELEPHONE 528-2237

Oct. 24, 2012

To whom it may concern,

I have known Dr. Susanne Anderson both professionally and casual socially since 1980 when I opened my practice. Throughout the years, I have always known her to be both professional and responsible in her behavior.


To first give some background about myself, prior to beginning my career in optometry, I worked in a regional spinal cord injury center in San Jose. In the time I worked there, I took care of many victims who were hit by drunk drivers, and were now paralyzed for the rest of their lives, while the drunk driver escaped with minor injuries, and in two particular instances escaped prosecution on technicalities. As a result of this I have developed a zero tolerance for impaired drivers (and hope I am never in the position to be one of them), and would not agree to help anyone who I believed drove while intoxicated.

Thorough the years, I have encountered Dr. Anderson at many professional meetings, and have actually traveled together with her to some of them, and have not had a circumstance where I felt she acted recklessly in her behavior. I have also done some school vision screenings in our area with her, and never detected any impairment in function or appearance. Lastly, I helped her out on my days off from my practice to work in her office when she took time off after the birth of her children. The office seemed to be efficiently run, and it was easy for me to continue the continuity of care for her patients with her recordkeeping (her documentation was easy to follow).

Finally, I actually had Dr. Anderson as a patient subsequent to a plane crash she was in on a volunteer trip to Mexico. She suffered some head injuries, and needed some help with some loss of accommodative function as a result of those injuries. I understand there were also some other minor persistent neurological issues that occurred.

I hope this information is of some help to you in your consideration of Dr. Anderson's probationary term. If all other terms and qualifications are met, I would support a dismissal of her current status. If you have any questions, please feel free to contact me.

Sincerely,



Steven S. Jio, O.D.

EXHIBIT E

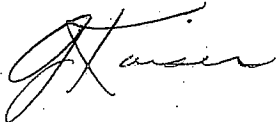
Greg W. Kaiser O.D.  
Central Coast Optometric Center  
800 Quintana Rd., 1d  
Morro Bay, CA 93442  
(805)772-6166

November 10, 2012

To Whom It May Concern,

I have known Dr. Susanne Anderson for over 30 years. In the early 1990's, I worked with Dr. Anderson in Mexico on several trips with the Liga International group of volunteer doctors. From August 1995 to January 1998, I worked with Dr. Anderson on a part-time basis at her office in Nipomo, Ca. I saw hundreds of her patients and reviewed many of her exam records. Dr. Anderson's records revealed her as a very thorough and capable Optometrist with a good Rapport with her patients.

I have never seen Dr. Anderson intoxicated or under the influence of drugs, or incapable of Presenting herself in a professional manner. She has raised three wonderful children who are all college graduates and fine citizens. As my colleague, I hold Dr. Anderson in high esteem.

A handwritten signature in cursive script, appearing to read 'G. Kaiser', written in dark ink.

Greg W. Kaiser O.D.

Thursday November 1, 2012

To the Board of Directors of the California Board of Optometry:

I am a Board Certified Ophthalmologist practicing in San Luis Obispo County since 2000.

When I began my practice I occasionally visited the office of Dr. Susanne Anderson. She was always professionally attired and conducted herself in a professional fashion. She was able to cogently discuss relevant ophthalmic issues. When I saw her at continuing education meetings she was professional, coherent and articulate. I never witnessed her consuming alcohol and she never appeared compromised.

Sometime after 2000, I became her physician, treating her for chronic blepharospasms. During her office visits she has always been coherent, articulate and has not seemed impaired in any way.

I have always known Dr. Anderson to be professional and that she maintained a reputation as a committed, professional optometrist when she was practicing.

Should you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely,



Paul Stallman, MD



providing *high quality* care[Home](#) [About Us](#) [Services](#) [Volunteer](#) [Donate](#) [News](#) [Helpful Links](#) [Board of Directors](#) [Contact](#)

Follow Us



## San Luis Obispo's Free Clinic

Now taking appointments.

Clinic Hours: 1:00pm – 5:00pm Friday and Saturday

The SLO Noor Foundation is a volunteer-based, non-profit organization dedicated to providing high quality free health care to uninsured people living within our community. Our team of volunteers, including physicians, nurses and pharmacists serves San Luis Obispo's uninsured and underserved by providing free primary and specialty care, along with education, outreach and advocacy...because no one should go without health care.

The SLO Noor Foundation Free Clinic operates solely on donations and grants from patients, private individuals, businesses, civic, Hospitals, and charitable foundations. The medical and educational services we provide enable our patients to lead healthier and more productive lives, which in turn, has a positive impact on their families and our community.

### Recent News



Apple Farm Annual Open House – Benefiting the SLO Noor Foundation Sat., Nov. 10th 10am-3pm



Apple Farm Annual Open House – Benefiting the SLO Noor Foundation Sat., Nov. 10th 10am-3pm



Yarns at the Adobe – Sunday, October 7th, 3-6 pm

Copyright © 2012 SLO Noor Foundation. All Rights Reserved.

EX-101

## About us

At the SLO Noor Foundation we understand the obstacles and challenges the uninsured face in our community when trying to obtain the quality medical care they need. The SLO Noor Foundation was established as a non-profit organization to help aid this problem. We provide free, high quality health care to those who could not otherwise afford access to care in San Luis Obispo County. The Foundation hopes to mitigate the effect on our community of the growing number of uninsured adults residing in our neighborhoods, the increasing risk of poor health conditions impacted by the lack of insurance, and the prevalence of the low-income and homeless in need of medical care."

## Mission

The mission of the SLO Noor Foundation is to provide the under-served and disadvantaged of SLO County with free access to the quality care they deserve, regardless of race, ethnicity, religion, immigration or socioeconomic status. We are committed to bettering our community by:

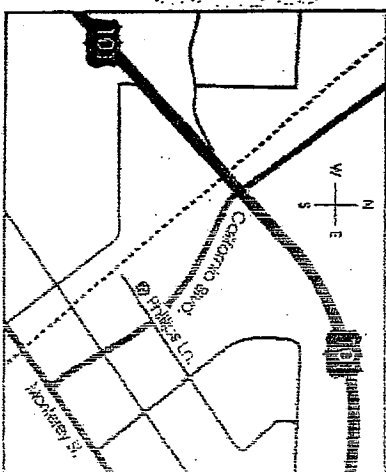
- Providing quality preventative and episodic primary health care to the uninsured
- Providing support group literature and partnering with social workers to assist individuals in identifying and qualifying for programs (including insurance) and other resources available in the community.
- Offering discount prescription information for prescriptions to be filled at local pharmacies
- Providing students with early exposure to addressing health care disparities through the mutually beneficial cooperative efforts of patients, healthcare professionals and members of the community

1428 Phillips Lane, Suite B-4  
San Luis Obispo, CA 93401

Phone: (805) 439-1797

Fax: (805) 439-1799

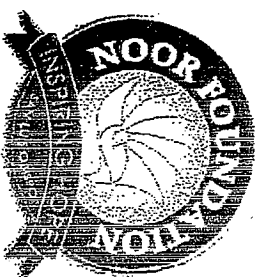
[slonoorfoundation.org](http://slonoorfoundation.org)



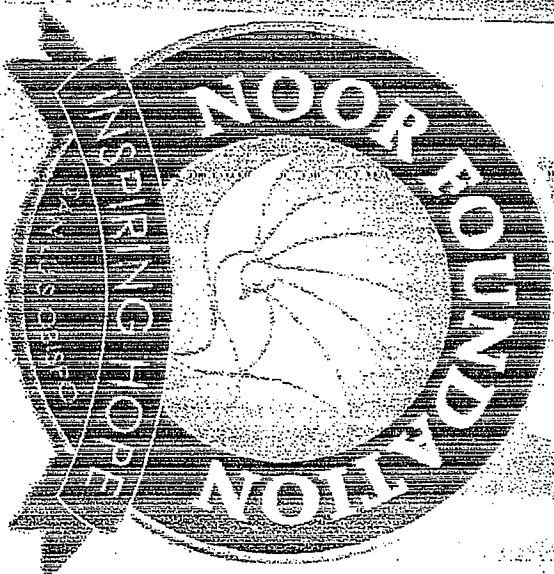
## Hours

Primary Care Clinic  
Fridays and Saturdays  
1p.m. - 5 p.m.

Eye Clinic - last Thursday  
of every month  
8 a.m. - 12 p.m.



Inspiring hope & providing high quality care



inspiring hope  
providing  
care

A free, high quality non-emergent  
health care clinic.

# Services

The following services are provided for free to all patients who visit the SLO Moor Foundation Free Clinic



## Basic Primary Care

- Patient Education
- Disease Prevention & Screening
- Physical Exams
- Women's Health
- Men's Health
- Laboratory Testing
- Specialty Referrals
- Physical Therapy
- Nutritional support
- Screening to help you qualify for Medi-Cal, CalCal, or similar free public insurance

## Medical Services

Designed to meet the essential need that has arisen in our community, Medical Services are the cornerstone of the SLO Moor Foundation. Our clinic provides a "medical home" to adults with acute and chronic illnesses needing routine medical supervision and medications.

Services provided include basic medical care, laboratory testing, diabetes treatment and much more. Individuals needing specialty care such as cardiology, rheumatology, oncology and other sub-specialties may receive such care in the clinic or through referrals. These services are offered on a mixed appointment and walk-in schedule. As with all our clinic services, basic tests are free as well.

## Case Management/Social Services

The case management department at the SLO Moor Foundation assists our patients in obtaining needed services in the community. Case managers work with clients to help them identify their needs and goals. Clients are then provided with referrals and information that is aimed at meeting those needs to assist them in achieving their goals. Our services are provided within a short-term framework that encourages the empowerment of clients to ensure them the opportunity to control their own future.

## Women's Health

The SLO Moor Foundation is especially committed to providing ongoing support of women's health through regular screening and follow-up appointments. Staff members assist patients in accessing needed care of breast and other types of cancer through a referral program.

## Referrals in the Areas of

- Housing
- Transportation
- Substance abuse issues
- Long term care/food assistance
- Skilled Nursing or Assisted Living placement Services

## Vision

- Comprehensive eye exams
- Eye Glasses
- Glasses repair
- Medical treatment for glaucoma, allergies, etc.
- Diabetic eye exams

# CALIFORNIA STATE BOARD OF OPTOMETRY

## CALIFORNIA STATE BOARD OF OPTOMETRY

**Licensee Name:** ANDERSON SUSANNE WILCH  
**License Type:** Optometrist (OPT)  
**License Number:** 6613  
**License Status:** Renewed Definition  
Probation Definition  
**Expiration Date:** September 30, 2013  
**Issue Date:** September 15, 1979  
**License or Registration Class:** TPG  
**Address:** PO BOX 1300  
**City:** NIPOMO  
**State:** CA  
**Zip:** 93444-1300  
**County:** SAN LUIS OBISPO  
**Actions:** Yes

A search of our records reveals that this optometrist may have been involved in a complaint that resulted in disciplinary action or a citation. You should contact the Board of Optometry at [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov) for more information.

### Related Licenses/Registrations/Permits

No records returned

### Public Disclosure

#### Administrative Disciplinary Actions

**Case Number:** CC200900010700  
**Description of Action:** LICENSE PLACED ON 5 YEARS PROBATION FOR UNPROFESSIONAL CONDUCT: USE OF ALCOHOLIC BEVERAGES REPEATED NEGLIGENT ACTS, ACTS O THAT WOULD HAVE WARRANTED DENIAL OF LICENSE, AND CONVICTIONS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS, AND DUTIES OF AN OPTOMETRIST

**Effective Date of Action:** October 12, 2011

Public documents relating to this action are available here: [http://www.optometry.ca.gov/consumers/enforcement/kroul\\_decision.pdf](http://www.optometry.ca.gov/consumers/enforcement/kroul_decision.pdf)

#### Disclaimer for Disciplinary Actions

All imaged documents provided by the Optometry Board are being made available to provide immediate access for the convenience of interested persons. While the Optometry Board believes the information to be reliable, human or mechanical error remains a possibility, as does delay in the posting or updating of information. Therefore, the Optometry Board makes no guarantee as to the accuracy, completeness, timeliness, currency, or correct sequencing of the information. The Optometry Board shall not be responsible for any errors or omissions, or for the use or results obtained from the use of this information. The types of documents which are available include, but are not limited to, accusations, decisions, suspension/restriction orders, public letters of reprimand and citations. Other specific cautionary notices may be included on other Web pages maintained by the Board. All access to and use of this Web page and any other Web page or Internet site of the Board is governed by the Disclaimers and Conditions for Access and Use as set forth at [California Department of Consumer Affairs' Disclaimer Information and Use Information](#).

This information is updated Monday through Friday - Last updated: APR-03-2012

#### Disclaimer

All information provided by the Department of Consumer Affairs on this web page, and on its other web pages and internet sites, is made available to provide immediate access for the convenience of interested persons. While the Department believes the information to be reliable, human or mechanical error remains a possibility, as does delay in the posting or updating of information.



EXHIBIT H

YOU ARE HERE: LAT Home→Collections→**Doctors**

## Mercy Workers Save Colleagues in Mexico Crash

November 06, 1991 | JESSE KATZ | TIMES STAFF WRITER

Using a crucifix as a splint, hair bands as tourniquets and shredded T-shirts as bandages, a group of USC nursing students and a Lancaster eye doctor saved the lives of four colleagues whose plane had crashed on a medical mission in Mexico.

The crash occurred last weekend when one of four single-engine planes piloted by the Flying Doctors of Mercy struck electrical lines and smashed into rugged terrain in the northwestern state of Sinaloa.

What transpired was a harrowing race against death by the California volunteers--won with primitive, makeshift measures far removed from their high-tech training.

"We were all dirty, our shirts were torn, we had blood under our fingernails and on our face--it was like a total MASH unit," USC nursing senior Rosie Romero, 22, said Tuesday. She was one of five students who made the trip to fulfill a volunteer work requirement in their community health class.

Instead of ambulances, they borrowed pickup trucks from local villagers and raced to the scene along dirt roads, crossing creeks and dodging livestock. A mayonnaise jar was used to collect urine specimens, a burlap sack served as a pillow and jagged wounds were cleaned with buckets of water.

By the time U.S. rescue crews arrived 10 hours later, it was dark. The tiny airport in El Fuerte had no radar or lights. Guided only by the headlamps of trucks that residents had parked around the runway, four Lear jets made daredevil landings and airlifted the injured to a trauma center in Tucson.

On Tuesday, the victims all were listed in fair condition with multiple fractures, cuts and bruises. Back in Los Angeles, the nursing students and the eye doctor were exhausted but relieved.

"It was a fabulous human experience," said ophthalmologist Rulon Beesley.

Said 26-year-old USC senior Denise Greene: "We basically sat down afterward, had a couple of margaritas and said, 'Whoa, what a day.'"

When the trip began Friday, the group had hoped to provide a range of medical services and supplies to the Mexican poor, including such basics as toothbrushes and toothpaste. For the volunteers of Liga International, a 66-year-old organization also known as Flying Doctors of Mercy, the trips are regular affairs in which they send as many as 25 planes a month south of the border.

Allen Clark, 38, an optician and pilot from Lancaster, had made the journey dozens of times, as had the three optometrists in his airplane. But as he was completing the last leg of the trip Saturday morning, from Guaymas to Choix, the craft's wing snagged electrical wires and the plane plummeted upside-down to the ground.

"It was like, Oh my God, I know they're going to be dead," Romero recalled thinking as she viewed the wreckage from above.

The three other planes in the convoy landed on a dirt airstrip about 10 miles away, where residents of the tiny village were awaiting their arrival. The students, some of whom speak Spanish, explained what had happened and were off in a frantic, bumpy ride in the back of the villagers' pickup trucks.

Ads by Google

About 45 minutes later, they encountered their wounded colleagues, who had been pulled from the wreckage by town folk. Clark had a fractured pelvis, crushed kneecap, broken foot and a deep cut across his chin. The others--G. Clark Pierre of Lancaster, Susan Anderson of Santa Maria and Greg Kaiser of San Luis Obispo--had injuries ranging from dislocated shoulders to compound fractures. Most were bleeding profusely.

"It was really life and death," said USC senior Amy Schmuecker, 27. "We just got in there and did the best we could."

Beesley said he took off the brace he was wearing for a herniated disc and used it to immobilize one victim's wrenched shoulder while the nursing students shredded their clothing for bandages, turning their T-shirts into tank tops.

Local residents gathered sticks and fence posts for splints. A hair band and the tubing from a stethoscope served as tourniquets. Some of the nursing students, who had split off to find medical supplies, showed up with a bag of IV solution and one needle--shared by the most critically injured.

"I had worked as a nurse before, but I never felt like a nurse until Saturday," said USC senior Jill Houston, 26.

ADDITIONAL PLANTS  
NO NOVEMBER 19  
AT 5:30 PM  
FALL 1987

am mentioned as Susan Anderson  
from Santa Maria, CA, mentioned  
and one of my references. Dr. Kaiser

They put the injured in the backs of the pickups and traveled to the town's primary clinic-- little more than an empty shell of a building. They found gauze, masking tape and a wooden crucifix about six inches long that decorated the lobby.

"I was a little ambivalent about that, you know, being in a historically Catholic society," said Elizabeth Hahn, 44, also a USC senior. "But we really didn't have time to stop and say, 'Excuse me, can I use your crucifix as a splint.' "



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

In the Matter of the Accusation Against:

Case No. 2006-121

SUSANNE WILCH KROUT, AKA  
SUSANNE WILCH ANDERSON  
240 Calle Del Sol  
Nipomo, CA 93444  
Optometrist License No. 06613

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 October 12, 2011.

It is so ORDERED September 12, 2011

  
\_\_\_\_\_  
FOR THE STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 SHAWN P. COOK  
Deputy Attorney General  
4 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-9954  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 BEFORE THE  
STATE BOARD OF OPTOMETRY  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA  
10

11 In the Matter of the Accusation Against:

Case No. 2006-121

12 SUSANNE WILCH KROUT, AKA  
SUSANNE WILCH ANDERSON  
13 240 Calle Del Sol  
Nipomo, CA 93444  
14 Optometrist License No. 06613

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

15 Respondent.  
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 PARTIES

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of  
21 Optometry. She brought this action solely in her official capacity and is represented in this matter  
22 by Kamala D. Harris, Attorney General of the State of California, by Shawn P. Cook, Deputy  
23 Attorney General.

24 2. Respondent Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent) is  
25 represented in this proceeding by attorney Michael Krout, Esq., whose address is: P.O. Box 1028  
26 San Luis Obispo, CA 93406

27 3. On or about September 5, 1979, the State Board of Optometry issued Optometrist  
28 License No. 06613 to Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent). The

1 Optometrist License was in full force and effect at all times relevant to the charges brought in  
2 Accusation No. 2006-121 and will expire on September 30, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2006-121 was filed before the State Board of Optometry (Board),  
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation  
6 and all other statutorily required documents were properly served on Respondent on November  
7 18, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of  
8 Accusation No. 2006-121 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the  
11 charges and allegations in Accusation No. 2006-121. Respondent has also carefully read, fully  
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
13 Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation  
25 No. 2006-121.

26 9. Respondent agrees that her Optometrist License is subject to discipline and she agrees  
27 to be bound by the State Board of Optometry (Board)'s probationary terms as set forth in the  
28 Disciplinary Order below.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2.

3  
4  
5  
6  
7  
8  
9  
0  
.  
1

2  
3  
4

5  
6  
7  
8  
9  
0

## 7

2  
3  
4  
5  
6

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

4 DISCIPLINARY ORDER

5 IT IS HEREBY ORDERED that Optometrist License No. 06613 issued to Respondent  
6 Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent) is revoked. However, the  
7 revocation is stayed and Respondent is placed on probation for five (5) years on the following  
8 terms and conditions.

9 1. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, and all  
10 rules governing the practice of optometry in California. Respondent shall notify the Board in  
11 writing within three days of any incident resulting in her arrest, or charges filed against, or a  
12 citation issued against, Respondent

13 2. QUARTERLY REPORTS. Respondent shall file quarterly reports of compliance  
14 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the  
15 Board. Omission or falsification in any manner of any information on these reports shall  
16 constitute a violation of probation and shall result in the filing of an accusation and/or a petition  
17 to revoke probation against Respondent's optometrist license. Quarterly report forms will be  
18 provided by the Board. Respondent is responsible for contacting the Board to obtain additional  
19 forms if needed. Quarterly reports are due for each year of probation and the entire length of  
20 probation as follows:

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

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

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

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

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

2 3. COOPERATE WITH PROBATION MONITORING PROGRAM . Respondent  
3 shall comply with requirements of the Board appointed probation monitoring program, and shall,  
4 upon reasonable request, report to or appear to a venue as directed.

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

8 Respondent shall provide to the Board the names, physical addresses, mailing addresses,  
9 telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors  
10 and shall give specific, written consent that the Respondent authorizes the Board and its  
11 representatives and the employers, supervisors, managers, and contractors to communicate  
12 regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but  
13 is not limited to, any violation of any probationary term and condition.

14 Respondent is encouraged to contact the Board's Probation Program at any time she has a  
15 question or concern regarding her terms and conditions of probation.

16 Failure to appear for any scheduled meeting or examination, or cooperate with the  
17 requirements of the program, including timely submission of requested information, shall  
18 constitute a violation of probation and will result in the filing of an accusation and/or a petition to  
19 revoke probation against Respondent's Optometrist license.

20 4. PROBATION MONITORING COSTS.

21 All costs incurred for probation monitoring during the entire probation shall be paid by the  
22 Respondent. The monthly cost may be adjusted as expenses are reduced or increased.  
23 Respondent's failure to comply with all terms and conditions may also cause this amount to be  
24 increased.

25 All payments for costs are to be sent directly to the Board of Optometry and must be  
26 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs  
27 incurred.)  
28

1 If Respondent is unable to submit costs for any month, she shall be required, instead, to  
2 submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to  
3 submit the costs, including payment amount(s). Supporting documentation and evidence of why  
4 the Respondent is unable to make such payment(s) must accompany this submission.

5 Respondent understands that failure to submit costs timely is a violation of probation and  
6 submission of evidence demonstrating financial hardship does not preclude the Board from  
7 pursuing further disciplinary action. However, Respondent understands that by providing  
8 evidence and supporting documentation of financial hardship it may delay further disciplinary  
9 action.

10 In addition to any other disciplinary action taken by the Board, an unrestricted license will  
11 not be issued at the end of the probationary period and the optometrist license will not be  
12 renewed, until such time as all probation monitoring costs have been paid. The filing of  
13 bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse  
14 the Board for costs incurred.

15 5. **FUNCTION AS AN OPTOMETRIST.** Respondent shall function as an  
16 optometrist for a minimum of 24 hours per week for the entire term of her probation period.

17 6. **NOTICE TO EMPLOYER.**

18 Respondent shall provide to the board the names, physical addresses, mailing addresses,  
19 and telephone number of all employers and supervisors and shall give specific, written consent  
20 that the licensee authorizes the board and the employers and supervisors to communicate  
21 regarding the licensee's work status, performance and monitoring.

22 Respondent shall be required to inform her employer, and each subsequent employer during  
23 the probation period, of the discipline imposed by this decision by providing her supervisor and  
24 director and all subsequent supervisors and directors with a copy of the decision and order, and  
25 the Statement of Issues in this matter prior to the beginning of or returning to employment or  
26 within 14 days from each change in a supervisor or director.

27 The employer will then inform the Board, in writing, that she is aware of the discipline, on  
28 forms to be provided to the Respondent. Respondent is responsible for contacting the Board to

1 obtain additional forms if needed. All reports completed by the employer must be submitted from  
2 the employer directly to the Board.

3 7. NOTICE TO PATIENTS.

4 During the period of probation, Respondent shall post a notice in a prominent place in her  
5 office that is conspicuous and readable to the public. The notice shall state the Respondent's  
6 Optometrist license is on probation and shall contain the telephone number of the State Board of  
7 Optometry. Respondent shall also post a notice containing this information prominently on any  
8 website related to her practice of Optometry. The above-described notices shall be approved by  
9 the board within 30 days of the effective date of this decision.

10 8. CHANGES OF EMPLOYMENT OR RESIDENCE.

11 Respondent shall notify the Board, and appointed probation monitor, in writing, of any and  
12 all changes of employment, location, and address within 14 days of such change. This includes  
13 but is not limited to applying for employment, termination or resignation from employment,  
14 change in employment status, and change in supervisors, administrators or directors.

15 Respondent shall also notify her probation monitor AND the Board IN WRITING of any  
16 changes of residence or mailing address within 14 days. P.O. boxes are accepted for mailing  
17 purposes; however the Respondent must also provide her physical residence address as well.

18 9. COST RECOVERY.

19 Respondent shall pay to the Board a sum not to exceed the costs of the investigation and  
20 prosecution of this case. That sum shall be \$3,320 and shall be paid in full directly to the Board,  
21 in a Board approved payment plan, within 6 months from the end of the probation term. Cost  
22 recovery will not be tolled.

23 If Respondent is unable to submit costs timely, she shall be required instead to submit an  
24 explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she  
25 will be able to submit the costs, including payment amount(s). Supporting documentation and  
26 evidence of why the Respondent is unable to make such payment(s) must accompany this  
27 submission.  
28



1 Respondent understands that failure to submit costs timely is a violation of probation and  
2 submission of evidence demonstrating financial hardship does not preclude the Board from  
3 pursuing further disciplinary action. However, Respondent understands that by providing  
4 evidence and supporting documentation of financial hardship may delay further disciplinary  
5 action.

6 Consideration to financial hardship will not be given should Respondent violate this term  
7 and condition, unless an unexpected AND unavoidable hardship is established from the date of  
8 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not  
9 relieve the Respondent of her responsibility to reimburse the Board for these costs.

10 10. TAKE AND PASS LICENSURE EXAMINATION(S).

11 (A) Respondent shall take and pass the California Laws and Regulations Examination  
12 (CLRE). Respondent shall pay the established examination fees. If respondent has not taken and  
13 passed the examination within twelve months from the effective date of this decision, respondent  
14 shall be considered to be in violation of probation.

15 11. COMMUNITY SERVICE.

16 Within 30 days of the effective date of this decision, Respondent shall submit to the Board,  
17 for its prior approval, a community service program in which Respondent provides free  
18 professional services on a regular basis to a community or charitable facility or agency,  
19 amounting to a minimum of ten (10) hours per month of probation. Such services shall begin no  
20 later than 15 days after respondent is notified of the approved program.///

21 12. VALID LICENSE STATUS.

22 Respondent shall maintain a current, active and valid license for the length of the probation  
23 period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall  
24 constitute a violation of probation.

25 13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.

26 Periods of residency or practice outside California, whether the periods of residency or  
27 practice are temporary or permanent, will toll the probation period but will not toll the cost  
28 recovery requirement, or the probation monitoring costs incurred. Travel out of California for

1 more than 30 days must be reported to the Board in writing prior to departure. Respondent shall  
2 notify the Board, in writing, within 14 days, upon her return to California and prior to the  
3 commencement of any employment where representation as an optometrist is/was provided.

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

9 **14. LICENSE SURRENDER.**

10 During Respondent's term of probation, if she ceases practicing due to retirement, health  
11 reasons, or is otherwise unable to satisfy the condition of probation, Respondent may surrender  
12 her license to the board. The Board reserves the right to evaluate Respondent's request and  
13 exercise its discretion whether to grant the request or to take any other action deemed appropriate  
14 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the  
15 tendered license and wall certificate, Respondent will no longer be subject to the conditions of  
16 probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon  
17 reinstatement.

18 Surrender of Respondent's license shall be considered a disciplinary action and shall  
19 become a part of Respondent's license history with the Board.

20 **15. VIOLATION OF PROBATION.**

21 If Respondent violates any term of the probation in any respect, the Board, after giving  
22 Respondent notice and the opportunity to be heard, may revoke probation and carry out the  
23 disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed  
24 against Respondent during probation, the Board shall have continuing jurisdiction and the period  
25 of probation shall be extended until the matter is final. No petition for modification of penalty  
26 shall be considered while there is an accusation or petition to revoke probation or other penalty  
27 pending against Respondent.

28 ///

1           16. COMPLETION OF PROBATION.

2           Upon successful completion of probation, Respondent's license shall be fully restored.

3           17. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES.

4           Respondent shall abstain completely from the personal use or possession of alcohol, any  
5 and all other mood altering drugs, substances and their associated paraphernalia, except when the  
6 drugs are lawfully prescribed by a licensed practitioner as part of a documented medical  
7 treatment.

8           Respondent shall execute a release authorizing the release of pharmacy and prescribing  
9 records as well as physical and mental health medical records. Respondent shall also provide  
10 information of treating physicians, counselors or any other treating professional as requested by  
11 the Board.

12          Respondent shall ensure that she is not in the presence of or in the same physical location as  
13 individuals, who are using illegal substances, even if Respondent is not personally ingesting the  
14 drug(s). Any positive result that registers over the established laboratory cutoff level shall  
15 constitute a violation of probation and shall result in the filing of an accusation and/or a petition  
16 to revoke probation against Respondent's optometrist license. Respondent also understands and  
17 agrees that any positive result that registers over the established laboratory cutoff level shall be  
18 reported to each of Respondent's employers.

19          18. BIOLOGICAL FLUID TESTING.

20          Respondent, at his/her expense, shall immediately participate in random testing, including  
21 but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle  
22 testing, or any drug screening program approved by the Board. The length of time shall be for the  
23 entire probation period. The Respondent will be randomly drug tested at the frequency outlined  
24 by the Department of Consumer Affairs Uniform Standards for Substance Abuse #4.

25          Respondent shall be required to make daily contact to determine if he/she is required to  
26 submit a specimen for testing, including weekends and holidays, at a lab approved by the Board.  
27 Board representatives may also appear unannounced, at any time to collect a specimen. All  
28 collections will be observed.

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

6 If Respondent is unable to provide a specimen in a reasonable amount of time from the  
7 request, Respondent understands that, while at the work site, any Board representative may  
8 request from the supervisor, manager or director on duty to observe Respondent in a manner that  
9 does not interrupt or jeopardize patient care in any manner until such time Respondent provides a  
10 specimen acceptable to the Board.

11 If Respondent tests positive for a prohibited substance per his/her probationary order,  
12 Respondent's license shall be automatically suspended. The Board will contact the Respondent  
13 and his/her employers, supervisors, managers, work site monitors, and contractors and notify  
14 them that Respondent's license has been suspended as a result of a positive test. Thereafter, the  
15 Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment  
16 provider and support group facilitators to determine whether the positive test is in fact evidence of  
17 prohibited use. If the Board determines the positive test is not evidence of prohibited use, the  
18 Board shall immediately reactivate the license and inform the Respondent and others previously  
19 contacted, that the license is no longer suspended.

20 Failure to submit to testing on the day requested, or appear as requested by any Board  
21 representative for testing, as directed, shall constitute a violation of probation and shall result in  
22 the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist  
23 license.

24 **19. PARTICIPATE IN GROUP SUPPORT MEETINGS .**

25 Respondent shall attend at least one (1), but no more than five (5), 12-step recovery  
26 meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) during each  
27 week of probation, as approved or directed by the Board. Respondent shall submit dated and  
28

1 signed documentation confirming such attendance to the Board during the entire period of  
2 probation.

3 20. ALCOHOL AND DRUG TREATMENT.

4 Respondent, at her expense shall successfully complete a treatment regime at a recognized  
5 and established program in California of at least six months duration and approved by the Board.  
6 The treatment program shall be successfully completed within the first nine months of probation.  
7 The program director, psychiatrist or psychologist shall confirm that Respondent has complied  
8 with the requirement of this decision and shall notify the Board immediately if he/she believes the  
9 Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of  
10 this information to the Board.

11 Respondent shall inform the program director, psychiatrist or psychologist of her  
12 probationary status with the Board, and shall cause that individual to submit monthly reports to  
13 the Board providing information concerning Respondent's progress and prognosis. Such reports  
14 shall include results of biological fluid testing.

15 Positive results shall be reported immediately to the Board and shall be used in  
16 administrative discipline.

17 21. CONTINUING EDUCATION.

18 Within 90 days of the effective date of this Decision, Respondent shall submit to the Board  
19 for its prior approval an educational program or course to be in areas of drug and alcohol  
20 addiction. The education program or course(s) shall consist of a minimum of four (4) hours.

21 This program or course shall be in addition to the Continuing Optometric Education  
22 requirements for renewal, and shall be obtained with all costs being paid by the Respondent.  
23 Following completion of each course, the board or its designee may administer an examination to  
24 test Respondent's knowledge of the course. Respondent shall provide written proof of attendance  
25 in such course or courses approved by the board.

26 22. PSYCHOTHERAPY OR COUNSELING PROGRAM.

27 Within 60 days of the effective date of this decision, respondent shall submit to the Board  
28 for its prior approval the name and qualifications of a psychotherapist of respondent's choice.

1 Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until such  
2 time as the Board releases his/her from this requirement and only upon the recommendation of  
3 the counselor. Respondent shall have the treating psychotherapist submit quarterly status reports  
4 to the Board. The Board may require respondent to undergo psychiatric or psychological  
5 evaluations by a Board-appointed psychiatrist or psychologist.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
8 discussed it with my attorney, Michael Krout, Esq.. I understand the stipulation and the effect it  
9 will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary  
10 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
11 of the State Board of Optometry.

12  
13 DATED: 11 July 2011 Susanne Wilch Anderson *ad*  
14 SUSANNE WILCH KROUT, AKA SUSANNE  
15 WILCH ANDERSON *(Susanne Wilch Krou)*  
16 Respondent

17 I have read and fully discussed with Respondent Susanne Wilch Krou, aka Susanne Wilch  
18 Anderson the terms and conditions and other matters contained in the above Stipulated Settlement  
19 and Disciplinary Order. I approve its form and content.

20  
21 DATED: 11 July 2011 *[Signature]*  
22 Michael Krout, Esq.  
23 Attorney for Respondent  
24  
25  
26  
27  
28

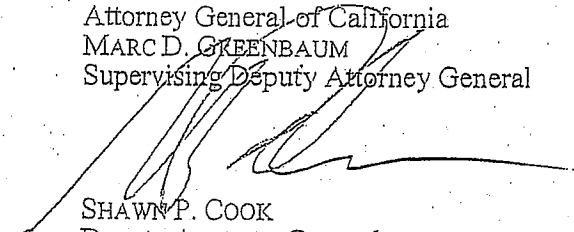
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: April 18, 2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General



SHAWN P. COOK  
Deputy Attorney General  
*Attorneys for Complainant*

LA2010503553  
Stipulation.rtf

Exhibit A

Accusation No. 2006-121



1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 SHAWN P. COOK  
Deputy Attorney General  
4 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-9954  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
9 **STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2006-121

13 **SUSANNE WILCH KROUT, AKA**  
14 **SUSANNE WILCH ANDERSON**  
15 **18649 Via Princessa**  
**Santa Clarita, CA 91387**  
**Optometrist License No. 06613**

**A C C U S A T I O N**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about September 5, 1979, the State Board of Optometry issued Optometrist  
22 License Number 06613 to Susanne Wilch Krout, aka Susanne Wilch Anderson (Respondent).  
23 The Optometrist License was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the State Board of Optometry (Board), Department  
27 of Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.

1           4.     Section 150 of the Code states: "The department is under the control of a civil  
2 executive officer who is known as the Director of Consumer Affairs."

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

7           6.     Section 22 of the Code states:

8           "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
9 administration of the provision is vested, and unless otherwise expressly provided, shall include  
10 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
11 'agency.'

12           "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
13 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
14 (commencing with Section 473), is taken over by the department, that program shall be  
15 designated as a 'bureau.'"

16           7.     Section 480 states, in pertinent part:

17           "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
18 one of the following:

19                 "(1) Been convicted of a crime. A conviction within the meaning of this section  
20 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
21 Any action which a board is permitted to take following the establishment of a  
22 conviction may be taken when the time for appeal has elapsed, or the judgment of  
23 conviction has been affirmed on appeal, or when an order granting probation is made  
24 suspending the imposition of sentence, irrespective of a subsequent order under the  
25 provisions of Section 1203.4 of the Penal Code.

26                 "(2) Done any act involving dishonesty, fraud or deceit with the intent to  
27 substantially benefit himself or another, or substantially injure another; or  
28

1           "(3)(A) Done any act which if done by a licentiate of the business or profession  
2           in question, would be grounds for suspension or revocation of license.

3           (B) "The board may deny a license pursuant to this subdivision only if the  
4           crime or act is substantially related to the qualifications, functions or duties of the  
5           business or profession for which application is made.

6  
7           "(c) A board may deny a license regulated by this code on the ground that the applicant  
8           knowingly made a false statement of fact required to be revealed in the application for such  
9           license."

10          8.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
11          revoke a license on the ground that the licensee has been convicted of a crime substantially  
12          related to the qualifications, functions, or duties of the business or profession for which the  
13          license was issued.

14          9.     Section 493 of the Code states:

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

24          "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
25          'registration.'"

26          10.    Section 3090 of the Code states:

27          "Except as otherwise provided by law, the board may take action against all persons guilty  
28          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 11. Section 3110 of the Code states:

7 "The board may take action against any licensee who is charged with unprofessional  
8 conduct, and may deny an application for a license if the applicant has committed unprofessional  
9 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
10 limited to, the following:

11 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the  
12 violation of, or conspiring to violate any provision of this chapter or any of the rules and  
13 regulations adopted by the board pursuant to this chapter.

14 \* \* \*

15 (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
16 omissions.

17 "(f) Any action or conduct that would have warranted the denial of a license.

18 \* \* \*

19 "(k) Conviction of a felony or of any offense substantially related to the qualifications,  
20 functions, and duties of an optometrist, in which event the record of the conviction shall be  
21 conclusive evidence thereof.

22 "(l) Administering to himself or herself any controlled substance or using any of the  
23 dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a  
24 manner, as to be dangerous or injurious to the person applying for a license or holding a license  
25 under this chapter, or to any other person, or to the public, or, to the extent that the use impairs  
26 the ability of the person applying for or holding a license to conduct with safety to the public the  
27 practice authorized by the license, or the conviction of a misdemeanor or felony involving the  
28

1 use, consumption, or self administration of any of the substances referred to in this subdivision, or  
2 any combination thereof.

3 12. California Code of Regulations, title 16, section 1517 states:

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

10 13. A "dangerous drug" or "dangerous device" is any drug or device that is unsafe for  
11 self-use within the meaning of Code section 4022 in that it requires a prescription under federal or  
12 state law.

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

17 15. CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

18 a. "Diazepam, generic for the brand name Valium 10 mg.", a benzodiazepam derivative,  
19 is a Schedule IV controlled substance as designated by Health and Safety Code section  
20 11057(d)(9) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

21 b. "Premarin" is a drug made up of conjugated estrogens obtained from the urine of  
22 pregnant mares, and is categorized as a dangerous drug pursuant to Section 4022 of the Code.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct- Use of Alcoholic Beverages or Controlled Substances to an Extent)

25 16. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions  
26 (a) and (l) in that Respondent has used alcoholic beverages and/or controlled substances to the  
27 extent or in a manner, as to be dangerous or injurious to her or other persons. The circumstances  
28 are as follows:

1 17. On or about January 4, 2007 at 2134 hours, Respondent was arrested for suspected  
2 violation of Vehicle Code sec. 23152, subd. (a)- driving under the influence of alcohol and/or  
3 drugs, after she was stopped in or around San Luis Obispo by the California Highway Patrol for  
4 weaving on the roadway. When Respondent exited her vehicle, she stumbled and walked with  
5 an unsteady gait. Respondent's PAS results were #1 at .07 and #2 at .073. Her blood alcohol  
6 result was .06 BL. Respondent admitted to the officer that she had consumed a "Bloody Mary"  
7 and had taken the controlled substances Valium, Diazepam and Premarin at approximately noon  
8 earlier that day.

9 18. On or about April 25, 2007, Respondent was convicted by the Superior Court of  
10 California, County of San Luis Obispo, in People v. Susanne Wilch Krout, case no. M398637, on  
11 her plea of nolo contendere to violation of Vehicle Code sections 23103, subd. (a) and 23103.5,  
12 subd.(a) [alcohol related ("wet") reckless driving] a misdemeanor, and a prior offense under  
13 Vehicle Code section 23103.5, subd. (c). for the purposes of sections 23540, 23546, 23550,  
14 23560, 23566, or 23622, as specified in those sections. Respondent's imposition of her sentence  
15 was suspended for 18 months, she was ordered to attend a "wet reckless" program, and submit  
16 proof of completion within 180 days.

17 19. On or about January 11, 2010 at 1946 hours, Respondent was arrested for suspected  
18 violation of Vehicle Code sec. 23152, subd. (a)- driving under the influence of alcohol and/or  
19 drugs, and section 23152, subd. (b)- driving with a blood alcohol content of .08% or higher after  
20 she was stopped in or around San Luis Obispo by the California Highway Patrol for weaving on  
21 the roadway and making a wide right turn. When Respondent exited her vehicle, she staggered  
22 and had trouble standing up. Respondent's PAS results were #1 at .167 and #2 at .164. Her blood  
23 alcohol result was .17 BL. Respondent initially denied having consumed any alcohol, but later  
24 admitted to the officer that she had drunk 2 glasses of champagne earlier that day between 4 am  
25 and 6am. She denied taking any current prescriptions, though Valium was found by the officer in  
26 her purse. She admitted that she was under the care of "Dr. Book", in Santa Maria.

27 20. On or about March 29, 2010, Respondent was convicted by the Superior Court of  
28 California, County of San Luis Obispo, in People v. Susanne Wilch Krout, case no. M000442962,

1 on her plea of nolo contendere to violation of Vehicle Code sections 23152, subd. (b) [driving  
2 with blood alcohol of .08 or greater] a misdemeanor. Respondent received a 3 year suspended  
3 sentence, was sentenced to 40 days in county jail with credit for time served of 2 days, a stay of  
4 execution until May 28, 2010, and ordered to attend a DDP (Drinking Driver Program) for second  
5 offenders.

6 SECOND CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct- Repeated Negligent Acts)

8 21. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions  
9 (a) and (c) in that she committed repeated negligent acts. The facts are as alleged in the  
10 preceding paragraphs 16 through 20, which are incorporated herein by reference.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct- Acts or Conduct that Would Have Warranted Denial of License)

13 22. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions  
14 (a) and (f) and 480, subdivision (a)(3) in that she engaged in acts or conduct that would have  
15 warranted denial of her license. The facts are as alleged in the preceding paragraphs 16 through  
16 20, which are incorporated herein by reference.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct- Substantially Related Convictions)

19 23. Respondent is subject to disciplinary action under sections 3090, 3110, subdivisions  
20 (a) and (k) and 490, in conjunction with California Code of Regulations, title 16, section 1517,  
21 in that she engaged in acts or conduct that would have warranted denial of her license. The facts  
22 are as alleged in the preceding paragraphs 16 through 20, which are incorporated herein by  
23 reference.


24 PRAYER

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

27 1. Revoking or suspending Optometrist License Number 06613, issued to Susanne  
28 Wilch Krout, aka Susanne Wilch Anderson;

- 1           2.    Ordering Susanne Wilch Krout to pay the State Board of Optometry the reasonable  
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
3 Code section 125.3;  
4           3.    Taking such other and further action as deemed necessary and proper.

5 DATED: Nov. 9, 2010

  
MONA MAGGIO  
Executive Officer  
State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

6  
7  
8  
9  
10 LA2010503553  
11 accusation.rtf  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





**Board of Optometry**  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Tel: (916) 575-7170  
Fax: (916) 575-7292  
[www.optometry.ca.gov](http://www.optometry.ca.gov)



### 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 twenty-ninth day of April 2013, the Executive Officer examined said official records of said Board of Optometry and found that **SUSANNE WILCH ANDERSON** graduated from Southern California College of Optometry in 1979, and is the holder of Certificate of Registration to Practice Optometry No. 6613, which was granted to her effective September 5, 1979. Said Certificate of Registration is currently in full force and effect and will expire September 30, 2013 unless renewed. The current address of record for said Certificate of Registration is PO Box 1300, Nipomo, CA 93444.

Said records further reveal that on or about March 17, 1997, **SUSANNE WILCH ANDERSON** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that, effective August 4, 2011, as the result of disciplinary action taken in Case number CC 2009-107, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 6613. However, the revocation was stayed and the Certificate was placed on probation for a period of five (5) years.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twenty-ninth day of April 2013.

  
Mona Maggio, Executive Officer

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Jessica Sieferman  
Probation Monitor, Enforcement Analyst

**Telephone:** (916) 575-7170

**Subject: Agenda Item 10B. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation**

---

Dr. Svetlana Fisher, O.D. (Petitioner) was issued Optometrist License Number 9936 by the Board on September 8, 1992. On March 1, 2011, the Board filed an Accusation against Petitioner charging her with violations of laws and regulations of the Optometry Practice Act. In a stipulated settlement agreed to by Petitioner, on May 8, 2012, 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.

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. Certification of Licensure



RECEIVED BY  
STATE BOARD OF OPTOMETRY

2013 MAR 27 AM 11:23

**Board of Optometry**  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
(916) 575-7170/(866) 585-2666  
[www.optometry.ca.gov](http://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.		
SVETLANA FISHER		9936 T		
2. ADDRESS (NUMBER) (STREET)		DATE OF BIRTH		
7976 SANTA MONICA BLVD.		07/28/1966		
(CITY) (STATE) (ZIP CODE)		TELEPHONE		
WEST HOLLYWOOD 90046		(818) 324-0399		
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5'4" 120 GRN RED				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY				
ADDRESS (NUMBER) (STREET)				
2575 YORBA LINDA				
(CITY) (STATE) (ZIP CODE)				
FULLERTON, CA 92831				
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
WEST HOLLYWOOD	01/01/01	03/21/13	OPTOMETRY

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 3/21/13 Signature Sueelana Fisher 

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 2450 Del Paso Road, Suite 105, 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.


**Svetlana Fisher, OD  
7976 Santa Monica Blvd.  
West Hollywood, CA 90046**

March 21, 2013

Explanation for Question # 12

The only disciplinary action taken against my optometric license  
Is the current one, resulting in this probation. I have never had any  
other disciplinary actions.

Thank you,

  
Svetlana Fisher, OD

To: The Board of Optometry

March 28, 2013

13. Disciplinary action was taken against my license on May 8, 2012.

The cause arose from a stipulated settlement, where I admitted to a violation of Section 3110, subdivision (q) failure to maintain adequate records pertaining to treatment of nine patients who resided and were treated at Board & Care facilities, as alleged in Accusation No. CC 200779

14. I feel that my license should be restored and probation should be dropped due to my full compliance with the terms of my probation. I have passed the Law Exam immediately (on June 25, 2012) - the first time that I took it. I have repaid the full sum owed (\$21,869.75) by December 2012. I have completed all quarterly patient record audits with 100% accuracy and I have obeyed all federal, state and local laws governing the practice of optometry in California.

15. I am self employed in private practice in West Hollywood, California. I have been in private practice for over 20 years.

16. Since my probation, I have made sure that all my patient records have been complete. I have taken billing and charting continuing education classes.

17. Every year I take more continuing education courses than the California Law requires.

18. The 3 journals that I read are: Review of Optometry, Contact Lens Spectrum and Optometric Management.

19. CE Classes: 5/15/12 Ophthalmology class - Dr. Berg and staff (2 hrs) including charting/billing  
7/22/12 Rio Hondo Retinal Diseases update (6 hrs)  
9/30/12 San Fernando Valley Pathology update (5 hrs)  
10/7/12 South Bay Fall CE (6 hrs)  
10/9/12 Dr. Berg CE (2hrs)  
10/16/12 Glaucoma update by Dr. Tannenbaum (2 hrs)  
11/13/12 class from Dr. Berg on Ophthalmic Updates (2 hrs)  
12/6/12 Management & charting of cataract care patients Dr. Benjamin (2hrs)  
1/27/13 Gonioscopy class (2hrs)  
3/3/13 Retina Updates by Dr. Boyer and staff (8hrs)  
3/24/13 San Fernando Valley Pharmacology and Macular update (5hrs)

20. Dr. Barry Kolom has been my chart auditor for the past 4 quarters. The Board has his results.

Thank you for your consideration in dismissing my probation early.



Svetlana Fisher, OD



**BERG-FEINFELD**  
VISION CORRECTION

*This is to certify that*

**Svetlana Fisher, O.D.**

*has attended the course entitled*

**Managing Post-op LASIK & Cataract Complications**

**Instructor: Alan M. Berg, M.D.**

**2 hours of COPE credits**

**COPE ID: 33959-RS • Event ID: 103928**

**May 15, 2012**

# CERTIFICATE OF COMPLETION

This certificate is awarded to

Svetlana Fisher, O.D.

In recognition of successfully completing  
six hours of continuing education at the  
Knott's Berry Farm Resort Hotel  
July 22, 2012

## Presented by RIO HONDO OPTOMETRIC SOCIETY

Steven Ferrucci, O.D.

Mario Meallet, M.D.

Ron Gallemore, M.D.

Sarah E. Wolff, O.D.  
Sarah E. Wolff, O.D. - RHOS President

Glaucoma (2 hours)

Cornea Review (2 hours)

Retinal Disease (2 hours)

Eileen Ng, O.D.  
Eileen Ng, O.D. - RHOS Education Chair





**BERG-FEINFELD**  
VISION CORRECTION

*This is to certify that*

**Svetlana Fisher, O.D.**

*has attended the course entitled*

**Updates in Refractive & Cataract Surgery**

*Instructor: Alan M. Berg, M.D.*

*2 hours of COPE credits*

*COPE ID: 31430 • Event ID: 104563*

*October 9, 2012*

Join us for an

Evening of Learning, Fun and Holiday Cheer

Continuing Medical Education Program\*

**Managing the Unhappy Premium Cataract Care Patient**

Arthur Benjamin, M.D.  
Clinical Assistant Professor  
Jules Stein Eye Institute  
UCLA Geffen School of Medicine

\* 3 Hours of CE Credits will be provided

When:

Thursday, December 6th, 2012  
Program begins at 7:00 PM

Where:

Benjamin Eye Institute  
9201 Sunset Boulevard, Suite 709

Program will be followed by a Holiday Party  
Bring your staff and significant others

RSVP by Monday, November 26, 2012

Fax: 310.275.5523

Phone: 310.275.5533

Email: lasik@benjaminye.com

Mayka Bily at mobile: 818.239.6022

Name:

Yes, I will attend.

No, I will not be able to attend.

Number of guests from your office

**BENJAMIN**  
EYE INSTITUTE

9201 Sunset Boulevard  
Suite 709  
West Hollywood, Ca 90069





**BERG-FEINFELD**  
VISION CORRECTION

*This is to certify that*

**Svetlana Fisher, O.D.**

*has attended the course entitled*

**Fundamentals of Gonioscopy**

**Instructors: Alan M. Berg, M.D. & Robert E. Feinfeld, M.D.**

**2 hours of COPE credits**

**COPE ID: 33941-GL • Event ID: #104882**

**January 27, 2013**



**Good Samaritan Hospital**  
*A Tradition of Caring*

## Retina Update 2013 Conference Certificate of Attendance

**Svetlana Fisher, OD**

State of License: \_\_\_\_\_ License# \_\_\_\_\_

Course Title: Retina Update  
COPE Course ID: 36794-PS  
Event Number: 105138  
Location: Los Angeles, CA  
Date: March 3, 2013

Name of Instructor: Homayoun Tabandeh, MD

This course has been accredited for 8 hours of Continuing Education credit by COPE

Kathryn Nixon  
COPE Administrator

K Nixon  
Administrator Signature

Please choose from one of the following  
convenient dates and locations:

### VALENCIA

Tuesday, November 6, 2012  
6:30 pm

#### Salt Creek Grille

24415 Town Center Drive  
Valencia, CA 91355  
(661) 222-9999

Beef, Chicken or Fish

### LOS ANGELES

Wednesday, November 7, 2012  
6:30 pm

#### Nonna of Italy

9255 West Sunset Blvd.  
W. Hollywood, CA 90069  
(310) 270-4455

Beef, Chicken or Fish

### STUDIO CITY

Tuesday, November 13, 2012 or  
Wednesday, November 14, 2012  
6:30 pm

#### La Loggia

11814 Ventura Blvd  
Studio City, CA 91604  
(818) 985-9222

Pasta, Chicken or Fish

### PASADENA

Monday, November 19, 2012 or  
Tuesday, November 20, 2012  
6:30 pm

#### McCormick & Schmick's

111 N. Los Robles Avenue  
Pasadena, CA 91101  
(626) 405-0064

Chicken or Fish

### WOODLAND HILLS

Tuesday, November 27, 2012  
6:30 pm

#### Maggiano's Little Italy

6100 Topanga Blvd  
Woodland Hills, CA 91364  
(818) 887-3777

Family Style



**BERG-FEINFELD**

VISION CORRECTION

### Speakers



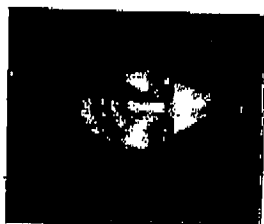
Alan M. Berg, M.D.

Managing Post-op  
LASIK & Cataract  
Complications



Robert E. Feinfeld, M.D.

Advanced Cataract  
Surgery & ORA  
(Opticwave Refractive  
Analysis)



Barbara S. Yates, M.D.

Thyroid Orbitopathy  
and Other Orbital  
Diseases

Kindly respond by  
Friday, October 26, 2012

Via Email: [info@bergfeinfeld.com](mailto:info@bergfeinfeld.com)  
or call Janette, Stella, or Michele at (818) 980-2020

Three Continuing Education Hours  
from California State Board of Optometry

**San Fernando Valley Optometric Society**  
Continuing Education

Print Name: Svetlana Fisher Signature: S Fisher  
Address: 7976 Santa Monica  
License Number: 9936 T Social Security Number: 288582817  
Phone: 323 650-0988

Course Evaluation:				
Overall (circle)	Poor	Fair	Good	Excellent
A. Was the subject adequately addressed?				<u>Y</u> N
B. Was the speaker well prepared?				<u>Y</u> N
C. Were the handouts adequate?				<u>Y</u> N
D. Were the slides adequate?				<u>Y</u> N
E. Would you hear this speaker again?				<u>Y</u> N

Comments: Good lecturer!

Course Identification:	
Course Title:	<u>SFVOS Fall</u>
Instructor(s):	<u>Gordon Trin, Yumou</u>
Date:	<u>9/20/12</u> Hours of C.E. <u>5</u>

NOT VALID UNLESS  
STAMPED IN RED.

KEEP WHITE COPY FOR YOUR RECORDS - TURN IN YELLOW COPY AT END OF SEMINAR

**San Fernando Valley Optometric Society**  
Continuing Education

Print Name: Svetlana Fisher Signature: Svetlana Fisher  
Address: 7976 Santa Monica Blvd  
License Number: 9936 Social Security Number: 088582817  
Phone: 818 324 0399

Course Evaluation:				
Overall (circle)	Poor	Fair	Good	Excellent
A. Was the subject adequately addressed?				<u>Y</u> N
B. Was the speaker well prepared?				<u>Y</u> N
C. Were the handouts adequate?				<u>Y</u> N
D. Were the slides adequate?				<u>Y</u> N
E. Would you hear this speaker again?				<u>Y</u> N

Comments: \_\_\_\_\_

Course Identification:	
Course Title:	<u>SFVOS Spring</u>
Instructor(s):	<u>Marsden, Bright</u>
Date:	<u>3/24/13</u> Hours of C.E. <u>5</u>

NOT VALID UNLESS  
STAMPED IN RED.

KEEP WHITE COPY FOR YOUR RECORDS - TURN IN YELLOW COPY AT END OF SEMINAR



STATE BOARD OF OPTOMETRY  
2450 Del Paso Road, Suite 105, Sacramento, CA 95834  
P [916] 575-7170 F [916] 575-7292 web: www.optometry.ca.gov



## CERTIFICATION OF PARTICIPATION IN CONTINUING EDUCATION

THIS WILL CERTIFY THAT:

**FISHER**

**SVETLANA**

Last Name (Please Print)

First

MI

Address (Practice Location) Street Number and Name

City

State

Zip Code

California License No.

Signature of Licensee

ATTENDED: NARROW ANGLE GLAUCOMA  
(Course Title)

SPONSORED BY: A CENTER FOR VISIONCARE – DANA TANNENBAUM, M.D.  
(Name of Sponsoring Organization)

AT: THE BISTRO GARDEN, 12950 VENTURA BLVD, STUDIO CITY, CA 91604  
Location where course(s) were provided

ON: TUESDAY, OCTOBER 16, 2012 FOR: 2 9239  
Date Hours Course ID #

COURSE INSTRUCTOR(S): DANA TANNENBAUM, M.D.

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.





**Sieferman, Jessica@DCA**

---

**From:** barry.kolom@gmail.com on behalf of Dr. Barry Kolom [dr.barry.kolom@gmail.com]  
**Sent:** Wednesday, April 10, 2013 9:25 PM  
**To:** Sieferman, Jessica@DCA  
**Subject:** Recommendation Letter : Svetlana Fisher, O.D.  
**Attachments:** SF OD- CA Board Letter 4-10-130001.pdf

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Ms. Sieferman,

Please review my letter and pass on to the Board of Optometry.

Thank you.

B. Kolom, O.D.

--

Barry Kolom, O.D., F.A.A.O.



AUNG-ZAW PHOO, O.D.  
LINH M. QUACH, O.D.  
FRANCISCA E. ESCOBAR, O.D.  
BARRY M. KOLOM, O.D., F.A.A.O.

16255 Ventura Boulevard, Suite 705  
Encino, California 91436-2311  
Phone 818.986.8860  
Fax 818.986.7324

April 10, 2013

Department of Consumer Affairs

California State Board of Optometry

ATTN: Jessica Sieferman, Probation Officer

RE: Svetlana Fisher, O.D.

Dear Board Members and Ms. Sieferman,

Dr. Fisher's office was consistently, as always, clean and neat and she adhered to all standards of care and hygiene. Her records are complete, legible and comprehensive. FDT printouts were attached to each record. Goldmann tonometry is her standard of care and appropriate referrals and follow-up were made when indicated.

This audit completes a one year cycle and I am certain, based on all the charts I have reviewed, that she practices Optometry at a very high standard and does not deviate from this practice on any of her patients. I have taught and mentored thousands of Optometry interns over the last 40 years and I sincerely believe that Dr. Fisher practices to the highest standards of optometric practice and am truly proud of the practitioner she is every day.

I do not feel that another two years of probation would prove any more decisively that Dr. Fisher meets your standard of ethical practice. I therefore recommend that your board consider reducing her probationary period to the one year already reviewed.

I am more than happy to discuss my recommendation further if desired.  
Thank you for the opportunity to work on the board's behalf.

Sincerely yours,

  
Barry Kolom, O.D., F.A.A.O.

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

In the Matter of the Accusation Against:

**SVETLANA FISHER  
7976 Santa Monica Blvd.  
West Hollywood, CA 90046**

**Optometrist License No. 9936**

Respondent.

Case No. CC 2007-79

OAH No. L-2010080070

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order 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 May 8, 2012.

It is so ORDERED April 9<sup>th</sup>, 2012



\_\_\_\_\_  
FOR THE STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HELENE E. SWANSON  
Deputy Attorney General  
4 State Bar No. 130426  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-3005  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. CC 2007-79

11 SVETLANA FISHER  
12 7976 Santa Monica Blvd.  
13 West Hollywood, CA 90046

OAH No. L-2010080070

14 Optometrist License No. 9936

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.

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 **PARTIES**

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of  
21 Optometry. She brought this action solely in her official capacity and is represented in this matter  
22 by Kamala D. Harris, Attorney General of the State of California, by Helene E. Swanson, Deputy  
23 Attorney General.

24 2. Respondent Svetlana Fisher (Respondent) is represented in this proceeding by  
25 attorney Craig Steinberg, whose address is:

26 Law Offices of Craig S. Steinberg

27 5737 Kanan Road, #540

28 Agoura Hills, CA 91301

3. On or about September 8, 1992, the State Board of Optometry issued Optometrist License No. 9936 to Svetlana Fisher (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC 2007-79 and will expire on July 31, 2012, unless renewed.

## JURISDICTION

4. Accusation No. CC 2007-79 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 15, 2010. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of the First Amended Accusation (Accusation) No. CC 2007-79 is attached as **Exhibit A** and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC 2007-79. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

//

//

//

1 **CULPABILITY**

2 9. Respondent admits to a violation of Section 3110, subdivision (q), failure to maintain  
3 adequate records pertaining to treatment of nine patients who resided and were treated at Board &  
4 Care facilities, as alleged in Accusation No. CC 2007-79.

5 10. Respondent agrees that her Optometrist License is subject to discipline and she agrees  
6 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

7 **RESERVATION**

8 11. The admissions made by Respondent herein are only for the purposes of this  
9 proceeding and any future proceedings between the Board and Respondent, or any other  
10 proceedings in which the State Board of Optometry or other professional licensing agency in the  
11 State of California is involved, and shall not be admissible in any other criminal or civil action,  
12 forum or proceeding.

13 **CONTINGENCY**

14 12. This stipulation shall be subject to approval by the State Board of Optometry.  
15 Respondent understands and agrees that counsel for Complainant and the staff of the State Board  
16 of Optometry may communicate directly with the Board regarding this stipulation and settlement,  
17 without notice to or participation by Respondent or her counsel. By signing the stipulation,  
18 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind  
19 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt  
20 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall  
21 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
22 between the parties, and the Board shall not be disqualified from further action by having  
23 considered this matter.

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

27 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
4 writing executed by an authorized representative of each of the parties.

5 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
6 the Board may, without further notice or formal proceeding, issue and enter the following

7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Optometrist License No. 9936 issued to Respondent  
10 Svetlana Fisher (Respondent) is suspended. However, the suspension is stayed and Respondent is  
11 placed on probation for three (3) years on the following terms and conditions.

12 1. **OBEY ALL LAWS:** Respondent shall obey all federal, state, and local laws,  
13 governing the practice of optometry in California. Respondent shall notify the Board in writing  
14 within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation  
15 issued against Respondent.

16 **CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any  
17 governmental agency, including probation or parole, and the orders are violated, this shall be  
18 deemed a violation of probation and may result in the filing of an accusation or petition to revoke  
19 probation or both.

20 **OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to  
21 any other disciplinary order from any other health-care related board or any professional licensing  
22 or certification regulatory agency in California or elsewhere, and violates any of the orders or  
23 conditions imposed by other agencies, this shall be deemed a violation of probation and may  
24 result in the filing of an accusation or petition to revoke probation or both.

25 2. **QUARTERLY REPORTS:** Respondent shall file quarterly reports of compliance  
26 under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms  
27 will be provided by the Board. Omission or falsification in any manner of any information on  
28 these reports shall constitute a violation of probation and shall result in the filing of an accusation

1 and/or a petition to revoke probation against Respondent's optometrist license. Respondent is  
2 responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are  
3 due for each year of probation throughout the entire length of probation as follows:

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

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

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

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

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

13 **3. COOPERATE WITH PROBATION MONITORING PROGRAM:** Respondent  
14 shall comply with the requirements of the Board's probation monitoring program, and shall, upon  
15 reasonable request, report or personally appear as directed.

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

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

21 Failure to appear for any scheduled meeting or examination, or cooperate with the  
22 requirements of the program, including timely submission of requested information, shall  
23 constitute a violation of probation and may result in the filing of an accusation and/or a petition to  
24 revoke probation against Respondent's Optometrist license.

25 **4. FUNCTION AS AN OPTOMETRIST:** Respondent shall function as an optometrist  
26 for a minimum of 60 hours per month for the entire term of her probation period, except for  
27 ordinary vacations or due to illness or injury.

28 **5. NOTICE TO EMPLOYER:** Respondent shall provide to the Board the names,



1 physical addresses, mailing addresses, and telephone number(s) of all employers and shall give  
2 specific, written consent that the licensee authorizes the Board and the employers to communicate  
3 regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not  
4 limited to, any violation of any probationary term and condition.

5 Respondent shall be required to inform her employer, and each subsequent employer  
6 during the probation period, of the discipline imposed by this decision by providing her director  
7 and all subsequent directors with a copy of the decision and order, and the Accusation in this  
8 matter prior to the beginning of or returning to employment or within 14 days from each change  
9 in a director.

10 The Respondent must ensure that the Board receives written confirmation from the  
11 employer that she is aware of the Discipline, on forms to be provided to the Respondent. The  
12 Respondent must ensure that all reports completed by the employer are submitted from the  
13 employer directly to the Board. Respondent is responsible for contacting the Board to obtain  
14 additional forms if needed.

15 **6. CHANGES OF EMPLOYMENT OR RESIDENCE:** Respondent shall notify the  
16 Board, and appointed probation monitor in writing, of any and all changes of employment,  
17 location, and address within 14 days of such change. This includes but is not limited to applying  
18 for employment, termination or resignation from employment, change in employment status, and  
19 change in supervisors, administrators or directors.

20 Respondent shall also notify his/her probation monitor AND the Board IN WRITING of  
21 any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing  
22 purposes; however the Respondent must also provide his/her physical residence address as well.

23 **7. COST RECOVERY:** Respondent shall pay to the Board a sum not to exceed the  
24 costs of the investigation and prosecution of this case. That sum shall be \$21,869.75 and shall be  
25 paid in full directly to the Board, in a Board approved payment plan, within six (6) months from  
26 the end of the Probation term. Cost recovery will not be tolled.

27 If Respondent is unable to submit costs timely, she shall be required instead to submit an  
28 explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) she

1 will be able to submit the costs, including payment amount(s). Supporting documentation and  
2 evidence of why the Respondent is unable to make such payment(s) must accompany this  
3 submission.

4 Respondent understands that failure to submit costs timely is a violation of probation and  
5 submission of evidence demonstrating financial hardship does not preclude the Board from

6 pursuing further disciplinary action. However, Respondent understands that by providing  
7 evidence and supporting documentation of financial hardship may delay further disciplinary  
8 action.

9 Consideration to financial hardship will not be given should Respondent violate this term  
10 and condition, unless an unexpected AND unavoidable hardship is established from the date of  
11 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not  
12 relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

13 **8. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS**

14 **EXAMINATION:** Before the probationary term is completed, Respondent shall take and pass  
15 the California Laws and Regulations Examination (CLRE). If Respondent fails this examination,  
16 Respondent must take and pass a re-examination as approved by the Board. The waiting period  
17 between repeat examinations shall be at six month intervals until success is achieved. Respondent  
18 shall pay the established examination fees. If Respondent has not taken and passed the  
19 examination prior to the end of probation, Respondent shall be considered to be in violation of  
20 probation.

21 **9. VALID LICENSE STATUS:** Respondent shall maintain a current, active and valid  
22 license for the length of the probation period. Failure to pay all fees and meet CE (continuing  
23 education) requirements prior to her license expiration date shall constitute a violation of  
24 probation.

25 **10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE:** Periods of  
26 residency or practice outside California, whether the periods of residency or practice are  
27 temporary or permanent, will toll the probation period but will not toll the cost recovery  
28 requirement, nor the probation monitoring costs incurred. Travel outside of California for more

1 than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify  
2 the Board, in writing, within 14 days, upon her return to California and prior to the  
3 commencement of any employment where representation as an optometrist is/was provided.

4 Respondent's license shall be automatically cancelled if Respondent's periods of  
5 temporary or permanent residence or practice outside California total two years. However,

6 Respondent's license shall not be cancelled as long as Respondent is residing and practicing in  
7 another state of the United States and is on active probation with the licensing authority of that  
8 state, in which case the two year period shall begin on the date probation is completed or  
9 terminated in that state.

10 **11. LICENSE SURRENDER:** During Respondent's term of probation, if she ceases  
11 practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of  
12 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
13 evaluate Respondent's request and exercise its discretion whether to grant the request, or to take  
14 any other action deemed appropriate and reasonable under the circumstances, without further  
15 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no  
16 longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery) are due  
17 upon reinstatement.

18 Surrender of Respondent's license shall be considered a Disciplinary Action and shall  
19 become a part of Respondent's license history with the Board.

20 **12. VIOLATION OF PROBATION:** If Respondent violates any term of the probation  
21 in any respect, the order staying the suspension of Respondent's license will be revoked  
22 automatically. If an accusation or a petition to revoke probation is filed against Respondent  
23 during probation, the Board shall have continuing jurisdiction until the matter is final, and the  
24 period of probation shall be extended. No petition for modification of discipline shall be  
25 considered while there is an accusation or petition to revoke probation or other discipline pending  
26 against Respondent.

27 **13. COMPLETION OF PROBATION:** Upon successful completion of probation,  
28 Respondent's certificate license shall be fully restored.

1           **14. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE:** If Respondent  
2 sells or closes her office after the imposition of administrative discipline, Respondent shall ensure  
3 the continuity of patient care and the transfer of patient records. Respondent shall also ensure that  
4 patients are refunded money for work/services not completed or provided, and shall not  
5 misrepresent to anyone the reason for the sale or closure of the office and/or practice. The  
6 provisions of this condition in no way authorize the practice of optometry by the Respondent  
7 during any period of license suspension.

8           **15. MONITOR BILLING AUDIT:** Within sixty (60) days of the effective date of this  
9 decision, Respondent shall provide to the Board or its designee the names and qualifications of  
10 three auditors. The Board or its designee shall select one of the three auditors to audit  
11 Respondent's billings and patient records for compliance with this condition of probation. During  
12 said audit, twenty (20) randomly selected client billing and patient records shall be reviewed per  
13 quarter during the period of probation, in accordance with accepted auditing/accounting standards  
14 and practices to ensure that the examinations and/or tests billed for were completed. The records  
15 reviewed will be records from at or after the start of probation. If requested by the Board, the  
16 Board shall be advised of the results of the audit, and may obtain any and all copies of any  
17 documents audited or the results of the audit, upon request. The cost of the audits shall be borne  
18 by Respondent. Failure to pay for the audits in a timely fashion or failure to provide the Board  
19 with the audit results and/or copies of the audited records within ten (10) days from audit  
20 completion shall constitute a violation of probation.

21           **IT IS HEREBY FURTHER ORDERED** that:

22           1.   **Restricted Practice.** Respondent shall be permanently prohibited from providing  
23 optometry treatment to patients at skilled nursing faculties, nursing homes, residential care  
24 facilities, Board and Care facilities, and assisted living facilities. This condition shall continue  
25 until such time, if ever, Respondent successfully petitions the Board for the reinstatement of her  
26 ability to perform such examinations. Respondent understands and agrees that the Board is under  
27 no obligation to reinstate Respondent's ability to perform such examinations, that the Board has  
28 made no representations concerning whether any such reinstatement might occur, and that the

1 decision to reinstate is within the sole discretion of the Board.

2       2. **Full Compliance.** This Stipulated Settlement and Disciplinary Order as a  
3 resolution to the charges in the Accusation is contingent upon Respondent's full compliance with  
4 the condition of this Order, set forth in Paragraph I above. If Respondent fails to satisfy this  
5 condition, she agrees the Board can file a supplemental accusation for unprofessional conduct  
6 based on her failure to comply with the term set forth in Paragraph I above as an independent  
7 basis for disciplinary action. In the event that Respondent fails to satisfy the above condition,  
8 Respondent understands and agrees that the Board will be entitled to proceed on the supplemental  
9 accusation based on her failure to comply with the above condition.

10                                   **ACCEPTANCE**

11       I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorney, Craig Steinberg. I understand the stipulation and the effect it will  
13 have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary Order  
14 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
15 State Board of Optometry.

16  
17 DATED: 2-25-12

  
18 SVETLANA FISHER  
Respondent

19       I have read and fully discussed with Respondent Svetlana Fisher the terms and conditions  
20 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
21 its form and content.

22 DATED: 2-26-12

  
23 CRAIG S. STEINBERG, ESQ.  
Attorney for Respondent  
24  
25  
26  
27  
28

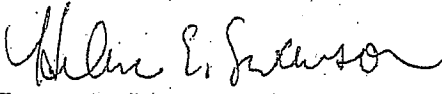
1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
3 submitted for consideration by the State Board of Optometry of the Department of Consumer  
4 Affairs.

5 Dated: February 27, 2012

6 Respectfully submitted,

7 KAMALA D. HARRIS  
8 Attorney General of California  
9 GREGORY J. SALUTE  
10 Supervising Deputy Attorney General

11   
12 HELENE E. SWANSON  
13 Deputy Attorney General  
14 *Attorneys for Complainant*

15 LA2009602506  
16 60728891.doc  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit A**

**Accusation No. CC 2007-79**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HELENE E. SWANSON  
Deputy Attorney General  
4 State Bar No. 130426  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-3005  
6 Facsimile: (213) 897-2804  
E-mail: Helene.Swanson@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC 2007-79

13 **SVETLANA FISHER**  
7976 Santa Monica Blvd.  
West Hollywood, CA 90046

**FIRST AMENDED ACCUSATION**

14 **Optometrist License No. 9936**

15 Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

22 2. On or about September 8, 1992, the State Board of Optometry issued Optometrist  
23 License Number 9936 to Svetlana Fisher (Respondent). The Optometrist License was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
25 2012, unless renewed.

26 ///

27 ///



**JURISDICTION**

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of

jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3090 of the Code 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 and administer this article as to licenseholders, 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."

6. Section 3110 of the Code states:

"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.

...

(d) Incompetence.

...

1 (q) The failure to maintain adequate and accurate records relating to the provision of  
2 services to his or her patients. . . .”

3 7. California Code of Regulations, Title 16, section 1510, provides as follows:

4 “Inefficiency in the profession is indicated by the failure to use, or the lack of proficiency in  
5 the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or keratometer), tonometer,  
6 biomicroscope, any one of the modern refracting instruments such as the phoropter, refractor,  
7 etc., or the phorometer-trial frame containing phoria and duction measuring elements or a  
8 multicelled trial frame, trial lenses, and prisms, in the conduct of an ocular examination; the  
9 failure to make and keep an accurate record of findings, lack of familiarity with, or neglect to use,  
10 a tangent screen or perimeter or campimeter; and the failure to make a careful record of the  
11 findings when the need of the information these instruments afford is definitely indicated.”

#### 12 COST RECOVERY

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

#### 17 STATEMENT OF FACTS

18 9. On or about June 2007, nurse evaluators Elizabeth Schein and Priscilla Tan, who  
19 were and are employed by the California Department of Health Care Services (DHCS), Audits  
20 and Investigations Division, began their investigation and audit, which included reviewing the  
21 patient records of twenty patients examined and treated by Respondent who resided at various  
22 Board and Care facilities.<sup>12</sup> Services were rendered by Respondent to those patients and Medi-

23 <sup>1</sup> In California in the early 1970's the residential care system was established to provide  
24 non institutional home based services to dependent care groups such as the elderly,  
25 developmentally disabled, mentally disordered and child care centers under the supervision of the  
26 Department of Public Social Services. At that time, homes for the elderly were known as Board  
and Care Homes and the name still persists as a common term to describe a licensed residential  
care home. In the vernacular of the State, these homes are also known as “Residential Care  
Facilities for the Elderly”.

27  
28 (continued...)

Cal was billed for 68 services provided to those patients between 2002 through 2006. The DHCS records at issue in this matter concern patient records for service dates from approximately January 2005 through December 2005.

10. Nine patient records that were reviewed were billed as comprehensive eye examinations, on separate dates of service (DOS), as follows:

Record No.	Patient ID <sup>3</sup>	Patient Date of Birth	Date of Service
1	A	4/24/66	1/28/05
5	B	10/28/49	3/21/05
7	D	6/5/81	3/23/05
8	E	12/25/39	7/22/05
9	F	3/21/47	4/12/05
14	J	1/9/57	4/26/05
17	M	11/19/49	4/26/05
23	Q	11/3/62	5/4/05
26	T	12/12/72	9/2/05

11. A second level of review of the medical records, some of which are identified above, was performed by DHCS Medi-Cal Vision Care Program Consultant, Cory Vu, O.D. Based upon his review, Dr. Vu determined that there was poor or inadequate documentation in the majority of records, most of the eye examination forms failed to include Respondent's signature, there was

Residential care facilities do not provide skilled nursing services (such as giving injections, unless there is a credentialed RN or LVN individual working in the home), but they do provide assistance with all daily living activities, such as bathing and dressing. The patient records at issue in this Accusation note that these patients had eye examinations at the following Board and Care facilities: Gilmar Manor, Rosewood, Walkers Boarding Care, Pleasant View, and Westside Manor.

<sup>2</sup> On or about June 2007, the DHCS requested that Respondent provide additional patient records for 20 patients; 10 records from her office located at 7976 Santa Monica Blvd., West Hollywood, CA, and 10 records from her office located at 906 San Fernando Road, San Fernando, CA.

<sup>3</sup> To protect the patient's privacy, they will each be identified only by an assigned letter identification. The patient records were provided to Respondent's attorney on or about April 19, 2010, in response to a request for discovery from Respondent's attorney. Complainant's attorney did not receive any further requests for patient records, information or any other discovery from Respondent's attorneys.

widespread omission of vision tests on the eye records, and various violations involving Medi-Cal requirements. On or about July 25, 2008, a telephone exit conference was held with Respondent, Respondent's attorney, Dr. Vu, Ms. Schein and Ms. Tan, where the preliminary audit findings that had been sent by fax to her were discussed, and she was given an opportunity to respond to the findings.

12. In a letter dated August 6, 2007, DHCS referred the case to the Board of Optometry for review of the services provided by Respondent to her patients.

**FIRST CAUSE FOR DISCIPLINE**

**(Gross Negligence and / or Incompetence)**

13. Respondent is subject to disciplinary action under section 3110, subdivisions (b) and (d), in that Respondent provided grossly negligent and / or incompetent care and treatment to her patients, as referenced in Paragraph 10, above, as follows:

- a) Respondent failed to complete or had inadequate medical histories in Record Nos. 1, 9, 14, 17, and 23.
- b) Respondent failed to do a required annual dilated eye exam for those patients diagnosed with diabetes (see Record Nos. 5 and 8.).
- c) Although it was noted in Record No. 5 that the patient had background diabetic retinopathy and reduced best corrected visual acuity (BCVA), Respondent failed to dilate the patient and determine whether the reduced visual acuity was from the diabetic retinopathy which would have necessitated a referral to a retinal specialist for laser treatment.
- d) Respondent failed to determine whether there were any signs of diabetic retinopathy in the eyes of the patient in Record No. 8.
- e) Respondent failed to perform, or improperly performed, two routine tests for glaucoma, *i.e.*, tonometry and ophthalmoscopy, which are a required standard of care for comprehensive eye examinations. Specifically, Respondent failed to perform tonometry measurements, or intraocular pressure, in Record Nos. 14 and 23 and failed to note the time that the tonometry test was performed in Record Nos. 1,

14, and 23. Respondent further failed to perform ophthalmoscopy and record the cup to disc ratio (C/D ratio) in Record Nos. 1, 5, 7, 8, 9, 14, 17, 23, and 26.

f) Respondent failed to properly record visual acuity (VA) measurements in numerous patients. Specifically, Respondent failed to record the entering VA in Record Nos. 1, 8, 9, 14, 17, and 23, and failed to record the BCVA in Record Nos. 7, 8, 9, 14, 17, and 23.

### **SECOND CAUSE FOR DISCIPLINE**

#### **(Failure to Maintain Adequate and Accurate Records)**

14. Respondent is subject to disciplinary action under Section 3110, subdivision (q), in that Respondent failed to maintain adequate and accurate records relating to the provisions of services provided to her patients, as more fully set forth in Paragraphs 9 to 13, above.

### **THIRD CAUSE FOR DISCIPLINE**

#### **(Violation of Regulations)**

15. Respondent is subject to disciplinary action under Section 3110, subdivision (a), in that Respondent demonstrated professional inefficiency in violation of California Code of Regulations, Title 16, section 1510, as more fully set forth in Paragraphs 9 to 14, above.

### **PRAYER**

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

1. Revoking or suspending Optometrist License Number 9936, issued to Svetlana Fisher.

//

//

//

//

//

//

//

2. Ordering Svetlana Fisher to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: March 1, 2011

  
MONA MAGGIO  
Executive Officer  
State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2009602506  
60609510.docx



**Board of Optometry**  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Tel: (916) 575-7170  
Fax: (916) 575-7292  
www.optometry.ca.gov



### 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 twenty-ninth day of April 2013, the Executive Officer examined said official records of said Board of Optometry and found that **SVETLANA FISHER** graduated from the Southern California College of Optometry in 1992, and is the holder of Certificate of Registration to Practice Optometry No. 9936, which was granted to her effective September 8, 1992, and which is currently in full force and effect and will expire July 31, 2014, unless renewed. The current address of record for said Certificate of Registration is 7976 Santa Monica Blvd., West Hollywood, California, 90046.

Said records further reveal that on or about August 17, 2006 Fictitious Name Permit Number 3273 was issued to **SVETLANA FISHER**, authorizing the use of the Fictitious Name "OPTOMETRIC SPECS APPEAL", in conjunction with her optometric practice at 7976 Santa Monica Blvd., West Hollywood, California 90046, said Fictitious Name permit is currently in full force and effect and will expire January 31, 2014.

Said records further reveal that on or about February 1, 1999, **SVETLANA FISHER** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that, effective May 8, 2012, as the result of disciplinary action taken in Case number CC 2007-79, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 9936. However, the revocation was stayed and the Certificate was placed on probation for a period of three (3) years.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twenty-ninth day of April 2013.

  
Mona Maggio, Executive Officer

# Memo

---

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

**To:** Board Members

**Date:** May 10, 2013

**From:** Jessica Sieferman  
Probation & Enforcement Analyst

**Telephone:** (916) 575-7184

**Subject:** Agenda Item 11 – 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



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

**To:** Board Members

**Date:** May 10, 2013

**From:** Alejandro Arredondo O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 12 – Adjournment

---