

MEMBERS OF THE BOARD

Alejandro Arredondo, OD, President
Madhu Chawla, OD, Vice President
Donna Burke, Secretary
Cyd Brandvein
Frank Giardina, OD
Glenn Kawaguchi, OD
William H. Kysella, Jr.
Rachel Michelin
Mark Morodomi
David Turetsky, OD
Lillian Wang, OD



AMENDED

QUARTERLY BOARD MEETING AGENDA

April 23-24, 2015

**Department of Consumer Affairs, HQ2
1747 North Market Boulevard
First Floor Hearing Room
Sacramento, CA 95834**

ORDER OF ITEMS SUBJECT TO CHANGE

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources or technical difficulties.

**Thursday, April 23rd
1:00 p.m.**

FULL BOARD OPEN SESSION

1. Call to Order/Roll Call and Establishment of a Quorum
2. 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)]
3. Petitions for Reduction of Penalty or Early Termination of Probation
 - A. Mai-Anh Nguyen, OPT 11482
 - B. Lawrence Young, OPT 8618

FULL BOARD CLOSED SESSION

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

4. Review and Possible Approval of Amendments to the Board Member Handbook
5. Update by the Education and Practice Committee on Accepting Continuing Medical Education and/or Osteopath Continuing Education to Meet Requirements of License Renewal and Possibly Moving Glaucoma Requirements Regarding CE from Title 16, California Code of Regulations (CCR) §1571(b) to Title 16, CCR §1536
6. Discussion and Possible Approval of Recommendations Pertaining to Posting Requirements of a Consumer Notice that Explains the Designations After an Optometrist's License Number

7. Discussion and Possible Action Pertaining to the Legality of Online Refractions Pursuant to the Laws Governing Optometry in the State of California
8. Update on the Supreme Court Decision Regarding the North Carolina Board of Dental Examiners v. the Federal Trade Commission
9. Update on Rulemaking Pertaining to Title 16, CCR §1516, Applicant Medical Evaluations and §1582, Unprofessional Conduct Defined
10. Adjournment

Friday, April 24th
8:30 a.m.

FULL BOARD OPEN SESSION

11. Call to Order/Roll Call and Establishment of a Quorum
12. President's Report – Welcome and Introductions
13. 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)]
14. Ethics Training Summary by Legal Counsel
15. Department of Consumer Affairs Report
16. Executive Officer's Report
 - A. Bagley-Keene –Discussions Between Board Meetings
 - B. BreEZe
 - C. Strategic Plan
 - D. Budget
 - E. Examination and Licensing Programs
 - F. Enforcement Program
17. Vote on Whether to Approve Board Meeting Minutes
 - A. November 21, 2014
 - B. January 23, 2015
 - C. February 24, 2015
18. Election of Officers
19. Discussion and Possible Approval of the Revised Executive Officer's Duty Statement
20. Update on the Recruitment Process and Timeline for Selecting a New Executive Officer
21. Discussion and Possible Action Regarding Legislation Sponsored by the Board
 - a. Assembly Bill 1253 (Steinorth), Retired Volunteer License
 - b. Assembly Bill 1359 (Nazarian), Certificate Requirements, Therapeutic Pharmaceutical Agents.
 - c. Senate Bill 349, (Bates), Mobile Optometric Facility

- d. Senate Bill 402 (Mitchell), Children's Vision
 - e. Senate Bill 496 (Nguyen), Foreign Graduates
22. Update on the Advisory by the California State Board of Optometry to Licensees Pertaining to Business and Professions Code (BCP) §655, "Prohibition of Business Arrangements Between Optometrists and Opticians or Persons in Optical Product Business and BPC §2556, Unlawful Practice
 23. Discussion and Possible Action Pertaining to Proposed Legislation (Assembly Bill 595, Alejo), Registered Dispensing Opticians Certificates. Including Discussion and Possible Action Pertaining to Proposed Amendments from the National Association of Opticians and Optometrists (NAOO), the California Optometric Association, and Other Stakeholders to Amend BCP Sections Impacting Business Arrangements Between Optometrists and Registered Dispensing Optician (BCP §655 and §2556)
 24. Discussion and Possible Action Pertaining to Proposed Legislation (SB 622 Hernandez), Impacting the Profession of Optometry; Including BPC §3041, Acts Constituting Practice of Optometry. Including Discussion and Possible Action Pertaining to Proposed Amendments from the California Optometric Association
 25. Suggestions for Future Agenda Items
 26. Adjournment

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

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the open meeting act. 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 Lydia Bracco at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

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

To: Board Members

Date: April 23, 2015

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 1 – Call to Order and Roll Call/ 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

Madhu Chawla, O.D., Vice President, Professional Member

Donna Burke, Board Secretary, Public Member

Cyd Brandvein, Public Member

Frank Giardina, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

William H. Kysella, Jr., Public Member

Rachel Michelin, Public Member

Mark Morodomi, Public Member

David Turetsky, O.D., Professional Member

Lillian Wang, O.D., Professional Member

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

To: Board Members

Date: April 23, 2015

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 2 – Public Comment

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

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Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members

Date: April 23, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 3A - In the Matter of the Petition for Early Termination of Probation

Dr. Mai-Anh Nguyen, O.D. (Petitioner) was issued Optometrist License Number 11482 by the Board on August 7, 2000. On February 12, 2013, the Board filed an Accusation against Petitioner charging her with violations of laws and regulations based on Unprofessional Conduct: Insurance Fraud, False Medical Record, False Document Related to Optometry, and Fraud, Misrepresentation or Dishonesty. Effective December 11, 2013, Petitioner's license was revoked, the revocation was stayed and Petitioner's license 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 the Stipulated Settlement and Disciplinary Order, and Accusation
3. Certification of Licensure

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

In the Matter of the Accusation Against:

Case No. CC-2010-168

MAI-ANH CHTN NGUYEN
1661 Burdette Drive, Suite H
San Jose, CA 95121-1681

Optometrist License No. 11482


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 December 11, 2013.

It is so ORDERED November 12, 2013.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVALASSILIOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2199
Facsimile: (510) 622-2270
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. CC-2010-168

12 **MAI-ANH CHTN NGUYEN**
13 **1661 Burdette Drive, Suite H**
14 **San Jose, CA 95121-1681**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Optometrist License No. 11482**

16 Respondent.

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 Aspasia A. Papavassiliou,
23 Deputy Attorney General.

24 2. Mai-Anh Chtn Nguyen (Respondent) is represented in this proceeding by attorney
25 Craig S. Steinberg, whose address is: 5737 Kanan Road, No. 540, Agoura Hills, CA 91301.

26 3. On or about August 7, 2000, the State Board of Optometry issued Optometrist
27 License No. 11482 to Mai-Anh Chtn Nguyen (Respondent). The Optometrist License will expire
28 on February 28, 2014, unless renewed.

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1 16. In consideration of the preceding 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 ORDERED that Optometrist License No. 11482 issued to Respondent Mai-Anh Chtn
6 Nguyen (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on
7 probation for five (5) years on the following terms and conditions.

8 **SEVERABILITY CLAUSE**

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

14 **1. OBEY ALL LAWS**

15 Respondent shall obey all federal, state, and local laws, governing the practice of optometry
16 in California.

17 Respondent shall notify the Board in writing within 72 hours of any incident resulting in
18 her arrest, or charges filed against, or a citation issued against Respondent.

19 **CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any
20 governmental agency, including probation or parole, and the orders are violated, this shall be
21 deemed a violation of probation and may result in the filing of an accusation or petition to revoke
22 probation or both.

23 **OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to
24 any other disciplinary order from any other health-care related board or any professional licensing
25 or certification regulatory agency in California, or elsewhere, and violates any of the orders or
26 conditions imposed by other agencies, this shall be deemed a violation of probation and may
27 result in the filing of an accusation or petition to revoke probation or both.

28 **2. QUARTERLY REPORTS**

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

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

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

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

Respondent is encouraged to contact the Board's probation monitoring program representative at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to

1 revoke probation against Respondent's Optometrist license.

2 ///

3 **4. PROBATION MONITORING COSTS**

4 All costs incurred for probation monitoring during the entire probation shall be paid by the
5 Respondent. The monthly cost may be adjusted as expenses are reduced or increased.

6 Respondent's failure to comply with all terms and conditions may also cause this amount to be
7 increased.

8 All payments for costs are to be sent directly to the Board of Optometry and must be
9 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
10 incurred.)

11 If Respondent is unable to submit costs for any month, she shall be required, instead, to
12 submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to
13 submit the costs, including payment amount(s). Supporting documentation and evidence of why
14 the Respondent is unable to make such payment(s) must accompany this submission.

15 Respondent understands that failure to submit costs timely is a violation of probation and
16 submission of evidence demonstrating financial hardship does not preclude the Board from
17 pursuing further disciplinary action. However, Respondent understands that by providing
18 evidence and supporting documentation of financial hardship it may delay further disciplinary
19 action.

20 In addition to any other disciplinary action taken by the Board, an unrestricted license will
21 not be issued at the end of the probationary period and the optometrist license will not be
22 renewed, until such time as all probation monitoring costs have been paid.

23 **5. FUNCTION AS AN OPTOMETRIST**

24 Respondent shall function as an optometrist for a minimum of 60 hours per month for the
25 entire term of her probation period.

26 **6. NOTICE TO EMPLOYER**

27 Respondent shall provide to the Board the names, physical addresses, mailing addresses,
28 and telephone number of all employers and supervisors and shall give specific, written consent

1 that the licensee authorizes the Board and the employers and supervisors to communicate
2 regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is
3 not limited to, any violation of any probationary term and condition.

4 Respondent shall be required to inform her employer, and each subsequent employer during
5 the probation period, of the discipline imposed by this decision by providing her supervisor and
6 director and all subsequent supervisors and directors with a copy of the decision and order, and
7 the accusation in this matter prior to the beginning of or returning to employment or within 14
8 calendar days from each change in a supervisor or director.

9 The Respondent must ensure that the Board receives written confirmation from the
10 employer that she is aware of the Discipline, on forms to be provided to the Respondent (DG-
11 Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are
12 submitted from the employer directly to the Board. Respondent is responsible for contacting the
13 Board to obtain additional forms if needed.

14 **7. CHANGES OF EMPLOYMENT OR RESIDENCE**

15 Respondent shall notify the Board, and appointed probation monitor in writing, of any and
16 all changes of employment, location, and address within 14 calendar days of such change. This
17 includes but is not limited to applying for employment, termination or resignation from
18 employment, change in employment status, and change in supervisors, administrators or directors.

19 Respondent shall also notify her probation monitor AND the Board IN WRITING of any
20 changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for
21 mailing purposes; however the Respondent must also provide her physical residence address as
22 well.

23 **8. COST RECOVERY**

24 Respondent shall pay to the Board a sum not to exceed the costs of the investigation and
25 prosecution of this case. That sum shall be \$6,107 and shall be paid in full directly to the Board,
26 in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost
27 recovery will not be tolled.

28 If Respondent is unable to submit costs timely, she shall be required instead to submit an

1 explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she
2 will be able to submit the costs, including payment amount(s). Supporting documentation and
3 evidence of why the Respondent is unable to make such payment(s) must accompany this
4 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 may delay further disciplinary
9 action.

10 Consideration to financial hardship will not be given should Respondent violate this term
11 and condition, unless an unexpected AND unavoidable hardship is established from the date of
12 this order to the date payment(s) is due.

13 **9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS**
14 **EXAMINATION**

15 Within 60 calendar days of the effective date of this decision, or within some other time as
16 prescribed in writing by the Board, Respondent shall take and pass the California Laws and
17 Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take
18 and pass a re-examination as approved by the Board. The waiting period between repeat
19 examinations shall be at six-month intervals until success is achieved. Respondent shall pay the
20 established examination fees.

21 If Respondent has not taken and passed the examination within six months from the
22 effective date of this decision, Respondent shall be considered to be in violation of probation.

23 **10. COMMUNITY SERVICES**

24 All types of community services shall be at the Board's discretion, depending on the
25 violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit
26 to the Board, for its prior approval, a community service program in which Respondent provides
27 free non-optometric or professional optometric services on a regular basis to a community or
28 charitable facility or agency, amounting to a minimum of 20 hours per month during her

1 probation. Such services shall begin no later than 15 calendar days after Respondent is notified of
2 the approved program.

3 **11. VALID LICENSE STATUS**

4 Respondent shall maintain a current, active and valid license for the length of the probation
5 period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall
6 constitute a violation of probation.

7 **12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

8 Periods of residency or practice outside California, whether the periods of residency or
9 practice are temporary or permanent, will toll the probation period but will not toll the cost
10 recovery requirement, nor the probation monitoring costs incurred. Travel outside of California
11 for more than 30 calendar days must be reported to the Board in writing prior to departure.
12 Respondent shall notify the Board, in writing, within 14 calendar days, upon her return to
13 California and prior to the commencement of any employment where representation as an
14 optometrist is/was provided.

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

20 **13. LICENSE SURRENDER**

21 During Respondent's term of probation, if she ceases practicing due to retirement, health
22 reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender
23 her license to the Board. The Board reserves the right to evaluate Respondent's request and
24 exercise its discretion whether to grant the request, or to take any other action deemed appropriate
25 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the
26 tendered license and wall certificate, Respondent will no longer be subject to the conditions of
27 probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon
28 reinstatement.

1 Surrender of Respondent's license shall be considered a Disciplinary Action and shall
2 become a part of Respondent's license history with the Board.

3 **14. VIOLATION OF PROBATION**

4 If Respondent violates any term of the probation in any respect, the Board, after giving
5 Respondent notice and the opportunity to be heard, may revoke probation and carry out the
6 disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed
7 against Respondent during probation, the Board shall have continuing jurisdiction and the period
8 of probation shall be extended until the matter is final. No petition for modification of discipline
9 shall be considered while there is an accusation or petition to revoke probation or other discipline
10 pending against Respondent.

11 **15. COMPLETION OF PROBATION**

12 Upon successful completion of probation, Respondent's license shall be fully restored.

13 **16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE**

14 If Respondent sells or closes his or her office after the imposition of administrative
15 discipline, Respondent shall ensure the continuity of patient care and the transfer of patient
16 records. Respondent shall also ensure that patients are refunded money for work/services not
17 completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of
18 the office and/or practice. The provisions of this condition in no way authorize the practice of
19 optometry by the Respondent during any period of license suspension.

20 **17. WORKSITE MONITOR**

21 Within 30 calendar days of the effective date of this decision, Respondent shall submit to
22 the Board or its designee for prior approval as a worksite monitor, the name and qualifications of
23 an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's
24 practice shall be monitored by the approved worksite monitor. The worksite monitor's license
25 scope of practice shall include the scope of practice of the Respondent that is being monitored.
26 The worksite monitor shall have an active unrestricted license, with no disciplinary action within
27 the last five (5) years. The worksite monitor shall not have any financial, personal, or familial
28 relationship with the Respondent, or other relationship that could reasonably be expected to

1 compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it
2 is impractical for anyone but the licensee's employer to serve as the worksite monitor, this
3 requirement may be waived by the Board; however, under no circumstances shall a licensee's
4 worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by
5 Respondent.

6 The Board or its designee shall provide the approved worksite monitor with copies of the
7 decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt
8 of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign
9 an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary
10 order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed
11 monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed
12 monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the
13 signed affirmation for approval by the Board or its designee.

14 Within 60 calendar days of the effective date of this decision, and continuing throughout
15 probation, Respondent's practice shall be monitored by the approved worksite monitor.
16 Respondent shall make all records available for immediate inspection and copying on the
17 premises by the worksite monitor at all times during business hours and shall retain the records
18 for the entire term of probation.

19 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
20 date of this decision, Respondent shall receive a notification from the Board or its designees to
21 cease the practice of optometry within three (3) calendar days after being so notified. Respondent
22 shall cease practice until a worksite monitor is approved to provide worksite monitoring
23 responsibility.

24 The worksite monitor must adhere at a minimum, to the following required methods of
25 monitoring the Respondent:

26 a) Have face-to-face contact with the Respondent in the work environment on a
27 frequent basis as determined by the Board, at least once per week.

28 b) Interview other staff in the office regarding the Respondent's behavior, if

1 applicable.

2 c) Review the Respondent's work attendance.

3 The Respondent shall complete the required consent forms and sign an agreement with the
4 worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

5 The worksite monitor must submit quarterly reports documenting the Respondent's work
6 performance. Reports are due for each year of probation and the entire length of probation from
7 the worksite monitor as follows:

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

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

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

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

16 The quarterly report shall include, but not be limited to:

- 17 1. the Respondent's name;
- 18 2. license number;
- 19 3. worksite monitor's name and signature;
- 20 4. worksite monitor's license number;
- 21 5. worksite location(s);
- 22 6. dates Respondent had face-to-face contact or correspondence (written and verbal)
with monitor;
- 23 7. staff interviewed, if applicable;
- 24 8. attendance report;
- 25 9. any change in behavior and/or personal habits;
- 26 10. assessment of the Respondent's ability to practice safely;
- 27 11. recommendation dependant on Respondent's performance on whether to continue
with current worksite monitor plan or modify the plan;
- 28 12. other relevant information deemed necessary by the worksite monitor or the
Board.

Respondent is ultimately responsible for ensuring her worksite monitor submits complete
and timely reports. Failure to ensure her worksite monitor submits complete and timely reports
shall constitute a violation of probation.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar

1 days of such resignation or unavailability, submit in writing to the Board or its designee, for prior
2 approval, the name and qualifications of a replacement worksite monitor who will be assuming
3 that responsibility within 15 calendar days. If Respondent fails to obtain approval of a
4 replacement monitor within 60 calendar days of the resignation or unavailability of the monitor,
5 Respondent shall receive a notification from the Board or its designee to cease the practice of
6 optometry within three (3) calendar days. After being so notified, Respondent shall cease practice
7 until a replacement monitor is approved and assumes monitoring responsibility.

8 **18. EMPLOYMENT LIMITATIONS**

9 Respondent shall not work in any health care setting as a supervisor of optometrists. The
10 Board may additionally restrict Respondent from supervising technicians and/or unlicensed
11 assistive personnel on a case-by-case basis.

12 Respondent shall not work as a faculty member in an approved school of optometry or as an
13 instructor in a Board-approved continuing education program.

14 Respondent shall work only in a regularly assigned, identified and predetermined
15 worksite(s) and shall not work in a "float" capacity.

16 **19. AUDIT REQUIRED**

17 The Board shall require quarterly audits of patient visits, billings, and payments as a
18 condition of probation.

19 Within 30 calendar days of the effective date of this decision, Respondent shall provide to
20 the Board or its designee the names and qualifications of three third party auditors. The Board or
21 its designee shall select one of the three auditors to audit Respondent's billings. During said audit,
22 randomly selected client billing records shall be reviewed in accordance with accepted
23 auditing/accounting standards and practices.

24 The Board or its designee shall provide the approved auditor with copies of the decision(s)
25 and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the
26 decision(s), accusation(s), and proposed auditing plan, the auditor shall sign an affirmation that he
27 or she has reviewed the terms and conditions of the Respondent's disciplinary order, fully
28 understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth

1 by the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a
2 revised auditing plan with the signed affirmation for approval by the Board or its designee.

3 Within 60 calendar days of the effective date of this decision, and continuing throughout
4 probation, Respondent's patient visits, billings and payments shall be audited by the approved
5 auditor. Respondent shall make all records available for immediate inspection and copying on the
6 premises by the auditor at all times during business hours and shall retain the records for the
7 entire term of probation.

8 If Respondent fails to obtain approval of an auditor within 60 calendar days of the effective
9 date of this decision, Respondent shall receive a notification from the Board or its designee to
10 cease the practice of optometry within three (3) calendar days after being so notified. Respondent
11 shall cease practice until an auditor is approved to provide auditing responsibility.

12 The Board shall be advised of the results of the audit, and may obtain any and all copies of
13 any documents audited or the results of the audit. The cost of the audits shall be borne by
14 Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from
15 audit completion shall constitute a violation of probation.

16 Quarterly reports of the audit results are due each year of probation and the entire length of
17 probation from the auditor as follows:

- 18 • For the period covering January 1st through March 31st, reports are to be
19 completed and submitted between April 1st and April 7th.
- 20 • For the period covering April 1st through June 30th, reports are to be completed
21 and submitted between July 1st and July 7th.
- 22 • For the period covering July 1st through September 30th, reports are to be
23 completed and submitted between October 1st and October 7th.
- 24 • For the period covering October 1st through December 31st, reports are to be
25 completed and submitted between January 1st and January 7th.

26 The quarterly report shall include, but not be limited to:

- 27 1. the Respondent's name;
- 28 2. license number;
3. auditor's name and signature;
4. auditor's license number;

5. dates Respondent had face-to-face contact or correspondence (written and verbal) with auditor;
6. the Respondent's compliance with this condition;
7. the Respondent's compliance with accepted auditing/accounting standards and practices;
8. any change in behavior and/or personal habits;
9. assessment of the Respondent's ability to practice safely;
10. recommendation dependant on Respondent's audit results and compliance with this condition on whether to continue with current audit plan or modify the plan;
11. other relevant information deemed necessary by the auditor, or the Board.

Respondent is ultimately responsible for ensuring her auditor submits complete and timely reports. Failure to ensure each auditor submits complete and timely reports shall constitute a violation of probation.

If the auditor resigns or is no longer available, Respondent shall, within five (5) days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the names and qualifications of a replacement third party auditor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement auditor within 60 calendar days of the resignation or unavailability of the auditor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

20. LENS PRESCRIPTIONS - MAINTAIN RECORDS

Respondent shall maintain patient records of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. name and address of the patient;
2. date;
3. price of the services and goods involved in the prescription;
4. visual impairment identified for which the prescription was furnished.

Respondent shall keep these patient records in a separate file, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

21. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by

1 the Physician Assessment and Clinical Education Program, University of California, San Diego
2 School of Medicine (Program), approved in advance by the Board or its designee. Respondent
3 shall provide the program with any information and documents that the Program may deem
4 pertinent. Respondent shall participate in and successfully complete the classroom component of
5 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
6 successfully complete any other component of the course within one (1) year of enrollment. The
7 medical record keeping course shall be at Respondent's expense and shall be in addition to the
8 continuing optometric education requirements for renewal of licensure.

9 A medical record keeping course taken after the acts that gave rise to the charges in the
10 accusation, but prior to the effective date of the decision may, in the sole discretion of the Board
11 or its designee, be accepted towards the fulfillment of this condition if the course would have
12 been approved by the Board or its designee had the course been taken after the effective date of
13 this decision.

14 Respondent shall submit a certification of successful completion to the Board or its
15 designee not later than 15 calendar days after the effective date of the decision, whichever is later.


16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Craig S. Steinberg. I understand the stipulation and the effect it
19 will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary
20 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
21 of the State Board of Optometry.

22
23 DATED: 10/22/2013 Mai-Anh Nguyen OD
24 MAI-ANH CHTN NGUYEN
Respondent

25 I have read and fully discussed with Respondent Mai-Anh Chtn Nguyen the terms and
26 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
27 I approve its form and content.
28

1 DATED: 10-22-13

2 
3 Craig S. Steinberg
4 Attorney for Respondent5 ENDORSEMENT6 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
7 submitted for consideration by the State Board of Optometry of the Department of Consumer
8 Affairs.

9 Dated: 10/23/13

10 Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 DIANN SOKOLOFF
14 Supervising Deputy Attorney General15 16 ASPASIA A. PAPAVALASSILOU
17 Deputy Attorney General
18 *Attorneys for Complainant*19 SF2012901063
20 90321252.doc
21
22
23
24
25
26
27
28

Exhibit A

Accusation No. CC-2010-168

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPA VASSILIOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2199
Facsimile: (510) 622-2270
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. CC-2010-168

12 **MAI-ANH CHTN NGUYEN**
13 **1661 Burdette Drive, Suite H**
14 **San Jose, CA 95121-1681**

ACCUSATION

15 **Optometrist License No. 11482**

16 **Respondent.**

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 August 7, 2000, the State Board of Optometry issued Optometrist
22 License Number 11482 to Mai-Anh Chtn Nguyen (Respondent). The Optometrist License was in
23 full force and effect at all times relevant to the charges brought in this Accusation will expire on
24 February 28, 2014.

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.

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

STATUTORY PROVISIONS

5. Section 810 of the Code states, in pertinent part:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim."

6. Section 3105 of the Code states:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section."

7. Section 3106 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

8. Section 3110 of the Code states, in pertinent part:

"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:

• • • •

1 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty or
2 corruption, that is substantially related to the qualifications, functions, or duties of an
3 optometrist."

4 **COST RECOVERY**

5 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **FACTS**

12 10. On April 1, 2010, the insurance company Vision Service Plan (VSP) conducted an
13 audit that revealed Respondent submitted \$165,560 in claims that Respondent could not
14 substantiate, with one or more of the following discrepancies found in 57 of the 111 records that
15 VSP reviewed:

16 A. Respondent used unused benefits from patients' family members to cover the cost of
17 materials and overages for the patients themselves;

18 B. Respondent billed for comprehensive exams without documentation that Respondent
19 provided the exams;

20 C. Respondent billed for comprehensive exams when Respondent had only documented
21 a refraction or other minimal testing;

22 D. Respondent billed for contact lens fittings and materials without documenting she had
23 provided the fittings and materials;

24 E. Respondent billed for contact lenses when the patient received sunglasses;

25 F. In many instances, Respondent had no record of having ordered and dispensed
26 materials for which she had billed; and

27 G. Respondent billed for services as having been provided in a different year than they
28 were in fact provided.

1 **FIRST CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct: Insurance Fraud)**
3 **(Bus. & Prof. Code § 810, subds. (a)(1) and (a)(2))**

4 11. Respondent has subjected her Optometrist License to discipline under Code section
5 810, subdivisions (a)(1) and (a)(2) because she engaged in unprofessional conduct as a health care
6 professional by knowingly presenting false or fraudulent claims for the payment of a loss under a
7 contract of insurance and knowingly preparing writings to be used in support of such false or
8 fraudulent claims. The circumstances are described in Paragraph 10 and its subparts above.

9 **SECOND CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: False Medical Record)**
11 **(Bus. & Prof. Code § 3105)**

12 12. Respondent has subjected her Optometrist License to discipline under Code section
13 3105 because she engaged in unprofessional conduct by altering or modifying the medical record
14 of her patients, with fraudulent intent, or creating any false medical record, with fraudulent intent.
15 The circumstances are described in Paragraph 10 and its subparts above.

16 **THIRD CAUSE FOR DISCIPLINE**
17 **(Unprofessional Conduct: False Document Related to Optometry)**
18 **(Bus. & Prof. Code § 3106)**

19 13. Respondent has subjected her Optometrist License to discipline under Code section
20 3106 because she engaged in unprofessional conduct by knowingly making or signing any
21 certificate or other document directly or indirectly related to the practice of optometry that falsely
22 represented the existence or nonexistence of a state of facts. The circumstances are described in
23 Paragraph 10 and its subparts above.

24 **FOURTH CAUSE FOR DISCIPLINE**
25 **(Unprofessional Conduct: Fraud, Misrepresentation or Dishonesty)**
26 **(Bus. & Prof. Code § 3110, subd. (e))**

27 14. Respondent has subjected her Optometrist License to discipline under Code section
28 3110, subdivision (e), because she engaged in unprofessional conduct by committing fraud,
misrepresentation, or any act involving dishonesty or corruption, that is substantially related to
the qualifications, functions, or duties of an optometrist. The circumstances are described in
Paragraph 10 and its subparts above.

PRAYER

THEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 11482, issued to Mai-Anh Chhn Nguyen;
2. Ordering Mai-Anh Chhn Nguyen 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: February 12, 2013


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SF2012901063
accusation.rtf



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



CERTIFICATION

The undersigned, Mona Maggio hereby certifies as follows:

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

On this twentieth day of March 2015, the Executive Officer examined said official records of said Board and found that **MAI-ANH CHTN NGUYEN** graduated from the Southern California College of Optometry in 2000, and is the holder of Optometry License No. 11482, which was granted to her effective August 7, 2000. Said Optometry License expires on February 29, 2016, unless renewed. The current address of record for said Optometry License is 1661 Burdette Drive, Suite H, San Jose, CA 95121-1681.

Said records further reveal that on or about August 12, 2000, **MAI-ANH CHTN NGUYEN** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Business and Professions Code (BPC) Section 3041.

Said records further reveal that on or about January 23, 2009, **MAI-ANH CHTN NGUYEN** became certified to perform lacrimal irrigation and dilation pursuant to BPC Section 3041(e)(6).

Said records further reveal that on February 12, 2013, the Board filed an Accusation in Case No. CC-2010-168. As a result of that action, the Board revoked Optometry License No. 11482, effective December 11, 2013. However, the revocation was stayed and said Optometry License was placed on probation for a period of five (5) years, with terms and conditions.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twentieth day of March 2015.


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: April 23, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 3B - In the Matter of the Petition for Early Termination of Probation

Dr. Lawrence Edwin Young, O.D. (Petitioner) was issued Optometrist License Number 8618 by the Board on October 2, 1986. On March 26, 2007, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on the Material Alteration of his Optometry License, Use of Altered License, Unlicensed Practice of Optometry, Acts of Dishonesty regarding Continuing Education, and Acts of Misrepresentation or Dishonesty. On June 18, 2007, by Default Decision, Petitioner's license was revoked.

On May 17, 2007, Petitioner filed a request to vacate the Default Decision. Effective June 18, 2007, the Board ordered the stay of the effective date of said decision to be stayed until August 24, 2007, and on August 17, 2007, the Board ordered the Default Decision and Order vacated. Effective April 8, 2008, Petitioner's license was revoked, the revocation was stayed, and Petitioner's license was placed on probation for three (3) years. After being placed on probation, Petitioner's license was immediately suspended for fifteen (15) days.

On January 27, 2010, the Board filed an Accusation and Petition to Revoke Probation against Petitioner charging him with violations of laws and regulations based on Failure to Provide Patient Records to the Board, and Failure to Comply with Multiple Probation Terms. Effective February 12, 2011, Petitioner's license was revoked.

On February 2, 2012, Petitioner filed a Petition for Reinstatement. Effective July 9, 2012, the Petition was denied.

On August 26, 2013, Petitioner filed a Petition for Reinstatement. Effective December 11, 2013, the Petition was granted, Petitioner's license was issued, immediately revoked, the revocation was stayed, and Petitioner's license was placed on probation for three (3) years.

The Petitioner is requesting the Board to grant his Petition for 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 the Decision, Decision, Proposed Decision, Accusation and Petition to Revoke Probation, Stipulated Settlement and Disciplinary Order, Order Vacating Default Decision and Order, Order Staying Effective Date of Default Decision and Order, Default Decision and Order, and Accusation
3. Certification of Licensure

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

In the Matter of the Petition for
Reinstatement of:

Case No. 2013081012

LAWRENCE YOUNG,

OAH No. CC 2013-64

Optometrist License No. 10427,

Petitioner.

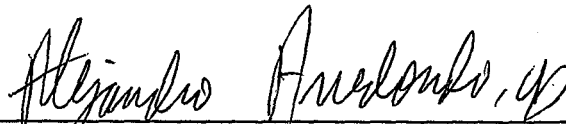
**ORDER NUNC PRO TUNC CLARIFYING PREVIOUS
ORDER ADOPTING DECISION**

It appearing that a clerical error having been made in the Board of Optometry's (Board) previous Order adopting a decision issued regarding Petitioner Lawrence Young, OD, the Board now issues this clarifying order *nunc pro tunc*:

1. On page 1 of the Decision, paragraph 3 is deleted in its entirety, as the Accusation referenced in paragraph 3 does not pertain to Petitioner Lawrence Young and was mistakenly inserted into the Decision.

The Decision, as amended herein, remains in effect, and all the balance of the Order and Decision remain operative and unaffected.

IT IS SO ORDERED this 5th day of February, 2014.


Alejandro Arredondo, O.D.
President
California State Board of Optometry

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

In the Matter of the Petition
for Reinstatement of:

OAH No. 2013081012

LAWRENCE YOUNG,

Agency Case No. CC 2013-64

Optometrist License No. 10427,

Petitioner.

DECISION

A quorum of the Board of Optometry (Board) heard this matter on September 13, 2013, in Pomona, California.

Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Lawrence E. Young (Petitioner) represented himself.

Sydney Mehringer, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 13, 2013.

FACTUAL FINDINGS

1. On or about August 26, 2013, Petitioner filed his Petition for Reinstatement.
2. The Board issued optometrist license number 8618 to Petitioner on or about October 2, 1986, and it was revoked effective February 12, 2011.
3. In approximately March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

4. The Board, by Decision and Order, effective date June 18, 2007, adopted a Default Decision and Order which revoked Petitioner's license.

5. On May 29, 2007, Petitioner filed a written motion to vacate the Default Decision and Order. The Board, by order effective June 18, 2007, stayed the effective date of the decision until August 24, 2007. By Order dated August 17, 2007, the Board vacated the Default Decision and Order. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license. By Decision and Order, effective April 3, 2008, the Board adopted a Stipulated Settlement and Disciplinary Order which revoked Petitioner's license, the revocation was stayed, and Petitioner was placed on probation for three years.

6. On January 27, 2010, the Board filed an Accusation and Petition to Revoke Probation against Petitioner. The Board, by Decision and Order, effective February 12, 2011, adopted a Proposed Decision and Order which revoked Petitioner's license effective February 12, 2011.

7. On February 2, 2012, Petitioner filed a Petition for Reinstatement. The Board, by Decision and Order, effective July 9, 2012, denied said petition.

8. Petitioner has completed additional community service since his last petition for reinstatement. After reviewing the Petition, the exhibits, and the witness testimony, it was established that Petitioner's Petition should be granted with terms and conditions which will provide that the public is protected.

LEGAL CONCLUSIONS AND CONCLUSIONS

1. Cause exists to grant Petitioner's Petition for Reinstatement, pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-8, and Legal Conclusions 2-5.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement . . . 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."

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] ... [¶]

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

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

5. Petitioner established, by clear and convincing evidence to a reasonable certainty, that his Petition should be granted, for the reasons set forth in factual findings 1-8.

ORDER

The application of Petitioner Lawrence E. Young for reinstatement of licensure is hereby granted. Petitioner will hereinafter be referenced as "Respondent" in the terms and conditions listed below. A license shall be issued to Respondent. Said license shall

immediately be revoked, the order of revocation stayed, and Petitioner's license placed on probation for a period of 3 years on the following terms and conditions:

SEVERABILITY CLAUSE

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

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

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

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

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

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

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

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

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

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his probation period.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

Respondent must ensure that the Board receives written confirmation from the employer that he is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however Respondent must also provide his physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 10,000 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this Order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of 16 hours per month for the first 12 months of his probation. Thereafter, no community service will be required. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

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

13. LICENSE SURRENDER

During Respondent's term of probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

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

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records.

Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

17. WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:


1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation defendant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his worksite monitor submits complete and timely reports. Failure to ensure his worksite monitor submits complete and timely reports shall constitute a violation of probation.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

Ordered: November 12, 2013

Effective: December 11, 2013


Alejandro Arredondo, O.D., President
California Board of Optometry
Department of Consumer Affairs

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

In the Matter of the Petition
for Reinstatement of License of:

OAH No. 2012030110

LAWRENCE EDWIN YOUNG, O.D.

Agency Case No. CC 2004-59

Optometrist License No. 8618,

Petitioner.

DECISION

A quorum of the Board of Optometry (Board) heard this matter on March 30, 2012, in Fullerton, California. The members of the Board present were Lee A. Goldstein, O.D., President; Alejandro M. Arredondo, O.D., Vice President; Donna Burke; Monica Johnson; Alexander Kim; and Fred Naranjo.

Michael Santiago, Senior Staff Counsel for the Department of Consumer Affairs, and Jessica Sieferman, the Board's Enforcement staff, were present during the proceedings.

Mark Harman, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Lawrence Edwin Young, O.D., (Petitioner) represented himself.

Katherine M. Messana, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on March 30, 2012.

FACTUAL FINDINGS

1. On or about February 2, 2012, Petitioner filed a Petition for Reinstatement, seeking reinstatement of his revoked optometrist license. He contends that he has been rehabilitated and is prepared to meet his commitments to the Board.

2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.

3. The Board issued optometrist license number 8618 to Petitioner on or about October 2, 1986.

Background

4. In approximately April 2007, the California Attorney General's Office filed an Accusation against Petitioner. While this Accusation was pending, Petitioner entered into a Stipulated Settlement and Disciplinary Order (Probation Order), which was adopted by the Board as its Decision and which became effective on April 3, 2008. Pursuant to the Probation Order, the Board revoked Petitioner's license, stayed the revocation and placed Petitioner on probation for three years on specified terms and conditions. In reaching this settlement, Petitioner agreed to abide by the discipline imposed by the Probation Order.

5. On January 27, 2010, the Board's Executive Officer filed an Accusation and Petition to Revoke Probation, alleging that Petitioner had violated provisions of the Optometry Practice Act and had failed to comply with several terms and conditions imposed under the Probation Order. Following a hearing on this Accusation and Petition, the Board adopted the Administrative Law Judge's Proposed Decision and revoked Petitioner's license, effective February 12, 2011. Specifically, the Board found that Petitioner had engaged in unprofessional conduct in failing to comply with the Board's request for patient records, had failed to provide written quarterly reports (Condition 6 of the Probation Order), had failed to function as an optometrist for the minimum required hours (Condition 7 of the Probation Order), had failed to complete the required 40 hours of optometry courses (Condition 11 of the Probation Order), and had failed to obtain Board pre-approval for community service (Condition 12 of the Probation Order), and had failed to pay any costs (Condition 13 of the Probation Order). These violations were persistent and willful.

6. Petitioner asserts that he has gone through substantial changes since revocation of his license. He testified, "I have been humbled. I am here to comply, not to fight." Petitioner said that, since December 2010, he lost his business and his home. He was unemployed for nine months in 2011, and could not find regular work. In October 2011, he was hired to work as a cashier at Chick-fil-A. In November 2011, he and his wife filed for protection under Chapter 7 of the Bankruptcy Code. In February 2012, he secured a position as a technician in a busy ophthalmologic practice, in which he conducts initial interviews and gathers information from about 300 patients per week. This work does not involve the practice of optometry.

7. Petitioner asserts that he takes full responsibility for the revocation. During his probation, he lost many patients and could not afford to take the continuing education courses. He failed to secure prior approval for his community service activities, although he alluded to his longstanding work for the Diamond Bar food store operation, and cited the

100's of hours of service to the Boosters Club of Diamond Bar High School, for which he volunteered for nine years while his children were attending there.

8. Petitioner's family dynamic has changed; his children have left the home, one is attending college, and Petitioner and his supportive wife are getting back on track with their finances. Petitioner has not completed any continuing education courses in the past few years. Because he is employed, he now can afford to pay for the continuing education classes and has submitted a list of proposed courses to the Board's staff. He reads optometry articles online on a regular basis. He testified that, because he has a stable job and home life, he can commit to completing the community service requirements, as well. He believes that the cost recovery requirement has been discharged through the bankruptcy proceedings.

9. Petitioner failed to submit any letters of support or character reference letters.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reinstatement, pursuant to Government Code section 11522, as set forth in factual finding numbers 1-9, and legal conclusion numbers 2-5.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . 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.

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] . . . [¶]

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

- (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering a petition for reinstatement of a certificate of registration under Section 1522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner failed to meet his obligations under the Probation Order, which resulted in the revocation of his license. In this proceeding, Petitioner did not prove, by clear and convincing evidence to a reasonable certainty, that reinstatement is warranted. Although Petitioner has made some changes in his life since revocation of his license, he has failed to demonstrate that he has made any substantial effort to maintain his skills and knowledge necessary to re-enter practice, such as through continuing education courses. He also failed to demonstrate that he has been involved in community activities other than high school boosters. Petitioner's assertions, not actions, comprise the bulk of the evidence he presented to establish his rehabilitation. The Board believes Petitioner must actually engage in appropriate activities on his own initiative before it may be concluded that he is serious about reinstatement. In sum, Petitioner failed to provide persuasive evidence of rehabilitation.

ORDER

Lawrence Edwin Young's Petition for Reinstatement is denied.

Dated: July 9, 2012



Lee A. Goldstein, O.D., President
California Board of Optometry

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

In the Matter of the Accusation/Petition to
Revoke Probation Against:

LAWRENCE EDWIN YOUNG,

Respondent.

No. CC 2004-59

OAH No. 2010060231

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective February 12, 2011.

IT IS SO ORDERED January 13, 2011.

By 

TR

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

In the Matter of the Accusation and
Petition to Revoke Probation Against:

LAWRENCE EDWIN YOUNG, O.D.

Optometrist Certificate No. OPT 8618,

Respondent.

Case No. CC 2004-59

OAH No. 2010060231

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 1, 2010, in Los Angeles, California. Complainant was represented by Randy Mailman, Deputy Attorney General. Lawrence Edwin Young, O.D. (Respondent), was present and represented himself.

At the hearing, the Administrative Law Judge (ALJ) was provided with Respondent's Exhibit D, which contained the names of numerous patients and was too lengthy to redact. On her own motion, the ALJ ordered that, following the use of the document in preparation of the Proposed Decision, Respondent's Exhibit D would be placed under seal. Exhibit D shall remain under seal and shall not be opened, except by order of the Office of Administrative Hearings, the Board of Optometry or by a reviewing court.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 1, 2010.

FACTUAL FINDINGS

1. On January 27, 2010, Complainant Mona Maggio filed the Accusation and Petition to Revoke Probation while acting in her official capacity as the Executive Officer of the State Board of Optometry (Board), Department of Consumer Affairs, State of California. On February 10, 2010, the Accusation and Petition to Revoke Probation was served on Respondent.

2. On October 2, 1986, the Board issued Optometrist Certificate Number OPT 8618 to Respondent. That certificate is in full force and effect and will expire on March 31, 2012, unless renewed.

3. In a Decision and Order, effective April 3, 2008, in Case No. CC 2004-59 (Prior Decision) adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Respondent's certificate, stayed the revocation and placed Respondent on probation for three years on specified terms and conditions, which included the following:

[¶] ... [¶]

2. **Obey all Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

3. **Comply With The Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program.

Respondent shall, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determined that Respondent may not be compliant with any of the terms or conditions of his probation.

Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program; including, but not limited to, allowing access to the probationer's optometric practice(s) and patient records upon request of the Board or its agent.

Respondent shall pay the monitoring cost associated with the Board's probation surveillance program each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

[¶] ... [¶]

6. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives. Respondent shall provide a copy of this decision to the optometric regulatory agency in every state and territory in which he has an optometry license.

7. **Function as an Optometrist.** Respondent, during the period of probation, shall engage in the practice of optometry in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For the purposes of compliance with this section, "engage in the practice of optometry" may include, when approved by the Board, volunteer work as an optometrist, or work in any non-direct patient care position that requires licensure as an optometrist. If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

[9] ... [9]

11. **Complete Optometry Course.** Respondent, at his own expense, shall enroll and successfully complete courses relevant to the practice of optometry, including, but not limited to, a course in ethics. Respondent shall obtain approval from the Board before enrolling in the ethics course. These courses shall be in addition to the courses required for license renewal. Respondent shall complete forty (40) hours of course work per year for each year of probation.

12. **Community Services—Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a community service program in which Respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least 400 hours over the course of the period of probation.

13. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$10,000. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

[¶] ... [¶]

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

4(a). When Respondent was placed on probation in April 2008, he was required to meet in person with a Board representative in Sacramento to go over the terms and conditions of his probation. However, due to his medical issues, the Board allowed him to conduct his initial probation interview by phone. In July 2008, Respondent and a Board representative spoke by telephone and discussed all of the terms and conditions of his probation.

4(b). On that date, Respondent signed a written acknowledgment indicating that he understood and would abide by the terms of his probation. This acknowledgment was forwarded to the Board.

4(c). On that date, Respondent also signed a Cost Recovery Payment Plan, wherein he agreed to pay the \$10,000 in costs in monthly payments as follows: one payment of \$357.22 by July 30, 2008, and 27 payments \$357.14 on the 30th of each month thereafter, until paid in full. The executed Cost Recovery Payment Plan was forwarded to the Board.

5. In August 2009, the Board received a complaint from one of Respondent's patients. On August 25, 2009, the Board sent a letter to Respondent requesting that, within 14 days, he provide the Board with a copy of the patient's records. The Board's request was

accompanied by the patient's written authorization for release of records to the Board. Respondent received the request, but did not send a reply.

6. On September 25, 2009, the Board sent Respondent another letter, requesting that, within 14 days, he provide the Board with a copy of the patient's records. Respondent received the request, but did not send a reply.

7. To date, Respondent has failed to provide the Board with the requested patient records. This is a violation of Business and Professions Code section 3110, subdivision (x).

8. Respondent's violation of Business and Professions Code section 3110 constitutes a violation of his probationary term number 2 (Obey all Laws).

9. To date, Respondent has failed to submit any written quarterly probation reports. This constitutes a violation of his probationary term number 6 (Submit Written Reports).

10(a). To date, Respondent has failed to provide evidence to the Board that he has functioned as an optometrist for a minimum of 24 hours per week for six consecutive months.

10(b). At the administrative hearing, Respondent attempted to establish that he had functioned as an optometrist as required. However, despite his assertions that he had been seeing patients regularly, the totality of the evidence failed to demonstrate that Respondent's practice had been operating at the number of hours required. Respondent acknowledged that, due to the probation, he "lost numerous vision care contracts . . . for a majority of programs that provide [his] livelihood." He also admitted that his office telephone line had been disconnected for an unspecified period of time, and that it had been difficult for patients to call in to make appointments. However, he "was able to scrape together enough money to reconnect [the phone line] in January 2010." He also admitted that the office electricity had been turned off for "at least 24 hours." Furthermore, at one point, he had to layoff all of his employees, and it took some time to settle all payroll amounts in arrears.

10(c). Respondent has failed to establish that he functioned as an optometrist for a minimum of 24 hours per week for six consecutive months. This constitutes a violation of his probationary term number 7 (Function as an Optometrist).

11. Respondent failed to complete 40 hours per year of optometry courses, in addition to the courses required for license renewal. This constitutes a violation of his probationary term number 11 (Complete Optometry Course).

12(a). Respondent has failed to obtain prior approval for any community service program providing 400 hours of non-optometric services.

12(b). Respondent did inform the Board that he volunteers for a high school booster club. He was instructed by the Board to submit confirmation from the booster club's program coordinator in order to obtain Board pre-approval. Respondent agreed several times to do so, but failed to submit confirmation from the program coordinator for pre-approval.

12(c). Respondent's failure to obtain pre-approval for his community service program constitutes a violation of probationary term number 12 (Community Service).

13. Respondent has failed to pay any portion of the cost recovery, and has made no effort to do so. This is a violation of probationary term number 13 (Cost Recovery).

14. On August 28, 2009, the Board sent Respondent a Notification of Non-Compliance of Terms and Conditions of Probation, informing him of his failure to comply with probationary terms numbers 3, 6, 7, 11, 12 and 13. The Board enclosed a blank copy of a Quarterly Report of Compliance for him to complete and submit. Respondent did not respond to the letter or submit any quarterly report.

15. At the administrative hearing, Respondent stated that he understood everything that was addressed at the hearing and apologized for the time and effort expended by the Board. Although he blamed the failure to pay costs or complete coursework on financial woes, he had no explanation for his failure to submit quarterly reports or failure to provide requested patient records. He stated, "You have gotten my attention. These things will never happen again." However, this assertion was implausible, given Respondent's failure to attempt any compliance during his two years, eight months of probation, particularly after written requests for compliance and the service of an Accusation 10 months ago.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent's Optometrist Certificate, pursuant to Business and Professions Code sections 3090 and 3110, subdivision (x), for unprofessional conduct in failing to comply with the Board's requests for patient records, as set forth in Factual Findings 5 through 7.

2. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 2 of his probation, by failing to obey all laws, specifically by reason of his violation of Business and Professions Code section 3110, subdivision (x), as set forth in Factual Findings 3 through 8.

3. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 6 of his probation, by failing to provide written quarterly reports, as set forth in Factual Findings 3, 4 and 9.

4. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 7 of his probation, by failing to function as an optometrist for the minimum required hours, as set forth in Factual Findings 3, 4 and 10.

5. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 11 of his probation, by failing to complete the required 40 hours of optometry courses per year, as set forth in Factual Findings 3, 4 and 11.

6. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 12 of his probation, by failing to obtain Board pre-approval for community service, as set forth in Factual Findings 3, 4 and 12.

7. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 13 of his probation, by failing to pay any costs, as set forth in Factual Findings 3, 4 and 13.

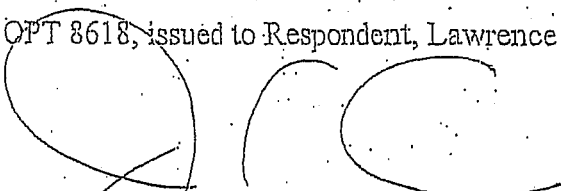
8. Respondent knowingly stipulated to the discipline imposed on his optometrist certificate. He again agreed to abide by the probationary terms and conditions when they were explained to him in July 2008. Nevertheless, Respondent unreasonably failed to comply with numerous probationary terms for over two years, eight months of his three year probation. This failure to comply persisted, despite written requests for compliance and the service of an Accusation 10 months ago. Although Respondent now insists he will comply with his probationary terms, his past actions bode poorly for the likelihood of his future compliance. Furthermore, other than this hollow assurance, Respondent has failed to take any action which would demonstrate his willingness to begin complying with his probationary terms. Respondent has been given more than ample time and opportunities to demonstrate that he was serious about compliance, but has made no effort to do so. Given the foregoing, the public health, safety and welfare cannot be protected by any discipline short of revocation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is made:

Optometrist Certificate Number OPT 8618, issued to Respondent, Lawrence Edwin Young, is hereby revoked.

DATED: December 22, 2010


JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS
Deputy Attorney General

4 State Bar No. 238437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to
Revoke Probation Against,

Case No. CC 2004-59

LAWRENCE EDWIN YOUNG
10004 Sierra Avenue
Fontana, CA 92335

ACCUSATION

Optometrist Certificate No. OPT 8618

AND

Respondent.

PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Mona Maggio (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs (Board).

2. On or about October 2, 1986, the Board issued Optometrist Certificate No. OPT 8618 to Lawrence Edwin Young (Respondent). The Optometrist Certificate was in effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Lawrence Edwin Young," Case No. CC 2004-59, the Board issued a decision, effective April 3, 2008, in which Respondent's Optometrist Certificate was revoked. However, the revocation was stayed

1 and Respondent was placed on probation for a period of three (3) years with certain terms and
2 conditions, as more fully outlined below. A copy of the Board's Decision and Order in Case
3 No. CC 2004-59 is attached as Exhibit A and incorporated herein by reference.

4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation are brought before the Board,
6 Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code unless otherwise indicated.

8 STATUTORY PROVISIONS

9 5. Section 3070, subdivision (a), states:

10 "Before engaging in the practice of optometry, each licensed optometrist shall notify the
11 board in writing of the address or addresses where he or she is to engage, or intends to engage, in
12 the practice of optometry and, also, of any changes in his or her place of practice. The practice of
13 optometry is the performing or the controlling of any of the acts set forth in Section 3041."

14 6. Section 3090 states:

15 "Except as otherwise provided by law, the board may take action against all persons guilty
16 of violating this chapter or any of the regulations adopted by the board. The board shall enforce
17 and administer this article as to licenseholders, and the board shall have all the powers granted in
18 this chapter for these purposes, including, but not limited to, investigating complaints from the
19 public, other licensees, health care facilities, other licensing agencies, or any other source
20 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
21 adopted by the board."

22 7. Section 3110 states, in pertinent part:

23 "The board may take action against any licensee who is charged with unprofessional
24 conduct, and may deny an application for a license if the applicant has committed unprofessional
25 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
26 limited to, the following:

27 ///

28 ///

1 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter or any of the rules and
3 regulations adopted by the board pursuant to this chapter.

4
5 "(x) Failure or refusal to comply with a request for the clinical records of a patient, that is
6 accompanied by that patient's written authorization for release of records to the board, within 15
7 days of receiving the request and authorization, unless the licensee is unable to provide the
8 documents within this time period for good cause."

9 **COST RECOVERY**

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

14 **ACCUSATION**

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Failure to Provide Patient Records to the Board)**

17 9. Respondent is subject to discipline pursuant to Code sections 3090 and 3110,
18 subdivision (x), on the grounds of unprofessional conduct, in that Respondent failed to comply
19 with the Board's August 25, 2009, and/or, September 25, 2009, request for clinical records of a
20 patient in regard to Complaint No. CC 2009-11. The Board's requests were accompanied by the
21 patient's written authorization for release of records to the board.

22 **PETITION TO REVOKE PROBATION**

23 10. Effective April 3, 2009, pursuant to the Board's Decision and Order in Case No. CC
24 2004-59, Respondent was placed on three (3) years probation, and subject to terms and conditions
25 of probation, including, but not limited to the following:

26 2. Obey All Laws. Respondent shall obey all federal, state and local laws,
27 and all rules governing the practice of optometry in California.
28

1 3. **Comply With The Board's Probation Program.** Respondent shall fully
2 comply with the conditions of the Probation Program established by the Board and
3 cooperate with representatives of the Board in its monitoring and investigation of the
4 Respondent's compliance with the Board's Probation Program.

5 Respondent shall, at his own expense, report in person to the Board's
6 headquarters in Sacramento within three (3) months of the effective date of the Board's
7 decision, and as the Board deems necessary if it is determined that Respondent may not be
8 compliant with any of the terms or conditions of his probation.

9 Respondent shall inform the Board in writing within no more than 15
10 days of any address change and shall at all times maintain an active, current license status
11 with the Board, including during any period of suspension.

12 Respondent shall comply with the Board's probation surveillance
13 program; including, but not limited to, allowing access to the probationer's optometric
14 practice(s) and patient records upon request of the board or its agent.

15 Respondent shall pay the monitoring cost associated with the Board's
16 probation surveillance program each and every year of probation, as designated by the
17 Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board
18 of Optometry and delivered to the Board or its designee no later than January 31 of each
19 calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of
20 probation.

21 Upon successful completion of probation, respondent's license shall be
22 fully restored.

23 6. **Submit Written Reports.** Respondent, during the period of probation,
24 shall submit or cause to be submitted such written reports/declarations and verification of
25 actions under penalty of perjury, as required by the Board. These reports/declarations shall
26 contain statements relative to Respondent's compliance with all the conditions of the
27 Board's Probation Program. Respondent shall immediately execute all release of
28 information forms as may be required by the Board or its representatives. Respondent
29 shall provide a copy of this decision to the optometric regulatory agency in every state and
30 territory in which he has an optometry license.

31 7. **Function as an Optometrist.** Respondent, during the period of
32 probation, shall engage in the practice of optometry in California for a minimum of 24
33 hours per week for 6 consecutive months or as determined by the Board. For purposes of
34 compliance with the section, "engage in the practice of optometry" may include, when
35 approved by the Board, volunteer work as an optometrist, or work in any non-direct patient
36 care position that requires licensure as an optometrist. If Respondent has not complied
37 with this condition during the probationary term, and the Respondent has presented
38 sufficient documentation of his good faith efforts to comply with this condition, and if no
39 other conditions have been violated, the Board, in its discretion, may grant an extension of
40 the Respondent's probation period up to one year without further hearing in order to
41 comply with this condition. During the one year extension, all original conditions of
42 probation shall apply.

43 11. **Complete Optometry Course.** Respondent, at his own expense, shall
44 enroll and successfully complete courses relevant to the practice of optometry, including,
45 but not limited to, a course in ethics. Respondent shall obtain approval from the Board
46 before enrolling in the ethics course. These courses shall be in addition to the courses

required for license renewal. Respondent shall complete forty (40) hours of course work per year for each year of probation.

12. **Community Services - Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a community service program in which Respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least 400 hours over the course of the period of probation.

13. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$10,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

11. Respondent's probation is subject to revocation pursuant to Probation Condition No. 2 (Obey All Laws), in that Respondent failed to obey all laws by violating provisions of the Optometry Practice Act, as more fully discussed in paragraph 9, above, which is herein incorporated by reference as set forth in whole.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Provide Written Quarterly Reports)

12. Respondent's probation is subject to revocation pursuant to Probation Conditions No. 3 (Comply with Probation Program), and No. 6 (Submit Written Reports), in that during the course of his probation, Respondent has failed to provide Quarterly Compliance Reports to the Board.

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1 THIRD CAUSE TO REVOKE PROBATION

2 (Failure to Function as an Optometrist)

3 13. Respondent's probation is subject to revocation under Probation Conditions No. 3
4 (Comply with Probation Program), and No. 7 (Function as an Optometrist), in that Respondent
5 has failed to evidence a minimum of twenty-four (24) practice hours per week during a six (6)
6 consecutive month period. On or about August 28, 2009, the Board sent Respondent a letter
7 regarding his non-compliance with probation, requesting that he provide the Board with evidence
8 of his practice hours. Respondent has failed to provide any patient records or other
9 documentation to support the requirements of his minimum practice hours.

10 FOURTH CAUSE TO REVOKE PROBATION

11 (Failure to Complete Optometry Course)

12 14. Respondent's probation is subject to revocation under Probation Conditions No. 3
13 (Comply with Probation Program), and No. 11 (Complete Optometry Course), in that Respondent
14 failed to complete forty (40) hours of optometry courses, in addition to courses required for
15 license renewal, in or between April 3, 2008 and April 3, 2009. In addition, Respondent has
16 failed to provide evidence of enrollment and successful completion of any of the forty (40) hours
17 of education courses related to the practice of optometry for the April 3, 2009 to April 3, 2010
18 probation year, and/or, a Board pre-approved ethics course.

19 FIFTH CAUSE TO REVOKE PROBATION

20 (Failure to Comply with Community Services' Provision)

21 15. Respondent's probation is subject to revocation under Probation Conditions No. 3
22 (Comply with Probation Program), and No. 12 (Community Services - Free Services), in that
23 Respondent failed to submit a community service program and Community Service Verification
24 Form to the Board for pre-approval, and has not evidenced completion of any hours of
25 Community Service - Free Services to the Board during the course of his probation.

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1 SIXTH CAUSE TO REVOKE PROBATION

2 ~~(Failure to Comply with Cost Recovery Agreement)~~

3 16. Respondent's probation is subject to revocation under Probation Conditions No. 3
4 ~~(Comply with Probation Program)~~, and No. 13 (Cost Recovery), in that Respondent has failed to
5 pay any of the \$10,000 cost recovery ordered by the Board. Respondent signed an agreement for
6 a payment plan, consisting of an initial month's payment of \$357.22, due July 30, 2008, and 27
7 subsequent monthly payments of \$357.14. Respondent failed to make his initial payment and all
8 other payments thereafter.

9 PRAYER

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

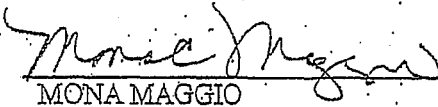
12 1. Revoking the probation that was granted by the Board in Case No. CC 2004-59 and
13 imposing the disciplinary order that was stayed, thereby revoking Optometrist Certificate
14 No. OPT 8618, issued to Respondent Lawrence Edwin Young;

15 2. Revoking or suspending Optometrist Certificate No. OPT 8618, issued to Respondent
16 Lawrence Edwin Young;

17 3. Ordering Respondent Lawrence Edwin Young to pay the State Board of Optometry
18 the reasonable costs of the investigation and enforcement of this case pursuant to section 125.3;
19 and

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 01/27/2010

23 
24 MONA MAGGIO
25 Executive Officer
26 State Board of Optometry
27 Department of Consumer Affairs
28 State of California
Complainant

27 LA2009604462
28 11/10/09 dmm.
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BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. CC 2004-59

LAWRENCE EDWIN YOUNG
10004 Sierra Avenue
Fontana, CA 92335

Optometrist Certificate No. OPT 8618
Branch Office License No. 6397

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the State Board of Optometry, as its Decision in this matter.

This Decision shall become effective on April 3, 2008.

It is so ORDERED March 3, 2008.



FOR THE STATE BOARD OF OPTOMETRY

RECEIVED BY
STATE BOARD OF OPTOMETRY

2008 FEB 28 PM 4:25

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2554
Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. CC 2004-59

11 LAWRENCE EDWIN YOUNG
12 10004 Sierra Avenue
13 Fontana, CA 92335

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Optometrist Certificate No. OPT 8618
15 Branch Office License No. 6397

16 Respondent.

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the State Board of Optometry (Board) the parties hereby
20 agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to
21 the Board for approval and adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Taryn Smith (Complainant) is the Executive Officer of the Board. She
24 brought this action solely in her official capacity and is represented in this matter by Edmund G.
25 Brown Jr., Attorney General of the State of California, by Scott J. Harris, Deputy Attorney
26 General.

27 ///

28 ///

2. Respondent Lawrence Edwin Young is represented in this proceeding by attorney Steven J. Cote, whose address is 19138 Walnut Drive, Suite 100, Rowland Heights, California, 91748.

3. On or about October 2, 1986, the Board issued Optometrist Certificate Number OPT-8618 (Certificate) to Respondent. The Certificate expired on or about March 31, 2004. On or about June 2, 2004 the Certificate was renewed. The Certificate will expire on March 31, 2008, unless renewed.

4. On or about February 17, 2004, the Board issued Branch Office License No. 6397 to Respondent. The License expired on February 1, 2006, and has not been renewed.

JURISDICTION

5. Accusation No. CC 2004-59 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 12, 2007. Respondent was found to be in default by the Board on or about May 17, 2007, for failure to timely file a Notice of Defense, which was to become effective on or about June 18, 2007. On or about August 17, 2007, the Board issued an Order Vacating Default Decision after Respondent submitted a motion seeking to vacate the original Default Decision and Order and a Notice of Defense contesting the Accusation. A copy of Accusation No. CC 2004-59 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 2004-59. 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 his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to

1 reconsideration and court review of an adverse decision; and all other rights accorded by the
2 California Administrative Procedure Act and other applicable laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 CULPABILITY

6 9. Respondent admits the truth of each and every charge and allegation in
7 Accusation No. CC 2004-59, except for the allegation and charge of his unlicensed practice of
8 optometry between June 25, 2004 and December 17, 2004, as more fully discussed in paragraph
9 18, lines 22-23, on page 6 of Accusation No. CC 2004-59, which herein is withdrawn by the
10 Board.

11 10. Respondent agrees that his Optometrist Certificate is subject to discipline
12 and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
13 Order below.

14 CONTINGENCY

15 11. This stipulation shall be subject to approval by the State Board of
16 Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the
17 State Board of Optometry may communicate directly with the Board regarding this stipulation
18 and settlement, without notice to or participation by Respondent. By signing the stipulation,
19 Respondent understands and agrees that he may not withdraw from this agreement or seek to
20 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
21 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
22 shall be of no force or effect, and, except for this paragraph, it shall be inadmissible in any legal
23 action between the parties, and the Board shall not be disqualified from further action by having
24 considered this matter.

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

28 \\\

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist Certificate No. OPT-8618, issued to Respondent Lawrence Edwin Young, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years pursuant to the terms and conditions of probation contained below.

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

1. **Actual Suspension.** Optometrist Certificate No. OPT 8618, issued to Respondent Lawrence Edwin Young, is suspended for a period of fifteen (15) days.

2. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

3. **Comply With The Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program.

Respondent shall, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determined that Respondent may not be compliant with any of the terms or conditions of his probation.

Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

1 Respondent shall comply with the Board's probation surveillance program;
2 including, but not limited to, allowing access to the probationer's optometric practice(s) and
3 patient records upon request of the board or its agent.

4 Respondent shall pay the monitoring cost associated with the Board's probation
5 surveillance program each and every year of probation, as designated by the Board, which may be
6 adjusted on an annual basis. Such costs shall be payable to the Board of Optometry and delivered
7 to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs
8 within 30 calendar days of the due date is a violation of probation.

9 Upon successful completion of probation, respondent's license shall be fully
10 restored.

11 4. **Report in Person.** Respondent, during the period of probation, shall
12 appear in person at interviews/meetings as directed by the Board or its designated
13 representatives.

14 5. **Residency, Practice, or Outside of State.** Any period of residency or
15 practice as an optometrist outside of the State of California shall not apply toward a reduction of
16 this probation time period. Respondent's probation is tolled any time he resides outside of
17 California. Respondent must provide written notice to the Board within 15 days of any change of
18 residency or practice outside California, and within 30 days prior to re-establishing residency or
19 returning to practice in California. Respondent shall provide a list of all states and territories
20 where he has ever been licensed as an optometrist. Respondent shall further provide information
21 regarding the status of each license and any changes in such license status during the term of
22 probation. Respondent shall inform the Board if he applies for or obtains a new optometry
23 license during the term of probation. Within 30 days of the Board's Decision, Respondent shall
24 provide a copy of the Board's Decision and Order to the Optometry Board of any other state
25 where he is currently licensed or becomes licensed to practice optometry.

26 6. **Submit Written Reports.** Respondent, during the period of probation,
27 shall submit or cause to be submitted such written reports/declarations and verification of actions
28 under penalty of perjury, as required by the Board. These reports/declarations shall contain

1 statements relative to Respondent's compliance with all the conditions of the Board's Probation
2 Program. Respondent shall immediately execute all release of information forms as may be
3 required by the Board or its representatives. Respondent shall provide a copy of this decision to
4 the optometric regulatory agency in every state and territory in which he has an optometry
5 license.

6 7. **Function as an Optometrist.** Respondent, during the period of
7 probation, shall engage in the practice of optometry in California for a minimum of 24 hours per
8 week for 6 consecutive months or as determined by the Board. For purposes of compliance with
9 the section, "engage in the practice of optometry" may include, when approved by the Board,
10 volunteer work as an optometrist, or work in any non-direct patient care position that requires
11 licensure as an optometrist. If Respondent has not complied with this condition during the
12 probationary term, and the Respondent has presented sufficient documentation of his good faith
13 efforts to comply with this condition, and if no other conditions have been violated, the Board, in
14 its discretion, may grant an extension of the Respondent's probation period up to one year
15 without further hearing in order to comply with this condition. During the one year extension, all
16 original conditions of probation shall apply.

17 8. **Employment Approval and Reporting Requirements.** Respondent
18 shall obtain prior approval from the Board before commencing or continuing any employment,
19 paid or voluntary, as an optometrist. Respondent shall cause to be submitted to the Board all
20 performance evaluations and other employment related reports as an optometrist upon request of
21 the Board.

22 If working as an employee, Respondent shall provide a copy of this decision to his
23 employer and immediate supervisors prior to commencement of any optometric or other health
24 care related employment. In addition to the above, Respondent shall notify the Board in writing
25 within seventy-two (72) hours after he obtains any optometric or other health care related
26 employment. Respondent shall notify the Board in writing within seventy-two (72) hours after
27 he is terminated or separated, regardless of cause, from any optometric, or other health care

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1 related employment with a full explanation of the circumstances surrounding the termination or
2 separation.

3 9. **Supervised Environment.** Within 60 days of the effective date of this
4 decision, Respondent shall submit to the Board, for its prior approval, the name and
5 qualifications of one or more proposed supervisors and a plan for each such supervisor by which
6 Respondent's practice would be supervised. Respondent shall not practice until receiving
7 notification of Board approval of Respondent's choice of a supervisor. The plan of supervision
8 shall be general and not require the physical presence of the supervising optometrist during the
9 time optometric procedures are performed, but does require an occasional random check of the
10 work performed on the patient. Additionally, the supervisor shall have full and random access to
11 all patient records of Respondent. Each proposed supervisor shall be a California licensed
12 optometrist who shall submit written reports to the Board on a quarterly basis verifying that
13 supervision has taken place as required and include an evaluation of Respondent's performance.
14 It shall be Respondent's responsibility to assure that the required reports are filed in a timely
15 manner. The supervisor shall be independent, with no prior business or professional relationship
16 with Respondent and the supervisor shall not be in a familial relationship with or be an
17 employee, (including independent contractor) partner or associate of Respondent. If the
18 supervisor terminates or is otherwise no longer available, Respondent shall not practice until a
19 new supervisor has been approved by the Board. All costs of the supervision shall be borne by
20 the Respondent.

21 10. **Employment Limitations.** Respondent shall not work in any health care
22 setting as a supervisor of optometrists. The Board may additionally restrict Respondent from
23 supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.
24 Respondent shall not work as a faculty member in an approved school of optometry or as an
25 instructor in a Board approved continuing education program. Respondent shall work only on a
26 regularly assigned, identified and predetermined worksite and shall not work in a float capacity.
27 If the respondent is working or intends to work in excess of 40 hours per week, the Board may
28 request documentation to determine whether there should be restrictions on the hours of work.

1 11. **Complete Optometry Course.** Respondent, at his own expense, shall
2 enroll and successfully complete courses relevant to the practice of optometry, including, but not
3 limited to, a course in ethics. Respondent shall obtain approval from the Board before enrolling
4 in the ethics course. These courses shall be in addition to the courses required for license
5 renewal. Respondent shall complete forty (40) hours of course work per year for each year of
6 probation.

7 12. **Community Services - Free Services.** Within 60 days of the
8 effective date of this decision, Respondent shall submit to the Board for its prior approval a
9 community service program in which Respondent shall provide free non-optometric services on
10 a regular basis to a community or charitable facility or agency for at least 400 hours over the
11 course of the period of probation.

12 13. **Cost Recovery.** Respondent shall pay to the Board costs associated with
13 its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the
14 amount of \$10,000.00. Respondent shall be permitted to pay these costs in a payment plan
15 approved by the Board, with payments to be completed no later than six months prior to the end
16 of the probation term.

17 If Respondent has not complied with this condition during the probationary term,
18 and Respondent has presented sufficient documentation of his or her good faith efforts to comply
19 with this condition, and if no other conditions have been violated, the Board, in its discretion,
20 may grant an extension of the Respondent's probation period up to one year without further
21 hearing in order to comply with this condition. During the one year extension, all original
22 conditions of probation will apply.

23 14. **License Surrender.** During Respondent's term of probation, if
24 Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy
25 the conditions of probation, Respondent may surrender his license to the Board. The Board
26 reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to
27 grant the request, or to take any other action deemed appropriate and reasonable under the
28 circumstances, without further hearing. Upon formal acceptance of the tendered license and wall

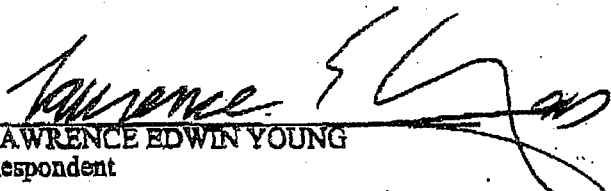
certificate, Respondent will no longer be subject to the conditions of probation, except he may be subject to reimbursing the Board for its costs of investigation and prosecution upon a petition for reinstatement.

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Steven J. Cote. I understand the stipulation and the effect it will have on my Optometrist Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 2-8-08


LAWRENCE EDWIN YOUNG
Respondent

I have read and fully discussed with Respondent Lawrence Edwin Young the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2-18-08


STEVEN J. COTE
Attorney for Respondent

///

///


1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the State Board of Optometry.

4
5 DATED: 2/22/08

6 EDMUND G. BROWN JR., Attorney General
of the State of California

7
8 GLORIA A. BARRIOS
Supervising Deputy Attorney General

9
10
11 
SCOTT J. HARRIS
Deputy Attorney General

12 Attorneys for Complainant

13
14 DOJ Matter ID: LA2007600189
15 60256940.wpd

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

In the Matter of the Accusation Against:

Case No. CC 2004-59

LAWRENCE EDWIN YOUNG
10004 Sierra Avenue
Fontana, CA 92335

Optometrist Certificate No. OPT 8618
Branch Office License No. 6397

Respondent.

ORDER VACATING DEFAULT DECISION AND ORDER

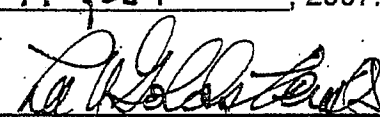
The Default Decision and Order revoking Optometrist Certificate No. OPT 8618 and Branch Office License Number 6397, both issued to respondent Lawrence Edwin Young, was made on May 17, 2007, to become effective on June 18, 2007.

Upon respondent's motion to vacate the Default Decision and Order, on May 29, 2007, the State Board of Optometry issued an order staying the effective date of said decision and order until August 24, 2007.

Good Cause having been shown pursuant to Government Code section 11520, subdivision (2), the Default Decision and Order entered herein is hereby vacated and respondent shall be granted a hearing on the merits in the above-entitled matter.

IT IS SO ORDERED this 17 day of August, 2007.

DATED: 08/17/2007


Lee A. Goldstein, OD, MPA - President
STATE BOARD OF OPTOMETRY

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

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In the Matter of the Accusation Against:

Case No. CC 2004-59

LAWRENCE EDWIN YOUNG
10004 Sierra Avenue
Fontana, CA 92335

Optometrist Certificate No. OPT 8618
Branch Office License No. 6397

Respondent.

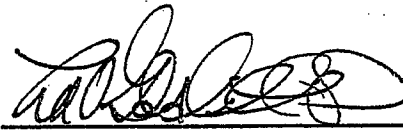
ORDER STAYING EFFECTIVE DATE OF DECISION

Upon respondent's request to vacate the Default Decision and Order herein made on May 17, 2007, to become effective on June 18, 2007,

IT IS HEREBY ORDERED that the effective date of said decision be stayed until August 24, 2007 for the purpose of allowing the Board to evaluate and consider respondent's request.

DATED:

May 29, 2007



Lee A. Goldstein, OD, MPA - President
STATE BOARD OF OPTOMETRY

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. CC 2004-59

12 LAWRENCE EDWIN YOUNG
13 10004 Sierra Avenue
Fontana, CA 92335

DEFAULT DECISION
AND ORDER

14 Optometrist Certificate No. OPT 8618
15 Branch Office License No. 6397

[Gov. Code, §11520]

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about March 26, 2007, Complainant Taryn Smith, in her official
20 capacity as the Executive Officer of the Board of Optometry, filed Accusation No. CC 2004-59
21 against Lawrence Edwin Young (Respondent) before the Board of Optometry (Board).

22 2. On or about October 2, 1986, the Board issued Optometrist Certificate
23 Number OPT 8618 (Certificate) to Respondent. The Certificate expired on or about March 31,
24 2004. On or about June 2, 2004 the Certificate was renewed. On or about June 25, 2004, the
25 Board deemed the renewal invalid. On or about December 17, 2004, the Board renewed the
26 Certificate. The Certificate will expire on March 31, 2008, unless renewed. .

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28 \\\

1 3. On or about February 17, 2004, the Board issued Branch Office License
2 Number 6397 to Respondent. The Branch Office License expired on February 1, 2006, and has
3 not been renewed.

4 4. On or about April 12, 2007, Anna A. Carpenter, an employee of the
5 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. CC
6 2004-59, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
7 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
8 which was and is 10004 Sierra Avenue, Fontana, CA 92335. A copy of the Accusation, the
9 related documents, and Declaration of Service are attached as Exhibit A, and are incorporated
10 herein by reference.

11 5. Service of the Accusation was effective as a matter of law under the
12 provisions of Government Code section 11505, subdivision (c).

13 6. Business and Professions Code (Code) Section 118, subdivision (b)
14 provides, in pertinent part, that the expiration, or forfeiture by operation of law, of a license
15 issued by a board...or its surrender without the written consent of the board, shall not, during any
16 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
17 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
18 provided by law or to enter an order suspending or revoking the license or otherwise taking
19 disciplinary action against the licensee.

20 7. Government Code section 11506 states, in pertinent part:

21 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
23 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
24 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

25 8. Respondent failed to file a Notice of Defense within 15 days after service
26 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
27 Accusation No. CC 2004-59.

28 \\

1 9. California Government Code section 11520 states, in pertinent part:

2 "(a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express admissions or upon
4 other evidence and affidavits may be used as evidence without any notice to respondent."

5 10. Pursuant to its authority under Government Code section 11520, the Board
6 finds Respondent is in default. The Board will take action without further hearing and, based on
7 the evidence before it, finds that the allegations in Accusation No. CC 2004-59 are true.

8 11. The total costs for investigation and enforcement are \$9,923.25 as of May
9 14, 2007.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Lawrence Edwin
12 Young has subjected his Optometrist Certificate No. OPT 8618 and Branch Office License
13 Number 6397 to discipline.

14 2. A copy of the Accusation and the related documents and Declaration of
15 Service are attached as Exhibit A.

16 3. The agency has jurisdiction to adjudicate this case by default.

17 4. The Board is authorized to revoke Respondent's Optometrist Certificate
18 and Branch Office License based upon the following violations alleged in the Accusation:

19 a. Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110,
20 subdivisions (e) and (f), and 480, (a)(2) and (a)(3), in that Respondent committed unprofessional
21 conduct by knowingly altering a certificate of registration issued by the Board in a material
22 respect, as more fully discussed in paragraph 15 of Accusation No. CC 2004-59.

23 b. Code sections 119, subdivision (a)(2), 3078, subdivisions (c) and (d),
24 3090, 3110, subdivision (e) and (f), 3107 and 480, subdivisions (a)(2) and (a)(3), in that
25 Respondent committed unprofessional conduct by using and submitting a materially altered
26 certificate of registration a medical group's credentialing department, as more fully discussed in
27 paragraph 15 of Accusation No. CC 2004-59.

28 \\\

1 c. Code sections 3078, subdivisions (c) and (d), 3090, 3110, subdivision (e)
2 and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed unprofessional
3 conduct and acts of dishonesty, as more fully discussed in paragraph 15 of Accusation No. CC
4 2004-59.

5 d. Code sections 3078, subdivision (c) and (d), 3090 and 3110, subdivision
6 (s), and 3040, in that Respondent committed unprofessional conduct by engaging in the unlawful
7 practice of optometry in or between March 31, 2004 and June 10, 2004; and, in or between June
8 25, 2004 and December 17, 2004, as more fully discussed in paragraph 18 of Accusation No. CC
9 2004-59.

10 e. Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110,
11 subdivisions (e) and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed
12 unprofessional conduct and an act of dishonesty by knowingly misrepresenting and submitting a
13 forged letter to the Board in connection with the certification of his continuing education
14 requirements, as more fully discussed in paragraph 19 of Accusation No. CC 2004-59.

15 f. Code sections 3078, subdivisions (c) and (d), 3090 and 3110, in that
16 Respondent committed unprofessional conduct through his acts as more fully discussed in
17 paragraphs 15, 18 and 19 of Accusation No. CC 2004-59.

18 LOCATION OF RECORDS

19 The record upon which this Default Decision and Order is based is located at the
20 Sacramento office of the Board.

21 * * *

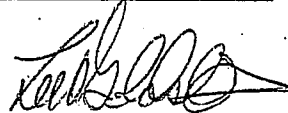
1 ORDER

2 IT IS SO ORDERED that Optometrist Certificate No. OPT 8618, and Branch
3 Office License Number 6397, heretofore issued to Respondent Lawrence Edwin Young, are
4 revoked.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may
6 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
7 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
8 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
9 statute.

10 This Decision shall become effective on June 18, 2007.

11 It is so ORDERED May 17, 2007

12 

13 FOR THE BOARD OF OPTOMETRY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA

16
17
18 60217308.wpd
19 DOJ docket number: LA2007600189

20 Attachments:

21 Exhibit A: Accusation No. CC 2004-59, Related Documents, and Declaration of Service
22
23
24
25
26
27
28

Exhibit A
Accusation No. CC 2004-59,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC 2004-59

13 LAWRENCE EDWIN YOUNG
14 10004 Sierra Avenue
Fontana, CA 92335

ACCUSATION

15 Optometrist Certificate No. OPT 8618
16 Branch Office License No. 6397

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Taryn Smith (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Optometry (Board).
21 2. On or about October 2, 1986, the Board issued Optometrist Certificate
22 Number OPT 8618 (Certificate) to Lawrence Edwin Young (Respondent). The Certificate
23 expired on or about March 31, 2004. On or about June 2, 2004 the Certificate was renewed. On
24 or about June 25, 2004, the Board deemed the renewal invalid. On or about December 17, 2004,
25 the Board renewed the Certificate. The Certificate will expire on March 31, 2008, unless
26 renewed.

27 ///

28 ///

3. On or about February 17, 2004, the Board issued Branch Office License Number 6397 to Respondent. The Branch Office License expired on February 1, 2006, and has not been renewed.

JURISDICTION

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

5. Section 3090^{1/} 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 license holders, 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 3078 of the Code states, in pertinent part:

290

"(c) A permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit.

“(d) If the board revokes or suspends the license to practice optometry of an individual optometrist...to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.”

7. Code section 119, subdivision (a)(2), states, in pertinent part,

“Any person who does any of the following is guilty of a misdemeanor:

“(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

1. Code section 3090 was repealed and [re]added by Stats.2005, c. 393 (A.B.488), § 4.

1 ...
2 (2) A fictitious license or any document simulating a license or purporting to
3 be or have been issued as a license."

4 8. Section 3040 of the Code states:

5 "It is unlawful for a person to engage in the practice of optometry or to display a
6 sign or in any other way to advertise or hold himself or herself out as an optometrist without
7 having first obtained a certificate of registration from the board under the provisions of this
8 chapter or under the provisions of any former act relating to the practice of optometry. "

9 9. Code section 3106^{2/} states that, "knowingly making or signing any
10 certificate or other document directly or indirectly related to the practice of optometry that falsely
11 represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

12 10. Code section 3107^{3/} states: "It is unlawful to use or attempt to use any
13 license issued by the board that has been purchased, fraudulently issued, counterfeited, or issued
14 by mistake, as a valid license."

15 11. Code section 3110^{4/} states, in pertinent part: "The board may take action
16 against any licensee who is charged with unprofessional conduct, and may deny an application
17 for a license if the applicant has committed unprofessional conduct. In addition to other
18 provisions of this article, unprofessional conduct includes, but is not limited to, the following:

19
20 ///

21 ///

22 _____
23 2. Former Code section 9096.6 was renumbered Code section 3106 and amended by
24 Stats.2005, c. 393 (A.B.488), §12.

25 3. Former Code section 3124 was renumbered Code section 3107 and amended by
26 Stats.2005, c. 393 (A.B.488), § 30. Former Code section 3124 stated that it was unlawful to
27 use any certificate that was *materially altered*.

28 4. Former Code section 3090, subdivision (b), was renumbered Code section 3110 and
amended by Stats.2005, c. 393 (A.B.488), § 28. Former Code section 3090, subdivision (b),
allowed the Board to discipline a licensee for *general unprofessional conduct*.

1 “(e) The commission of fraud, misrepresentation, or any act involving
2 dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of
3 an optometrist;

4 “(f) Any action or conduct which would have warranted the denial of a license.
5 ”

6 “(s) The practice of optometry without a valid, unrevoked, unexpired license^{5/};
7 ”

8 “(v) Altering with fraudulent intent a license issued by the board, or using a
9 fraudulently altered license, permit certification or any registration issued by the board.^{6/}”

10 12. Code section 480, states, in pertinent part:

11 “(a) A board may deny a license regulated by this code on the
12 grounds that the applicant has one of the following:

13 “(2) Done any act involving dishonesty, fraud or deceit with the intent to
14 substantially benefit himself or another, or substantially injure another; or

15 “(3) Done any act which if done by a licentiate of the business or profession in
16 question, would be grounds for suspension or revocation of license.”

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

21 14. Section 118, subdivision (b) of the Code provides, in pertinent part, that
22 the expiration, or forfeiture by operation of law, of a license issued by a board...or its surrender
23 without the written consent of the board, shall not, during any period in which it may be renewed,
24

25 5. Code section 3127 was repealed by Stats.2005, c. 393 (A.B.488), § 33, and renumbered
26 Code section 3110, subdivision (s).

27 6. Code section 3123 was repealed by Stats.2005, c. 393 (A.B.488), § 29, and renumbered
28 Code section 3110, subdivision (v). Former Code section 3123 required that the alteration be
material, but did not require fraudulent intent.

1 restored, reissued, or reinstated, deprive the board of its authority to institute or continue a
2 disciplinary proceeding against the licensee upon any ground provided by law or to enter an order
3 suspending or revoking the license or otherwise taking disciplinary action against the licensee.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Material Alteration of Certificate of Registration)

6 15. Respondent's Optometrist Registration and Branch Office License are
7 subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110,
8 subdivisions (e) and (f), and 480, (a)(2) and (a)(3), in that Respondent committed unprofessional
9 conduct by knowingly altering a certificate of registration issued by the Board in a material
10 respect. The circumstances are as follows:

11 a. On or about March 31, 2004, Respondent's Certificate of Registration,
12 with Receipt No. 07400002 expired. On or about December 1, 2004, a complaint was filed with
13 the Board by Med Advantage/Epic Management, which is affiliated with Pinnacle Medical
14 Group, with whom Respondent once provided contracted optometry services. On or about April
15 27, 2004, Epic Management's Credentialing Department received a facsimile from Respondent
16 for credentialing purposes containing a falsified certificate of registration. The certificate of
17 registration contained the following information: Respondent's License No. OPT 8618;
18 Respondent's name and address of record; an expiration date of March 31, 2006; and, Receipt
19 No. 07401882.

20 b. A review of the Board's records indicated that Respondent was never
21 issued a Certificate of Registration with Receipt No. 07401882; and, in fact, no such receipt
22 number exists. A further review of the Board's records indicated that the Respondent was not
23 validly licensed in the State of California in or between March 31, 2004 and June 10, 2004, and
24 June 25, 2004 and December 17, 2004, as more fully discussed in paragraph 18, below.

25 c. On or about January 31, 2005, a Senior Investigator with the Department
26 of Consumer Affairs (Investigator) interviewed the Respondent regarding the allegations that he
27 had fraudulently altered the renewal certificate and submitted it to a health care provider as proof

28 ///

1 of active status. Respondent stated that, "I may have done something for insurance company
2 purposes, pending my license renewal. I had a lot of problems during this period of time."

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Use of Counterfeited or Materially Altered Certificate of Registration)

5 16. Respondent's Optometrist Registration and Branch Office License are
6 subject to discipline pursuant to Code sections 119, subdivision (a)(2), 3078, subdivisions (c) and
7 (d), 3090, 3110, subdivision (e) and (f), 3107 and 480, subdivisions (a)(2) and (a)(3), in that
8 Respondent committed unprofessional conduct by using and submitting a materially altered
9 certificate of registration to Epic Management's Credentialing Department, as more fully
10 discussed in paragraph 15, above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Acts of Dishonesty)

13 17. Respondent's Optometrist Registration and Branch Office License are
14 subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3110,
15 subdivision (e) and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed
16 unprofessional conduct and acts of dishonesty, as more fully discussed in paragraph 15, above.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 (Unlicensed Practice of Optometry)

19 18. Respondent's Optometrist Registration and Branch Office License are
20 subject to discipline pursuant to Code sections 3078, subdivision (c) and (d), 3090 and 3110,
21 subdivision (s), and 3040, in that Respondent committed unprofessional conduct by engaging in
22 the unlawful practice of optometry in or between March 31, 2004 and June 10, 2004; and, in or
23 between June 25, 2004 and December 17, 2004. The circumstances are as follows:

24 a. On or about March 31, 2004, Respondent's Certificate of Registration
25 expired. On or about June 2, 2004, Respondent's renewal payment was received, and was
26 processed by the Board on or about June 10, 2004, on which date the Board issued Respondent
27 Renewal Certificate Receipt No. 00001425. However, on or about June 24, 2005, Respondent's
28 renewal payment check was dishonored. On or about June 25, 2004, the Board notified

1 Respondent that Renewal Certificate Receipt No. 00001425 was no longer valid. On or about
2 October 27, 2004 the Board sent a cease and desist letter to Respondent as a result of
3 Respondent's failure to pay renewal fees, and his failure to prove completion of his continuing
4 education requirements. On or about November 22, 2004, the Board received a cashiers check
5 from Respondent for his renewal fees. On or about December 17, 2004, the Board reinstated
6 Respondent's Certificate of Registration with Receipt No. 00000533.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 (Act of Dishonesty, Misrepresentation - Continuing Education)

9 19. Respondent's Optometrist Registration and Branch Office License are
10 subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110,
11 subdivisions (e) and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed
12 unprofessional conduct and an act of dishonesty by knowingly misrepresenting and submitting a
13 forged letter to the Board in connection with the certification of his continuing education
14 requirements. The circumstances are as follows:

15 a. On or about December 13, 2004, the Board received a letter dated
16 December 10, 2004, via facsimile from the Respondent, indicating that he had met all of his
17 continuing education requirements. Included in the facsimile was a letter from Dr. Curtis
18 Hog[g]arth, President of the Inland Empire Optometric Society, which certified that Respondent
19 had completed twenty-eight hours of continuing education.

20 b. On or about February 8, 2005, the Investigator interviewed Dr. Curtis
21 Hoggarth. Dr. Hoggarth indicated that he had not drafted or signed the letter in question. Dr.
22 Hoggarth further stated that he signs his name with his middle initial 'C' and, that his last name
23 is spelled with two 'G's.' The signature on the December 10, 2004 letter submitted by
24 Respondent does not include a middle initial 'C', and, Dr. Hoggarth's last name is incorrectly
25 spelled with only one 'G'.

26 c. On or about February 25, 2005, the Investigator interviewed Respondent.
27 Respondent admitted that Dr. Hoggarth provided him with a list of continuing education courses
28 he had completed. Respondent further admitted that he had, in fact, drafted and signed the

1 December 10, 2004 letter; and, that he had not obtained permission from Dr. Hoggarth to draft,
2 and/or, sign a letter addressed to the Board. At that time, the Investigator had Respondent initial
3 and date the December 10, 2004 letter next to the signature in order to verify that Respondent
4 had prepared and signed the letter without Dr. Hoggarth's approval.

5 SIXTH CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

7 20. Respondent's Optometrist Registration and Branch Office License are
8 subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090 and 3110, in
9 that Respondent committed unprofessional conduct through his acts as more fully discussed in
10 paragraphs 15, 18 and 19, above.

11 PRAYER

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

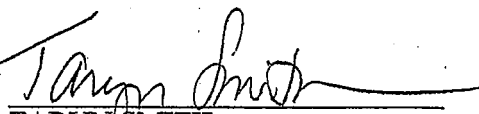
14 1. Revoking or suspending Optometrist Certificate Number OPT 8618,
15 issued to Respondent Lawrence Edwin Young.

16 2. Revoking or suspending Branch Office License Number 6397, issued to
17 Respondent Lawrence Edwin Young.

18 3. Ordering Respondent Lawrence Edwin Young to pay the Board of
19 Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code section 125.3;

21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 3/26/07

24
25 
26 TARYN SMITH
27 Executive Officer
28 Board of Optometry
State of California
Complainant



STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA95834
P (916) 575-7170 F (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 California State Board of Optometry (Board), and that in such capacity she has custody of the official records of the Board.

On this second day of April 2015, the Executive Officer examined said official records of the Board and found that **LAWRENCE EDWIN YOUNG** graduated from the University Of Houston College Of Optometry in 1986, and is the holder of Optometry License No. 8618, which was granted to him effective October 2, 1986. The current address of record for said Optometry License is 2400 Nova Ct., Rowland Heights, CA 91748.

Said records further reveal that on or about June 20, 2005, **LAWRENCE EDWIN YOUNG** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Business and Professions Code Section 3041.

Said records further reveal that on or about March 26, 2007, the Board filed an Accusation against **LAWRENCE EDWIN YOUNG**, in Case No. CC 2004-59. The Board, by Decision and Order effective June 18, 2007 adopted a Default Decision and Order resolving said Accusation. Optometry License No. 8186 and Branch Office License No. 6397 were revoked.

Said records further reveal that on or about May 17, 2007, **LAWRENCE EDWIN YOUNG** filed a written motion to vacate the Default Decision and Order, in Case No. CC 2004-59. The Board, by Order effective June 18, 2007 stayed the effective date of said Decision and Order until August 24, 2007.

Said records further reveal that on or about August 17, 2007, the Board, by Order effective August 17, 2007 vacated the Default Decision and Order, in Case No. CC 2004-59. The Board, by Decision and Order effective April 3, 2008, adopted a Stipulated Settlement and Disciplinary Order resolving said Accusation. Optometry License No. 8618 was revoked, the revocation was stayed and the license was placed on probation for three (3) years. After being placed on probation Optometry License No. 8618 was immediately suspended for fifteen (15) days.

Said records further reveal that on or about January 27, 2010, the Board filed an Accusation and Petition to Revoke Probation against **LAWRENCE EDWIN YOUNG**, in Case No. CC 2004-59. The Board, by Decision and Order effective February 12, 2011, adopted a Proposed Decision and Order resolving said Accusation and Petition to Revoke Probation. Optometry License No. 8618 was revoked effective February 12, 2011.

Said records further reveal that on or about February 2, 2012, **LAWRENCE EDWIN YOUNG** filed a Petition for Reinstatement, in Case No. CC 2004-59. The Board, by Decision and Order effective July 9, 2012, denied said Petition.

Said records further reveal that on or about August 26, 2013, **LAWRENCE EDWIN YOUNG** filed a Petition for Reinstatement, in Case No. CC 2013-64. The Board, by Decision and Order effective December 11, 2013, granted said Petition. Optometry License No. 8618 was reissued, immediately revoked, the revocation was stayed and the license was placed on probation for three (3) years.

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this second day of April 2015.


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: April 23, 2015

From: Board Staff

Telephone: (916) 575-7170

Subject: FULL BOARD CLOSED SESSION

Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and 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

To: Board Members

Date: April 23, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: **Agenda Item 4 – Review and Possible Approval of Amendments to the Board Member Handbook**

Background

With the assistance of legal counsel, Cyd Brandvein, Donna Burke and Board staff, the Board Member Handbook and Administrative Procedures Manual were combined into one cohesive document. Several policies were added in addition to those originally presented in the Administrative Manual to further assist Board Members and staff by co-locating frequently referred to materials into a single source document. Officer rolls and responsibilities were clarified and several grammatical edits, sequencing, and informational updates were made. In addition, staff provided various hyperlinks throughout the document. Board Members and staff can now use this document as a quick resource to pertinent websites, training information, forms, documents, statutes, and regulations.

Action Requested

Please review and vote to approve the proposed amendments to the Board Member Handbook.

Attachment

1. Revised Board Member Handbook
2. Board Member Handbook and Administrative Procedures Manual as previously presented

State of California
Business, Consumer Services, and Housing Agency
Department of Consumer Affairs



Board Member Handbook



California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
www.optometry.ca.gov

2015 Edition

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1. Introduction

Overview

The [California State Board of Optometry](#) (hereafter Board) was created by the California Legislature in 1913 under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. In 1923, the Board promulgated the first rules for the practice of optometry and the State Legislature first required all applicants for licensure to be graduates of an accredited school or colleges of optometry. The Board is responsible for accrediting these schools. To assure competent and ethical practitioners and protect the public from harm, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board.

Today, the Board is one of the Boards, bureaus, commissions, and committees within the [Department of Consumer Affairs](#) (DCA), part of the [Business, Consumer Services and Housing Agency](#) under the aegis of the [Governor](#). DCA is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While the DCA provides administrative oversight and support services, the Board has policy autonomy and sets its own policies, procedures, and initiates its own regulations.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code (BPC) § [3010.1](#)).

The Board consists of [11 members](#), five of whom shall be public members and six are professional members (licensed optometrists of the State of California actually engaged in the practice of optometry at the time of appointment or faculty members of a school or college of optometry). No more than two faculty members may be on the Board at any one time and they may not serve as public members. No member of the Board shall have a financial interest in any purchase or contract under Board purview nor shall he/she have financial interest in the sale of any property or optical supplies to any prospective candidate for examination before the Board. The public members shall not be licensees of the Board or of any other Healing Arts Board. The Governor appoints three public members and the six professional members. The [Senate Rules Committee](#) and the [Speaker of the Assembly](#) each appoint one public member. Board Members may serve up to two, four-year terms. Board Members are paid \$100 for each day actually spent in the discharge of official duties and are reimbursed travel expenses.

The purpose of this handbook is to provide guidance to Board Members regarding general processes and procedures involved with their position on the Board. It also serves as a useful source of information for new Board Members as part of the induction process. Board Members are typically asked to create and review policy and administrative changes, make disciplinary decisions, and preside over regular and special meetings. This handbook is additive to the Bagley-Keene Open Meeting Act and the Administrative Procedures Act which provide public meeting laws.

Mission Statement

To protect the health and safety of California consumers through licensing, education and regulation of the practice of Optometry.

Vision Statement

To ensure excellent optometric care for every Californian.

Values Statement

Consumer protection – We make effective and informed decisions in the best interest and for the safety of Californians.

Integrity – We are committed to honesty, ethical conduct, and responsibility.

Transparency – We hold ourselves accountable to the people of California. We operate openly so that stakeholders can trust that we are fair and honest.

Professionalism – We ensure qualified, proficient, and skilled staff provide excellent service to the State of California.

Excellence – We have a passion for quality and strive for continuous improvement of our programs, services, and processes through employee empowerment and professional development.

Board Responsibilities

With approximately 8,800 licensed optometrists, the largest population of optometrists in the United States, 3,000 branch office licenses, statements of licensure, and fictitious name permits, and 24,000 practice certifications, the Board is charged with the following duties and responsibilities:

- Accrediting the schools and colleges providing optometric education.
- Establishing educational requirements for admission to the examination for certificates of registration as California licensed optometrists.
- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.
- Setting and enforcing standards for continued competency of existing licensees.
- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe authorized pharmaceutical agents.
- Issuing certifications to diagnose and treat glaucoma for patients over the age of 18.
- Licensing branch offices and issuing fictitious name permits.
 - Effective January 1, 2007, the Board no longer registers Optometric Corporations. However, the Board has maintained the authority to regulate those in existence.

- Promulgating regulations governing:
 - Procedures of the Board
 - Admission of applicants for examination for licensure as optometrists
 - Minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions
- Providing for redress of grievances against licensees by investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, or unlawful activity.
- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted.

This procedures manual is provided to Board Members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board Members and ensure Board effectiveness and efficiency.

Definitions

Term	Acronym	Definition
<u>Administrative Law Judge</u>	ALJ	A judge from the <u>Office of Administrative Hearings</u> (OAH) who presides over license denial and discipline cases (the trier of fact) and makes a Proposed Decision to the Board that includes findings of fact, conclusions of law, and a recommended penalty.
<u>Administrative Procedures Act</u>	APA	The law that sets out the procedure for license denial and license discipline, to meet constitutional requirements for due process of law.
<u>Bagley-Keene Open Meeting Act.</u>	-	Provisions of the public meetings law governing state agencies
Business and Professions Code	BPC	A series of statutes passed by the legislature.
<u>Department of Consumer Affairs</u>	DCA	The DCA protects and serves California consumers while ensuring a competent and fair marketplace. The DCA issues licenses in more than 100 business and 200 professional categories, including doctors, dentists, contractors, cosmetologists and automotive repair facilities. The DCA includes 41 regulatory entities (25 boards, nine bureaus, four committees, two programs, and one commission). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints and discipline violators. The committees, commission and boards are semiautonomous bodies whose members are appointed

by the Governor and the Legislature. DCA provides them administrative support. DCA's operations are funded exclusively by license fees.

Executive Officer	EO	An individual who serves at the pleasure of the Board Members who provides direction to the EO in the areas of program administration, budget, strategic planning, and coordination of meetings
Office of Administrative Hearings	OAH	The state agency that provides neutral (unaffiliated with either party) judges to preside over administrative cases.
Office of Administrative Law	OAL	The state agency that reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.
Regulation	-	A standard that implements interprets or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.
State Administrative Manual	SAM	A reference source for statewide policies, procedures, requirements and information developed and issued by authoring agencies. In order to provide a uniform approach to statewide management policy, the contents have the approval of and are published by the authority of the Department of Finance Director and the Department of General Services Director.
Statute	-	A law passed by the legislature.
Stipulation	STIP	A form of plea bargaining in which a disciplinary case is settled by negotiated agreement prior to a hearing. The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines is used to guide these negotiated settlements.

Licenses and Certification Issued by the Board

The following chart provides an overview of the various licenses and certifications issued by the Board.

TYPE	DESCRIPTION	Authority
Optometric License (OPT)	Required to practice optometry in California.	BPC § 3040 , BPC § 3041
Statement of Licensure (SOL)	Required for each practice location other than the licensee's principal place of practice and other than any Branch Office License Location.	BPC § 3070 CCR § 1506(d) .
Branch Office License	Required for each location for the	BPC § 3077

(BOL)	practice of optometry and owned by a licensee that is in addition to the licensee's principal place of practice location.	
Fictitious Name Permit (FNP)	Required if a fictitious name is used in conjunction with the practice of optometry.	BPC § 3078 , CCR § 1518
Therapeutic Pharmaceutical Agents (TPA) Certification	Required for optometrists who wish to treat patients with pharmaceutical agents as authorized by this category.	BPC § 3041.3 , CCR § 1568
Lacrimal Irrigation and Dilation Certification	Required to perform lacrimal irrigation and dilation, an optometrist must be TPA certified.	BPC § 3041(e)(6) , BPC § 3041.3
Glaucoma Certification	Required to diagnose and treat Glaucoma, an optometrist must be TPA certified.	BPC § 3041(f)(5) , CCR § 1571

General Rules of Conduct

The following rules of conduct detail expectations of Board Members. The Board is comprised of both public and professional members with the intention that, together, the Board can collectively protect the public and regulate the Optometry profession.

- Board Members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
 - Board Members shall recognize the equal role and responsibilities of all Board Members.
 - Board Members shall adequately prepare for Board responsibilities.
 - Board Members shall not speak or act for the Board without proper authorization.
 - Board Members shall maintain the confidentiality of non-public documents and information.
 - Board Members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
 - Board Members shall treat all applicants and licensees in a fair and impartial manner.
- Board Members shall not use their positions on the Board for personal, familial or financial gain.

2. Board Meeting Procedures

All Healing Arts Boards under the DCA, including the Board must meet in accordance with the provisions set forth by the [Bagley-Keene Open Meeting Act](#). The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Open Meetings

The Bagley-Keene Act of 1967, officially known as the Bagley-Keene Open Meeting Act, implements a provision of the [California Constitution](#) which declares that "the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny", and explicitly mandates open meetings for [California](#) State agencies, Board s, and commissions. The act facilitates accountability and transparency of government activities and protects the rights of citizens to participate in State government deliberations. Similarly, California's [Brown Act](#) of 1953 protects [citizen rights](#) with regard to open meetings at the county and local government level.

The Bagley-Keene act stipulates that the Board is to provide adequate notice of meetings to be held to the public as well as provide an opportunity for public comment. The meeting is to be conducted in an open session, except where closed session is specifically noted.

Closed Session ([GC § 11126 et seq.](#))

The Bagley-Keene Act of 1967 also contains specific exceptions from the open meeting requirements where government has a demonstrated need for confidentiality.

Should a closed session be required, the Board must disclose in the open meeting a general statement about the closed session items (i.e. by mentioning it on the agenda). Additionally, all closed sessions must take place in a regularly scheduled or special meeting.

All material discussed in closed sessions must remain confidential. When such a session takes place, a staff person will be present to record and make available to Board Members the discussion topics and decisions made.

All closed sessions must be held during a regular or special meeting (§ 11128). A staff person shall be designated to attend the closed session and record the discussion topics and decisions made, which will be available only to members.

Closed Sessions may take place in the following instances:

- Personnel matters (i.e. appointments, employment, performance evaluations, etc.).
- Administrative disciplinary proceedings.
- Examination matters, such as when the Board administers or approves an exam.
- Pending litigation.

- Confidential audit reports.
- Protection of privacy when matters discussed would be an invasion of privacy if conducted in open session.
- Response to a threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment.

All information discussed in the closed session is confidential and must not be disclosed to outside parties.

Special Meetings ([GC § 11125 et seq.](#))

A special meeting may be held where compliance with a 10-day meeting notice would impose a hardship or when an immediate action would be required to protect the public interest.

Notice for a special meeting must be posted on the Internet at least 48 hours prior to the meeting. Upon commencement, the Board must state the specific facts that necessitate special meeting as a finding. This finding must be adopted by a two-thirds vote; failure to adopt the finding terminates the meeting.

The purpose and instructions for special meetings are detailed in [GC § 11125.4](#). The notice needs to specify the time, place and purpose of the Special Meeting.

Emergency Meetings ([GC § 11125.5](#))

An emergency meeting may be held for an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities. An emergency situation is where work stoppage, crippling disaster, or other activity severely impairs the public health or safety. A determination of an emergency situation must be made by a majority of the board members.

Media outlets on the board's interested parties list must be given at least one hour's notice of the emergency meeting by telephone, if telephone services are functioning. The minutes of a meeting called pursuant to this section, a list of persons who the president or designee notified or attempted to notify, a copy of the roll call vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

Committee Meeting Requirements

Committee Meetings consist of less than a quorum of the members of the full Board. Subcommittee and task force meetings are variations of Committee Meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. Committee and Subcommittee Meetings, where less than a quorum of the Board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons and does not

exercise any authority of a state body delegated to it by that state body. (Note: It is the number of persons on the committee [not the number of Board Members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the Board should not attend the meeting, as such attendance would clearly be perceived as a Bagley-Keene Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the Board provided the members of the Board who are not members of the committee attend only as observers. ([GC §11122.5\(c\)\(6\)](#)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a Committee Meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body as observers." The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of [GC §11122.5\(c\)\(6\)](#), and the opinion of the California Attorney General, if a majority of members of the full Board are present at a Committee Meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The Board Members who are not Committee Members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a Board schedules its Committee Meetings seriatim, and other Board Members are typically present to ultimately be available for their own Committee Meeting, the notice of the Committee Meeting should contain a statement to the effect that "Members of the board who are not members of this committee may be attending the meeting only as observers."

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of "state body in [Section 11121\(c\)](#)."

Making a Motion at Meetings

When new business is to be introduced or a decision or action is to be proposed, a Board Member should make a motion to introduce a new piece of business or to propose a decision or action. All motions must reflect the content of the meeting's agenda – the Board cannot act on business that is not listed on the agenda.

Upon making a motion, Board Members must speak slowly and clearly as the motion is being voice and/or video recorded. Members who opt to second a motion must remember to repeat the motion in question. Additionally, it is important to remember that once a motion has been made and seconded, it is inappropriate to make a second motion until the initial one has been resolved.

The basic process of a motion is as follows:

- An agenda item has been thoroughly discussed and reviewed. If it is a new piece of business, see step 2.
- The Board President opens a forum for a Member to make a motion to adopt or reject the discussed item.
- A Member makes a motion before the Board.
- Another Member seconds this motion.
- The Board President puts forth the motion to a vote.
- The Board President solicits additional comment from the Board and then the public.
- If it is a voice vote, those in favor of the motions say “aye” and those opposed say “no”. Members may also vote to “abstain”, meaning a non-vote or “recuse” meaning to disqualify from participation in a decision on grounds such as prejudice or personal involvement. Recusal is the proper response to a conflict of interest.
- The vote of each Board Member shall be recorded via roll call vote.
- Upon completion of the voting, the President will announce the result of the vote (e.g. “the ayes have it and the motion is adopted” or “the no’s have it and the motion fails”).

The adjournment of each meeting is done via motion, seconded motion, and majority vote.

Meeting Frequency

([BPC § 3017](#))

The Board shall hold regular meetings every calendar quarter. Notice of each meeting and the time and place thereof shall be given to each member in the manner provided by the [Bagley-Keene Open Meeting Act](#).

Board Member Attendance at Board Meetings

(Board Policy)

Board Members shall attend each Board Meeting. If a member is unable to attend a meeting, it is the responsibility of the Board Member to contact the President and the Executive Officer with their request for an excused absence.

Quorum

([BPC § 3010.1](#))

Six Board Members constitute a quorum of the Board for the transaction of business. Either having members in attendance or by teleconference, with proper notice, can meet the

requirement for a quorum. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

(Board Policy and [GC § 11125 et seq.](#))

Any Board Member may submit items for a Board Meeting agenda to the Board President with a copy to the Executive Officer 30 days prior to the meeting. Members may also recommend agenda items during the meeting under Suggestions for Future Agenda Items. A motion and vote may be taken but is not necessary. The Board President will confer with the Executive Officer and Legal Counsel regarding the future agenda items. It will be a standing item to review the status of future agenda items that have been recommend by Board Members that may not have made the current Board Meeting agenda.

Staff maintains a list of items to research and bring back to a future Board Meeting. Staff may recommend the issue be referred to a Committee first to be vetted. Prior to items being placed on the agenda, staff conducts research to determine if an item is appropriate for Board discussion. This research starts with identifying how the item meets our mandate to protect the health and safety of California consumers. In addition, staff researches potential benefits to the State, identifies the current professional trends and what other states are doing. For items requiring legislative and/or regulatory changes, staff identifies potential concerns by anticipating who would be in support of or in opposition to the bill/rulemaking.

No item shall be added to the agenda subsequent to the provision of the meeting notice. However, an agenda item may be amended and then posted on the Internet at least 10 calendar days prior to the meeting.

If the agenda contains matters that are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Items not included on the agenda may not be discussed.

Notice of Meeting

([GC § 11120 et seq.](#))

Regularly scheduled quarterly meeting generally occur throughout the year and address the usual business of the Board. There are no restrictions on the purposes for which a regularly scheduled meeting may be held.

Per the Bagley-Keene Open Meeting Act, the Board is required to give at least ten (10) calendar days for written notice of each Board Meeting to be held.

The meeting notice must include the agenda with a brief description of the item. No changes can be made to the agenda unless the notice is amended accordingly. If this occurs, it must be posted for ten (10) calendar days prior to the meeting.

Notice of Meetings to be posted on the Internet

([GC § 11125 et seq.](#))

Notice shall be given and also made available on the Internet at least ten (10) calendar days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide information prior to the meeting. However, it need not include a list of witnesses expected to appear at the meeting.

Written notices shall include the address of the Internet site where notices required by this article are available.

Record of Meetings

(Board Policy)

The minutes are a summary, not a transcript, of each Board Meeting. They shall be prepared by Board staff and submitted for review by Board Members before the next Board Meeting. Board Minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meetings may be tape-recorded if determined necessary for staff purposes. Tape recordings may be disposed of upon Board approval of the minutes.

Meeting by Teleconferencing

([GC § 11123 et seq.](#))

Board Meetings held by a teleconference must comply with requirements applicable to all meetings.

The portion of the meeting that is open session must be made audible to the public present at the location specified in the meeting notice. Each teleconference meeting location must be identified in the meeting agenda. The location must be open to the public and ADA accessible. Additionally, each Board Member participating via teleconference must post appropriate signage for the public and ensure public materials are available to the public, either printed or electronic.

Board Policy does not allow Board Members to participate in petition hearings via teleconference. Thus, Board Members would not be able to participate in the petition deliberations and voting during closed session. However, after petition proceedings are final, the Board Member should be contacted to participate in all other closed session deliberations.

Unless it is during a petition hearing, if a Board Member is participating via teleconference, and the call is disconnected, an effort should be made to reconnect the call.

All votes taken during this meeting shall be by roll call.

Use of Electronic Devices During Meetings

Members should not text or email each other during an open meeting on any matter within the Board's jurisdiction.

Use of electronic devices, including laptops, during the meetings is solely limited to access the Board Meeting materials that are in electronic format.

3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board Members shall have Board President approval for travel except for regularly scheduled Board and Committee Meetings to which the Board Member is assigned.

Travel Arrangements

(Board Policy)

Board staff will make travel arrangements for each Board Member as required.

Out-of-State Travel

(State Administrative Manual § 700 et seq.)

For out-of-state travel, Board Members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims

(State Administrative Manual § 700 et seq. and DCA Travel Guidelines)

Rules governing reimbursement of travel expenses for Board Members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. Board Members will be provided with completed travel claim forms submitted on their behalf. The Executive Officer's Assistant maintains these forms and completes them as needed. It is advisable for Board Members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board Members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the Director and are provided to Board Members.

Salary Per Diem

([BPC § 103](#))

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board Members is regulated by BPC § 103.

In relevant part, this section provides for the payment of salary per diem for Board Members "for each day actually spent in the discharge of official duties," and provides that the Board Member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board Members, except for attendance at official Board or Committee Meetings and unless a substantial official service is performed by the Board Member. Attendance at gatherings, events, hearings, conferences or meetings, other than official Board or Committee Meetings, in which a substantial official service is performed, shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board Member's attendance.
2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board Meeting or Committee Meeting to the conclusion of that meeting. Where it is necessary for a Board Member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.
3. Board Members will be provided with a copy of the salary per diem form submitted on their behalf.

For Board -specified work, Board Members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and committee work. That work does not include preparation time for Board or Committee Meetings. Board Members cannot claim salary per diem for time spent traveling to and from a Board or Committee Meeting.

4. Selection of Officers and Committees

Officers of the Board

([BPC § 3014](#))

The Board shall elect from its members a President, Vice-President, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Roles and Responsibilities of Board Officers

(Board Policy)

President

- **Board Business:** Conducts the Board's business in a professional manner and with appropriate transparency, adhering to the highest ethical standards. Shall use Roberts Rules of Order as a guide and shall use the Bagley-Keene Act during all Board Meetings.
- **Board Vote:** Conducts roll call vote.
- **Board Affairs:** Ensures that Board matters are handled properly, including preparation of pre-meeting materials, committee functioning and orientation of new Board Members.
- **Governance:** Ensures the prevalence of Board governance policies and practices, acting as a representative of the Board as a whole.
- **Board Meeting Agendas:** Develops agendas for meetings with the Executive Officer and Legal Counsel. Presides at Board Meetings.
- **Executive Officer:** Establishes search and selection committee for hiring an Executive Officer. The committee will work with the DCA on the search. Convenes Board discussions for evaluating Executive Officer each fiscal year.
- **Board Committees:** Seeks volunteers for committees and coordinates individual Board Member assignments. Makes sure each committee has a chairperson, and stays in touch with chairpersons to be sure that their work is carried out. Obtains debrief from each Board Committee chairperson and reports committee progress and actions to Board at the Board Meeting.
- **Yearly Elections:** Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

Vice President

- **Board Business:** Performs the duties and responsibilities of the President when the President is absent.
- **Board Budget:** Serves as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Review budget change orders with staff.
- **Strategic Plan:** Serves as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board.
- **Board Member On-Boarding:** Welcomes new members to the Board. Is available to answer questions, and understand role and responsibilities. May participate in on-Boarding meeting with staff and new members.

Secretary

- **Attendance:** Calls roll to establish quorum
- **Board Motions:** Restates the motion prior to discussion.
- **Board Business:** Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Reviews and provides edits to draft minutes which have been transcribed by staff following recorded webcasts, note taking and other methods to record public meetings.
- **Yearly Elections:** Reviews template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents:** Maintains copies of administrative documents, e.g., Board Member Handbook, Administrative Law Book, Bagley-Keene Open Meeting Act for reference during Board Meeting.

Election of Officers

(Board Policy)

The Board elects the officers at the last meeting of the fiscal year. Officers serve a term of one-year, beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board Member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President until the election for President is held. Elected officers shall then serve the remainder of the term.

Committee Appointments

(Board Policy)

The President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in consultation with the Vice President, Secretary and the Executive Officer. In determining the composition of each committee, the president shall solicit interest from the Board Members during a public meeting. The President shall strive to give each Board Member an opportunity to serve on at least one committee. Appointment of non-Board Members to a committee is subject to the approval of the Board.

Attendance of Committee Meetings

([GC § 11122.5](#) (c)(6))

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to [§ 11123](#), any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by § 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

5. Board Administration and Staff

Board Administration

(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs, operations and staff shall be the responsibility of the Executive Officer. Board Members should not interfere with day-to-day operations, which are under the authority of the Executive Officer.

Board Staff

The Board's essential functions are comprised of ensuring Optometrists licensed in the State of California meet professional examination requirements and follow legal, legislative and regulatory mandates. The Board is also responsible for enforcement of State of California requirements and regulations as they pertain to the Optometry profession.

- **Licensing:** Staff is responsible for evaluating applications for initial licensure, license renewals, providing certifications, issuing Fictitious Name Permits, monitoring continuing education, and providing license verifications to consumers and customer service to licensees accordingly.
- **Examinations:** Staff regulates the law and licensing exams, which are necessary to ensure proficiency to practice. Staff also develops examination procedures.
- **Legislative and Regulatory:** Administrative staff is responsible for implementing administrative changes, primarily by revising or introducing regulations and statutes.
- **Enforcement:** Staff is responsible for ensuring consumer protection predominantly by processing consumer complaints, monitoring probationers, and providing customer service to licensees and consumers by providing information related to Board law.

Employees of the Board with the exception of the Executive Officer are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board Members shall not intervene or become involved in specific day-to-day personnel transactions.

Appointment of Executive Officer

[\(BPC § 3027\)](#)

The Board shall employ an Executive Officer and other necessary assistance in the carrying out of the provisions of the [BPC, Chapter 7](#).

The Executive Officer serves at the pleasure of the Board Members who provide direction to the Executive Officer in the areas of program administration, budget, strategic planning, and coordination of meetings. The Executive Officer shall not be a member of the Board. With the approval of the Director of Finance, the Board shall determine the salary of the Executive Officer. The Executive Officer shall be entitled to traveling and other necessary expenses in the performance of his/her duties as approved by the Board.

Executive Officer Evaluation

(Board Policy)

Board Members shall evaluate the performance of the Executive Officer on an annual basis.

Legal Counsel

The Board's legal counsel represents the Board for litigation and accordingly for services rendered by the Office of the Attorney General. The Board's legal counsel provides "in-house" counsel.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board's strategic planning process. The Vice President shall serve as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will update the strategic plan every three years, with the option to use a facilitator to conduct the plan update. At the end of the fiscal year, an annual review conducted by the Board will evaluate the progress toward goal achievement as stated in the strategic plan and identify any areas that may require amending. .

Board Budget

(Board Policy)

The Vice President shall serve as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Vice President.

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislation.

Press Releases

(Board Policy)

The Executive Officer may issue press releases with the approval of the Board President.

Legislation

(Board Policy)

In the event time constraints preclude Board action, the Board delegates to the Executive Officer and the Board President and Vice President the authority to take action on legislation that would affect the practice of optometry or responsibilities of the Board. The Board shall be notified of such action as soon as possible.

6. Other Policies and Procedures

Board Member Orientation and Training

([BPC § 453](#))

Newly appointed members shall complete a training and orientation program provided by DCA within one year of assuming office. This one-day class will discuss Board Member obligations and responsibilities.

Newly appointed Board Members shall complete provided by the Department of Consumer Affairs (complete within one (1) year of assuming office).

([GC § 11121.9](#), [GC § 12950.1](#))

All Board Members shall complete all required training and submit compliance documentation, including but not limited to, the documents specified below:

- [Board Member Orientation Training](#) provided by the DCA (complete within one (1) year of assuming office).
- [Ethics Orientation Training](#) (complete within first six (6) months of assuming office) and every two (2) years thereafter.
- [Conflict of Interest](#), [Form 700](#) (submit annually) and within 30 days of assuming office.
- [Sexual Harassment Prevention Training](#) (complete within first six (6) months of assuming office) and every two (2) years thereafter.

Upon assuming office, members will also receive a copy of the Bagley-Keene Open Meeting Act, which lists public meeting laws that provide the guidelines for Board Meetings. The current version of this Act can also be found at the following:

http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Additional Board Member resources can be found at www.dcaBoardmembers.ca.gov. Business cards will be provided to each Board Member with the Board's name, address, telephone and fax number, and website address. A Board Member's business address, telephone and fax number, and email address may be listed on the card at the member's request.

Board Member Disciplinary Actions

(Board Policy)

The Board may censure a member if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner. The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as chair. In accordance with the Public Meetings Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(BPC §§ [106](#) and [106.5](#))

The Governor has the power to remove from office at any time any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board Member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

([GC § 1750](#))

In the event that it becomes necessary for a Board Member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. State law requires written notification. A copy of this letter shall also be sent to the director of DCA, the Board President, and the Executive Officer.

Conflict of Interest

([GC § 87100](#))

No Board Member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board Member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board Member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Candidates, Applicants and Licensees

(Board Policy)

Board Members shall not intervene on behalf of a candidate or an applicant for licensure for any reason. Nor shall they intervene on behalf of a licensee. All inquiries regarding licenses, applications and enforcement matters should be referred to the Executive Officer.

Communication with Other Organizations and Individuals

(Board Policy)

Any and all representations made on behalf of the Board or Board Policy must be made by the Executive Officer or Board President, unless approved otherwise. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Executive Officer's Office.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board Members or the staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board Member may access the file of a licensee or candidate without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the Office of the Board.

Ex Parte Communications

([GC § 11430.10 et seq.](#))

The Government Code contains provisions prohibiting *ex parte* communications. An *ex parte* communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of § 11430.10, which states:

“While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication.”

Board Members are prohibited from an *ex parte* communication with Board enforcement staff while a proceeding is pending. Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board Members.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board Member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board Member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board Member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Executive Officer.

7. Complaint and Disciplinary Process

The Board conducts disciplinary proceedings in accordance with the Administrative Procedure Act, [GC § 11370](#), and those sections that follow. The Board conducts investigations and hearings pursuant to [Government Code §§ 11180 through 11191](#). The Board also uses its [Uniform Standards Related to Substance Abuse and Disciplinary Guidelines](#) as a guide when determining appropriate levels of discipline.

Typically, the disciplinary process begins with a complaint case. Complaints can come to the Board via consumers, optometrists, and other agencies. Under Business and Professions Code 800 et seq., civil judgments or settlement against a licensee that exceeds three thousand dollars (\$3,000) must be reported to the Board by an insurer or licensee. These will result in an enforcement investigation.

To begin an investigation, the Board's enforcement staff determines jurisdiction over a complaint case. If jurisdiction has been established, enforcement staff begins its investigation by requesting permission to review the patient's medical file (if this is pertinent to the complaint) and notifies the optometrist that a complaint has been made.

Enforcement staff determines if a violation of the [Optometry Practice Act](#) has occurred by verifying facts to validate a complaint allegation. This is generally accomplished by gathering statements, patient records, billings, and insurance claims, etc. The Board may also submit the case to the Division of Investigation (DOI) for further investigation as DOI investigators are given authority of peace officers by the Business and Professions Code while engaged in their duties. Therefore, these investigators are authorized more investigative privileges than Board staff.

The Board may also seek the aid of an expert witness when the enforcement team needs an expert opinion to determine if the licensee in question breached the standard of care.

If it is determined by enforcement staff, expert opinion, DOI, etc. that the subject's acts constitute a violation of law, the completed investigative report is submitted to the California Office of the Attorney General. The assigned Deputy Attorney General will review the case to determine if the evidence supports filing of an accusation against the subject for a violation of the law. If it is determined appropriate, an accusation is prepared and served upon the subject and he or she is given the opportunity to request a hearing to contest the charges.

Acts subject to disciplinary action – such as revocation, suspension, or probationary status of a license – include but are not limited to:

- Unprofessional conduct;
- Gross negligence;
- Sexual misconduct;
- Conviction of a substantially related crime;
- Substance abuse; and
- Insurance fraud.

After the Board files an accusation, the case may be resolved by a stipulated settlement: a written agreement between parties to which the person is charged admits to certain violations and agrees that a particular disciplinary order may be imposed.

Stipulations are subject to adoption by the Board. If a stipulated settlement cannot be negotiated, the Board holds a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings. The hearing may last anywhere from one day to several months, depending on the complexity of the case and the defense. During the hearing, both sides may call expert witnesses to support their views. After both sides have argued their case, the judge issues a proposed decision. This written proposal is submitted to the Board for adoption as its decision in the matter.

If the Board does not adopt the proposed decision, Board Members obtain a transcript of the hearing, review the decision and decide the matter based upon the administrative record. If dissatisfied with the Board's decision, the respondent may petition for reconsideration or he or she may contest it by filing a writ of mandate in the appropriate superior court.

Reviewing Disciplinary Decisions

Board Members participate in disciplinary hearings with an ALJ who presides over the hearing. At the conclusion of the hearing, Board Members are required to make a disciplinary decision.

Deciding to Adopt or Reject a Proposed Decision

Upon being presented with a proposed disciplinary decision from an ALJ, each Board Member is asked to either adopt or Reject the action. Accordingly, the following should be considered when making a decision:

- Factors for consideration when deciding to adopt an ALJ's proposed decision
 - The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
 - The law and standards of practice are interpreted correctly.
 - In those cases in which witness credibility is crucial to the decision, the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
 - The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
 - If probation is granted, the terms and conditions of probation provide the necessary public protection.
 - The costs of proceeding with Rejection far exceed the severity of the offense and the probability is high that respondent will be successful on appeal.
- Factors for consideration when deciding to Reject an ALJ's proposed decision
 - The proposed decision reflects the ALJ clearly abused his/her discretion.

- The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.
- The witness's credibility is crucial to the decision and the findings of fact include a determination based substantially on a witness' credibility; but the determination does not identify specific evidence of the observed demeanor, manner, or attitude, of the witness that supports the credibility determination.
- The ALJ made an error in interpreting the licensing law and/or regulations.
- The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially less than is appropriate to protect the public.

Note: The Board may not increase a cost recovery reward.

Reviewing the Record and Preparing to Discuss and Render a Decision after Rejection

Should the Board reject a proposed decision by the ALJ must review the factual and legal findings to render a determination. The following guidance is provided to Board Members when reviewing the case record:

- Reviewing the Administrative Record
 - The Accusation
 - Make note of the code §§ charged and brief description of the §§ (e.g. B&P 3110(b) – gross negligence; B&P 3110 (d) – incompetence).
 - Read the facts that are alleged as they stand to prove or disprove the code violations. The burden to prove the violations by “clear and convincing evidence to a reasonable certainty” rests on the Board.
 - The Proposed Decision
 - Factual Findings. Review the factual findings and determine if they and/or testimony prove violations. Note that expert testimony may be necessary to prove the violations.
 - Legal conclusions (determination of issues). Determine if any proven facts constitute a violation of the code §.
 - Order. Review the order and determine if the penalty is appropriate per the violations found and if it is consistent with the Disciplinary Guidelines. If not, determine if there is a basis for which the record deviated from the guidelines.
 - The Transcript
 - Sufficiency of the Evidence. Determine if the evidence introduced is clear and convincing to a reasonable certainty to prove *each* factual allegation.
 - Lay Witnesses. Determine if the testimony provided by witnesses prove factual allegations. Refer back to the ALJ's credibility findings.

- Expert Witnesses. Which expert's testimony was given the most weight by the ALJ? If a Board Member does not agree with the ALJ's findings, the Board Member must determine which evidence in the record supports their conclusion.
- Written Arguments received from parties after rejection of a proposed decision.
 - Is the written argument from each party persuasive?
 - Do the parties cite to the administrative record/transcript? This is not required, but may bear on the persuasiveness of a party's argument.
- Preparing for an Oral Argument Hearing
 - Review written arguments and determine if the burden of proof has been met.
 - The Deputy Attorney General's (DAG) argument will contend the facts are clearly proven and constitute a violation of the law.
 - The Respondent's argument will likely focus on the weaknesses of the Board's case and strength of the Respondent's case. Consider if (a) facts are proven, (b) the law was violated, and (c) the penalty is appropriate.
 - Review the proposed decision
 - Note in the proposed decision areas of agreement and disagreement with the ALJ in regards to factual findings, the legal conclusion, and proposed penalty. Also note the specific evidential findings that support this independent conclusion.
 - Summary and Conclusion
 - Maintain focus on the code sections alleged to have been violated and the facts that were alleged to have occurred. Using the guidance above will assist the Board Member in making a decision that will withstand judicial scrutiny.

8. California's Legislative Process

The California State Legislature consists of two houses: the Senate and the Assembly. The Senate has 40 members and the Assembly has 80 members.

All legislation begins as an idea or concept. Should the Board take an idea to legislation, it will act as its sponsor.

In order to move an idea or concept toward legislation the Board must attain a Senator or Assembly Member to author it as a bill. Once a legislator has been identified as an author, the legislator will proceed to the Legislative Council where a bill is drafted. The legislator will introduce the bill in a house (if a Senator authors a bill, it will be introduced to the Senate; if an Assembly Member authors a bill, it will be introduced to the Assembly). This house is called the House of Origin.

Once a bill is introduced on the floor of its house, it is sent to the Office of State Printing. At this time, it may not be acted upon until 30 days after the date that it was introduced. After the allotted time has lapsed, the bill moves to the Rules Committee of its house to be assigned to a corresponding Policy Committee for hearing.

During committee hearing, the author presents the bill to the committee and witnesses provide testimony in support or opposition of the bill. At this time, amendments may be proposed and/or taken. Bills can be amended multiple times. Additionally, during these hearings, a Board representative (Board Chair, Executive Officer, and/or staffer) may be called upon to testify in favor of the bill.

Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. A bill is passed in committee by a majority vote.

If the bill is passed by committee, it returns to the floor of its House of Origin and is read a second time. Next, the bill is placed on third reading and is eligible for consideration by the full house in a floor vote. Bill analyses are prepared prior to this reading. During the third reading, the author explains the bill and members discuss and cast their vote. Bills that require appropriation or, that take effect immediately, generally require 27 votes in the Senate and 41 votes in the Assembly to be passed. Other bills require majority vote. If a bill is defeated, its author may seek reconsiderations and another vote.

Once a bill has been approved by the House of Origin, it is submitted to the second house where the aforementioned process is repeated. Here, if an agreement is not reached, the bill dies or is sent to a two-house committee where members can come to a compromise. However, if an agreement is made, the bill is returned to both houses as a conference report to be voted upon.

Should both houses approve a bill, it proceeds to the governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is in session, the governor must act within 12 days; otherwise, he has 30 days to do so. A two-thirds vote from both houses can override the governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the governor are assigned a chapter number by the Secretary of State. Chaptered bills typically become part of the California Codes and the Board may enforce it as statute once it becomes effective. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

For a graphic overview of California's legislative process, see the attached diagram at the end of this section.

Positions on Legislation

As a regulatory body, the Board can issue its own legislative proposals or take a position on a current piece of legislation.

At Board Meetings, staff may present current legislation that is of potential interest to the Board and/or which may directly impact the Board and the practice of optometry. When the Board attains research on legislation, it can take a position on the matter.

Possible positions include:

- **Neutral:** If a bill poses no problems or concerns to the Board, or its provisions fall outside of the Board's jurisdiction, the Board may opt to remain neutral. Should the Board take this stance, it cannot testify against the bill.
- **Neutral if Amended:** The Board may take this position if there are minor problems with the bill but, providing they are amended, the intent of the legislation does not impede with Board processes.
- **Support:** This position may be taken if the Board supports the legislation and has no recommended changes.
- **Support if Amended:** This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.
- **Oppose:** The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.
- **Oppose Unless Amended:** The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Insert diagram The Life Cycle of Legislation

9. Regulations

Regulations and statutes, govern the Board. Regulations interpret or make specific laws that are enforced or administered by the Board.

Should the Board wish to implement an administrative change, it may do so via statute or regulation. There are pros and cons to each of these routes. However, should the Board decide to implement a regulatory (also referred to as rulemaking) change or introduce a new regulation, it must follow detailed procedures.

In order to prepare a rulemaking action, the Board is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

The issuance of a notice of proposed regulation initiates a rule making action. To do this, the Board creates a notice to be published in the California Regulatory Notice Register and mailed to interested parties. It must also post the notice, proposed text, and statement of reasons for the rulemaking action on its website.

Once the notice has been posted, the Administrative Procedures Act (APA) requires a 45-day comment period from interested parties before the Board may proceed further with the proposed regulation. During this time the Board can also decide if it wants to hold a public hearing to discuss the proposed rulemaking action. However, if it opts against this, but an interested person requests a hearing at least 15 days prior to the end of the written comment period, the Board must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, the Board will often decide to revise its proposal. If it chooses to do so, APA procedures require that the agency assess each change and categorize them as (a) non-substantial, (b) substantial and sufficiently related, or (c) substantial and not sufficiently related. Any change that has been categorized as substantial and sufficiently related must be available for public comment for at least 15 days before the change is adopted in the proposal. All comments must then be considered by the Board.

Additionally, if the Board cites new material that has not been available to the public while revising the proposal, these new references must be presented to the public for 15 days.

The Board is also responsible for summarizing and responding on record to public comments submitted during each allotted period. These are to be included as part of the final statement of reasons. By doing so, the agency demonstrates that it has understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation.

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During its review, OAL must determine if the rulemaking action satisfies the standards set forth by APA. These standards are: necessity, authority, consistency, clarity, non-duplication, and reference. It must also have satisfied all procedural requirements governed by the APA.

If OAL deems that the rulemaking action satisfies the aforementioned standards, it files the regulation with the Secretary of State and it is generally effective within 30 days. The regulation is also printed in the California Code of Regulations.

If OAL, however, determines that the action does not satisfy these standards, it returns the regulation to the Board which can revise the text, post notice of change for another comment period, and, finally, resubmit the proposed regulation to OAL for review; or, the Board may appeal to the governor.

Diagrams on the next two pages provide a graphical overview of the rulemaking process.

Insert Diagram The Rulemaking Process

Insert Diagram OAL Review

Board Member Handbook

Introduction:

The purpose of this handbook is to provide guidance to future and incumbent Board Members regarding the general processes involved with their position on the Board of Optometry (Board). As a Board Member, you are typically asked to create and review policy and administrative changes, make disciplinary decisions, and preside over regular and special meetings.

In addition to the Bagley-Keene Open Meeting Act and the attached Administrative Procedures Manual, which provide public meeting laws, this handbook serves as a referential guide to help you understand further meeting requirements and Board procedures.

Mission Statement

To protect the health and safety of California consumers through licensing, education and regulation of the practice of Optometry.

Vision Statement

To ensure excellent optometric care for every Californian.

Values Statement

Consumer protection – We make effective and informed decisions in the best interest and for the safety of Californians.

Integrity – We are committed to honesty, ethical conduct, and responsibility.

Transparency – We hold ourselves accountable to the people of California. We operate openly so that stakeholders can trust that we are fair and honest.

Professionalism – We ensure qualified, proficient, and skilled staff provides excellent service to the State of California.

Excellence – We have a passion for quality and strive for continuous improvement of our programs, services, and processes through employee empowerment and professional development.

~~Mission Statement:~~

~~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.~~

~~Vision Statement~~

~~The Board of Optometry's vision is to be the leading health care profession board that continuously provides consumers and optometrists with effective, collaborative, and proactive services.~~

~~Values Statement:~~

~~The Board of Optometry values:~~

~~Integrity~~

~~Competence Accountability Responsiveness Efficiency~~

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Getting Started as a Board Member

The following information serves to inform Board Members of mandatory training requirements as well as the Board of Optometry's (Board) essential functions. Newly appointed members are also advised in this section on how to engage with Board staff and of their relationship with the Executive Officer.

Training Requirements

Within one year of assuming office, newly appointed members shall complete the following training:

1. Board Member Orientation [Training](#), which is provided by the Department of Consumer Affairs
2. Ethics Orientation Training, ~~Ethics Training Course~~ which shall be completed within the first 6 months of office
3. [Conflict of Interest, Form 700](#)
4. Sexual Harassment Prevention [Training](#), within the first six months of office

Additional training:

1. Members shall attend an ethics training course every two years

Upon assuming office, members will also receive a copy of the Bagley-Keene Open Meeting Act, which lists public meeting laws that provide the guidelines for Board Meetings. The ~~2014~~ [the current](#) version of this Act can also be found at the following:

http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Board Member Reference Documents

Board of Optometry's Essential Functions

The Board's essential functions are comprised of licensing, examinations, ~~legal~~ [Legislative](#) and regulatory, and enforcement. As such, the following provide a brief understanding of staff procedures to uphold each function.

1. Licensing: Staff is responsible for such tasks as evaluating applications for initial licensure, license renewals, providing certifications [\(a list of licenses and certifications issued by the Board is found on page \[redacted\] -see page 16 this list\)](#) issuing Fictitious Name Permits, monitoring continuing education, and providing license verifications to consumers and customer service to licensees accordingly.
2. Examinations: Staff regulates the law and licensing exams, which are necessary to ensure proficiency to practice. Staff also develops examination procedures.
3. ~~Legal~~ [Legislative](#) and Regulatory: Administrative staff is responsible for implementing administrative changes, primarily by revising or introducing regulations and statutes.
4. Enforcement: Staff is responsible for ensuring consumer protection predominantly by processing consumer complaints, monitoring probationers, and providing customer service to licensees and consumers by providing information related to Board law.

Interactions with Board Staff

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of

employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-to-day personnel transactions.

The Executive Officer

The Executive Officer serves at the pleasure of the Board Members as a whole. As such, your role as a Board Member is to direct the Executive Officer to implement program administration, budget, strategic planning, and coordination of meetings.

Meetings

All Healing Arts Boards under the Department of Consumer Affairs, including the Board of Optometry, must meet in accordance with the provisions set forth by the Bagley-Keene Open Meeting Act ~~and the Brown Act~~. A copy of the Bagley-Keene Open Meeting Act ~~should~~ is be provided to each newly appointed Board Member. (see web address on page 1).

For more information on Administrative Procedures, you may reference the attached Administrative Procedure Manual.

Attendance at Board Meetings

The Board's policy is such that Members attend each meeting of the Board. If a Member is unable to attend, he or she must contact the Executive Officer and Board President and ask to be excused from the meeting for a specific reason.

Quorum

In order to conduct a full Board Meeting, there needs to be a quorum of six board members. Either having members in attendance or by teleconference, with proper notice, can accomplish this.

General Rules of Conduct

The following rules of conduct are taken from the attached Administrative Procedures Manual to detail expectations of your conduct as a Member. Be mindful that the Board is comprised of both public and professional members with the intention that, together, you can protect the public and regulate the profession of Optometry.

- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.

- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall adequately prepare for Board responsibilities.
- Board members shall not speak or act for the Board without proper authorization.
- Board members shall maintain the confidentiality of non-public documents and information.
- Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
- Board members shall treat all applicants and licensees in a fair and impartial manner.
- Board members shall not use their positions on the Board for personal, familial or financial gain.
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Meeting Requirements

Pursuant to Government Code Section, 11121.9, the following are requirements for the various meetings that you, as a Board Member, may attend.

Open Meeting Requirements:

Regularly scheduled meetings generally occur throughout the year and address the usual business of the Board. There are no restrictions on the purposes for which a regularly scheduled meeting may be held.

The Board is required to give at least 10 calendar days for written notice of each Board Meeting to be held.

The meeting notice must include the agenda, which may have a brief description of the item. Note that no changes can be made to the agenda unless the notice is amended accordingly. If this occurs, it must be posted for 10 calendar days prior to the meeting. More information about notice requirements can be found in the Administrative Procedures Manual.

Committee Meeting Requirements:

Notice requirements are mandatory for committee meetings if the committee consists of three or more persons. Those committees with fewer members do not need to submit meeting notices.

Should the committee post notice for a meeting, it must match the requirements for open meetings wherein the notice must be posted on the Internet at least 10 calendar days prior to the meeting and be provided to interested parties upon request.

Special Meeting Requirements:

Though the purposes and instructions for special meetings are found in Government Code Section 11125.4, one such reason is in the instance that a 10-day notice period to the public would impose a hardship to the Board. However, should this occur, the Board must provide notice of the meeting to each member and those persons who have requested notice of board meetings. This notice needs to specify the time, place and purpose of this special meeting.

At the commencement of this meeting, the Board must make a finding (in the open session) that providing a 10-day notice of the meeting poses a substantial hardship or that immediate action is required to protect public interest. This finding must then be adopted by two-thirds vote of members present or by a unanimous vote if less than the two-thirds of members are present. Failure to do so terminates the meeting.

Closed Session Requirements:

Closed Sessions may take place in the following instances:

1. Personnel matters (i.e. appointments, employment, performance evaluations, etc.)
2. To conduct administrative disciplinary proceedings
3. Examination matters, such as when the Board administers or approves an exam
4. Pending litigation
5. In response to confidential audit reports
6. When matters discussed would be an invasion of privacy if conducted in open session
7. As a response to a threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment.

Should a closed session take place, the Board must disclose in the open meeting a general statement about the closed session items (i.e. by mentioning it on the agenda). Additionally, all closed sessions must take place in a regularly scheduled or special meeting.

All material discussed in closed sessions must remain confidential. When such a session takes place, a staff person will be present to record and make available to members the discussion topics and decisions made.

Making a Motion

A Board Member should make a motion to introduce a new piece of business or to propose a decision or action. All motions must reflect the content of the meeting's agenda – the Board cannot act on business that is not listed on the agenda.

Upon making a motion, it is important to remember to speak slowly and clearly; bear in mind that the motion is being recorded. Members who opt to second the motion must remember to repeat the motion in question. Additionally, it is important to remember that once a motion has been made, it is inappropriate to make a second motion until the initial one has been resolved.

The basic process of a motion is as follows:

1. An agenda item has been thoroughly discussed and reviewed. If it is a new piece of business, see step 2.
2. The Board President opens a forum for a Member to make a motion to adopt or reject the discussed item.
3. A Member makes a motion before the Board.
4. Another Member seconds this motion.
5. The Board President puts forth the motion to a vote.
6. If it is a voice vote, those in favor of the motions say "aye" and those opposed say "no".
Members may also vote to "abstain", meaning a non-vote or "recuse" meaning to disqualify from participation in a decision on grounds such as prejudice or personal involvement. Recusal is the proper response to a conflict of interest.
- ~~7. If it is a voice vote, those in favor of the motion say "aye" and those opposed say "no".~~
- ~~8. If it is a rising vote, those in favor of the motion will rise from their seats.~~
- 6.7. Upon completion of the voting, the President will announce the result of the vote (e.g. "the ayes have it and the motion is adopted" or "the no's have it and the motion fails").

The adjournment of each meeting is done via motion, seconded motion, and majority vote.

Background Information of Various Board Processes

As a member, you may be asked to review material which you are not closely acquainted with. Therefore, you may wish to reference the following guides to attain a comprehensive understanding of items brought forth in Board Meetings.

This section provides a guide to the Legislative Process, Regulatory Process, Complaint and Disciplinary Process, and the various licenses and certifications provided by the Board.

Licenses and Certification Issued by the Board

The following chart provides an overview of the various licenses and certifications issued by the board. ~~The following chart provides an overview of the various licenses and certifications that the Board issues to its licensees.~~

<u>TYPE</u>	<u>DESCRIPTION</u>	<u>Authority</u>
<u>Optometric License (OPT)</u>	<u>License to practice optometry in California at designated "principal place of practice." May be owner or an employee/independent contractor at the location.</u>	<u>B&P 3040</u>
<u>Statement of Licensure (SOL)</u>	<u>Required for every location where a licensee is employed or works as an independent contractor in addition to principal place of practice as designated by OPT license.</u>	<u>CCR 1506(d).</u>
<u>Branch Office License (BOL)</u>	<u>Required for each optometric practice owned by a licensed optometrist that is in addition to principal place of practice as designated by OPT license.</u>	<u>B&P 3077</u>
<u>Fictitious Name Permit (FNP)</u>	<u>Required if a fictitious name is used in conjunction with the practice of optometry.</u>	<u>B&P 3078 and CCR 1518</u>
<u>Therapeutic Pharmaceutical Agents (TPA) Certification</u>	<u>Required for optometrists who wish to treat patients with pharmaceutical agents as authorized by this category. To become TPA certified, an optometrist must meet one of seven category requirements.</u>	<u>B&P 3041.3 and CCR 1568</u>
<u>Glaucoma Certification</u>	<u>Effective January 8, 2011. In order to be certified to diagnose and treat Glaucoma, an optometrist must already be TPA certified.</u>	<u>B&P 3041(f)(5) and CCR 1571</u>
<u>Lacrimal Irrigation and Dilation Certification</u>	<u>Effective January 1, 2011. To be certified to perform these tasks, an optometrist must already be TPA certified.</u>	<u>B&P 3041(e)(6) and B&P 3041.3</u>

Complaint and Disciplinary Process

Under the Department of Consumer Affairs, the California State Board of Optometry (Board) conducts disciplinary proceedings in accordance with the Administrative Procedure Act, Government Code Section 11370, and those sections that follow. The Board conducts investigations and hearings pursuant to Government Code Sections 11180 through 11191.

Typically, the disciplinary process begins with a complaint case. Complaints can come to the Board via consumers, optometrists, and other agencies. Under Business and Professions Code 800 et seq., civil judgments or settlement against a licensee that exceeds three thousand dollars (\$3,000) must be reported to the Board by an insurer or licensee. These will result in an enforcement investigation.

To begin an investigation, the Board's enforcement staff determines jurisdiction over a complaint case. If jurisdiction has been established, enforcement staff begins its investigation by requesting permission to review the patient's medical file (if this is pertinent to the complaint) and notifies the optometrist that a complaint has been made.

Enforcement staff determines if a violation of the Optometry Practice Act has occurred by verifying facts to validate a complaint allegation. This is generally done by gathering statements, patient records, billings, insurance claims, etc. The Board may also submit the case to the Division of Investigation (DOI) for further investigation as DOI investigators are given authority of peace officers by the Business and Professions Code while engaged in their duties. Therefore, these investigators are authorized more investigative privileges than Board staff.

The Board may also seek the aid of an expert witness when the enforcement team needs an expert opinion to determine if the licensee in question breached the standard of care.

If it is determined by enforcement staff, expert opinion, DOI, etc. that the subject's acts constitute a violation of law, the completed investigative report is submitted to the California Office of the Attorney General. The assigned Deputy Attorney General will review the case to determine if the evidence supports filing of an accusation against the subject for a violation of the law. If it is determined appropriate, an accusation is prepared and served upon the subject and he or she is given the opportunity to request a hearing to contest the charges.

Acts subject to disciplinary action – such as revocation, suspension, or probationary status of a license – include but are not limited to:

- Unprofessional conduct;
- Gross negligence;
- Sexual misconduct;
- Conviction of a substantially related crime;
- Substance abuse; and
- Insurance fraud.

After the Board files an accusation, the case may be resolved by a stipulated settlement: a written agreement between parties to which the person is charged admits to certain violations and agrees that a particular disciplinary order may be imposed.

Stipulations are subject to adoption by the Board. If a stipulated settlement cannot be negotiated, the Board holds a hearing before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last anywhere from one day to several months, depending on the complexity of the case and the defense. During the hearing, both sides may call expert witnesses to support their views. After both sides have argued their case, the judge issues a proposed decision. This written proposal is submitted to the Board for adoption as its decision in the matter.

If the Board does not adopt the proposed decision, Board members obtain a transcript of the hearing, review the decision and decide the matter based upon the administrative record. If dissatisfied with the Board's decision, the respondent may petition for reconsideration or he or she may contest it by filing a writ of mandate in the appropriate superior court.

Reviewing Disciplinary Decisions

~~As previously mentioned under the purposes for a closed-session meeting, You You will be asked to make a disciplinary decision based on a hearing that has taken place with an Administrative Law Judge. To learn more about the complaint and disciplinary process, you may consult with the overview provided on page 14 of this handbook.~~

Deciding to Adopt or Non-adopt a Proposed Decision

Upon being presented with a proposed disciplinary decision from an Administrative Law Judge (ALJ), you, as a Board Member, are asked to either adopt or non-adopt the action. Accordingly, consider the following when making your decision:

A. Factors for adopting an ALJ's proposed decision:

1. The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
2. The law and standards of practice are interpreted correctly.
3. In those cases in which witness credibility is crucial to the decision, the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
4. The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
5. If probation is granted, the terms and conditions of probation provide the necessary public protection.
6. The costs of proceeding with non-adoption far exceed the severity of the offense and the probability is high that respondent will be successful.

B. Factors for non-adopting an ALJ's proposed decision:

1. The proposed decision reflects the ALJ clearly abused his/her discretion.
2. The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.

3. The witness's credibility is crucial to the decision and the findings of fact include a determination based substantially on a witness' credibility; but, the determination does not identify specific evidence of the observed demeanor, manner, or attitude, of the witness that supports the credibility determination.
4. The ALJ made an error in interpreting the licensing law and/or regulations.
5. The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially less than is appropriate to protect the public.

Reviewing the Record and Preparing to Discuss and Render a Decision after Non-adoption

Should you, as a Member, choose to non-adopt a proposed decision by the administrative law judge (ALJ), he or she must review the factual and legal findings to render a determination. The following suggestions are intended to assist in reviewing the case record:

A. Reviewing the Administrative Record

1. The Accusation:

- Make note of the code sections charged and brief description of the sections (e.g. B&P 3110(b) – gross negligence; B&P 3110 (d) – incompetence).
- Read the facts that are alleged as they stand to prove or disprove the code violations. The burden to prove the violations by “clear and convincing evidence to a reasonable certainty” rests on the Board.

2. The Proposed Decision:

- Factual Findings. Review the factual findings and determine if they and/or testimony prove violations. Note that expert testimony may be necessary to prove the violations.
- Legal conclusions (determination of issues). Determine if any proven facts constitute a violation of the code section.
- Order. Review the order and determine if the penalty is appropriate per the violations found and if it is consistent with the Disciplinary Guidelines. If not, determine if there is a basis for which the record deviated from the guidelines.

3. The Transcript

- Sufficiency of the Evidence. You must determine if the evidence introduced is clear and convincing to a reasonable certainty to prove *each* factual allegation.
- Lay Witnesses. You must determine if the testimony provided by witnesses prove factual allegations. In doing so, bear in mind the ALJ's credibility findings.

- Expert Witnesses. Which expert's testimony was given the most weight by the ALJ? If you do not agree with the ALJ's findings, you must determine which evidence in the record supports your own conclusion.

B. Preparing for an Oral Argument Hearing

1. Review written arguments and determine if the burden of proof has been met.
 - The Deputy Attorney General's (DAG) argument will contend the facts are clearly proven and constitute a violation of the law.
 - The Respondent's argument will likely focus on the weaknesses of the Board's case and strength of the Respondent's case. It will force you to answer if (a) facts are proven, (b) the law was violated, and (c) the penalty is appropriate.
2. Review the proposed decision
 - Note in the proposed decision where you agree and disagree with the ALJ in regards to factual findings, the legal conclusion, and proposed penalty. Also note the specific evidential findings which support your own conclusions.
3. Summary and Conclusion
 - Remember, that if you maintain your focus on the code sections alleged to have been violated and the facts that were alleged to have occurred, your decision should be made more easily and this will help your decision withstand judicial scrutiny.

Overview of California's Legislative Process

For a graphic overview of California's legislative process, see the attached diagram on [page 40](#).

The California State Legislature consists of two houses: the Senate and the Assembly. The Senate has 40 members and the Assembly has 80 members.

All legislation begins as an idea or concept. Should the Board take an idea to legislation, it will act as its sponsor.

Next, in order to move the idea toward legislation the Board must attain a Senator or Assembly Member to author it as a bill. Once a legislator has established himself or herself as an author, he or she will proceed to the Legislative Council where a bill is drafted; it is then returned to the legislator for introduction in a house (if a Senator authors a bill, it will be introduced to the Senate; if an Assembly Member authors a bill, it will be introduced to the Assembly). This house is called the House of Origin.

Once a bill is introduced on the floor of its house, it is sent to the office of State Printing. At this time, it may not be acted upon until 30 days after the date which it was introduced. After the allotted time has lapsed, the bill moves to the Rules Committee of its house to be assigned to a corresponding Policy Committee for hearing.

During committee hearing, the author presents his or her bill to the committee and witnesses provide testimony in support or opposition of the bill. At this time, amendments may be proposed and/or taken. Bills can be amended multiple times. Additionally, during these hearings, a Board representative (Board Chair, Executive Officer, and/or staffer) may be called upon to testify in favor of the bill.

Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. A bill is passed in committee by a majority vote.

If the bill is passed by committee, it returns to the floor of its House of Origin and is read a second time. Next, the bill is placed on Third Reading and is eligible for consideration by the full house in a floor vote. Bill analyses are prepared prior to this reading. During the third reading, the author explains the bill and members discuss and cast their vote. Bills that require appropriation or, that take effect immediately, generally require 27 votes in the Senate and 41 votes in the Assembly to be passed. Other bills require majority vote. If a bill is defeated, its author may seek reconsiderations and another vote.

Once a bill has been approved by the House of Origin, it is submitted to the second house where the aforementioned process is repeated. Here, if an agreement is not reached, the bill dies or is sent to a two-house committee where members can come to a compromise. However, if an agreement is made, the bill is returned to both houses as a conference report to be voted upon.

Should both houses approve a bill, it proceeds to the governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is in session, the governor must act within 12 days; otherwise, he has 30 days to do so. A two-thirds vote from both houses can override the governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the governor are assigned a chapter number by the Secretary of State. Chaptered bills typically become part of the California Codes and the Board may enforce it as statute once it becomes effective. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

Positions on Legislation

As a regulatory body, the Board can issue its own legislative proposals or take a position on a current piece of legislation.

At Board Meetings, staff may present current legislation that is of potential interest to the Board, and/or which may directly impact the Board and the practice of optometry. When the Board attains research on legislation, it can take a position on the matter.

Possible positions include:

Neutral: If a bill poses no problems or concerns to the Board, or its provisions fall outside of the Board's jurisdiction, the Board may opt to remain neutral. Should the Board take this stance, it cannot testify against the bill.

Neutral if Amended: The Board may take this position if there are minor problems with the bill but, providing they are amended, the intent of the legislation does not impede with Board processes.

Support: This position may be taken if the Board supports the legislation and has no recommended changes.

Support if Amended: [This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.](#)

Oppose: The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.

Oppose Unless Amended: The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Insert diagram [The Life Cycle of Legislation](#)

Overview of Regulations

Regulations are administratively enforceable. They, along with statutes, govern the Board and comprise the Board's Practice Act. Succinctly, regulations interpret or make specific laws that are enforced or administered by the Board.

Should the Board wish to implement an administrative change, it may do so via statute or regulation. There are pros and cons to each of these routes. However, should the Board decide to implement a regulatory (also referred to as rulemaking) change or introduce a new regulation, it must follow direct procedures.

In order to prepare a rulemaking action, the Board is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

The issuance of a notice of proposed regulation initiates a rule making action. To do this, the Board creates a notice to be published in the California Regulatory Notice Register and mailed to interested parties. It must also post the notice, proposed text, and statement of reasons for the rulemaking action on its website.

Once the notice has been posted, the Administrative Procedures Act (APA) requires a 45-day comment period from interested parties before the Board may proceed further with the proposed regulation. During this time the Board can also decide if it wants to hold a public hearing to discuss the proposed rulemaking action. However, if it opts against this, but an interested person requests a hearing at least 15 days prior to the end of the written comment period, the Board must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, the Board will often decide to revise its proposal. If it chooses to do so, APA procedures require that the agency assess each change and categorize them as (a) non-substantial, (b) substantial and sufficiently related, or (c) substantial and not sufficiently related. Any change that has been categorized as substantial and sufficiently related must be available for public comment for at least 15 days before the change is adopted in the proposal. All comments must then be considered by the Board.

Additionally, if the Board cites new material that has not been available to the public while revising the proposal, these new references must be presented to the public for 15 days.

The Board is also responsible for summarizing and responding on record to public comments submitted during each allotted period. These are to be included as part of the final statement of reasons. By doing so, the agency demonstrates that it has understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation.

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Diagrams on pages 13 and 14 provide graphical overview of the rulemaking process.

Insert Diagram The Rulemaking Process

Insert Diagram OAL Review

State of California
State and Consumer Services Agency



Administrative Procedure Manual



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www.optometry.ca.gov

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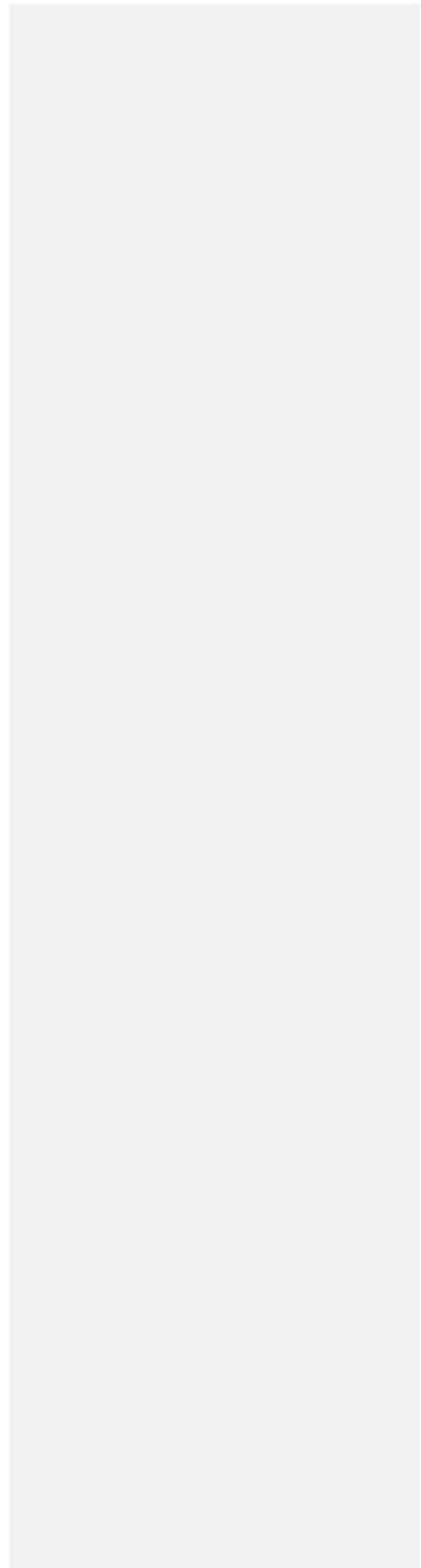
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Chapter 1. Introduction

Overview

The California State Board of Optometry (hereafter Board) was created by the California Legislature in 1913 under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. In 1923, the Board promulgated the first rules for the practice of optometry and the State Legislature first required all applicants for licensure to be graduates of an accredited school or colleges of optometry. The Board is responsible for accrediting these schools. To assure competent and ethical practitioners and protect the public from harm, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board.

Today, the Board is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the State and Consumer Services Agency under the aegis of the Governor. DCA is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While the DCA provides administrative oversight and support services, the Board has policy autonomy and sets its own policies, procedures, and initiates its own regulations.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code (BPC) Section 3010.1).

The Board consists of eleven members, five of whom shall be public members and six are professional members (licensed optometrists of the State of California actually engaged in the practice of optometry at the time of appointment or faculty members of a school or college of optometry). No more than two faculty members may be on the Board at any one time and they may not serve as public members. No member of the Board shall have a financial interest in any purchase or contract under Board purview nor shall he/she have financial interest in the sale of any property or optical supplies to any prospective candidate for examination before the Board. The public members shall not be licensees of the Board or of any other Healing Arts Board. The Governor appoints three public members and the six professional members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. Board members may serve up to two, four-year terms. Board members are paid \$100 for each day actually spent in the discharge of official duties and are reimbursed travel expenses.

Board Responsibilities

With approximately 7,500 practicing optometrists and 500 optometric corporations, the largest population of optometrists in the United States, the Board is charged with the following duties and responsibilities:

- Accrediting the schools and colleges providing optometric education.
- Establishing educational requirements for admission to the examination for certificates of registration as California licensed optometrists.

- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.
- Setting and enforcing standards for continued competency of existing licensees.
- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe authorized pharmaceutical agents.
- Issuing certification to diagnose and treat glaucoma for patients over the age of 18.
- Licensing branch offices and issuing fictitious name permits.
 - Effective January 1, 2007, the Board of Optometry no longer registers Optometric Corporations. However, the Board has maintained the authority to regulate those in existence.
- Promulgating regulations governing:
 - Procedures of the Board
 - Admission of applicants for examination for licensure as optometrists
 - Minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions
- Providing for redress of grievances against licensees by investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, or unlawful activity.
- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted.

This procedures manual is provided to Board members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency.

Definitions

ALJ	Administrative Law Judge.
AOA	American Optometric Association
APA	Administrative Procedure Act
BPC	Business and Professions Code
CLEAR	Council on Licensure Enforcement and Regulations
COA	California Optometric Association
DCA	Department of Consumer Affairs

EO	Executive Officer
OAH	Office of Administrative Hearings. This state agency provides neutral judges to preside over administrative cases.
OAL	Office of Administrative Law. This state agency reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.
Regulation	A standard that implements, interprets, or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.
SAM	State Administrative Manual
Statute	A law passed by the legislature.
Stipulation	A form of plea bargaining in which a disciplinary case is settled by negotiated agreement prior to hearing.
President	Where the term "President" is used in this manual, it will be assumed to include "his or her designee"

General Rules of Conduct

- Board members shall recognize the equal role and responsibilities of all Board Members.
- Board members shall adequately prepare for Board responsibilities.
- Board members shall not speak or act for the Board without proper authorization.
- Board members shall maintain the confidentiality of non-public documents and information.

Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public

- Board members shall treat all applicants and licensees in a fair and impartial manner.
- Board members shall not use their positions on the Board for personal, familial or financial gain.
- ~~Board members shall not use their positions on the Board for personal, familial or financial gain.~~
- ~~Board members shall not speak or act for the Board without proper authorization.~~
- ~~Board members shall maintain the confidentiality of non-public documents and information.~~

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- ~~Board members shall adequately prepare for Board responsibilities.~~
- ~~Board members shall recognize the equal role and responsibilities of all Board members.~~
- ~~Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.~~
- ~~Board members shall treat all applicants and licensees in a fair and impartial manner.~~
- ~~Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.~~
- ~~Board members shall not use their positions on the Board for personal, familial or financial gain.~~

Chapter 2. Board Meeting Procedures

Frequency of Meetings

(BPC Section 3017)

The Board shall hold regular meetings every calendar quarter.

Special meetings of the Board may be held upon request of a majority of the members of the Board or upon the call of the President.

Six members constitute a quorum at a Board meeting.

Notice of each meeting and the time and place thereof shall be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

Board Meeting Attendance at Board Meetings

(Board Policy)

Board members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Executive Officer and ask to be excused from the meeting for a specific reason.

Public Attendance at Board Meetings

(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This act governs meetings of the state regulatory boards and meeting of committees of those boards where the

committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included in the agenda.

The Bagley-Keene act stipulates that the Board is to provide adequate notice of meetings to be held to the public as well as provide an opportunity for public comment. The meeting is to be conducted in an open session, except where closed session is specifically noted.

If the agenda contains matters that are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Closed Sessions at Board Meetings

(Government Code Section 11126 et seq.)

A Board may meet in a closed session to discuss: personnel matters (appointments, employment, evaluation of performances, etc.); examination matters wherein the Board prepares, approves, grades, or administers examinations; matters which would constitute an invasion of privacy if discussed in an open session; administrative disciplinary matters; pending litigation; as a response to confidential final draft audit report; and, as a response to threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment.

Closed Session Procedural Requirements

(Government Code Section 11126 et seq.)

The Board shall disclose in the open meeting a generalization of the items to be discussed in a closed session. This can be accomplished by those items on the agenda as a closed session item.

All closed sessions must be held during a regular or special meeting (section 11128). A staff person shall be designated to attend the closed session and record the discussion topics and decisions made, which will be available only to members.

All information discussed in the closed session is confidential and must not be disclosed to outside parties.

Quorum

(BPC Section 3010.1)

Six of the members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

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(Board Policy and Government Code Section 11125 et seq.)

Any Board member may submit items for a Board meeting agenda to the ~~Executive Officer~~ **15 Board President** 30 days prior to the meeting. Members may also recommend agenda items during the meeting under Suggestions for Future Agenda Items. A motion and vote may be taken but is not necessary. The Board President will confer with the Executive Officer and Legal Counsel regarding the issues.

Staff maintains a list of items to research and bring back to a future Board meeting. Staff may recommend the issue be referred to a Committee first to be vetted. Prior to items being placed on the agenda, staff conducts research to determine if an item is appropriate for Board discussion. This research starts with identifying how the item meets our mandate to protect the health and safety of California consumers. In addition, staff researches potential benefits to the State, identifies the current professional trends and what other states are doing. For items requiring legislative and/or regulatory changes, staff identifies potential political concerns by anticipating who would be in support of or in opposition to the bill/rulemaking and whether or not the opposition (if any) would be open to negotiation.

No item shall be added to the agenda subsequent to the provision of the meeting notice. However, an agenda item may be amended and then posted on the Internet at least 10 calendar days prior to the meeting.

Items not included on the agenda may not be discussed.

Notice of Meetings

(Government Code Section 11120 et seq.)

According to the Opening Meeting Act, meeting notices (including agenda for Board meetings) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The notice shall include a staff person's name, work address, and work telephone number so that he or she can provide information prior to the meeting.

Notice of Meetings to be Posted on the Internet

(Government Code Section 11125 et seq.)

Notice shall be given and also made available on the Internet at least 10 calendar days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide information prior to the meeting. However, it need not include a list of witnesses expected to appear at the meeting.

Written notices shall include the address of the Internet site where notices required by this article are available.

Special Meetings

(Government Code Section 11125 et seq.)

A special meeting may be held where compliance with a 10-day meeting notice would impose a hardship or when an immediate action would be required to protect the public interest.

Notice for a special meeting must be posted on the Internet at least 48 hours prior to the meeting. Upon commencement, the Board must state the specific facts which necessitate special meeting as a finding. This finding must be adopted by a two-thirds vote; failure to adopt the finding terminates the meeting.

Record of Meetings

(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting. Board minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meetings may be tape-recorded if determined necessary for staff purposes. Tape recordings may be disposed of upon Board approval of the minutes.

Meeting by Teleconferencing

(Government Code Section 11123 et seq.)

Board Meetings held by a teleconference must comply with requirements applicable to all meetings.

The portion of the meeting that is open session must be made audible to the public present at the location specified in the meeting notice. Each teleconference meeting location must be identified in the meeting notice and agenda.

All votes taken during this meeting shall be by roll-call.

Use of Electronic Devices During Meetings

| Bagley-Keene Act

Members should not text or email each other during an open meeting on any matter within the Board's jurisdiction.

Use of electronic devices including laptops during the meetings are solely to access the Board meeting materials that are in electronic format.

Meeting Rules

(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Chapter 3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board members shall have Board President approval for travel except for regularly scheduled Board and committee meetings to which the Board member is assigned.

Travel Arrangements

(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Executive Officer's Assistant on lodging accommodations.

Out-of-State Travel

(State Administrative Manual Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims

(State Administrative Manual Section 700 et seq. and DCA Travel Guidelines)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense

claim forms. The Executive Officer's Assistant maintains these forms and completes them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the Director and are provided to Board members.

Salary Per Diem

(BPC Section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by BPC Section 103.

In relevant part, this section provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board member's attendance.
2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board meeting or committee meeting to the conclusion of that meeting. Where it is necessary for a Board member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and AOA or CLEAR committee work. That work does not include preparation time for Board or committee meetings. Board members cannot claim salary per diem for time spent traveling to and from a Board or committee meeting.

Chapter 4. Selection of Officers & Committees

Officers of the Board

(BPC Section 3014)

The Board shall elect from its members a President, Vice-President, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Election of Officers

(Board Policy)

The Board elects the officers at the last meeting of the fiscal year. Officers serve a term of one-year beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President until the election for President is held. Elected officers shall then serve the remainder of the term.

Roles and Responsibilities of Board Officers

(Board Policy)

President

- **Board Business:** Conducts the board's business in a professional manner and with appropriate transparency, adhering to the highest ethical standards. Applies Roberts Rules of Order and Bagley Keene Act during all Board Meetings.
- **Board Vote:** [Conducts roll call vote](#)
- **Board Affairs:** Ensures that board matters are handled properly, including preparation of pre-meeting materials, committee functioning and orientation of new board members.
- **Governance:** Ensures the prevalence of Board governance policies and practices, acting as a representative of the Board as a whole.
- **Board Meeting Agendas:** Develops agendas for meetings with the Executive Officer and [Legal Counsel](#). Presides at Board meetings.

- **Executive Officer:** Working with the State of California Department of Consumer Affairs, may establish search and selection committee (usually acts as chair) for hiring an Executive Officer. Convenes board discussions on evaluating the Executive Officer each fiscal year.
- **Board Committees:** Seeks volunteers for committees and coordinates individual Board Member assignments. Makes sure each committee has a chairperson, and stays in touch with chairpersons to be sure that their work is carried out.
- **Yearly Elections:** Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

Vice President

- **Board Business:** In the Absence of the Board President, the Vice President will performs the duties and responsibilities of the President. ~~performs Board President responsibilities when the President cannot be available.~~
- **Board Member On-Boarding:** Welcomes new members to the Board. Is available to answer questions, and understand role and responsibilities. May participate in on-boarding meeting with staff and new members.

Secretary

- **Calls Roll to Establish Quorum**
- **Board Motions: Restates the motion prior to discussion.**
- **Board Business:** Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Staff drafts minutes using recording, webcast and staff notes, will submit draft minutes to Secretary for his/her review. Submits various reports to the Board as required.
- **Yearly Elections:** Prepares template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents:** References documents e.g. Board Member Handbook, Law Book, Bagley Keene.

Committee Appointments

(Board Policy)

The President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in consultation with the Vice President, Secretary and the Executive Officer. Appointment of non-Board members to a committee is subject to the approval of the Board.

Attendance of Committee Meetings

(Government Code Section 11122.5 (c)(6))

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

Chapter 5. Board Administration and Staff

Appointment of Executive Officer

(BPC Section 3027)

The Board shall employ an Executive Officer and other necessary assistance in the carrying out of the provisions of the BPC, Chapter 7.

The executive officer shall perform the duties delegated by the Board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the Board. With the approval of the Director of Finance, the Board shall fix the salary of the Executive Officer. The Executive Officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

Board Administration

(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs, operations and staff shall be the responsibility of the Executive Officer. Board members should not interfere with day-to-day operations, which are under the authority of the Executive Officer.

Legal Counsel

The Board's legal counsel acts represents the Board for litigation and accordingly for services rendered by the Office of the Attorney General. The Board's legal counsel provides "in-house" counsel.

Board Budget

(Board Policy)

The Secretary shall serve as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Secretary.

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate al budget issues to the Administration and Legislation.

Press Releases

(Board Policy)

The Executive Officer may issue press releases with the approval of the Board President.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board's strategic planning process. The Vice President shall serve as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will conduct an annual strategic planning session and may utilize a facilitator to conduct the strategic planning process.

Legislation

(Board Policy)

In the event time constraints preclude Board action, the Board delegates to the Executive Officer and the Board President the authority to take action on legislation that would affect the practice of optometry or responsibilities of the Board. The Board shall be notified of such action as soon as possible.

Communication with Other Organizations & Individuals

(Board Policy)

Any and all representations of the Board or Board policy must be made by the Executive Officer or Board President, unless approved otherwise. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Executive Officer's Office.

Executive Officer Evaluation

(Board Policy)

Board members shall evaluate the performance of the Executive Officer on an annual basis.

Board Staff

(DCA Reference Manual)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by

collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-today personnel transactions.

Business Cards

(Board Policy)

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address. A Board member's business address, telephone and fax number, and email address may be listed on the card at the member's request.

Chapter 6. Other Policies & Procedures

Board Member Orientation

(BPC section 453)

Newly appointed members shall complete a training and orientation program provided by DCA within one year of assuming office. This one-day class will discuss board member obligations and responsibilities.

Materials Provided to Incoming Board Members

(Government Code section 11121.9)

A copy of the Bagley-Keene Act must be provided to each new member upon his or her appointment.

Board Member Ethics Training

(Government Code section 12950.1)

Newly appointed board members shall attend an ethics training course within six months of assuming office and every two years thereafter.

Pursuant to Government Code section 12950.1, each member shall attend at least two hours of interactive training covering sexual harassment prevention within six months of his or her appointment.

Board Member Disciplinary Actions

(Board Policy)

The Board may censure a member if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner. The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as chair. In accordance with the Public Meetings Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(BPC Sections 106 and 106.5)

The Governor has the power to remove from office at any time any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

(Government Code Section 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. State law requires written notification. A copy of this letter shall also be sent to the director of DCA, the Board President, and the Executive Officer.

Conflict of Interest

(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Candidates, Applicants and Licensees

(Board Policy)

Board members shall not intervene on behalf of a candidate or an applicant for licensure for any reason. Nor shall they intervene on behalf of a licensee. All inquiries regarding licenses, applications and enforcement matters should be referred to the Executive Officer.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board members or the staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board member may access the file of a licensee or candidate without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the office of the Board.

***Ex Parte* Communications**

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting *ex parte* communications. An *ex parte* communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an *ex parte* communication with Board enforcement staff while a proceeding is pending. Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board

member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Executive Officer.

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To: Board Members

Date: April 23, 2015

From: Robert Stephanopoulos
Enforcement Analyst

Telephone: (916) 575-7185

Subject: Agenda Item 5 – Acceptance of Continuing Medical Education

Action Requested:

It is requested that the Board consider the recommendations made by the Practice and Education Committee to accept Continuing Medical Education (CME) to fulfill CE requirements for optometry license renewal.

Background:

The Board received a letter from Dr. Pam Miller, O.D., regarding the inability of optometrists to apply CME courses to CE requirements. Dr. Miller specifically stated that she had taken CME courses on diabetes and cardiology, but was unable to earn CE credit towards her license renewal. Dr. Miller believes these courses are particularly valuable to optometrists, as she frequently sees patients who are diabetic and/or have cardio-vascular problems. Dr. Miller has requested the Board consider allowing any CE course approved for Category 1 CME credits by the [American Medical Association](#) (AMA) and Category 1-A CME credits by the [American Osteopathic Association](#) (AOA).

Currently, [Business and Professions Code \(BPC\) §3059](#) and [California Code of Regulations \(CCR\) §1536](#), requires that optometrists complete 40 hours of CE per renewal cycle. This CE requirement increases to 50 hours if the optometrist is certified to use therapeutic pharmaceutical agents. Further, 35 of the 50 hours required shall be on the diagnosis, treatment, and management of ocular disease. Pursuant to [CCR §1571](#), optometrists certified in the diagnosis and treatment of glaucoma are required to take 10 hours of glaucoma specific CE, which shall be part of the 35 hours in the diagnosis, treatment, and management of ocular disease. In addition, 20 hours of CE may be accomplished by any or all of the following: documented and accredited self-study, teaching an optometric CE course, writing optometric articles that have been published, attendance at a Board meeting, and completing a CPR course.

The Board contacted Lisa Fennell of the [Association of Regulatory Board of Optometry](#) (ARBO) to gather information concerning the acceptance of CME to the CE requirements of other state optometry boards. Ms. Fennell was able to get responses from 15 other state optometry boards, 10 of which said they would accept CME if it was related to the practice of optometry or ocular side effects. In particular, Dr. John Robinson, O.D., Executive Director of the North Carolina Board of Optometry stated that the human body and disease that affect it cannot be neatly separated and care assigned to one class of practitioner. Moreover, he is of the opinion that the purpose of continuing education is to keep the practitioner – no matter the specialty – current in the knowledge necessary for the proper care of their patients.

Dr. Jack Terry, O.D., CEO of the [National Board of Examiners in Optometry](#) was contacted for his opinion on the acceptance of CME, as he is familiar with the subject matter used in the national exam. Dr. Terry stated that he was very fortunate over the years to attend many CE courses at a medical school that offered Category 1 CME for the majority of the CE. He specified that topics such as diabetes, hyperthyroidism, hypercholesterolemia, amaurosis fugax, transient ischemic attacks, arthritis, ulcerative colitis, Crohn's Disease, Parkinson's Disease, sarcoidosis, systemic hypertension, leukemia, lymphoma, hyper-viscosity syndromes, Lyme Disease, Wilson's Disease, cirrhosis with jaundice, Pancoast Syndrome, other lung disease, COPD, STDs, CVA, MI, and malignant melanoma metastasizing to the choroid all have obvious optometric ramifications. He further asserted that allowing CME is very appropriate, applicable, and should be accepted by the Board.

On March 19, 2015, the Practice and Education Committee (Committee) made up of Dr. Ken Lawenda, O.D., Dr. Madhu Chawla, O.D., and Ms. Cyd Brandvein met to discuss the acceptance of CME. Dr. Ken Lawenda strongly agreed with Dr. Robinson's assessment of CME, in that the body can't be compartmentalized. In Dr. Lawenda's experience, there are many parts of the human body, as well as medications, which have relevancy to the pathology of the eye. Dr. Chawla stated that, from her experience working in a hospital setting which utilizes integrated electronic medical records and patients are viewed from a complete body perspective, she believes CME is relevant. Ms. Brandvein stated that California could be on the leading edge of this type of acceptance of CME credit, and that integrative medicine and collaboration between doctors is the direction medicine is headed. Therefore, it is the Committee's recommendation that the Board approve the addition of subsection (4) to CCR §1536(e) to read the following:

(4) Any CE course approved for category 1 of the AMA or category 1A of the AOA CME credits that contributes to the advancement of professional skill and knowledge in the practice of optometry.

Attachments:

- 1) [BPC §3059](#)
- 2) [CCR §1536](#)
- 3) [CCR §1571](#)

§ 3059. Continuing education requirements

(a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

- (1) Glaucoma.
- (2) Ocular infection.
- (3) Ocular inflammation.
- (4) Topical steroids.
- (5) Systemic medication.
- (6) Pain medication.

(f) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(g) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(h) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.

Added Stats 1971 ch 1791 § 10. Amended Stats 1972 ch 1278 § 1; Stats 1974 ch 403 § 1; Stats 1987 ch 770 § 1; Stats 1990 ch 1382 § 1 (AB 881); Stats 1994 ch 578 § 1 (AB 2943); Stats 1996 ch 13 § 10 (SB 668), effective February 20, 1996; Stats 1997 ch 556 § 2 (SB 461). Stats 2000 ch 676 § 5 (SB 929); Stats 2001 ch 159 § 11 (SB 662). Stats 2004 ch 426 § 40 (AB 2464); Stats 2006 ch 302 § 3 (SB 579), effective January 1, 2007.

§ 1536. Continuing Optometric Education; Purpose and Requirements.

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the license expiration date. Such course work shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of continuing optometric education every two years in order to renew his or her license. Thirty-five of the required 50 hours of continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (e).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(4) A full day's attendance at a California State Board of Optometry Board meeting. Up to two credit hours shall be granted for a full day.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education courses officially sponsored or recognized by any accredited school or college of optometry.

(2) Continuing optometric education courses provided by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education courses approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

(f) Other continuing optometric education courses approved by the Board as meeting the criteria set forth in paragraph (g) below, after submission of a course, schedule, topical outline of subject matter, and curriculum vitae of all instructors or lecturers involved, to the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

(g) The criteria for judging and approving continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry.

(2) Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

California Code of Regulations

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

(4) Number of continuing optometric education hours provided for attending the course.

(5) Date the course was provided.

(6) Location where the course was provided.

(7) Name(s) and signatures of the course instructor(s).

(8) Such other evidence of course content or attendance as the Board may deem necessary.

Use of a certificate of course completion provided by the Board is recommended for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the Board upon request.

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

(i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.

(2) Those licensees as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

(3) Any licensee who is renewing an active license for the first time, if he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.

(j) The Board may conduct an audit of any licensee's attendance of a continuing optometric education course as a means of verifying compliance with this section.

Authority cited: Section 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.

History

1. New section filed 2-21-89; operative 3-23-89 (Register 89, No. 10).

2. Amendment of subsections (a) and (d), new subsection (d)(3), and amendment of subsections (e), (f), (f)(2), (f)(4), (g), (g)(8), (h)(2), (h)(3) and (i), and new subsection (j) and amendment of Note filed 5-8-96; operative 6-7-96 (Register 96, No. 19).

3. Amendment filed 12-22-2004; operative 1-21-2005 (Register 2004, No. 52).

4. Amendment of section and Note filed 5-18-2011; operative 6-17-2011 (Register 2011, No. 20).

§ 1571. REQUIREMENTS FOR GLAUCOMA CERTIFICATION

(a) Only optometrists meeting the requirements of this Article may apply for certification for the treatment of glaucoma as described in subdivision (j) of Section 3041, in patients over 18 years of age. The optometrist shall:

(1) Hold an active license as an optometrist in California in good standing with the State Board of Optometry (Board);

(2) Be certified to use Therapeutic Pharmaceutical Agents (TPA) pursuant to Section 3041.3;

(3) Complete a didactic course of no less than 24 hours in the diagnosis, pharmacological and other treatment and management of glaucoma. The following topics may be covered in the course:

(A) Anatomy and physiology of glaucoma

(B) Classification of glaucoma

(C) Pharmacology in glaucoma therapy

(D) Diagnosis of glaucoma including risk factors analysis

(E) Medical and surgical treatment

(F) Participant performance assessment; and

(4) Complete a Case Management Requirement where a minimum of 25 individual patients are each prospectively treated for a minimum of 12 consecutive months. For purposes of this section, "treat" means properly evaluating the patient, performing all necessary tests, diagnosing the patient, recognizing the type of glaucoma within a licensee's scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient's condition, and making timely referrals to an ophthalmologist when appropriate. The following options may be chosen in any combination to fulfill this requirement:

(A) Case Management Course: Completion of a 16-hour case management course developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board, with at least 15 cases of moderate to advanced complexity. The course may be conducted live, over the Internet, or by use of telemedicine. One hour of the program will be used for a final competency examination. Although the Case Management Course does not involve treatment of patients, completion of the 16-hour Case Management Course is equivalent

to prospectively treating 15 individual patients for 12 consecutive months. Therefore, completion of the 16-hour Case Management Course will count as a 15-patient credit towards the Case Management Requirement. The full course must be completed to receive the 15-patient credit. The course must include the following topics/conditions:

1. Presentation of conditions/cases that licensees may treat:

a. All primary open-angle glaucoma;

b. Exfoliation and pigmentary glaucoma.

2. Presentation of conditions/cases that licensees may not treat, but must recognize and refer to the appropriate physician and/or surgeon such as:

a. Pseudoglaucoma with vascular, malignant, or compressive etiologies;

b. Secondary glaucoma;

c. Traumatic glaucoma;

d. Infective or inflammatory glaucoma;

e. Appropriate evaluation and analysis for medical or surgical consultation;

f. In an emergency, if possible, stabilization of acute attack of angle closure and immediate referral of the patient.

(B) Grand Rounds Program: Completion of a 16-hour grand rounds program developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board, wherein participants will evaluate and create a management plan for live patients. Completion of the 16-hour Grand Rounds Program is equivalent to prospectively treating 15 individual patients for 12 consecutive months. Therefore, the 16-hour Grand Rounds Program will count as a 15-patient credit towards the Case Management Requirement. The full program must be completed to receive the 15-patient credit. Patients must be evaluated in person. The program must include the following:

1. Presentation of various patient types such as: glaucoma suspects; narrow angle, primary open angle glaucoma (early, moderate, late); and secondary open angle glaucoma such as pigment dispersion and pseudoexfoliation. Patient data, including but not limited to, visual acuities, intra-ocular pressures, visual fields, imaging, and pachymetry, will be available on-site and presented upon request;
2. Examination of patients, evaluation of data and test results, and commitment to a tentative diagnosis, treatment, and management plan;
3. Participation in group discussion of the cases with instructor feedback;
4. Attendance of follow-up meetings (within the 16-hour program requirement) where the same or different patients will be reviewed via serial data, including but not limited to visual fields and imaging photos.

(C) Preceptorship Program: Completion of a preceptorship program where each patient must be initially evaluated by the licensee and co-managed with a preceptor. Each patient must be prospectively treated for a minimum of 12 consecutive months. A preceptor for purposes of this section is defined as:

1. A California licensed, Board certified ophthalmologist in good standing; or
2. A California licensed optometrist in good standing, who has been glaucoma certified for two or more years.

Preceptors shall confirm the diagnosis and treatment plan, and then approve the therapeutic goals and management plan for each patient. Consultation with the preceptor must occur at appropriate clinical intervals or when the therapeutic goals are not achieved. Clinical data will be exchanged at appropriate intervals determined by the preceptor and the licensee. Telemedicine and electronic exchange of information may be used as agreed upon by the preceptor and the licensee. Each patient that is seen by the optometrist in the program will count as a 1-patient credit towards the Case Management Requirement.

(b) Licensees that are glaucoma certified pursuant to this Section shall be required to complete 10 hours of glaucoma specific optometric continuing education every license renewal period. These 10 hours shall be part of the required 35 hours on the diagnosis, treatment and management of ocular disease.

(c) Licensees who completed their education from an accredited school or college of optometry on or after May 1, 2008, are exempt from the didactic course and case management requirements of this Section, provided they submit proof of graduation from that institution to the Board.

California Code of Regulations

(d) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2000, and who have not completed a didactic course of no less than 24 hours will be required to take the 24-hour course indicated in subsection (a). Licensees who graduated from an accredited school or college of optometry after May 1, 2000, are exempt from the didactic course requirement of this Section.

(e) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2008, and who have taken a didactic course of no less than 24 hours, but not completed the case management requirement under SB 929 [Stats. 2000, ch. 676, § 3], will be required to complete the Case Management Requirement indicated in subsection (a).

(f) Licensees who started the process for certification to treat glaucoma under SB 929 [Stats. 2000, ch. 676, § 3] but will not complete the requirements by December 31, 2009, may apply all patients who have been co-managed prospectively for at least 12 consecutive months towards the Case Management Requirement indicated in subsection (a).

Authority cited: Sections 3025, 3041, 3041.10 and 3059, Business and Professions Code. Reference: Sections 3041 and 3041.3, Business and Professions Code.

History

1. New section filed 12-9-2010; operative 1-8-2011 (Register 2010, No. 50).

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To: Board Members

Date: April 24, 2015

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: **Agenda Item 6 – Discussion and Possible Approval of Recommendations Pertaining to Posting Requirements of a Consumer Notice that Explains the Designations After an Optometrist’s License Number**

At the November 21, 2014 meeting Dr. David Turetsky, O.D. requested the Board consider a consumer notice requirement (signage) that would educate consumers about the different certifications an optometrist can obtain and what the designations after the license number mean.

Board President Dr. Alejandro Arredondo asked Dr. Turetsky, Ms. Donna Burke, and Ms. Cyd Brandvein to work on the consumer notice. Unfortunately, Ms. Brandvein was unavailable to participate.

The workgroup reviewed and updated the fact sheet “What Do the Letters after an Optometrist’s License Mean?” The opening paragraph of the fact sheet was revised for clarity and a category for optometrists with “No Designation” was added for the small group of optometrists who still practice but have not obtained any additional certifications.

The workgroup recommendation is for this Consumer Notice to become part of Title 16, California Code of Regulations (CCR), Section 1506, Certificates – Posting. Requiring at each office there shall be posted in a conspicuous place, next to the optometrist’s posted license, a notice which shall clearly state the certification designations and definitions for the purpose of consumer education.

Action Requested

Please review Attachment 1, provide any suggested edits; and approve the workgroup’s recommendation. Direct staff to draft language to amend Title 16, CCR 1506, Certificates – Posting, adding the proposed consumer notice into regulation. Additionally, please direct staff to bring the draft language to the August 21, 2015 board meeting for review and possible action to initiate the rulemaking process.

Attachment

1. Draft Consumer Notice- Designations After an Optometrist’s License Number
2. CCR 1506 Certificates - Posting



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CONSUMER NOTICE

Designations After an Optometrist's Name

Certifications allow an optometrist to provide certain additional optometric procedures and services. Certifications are listed immediately to the right of the doctor's license number. The certification designations and their meanings are listed below.

TLG

The **TLG** designation indicates that, in addition to the optometric services described in the TPA section below, the optometrist is also certified to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years and diagnose and treat primary open angle glaucoma in patients over the age of 18 years.

TPG

The **TPG** designation indicates that, in addition to the optometric services described in the TPA section below, the optometrist is also certified to diagnose and treat primary open angle glaucoma in patients over the age of 18 years.

TPL

The **TPL** designation indicates that, in addition to the optometric services described in the TPA section above, the optometrist is also certified to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years.

TPA

TPA is the baseline for the scope of optometry in California. The TPA designation indicates that the optometrist is certified to use therapeutic pharmaceutical agents and the optometrist may treat certain conditions of the human eye, or any of its appendages, with therapeutic pharmaceutical agents. The optometrist may also perform certain procedures on the eye. The therapeutic pharmaceutical agents that may be prescribed, the conditions of the eye, and the authorized procedures are listed in California Business and Professions Code Section 3041.

DPA

The **DPA** designation indicates that the optometrist is certified to use diagnostic pharmaceutical agents for examination purposes only.

No Designation

An optometrist with no designation indicates he/she is licensed to conduct exams for the overall health of the eyes and screen for disease, but not treat. The also prescribe corrective lenses.

§1506. CERTIFICATES – POSTING

(a) A certificate of registration, i.e., original wall certificate, is an original certificate of registration and license to practice optometry in California granted by the Board to a natural person who has qualified for the same pursuant to the provisions of Chapter 7 of Division 2 of the Code and it may not be assigned or transferred to another person but shall; notwithstanding whether it is replaced by a certification of the issuance of a certificate of registration, i.e., duplicate wall certificate, as provided by subdivision (b) of this section; remain valid and in force unless it is revoked or suspended and not reinstated or it is expired and not renewed or restored.

(b) A certification of the issuance of a certificate of registration is a certification by the Board that the person named thereon to whom it is conveyed is the holder of the certificate of registration designated thereon and shall be issued to such person as prima facie evidence that such person is the holder of such certificate of registration designated thereon and to replace the same or a previous certification of the issuance of a certificate of registration issued to the same person, provided that: (1) There is furnished proof satisfactory to the Board of a change in name authorized by law of such person or of the loss of, destruction of or severe damage to such certificate of registration or previous certification of the issuance of such certificate of registration. (2) Such certificate of registration or previous certification of the issuance of such certificate of registration is, unless it is lost or destroyed, surrendered to the Board. (3) There is payment of the fee prescribed by Section 3152(h) of the code for the issuance of a certification of registration. (c) The principal place of practice of an optometrist shall be deemed by the Board to be that office, other than his/her branch office or offices, wherein he/she owns, singly or jointly with any others, the practice of optometry, provided however: (1) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in a single office as an employee, that office shall be his/her principal place of practice. (2) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in two or more offices as an employee, he/she shall inform the Board in writing as to which of such offices shall be deemed his/her principal place of practice.

(d) When the optometrist owns, singly or jointly with any others, the practice of optometry in more than one office or is employed to practice optometry in more than one office and it is infeasible to have his/her certificate posted in more than one of such offices, he/she shall have a numbered statement of licensure issued by the Board and signed by its executive officer conspicuously posted in each of such additional offices wherein he/she owns, singly or jointly with any others, the practice of optometry or wherein he/she practices optometry as an employee, provided that: (1) He/she shall first send a written request to the Board for such statement of licensure or statements of licensure and shall include in such request the exact location of the office wherein it or each of them is to be posted in lieu of his/her certificate. (2) He/she shall not have a statement of licensure posted in any office other than as authorized by such statement of licensure. (3) A statement of licensure shall not be altered or assigned. (4) A statement of licensure is to be immediately surrendered to the Board by the optometrist to whom it is issued upon the occurrence of any of the following: (A) His/her certificate becomes expired, is suspended or is revoked.

(B) He/she terminates ownership of the practice or his/her employment to practice optometry in the office wherein he/she is authorized by such statement of licensure to post the same in lieu of his/her certificate.

(C) The office wherein he/she is authorized by such statement of licensure to post the same becomes the only office wherein he/she has ownership of the practice and/or practices optometry as an employee.

Authority cited: Section 3025, Business and Professions Code

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To: Board Members

Date: April 23, 2015

From: Cheree Kimball
Enforcement Analyst

Telephone: (916) 575-7173

Subject: **Agenda Item 7 - Discussion and Possible Action Pertaining to the Legality of Online Refractions Pursuant to the Laws Governing Optometry in the State of California**

Background

Online Refractions – What are they?

Online refractions – or the process of obtaining a corrective lens prescription through an automated means using dedicated technology that does not require direct, physical examination by an Optometrist or Ophthalmologist. Currently, there are two systems in use in the public (the SoloHealth Station and the 20/20NOW Refraction System), one system that is in the process of obtaining FDA approval (Opternative), and one business that has announced plans to look into creating the technology. The first three systems are different in how they work, what they offer, and what equipment is required to operate them.

The SoloHealth Station ([Attachment 1](#)) is a single unit, kiosk style health assessment station that offers screening tools for vision, blood pressure, BMI and an overall health risk assessment. These stations are already in place inside of Walmarts, Safeways, Sam's Clubs, and Schnuck's. While the SoloHealth Station assesses your visual acuity, it neither provides nor offers a corrective lens prescription. It does, however, offer access to a database of local health care providers.

The 20/20NOW Refraction System ([Attachment 2](#)) uses an auto refractor, an auto lensometer, an auto phoropter, high definition video-conferencing, and a remote "certified ophthalmic technician" to conduct a thorough refraction. The information is then transmitted to an Ophthalmologist who writes the final corrective lens prescription. According to 20/20NOW, there are no patient exclusions for using their system, the refraction process takes about 15 minutes, and the final prescription is available within about 15 minutes.

Opternative ([Attachment 3](#)) is currently in the process of obtaining FDA approval. Opternative's system can be used by a consumer in their own home and requires only a computer, a web-enabled phone, and about 12 feet of space. According to their website, the process takes about 15 to 25 minutes and the information is reviewed by "licensed, board certified eye care professional in the state where you reside" who then issues any corrective lens prescription. Opternative's website is very clear that this is not an eye health examination, and encourages users to follow the eye health exam recommendations set by the American Optometric Association. Further, Opternative's FAQ states that, while anyone can take the refractive eye exam, the system will not provide clinical guidance or corrective lens prescriptions unless the person meets certain age and health criteria. Everyone who does not meet these criteria will, instead, be given a referral for a local eye care professional ([Attachment 4](#)).

Legal Issues

In December, 2014, The Ohio State Board of Optometry (Ohio) issued a policy statement regarding online refractions in response to new technology enabling refractive exams to be conducted with the aid of a computer and a web-enabled phone and, once the examination has been reviewed by a licensed professional, a corrective lens prescription can be issued to a consumer without the consumer being examined directly by an Optometrist or Ophthalmologist. While obtaining a new corrective lens prescription without leaving home is certainly convenient, this technology cannot perform eye health examinations, nor can they resolve vision issues more complex than myopia, hyperopia, and astigmatism.

Ohio's Policy Statement ([Attachment 5](#)) specifies that it considers the standard of care to be the issuance of a corrective lens prescription as part of an ocular health examination. The Policy Statement also specifically states, in reference to an online refractive examination being reviewed by an optometrist who then issues the corrective lens prescription, "we do not advocate participation by Ohio licensed optometrists in these practices."

In addition to Ohio's Policy Statement, three states have passed legislation seeking to regulate the use of this technology (Alabama, Michigan, and West Virginia) and two more bills are currently pending (Nebraska and Maine). The goals of these new laws are to clarify that refractions should only be done by licensed eye health professionals, authorize the licensing Boards to issue citations to unlicensed persons, require a prescription to dispense eyeglasses or contact lenses, and update telemedicine laws to include Optometrists. The American Optometric Association is also recommending that Boards adopt regulations specifying that corrective lens prescriptions cannot be based solely on telemedicine services.

In California, Business and Professions Code (BPC) section 2540 specifies that only an optometrist or a physician and surgeon "may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices." This is reaffirmed in BPC 3041(a)(2), which defines the practice of optometry as including "the determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition." BPC 2541 defines prescription ophthalmic devices, specifying, again, that the prescriptions be ordered by an optometrist or a physician and surgeon. California Code of Regulations (CCR) section 1577 authorizes the Executive Office of the Board to issue citations to unlicensed persons for performing services for which a license to practice is required. BPC section 2290.5, which speaks to telemedicine under the umbrella term of telehealth, specifically applies to all persons licensed under Division 2 of the BPC, which includes optometrists and physicians and surgeons.

California law states that corrective lenses can only be dispensed with a prescription written by an Optometrist or an Ophthalmologist. However, the law is not specific as to how the refractive eye examination is conducted, whether it is required to be in conjunction with an ocular health examination, nor even whether or not the doctor who issues the prescription is physically present during the examination. While it is not uncommon for California law to not specifically describe the details of optometric examinations or treatments, relying, instead, on the testimony of experts who can speak to the standard of care for specific cases, this allows some degree of interpretation regarding whether an Optometrist would be in violation of the Optometric Practice Act for issuing a corrective lens prescription to a patient that has not been seen in person.

Potential Options

1. Issue a Policy Statement similar to the one issued by the Ohio State Board of Optometry

A Policy Statement regarding Online Refractions would be inappropriate in California. A policy statement is unenforceable, would not stand up to a legal challenge, and would likely be considered to be an underground regulation.

2. Direct staff to look into updating regulations to more specifically address how a refractive eye examination is conducted.
3. Direct staff to look into updating regulations to more specifically address the requirements for corrective lens prescriptions.
4. Direct staff to look into conducting a consumer outreach campaign to educate the public on the importance of regular eye health examinations for maintaining eye health for life.

Attachments

1. [SoloHealth Station Overview](#)
2. [20/20NOW Refraction System](#)
3. [Opternative](#)
4. [Opternative's FAQ's](#)
5. [Ohio State Board of Optometry's Policy Statement Regarding Online Refractions](#)
6. Referenced Statutes and Regulations – BPC 2540, 3041(a)(2), 2541, 2290.5, and CCR 1577



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PRIVACY POLICY DATA SHARING POLICY TERMS OF USE SOLOHEALTH STATION TERMS OF SERVICE & PRIVACY POLICY

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HOW IT WORKS

Using 20/20 NOW, consumers can enter your store and, even without an appointment, get a complete refraction in 15 minutes or less. With HD video conferencing our certified remote ophthalmic technicians remotely operate state-of-the-art equipment for an incredibly precise prescription on the spot.



The patient is greeted by an assistant and electronically completes intake forms.



The patient is placed on an auto refractor to achieve a baseline reading.



If the patient wears glasses, their eyewear is placed on an auto lensometer.



All pre-refraction information is transmitted to a remote certified ophthalmic technician (COT).



An auto phoropter is placed in front of the patient's eye and adjusted.



Through high tech HD video-conferencing, a COT remotely conducts a thorough refraction directly with the patient and interacts in real time.



At the end of the refraction, the patient is shown a comparison of their original and new prescription. A preliminary report prints out in the exam room. The prescription reports are then reviewed by a remote, board-certified ophthalmologist and the final report with the new Rx is sent directly to the EMR system at the practice.

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The Opternative Eye Exam provides glasses and contact lens prescriptions for just \$30.

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Save time & money

Opternative experience

30mins

\$30



We recommend seeing your eye doctor for a health exam every two years.

Traditional experience

3hrs

\$80



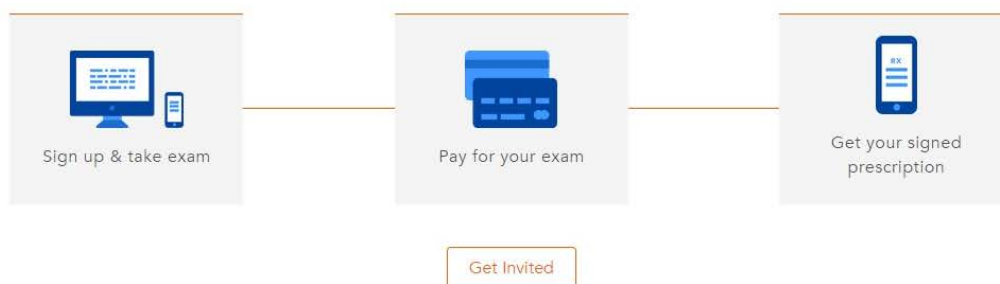
Get Invited



Physician approved

Receive a prescription that's been reviewed and signed by an eye care professional in your state.

How it works



No hassle

Take our online eye exam from home, get your digitally signed prescription the same day, and shop for a new pair of glasses anywhere you'd like!



Keeping your eyes healthy

A refractive eye exam is only part of your comprehensive eye care. It's important that you visit an eye care professional's office for an eye health exam once every two years, as recommended by the American Optometric Association. After taking Opternative's refractive eye exam we'll help you locate an optometrist or ophthalmologist in your area.

Everyone is eligible to take Opternative's eye exam, but people under 18, over 40, or with specific medical conditions (diabetes, hypertension, known eye disease, etc.) don't qualify for receiving prescription services at this time.

Get Invited



Accurate

Internal studies show Opternative's exam performing equally to a traditional refractive eye exam. Before launch, we will conduct a third party NIH registered, IRB reviewed clinical study and be in compliance with the FDA.

Seeing is believing

"This is by far the easiest and fastest way to get an accurate prescription. I was amazed that it even picked up on my astigmatism!"



BROK VANDERSTEEN

Senior Member Outreach Executive,
ContextMedia, Inc.

"This will be the best thing that's ever happened for people who need regular eye exams."



SAM YAGAN

CEO, Match.com

"My experience in taking the eye exam was very positive and I found the user interface to be intuitive."



DAN MALVEN

Vice President, Walgreens

Opternative online eye test could revolutionise sight exams.

THE HUFFINGTON POST

Opternative is the first online eye exam that writes you a prescription.

TC TechCrunch

The end of eye charts? A startup can now give eyeglass exams online.

FAST COMPANY

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Sign Up For An Invite Today

We have not launched yet, but sign up for our early access program and we'll send you an exam invite before anyone else.

First name	Last name	
Email		
State	Zip	
Birthday		
MM	DD	YYYY
When do you need an eye exam?		
Select		
When was your last eye exam?		
Select		
Request an invite		

Want to get involved? We're looking to partner with providers and retailers. Learn more: [PROVIDERS](#) [RETAILERS](#)

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* Optative's technology is only intended and suitable for use by licensed eye care professionals to perform online refractive eye exams on patients between the ages of 18-40 and in good health (e.g. patients must not have a history of diabetes, hypertension, glaucoma, cataracts, retinal detachment, brain injuries, neurological issues, or symptoms of acute eye pain, or flashes and floaters in their eyes, etc.). Our technology does not include a comprehensive health exam. Optative recommends that users go to see their nearest Optometrist or Ophthalmologist at their earliest convenience to get a full health exam, and that eye care professionals using the technology to perform refractive eye exams also counsel patients on the need to obtain complete and full eye and health examinations.

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How will Opternative encourage comprehensive eye exams?

Patient safety comes first. We are committed to fully supporting the AOA's recommendation of a comprehensive eye health exam once every 2 years for all patients over 18. We will promote compliance with AOA standards in the following ways:

- Our refractive eye exam will be clearly labeled so that consumers understand that our software does not perform an eye health exam.
- Eye care professionals using our software will be required to provide clinical guidance stating that each patient needs to take an eye health exam.
- Every patient will be provided contact information for local eye care professionals in their area where they can receive an eye health exam and fulfill their prescription. Opternative will send out reminders to individuals who require health checks based on when they took their last Opternative exam.

Can anyone take the exam?

Yes, we are allowing everyone to take our refractive eye exam. However, we will not be providing clinical guidance or prescription services to patients that do not currently meet age and health requirements. The requirements include, but are not limited to:

- 18-40 years old.
- No history of amblyopia, diabetes, hypertension, glaucoma, cataracts, retinal detachment, brain injuries, neurological issues, etc.
- No recent discomfort or symptoms of acute eye pain, flashes and/or floaters in eyes.

Everyone who takes the exam will be referred to an eye care professional for a follow up eye health testing (and possibly a refractive exam) if they did not qualify for our prescription services. For convenience we will have a complete list of local eye care professionals that patients can choose from in their account. If you're an eye care professional who would like to learn more about our in-office referral program [click here](#).

How does the exam work?

Opternative's online refractive eye exam is a series of eye tests designed to measure the components of a vision prescription: near sightedness, far sightedness, and astigmatism. The interactive exam takes approximately 15-25 minutes and follows the same principles applied in an eye care professional's office where patients are asked to respond to a series of ophthalmological images. The difference is our exam can be performed remotely using a patient's computer screen to display precisely calibrated images and a web-enabled phone to record a patient's answers. Based on the patient's responses to the exam and their medical history, a licensed eye care professional is able to determine an appropriate prescription or provide other clinical guidance to the patient. Those without a web-enabled phone can still take the test via a proctor mode that allows a friend to run the test from the computer.

Does this test my eye health?

No, this is not an eye health exam. Our service provides patients with a refractive eye exam, which measures a person's prescription for eyeglasses or contact lenses. A refractive eye exam is only part of comprehensive eye care. It's important for patients to visit an eye care professional's office for an eye health exam once every two years, as recommended by the [American Optometric Association](#). After taking Opternative's refractive eye exam, we'll help locate an optometrist or ophthalmologist in your area.

Where is this prescription valid?

Our digital prescriptions will be signed by a licensed, board certified eye care professional in the state where you reside, and can be used anywhere in the United States. Those located outside the U.S. may take our exam, but should first review the laws their countries employ before using prescriptions signed by U.S. eye care professional.

POLICY STATEMENT REGARDING ONLINE REFRACTIONS

The Ohio State Board of Optometry's first and foremost charge is protection of the public's health and wellness. The Board recognizes that online refractive technology has potential as a visual screening and refractive device in a medical setting or as an online visual screening program. However, the Board does not support the use of online questionnaires to give a glasses or contact lens prescription, without an immediate, accompanying physical examination of ocular health by an Ohio licensed optometrist.

One company is currently on the internet advising they are launching these services. Their policy states; "No one under 18, over 40, or with specific medical conditions such as diabetes, hypertension, known eye diseases, will qualify to receive a prescription." However, **the use of online questionnaires is inadequate to establish the patient's age and medical/ocular history.** The patient record established by the online eye questionnaire should be consistent with existing laws and regulations governing patient health care records. Age and location of the patient must be verified by acceptable means of identification. Records of past care, with laboratory and test results, are necessary to establish pre-existing medical conditions. We would expect that medical history be verified with a dated copy of a completed physical examination and ocular history be verified with a dated copy of a completed eye examination.

The risk with all telemedicine is substandard professional services. With the promise to save people the commute, the wait, the time, and the money, **standards of care can be significantly compromised.** It is expected that all optometrists who provide telemedicine place the welfare and health of the patients first. An online eye refraction shall not be given after an online questionnaire, unless a dated copy of a recent eye health examination (within 6 months) is part of the patient's record.

Telemedicine is the way of the future and the Board agrees that it is a powerful tool in medical practice, but not a separate form of medicine. We would expect that optometrists who provide eye care, whether in-person or via telemedicine, comply with **acceptable, appropriate, and professional standards of care.** While we support technology, increased access to care, and patient choice, we do not support the use of online questionnaire to give prescriptions without an accompanying, ocular health exam. This does not adhere to current standards of care and therefore represents a compromise to the health and safety of the public.

1. Glasses prescriptions: It is the well-established and accepted standard of care, that a refraction is not to be independent from an ocular health exam. This is vital for the detection of eye diseases that result in permanent vision loss as well as serious systemic diseases. Many times those diseases first present themselves in a change in the quality of vision. Therefore, **we do not support the use of any company to give a prescription apart from the ocular health exam.**

2. Contact lens prescriptions: Under the Fairness to Contact Lens Consumers Act, the expiration date of a contact lens prescription must be specified based on the medical judgment of the prescriber, **with respect to the ocular health of the patient.** This important component of the prescription can be determined only with the use of a slit lamp. Skype interactions, a self-photo, and a web cam photo are not a substitute for this binocular microscope examination, which gives a stereoscopic, highly magnified view of ocular structures. Only a slit lamp examination can detect the presence of corneal neovascularization and infiltrates below the corneal epithelium; both indicate that ocular health is compromised by the use of contact lenses. Additional testing, such as corneal topography, may be necessary to determine whether contact lens wear is causing corneal pathology. Neither a prior contact lens prescription nor a close-up photo of the patient's eyes can confirm ocular health for established contact lens wearers.

Telemedicine is the way of the future and we support technology as a powerful tool in health care. However, The Ohio State Board of Optometry agrees that there are too many unanswered questions regarding this technology, as well as serious concerns for liability and risk involved. **Therefore, we do not advocate participation by Ohio licensed optometrists in these practices. You should notify the Board if you become aware of online refractions being conducted in the State of Ohio.**

Approved 12-10-14

POLICY STATEMENT REGARDING ONLINE REFRACTIONS

Please refer to the following excerpts from our Laws, Rules and Policies:

4725.19 Disciplinary actions.

(9) Departing from or failing to conform to acceptable and prevailing standards of care in the practice of optometry as followed by similar practitioners under the same or similar circumstances, regardless of whether actual injury to a patient is established;

(15) Soliciting patients from door to door or establishing temporary offices, in which case the board shall suspend all certificates held by the optometrist;

4725.01 Optometry definitions.

As used in this chapter:

(A)(1) The "practice of optometry" means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury.

4725-5-16 Display of name and office requirements.

An optometrist has the responsibility to establish and maintain a safe and hygienic office adequately equipped to provide full optometric services within the scope of the licensure of the practitioner. The board requires the following minimum equipment needed to provide a full scope examination which shall include, but not be limited to, tonometer, slit lamp, and instrumentation to examine the retina and to perform visual fields. All optometric examination locations shall be equipped with adequate hand washing facilities on location for use by optometrists and patients.

Business and Professions Code Sections

§2540. MEASURE OF RANGE OF VISION; DETERMINE PRESCRIPTION OF LENSES

No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices.

Added Stats 1959 ch 2073 § 2. Amended Stats 1985 ch 1139 § 1;

Stats 2006 ch 148 § 2 (AB 1382), effective January 1, 2007.

§3041. ACTS CONSTITUTING PRACTICE OF OPTOMETRY

(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

...

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

...

Added Stats 1976 ch 418 § 2. Amended Stats 1989 ch 886 § 61;

Stats 1995 ch 279 § 18 (AB 1471); Stats 1996 ch 13 § 6 (SB 668), effective February 21, 1996. Amended Stats 2000 ch 676 §3 (SB 929); Stats 2007 ch 507 § 2 (AB 1224), effective January 1, 2008; Stats 2008 ch 352 § 1 (SB 1406), effective January 1, 2009; Stats 2009 ch 140 § 11 (AB 1164), effective January 1, 2010; Stats 2012 ch 714 § 3 (AB 761), effective January 1, 2013.

§2541. PRESCRIPTION OPHTHALMIC DEVICE DEFINED

A prescription ophthalmic device includes each of the following:

(a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

(b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).

(c) Any plano contact lens that is marketed or offered for sale in this state. "Plano contact lens" means a zeropower or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.

Added Stats 1959 ch 2073 § 2. Amended Stats 1985 ch 1139 § 2;

Stats 2006 ch 148 § 3 (AB 1382), effective January 1, 2007.

§2290.5. TELEHEALTH; PATIENT CONSENT; HOSPITAL PRIVILEGES AND APPROVAL OF CREDENTIALS FOR PROVIDERS OF TELEHEALTH SERVICES

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

Added Stats 2011 ch 547 § 4 (AB 415), effective January 1, 2012.

Amended by Stats. 2014, Ch. 404, Sec. 1. Effective September 18,

California Code of Regulations Section

§1577. CITATIONS FOR UNLICENSED PERSONS

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, as defined in Section 125.9 of the Code, who are performing or who have performed services for which a license is required under the statutes and regulations enforced by the Board of Optometry. Each citation issued for unlicensed activity shall be issued in accordance with Section 1578 of these regulations. The provisions of section 1578 shall apply to the issuance of citations for unlicensed activity under this section. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Authority cited: Sections 125.9, 148, 3025 and 3135, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

History 1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).

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

To: Board Members

Date: April 23, 2015

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: **Agenda Item 8 – Update on the Supreme Court Decision Regarding the North Carolina Board of Dental Examiners v. the Federal Trade Commission**

At today's meeting Claire Yazigi, Senior Legal Counsel will provide an update on the discussion of what this decision means for regulatory boards under the umbrella of the Department of Consumer Affairs.

Background

On February 25, 2015, the Supreme Court decided *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, No. 13-534. The Court held that the North Carolina State Board of Dental Examiners was not immune from Sherman Act regulation under the doctrine of state-action antitrust immunity as set forth in *Parker v. Brown*, 317 U.S. 341 (1943) and its progeny. "If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked."

The North Carolina State Board of Dental Examiners, made up of six dentists, one dental hygienist, and one consumer, was tasked with the duty to create, administer, and enforce a licensing system for dentists. The Board issued numerous cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers. The FTC filed an administrative complaint alleging that the Board's action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition in violation of the Sherman Act. The Board moved to dismiss on the basis of state-action immunity. The administrative law judge (ALJ) denied the motion and ultimately found in favor of the FTC. The Fourth Circuit affirmed.

The Supreme Court affirmed. "[A]ctive market participants," held the Court, "cannot be allowed to regulate their own markets free from antitrust accountability." In *Parker v. Brown*, the Court had interpreted antitrust laws to confer immunity on anticompetitive conduct by states when acting in their sovereign capacity. But immunity for state agencies requires more than a mere façade of state involvement. A nonsovereign actor controlled by market participants, like the Board here, is immune only if (1) the challenged restraint on competition is clearly articulated and affirmatively expressed as state policy and (2) the policy is actively supervised by the state. While the unauthorized practice of dentistry is prohibited, nothing in the governing statute addresses whether that prohibition covers teeth whitening, and the Board did not receive active supervision when it interpreted the statute to address teeth whitening and when it enforced that policy by issuing cease-and-desist letters.

Justice Kennedy delivered the opinion of the Court, joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Alito filed a dissenting opinion, joined by Justices Scalia and Thomas.

The Department of Consumer Affairs is working with Agency and the Governor's Office in determining if this decision has effect on any of the boards under the DCA umbrella and if so how to best manage any potential problems related to antitrust immunity.

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To: Board Members

Date: April 23, 2015

From: Nooshin Movassaghi
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 9 – Update on Rulemaking Pertaining to Title 16, CCR §1516, Applicant Medical Evaluations and §1582, Unprofessional Conduct Defined**

Action Requested:

None. This is an update

Update:

At its August 16, 2013 meeting, the Board voted to initiate a rulemaking to give the Board authority to compel an applicant to submit to a psychological or physical examination, and further define unprofessional conduct. The rulemaking action was printed in the California Regulatory Notice Register on October 18, 2013, and the 45-day comment period for the public started on October 18, 2013 and ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. Staff resubmitted the unchanged rulemaking package to the Office of Administrative Law, which was printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period began on August 8, 2014 and concluded on September 22, 2014.

The rulemaking action was printed in the California Regulatory Notice Register December 12, 2014, and the 45-day comment period for the public started on December 12, 2014 and ended on January 26, 2015. The hearing was held on January 26, 2015. There were no comments or public speakers at the hearing. The rulemaking package was then sent to Department of Consumer Affairs and approved on April 1, 2015. The rulemaking package was sent to Agency on April 1, 2015 and has been approved. Currently the file is with the Department of Finance (DOF) for fiscal review.

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To: Board Members

Date: April 23, 2015

From: Alejandro Arredondo, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 10 – Adjournment

2450 Del Paso Road, Suite 105
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To: Board Members

Date: April 24, 2015

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 11 – Call to Order and Roll Call/ 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

Madhu Chawla, O.D., Vice President, Professional Member

Donna Burke, Board Secretary, Public Member

Cyd Brandvein, Public Member

Frank Giardina, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

William H. Kysella, Jr., Public Member

Rachel Michelin, Public Member

Mark Morodomi, Public Member

David Turetsky, O.D., Professional Member

Lillian Wang, O.D., Professional Member

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(916) 575-7170, (916) 575-7292 Fax
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To: Board Members

Date: April 24, 2015

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 12 - President's Welcome, Introductions and Report

Welcome, introductions and report by President Alejandro Arredondo, O.D.

- Introduction of New Board Members
Lillian Wang, OD
Mark Morodomi
- Thank You to Former Board Members
Kenneth Lawenda, OD
Alexander Kim, OD
- Introduction of Board Staff
- Introduction of Audience (voluntary)
- Update on Director's Meetings

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To: Board Members

Date: April 24, 2015

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 13 – Public Comment

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

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To: Board Members

Date: April 24, 2015

From: Claire Yazigi
Senior Staff Counsel

Telephone: (916) 575-7170

Subject: Agenda Item 14 – Ethics Training Summary by Legal Counsel

Claire Yazigi, DCA Senior Staff Counsel, will provide the Board Members with an Ethics Training Summary and review the attachments during this meeting.

Attachments

1. 10 Rules to Open Meetings
2. Ethics Overview

**BAGLEY-KEENE OPEN MEETING ACT
TOP TEN RULES
(May 2014)**

[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]

- 1. All meetings are public. (GC §11123.)**
- 2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)**
- 3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1).**
 - a. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)**
- 4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.)**
- 5. Law applies to committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (GC §11121)**
- 6. Public comment must be allowed on open session agenda items before or during discussion of each item and before a vote, unless: (GC §11125.7.)**
 - a. The public was provided an opportunity to comment at a previous committee meeting of the board, where the committee consisted exclusively of board members. If the item has been substantially changed, another opportunity for comment must be provided.**
- 7. Closed sessions (GC §11126.) At least one staff member must be present to record topics discussed and decisions made. (GC § 11126.1).**

Closed session allowed:

- a. Discuss and vote on disciplinary or enforcement matters under the Administrative Procedure Act (APA). (subd. (c)(3).)**
- b. Prepare, approve or grade examinations. (subd. (c)(1).)**

- c. Pending litigation. (subd. (e)(1).)
- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (subd. (a), (b).)

No closed session allowed for:

- a. Election of board officers. (68 AG 65.)
- b. Discussion of controversial regulations or issues.

- 8. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526.)
- 9. No proxy votes. (68 AG 65.)
- 10. Teleconference Meetings (GC §11123.)
 - a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
 - b. Notice and agenda required. (subd. (b)(1)(A).)
 - c. Every location must be open to the public and at least one board member must be physically present at every noticed location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
 - e. Rollcall vote required. (subd. (b)(1)(D).)
 - f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

Reference: January 2014 "Public Meetings" Memorandum & Attached Guide to the Bagley-Keene Open Meeting Act
http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

ETHICAL DECISION MAKING

Handout #2

Questions	Mandatory Recusal	Need Further Discussion
<p>Have you served as</p> <ul style="list-style-type: none"> investigator prosecutor, or advocate <p>before or during the adjudicative proceeding?</p>	Yes	
<p>Are you biased or prejudiced for or against the person?</p> <p>or</p> <p>Do you have an interest (including a financial interest) in the proceeding? See The Fair Political Practice Committee, which has specific and detailed rules about financial disqualification.</p>	Yes	
<p>Have you</p> <ul style="list-style-type: none"> engaged in a prohibited ex parte communication before or during adjudicative proceeding (may result in recusal)? <p>OR</p> <ul style="list-style-type: none"> Has anyone complained to you about investigation currently in progress? <p>√ “Ex parte” communication: direct or indirect communication with you by one of the parties or its representative without notice and opportunity for all parties to participate in the communication (e.g. applicant or licensee (or someone acting on that person’s behalf)</p>		Yes
Do you or your spouse or a close family member (such as an uncle or cousin) have personal knowledge of disputed evidentiary facts concerning the proceeding?		Yes
Do you doubt your capacity to be impartial?		Yes
Do you, for any reason, believe that your recusal would further the interests of justice?		Yes

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To: Board Members

Date: April 24, 2015

From: Alejandro Arredondo, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 15 – Department of Consumer Affairs Report

Brandon Rutschmann, BreEZe Project Director, will provide a BreEZe status update and answer questions from the Board. He will also review the BreEZe timeline and its impact on Board resources (Attachment 1).

If available, additional information from a Department representative may be presented.

Attachments

1. Board BreEZe timeline

California Board of Optometry



2/2/15 2/16/15 3/2/15 3/16/15 3/30/15 4/13/15 4/27/15 5/11/15 5/25/15 6/8/15 6/22/15 7/6/15 7/20/15 8/3/15 8/17/15 8/31/15 9/14/15 9/28/15 10/12/15 10/26/15 11/9/15 11/23/15 12/7/15 12/21/15 1/4/16 1/18/16 2/1/16 2/15/16

UAT Script Development UAT Script Validation UAT Process Training UAT Execution Regression Testing Go Live

Current Script Inventory Count 123
% of Inventory Items Completed 100%
Status **COMPLETED**

DV Run 1.0 DV Run 1.5 DV Run 2.0 DV Run 2.5 DV Run 3.0 DV Run 4.0 DV Run 5.0 Dress Rehearsal

Data Conversion Data Validation (DV) Defect Resolution

Design Updates Review Train the Trainer User Training

Organizational Change Management Support Activities

Task	Task Start	Task Finish
Design Updates Review (thru UAT Entry)	2/1/15	10/28/15
Reports Development sign-off	2/1/15	5/28/15
Organizational Change Management Activities	2/1/15	2/17/16
UAT - Script Writing	2/5/15	5/4/15
Data Validation Run 1.5	3/25/15	4/15/15
UAT - Executive Sign-off for Scripts / Test Capacity	5/11/15	5/11/15
Data Validation Run 2	5/13/15	5/29/15
UAT - User Acceptance Process Training	6/1/15	7/15/15
Data Validation Run 2.5	6/24/15	7/7/15
Data Validation Run 3	7/29/15	8/11/15
UAT - Conduct UAT (Script, Ad-Hoc & End to End Testing)	11/1/15	1/10/16
Train-the-Trainer	11/16/15	12/6/15
Data Validation Run 4	9/16/15	9/25/15
User Training	12/7/15	1/10/16
Data Validation Run 5	10/15/15	10/21/15
UAT - Executive Officer UAT Sign-off	1/10/16	1/10/16
Dress Rehearsal for Go-Live	1/9/16	1/12/16
Release 2 Go-Live	2/16/16	2/16/16
<i>*All dates are for planning purposes only and have not been contractaully baselined</i>		

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To: Board Members

Date: April 24, 2015

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: Agenda Item 16 – Executive Officer’s Report

A. Bagley-Keene – Discussions Between Board Meetings

Brief presentation by Claire Yazigi, DCA Senior Staff Counsel.

B. BreEZe

As reported in Agenda Item 15, staff has started working with the Organizational Change Management (OCM) Team to assist staff with a smooth transition to BreEZe. DCA added OCM to the BreEZe project as part of lessons learned from R1.

The OCM Team met with Mona Maggio and Jessica Sieferman on April 16, 2015 to give an overview of OCM (Attachment 1), review their OCM proposal for the Board, and provide a rough timeline of OCM activities (Attachment 2). With the BreEZe Go-Live date being pushed to February 2016, it is expected that OCM activities will continue past the original December 2015 date.

Staff has completed User Acceptance Testing (UAT) script writing and will begin UAT in November 2015. The Board’s Data Validation (DV) Team completed their third DV run (Mock 1, Run 1.5) and identified several triage items to be addressed. With this run, staff identified additional legacy data cleanup areas and updates needed for data mapping.

C. Strategic Plan

The Strategic Plan Report (Attachment 3) provides an update on the status of each Board objective.

D. Budget

2014/15 Budget - Presented by Wilbert Rumbaoa, Budget Analyst

The Fiscal Year for the State of California is July 1 – June 30.

The 2014/2015 budget for the Board is \$1,884,617

Expenditures as of Month 8 \$1,215,885 Expenditure Report (Attachment 4)

Revenue collected a of Month 9 \$1,657,700

Board Fund Condition

The Board's fund condition reflects 11.6 months in reserve. (Attachment 5)

General Fund Loans

The Board's loan balance to the General Fund is \$1 million dollars. Boards with repayment schedules are in or close to a negative fund reserve.

E. Examination and Licensing Programs

OPES and Board staff scheduled law examination workshops for March 2nd, March 23rd, April 20th, May 18th, June 8th and June 22nd. Currently, the Board has 66 subject matter experts (SME), and is in extreme need for newly graduated SMEs. OPES has informed staff to reach out to the new graduates in order to assure their perspective as newly graduate doctors is included in the law examination development. Each workshop requires 5 SMEs to participate for 1 day. Staff has used Listserv, Facebook, twitter, COA newsletters and our website to recruit new SMEs and it has started to pay off, as we have received a couple new applicants.

Staff has increased its use of social media, through the Board's social media outlets; specifically, twitter, Survey Monkey and Facebook. Staff has met with DCA Public Affairs team to make sure the Board is in line with the department's guidelines for effective use of social media. DCA team informed staff that the Board is one of the few making excellent use of our social media. Staff also worked with DCA Publication team to create social media cards to give out at various outreach events and at school presentations. Staff has included a sample for each Board member and has been receiving very good feedback and traffic on the social media sites. As recommended by DCA Public Affairs team, staff's next goal is to work with DCA to produce a short public service video raising awareness for the danger associated with colored contact lenses prior to Halloween.

Board staff has scheduled outreach presentations with Western University and Marshall B. Ketchum University, Southern California College of Optometry students and faculty for April and May 2015. In addition to the licensing and enforcement overviews, staff will provide additional information related to BreEZe and how it will impact them. Students and faculty will be encouraged to contact Board staff immediately with any BreEZe difficulties upon implementation. Staff will be prepared with frequently asked questions – which will be continuously updated.

The Licensing Program began holding monthly team meetings to review current workload, cycle times, potential concerns, and to identify any potential process improvements. Through Excel, staff has started manually tracking every application the Board receives to obtain the most accurate cycle times and identify any areas of improvement. The manual tracking is necessary due to the current constraints in our legacy systems, but should not be necessary with BreEZe.

Since BreEZe Go Live is scheduled for February 2016, the Board will have roughly a year's worth of cycle time data that can be used to compare with cycle times post BreEZe.

Licensing statistics will be provided during the Board meeting.

F. Enforcement Program

The Enforcement Program lost the Lead Enforcement Analyst position due to the Board's need for a Staff Services Manager I (SSM I). While the SSM I has an enforcement caseload, only two of the Board's enforcement analysts are being actively assigned new cases. Those two are also involved in DV and UAT. The other enforcement analyst has been tasked with other duties essential to the Board's daily operational needs. In addition, Rob Stephanopoulos has assumed the probation monitoring duties.

To address the current workload constraints, staff will be submitting BCPs in July 2015 for two enforcement positions: Lead Enforcement Analyst (AGPA) and Staff Services Analyst (SSA/AGPA).

The Board has yet to receive the official Enforcement Measures (EM) Report from DCA. However, staff ran the EM report (Attachment 6).

During the January 23, 2015 Board meeting, staff reported its involvement in the new CURES 2.0 system currently being developed by the Department of Justice. As stated, the CURES 2.0 system is set to “go-live” in July 2015. All optometrists who possess a TPA certification (including TPL, TPG and TLG) **and** a DEA # will need to register for CURES 2.0 by January 1, 2016.

However, pursuant to Business and Professions Code section 209(c), there is to be a procedure to enable those without DEA #s to “opt out of applying for access to CURES.” To staff's knowledge, this procedure has yet to be created. Staff has requested an update on this procedure and will provide any additional information during the Board meeting.

DCA is working with all impacted Boards to develop a CURES Outreach Plan to educate its licensees on the CURES 2.0 system.

Attachments

1. OCM Pamphlet
2. OCM Timeline
3. Strategic Plan Report
4. Budget - Expenditure Report
5. Budget - Fund Condition Report
6. EM Statistics

WHAT IS OCM?

Organizational Change Management (OCM) addresses the people side of change by providing a framework for managing the impact and mitigating the risks associated with change in an organization. OCM support is a big step towards ensuring DCA business operations will continue successfully through BreEZe implementation for our Release 2 programs.

Our OCM Analysts have deep knowledge, skills, and experiences in the application of OCM industry standards and best practices on a number of State of California IT projects. Our OCM methodology combines methods and ideas from several recognized industry sources and aligns with the California Department of Technology standards.

Key activities in our OCM project include working with your program to effectively communicate project progress. Our team will map your business processes to identify and resolve transition issues and gaps. Additional activities include the creation of end-to-end UAT scripts that test all gap solutions, as well as the creation and completion of “go-live” readiness assessments.

OUR PROJECT TEAM

Shelly Menzel | OCM Manager
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David Teater | OCM Lead
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***“We look forward to
working with you!”***



Organizational Change Management

DO WE NEED OCM?

We will work with you to identify process gaps between your current business processes through the existing legacy systems, and evaluate them with the “to-be” processes in the BreEZe system. We will then help you find solutions to address any identified gaps and create program specific end-to-end UAT scripts to test the feasibility of these solutions.

CAN WE SPARE THE MANPOWER?

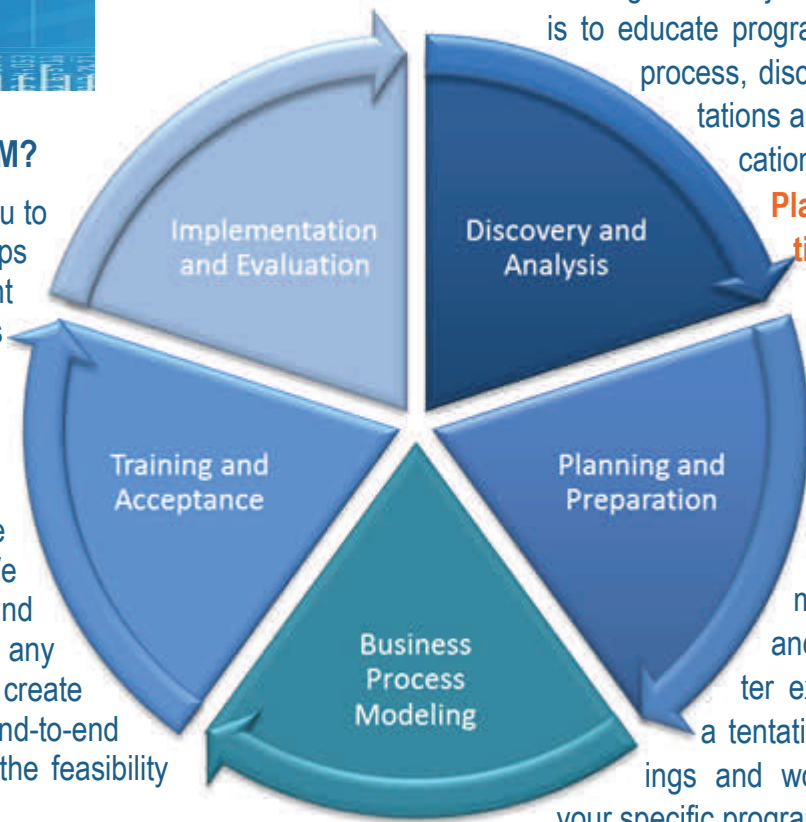
We realize that resources continue to be a challenge. Our BreEZe OCM team will work with you and your staff to achieve maximum benefits from these activities while minimizing time and resource commitments. *The real question is, can you afford to miss this opportunity to engage in the OCM process before your migration to BreEZe?*

OUR PLAN

Discovery and Analysis (4 weeks)* Our OCM team interfaces with your program through a series of meetings. The objective of these sessions is to educate program staff on the OCM process, discuss roles and expectations and create a communication plan.

Planning and Preparation (2 weeks)*

The OCM team will customize a toolkit for your program, based on data collected in the first phase. We will continue to gather information and artifacts and identify subject matter experts while outlining a tentative schedule of meetings and workshops needed for your specific program.



Business Process Mapping (18-21 weeks)* In this phase we will work with your team to identify your program’s “as-is” business processes that will be affected by the BreEZe transition and document them using process flow diagrams. We will then evaluate these processes by comparing them to the BreEZe system functionality and design documentation to identify potential gaps. We will work with your subject matter experts to find solutions for these gaps and create end-to-end UAT scripts to test these solutions.

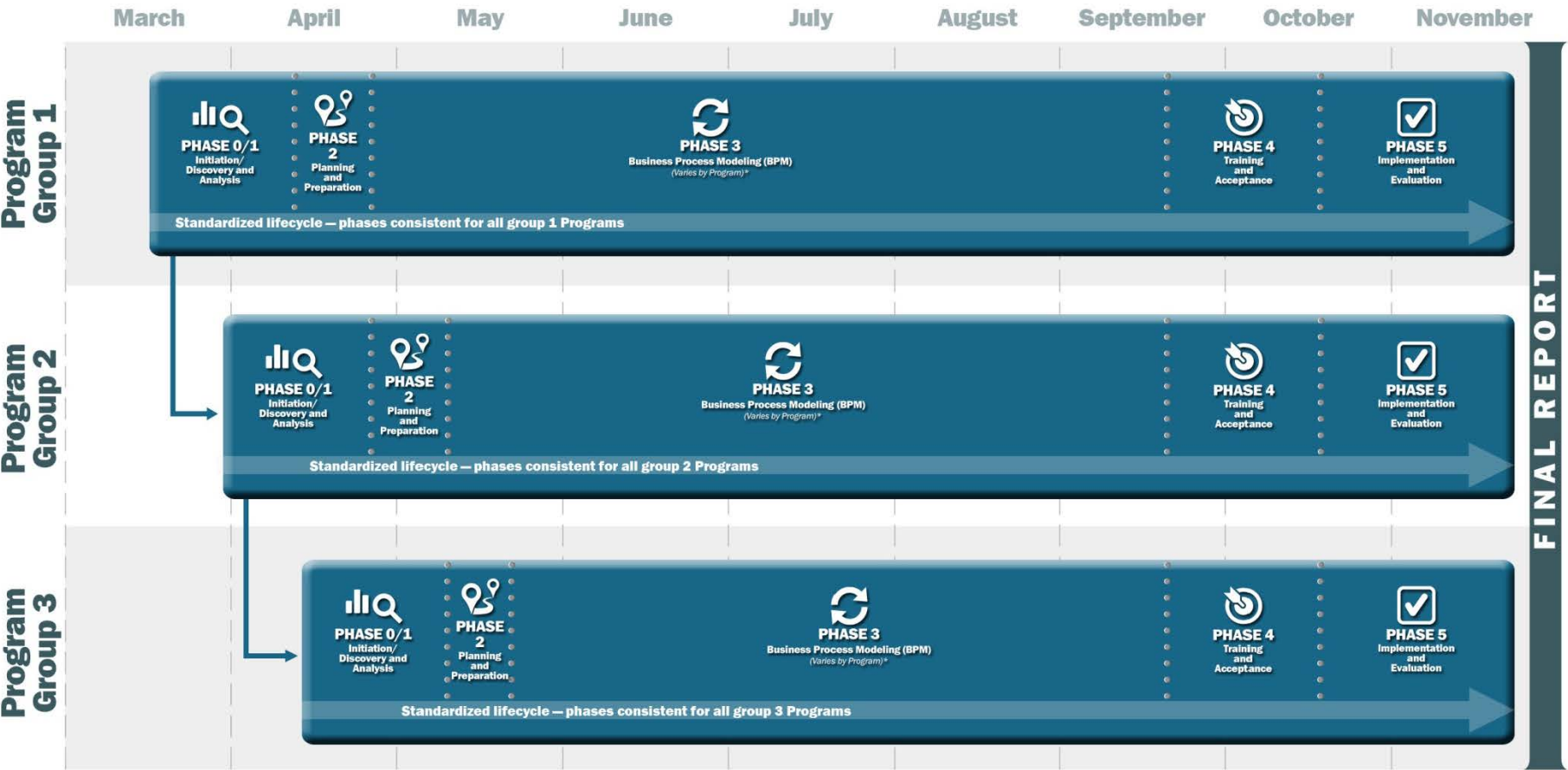
Training and Acceptance (4 weeks)* Through the creation and delivery of a program specific Transition Guide, the OCM team will provide your program with the training tools, job aids, reports and other references necessary to increase end-user understanding of how your business processes will continue after BreEZe implementation.

Implementation and Evaluation (5 weeks)* We develop targeted metrics to help key program stakeholders determine go/no-go criteria and work with your program staff to help ensure your readiness to use the BreEZe system.

*Phase lengths are estimates and may vary depending on allocated program resources and program complexity.



OCM 2.0 Program Lifecycle – Detailed View



Planned Go Live December, 2015

*Actual duration of Phases 3 and 4 will be 21-25 weeks, depending on Program complexity and requirements.

**STATE BOARD OF OPTOMETRY
STRATEGIC PLAN STATUS REPORT
April 23, 2015**

Objective 1.1: Work with DCA to ensure successful implementation of the BreEZe system including ATS data clean-up to prepare for migration. Start: Q1 2014 End: Q3 2015 Success Measure: Data is repaired and BreEZe is successfully implemented. <ul style="list-style-type: none"> Identify the ATS data elements to clean up by requesting queries and ad-hoc reports to find discrepancies. Confirm processes are in place to ensure all future data entry is free from errors. Define which discrepancies need to be fixed by OIS and which need to be fixed by the Board. Train staff on how to make repairs. Repair data as needed. Verify all data is repaired. Participate in all development meetings and user acceptance testing (UAT) with BreEZe team. Ensure all data is transferred accurately from ATS into BreEZe. Modify business processes to ensure data integrity. Verify all Board functions transfer seamlessly by confirming all necessary data is being captured in BreEZe. Train staff on BreEZe system. 	STATUS/ COMPLETION DATE Ongoing (End date has been extended thru Feb. 2016).
Objective 1.2: Inform licensees about the new online services that will be available with the launch of BreEZe. Start: Q1 2015 End: Q3 2016 Success Measure: Licensees submit fewer paper applications and submit more online applications. <ul style="list-style-type: none"> Research new services the Board will be offering. Work with Publications, Design and Editing (PDE) to draft descriptions, guidelines, requirements, materials, and frequently asked questions. Train internal staff on how to answer technical calls regarding the online services. Inform licensees about online renewal using renewal Inserts, email blasts, social media, Board newsletter article, and COA newsletter. Add online renewal information to presentations to college students. Update website with license online renewal information. Provide online licensing renewal updates at Board meetings. Partner with schools to disseminate information to students and optometrist working at the schools. 	STATUS/ COMPLETION DATE Ongoing. Board staff will continue to provide additional outreach to students and faculty members.
Objective 1.3: Evaluate effectiveness of existing multi-level license structure to determine if current structure adequately meets needs of the profession and consumers.	STATUS/ COMPLETION DATE

<p>Start: Q3 2017 End: Q4 2018</p> <p>Success Measure: Report to Board of current effectiveness</p> <ul style="list-style-type: none"> • Discuss certification and license types with COA. • Conduct research to determine the number of certified licensees and to determine how many licensees took steps to get additional certifications. • Determine if changes need to be made to existing multi-level licensing structure. • Draft justification for eliminating DPA certification (and other changes if found necessary). • Find a sponsor and introduce legislation if necessary. • Implement program changes and promulgate regulations if required in response to passed legislation. 	No update
<p>Examination Goal 2 <i>The Board works to provide a fair, valid and legally defensible licensing exam (California Law and Regulation Examination) and exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in California.</i></p>	
<p>Objective 2.1: Perform an occupational analysis to ensure examination integrity and address possible.</p>	STATUS/ COMPLETION DATE
<p>Start: Q2 2015 End: Q2 2018</p> <p>Success Measure: Occupational analysis completed</p> <ul style="list-style-type: none"> • Explore occupational analysis vendors. • Obtain funding for occupational analysis and a limited-term AGPA position. • Research and draft objectives for each occupational analysis. • Partner with the NBEO to conduct analysis. • Report findings to Board. 	No update
<p>Objective 2.2: Evaluate the benefit and cost of increasing the frequency of offering the California Law and Regulations Examination.</p>	STATUS/ COMPLETION DATE
<p>Start: Q3 2014 End: Q3 2015</p> <p>Success Measure: Evaluation report to the Board</p> <ul style="list-style-type: none"> • Work with OPES to research the Board exam and its current fail/retake rate. • Research current exam standards for other regulatory boards in California and other states. • Research cost of creating enough exam questions to make more exams. • Compare exam cost-to-retake rate. • Report results to the Board for decision. 	No update
<p>Law and Regulation Goal 3 <i>The Board works to establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost-effective practices.</i></p>	
<p>Objective 3.1: Actively engage in the evaluation and/or development of scope-of-practice issues and any associated legislation. If required:</p> <ol style="list-style-type: none"> 1. Promulgate regulations to implement legislative changes. 2. Identify Board functions that may be impacted by legislative changes. 3. Develop and implement a plan to manage the increased workload created by legislative changes. 	STATUS/ COMPLETION DATE

<p>Start: Q1 2014 End: Q4 2018</p> <p>Success Measure: Reports to Board on legislative impact and implementation of new regulations.</p> <ul style="list-style-type: none"> • Monitor SB492 process and any other legislation that impacts scope. • Meet with sponsor, author, and opposition to understand the pros and cons. • Present Board staff recommendations to Board for determination of whether to support or oppose legislation. • Identify and develop training courses with schools of optometry for current licensees. • Work with California schools of optometry to verify course content for new students regarding the new scope-of-practice legislation. • Work with NBEO to ensure new scope is tested on national exam and determine if breakout scores are necessary. Amend statutes and regulations as needed. • Revise CLRE to add new scope laws and regulations. • Review all current regulations that impact scope and determine if amendments need to be made. • Promulgate regulations, if necessary. • Identify Board functions that may be impacted by legislative changes: <ul style="list-style-type: none"> •Travel – work groups with schools •Mediator to talk to schools – curriculum •Additional Board meetings to review and approve regulations •Enforcement – ensure optometrists are trained •Subject matter experts – staff training • Develop and implement a plan to manage the increased workload created by legislative changes. <ul style="list-style-type: none"> •Workload study to determine space requirements for new employees. •Form stronger partnerships with COA and schools. 	<p>Ongoing</p>
<p>Objective 3.2: Sponsor legislation to expand or clarify the Optometric Practice Act.</p>	<p>STATUS/ COMPLETION DATE</p>
<p>Start: Q2 2014 End: Q4 2018</p> <p>Success Measure: Chaptered statutory changes</p> <ul style="list-style-type: none"> • Divide up law book among departments to identify any unclear laws. (Consider using focus groups.). • Conduct research to identify the statutes requiring changes [i.e. expand on 801 (self-reporting requirements)] and additional items that could be included from other Boards. • Draft justification for changes and submit to Board for approval. • Find author and possibly outside sponsor (or sponsor ourselves). • Advocate for the bill as it moves through the legislature. 	<p>Ongoing. AB1253, AB1359, SB349, SB402, SB496</p>
<p>Objective 3.3: Review regulations to determine need for clarity then revise and/or amend as needed.</p>	<p>STATUS/ COMPLETION DATE</p>
<p>Start: Q2 2014 End: Q4 2018</p> <p>Success Measure: Regulation changes have been made</p> <ul style="list-style-type: none"> • Collectively list regulations that need clarification (including review and clarify regulations for licensees) Ensure independent contractors fit within regulations. • Divide law book sections by department to identify any unclear laws. (Consider using focus groups.). • Draft regulations packet. • Submit draft regulations packet to Board for approval. • Submit regulations packet to OAL. 	<p>Ongoing.</p>

<ul style="list-style-type: none"> • Conduct a public hearing. • Obtain OAL approval of regulation. • Inform licensees and Board staff about the changes. • Modify Board processes as required. 	
Objective 3.4: Inform and educate licensees and interested stakeholders about new or unfamiliar laws and regulations.	STATUS/ COMPLETION DATE
Start: Q2 2014 End: Q4 2018 Success Measure: Fewer questions from licensees <ul style="list-style-type: none"> • Divide up law book by department to identify any unclear laws. (Consider using focus groups.). • Track frequently asked questions and use as a guide to determine the issues (regarding new or unfamiliar laws) that need clarity. • Update college presentations. • Write newsletter articles. • Send advertising articles to all licensees (new with new licensee). • Update website, social media, and create FAQs for website. • Include flyer with license renewals. • Send email blast to licensees. • Make presentation at Board meetings to encourage licensee participation. 	Ongoing. The Board is using social media to reach out to licensees.
Objective 3.5: Explore the feasibility of transferring regulation authority for Registered Dispensing Opticians (RDO) from the Medical Board of California to the Board of Optometry.	STATUS/ COMPLETION DATE
Start: Q2 2014 End: Q3 2014 Success Measure: Feasibility report submitted to board <ul style="list-style-type: none"> • Create a report for all enforcement cases transferred to the RDO program in the last 5 years. • Track RDO calls received and transferred to the Medical Board of California. • Research outcomes of cases referred to Medical Board of California. • Meet with Medical Board of California to determine registered population, enforcement caseload, cycle times, and unlicensed activity. • Conduct fiscal analysis to transfer RDO oversight to the Optometry Board. • Meet with stakeholders (professional associations, NAOO, Medical Board, COA, senate and assembly B&P Committees, AGO) and DCA to create a strategy for transferring the program, if it is determined to be feasible. • Conduct a public meeting to address concerns and questions regarding RDO transition. • Draft and submit a feasibility study report for Medical Board and Optometry Board for decision. 	No update.
Enforcement Goal 4 <i>The Board protects the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of Optometry in California.</i>	
Objective 4.1: Submit a Budget Change Proposal (BCP) to request additional enforcement analysts and clerical positions to support the CURES implementation, improve investigative processing times, and streamline the enforcement process.	STATUS/ COMPLETION DATE
Start: Q2 2014 End: Q1 2015 Success Measure: Approved BCP <ul style="list-style-type: none"> • Compare timeline goals to actual timeline and identify areas where an additional 	BCP's were

<p>position would help streamline the enforcement process.</p> <ul style="list-style-type: none"> Identify all projects that are not being completed now in order to justify the need for new position(s). Identify the fiscal year to begin employment and length of employment (limited term or permanent). Identify the alternatives and consequences of not gaining the additional position(s). Review budget letter regarding BCP for fiscal year 2014 and create a BCP for staff person. Work with DCA budget office to determine chances for approval. Draft BCP and submit for approval. 	denied last fiscal year; however, the Board plans on submitting additional BCP's this fiscal year.
<p>Objective 4.2: Work with DCA to ensure successful implementation of the BreZE system including CAS data clean-up to prepare for migration.</p> <p>Start: Q1 2014 End: Q3 2015</p> <p>Success Measure: Successful conversion to BreZE</p> <ul style="list-style-type: none"> Create ad hoc reports for complaint, citation, discipline, and probation modules. Create business rules to identify enforcement data that needs to be converted. Attend BreZE Executive Steering Committee meetings. Correct CAS discipline and probation coding and clean up other data. Participate in configuration, data conversion, and UAT BreZE. 	<p>STATUS/COMPLETION DATE</p> <p>Ongoing.</p>
<p>Objective 4.3: Identify and implement process improvements in the Enforcement unit to reduce enforcement and discipline cycle times.</p> <p>Start: Q4 2014 End: Q4 2014</p> <p>Success Measure: Reduced cycle times</p> <ul style="list-style-type: none"> Outline entire enforcement process using Microsoft Visio. Identify processing times for each step. Determine where "bottle necks" are and identify solutions (such as holding monthly meetings with DOI and DAG Liaison). Implement improvements. 	<p>STATUS/COMPLETION DATE</p> <p>Ongoing.</p>
<p>Objective 4.4: Create inspection authority to enable the Board to inspect practice locations to proactively identify areas of non-compliance.</p> <p>Start: Q1 2016 End: Q3 2018</p> <p>Success Measure: Inspection Authority added to statute</p> <ul style="list-style-type: none"> Research other boards with inspection authority; request sample legislation/regulation packets that have been approved. Determine feasibility of adding inspection authority to Board. Work with policy analyst to draft language and supporting documentation to prepare legislation/regulation packet. Draft justification for proposed changes to submit for Board approval. Find author and possibly an outside sponsor (or sponsor ourselves) for legislation/regulations changes. Advocate for the bill as it moves through the legislature. Promulgate regulations to clarify statute if bill passes. 	<p>STATUS/COMPLETION DATE</p> <p>No update.</p>
<p>Objective 4.5: Increase enforcement efforts to address optometry practice in unlicensed locations.</p> <p>Start: Q3 2014 End: Q4 2015</p> <p>Success Measure: Decrease in unlicensed activity</p>	<p>STATUS/COMPLETION DATE</p>

<ul style="list-style-type: none"> Proactively search the Internet for optometry practices by unlicensed individual and research revoked and surrendered licensees to determine where unlicensed individuals are working. Create reports identifying expired licensees (such as more than 6 months) and research if still practicing. Take benchmark measurement of current unlicensed activity. Open DOI request for service when necessary. Take enforcement action if necessary based on results of investigation. Create outreach strategy to educate consumers and optometrists about unlicensed activity. 	No update.
Objective 4.6: Increase communication to administrators of community and school clinics to educate administrators about the Board's complaint process.	STATUS/ COMPLETION DATE
Start: Q4 2016 Success Measure: Increased communication <ul style="list-style-type: none"> Identify target outreach groups (such as Parent Teacher Associations, community college clinics, community clinics, and other schools/community associations.). Draft enforcement outreach materials. Research best distribution method to target audiences. Distribute materials. 	No update.
Outreach Goal 5 <i>The Board proactively educates, informs and engages consumers, licensees, students and other stakeholders on the practice of optometry and the laws and regulations which govern it.</i>	
Objective 5.1: Create a Budget Change Proposal (BCP) to request one additional position to support expansion of the Board's outreach program.	STATUS/ COMPLETION DATE
Start: Q2 2014 Success Measure: New outreach position <ul style="list-style-type: none"> Identify outreach projects to help support the need for a BCP. Identify the fiscal year to begin employment and length of employment. Identify the alternatives and consequences of not gaining the position. Review budget letter regarding BCP for fiscal year 2014 and create a BCP for staff person. Work with DCA budget office to determine chances for approval. Draft BCP and submit for approval. 	No update.
5.2 Develop a communications plan that includes the following:	STATUS/ COMPLETION DATE
Start: Q4 2016 Success Measure: Final four year communication plan <ul style="list-style-type: none"> Include inserts with renewal notices to optometrists with reminders about the requirement to make consumer protection information available to patients. Research the feasibility of using free public service announcements to disseminate optometric health information to consumers. Identify public relations agencies that could provide pro bono work to assist the Board with expanding outreach to consumers. Work with DCA's Office of Publications, Design and Editing to create multi-language consumer education materials. Expand social media by using more frequent messages and exploring additional online opportunities. Explore having a Board representative attend major optometric continuing education events for direct outreach to licensees. 	No update.

Organizational Effectiveness Goal 6 <i>The Board works to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.</i>		
Objective 6.1: Document all internal Board procedures and processes to ensure successful succession planning of Board staff and Board members.		STATUS/ COMPLETION DATE
Start: Q3 2014 End: Q4 2015 Success Measure: Creation of procedures manual and knowledge transfer process in place <ul style="list-style-type: none">Identify and collect existing procedures and document unwritten procedures.Direct staff to update and/or draft desk procedures for their individual job responsibilities.Use flow charts from BreEZe to assist in development of Board-specific procedures.Create electronic and hard copy of procedures manual and update annually.Develop method for transferring knowledge to new staff or changing staff duties.Test newly written and revised procedures with other staff to ensure ease of understanding by new staff.		With the assistance of the OCM team, staff will begin mapping all business processes starting in mid-May 2015, with an estimated completion date of November 2015.
6.2 Conduct a job analysis for all Board programs to identify areas for resource allocation and enhancement.		STATUS/ COMPLETION DATE
Start: Q3 2014 End: Q1 2015 Success Measure: Recommendations report to the Board <ul style="list-style-type: none">Research internal and external sources for conducting job analysis and determine cost and available fiscal resources to do so.Select resource to conduct the analysis.Contact Board of Veterinary Medicine and Board of Psychology to obtain copies if their workforce study (from CPS).Draft objectives (scope of work) for the job analysis.Conduct a best practices study.Present recommendations report for Board approval.		No update.
6.3 Use the Individual Development Plan (IDP) process to increase professional development of Board staff.		STATUS/ COMPLETION DATE
Start: Q4 2014 End: Q4 2014 Success Measure: Recommendations report to the Board <ul style="list-style-type: none">Distribute IDPs to staff and have staff complete on employee portions.Set meeting dates with staff throughout the quarter to review IDPs.Implement approved development plans.		No update.

0763 - State Board of Optometry

Analysis of Fund Condition

Prepared 12/23/14

(Dollars in Thousands)

	Actual 2013-14	CY 2014-15	BY 2015-16
NOTE: \$1 Million Dollar General Fund Repayment Outstanding			
BEGINNING BALANCE	\$ 1,270	\$ 1,438	\$ 1,383
Prior Year Adjustment	\$ 10	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,280	\$ 1,438	\$ 1,383
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 49	\$ 50	\$ 67
125700 Other regulatory licenses and permits	\$ 172	\$ 175	\$ 184
125800 Renewal fees	\$ 1,596	\$ 1,594	\$ 1,640
125900 Delinquent fees	\$ 10	\$ 9	\$ 9
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 2	\$ -	\$ -
150300 Income from surplus money investments	\$ 4	\$ 4	\$ 4
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,834	\$ 1,832	\$ 1,904
Transfers to Other Funds			
GF loan per item 1110-001-0763 BA of 2011	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 1,834	\$ 1,832	\$ 1,904
Totals, Resources	\$ 3,114	\$ 3,270	\$ 3,287
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 8	\$ 2	\$ 3
1110 Program Expenditures (State Operations)	\$ 1,668	\$ 1,885	\$ 1,655
Total Disbursements	\$ 1,676	\$ 1,887	\$ 1,658
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,438	\$ 1,383	\$ 1,629
Months in Reserve	9.1	10.0	11.6

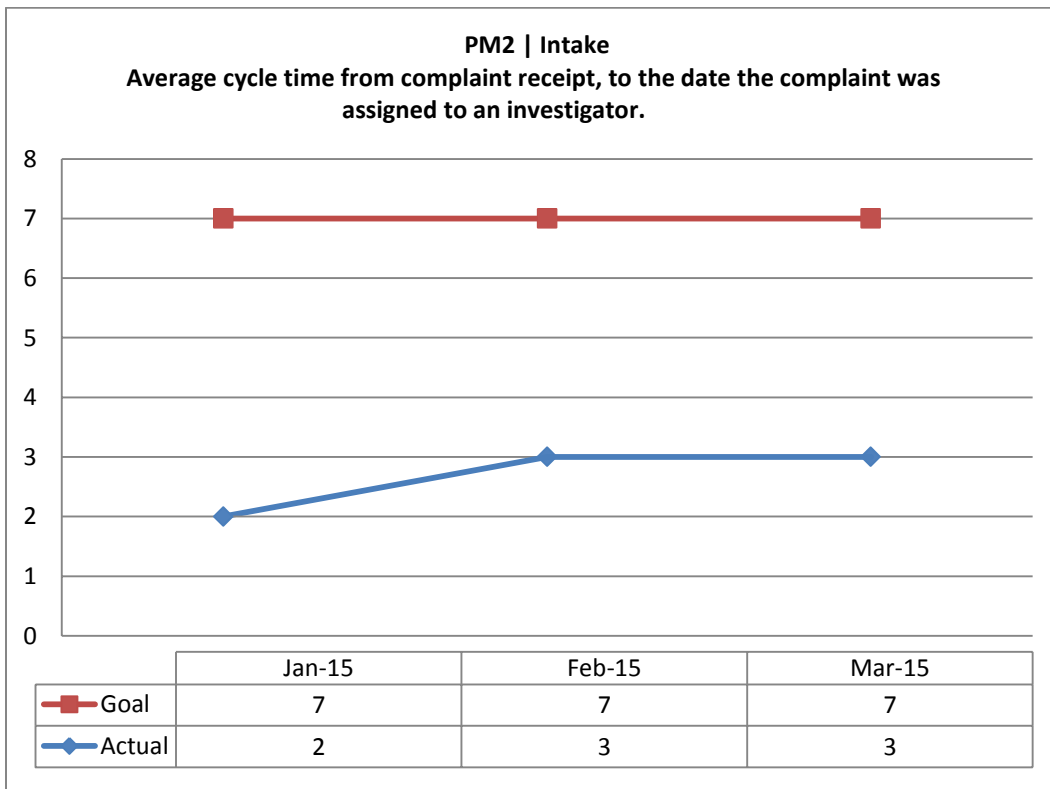
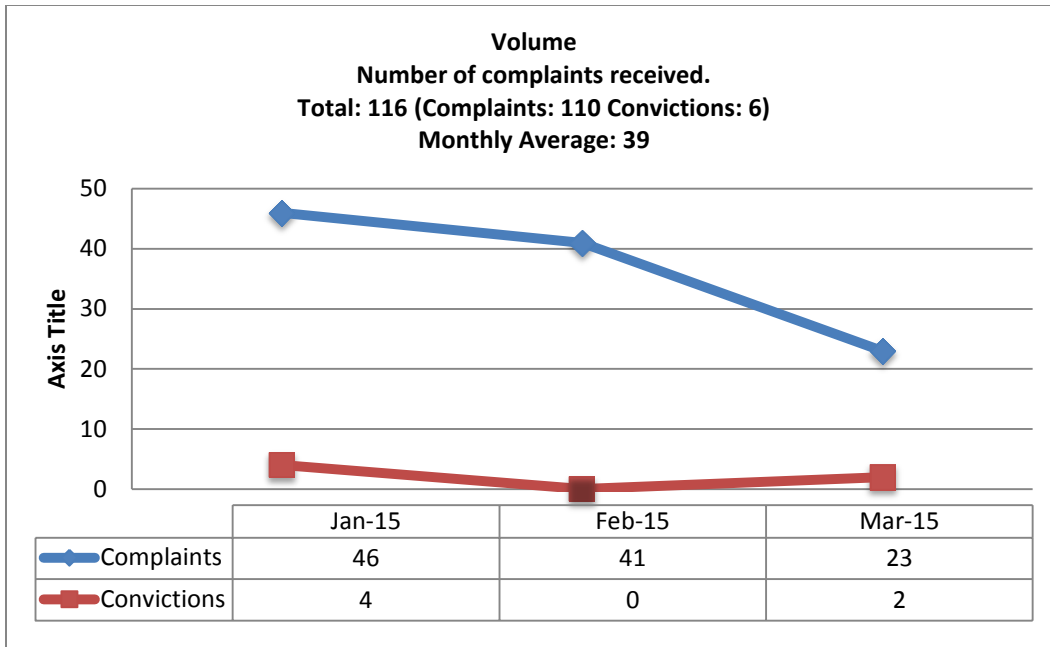
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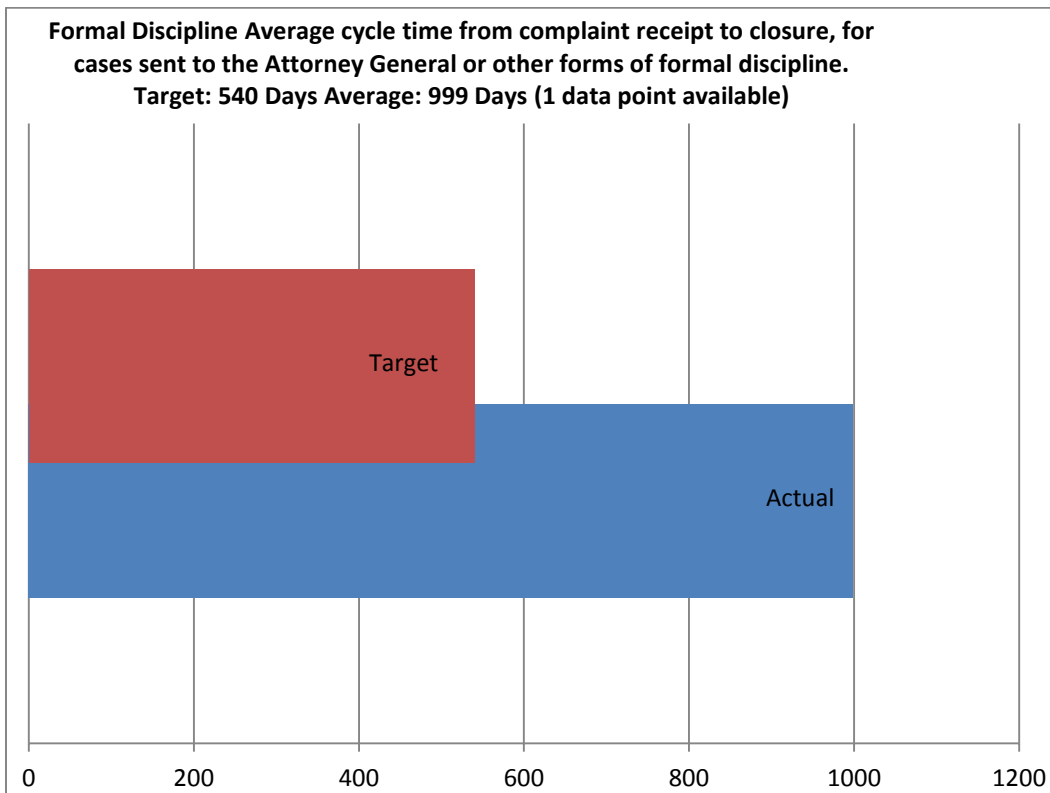
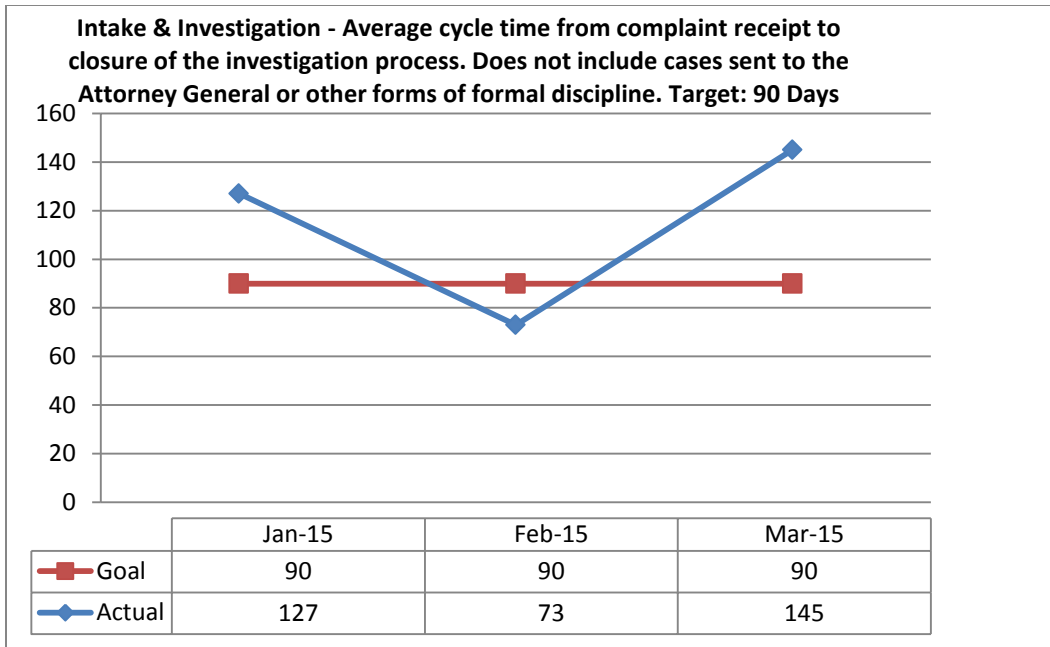
- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- ASSUMES INTEREST RATE AT 0.3%.

**BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2014-15 EXPENDITURE PROJECTION**

FM 8

OBJECT DESCRIPTION	FY 2013-14		FY 2014-15				
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES 2/28/2014	BUDGET STONE 2014-15	CURRENT YEAR EXPENDITURES 2/28/2015	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	350,625	237,022	417,391	276,793	66%	423,998	(6,607)
Statutory Exempt (EO)	84,180	56,120	84,180	57,240	68%	85,860	(1,680)
Temp Help Reg (907)	25,669	16,086	41,000	15,841	39%	29,643	11,357
Temp Help (Exam Proctors)			0				0
Board Member Per Diem	9,200	6,100	7,353	5,700	78%	8,600	(1,247)
Committee Members (DEC)			0				0
Overtime	2,948		0	3,588		3,588	(3,588)
Staff Benefits	186,104	125,512	291,209	159,035	55%	243,614	47,595
TOTALS, PERSONNEL SVC	658,726	440,840	841,133	518,197	62%	795,303	45,830
OPERATING EXPENSE AND EQUIPMENT							
General Expense	7,200	5,310	15,654	7,916	51%	10,000	5,654
Fingerprint Report	2,818	1,274	5,306	1,789	34%	3,750	1,556
Minor Equipment	3,992	3,170	4,350	2,989	69%	2,989	1,361
Printing	12,330	9,160	12,023	1,320	11%	5,200	6,823
Communications	4,476	2,724	5,446	2,241	41%	4,300	1,146
Postage	14,850	10,110	13,056	8,533	65%	14,000	(944)
Insurance			0				0
Travel In State	38,846	20,714	31,458	16,814	53%	32,000	(542)
Travel Out-of-State	508		0				0
Training	85	85	1,037	0	0%		1,037
Facilities Operations	108,583	107,838	58,676	110,083	188%	110,083	(51,407)
Utilities			0				0
C & P Services - Interdept.	39,029	0	40,943	37,002	90%	37,002	3,941
C & P Services - External			17,000	22,215	131%	22,215	(5,215)
DEPARTMENTAL SERVICES:							
OIS Pro Rata	140,852	106,753	159,455	117,417	74%	159,455	0
Admin Pro Rata	105,859	79,871	118,581	85,779	72%	118,581	0
Interagency Services	0	0	146	0	0%	0	146
IA w/ OPES	22,520	22,520	0	24,784		24,784	(24,784)
DOI-Pro Rata	3,392	2,557	3,708	2,685	72%	3,708	0
Public Affairs Pro Rata	3,921	3,594	3,625	2,622	72%	3,625	0
PCSD Pro Rata	3,865	3,077	3,939	2,865	73%	3,939	0
INTERAGENCY SERVICES:							
Consolidated Data Centers	673	528	4,509	142	3%	700	3,809
DP Maintenance & Supply	1,036	1,036	942	1,990	211%	1,990	(1,048)
Statewide Pro Rata	65,849	49,387	82,909	62,182	75%	82,909	0
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight	0		484	0	0%	0	484
Exam Site Rental		0	0				0
C/P Svcs-External Expert Administrative	98	98	0	98		98	(98)
C/P Svcs-External Expert Examiners	0	0	20,703	0	0%	0	20,703
C/P Svcs-External Subject Matter	22,299	4,656		5,245		7,900	(7,900)
ENFORCEMENT:							
Attorney General	195,500	146,635	229,055	90,128	39%	157,000	72,055
Office Admin. Hearings	42,387	29,137	37,930	22,463	59%	44,000	(6,070)
Court Reporters	1,408	379		1,919		2,900	(2,900)
Evidence/Witness Fees	22,600	14,200	15,877	8,404	53%	20,000	(4,123)
DOI - Investigations	217,607	163,421	153,672	111,162	72%	153,672	0
Major Equipment		0	9,000	0	0%	0	9,000
Other Items of Expense				58		58	(58)
Vehicle Operations							0
TOTALS, OE&E	1,082,583	788,234	1,049,484	750,845	72%	1,026,858	22,626
TOTAL EXPENSE	1,741,309	1,229,074	1,890,617	1,269,042	133%	1,822,161	68,456
Reimb. - State Optometry Fund	(100)	(100)					0
Sched. Reimb. - Fingerprints	(4,508)	(1,666)	(6,000)	(1,715)	29%	(6,000)	0
Sched. Reimb. - Other	(4,790)	(3,370)		(3,055)			0
Probation Monitoring Fee - Variable	(15,000)	(9,300)		(10,700)			0
Unsched. Reimb. - Investigative Cost Recover	(48,869)	(37,276)		(37,687)			0
Unsch. DOI ICR Administrative Case							0
Unsched. Reimb. - ICR - Prob Monitor	(100)	(100)					0
NET APPROPRIATION	1,667,942	1,177,261	1,884,617	1,215,885	65%	1,816,161	68,456
SURPLUS/(DEFICIT):							3.6%





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

To: Board Members

Date: April 24, 2015

From: Donna Burke
Board Secretary

Telephone: (916) 575-7170

Subject: Agenda Item 17 –Vote on Whether to Approve Board Meeting Minutes

This item will be sent under separate cover as the draft minutes are still under review.

- A. November 21, 2014
- B. January 23, 2015
- C. February 24, 2015

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

To: Board Members

Date: April 24, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 18 – Election of Officers

Election of Officers

[Business and Professions Code § 3014](#) states that the board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor.

Pursuant to the Board Member Handbook, the Board elects the officers at the last meeting of the fiscal year. Officers serve a term of one-year beginning July 1 of the following fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Nomination Forms and Candidate Statements

During the January 23, 2015 Board meeting, Board members requested staff to create a nomination form for Board Members to nominate candidates and provide candidates an opportunity to include candidate statements in the Board meeting materials. Nomination forms included an optional field for members to provide a brief description of why they believe the nominee is the best candidate for the selected office. In addition, staff sought candidate statements from all those nominated.

Available Offices and Nominations

The available offices are President, Vice President and Secretary. As of April 16, 2015, Board staff received the following nominations:

- President:
 - Donna Burke, nominated by Dr. David Turetsky, OD
 - Dr. Madhu Chawla, OD, nominated by Dr. Alejandro Arredondo, OD
- Secretary:
 - Dr. David Turetsky, OD, nominated by Dr. Alejandro Arredondo, OD

Additional Nominations

Any additional nominations may be made during this agenda item.

Action Requested

Please seek additional nominations and provide time for each candidate to make any additional statements. After all statements have been made, please solicit public comment. Once all have been heard, please conduct roll call votes on each office position.

Attachments:

1. Nomination form for Donna Burke
2. Candidate Statement from Donna Burke
3. Nomination form for Dr. Madhu Chawla, OD
4. Candidate Statement from Dr. Madhu Chawla, OD
5. Nomination form for Dr. David Turetsky, OD



STATE BOARD OF OPTOMETRY
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OFFICER NOMINATION FORM

NOMINATED OFFICE: ☒ President
☐ Vice President
☐ Secretary

NOMINEE: ☐ Alejandro Arredondo, OD ☐ William H. Kysella, Jr.
☐ Madhu Chawla, OD ☐ Kenneth Lawenda, OD
☒ Donna Burke ☐ Rachel Michelin
☐ Cyd Brandvein ☐ David Turetsky, OD
☐ Frank Giardina, OD ☐ Alexander Kim, MBA
☐ Glenn Kawaguchi, OD

NOMINATED BY: David Turetsky, OD

OPTIONAL*
**NOMINATION
REASON:**

*Please provide a brief
description of why you
believe this nominee is the
best candidate for the
selected office.*

In the coming year, the Board will be involved in several high profile pieces of legislation, most specifically the expansion of practice bill. A President with relationships with the Legislature and a knowledge of how the political process works in the halls of the Capitol will be advantageous in gaining support for the Board's positions. Ms. Burke has been a Sacramento lobbyist for a large national corporation and has extensive experience presiding over Boards in general and understands the workings of the Board of Optometry in particular. Although not an optometrist, Ms. Burke can obtain all necessary advice and counseling regarding the profession from the 6 optometrists who have been appointed to the Board.

***This field is completely optional. Nominations may be made without any justification.**

Nomination Form for
Donna Burke

I accept the nomination to serve as president.

My past career as an executive at AT&T provides me a solid foundation to serve as chair. I managed a multimillion dollar budget, supervised large and small teams of exempt and non-exempt staff as well as bargained employees. I participated in a plethora of meetings to organize, develop strategies, reduce and/or decrease staff, establish policy, etc. I held a number of positions in several departments, including media relations, employee relations, human resources, government affairs, public affairs and constituency relations. My duties included serving as a company spokesperson, managing political and philanthropic contributions, organizing employee campaigns and advocating on issues important to the company. I was a registered lobbyist when I managed the External Affairs department in Michigan and continued to engage in local lobbying when I transferred to California

In addition to my work experience, I have participated on volunteer boards and accepted political appointments. In some instances I served as board chair and in others I held leadership roles or remained an engaged member. Some associations/organizations followed Robert Rules while others were very informal. The most recent boards where I served in a leadership capacity were Capital Public Radio and Folsom Lake College Foundation. I completed my two-year term as board chair at CapRadio in January 2015. My two-year term as board chair of Folsom Lake College Foundation, concluded June 2013.

I enjoy serving on the California Optometry Board. Regardless of the title or position I hold, I will continue to work hard to execute our mission to protect consumers.

Thank you.

Donna Burke



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OFFICER NOMINATION FORM

NOMINATED OFFICE: ☒ President
☐ Vice President
☐ Secretary

NOMINEE:

<input type="checkbox"/> Alejandro Arredondo, OD	<input type="checkbox"/> William H. Kysella, Jr.
<input checked="" type="checkbox"/> Madhu Chawla, OD	<input type="checkbox"/> Kenneth Lawenda, OD
<input type="checkbox"/> Donna Burke	<input type="checkbox"/> Rachel Michelin
<input type="checkbox"/> Cyd Brandvein	<input type="checkbox"/> David Turetsky, OD
<input type="checkbox"/> Frank Giardina, OD	<input type="checkbox"/> Alexander Kim, MBA
<input type="checkbox"/> Glenn Kawaguchi, OD	

NOMINATED BY:

Alex Arredondo

OPTIONAL*
NOMINATION
REASON:

*Please provide a brief
description of why you
believe this nominee is the
best candidate for the
selected office.*

Page 239 of 359
*This field is completely optional. Nominations may be made without any justification.

Candidate Statement

Candidate: Madhu Chawla, OD

Nominated Office:

President

Professional Experience:

Experience working in multiple practice settings including the following: Hospital/HMO (current position), private practice within both an optometry and ophthalmology setting, community health center, academic clinical setting, commercial optometry setting

Service to California State Board of Optometry, Appointed June of 2012:

- Currently serving as Board Vice President
- Practice and Education Committee, 2012-Present
 - Committee Chair 2013-present
- Public Relations Committee Member, 2013-Present
- Legislative Committee Member, 2012-2014
- Executive Officer Recruitment Committee Member, 2015

Current Leadership Roles at Kaiser Permanente:

- Lead medical center liaison for ODs at KP Woodland Hills Medical Center
- Optometry Representative on Woodland Hills Medical Center Leadership Council
- Chair, Southern California Regional Optometry Glaucoma Subcommittee
- Chair, Southern California Regional Optometry Education Committee
- Lead OD member, Southern California Regional Eye Care Technology Committee
- Member, Southern California Regional Legislative Committee
- Member, Southern California Regional Contact Lens Subcommittee
- Member, Southern California Regional Low Vision Subcommittee
- Recipient of 2014 Optometrist of the Year Award for KP Southern CA

Other Service to Profession of Optometry:

- National Board of Examiners in Optometry: Past Proctor and Clinical Examiner
- Participation in international and local eye care clinics including service to underserved populations in India, South Africa, Chile, Laos, Romania, Los Angeles, Boston, and San Diego

During my time on the Board these past 3 years, I have worked to steadily increase my participation as well as expand my knowledge of pertinent issues. Serving on multiple committees throughout my time on the Board has allowed me to work on a variety of projects including those related to enforcement, legislation, and education of the public and our licensed professionals. My passion for and my dedication to my profession are evident by my extensive participation in virtually all aspects of direct patient care as well as the care delivery process. My participation on numerous committees throughout my career has provided an unparalleled opportunity to serve as a mediator and facilitator while working in concert with a large variety of health care professionals, administrators, volunteers, students, IT consultants, business consultants, opticians, and other optometric and medical support staff.

The positions I have held have given me an opportunity to support optometrists in the advancement of our profession as well as to ensure that the patients I have served receive the highest quality of care.

My vision is that of a unified Board that capitalizes on the unique strengths of each of its members to move forward together so that we may advocate for the well-being of the consumers of optometric care and services in our state. I feel that my broad range of experience has provided me with the skills to serve as an effective, efficient, and conscientious Board President.

I respectfully ask for your support and vote.



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OFFICER NOMINATION FORM

NOMINATED OFFICE: ☐ President
☐ Vice President
☒ Secretary

NOMINEE:

<input type="checkbox"/> Alejandro Arredondo, OD	<input type="checkbox"/> William H. Kysella, Jr.
<input type="checkbox"/> Madhu Chawla, OD	<input type="checkbox"/> Kenneth Lawenda, OD
<input type="checkbox"/> Donna Burke	<input type="checkbox"/> Rachel Michelin
<input type="checkbox"/> Cyd Brandvein	<input checked="" type="checkbox"/> David Turetsky, OD
<input type="checkbox"/> Frank Giardina, OD	<input type="checkbox"/> Alexander Kim, MBA
<input type="checkbox"/> Glenn Kawaguchi, OD	

NOMINATED BY:

Alex Arredondo

OPTIONAL*

NOMINATION
REASON:

*Please provide a brief
description of why you
believe this nominee is the
best candidate for the
selected office.*

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To: Board Members

Date: April 24, 2015

From: Donna Burke, Secretary
Glenn Kawaguchi, OD
Mona Maggio, Executive Officer

Telephone: (916) 575-7170

Subject: **Agenda Item 19 – Discussion and Possible Action to Approve the Revised Executive Officer’s Duty Statement**

With the creation of the Staff Services Manager I (SSM I) position within the Board, the Department of Consumer Affairs, Office of Human Resources, requested the Executive Officer’s Duty Statement be reviewed and revised, as needed.

Dr. Arredondo, Board President asked Members, Donna Burke and Glenn Kawaguchi, O.D. to take on this task.

This matter was presented to the Board at its January 23, 2015; however, there was a request by Cyd Brandvein to have the SSM I duty statement available for review as well.

Action Requested

Please review the revised duty statement for the Executive Officer, and suggest edits for discussion and inclusion.

Upon approval, this duty statement will be signed by the new Executive Officer and Board President.

Attachments:

1. Revised Duty Statement (2015)
2. Current Duty Statement (2008)
3. Staff Services Manager I Duty Statement

Classification Title	Board/Bureau/Division
Executive Officer	Board of Optometry
Working Title	Office/Unit/Section / Geographic Location
(Same)	Board of Optometry / Sacramento
Position Number	Effective Date of appointment
631-110-8905-001	

General Statement:

Under the general direction of the 11-member Board, the Executive Officer (EO) is responsible for overseeing all aspects of the optometric services program in the State of California which includes licensure and certifications; development, supervision and administration of examinations; and enforcement of the Optometry Act. The EO works collaboratively with the Director of the Department of Consumer Affairs (DCA) to interpret and execute the intent of the board policies in a way that ensures the public is protected and Board mandates and Strategic Plan are met and accomplished. Specific responsibilities include, but are not limited, to the following:

A. Specific Assignments [Essential (E) / Marginal (M) Functions]:

30% Managerial and Administrative (E)

Act as principal operations officer for the Board; establish short and long term personnel goals that underscore succession planning and training; manage all personnel including recruitment, orientation, staff development through Individual Development Plans (IDPs) and evaluation; develop long term fiscal and budgetary goals and strategies and; identify resource needs.

20% Board Liaison (E)

Function as administrative agent for the Board. Coordinate and manage all Board and Committee meetings. Prepare agendas and minutes for all Board meetings and committee meetings; act as Board spokesperson at all meetings and hearings as delegated by the Board; serve as liaison between Board, Board Committees and staff; conduct orientation for new Board members and facilitate annual transition of Board Committee assignments and election of new officers; follow proper administrative procedure for noticing meetings and hearings. Inform, advise, and consult Board on programs and activities administered by staff. Implement all Board-approved policies and actions. Ensure full compliance with the Open Meetings Act

20% Program Management – Licensing, Enforcement and Examinations (E)

Develop industry-specific disciplinary guidelines. Oversee the processing of applications for licensure or registration, ensuring that only qualified applicants are issued licensure or registration. Manage and direct the Board's continuing education program.

Oversee the handling of enforcement cases and the processing of complaints, investigations, prosecutions and disciplinary actions performed by the Office of Attorney

General, Division of Investigation and Office of Administrative Hearings. Provide for investigation of complaints, including preparation of accusations or statements of issue

and initiating, directing and evaluating administrative and/or criminal investigations; approve and sign final accusation; monitor case flow and costs; advise Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensure adherence to Administrative Procedures Act timelines; and ensure appropriate implementation of all Board disciplinary decisions. Meet and confer with outside legal agencies on cases; serve as Board's spokesperson on all cases. Maintain confidentiality in accordance with the Public Records Act.

Oversee the administration of Optometry examinations to ensure compliance with applicable statutes, regulations and policies. Coordinate periodic occupational analysis and examination validation functions.

15% Legislation and Regulations (E)

Identify the need for new legislation; recommend modification of existing statutes or regulations. Prepare and analyze legislative proposals to effect statutory or regulatory change; facilitate legislative author's research in preparation of statements and fact sheets. Obtain independent author for legislation, as needed. Provide testimony before legislative committees and public hearings regarding Board policies, programs and activities. Oversee and ensure compliance with all aspects of the legislative and rule-making processes and the Administrative Act. Prepare the sunset review report. Interpret and execute the Business and Professions Code and all Board policies and guidelines related to the Board; seek legal counsel from the Department of Consumer Affairs in executing the above duties.

15% Public Contact (E)

Serve as Board liaison to a wide array of government and professional and volunteer organizations; participate and serve as Board representative to professional organizations. Disseminate accurate and timely information via available communication tools and resources, including the department website and Internet social media venues regarding the Board's licensure act (B&P Code Section 3040 *et seq.*), regulations and policies and general consumer awareness information. Serve as liaison to professional associations, other government agencies, optometry school administrators, students, consumer groups and the general public.

B. Supervision Received

The EO reports directly to the Board President and receives majority of assignments from the Board.

C. Supervision Exercised

The EO directly supervises one Staff Services Manager I (SSM I) and contracted consultants, and inspectors, and the EO may also indirectly supervise subordinate staff through a subordinate supervisor.

D. Administrative Responsibility

The EO manages Board resources, programs and personnel through a subordinate manager.

E. Personal Contacts

The EO will have regular direct contact with licensees, optometrist, members of the Board of Optometry, and various DCA employees and other agencies. The information exchanged will include sensitive/confidential information. On a daily basis, the Executive Officer will respond to inquiries from the general public by telephone, e-mail or in writing. In addition, the EO works directly with the Board's President and other Board Members, program staff, DCA staff and other state agencies.

F. Actions and Consequences

Failure to complete assigned duties in a timely manner may delay licensing and enforcement actions which could result in a fiscal loss to the Board. Failure to properly ensure completion of Board responsibilities could result in the Board's inability to fulfill its mission-critical activities related to the regulation of this profession for the protection of the consumer public, and may result in direct patient harm and discredit to the Board.

G. Functional Requirements

The incumbent works 40 hours per week in an office setting, with artificial light and temperature control. The incumbent may spend 75%-85% of the working day using a personal computer. The position requires bending and stooping to retrieve files, walking, and occasional light lifting, up to 20-25 pounds. The ability to use a personal computer and telephone is essential. Regular attendance and punctuality are an essential part of this job. The incumbent is required to professionally and tactfully interact with the public and licensees, and use good judgment at all times.

H. Other Information

The incumbent must possess good communication skills, use good judgment in decision-making, exercise creativity and flexibility in problem identification and resolution, manage time and resources effectively, be responsive to Board needs, and represent the Board in a professional manner. The incumbent must also use strong interpersonal skills to support the achievement of the goals and objectives of the Board and maintain good working relationships with staff, governmental agencies and public entities. This position has access to confidential or sensitive information related to consumers of Board services and/or employees of the Board. The individual occupying this position is expected to maintain the privacy and confidentiality of such information at all times. Travel is required to attend various meetings. The incumbent will travel by whichever method, commercial carrier or automobile, is in the best interest of the State. Travel may occur for one or several consecutive days.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Date

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Date

Printed Name, Classification

Revision Date: January 2015

BOARD OF OPTOMETRY
DUTY STATEMENT
EXECUTIVE OFFICER
Position No. 631-110-8905-001
April 2008

The Executive Officer (EO) is responsible for the administration and overall management of all Board activities and functions. The EO promotes the primary mission of protecting the public's health, safety and welfare through ensuring the competency and qualifications of providers of optometric services. The EO is further responsible for interpreting and executing the intent of all Board policies to the public and to other governmental agencies. Under the direction of the 11-member Board, the Executive Officer's specific responsibilities include:

DUTIES AND RESPONSIBILITIES

25% Administrative and Managerial: Acts as principal operations officer for the Board; manages all personnel including recruitment, orientation, staff development and evaluation all staff; oversees the procurement and management of space, equipment, and supplies; identifies need for augmentation of operating budget and ensures that all budget change proposals, finance letters, and other fiscal documents are accurate and that they support the Board's goals and mission.

25% Board Liaison: Functions as administrative agent for the Board. Coordinates and manages all Board and Committee meetings and all Board communications. Prepares agendas and minutes for all Board meetings and committee meetings; acts as Board spokesperson at all meetings and hearings as delegated by the Board; serves as liaison between Board, Board Committees, and staff; conducts orientation for new Board members; sees that all meetings and hearings are noticed to the public and follows proper administrative procedure. Informs, advises and consults the Board on programs and activities administered by staff. Implements all Board-approved policies and actions. Ensures full compliance with the Open Meetings Act.

25% Program Management - Licensing, Enforcement and Examinations: Oversees the processing of applications for licensure or registration, ensuring that only qualified applicants are issued licensure or registration. Manages and directs the Board's continuing education program.

Oversees the handling of enforcement cases and the processing of complaints, investigations, prosecutions and disciplinary actions performed by the Office of the Attorney General, Division of Investigation and Office of Administrative Hearings. Provides for investigation of complaints; preparation of accusations or statements of issue; signs final accusation; consults with legal counsel on problem cases, monitors flow of cases in system and monitors costs; advises Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensures that Administrative Procedure Act timelines are followed and that all Board disciplinary decisions are appropriately implemented. Meets and confers with outside legal agencies on cases; serves as Board's liaison to media and public on all publicized cases. Maintains confidentiality of information and records in accordance with Public Records Act.

BOARD OF OPTOMETRY
DUTY STATEMENT
EXECUTIVE OFFICER
Position No. 631-110-8905-001
April 2008

Oversees the administration of examinations for providers of Board of Optometry services to ensure compliance with applicable statutes, regulations and policies. Coordinates periodic occupational analyses and examination validation functions.

20% Legislation and Regulations: Identifies the need for new legislation; recommends modification of existing statutes or regulations. Reviews drafts of specific language to effect statutory or regulatory change; oversees the preparation of author's statements and fact sheets. Obtains authors for legislation, as needed. Testifies before legislative committees and at public hearings regarding Board policies, programs and activities. Oversees and ensures compliance with all aspects of the legislative and rulemaking processes and the administrative Procedures Act. Prepares the sunset review report to the Legislature as required by law. Responsible for interpretation and execution of the Business and Professions Code and all Board policies and guidelines related to the Board; seeks legal counsel from the Department of Consumer Affairs in carrying out the above activities.

5% Public Contact: Serves as the Board's liaison to a wide array of governmental and voluntary organizations; serves as liaison to professional organizations; participates and serves as Board's staff representative to various associations. Disseminates information concerning the Board's licensure act (B&P Code Section 3040 *et. seq.*), regulations and policies before professional associations, other governmental agencies, optometry school administrators and students, and consumer groups. Acts as the Board's designated spokesperson when responding to inquiries from the media, state agencies and other interested groups.

Department of Consumer Affairs

Position Duty Statement

HR- 041 (new 9/14)

Classification Title Staff Services Manager I	Board/Bureau/Division California Board of Optometry
Working Title Enforcement Program Manager	Office/Unit/Section / Geographic Location Probation/Enforcement / Sacramento
Position Number 631-110-4800-001	Effective Date December 2, 2014

General Statement: Under the general direction of the Executive Officer, the Staff Services Manager I (SSMI) plans, directs and organizes the statewide activities of the licensing, enforcement, fingerprint and probation programs, including formulating and recommending policy, implementing regulations and managing program operations. Responsibilities include, but are not limited to, the following:

A. Specific Assignments [Essential (E) / Marginal (M) Functions]

40% (E) Program Management

- Evaluate programs' performance; identify programs' deficiencies, programs' effectiveness and implement new or changes in policies and procedures as necessary. Develop solutions or delegates problem solving to staff, and assigns and monitors projects. 10%
- Plan, organize and direct the day-to-day activities of the Board's licensing, enforcement, fingerprint and probation programs. Resolve all issues, concerns or problems as they relate to the enforcement and probation programs. Conduct staff meetings and manages workloads for the licensing, enforcement, probation, and fingerprint programs. 10%
- Manage all tracking mechanisms utilized by the licensing, enforcement, probation, and fingerprint programs, including the cost recovery database, probation monitoring drug testing system, and staff monthly statistical workload reports. Prepare statistical reports for the Board and other required reporting entities. Analyze the Enforcement Tracking System generated reports to ensure staff utilizes accurate action codes. 5%
- Negotiate with deputy attorneys general and respondents' attorneys on proposed settlements or stipulations. Testify at administrative hearings as needed. Interpret, apply, administer and enforce provisions of the California Business and Professions Code and the California Code of Regulations. Interpret the Board of Optometry's Disciplinary Guidelines. 5%
- Administer the Board of Optometry's cite and fine program. Attend and participate at informal conferences for citation appeals. 5%
- Monitor enforcement related expenditures. Addresses and resolves discrepancies in billings from all enforcement-related entities. Routinely evaluates expenditure patterns to ensure resources are used in the most cost-effective and efficient manner. Initiate and implement contracts that directly impact the enforcement and probation program by quality of services and/or costs savings. Oversee the maintenance and acquires new contracts as necessary including but not limited to, drug screens, hair follicle testing, other biological fluid testing mechanisms, exam sites, and psychological testing. 5%

15% (E) Supervision of Staff

- Plan, assign, direct, review and evaluate the work of all licensing, enforcement, fingerprint, and probation program personnel. Establish work performance standards for all licensing and enforcement program personnel. 10%
- Recruit, train, evaluate performance, prepares Individual Development Plans (IDPs) and probationary reports as needed, tracks attendance, counsels, and prepares corrective actions for board staff. Prepare and maintain training program for board staff. 5%

10% (E) Legislation/Regulation

- Interpret and evaluate current statutes and regulations. Assist the Executive Officer and/or Board members in determining the need for regulatory amendments and/or the establishment of new laws.
- Formulate, recommend, analyze and implement legislation, regulations, procedures and policies relating to the Board's enforcement, probation, and fingerprint programs. Testify at legislative hearings with the EO and policy analyst. 10%

10% (E) Budget

- Analyze and monitor monthly program expenditure patterns and fund condition statements, contractual agreements, and assess impact of new or increased expenditures on current year enforcement line budget. 5%
- Assist Executive Officer in preparing annual budget documents including budget change proposals and all supporting schedules, workload and revenue statistics, program element statements, budget projections and fund conditions. Attend and possibly testify at legislative budget hearings with the Executive Officer. 5%

10% (E) Strategic Planning

- Oversee and monitor the development, implementation, and timeline of the goals and objectives for the Strategic Plan. Plan long-range strategies of program responsibilities using a project management approach specific to the Board's enforcement, fingerprint and probation programs' goals and objectives. 5%
- Monitor and continually updates action plans and assigned objectives of the Board's Strategic Plan for the various committees. Prepare quarterly reports for board meeting pertaining to the completion and status of Strategic Plan goals and objectives. 5%

10% (E) Board and Committee Meetings

- Plan, organize, and direct the preparation of agendas, committee packets, and travel arrangements for the Practice Committee and Consumer Protection Committee meetings. 5%
- Research, develop and make presentations before the Board, committees, DCA, and other agencies regarding the Board's enforcement, fingerprint and probation programs. 5%

5% (M) Miscellaneous Projects

Provide support for and conduct miscellaneous projects as directed by the Executive Officer and/or the Board.

B. Supervision Received

The incumbent reports directly to and is supervised by the Executive Officer.

C. Supervision Exercised

The incumbent directly supervises one full-time Associate Governmental Program Analyst; three Staff Services Analysts, one management services technician and two Office Technicians.

D. Administrative Responsibility

The incumbent is responsible for planning, directing and organizing the statewide activities of the enforcement, fingerprint, probation and licensing programs, including formulating and recommending policy, implementing regulations and managing program operations consistent with the Board's mandate.

E. Personal Contacts

The incumbent has regular contact with various members of the Department's administrative and information systems staff in addition to continuous contact with Board staff. The incumbent will also establish and maintain cooperative relationships with licensees, consumers, media, professional associations, the Legislature, other state agencies to interpret the Board's practice act, regulations, protocols, and policies.

F. Actions and Consequences

Failure to properly administer the Board's enforcement, probation, and licensing programs could result in ineffective and inefficient operations jeopardizing the health and safety of consumers.

G. Functional Requirements

The position requires incumbent to 40 hours per week in an office setting, with artificial light and temperature control. Daily access to and use of a personal computer and telephone is essential.

Staff Services Manager I
Duty Statement
Page 3

H. Other Information

Incumbent is expected to travel occasionally to attend meetings, conferences, etc. Incumbent must possess good communication skills, use good judgment in decision-making, exercise creativity and flexibility in problem identification and resolution, manage time and resources effectively, and be responsive to Board needs. The incumbent will have access to confidential information and must adhere to all privacy and confidential policies.

Fingerprinting

Title 11, section 703(d) California Code of Regulations requires criminal record checks of all personnel who have access to Criminal Offender Record information (CORI). Pursuant to this requirement, applicants for this position will be required to submit fingerprints to the Department of Justice and be cleared before hiring.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Date

Jessica Sieferman

Printed Name

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Date

Mona C. Maggio

Printed Name

09/2014

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

To: Board Members

Date: April 24, 2015

From: Cyd Brandvein, Public Member
Madhu Chawla, O.D.

Telephone: (916) 575-7170

Subject: Agenda Item 20 – Process for Selection of a New Executive Officer

At today's meeting, the Selection Committee will provide the status of the recruitment process for hiring a new executive officer.

Background

At the February 24, 2015, Olivia Trejo, Classification and Pay Manager with the Department of Consumer Affairs, Office of Human Resources provided information on the process for selection of a new executive officer (EO).

Ms. Cyd Brandvein and Dr. Madhu Chawla, O.D. were appointed by President Arredondo, O.D. to serve as the Selection Committee for the EO recruitment.

Ms. Maggio notified the Board that after consulting with Board President Dr. Arredondo, she changed her retirement date from June 30, 2015 to April 30, 2015.

On April 27, 2015, the Board will hold a closed session meeting to appoint an interim or acting executive officer.

Attachment

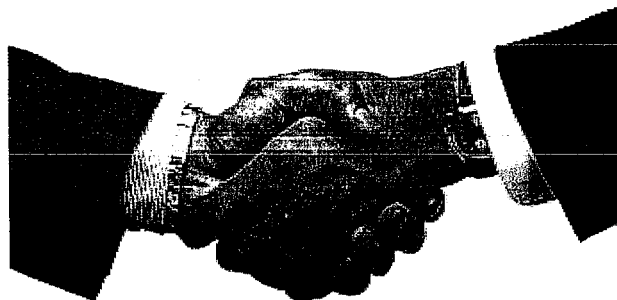
1. Executive Officer Recruitment Outline

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

EXECUTIVE OFFICER RECRUITMENT OUTLINE





Prepared by
Department of Consumer Affairs
Office of Human Resources
1625 N. Market Blvd. Suite N-321
Sacramento, CA 95834

Revised January 2015

FOREWORD

The purpose of this outline is to provide a practical guide for Board Members in the recruitment of qualified Executive Officers (EO). This manual is intended as a useful reference and common terminology is used insofar as possible. It should be considered a supplement to working with the Deputy Director for Board and Bureau Relations and/or the Department of Consumer Affairs (DCA) Office of Human Resources (OHR) Personnel Officer (PO) or assigned Classification and Pay Analyst (C&P) in the selection of an EO.

A sample listing of activities and a timeline for EO recruitment is included as **Attachment A**.

Any inquiries or comments relating to this manual should be directed to the DCA OHR.

**BOARD ACTION:
REVIEW DUTY STATEMENT**

An updated and current EO duty statement that clearly and accurately describes the functions and responsibilities of the position, as determined by the Board is required. The duty statement provides the foundation upon which recruitment is based. See **Attachment B** for a sample EO duty statement.

The duty statement will be used to develop recruitment flyers (**Attachment C**) or advertisements for the position. In addition, it will be used to define the criteria for the screening of applications and the development of interview questions.

If a current duty statement is not available, the OHR C&P Analyst assigned to the Board will obtain a duty statement from another Board of similar size and activities and can assist the Board in developing an appropriate duty statement.

Any changes to the duty statement require Board review and approval at a publicly announced Board Meeting.

RECRUITMENT OF QUALIFIED CANDIDATES

Recruitment and appointments of EOs shall be made in accordance with the provisions of civil service laws to ensure consistency and transparency throughout the department.

Unless licensure is required, there are no specific qualifications established for EO positions. Board Members must determine the qualifications that will produce the best EO for that Board. Therefore, it is necessary for the Board (or the Selection Committee) to develop a set of qualifications to be used in the recruitment of EOs.

The following criteria are general in nature; however, they may be used for many of the EO positions:

✓	Demonstrated supervisory and management skills.
✓	Administrative experience including fiscal responsibility, budget preparation, development of regulations, policy development and implementation.
✓	Legislative or lobbying experience and a working knowledge of the State and federal statutes and rules pertaining to the particular Board.
✓	Regulatory and/or enforcement experience such as processing complaints, monitoring investigations or hearings on disciplinary matters.
✓	Ability to communicate effectively both orally and in writing and deal effectively with a broad spectrum of people interacting with the board.
✓	Prior experience working with Boards.
✓	Experience with licensure including, but not limited to, professional examination or testing procedures and techniques.
✓	Knowledge of current consumer issues in the licensed profession.

Initial recruitment will include advertising on the California Department of Human Resources' website (www.calhr.ca.gov). Other recruitment activities can include advertising the position in regional newspapers, minority publications and professional publications, depending on the

available budget and the needs of the Board. Reaching a group of candidates whom the Board considers to be the most likely to be excellent candidates will dictate the focus and direction of the advertising.

PUBLIC MEETING REQUIREMENTS

Your Board Attorney from the DCA Legal Affairs Office should address issues regarding public meeting requirements. When a committee of the Board, consists of more than two members, it is considered a public meeting and must be noticed, as required by law. Therefore, a Selection Committee, established by the Board to assist in the recruitment effort, should be limited to no more than two Members.

BOARD ACTION: **ESTABLISH SELECTION COMMITTEE**

The Board should identify two members who will have sufficient time and interest to commit to actively participating in the selection process. Certain Boards require the EO selection to be approved by the DCA Director, as noted on page seven herein. In those instances, the Board should consider whether or not a designee of the Director should be part of the Selection Committee.

COMMITTEE ACTION: **SCREENING APPLICATIONS**

The Selection Committee will work with the OHR PO or assigned C&P Analyst, and the DCA Deputy Director for Board and Bureau Relations to advertise, develop screening criteria, review applications, conduct initial interviews and obtain a manageable number of candidates to be interviewed by the full Board at a publicly noticed meeting.

Initial (pre-) screening of qualified applicants can be performed by the C&P Analyst or by the Selection Committee, in accordance with the qualifications established by the Board or the Selection Committee. The screening criteria can be very general in nature, and is intended to eliminate those candidates who clearly do not meet the criteria established by the Board or Selection Committee.

A final screening by the Selection Committee will identify a target number of candidates for an initial interview. Typically, a candidate pool of at least five to six applicants is recommended.

Applicants who were screened out during the initial screening process should be notified by mail of the results. These notifications can be done by Board staff or the C&P Analyst. Per Government Code Section 12946, OHR will retain the applications a minimum of two years following the completion of the selection process.

SELECTION COMMITTEE ACTION: **INITIAL INTERVIEWS**

If initial interviews are held to narrow the field of candidates, the Selection Committee is responsible for conducting the interviews. Board staff or the C&P Analyst may assist in scheduling the interviews, on the date(s) and at the location(s) selected by the Selection Committee. If interviews

are scheduled for more than one day, the interviews may be scheduled in different locations depending upon Board interest, candidate locations and budget considerations.

In scheduling interviews, the notifications should provide at least a one-week advance notice for the candidates. In determining the location of the interviews, consideration should be given to where the majority of candidates reside, as candidates must endure any costs associated with appearing for an interview.

If references were not requested in the recruitment advertisement, candidates should be advised to bring a list of at least three professional references to the first interview.

Forty-five to fifty minutes should be allowed for each candidate's interview. Prior to the interview, the duty statement should be provided. [Note: For confidentiality purposes, examples of effective interview questions will only be provided to the Selection Committee.]

In the initial interview, the following topics should be thoroughly covered:

✓	The exact duties of the position.
✓	The supervision given and/or received.
✓	The frequency and level of public contact.
✓	The value of independent decision-making.
✓	The responsibility of training staff, if applicable.
✓	The EO's relationship with the Board.
✓	The education desired/required.
✓	The qualifications of the position.

In closing the interview, advise the applicants when a decision is expected to be made and that all candidates will be notified in writing if they will proceed to the next step, a final interview before the full Board.

CHECKING REFERENCES

The references of the final candidates may be obtained and contacted prior to any final interviews. This can be done by the Board members or by the C&P Analyst assigned to the Board. This provides the Board with all necessary information to make a decision on the day of the interviews and eliminates the need for another public meeting on the same issue. See **Attachment D** for a sample of appropriate reference check questions.

BOARD ACTION: **CONDUCTING TOP CANDIDATE INTERVIEWS**

Final interviews of the top two to three candidates are conducted by a quorum of the full Board in closed session. This meeting must conform to the notice requirements of the Bagley-Keene Act for all Board meetings. This interview gives all Board Members an opportunity to meet the candidates and assess their qualifications and to determine how well s/he will perform the duties of the position, in addition to how well s/he will work, on a personal level, with the Board.

A different set of interview questions should be developed for the final interviews and the questions should cover a range of topics that will give the Board a strong sense of the applicant's understanding of, and readiness for the position. The following four areas are typically covered:

1. Ability to communicate effectively, both orally and in writing.
2. Experience working with Boards.
3. Experience with licensure, enforcement, professional examinations/testing.
4. Knowledge of current consumer issues in the licensed profession(s).

In closing the interview, advise each applicant when a decision is expected to be made and that all candidates will be notified of the final outcome in writing.

BOARD ACTION:
SELECTION OF FINALIST

After all of the candidates are interviewed in closed session, the Board must vote to select the final candidate for the EO position. This vote is also held in closed session.

Setting the Salary

When the final selection has been voted on by the Board, the Board must also determine the appropriate salary in closed session. All appointments shall be within the salary range for the established Exempt level approved by the CalHR. Upon the initial appointment, the Exempt shall be entitled to the rate within the salary range five percent above the rate last received or the minimum within the salary range, whichever is higher.

All exceptions to the appointment salary must be submitted to the DCA Executive Office, the Business, Consumer Services and Housing Agency Secretary, the Governor's Office Appointments Secretary, and CalHR for approval.

After the Board has made its final selection and determined the salary to be offered in closed session, the Board President/Chairperson shall return to open session to generally announce that the Board has made a selection. The announcement of the selected successful candidate should wait until the candidate notification and acceptance process outlined below has been completed and the unsuccessful candidates have been notified (at least verbally).

Note: Some Boards¹ have statutes requiring that the DCA Director approve the Board's selection for EO and the proposed salary. In such case, the Board President/Chairperson should send a written notice to the Director of the DCA, via the Deputy Director for Board and Bureau Relations,

1

- Board of Barbering and Cosmetology – BP7303(c). The appointment of the executive officer is subject to the approval of the director.
- Contractor's State License Board - BP7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.
- Dental Board – BP1616.5. The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer..."
- Structural Pest Control Board - BP8528. With the approval of the director, the board shall appoint a registrar, fix his or her compensation and prescribe his or her duties. The registrar is the executive officer and secretary of the board.

indicating that the Board had selected its Executive Officer and the proposed salary and is requesting the Director's approval. See **Attachment E** for a sample Director's Office Approval letter.

Candidate Notification

After the Board has determined the candidate and salary, and if applicable, secured the approval of the Department's Director, the Board President/Chairperson will contact the selected candidate and offer the position. Once the candidate accepts, the effective date the candidate will begin the duties of EO must also be determined. After the discussion, the Board President/Chairperson will provide the candidate with a confirmation letter (**Attachment F**) drafted by the C&P Analyst, which outlines the facts of the appointment. The Board President/Chairperson will forward a copy of the confirmation letter to the C&P Analyst and the Deputy Director for Board and Bureau Relations, at DCA headquarters. The DCA OHR will provide an attachment for the confirmation letter outlining the State's benefits package.

CRIMINAL OFFENDER RECORD INFORMATION (CORI) CLEARANCE REQUIREMENT

DCA is authorized to receive CORI from the Department of Justice. DCA is required to obtain fingerprints and conduct a criminal conviction record review for all individuals who have access to CORI. DCA Policy *Non-Sworn Employee Fingerprints Access to CORI* outlines the process for obtaining and reviewing the CORI of affected personnel.

All EOs will require CORI clearance before their start date and preferably before the selection is publically announced. The Board's CORI Coordinator or OHR can assist with the facilitation of the CORI clearance.

OATH OF OFFICE

Executive Officer Appointment

The Oath of Office (Std. 688) (**Attachment G**) must be administered on or prior to the effective date of the EO's appointment. The Oath of Office may be administered by any Board Member or by the DCA Director, Chief Deputy Director or their designee. The Deputy Director for Board and Bureau Relations can assist with arrangements for the Director or Chief Deputy to administer the Oath of Office.

Letters should be sent to all candidates notifying them of the hiring decision. Notifications can be performed by Board staff or DCA OHR staff.

Prior to a Board selecting a permanent EO, it may be necessary for the Board to select or designate an individual to a temporary appointment to the position in order to continue Board business without interruption. Two such temporary appointments are the Acting Assignment and the Interim Assignment.

Acting Assignment

In the absence of an EO, the Board President/Chairperson can designate a Board staff person to act as the EO, either until a Board meeting can be convened to appoint an *Interim* EO (who may be the same person as the *Acting*) or until a permanent EO takes office. An *Acting* assignment requires the administration of an Oath of Office and confirmation of the position's authority by a letter from the Board President/Chairperson. See **Attachment H** for a sample Acting Assignment

Confirmation Notice. An *Acting* assignment does not confer any status upon the individual and there is no additional monetary compensation, so these appointments should only be used for short-term needs.

Interim Assignment

Appointment of an *Interim* EO requires a vote by a quorum of Board Members at a publicly noticed meeting and administration of the Oath of Office. Typically, an *Interim* appointment is used to maintain the Board's daily activities during the recruitment process and to compensate an individual (usually a Board staff person) for taking on the additional responsibilities. See **Attachment I** for a sample Interim Assignment Confirmation Notice.

POST SELECTION

BOARD ACTION:
**EXECUTIVE OFFICER PERFORMANCE EVALUATION
AND SALARY INCREASES**

Annually, each Board is expected to provide the EO with a written evaluation of his or her performance. The Board President/Chairperson should contact the DCA OHR PO to obtain a copy of the EO Performance Evaluation Form.

The Board President/Chairperson may request Board staff or OHR send out the Executive Officer Performance Evaluation Form to each Board Member to obtain an evaluation of the EO's performance.

Board Members should complete the Executive Officer Performance Evaluation Form, rating and commenting on the EO's performance in each category the Board Member can evaluate.

The Board President/Chairperson can collate all Board Member ratings and comments for discussion. In order to abide with the Bagley-Keene Act, the Board must discuss the EO ratings and the evaluation only during a properly noticed Board meeting.

Evaluations are usually discussed in a closed session under Government Code Section 11126(a). Your assigned Attorney may assist you during this process, if desired.

After the Board determines the contents of the final Executive Officer Performance Evaluation Form and any outcome, it should determine who will meet with the EO to discuss his/her performance, which must also be in compliance with the Bagley-Keene Act. When the EO's performance meets or exceeds the expectations of the Board, the Board may request a salary increase for the exempt level assigned to the EO for that Board. OHR will advise the Board of the current salary standards. Any request for a salary increase must be reported on the Executive Officer Performance Evaluation Form.

The original Executive Officer Performance Evaluation Form, signed by both the Board President/Chairperson and the EO, is forwarded to the DCA OHR PO to be filed in the EO's Official Personnel File. The EO must also receive a final signed copy of the evaluation.

EXECUTIVE OFFICER RECRUITMENT OUTLINE

The Bagley-Keene Act requires that after a closed session where there was an action taken to appoint, employ or dismiss a public employee, the Board must, during open session at a subsequent public meeting, report that action and the roll call vote, if any was taken.

CONTACT INFORMATION

DCA aims to make the EO recruitment process as seamless as possible. To ensure this, DCA has resources to assist the Board throughout the process. Please feel free to contact the following resources if you have any questions regarding the process:

Deputy Director for Board and Bureau Relations
(916) 574-8200

DCA Legal Affairs Office
(916) 574-8220

Office of Human Resources
Personnel Officer
(916) 574-8301

Attachment A

Department of Consumer Affairs Executive Officer Recruitment

Tasks/Events	Responsible Party	Tentative Target Completion Date
At (or prior to) scheduled/noticed Board Meeting:		
<ul style="list-style-type: none"> Provide Duty Statement to Board for consideration (If there are changes, the Board will need approve the changes at a publicly announced Board meeting) 	DCA OHR	
At scheduled/noticed Board Meeting:		
<ul style="list-style-type: none"> Meet with Board to discuss recruitment options, recruitment timeline, etc. Board discusses having Assistant EO (or other staff if no AEO) serve as <i>Interim</i> or <i>Acting</i> EO during recruitment period¹ Board makes motion/votes to appoint Interim or Acting EO, if applicable Board determines 2-member SCOM conduct preliminary recruitment activities 	DCA OHR	
Subsequent to Board Meeting - Advise SCOM throughout recruitment period		
<ul style="list-style-type: none"> Provide sample recruitment bulletin, timeline of events Develop final recruitment bulletin; obtain SCOM and the Deputy Director for Board and Bureau Relations' approval Advertise on State (CalHR) website and Board/DCA website (minimum 10 days; normally 3-4 weeks) 	DCA OHR	
Advertise externally (optional)	Board Staff	
Copy external advertisement(s) for recruitments file	DCA OHR	
During Recruitment Period		
<ul style="list-style-type: none"> Meet/work with SCOM and the Deputy Director for Board and Bureau Relations to determine application screening criteria Meet/work with SCOM to determine interview questions Work with SCOM to determine interview dates Receive applications; copy applications and provide to SCOM 	DCA OHR	
Review applications using screening criteria; determine candidates for initial (optional) or final interview	SCOM	
Schedule initial Interviews, if applicable (optional step)	Board Staff or DCA OHR	

¹ An Interim appointment is placed into the position and receives the pay of the position; Acting appointments are typically of very short duration and do not receive the exempt pay. Both require the administration of the Oath of Office.

Department of Consumer Affairs Executive Officer Recruitment

Continued.....

Tasks/Events	Responsible Party	Tentative Target Completion Date
Conduct initial interviews, if applicable	SCOM	
Recommend top candidates for final interview with full Board at next noticed meeting		
Conduct reference checks	SCOM or DCA OHR	
Schedule 2 nd /final Interviews w/Full Board (quorum)	DCA OHR	
At scheduled/noticed Board meeting (in closed session)	Full Board	
<ul style="list-style-type: none"> Conduct interviews with top candidates Determine finalist(s) Select Finalist² Determine appointment date Determine salary³ 	(quorum)	
Post Selection Activities	DCA HR	
<ul style="list-style-type: none"> Notify all candidates in writing Candidate submits fingerprints for LiveScan (CORI clearance)⁴ 		
Formal announcement of Executive Officer	Board / DCA Board and Bureau Relations / DCA Public Affairs	
On day of appointment	Board Chair or DCA Director (or designee)	
<ul style="list-style-type: none"> Administer <i>Oath of Office</i> 		

² By statute, some EO appointments require the approval of the Director, DCA.

³ Exempt salary for appointees is restricted.

⁴ EOs typically have access to criminal record information in the course of reviewing accusations and, therefore, are required to receive clearance from the Department of Justice to review Criminal Offender Record Information (CORI). Refer to DCA Policy DOI 03-01: Non-Sworn Employee Fingerprints - Access to CORI.

Attachment B

Exempt Employee's Name	
Classification Title Executive Officer	Board / Bureau / Commission / Committee
Exempt Level / Salary Range	Geographic Location Sacramento
Position Number	Effective Date of Appointment

General Statement: Under the general direction and leadership of the X-member Board and its Administrative Committee, the Executive Officer of the Board functions as operations officer for management of the Board's resources and staff. The Executive Officer is further responsible for interpreting and executing the intent of all Board policies to the public and to other governmental agencies. This position is an at-will position and the incumbent serves at the pleasure of the Board. These duties include, but are not limited to, the following:

A. Specific Assignments [Essential (E) / Marginal (M) Functions]:

- 40% (E)** Acts as principal operations officer for the Board; manages all Board offices; manages all personnel including recruitment, orientation, professional staff development and evaluation of senior level staff; oversees the procurement and management of space, equipment, and supplies; identifies need for augmentation of operating budget and ensures that all budget change proposals, finance letters, and other fiscal documents are accurate and that they support the Board's goals and mission.
- 30% (E)** Functions as administrative agent for the Board; prepares agendas and minutes for all Board meetings and committee meetings; acts as Board spokesperson at all meetings and hearings as delegated by the Board; serves as liaison between Board, Board Committees, and staff; conducts orientation for new Board members. Delegates, but is responsible for evaluation of credentials of application, endorsement, and renewal for California, the United States, and out-of-country; sees that all meetings and hearings are notices to the public and follows proper administrative procedure; responsible for the regulatory change process from notice of hearing to implementation of approved regulations; provides for initial and continued approval of programs; implements legislation and legislative mandates.
- 10% (E)** Responsible for interpretation and execution of the Business and Professions Code and all Board policies and guidelines related to the Board; seeks wide dissemination of the above information in a structured manner through informational hearings, workshops, and seminars conducted by Board staff and members; seeks legal counsel from the Department of Consumer Affairs in carrying out the above activities.
- 10% (E)** Provides for investigation of complaints; preparation of accusations or statements of issue; signs final accusation; consults with legal counsel on problem cases, monitors flow of cases in system and monitors costs; advises Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensures that Administrative Procedure Act timelines are followed and that all Board disciplinary decisions are appropriately implemented. Meets and confers with outside legal agencies on cases; serves as Board's liaison to media and public on all publicized cases. Maintains confidentiality of information and records in accordance with Public Records Act.

10% (E) Serves as the Board's liaison to a wide array of governmental and voluntary organizations; serves as liaison to professional organizations; participates and serves as Board's staff representative to various associations.

B. Supervision Received

The Executive Officer serves under the administrative direction of the Board and reports directly to the Board President or Chairperson.

C. Supervision Exercised

The Executive Officer is delegated the authority by the Board to provide leadership and oversight for all Board programs and activities. The Executive Officer directly supervises [list direct reports].

D. Administrative Responsibility

The Executive Officer is responsible for all administrative and fiscal functions and aspects of the Board.

E. Personal Contacts

The Executive Officer has regular contact with all levels of Board staff, DCA Executive Management and staff, legislators, the Governor's Office, members of the public and members of the trade and industry groups.

F. Functional Requirements

No specific physical requirements are present. The Executive Officer works in an office setting with artificial light and temperature control. Daily access to and use of a personal computer and telephone are essential. Sitting and standing requirements are consistent with office work. This position requires frequent travel including overnight travel by all available transportation methods.

G. Other Information

This position has access to Criminal Offender Record Information (CORI). Title 11, Section 703(d) of the California Code of Regulations requires criminal record checks of all personnel who have access to CORI. Pursuant to this requirement, incumbents in this position will be required to submit fingerprints to the Department of Justice and be cleared prior to appointment.

This position also requires the incumbent to take an Oath of Office prior to appointment.

Additionally, this position is subject to the Department of Consumer Affairs' Conflict of Interest Code (16 CCR § 3830) and the incumbent must file a Statement of Economic Interests Form upon appointment, annually, and upon separation.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Date

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Board President / Chairperson Signature

Date

Board President / Chairperson's Printed Name

NEW (date) or Revision (date)

Attachment C

SAMPLE RECRUITMENT FLYER

THE BOARD OF _____
INVITES APPLICATIONS FOR THE POSITION OF

EXECUTIVE OFFICER

[SALARY MONTHLY]

The Executive Officer is hired by the Board and serves at its pleasure. The Executive Officer is responsible for carrying out the policies of the xx-member Board. The mission of the Board is to _____. The Board is responsible for _____. The Executive Officer position is exempt from civil service and is located in Sacramento, CA.

All applicants should possess the following desirable qualifications:

- Administrative experience; e.g., ability to prepare, understand, and work with a government budget, development of regulations, policy development and implementation, etc.
- Demonstrated supervisory experience, ability to organize and control the flow of work.
- Regulatory and/or enforcement experience such as processing complaints, monitoring investigations, keeping abreast of hearings on disciplinary matters, etc.
- Legislative or lobbying experience/coordination including appearing before legislative committees.
- Ability to communicate effectively both orally and in writing.
- Knowledge of current consumer issues in the licensed professions.
- Experience with and/or in taking direction from a board or committee.
- Candidates must have a baccalaureate degree from a WASC comparable accredited school and preferably an advanced or professional degree.

Interested persons should submit a resume by _____ to:

Department of Consumer Affairs
1625 N. Market Blvd. Suite
Sacramento, CA 95834

ATTN: _____, Office of Human Resources

All applications will be screened and only the most qualified candidates will be scheduled for a preliminary interview. It is anticipated that interviews will be held during _____. Travel expenses for these interviews are the responsibility of each candidate. For further information, please contact _____ at (916) ____-_____.

The Department of Consumer Affairs provides equal employment opportunities to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation.

Attachment D

EXECUTIVE OFFICER CANDIDATES

QUESTIONS FOR REFERENCES

1. What was the professional relationship between you and Ms./Mr./Dr. _____?

2. What were the dates of this professional relationship?

3. How would you describe Ms./Mr./Dr. _____'s working or management style?

4. If the position Ms./Mr./ Dr. _____ occupied necessitated contact with a board of directors, how would you characterize Ms./Mr./Dr. _____'s interaction with the board?

5. Is there any other information regarding Ms./Mr./Dr. _____ that you would like to add?

Attachment E

SAMPLE LETTER: DIRECTOR'S APPROVAL

(Board Letterhead)

DATE

DCA Director
Department of Consumer Affairs
1625 N. Market Blvd. Suite S-308
Sacramento, CA 95834

Dear Director _____:

The Board of _____ has selected [NAME] for the position of Interim Executive Officer. S/he will serve in this "at will" capacity until a permanent Executive Officer is selected or his/her appointment is terminated by the Board or s/he otherwise leaves. [If required*:I understand the Board has your concurrence in this appointment.]

NAME is currently a/n (Civil Service class, if appropriate). S/he will assume the Interim Executive Officer duties effective DATE, with a salary of \$_____ per month.

I request your assistance in ensuring that NAME's Oath of Office is administered by DATE so s/he may begin serving in this role.

The Board's Selection Committee will continue to work with the DCA's Office of Human Resources in continuing the search and selection process.

Sincerely,

NAME, Board President/Chairperson
Board of _____

cc: Deputy Director, Board and Bureau Relations
DCA Office of Human Resources
Candidate

Barbering & Cosmetology
Contractors State License Board
Dental Board
Structural Pest Control

Attachment F

SAMPLE LETTER: CONFIRMATION OF ACCEPTANCE

(Board Letterhead)

DATE

CANDIDATE NAME
ADDRESS

Dear Candidate Name,

In accordance with our telephone conversation of DATE, this letter is confirmation that you have accepted the position of Executive Officer, Board of _____ at a salary of \$_____ per month, in accordance with the California Department of Human Resources Exempt Category Level _____.

This position, which is exempt from civil service is an "at will" position. Therefore, you serve at the pleasure of the Board and your appointment may be terminated at any time, without notice and without cause.

We agreed that your start date with the Board would be _____.

Attached is an outline of the benefits package offered by the State of California for a managerial (or supervisory) position.

Congratulations on your appointment. On behalf of the entire Board, we look forward to working with you and together meeting the challenges facing the Board in the future.

Sincerely,

Name, President/Chairperson
Board of _____

cc: Deputy Director, Board and Bureau Relations
Office of Human Resources
Official Personnel File

Attachment: Excluded Benefits Chart

Attachment G

OATH

for the Office of _____

I, _____, *do solemnly swear*
(or affirm) that I will support and defend the Constitution of the
United States and the Constitution of the State of California
against all enemies, foreign and domestic; that I will bear true
faith and allegiance to the Constitution of the United States and
the Constitution of the State of California; that I take this
obligation freely, without any mental reservation or purpose of
evasion; and that I will well and faithfully discharge the duties
upon which I am about to enter.

Signature _____

Term Expires _____

Subscribed and sworn to before me,

this _____ *day of* _____

A. D. _____

OATH OF OFFICE

of

STD. 688 (REV. 11-99) (REVERSE)

Attachment H

SAMPLE LETTER: ACTING APPOINTMENT ACCEPTANCE

(Board Letterhead)

DATE

NAME
ADDRESS

Dear NAME:

This acknowledges your acceptance of the responsibility of *Acting* Executive Officer, Board of _____, effective _____. This Acting assignment will continue until the Board can hold a meeting to appoint an Interim Executive Officer. The Board is unable to provide any additional compensation for the Acting assignment.

This Acting designation confers upon you the authority to act in the full capacity of the Executive Officer, on behalf of the Board, including signature and supervisory authority.

I appreciate your acceptance of this responsibility and look forward to working with you in the future.

Sincerely,

NAME, Board President/Chairperson
Board of _____

cc: Deputy Director, Board and Bureau Relations
Office of Human Resources
Official Personnel File

Attachment I

SAMPLE LETTER: INTERIM APPOINTMENT ACCEPTANCE

(Board Letterhead)

DATE

NAME

ADDRESS

Dear NAME,

This letter is to confirm the decision reached by the Board at the DATE Board meeting in which you were appointed to the position of Interim Executive Officer for the Board of _____.

This Interim appointment, effective DATE, will include compensation at \$_____ per month, in accordance with the California Department of Human Resources Exempt Category Level _____.

This position, which is exempt from civil service is an "at will" position. Therefore, you serve at the pleasure of the board and your appointment may be terminated at any time, without notice and without cause. At the conclusion of this appointment, you have (or do not have) a mandatory right of return to your former civil service position.

Thank you for your acceptance of this appointment. On behalf of the entire Board, I look forward to working with you in the future.

Sincerely,

NAME, President/Chairperson
Board of _____

cc: Deputy Director, Board and Bureau Relations
Office of Human Resources
Official Personnel File

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

To: Board Members

Date: April 24, 2015

From: Nooshin Movassaghi
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 21 – Discussion and Possible Action Regarding Legislation
Sponsored by the Board**

1. Assembly Bill 1253 (Steinorth), Retired Volunteer License

Action Requested:

None. Update only.

Background:

The Board approved the proposed amendments to Business Professions Code (BPC) §3151.1 at its February 24, 2015 meeting and directed staff to move forward with the legislative process (see attachment 1). Staff secured Assemblymember Steinorth as the author. On April 2, 2015 the language was amended based on the Assembly Committee on Business and Profession's consultants' recommendation (see attachment 2).

On April 7, 2015 the bill was heard at Assembly Committee on Business and Professions and moved on to the Appropriations committee.

2. Assembly Bill 1359 (Nazarian), Certificate Requirements, Therapeutic Pharmaceutical Agents

Action Requested:

None. Update only.

Background:

The Board at its February 24, 2015 directed staff to amend the proposed language to the bill and move forward with the legislative process (see attachment 3). The bill will be heard at the April 28, 2015 Assembly Business and Professions Committee hearing. Staff has worked with a consultant from this committee and provided requested information.

3. Senate Bill 349, (Bates), Mobile Optometric Facility

Action Requested:

Please review and direct staff to move forward with a regulatory process to establish guidelines for licensees to use mobile optometric facilities. Additionally, direct staff to draft and send a formal notice to the author removing the Board's sponsorship of SB 349.

Background:

The Board, at its February 24, 2015 meeting, agreed to keep the language of the mobile optometric facility limited to nonprofit, charitable and governmental agencies. At the request of the author's office, staff met and agreed on amendments (see attachment 4) proposed by California Optometric Association (COA) and

Vision to Learn. On March 25th, staff was asked by the Senate Business and Professions consultant why the Board wants to “limit the mobile facilities to nonprofits, government, and schools? Why not for-profit?” The bill was to be heard on April 6, 2015 at Senate Business and Professions committee. Staff requested to move the hearing to April 20, 2015 in order to call for a special board meeting to address the legislative process and the issue. Due to a lack of quorum, there was no special board meeting. On April 16, 2015 the author pulled the bill, making it a two year bill.

According to the Health and Safety Code §1765.160 (see attachment 5), the governing body of a licensee using a mobile unit shall establish written policies governing the service that the mobile unit provides. Staff was informed by the Office of Administrative Law (OAL) that, with the help of legal counsel, the Board can proceed with regulations concerning mobile units.

4. Senate Bill 402 (Mitchell), Children’s Vision

Action Requested:

None. Update only.

Background:

Staff worked with the author’s office and amended the bill to include COA’s suggestions (see attachment 6 and 7). On April 15, 2015 the Senate Education Committee heard the bill. Dr. Glenn Kawaguchi and Dr. Scott Daly testified on behalf of this bill, and the bill was passed. On April 22, 2015 the bill will be heard by the Senate Education Committee.

5. Senate Bill 496 (Nguyen), Foreign Graduates

Action Requested:

Staff requests the Board direct staff to work on issues brought up by stakeholders and continue the legislative process for this two year bill.

Background:

Staff secured Senator Nguyen as the author for SB 496 which included the amendments to Business and Professions Code (BPC) § 3057.5 and addition of BPC §3058 (see attachment 8). On April 6, 2015 the bill was to be heard at the Senate Business and Professions Committee. Due to unresolved issues brought forth by opposition from Ketchum University (see attachment 9), the bill has been pulled and is a two year bill. Staff will work with all stakeholders during this time.

Attachments

1. AB 1253 Retired Volunteer
2. Assembly Committee on Business and Professions consultant’s AB 1253 analysis
3. AB 1359 TPA
4. SB 496 Mobile Optometric Facilities
5. Health and Safety Code § 1765.160
6. SB 402
7. Senate Committee on Education consultant’s SB 402 analysis
8. SB 496 Foreign Graduates
9. Opposition letter from Ketchum University

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1253

Introduced by Assembly Member Steinorth

February 27, 2015

An act to amend Section 3151.1 of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1253, as amended, Steinorth. Optometry: license: retired volunteer service designation.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry and makes a violation of the act a crime. The act requires the board to issue, upon application and payment of a specified fee, a retired license to an optometrist with a current and active license, and prohibits the holder of a retired license from engaging in the practice of optometry. The act authorizes the holder of a retired license issued for less than 3 years to reactivate the license to active status if certain requirements have been met, including, the filing of an application for reactivation on a form prescribed by the board. The act authorizes the holder of a retired license issued for more than 3 years to reactivate the license to active status if certain additional requirements have been met, including, that the holder of the retired license passes both the National Board of Examiners in Optometry's Clinical Skills examination, or other clinical examination approved by the board, and the board's jurisprudence examination. The act requires the board to issue a license with retired volunteer service designation to an optometrist who holds a retired license or a license that is current and active upon application and payment of a specified

fee if the applicant certifies that he or she has completed the required continuing education hours. The act requires the applicant for a license with retired volunteer service designation to, among other things, certify that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

This bill would limit the existing requirement that the board issue a license with retired volunteer service designation to an optometrist who holds a retired license to an optometrist who holds a retired license issued for less than ~~3~~ 5 years. The bill would require the board to issue, upon application and payment of a specified fee, a license with retired volunteer service designation to an optometrist who holds a retired license issued for ~~3~~ 5 years or more, if that licensee meets all the requirements for an optometrist to reactivate his or her retired license issued for more than 3 years, as described above, and satisfies all other requirements of an applicant for a license with retired volunteer service designation. *The bill would also require an applicant for a license with retired volunteer service designation who has held a retired license for more than 3 years to complete, and certify on the application that he or she has completed, an additional 50 hours of formal continuing education coursework. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

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

- 1 SECTION 1. Section 3151.1 of the Business and Professions
- 2 Code is amended to read:
- 3 3151.1. (a) The board shall issue, upon application and
- 4 payment of the fee described in Section 3152, a license with retired
- 5 volunteer service designation to an optometrist who holds a retired
- 6 license issued for less than ~~three~~ five years or a license that is
- 7 current and active.

(b) The board shall issue, upon application and payment of the fee described in Section 3147.6, a license with volunteer service designation to the holder of a retired license issued for ~~three~~ five years or more if he or she satisfies all the requirements of Section 3147.6.

(c) The applicant shall certify on the application that he or she has completed the required number of continuing education hours pursuant to Section 3059. *If the applicant has held a retired license for more than three years, the applicant shall complete, and certify on the application that he or she has completed an additional 50 hours of formal continuing optometric education coursework.*

(d) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(e) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision ~~(e)~~. (d). Pursuant to Section 3146, the license expires at midnight on the last day of the licenseholder's birth month every two years if not renewed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 7, 2015

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Susan Bonilla, Chair

AB 1253 Steinorth – As Introduced February 27, 2015

SUBJECT: Optometry: license: retired volunteer service designation.

SUMMARY: Limits the issuance of a license with a retired volunteer service designation to an optometrist who holds a retired license for less than three years, and requires the holder of a retired license issued for more than three years to meet certain requirements, including passing clinical and jurisprudence examinations, in order for the State Board of Optometry (Board) to issue a license with retired volunteer service designation.

EXISTING LAW

- 1) Provides, pursuant to the Optometry Practice Act, for the licensure and regulation of optometrists by the Board within the Department of Consumer Affairs. (Business and Professions Code (BPC) Section 3000 et seq.)
- 2) Defines the practice of optometry to include 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, as specified. (BPC Section 3041)
- 3) Requires the Board to adopt regulations that require, as a condition to license renewal, that all licensees submit proof satisfactory to the Board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the Board or by other means deemed equivalent by the Board. (BPC Section 3059)
- 4) Provides that a license expires at midnight on the last day of the licenseholder's birth month following its original issuance and thereafter at midnight on the last day of the licenseholder's birth month every two years if not renewed. (BPC Section 3146)
- 5) Authorizes an expired license to be renewed at any time within three years after its expiration, and a retired license issued for less than three years to be reactivated to active status by filing an application for renewal, paying all fees, and submitting proof of completion of the required number of hours of continuing education (CE) for the last two years. (BPC Section 3147)
- 6) Authorizes the Board to reactivate or restore to active status a license that is not renewed within three years after its expiration, or a retired license issued for more than three years, if specified requirements are met, including the passage of both the National Board of Examiners in Optometry's Clinical Skills examination, or other clinical examination approved by the Board, and the Board's jurisprudence examination. (BPC Section 3147.6)
- 7) Requires the Board to issue, upon application and payment of prescribed fees, a retired license to an optometrist who holds a current and active license; exempts a retired licensee

from CE requirements, and prohibits a retired licensee from practicing optometry. (BPC Section 3151)

- 8) Requires the Board to issue, upon application and payment of prescribed fees, a license with retired volunteer service designation to an optometrist who holds a retired license or a license that is current and active. (BPC Section 3151.1)
- 9) Requires an applicant for a license with retired volunteer service designation to certify that he or she has completed the required number of CEs and that the sole purpose of the license is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs. (BPC Section 3151.1(b) (c))
- 10) Requires the holder of a retired license with volunteer service designation to renew that license biennially, and to certify that he or she has completed the CE requirements and that the sole purpose of the license is to provide voluntary, unpaid optometric services. (BPC Section 3151.1(d))
- 11) Limits the fee for a retired license, and the biennial renewal fee for a retired license with volunteer designation, to fifty dollars (\$50). (BPC Section 3152)

THIS BILL

- 1) Specifies that the Board may issue a license with retired volunteer service designation to an optometrist who holds a retired license for less than three years.
- 2) Requires the holder of a retired license issued for more than three years to meet certain requirements, including the passage of both the National Board of Examiners in Optometry's Clinical Skills examination, or other clinical examination approved by the Board, and the Board's jurisprudence examination, in order for the Board to issue, upon application and payment of the prescribed fee, a license with volunteer service designation.
- 3) Clarifies that a license with retired volunteer service designation expires at midnight on the last day of the licensee's birth month every two years if not renewed.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS

- 1) **Purpose.** This bill is sponsored by the Board. According to the author, "[This bill] is a consumer protection measure which will ensure that retired optometrists are up to date and current on standard optometric practices. Existing law allows for someone who practiced optometry decades ago to quickly maintain a retired volunteer license simply by signing up and paying a fee. [This bill] will clarify that the Board will only issue a 'retired volunteer license' to an applicant if their regular optometrist license retired within the last three years. If it has been longer than three years, the optometrist would have to reapply to the Board as a new applicant. Consumers hold a reasonable expectation that optometrists at a health fair remain sufficiently educated in standard and current practices and knowledge. [This bill] will follow through on this expectation."

- 2) **Background. Retired and Retired Volunteer Service Licenses.** SB 1215 (Emmerson), Chapter 359, Statutes of 2012, recently established both retired licenses and licenses with retired volunteer service designation for optometrists. Prior to these new license categories, licensees who were entering retirement had to choose between keeping an active license, and paying renewal fees, or having their license expire and put on delinquent status before the license was cancelled. In addition, SB 1215 made it easier for retired optometrists to volunteer by creating the volunteer service designation. Regulations implementing the fees for these license categories, set at twenty-five dollars (\$25) for retired licenses and fifty dollars (\$50) for retired volunteer licenses, became effective on April 1, 2014.

An optometrist with retired volunteer status is able to practice solely for the purpose of volunteering his or her services at health fairs, vision screenings, and public service eye programs. There is no limitation on the scope of services that may be provided. Active retired volunteers are required to certify that they meet CE requirements, and must continue to meet CE requirements as a condition of renewal.

Continuing Education Requirements. BPC Section 3059 requires the Board to adopt CE requirements for licensees, and Section 1536 of Title 16 of the California Code of Regulations outlines those requirements. Licensees are required to complete 40 hours of continuing optometric education course work within two years immediately preceding the license expiration date, while optometrists certified to use therapeutic pharmaceutical agents are required to complete 50 hours of CEs. According to the Board, while a retired licensee will have to certify that they have met these CE requirements, this CE requirement is only applicable to the licensee's last renewal period, because retired licensees are not required to complete CEs. As a result, under existing law, a retired licensee who has not maintained an active license may be eligible for a retired volunteer license at any point in time without completing any additional CEs.

No Time Frame for Retired Volunteer Licenses. The Board notes that because there is no time frame for a retired volunteer license, it may allow a retired licensee who has not practiced for decades and who has not kept up with any CE requirements to convert their license to retired volunteer status and start practicing again, which may pose a risk to consumers. According to the Board, consumers who rely on retired volunteer optometrists rightfully expect that the licensee is up to date on current standards, practices, and education within the optometry field, regardless of whether those services are paid for or not.

Because these license categories are new, there are currently no retired licensees who have been out of practice for more than three years and thus would be ineligible to convert their license to a retired volunteer license. In addition, there is no basis to determine whether allowing licensees who have been on retired status for more than three years provide, or have provided, substandard care to consumers. However, the Board seeks to prevent that possibility by limiting the time period a licensee can be out of practice. In addition, the Board notes that the practice of optometry is subject to great change, especially with regards to scope of practice, which may increase the likelihood that someone who is out of practice for longer than three years might not be able to provide the same level of service, especially when there are no limitations on the scope of services a volunteer can provide.

- 3) **Prior Legislation.** SB 1215 (Emmerson), Chapter 359, Statutes of 2012, required the Board to issue a retired license to an optometrist with a current and active license, prohibited the

holder of a retired license from engaging in the practice of optometry, and authorized the holder of a retired license to reactive the license if certain conditions were met. The bill also required the board to issue a retired license with a volunteer service designation to an optometrist with a retired or current and active license, and required that applicant to certify completion of specified continuing education hours, and established renewal procedures for that license designation.

ARGUMENTS IN SUPPORT. The California Board of Optometry writes in support, "Existing law allows for the holder of a retired license to convert said license to a retired volunteer service license at any time – even if their retired license is many years old, and have not practiced optometry in several years. Consumers have a reasonable expectation that an optometrist who serves at a public health fair, for example, [is] licensed and up to date on current practices within the field of optometry. AB 1253 will uphold this expectation by establishing time frames and expiration dates for retired volunteer service licenses. This policy aims to increase consumer protection, which is especially critical in the health field, specifically dealing with one's vision and eyesight."

According to the California Optometric Association (COA), "This measure clarifies the pathway for obtaining a 'retired volunteer' license. COA supports giving retired doctors of optometry the ability to provide eye care in a volunteer capacity for those in need."

ARGUMENTS IN OPPOSITION.

None on file.

POLICY ISSUES FOR CONSIDERATIONS. According to the author, the time period for a retired license to convert to a retired volunteer license is limited to three years because that is the established time period for a license to be expired or on retired status before it can be reactivated without having to retake examinations. However, the author may wish to consider whether limiting the time period to three years may have the inadvertent effect of limiting the pool of potential volunteers who are able to provide competent services to those in need. While the author raises a legitimate concern regarding the amount of time someone can be out of practice and still engage in practice, especially in light of the limited CE requirement, the author may wish to consider whether such concerns about keeping up to date with current practices could be mitigated by, for example, an additional CE requirement. As a result, the author may wish to consider increasing the amount of time a retired licensee can convert to a retired volunteer license, without having to retake examinations, and contingent upon the licensee's completion of the additional CE requirements. This may provide a balanced approach to ensuring that all consumers, regardless of their ability to pay, are provided with competent services, and promote access to care by limiting barriers to volunteers.

SUGGESTED AUTHOR'S AMENDMENTS.

On page 2, line 6, strike "three" and insert "five"

On page 2, line 10, strike "three" and insert "five"

On page 2, line 15, insert the following: "If the applicant has held a retired license for more than

three years, the applicant shall complete, and certify on the application that he or she has completed, an additional 50 hours of formal continuing optometric education course work."

REGISTERED SUPPORT / OPPOSITION:**Support**

State Board of Optometry (sponsor)
California Optometric Association

Opposition

None on file.

Analysis Prepared by: Eunie Linden / B. & P. / (916) 319-3301

ASSEMBLY BILL

No. 1359

Introduced by Assembly Member Nazarian

February 27, 2015

An act to amend Section 3041.3 of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1359, as introduced, Nazarian. Optometry: therapeutic pharmaceutical agents certification: requirements.

(1) The Optometry Practice Act provides for the licensure and regulation of optometrists by the State Board of Optometry. The act defines the practice of optometry to include 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 authorizes optometrists to engage in specified acts if certain requirements are met, including, the use of therapeutic pharmaceutical agents. The act authorizes the board to grant a certificate to use therapeutic pharmaceutical agents to an applicant who graduated from a California accredited school of optometry, prior to January 1, 1996, and is licensed as an optometrist in the state if certain requirements are met, including, but not limited to, completing a didactic course of at least 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease, as specified.

This bill would change all references to a certificate to use therapeutic pharmaceutical agents to refer to a therapeutic pharmaceutical agents (TPA) certification. The bill would delete certain requirements for an applicant for a therapeutic pharmaceutical agents certification who

graduated from a California accredited school of optometry, prior to January 1, 1996, and is licensed as an optometrist in the state, including, but not limited to, completing a didactic course of at least 80 classroom hours, as specified. The bill would require such an applicant to complete a preceptorship of at least 65 hours, as specified, with either a TPA-certified optometrist in good standing or a physician and surgeon board-certified in ophthalmology in good standing, and would require such an applicant to complete a minimum of 80 hours of directed and accredited education in ocular and systemic diseases, as specified. The bill would require a preceptor to certify completion of the preceptorship on a form approved by the board.

(2) The act exempts an optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, from meeting specified requirements for the issuance of a certificate to use therapeutic pharmaceutical agents, including the didactic course of at least 80 classroom hours.

This bill would delete those exemptions for an optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, and instead require such an applicant to meet the requirements for the issuance of a therapeutic pharmaceutical agents certification that apply to an applicant who graduated from a California accredited school of optometry, prior to January 1, 1996, as specified.

(3) The act also authorizes the board to grant a certificate to use therapeutic pharmaceutical agents to an applicant who graduated from a California accredited school of optometry, on or after January 1, 1996, and is licensed as an optometrist in the state if certain requirements are met, including, but not limited to, completing 10 hours of experience with a board certified ophthalmologist.

This bill would delete certain requirements for an applicant for a therapeutic pharmaceutical agents certification who graduated from a California accredited school of optometry, on or after January 1, 1996, and is licensed as an optometrist in the state, and would instead require such an applicant to pass all sections of the National Board of Examiners in Optometry's national board examination or its equivalent, as determined by the board, in order to be granted a therapeutic pharmaceutical agents certification.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 3041.3 of the Business and Professions Code is amended to read:

3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

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

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

(2)
(1) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, ~~in with either an ophthalmologist's office or an optometric clinic. a TPA-certified optometrist in good standing or a physician and surgeon board-certified in ophthalmology in good standing.~~ The training received during the preceptorship shall be on the diagnosis, treatment, and management of ~~ocular~~, *ocular and systemic* disease. The preceptor shall certify completion of the preceptorship *using a form approved by the board.* ~~Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California.~~ The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the

preceptorship by requiring that the ~~ophthalmologist~~ preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

~~(3)~~

(2) Successfully completes a minimum of ~~20~~ 80 hours of ~~self-directed~~ *directed and accredited education in ocular and systemic diseases within two years prior to meeting the requirements of paragraph (1).*

~~(4)~~

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

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

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

~~(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).~~

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

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

~~(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those~~

1 ~~hours on the diagnosis, treatment, and management of ocular,~~
2 ~~systemic disease.~~

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

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

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

15 (1) In order to obtain a ~~certificate to use~~ therapeutic
16 pharmaceutical agents *certification*, any optometrist who obtained
17 his or her license outside of California and graduated from an
18 accredited school of optometry prior to January 1, 1996, shall be
19 required to fulfill the requirements set forth in subdivision (b). In
20 order for the applicant to be eligible for the certificate to use
21 therapeutic pharmaceutical agents, the education he or she received
22 at the accredited out-of-state school of optometry shall be
23 equivalent to the education provided by any accredited school of
24 optometry in California for persons who graduate before January
25 1, 1996. For those out-of-state applicants who request that any of
26 the requirements contained in subdivision (b) be waived based on
27 fulfillment of the requirement in another state, if the board
28 determines that the completed requirement was equivalent to that
29 required in California, the requirement shall be waived.

30 (2) In order to obtain a ~~certificate to use~~ therapeutic
31 pharmaceutical agents *certification*, any optometrist who obtained
32 his or her license outside of California and who graduated from
33 an accredited school of optometry on or after January 1, 1996,
34 shall be required to fulfill the requirements set forth in subdivision
35 (c). In order for the applicant to be eligible for the certificate to
36 use therapeutic pharmaceutical agents, the education he or she
37 received by the accredited out-of-state school of optometry shall
38 be equivalent to the education provided by any accredited school
39 of optometry for persons who graduate on or after January 1, 1996.
40 For those out-of-state applicants who request that any of the

1 requirements contained in subdivision (c) be waived based on
2 fulfillment of the requirement in another state, if the board
3 determines that the completed requirement was equivalent to that
4 required in California, the requirement shall be waived.

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

3070.2.

The Legislature finds and declares the necessity of establishing regulations for mobile optometric facilities in order to help secure the availability of quality vision care services for patients who receive care in remote or underserved areas and for patients who need specialized types of cost-effective health care.

(a) For purposes of this section, “mobile optometric facility” means ~~a self-contained unit housing~~ mobile optometric equipment, which may include a trailer or van, that may be moved, towed, or transported from one location to another in which the practice of optometry is performed as defined in Section 3041. “Mobile optometric facility” does not include an “extended optometric clinical facility,” as defined in 16 CCR 1507.

(b) The ownership of a mobile optometric facility shall be limited to a nonprofit charitable organization, a governmental agency, or a school as provided in 16 CCR 1507(e).

~~(c) An optometrist may engage in the practice of mobile optometry provided that all of the following requirements are met:~~

~~(1) The optometrist maintains a primary business office, separate from the mobile optometric facility, that meets all of the following requirements:~~

~~(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.~~

~~(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which the primary business office is located.~~

~~(C) Is owned or leased by the optometrist or by the employer of the optometrist.~~ The Board shall promulgate regulations establishing a registry for mobile optometric facilities and shall set a registration fee at an amount not to exceed the costs of administration by January 1, 2017.

~~(d2)~~ The optometrist or owner shall maintain~~s~~ and disclos~~e~~s patient records in the following manner:

~~(1A)~~ Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. ~~The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).~~ The optometrist shall notify the patient where his or her records are stored and how the patient may access them.

~~(2B)~~ The ~~optometrist~~ individual maintaining the records complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

~~(3C)~~ If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient’s record, including all of the following information ~~about the prescribing optometrist~~:

- (A) The optometrist's name, license number, and contact information.
- (B) The mobile facility's owner, registration, and contact information. ~~License number.~~
- (C) ~~The place location of practice and the primary business office at which optometric services were provided.~~
- (D) Description of the goods and services ~~for which the patient is charged~~ provided and the amount charged.

(4D) For services provided at a school site, a copy of consent by the parent, guardian, or legal representative and referral or order requesting optometric services from personnel in a school district or county office of education, as defined in Section 49452 of the Education Code and Section 591 of Title 5 of the California Code of Regulations, shall be kept in the patient's medical record.

(de) A mobile optometric facility shall comply with applicable federal and state laws governing access for disabled individuals. ~~have all of the following:~~

(f) When providing services, a mobile optometric facility shall have access to all of the following:

- (1) ~~An access ramp or lift if services are provided to disabled persons.~~
- (12) Adequate equipment and supplies for cleaning, disinfection, and sterilization.
- (23) Adequate instruments and equipment ~~to perform the full range of optometric services, as defined in 3041.~~ required for all optometric services and procedures performed within the mobile optometric facility.
- (34) ~~A~~ An adequate supply of clean, running hot and cold water.
- (45) ~~A~~ Toilet facilities.
- (56) A covered, galvanized stainless steel or other noncorrosive metal container for deposit of refuse and waste materials.
- (67) Sufficient lighting around the perimeter of the work site from which the mobile optometric facility provides any services.

(ge) An owner of a mobile optometric facility shall be responsible for all of the following:

- (1) Compliance with the applicable requirements of the Vehicle code, ~~including obtaining a vehicle identification number for the mobile optometric facility; and local planning, fire, and zoning laws.~~
- (2) Maintaining the mobile optometric facility in good repair and in a clean and sanitary manner.
- (3) Establishing written policies and procedures that include, but are not limited to, all of the following:
 - (A) Scope of services.
 - (B) Procedures for the performance of the services provided.
 - (C) Quality assurance.
 - (D) Infection control.
 - (E) Medical record documentation of services provided.
 - (F) Emergency response and evacuation plan for the mobile unit.
 - (G) Arrangements for treatment by a local health care professional.

- (H) Patient emergency medical care.
- (I) Written notification for patients of any condition that requires follow-up care or treatment.

(4) Maintaining a mobile unit services log that shall include, but is not limited to, all of the following:

- (A) Patient record or identification number.
- (B) Name, age, and sex of patient.
- (C) Site, date, time, and as appropriate, duration of exam.
- (D) Printed optometrist name and license number.
- (E) Signature or electronic signature, or the equivalent.

(h) An optometrist who satisfies all of the requirements in this section for the practice of optometry in a mobile optometric facility shall not be required to comply with Section 3070 and 3077 in regard to providing notification to the board of each location at which he or she practices.

- (i) [The provisions of this bill shall take effect on January 1, 2017.](#)

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.63]

(Division 2 enacted by Stats. 1939, Ch. 60.)

CHAPTER 9. Mobile Health Care Units [1765.101 - 1765.175]

(Chapter 9 added by Stats. 1993, Ch. 1020, Sec. 2.)

1765.160.

Any licensee using mobile services pursuant to this chapter shall do all of the following:

- (a) Have written policies established by the governing body of the licensee, to govern the services that the mobile unit provides. The policies shall include, but shall not be limited to, policies related to patient care, personnel training and orientation, personnel supervision, and evaluation of services provided by the mobile unit.
- (b) Have written policies regarding patient selection criteria.
- (c) Develop and implement the written policies and procedures for the mobile unit in consultation with other appropriate health care professionals.
- (d) Ensure that the written policies and procedures are consistent with the policies and procedures of the parent facility, if any.
- (e) Ensure that the policies and written procedures shall be approved by the governing body, administration, and medical staff of the licensee, where appropriate.
- (f) Ensure that the written policies and procedures include, but are not limited to, all of the following:
 - (1) Scope of services.
 - (2) Procedures for the performance of the services provided.
 - (3) Quality assurance.
 - (4) Infection control.
 - (5) Medical record documentation of services provided, as appropriate.
 - (6) Transport of patients, including, but not limited to, method, special equipment, necessary personnel, and protection from inclement weather.
 - (7) Emergency services and evacuation plan for the mobile unit.
- (A) A licensee using mobile services pursuant to this chapter shall specify in writing policies and procedures for emergencies including fire, natural disaster, and medical emergencies. In its policies and procedures, the mobile unit shall address the emergency plan required of the parent facility and state how the plans shall be coordinated.

(B) A licensee using mobile services pursuant to this chapter shall familiarize its employees and each patient with the policies and procedures adopted pursuant to subparagraph (A).

(C) A licensee using mobile services pursuant to this chapter shall maintain written transfer agreements that shall include, but shall not be limited to, provisions for communication with, and transportation to, one or more nearby hospitals and other health facilities as needed to meet medical emergencies. The mobile unit shall develop procedures that include personnel needed to assist in the transfer, as well as provisions for meeting medical needs to accommodate the emergency transfer.

(8) Location.

(9) Schedule of mobile unit services.

(g) Maintain clinical records on each patient, in accordance with regulations.

(h) Maintain a mobile unit services log that shall include, but shall not be limited to, all of the following:

(1) Patient chart or identification number.

(2) Name, age, and sex of patient.

(3) Site, date, time, and as appropriate, duration of procedure.

(Added by Stats. 1993, Ch. 1020, Sec. 2. Effective January 1, 1994.)

Introduced by Senator MitchellFebruary 25, 2015

An act to amend Section 49455 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as introduced, Mitchell. Pupil health: vision examinations.

Existing law requires a pupil's vision to be appraised by a school nurse or other authorized person in the pupil's kindergarten year or upon first enrollment in elementary school, and in grades 2, 5, and 8. Existing law requires color vision to be appraised only once, only on male pupils, and authorizes the color vision to be conducted after the male pupil has reached first grade. Existing law specifies that a pupil's vision may be appraised by using an eye chart or other scientifically validated photoscreening test, as specified. Existing law authorizes vision assessments to be waived by the pupil's parents upon presentation of a certificate from a physician and surgeon, a physician assistant, or an optometrist. Existing law requires the State Department of Education to adopt guidelines to implement those provisions.

This bill would instead require a pupil's vision to be examined by a physician, optometrist, or ophthalmologist at least every 2nd year after the pupil's kindergarten year or first enrollment, and would require the examination to be consistent with the most current standard, policy, or guideline adopted by the American Academy of Pediatrics, the American Academy of Ophthalmology, or the American Optometric Association. The bill would delete the provision specifying that a pupil's vision may be appraised using an eye chart or other scientifically validated photoscreening test, and instead would require a vision examination to include tests for visual acuity, binocular function, as well as refraction

and eye health evaluations. The bill would delete the provision providing for a waiver of the vision appraisal, and would also delete the provision requiring color vision to be only for male pupils after the pupil has reached first grade, and would instead require color vision to be examined once at enrollment. The bill would require the department to adopt regulations to implement the above-specified requirements relating to vision examinations, as specified.

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 49455 of the Education Code is amended
2 to read:
3 49455. (a) ~~(1)~~ During the kindergarten year or upon first
4 enrollment or entry in a California school district of a pupil at an
5 elementary school, and ~~in grades 2, 5, and 8, the pupil's vision~~
6 ~~shall be appraised by the school nurse or other authorized person~~
7 ~~under Section 49452. at least every second year thereafter until~~
8 ~~the pupil has completed grade 8, the pupil's vision shall be~~
9 ~~examined by a physician, optometrist, or ophthalmologist. This~~
10 ~~examination shall be consistent with the most current standard,~~
11 ~~policy, or guideline adopted by the American Academy of~~
12 ~~Pediatrics, the American Academy of Ophthalmology, or the~~
13 ~~American Optometric Association. This examination shall include~~
14 ~~tests for visual acuity, binocular function, as well as refraction~~
15 ~~and eye health evaluations. The parent or guardian of the pupil~~
16 ~~shall provide results of the examination to the school.~~
17 (2) ~~A pupil whose first enrollment or entry occurs in grade 4 or~~
18 ~~7 shall not be required to be appraised in the year immediately~~
19 ~~following the pupil's first enrollment or entry.~~
20 (b) ~~The appraisal examination shall include tests for visual~~
21 ~~acuity, including near vision, and color vision; however, color~~
22 ~~vision shall be appraised examined once and only on male pupils,~~
23 ~~at enrollment, and the results of the appraisal examination shall~~
24 ~~be entered in the health record of the pupil. Color vision appraisal~~
25 ~~need not begin until the male pupil has reached the first grade.~~
26 (c) ~~The appraisal may be waived, if the pupil's parents so desire,~~
27 ~~by their presenting of a certificate from a physician and surgeon,~~
28 ~~a physician assistant practicing in compliance with Chapter 7.7~~

(commencing with Section 3500) of Division 2 of the Business and Professions Code, or an optometrist setting out the results of a determination of the pupil's vision, including visual acuity and color vision.

(d) A pupil's vision may be appraised by using an eye chart or any other scientifically validated photoscreening test. Photoscreening tests shall be performed, under an agreement with, or the supervision of, an optometrist or ophthalmologist, by the school nurse or a trained individual who meets requirements established by the department.

(e)

(c) Continual and regular observation of the pupil's eyes, appearance, behavior, visual performance, and perception that may indicate vision difficulties shall be done by the school nurse and the classroom teacher.

(f)

(d) This section shall not apply to a pupil whose parents or guardian file with the principal of the school in which the pupil is enrolling, a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

(g)

(e) The department shall adopt ~~guidelines~~ *regulations* to implement this section, including training requirements and a ~~method of testing for near vision.~~ *shall provide participation data.*

SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

Bill No: SB 402
Author: Mitchell
Version: February 25, 2015
Urgency: No
Consultant: Olgalilia Ramirez
Hearing Date: April 15, 2015
Fiscal: Yes

Subject: Pupil health: vision examinations

NOTE: This bill has been referred to the Committees on Education and Health. A "do pass" motion should include referral to the Committee on Health.

SUMMARY

This bill deletes the requirement that students' vision be appraised by a school nurse, and instead requires that students' vision be examined by a physician, optometrist, or ophthalmologist.

BACKGROUND

Current law:

1. Requires, during kindergarten or upon first enrollment in an elementary school, and in grades 2, 5, and 8, the vision of students to be appraised by the school nurse or other authorized person. The appraisal must include tests for visual acuity and color vision, however, color vision is to be appraised once and only on male students. Continual and regular observation of students' eyes, appearance, behavior, visual performance and perception are to be done by the school nurse and the classroom teacher. The appraisal may be waived if the parents present a certificate from a physician and surgeon, a physician assistant or an optometrist, and parents may opt-out based on religious beliefs. (Education Code § 49455)
2. Requires a report to be made to the parent when a visual or other defect has been noted by the supervisor of health or his/her assistant. (EC § 49456)
3. Requires school districts to provide for the testing of the sight and hearing of each student enrolled in the district. The test is to be given only by:
 - A. Duly qualified supervisors of health employed by the district.
 - B. Certificated employees of the district or county office of education who possess the qualifications prescribed by the Commission on Teacher Credentialing.
 - C. Contract with an agency duly authorized to perform those services by the county superintendent of schools, under guidelines established by the State Board of Education.

- D. Accredited schools or colleges or optometry, osteopathic medicine, or medicine. (Education Code § 49452)
4. Provides that:
- A. An employee of a school district or of a county superintendent of schools to be authorized to give vision tests and be designated a "duly qualified supervisor of health" if the employee is a physician and surgeon or osteopath, a school nurse, or an optometrist.
 - B. Non-medical certificated employees of a school district or county office of education may be authorized to give vision tests if the employee has specified documentation. (California Code of Regulations, Title 5, § 591)

ANALYSIS

This bill deletes the requirement that students' vision be appraised by a school nurse or other authorized person, and instead requires that students' vision be examined by a physician, optometrist, or ophthalmologist. Specifically, this bill:

1. Adds binocular function, refraction, and eye health evaluation to the list of required vision examinations.
2. Requires the parent or guardian to provide test results to the school and eliminates vision appraisal waivers.
3. Requires examinations to be aligned with the most current standards, policy or guidelines adopted by the American Academy of Pediatrics, the American Academy Ophthalmology or the American Optometric Association.
4. Requires students' vision to be examined every two years until the student completes grade 8.
5. Deletes the following provisions:
 - A. Clarifying if first enrollment occurs in grade 4 or 7 the student's vision need not be appraised in the year immediately following.
 - B. Requiring color vision to be only for male students after the student has reached first grade instead specifies that student's color vision be examined once at enrollment.
 - C. Specifying that a student's vision may be appraised using an eye chart or other scientifically validated photoscreening test.
6. Requires the department to adopt regulations to implement this section as well as provide participation data in lieu of adopting guidelines, as specified.

STAFF COMMENTS

1. **Need for the bill.** According to the author, vision testing in California schools is limited to screening for visual acuity and while current practices are important for identifying children who may need glasses, it does not address how well the two eyes work together while reading which may impact academic performance. The author asserts that although there are optional procedures for assessing vision in public schools that could uncover eye coordination problems, these are rarely used. This bill requires students entering elementary school to receive a comprehensive eye exam by a physician, optometrist, or ophthalmologist for the purposes of identifying visual defects like eye coordination problems that may be missed by existing testing methods.
2. **Comprehensive eye exam.** According to the California Optometric Association comprehensive eye exams evaluate three primary areas: vision, binocularity and eye health. "A subjective and/or an objective refraction are performed to detect myopia (nearsightedness), astigmatism (irregularity of the cornea) or hyperopia (farsightedness)." Additionally, focusing ability is evaluated and near visual acuity as well as color vision is tested. There is a binocular assessment, which checks depth perception, eye alignment, teaming tracking, and convergence important skills for reading and learning. Overall, a thorough evaluation is performed to ensure good eye health. This bill adds binocular function, refraction, and eye health evaluation to the list of required vision examinations and requires the parent or guardian to provide test results to the school.
3. **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 instead, provides that examinations including binocular function as well as refraction and eye health examinations are given to students every two years until the student completes grade 8.
4. **Vision screening in California's schools.** *The Guide for Vision Testing in California Public Schools* developed by California Department of Education (CDE) provides districts and school health personnel with guidelines for a vision testing program. The guidelines facilitate the planning and implementation of programs for assessment of vision for all students in California public schools. Among its recommendations, the publication provides that those authorized to conduct vision appraisals include the following:
 - A. Medical practitioners, including a nurse, physician, ophthalmologist, or optometrist who holds both a license from the appropriate California board or agency, and a health and development credential, a standard designated service credential with a specialization in health, a health services credential as a school nurse, or a school nurse services credential;

- B. Certificated school district or county employees who hold a teaching credential and are qualified by training, including satisfactory completion of six hours of vision testing, or an accredited college or university course in vision testing of at least one semester unit; or,
- C. Contracting agents who have met the training requirements specified above and who have been authorized by the county superintendent of schools in which the district is located to perform the tests.

Current law requires CDE to adopt guidelines to implement this section and provides CDE with flexibility to consult with the appropriate entities. Rather than require the implementation of standards from non-governmental entities **staff recommends** striking on page 2 line 9 "This examination shall be consistent with the most current standard, policy or guideline adopted by the American Academy of Pediatrics, the American Academy Ophthalmology or the American Optometric Association."

Current law provides students' vision to be appraised by a school nurse. This bill deletes this option and provides no alternative for parents. **Staff recommends** the bill be amended to reinstate the following provisions:

- A. A school shall not deny admission to a pupil or take another adverse action against a pupil if his or her parent or guardian fails to provide the results of the examination to the school.
- B. If the results of the eye examination are not provided to the school, then during the kindergarten year or upon first enrollment or entry, and in grades 2, 5, and 8, the pupil's vision shall be appraised by the school nurse or other person authorized under Section 49452.
- C. A pupil whose first enrollment or entry occurs in grade 4 or 7 shall not be required to be appraised in the year immediately following the pupil's first enrollment or entry.
- D. The appraisal shall include tests for visual acuity, including near vision and color vision. However, color vision shall be appraised once and only on male pupils, and the results of the appraisal shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade.
- E. A pupil's vision may be appraised by using an eye chart or any other scientifically validated photoscreening test. Photoscreening tests shall be performed under an agreement with, or the supervision of an optometrist or ophthalmologist, by the school nurse, or a trained individual who meets requirements established by the department.

5. ***Prior legislation.***

AB 1840 (Campos, CH. 803, 2014) authorized a child's vision to be appraised by using an eye chart or any scientifically validated photoscreening test and requires

photoscreening tests to be performed, under an agreement with, or the supervision of an optometrist or ophthalmologist, by the school nurse or by a trained individual who meets specified requirements as determined by the California Department of Education (CDE). AB 402 would substantially delete the provisions most recently enacted by AB 1840 (Campus 2014) and SB 1172 (Steinberg 2014) regarding vision appraisals. The amendments outlined in staff comment #4 reinstate the deleted provisions only in the event that results of an exam cannot be provided by a parent.

SB 1172 (Steinberg, CH. 925, 2014) requires school vision appraisals to include tests for near vision, and expands current requirements for school nurses and teachers to observe student's eyes to also include observation of the appearance and behavior of student's eyes, and requires observation to be continual and regular.

SB 430 (Wright, 2013) would have required a pupil to receive a vision examination from a physician, optometrist, or ophthalmologist and required that screening to include a test for binocular function, refraction, and eye health. SB 430 died in the Assembly Health Committee.

AB 1095 (Wright, 2001) would have required every student, within 90 days of entering grade 1, to undergo a comprehensive eye exam that included, 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.

SUPPORT

California Black Health Network
 California Federation of Teachers
 California Federation of Teachers
 California Optometric Association
 California Pan-Ethnic Health Network
 California State Board of Optometry
 Numerous individuals

OPPOSITION

American Academy of Pediatrics
 California Academy of Eye Physicians and Surgeons
 California Academy of Family Physicians
 California School Nurse Organizations
 Kaiser Permanente

-- END --

Introduced by Senator Nguyen

February 26, 2015

An act to amend Section 3057.5 of the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as introduced, Nguyen. Optometry: graduates of a foreign university: examinations.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, which licenses optometrists and regulates their practice. 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 requires an applicant for licensure to submit an application that is provided under oath and to pay a prescribed fee. All fees are deposited in the Optometry Fund, which is continuously appropriated to the board to administer the act. Any violation of the act is a crime.

Existing law authorizes the board to permit a graduate of a foreign university who meets specified requirements to take the examinations for an optometrist license.

This bill would revise the license examination requirements for a graduate of a foreign university to, among other things, require submission of an application and payment of a prescribed fee. By increasing the amount of moneys deposited into a continuously appropriated fund, this bill would make an appropriation. Because the application would be required to be provided under oath, this bill would expand the scope of an existing crime and 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: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 3057.5 of the Business and Professions
2 Code is amended to read:

3 3057.5. (a) Notwithstanding any other provision of this
4 chapter, the board shall permit a graduate of a foreign university
5 who meets all of the following requirements to take the
6 examinations for an optometrist license:

7 ~~(a)~~

8 (1) Is over 18 years of age.

9 ~~(b)~~

10 (2) Is not subject to denial of a license under Section 480.

11 ~~(c)~~

12 (3) Has ~~a~~ obtained any of the following:

13 (A) A degree as a doctor of optometry issued by a university
14 located outside of the United States.

15 (B) A degree from a school of optometry program located
16 outside of the United States that has a minimum of a four year or
17 equivalent curriculum leading to an optometry license in the
18 country where the program is located.

19 (C) A degree from a school of medicine located outside of the
20 United States and completed the necessary requirements to practice
21 in the field of ophthalmology in the country where the school of
22 medicine is located.

23 (4) Submits an application to obtain a letter of sponsorship on
24 a form approved by the board.

25 (5) Pays to the board the fee for an application for licensure
26 prescribed in subdivision (a) of Section 3152.

27 (b) (1) A graduate of a foreign university shall provide to the
28 board any supporting documents requested by the board to
29 establish that the requirement of paragraph (3) of subdivision (a)
30 has been met. These supporting documents may include, but are

1 *not limited to, a curriculum vitae, official examination score,*
2 *certificate of optometric or medical education, official school*
3 *transcript, certified copy of optometric or medical diploma, official*
4 *English translation, certificate of completion of post graduate*
5 *training, and certificate of clinical training.*

6 *(2) Every document provided pursuant to this subdivision shall*
7 *be in English or translated into English by a certified United States*
8 *translation service approved by the board.*

9 *(c) The board shall require a graduate of a foreign university*
10 *to obtain an evaluation of his or her official school transcript by*
11 *an education evaluation service approved by the board. The board*
12 *shall determine from the evaluation whether the applicant has met*
13 *the educational requirements that are reasonable and necessary*
14 *to ensure that an optometrist has the knowledge to adequately*
15 *protect the public health and safety.*

16 *(d) Notwithstanding paragraph (3) of subdivision (a), if a*
17 *graduate of a foreign university does not meet the educational*
18 *requirements that are reasonable and necessary to ensure that an*
19 *optometrist has the knowledge to adequately protect the public*
20 *health and safety, the board may establish alternative education*
21 *requirements for the graduate of a foreign university to meet in*
22 *order to ensure this knowledge. A graduate of a foreign university*
23 *shall provide any supporting documents requested by the board*
24 *to establish that these requirements are met.*

25 *(e) The board shall issue a letter of sponsorship, or its*
26 *equivalent, required by the National Board of Examiners in*
27 *Optometry, or its equivalent, to permit a graduate of a foreign*
28 *university to take all examinations required for licensure. This*
29 *letter of sponsorship shall expire two years from the date of*
30 *issuance.*

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O



**Marshall B.
KETCHUM UNIVERSITY**

Southern California College of Optometry

Office of the Dean

March 26, 2015

Ms. Mona Maggio
Executive Officer
California State Board of Optometry
2450 Del Paso Rd, Suite 105
Sacramento, CA 95834

RE: SB 496 Pathway to Optometry Licensing

Dear Ms. Maggio:

We are writing in opposition to SB 496 "Pathway to Optometry Licensing" sponsored by Sen. Janet Nguyen.

While foreign graduates have an understandable desire to practice their profession in California, there already exists a clear pathway that recognizes the appropriate education and training of optometrists and assures the delivery of safe and competent care. The typical pathway includes 1) graduation with a doctorate of optometry degree from a school or college of optometry accredited by the Accreditation Council on Optometric Education (ACOE) and 2) passage of the National Board of Examiners in Optometry 3-part examination.

Both steps should be viewed in aggregate. In other words, passage of an examination alone does not constitute an adequate assessment for the safe and effective practice of optometry. Rather, the examination is an opportunity to support that the student and program learning outcomes were achieved by the accredited program. The critical element for the doctorate of optometry is the **clinical education and training** that prepares graduates to practice to the fullest scope as practiced by U.S. optometrists. The clinical (i.e. patient care) experience from a bachelor's or master's degree does not carry the equivalency necessary because the scope of practice is extremely limited in overseas jurisdictions. For example, it is illegal in some countries to do retinoscopy. Passing an exam question on red eyes is different than the experience of treating patients with red eyes. As a result, the proposed pathway may have the unintended consequence of fostering false hope for patient safety in California.

An alternative pathway is already available to foreign graduates. The accelerated pathway for obtaining a doctorate of optometry is available at both the New England College of Optometry and Salus University Pennsylvania College of Optometry. Completion of the degree is possible in 2 years rather than the traditional 4 year post-baccalaureate program.

Several more schools recognize some course work to obtain advanced standing at various stages in their program. Clinical training is a key element addressed in this path, and completion of the program leads to the accredited OD degree.

In summary, we believe that optometrists without a doctorate of optometry from an ACOE accredited school are NOT qualified to practice optometry in the United States. The public health and safety are best assured by optometrists having the appropriate education and clinical education verified by accreditation and examination. An individual's desire to practice still has an available pathway after acquiring needed clinical experience and education.

Reference

1. <http://www.arbo.org/faq.php#licensure> FAQ "I am an internationally educated optometrist – how do I get licensed in the U.S.?"
2. <http://www.aoa.org/about-the-aoa/what-is-a-doctor-of-optometry?sso=y>
3. New England College of Optometry <http://www.neco.edu/academics/international>
4. Salus University PCO http://www.salus.edu/od_international/

Sincerely,



Stanley Woo, O.D., M.S., M.B.A., FAAO
Dean
Southern California College of Optometry



Kevin L. Alexander, O.D., Ph.D.
President
Marshall B. Ketchum University

Cc: Board of Optometry

Alex Arredondo, OD – President; Alexander Kim, MBA; Kenneth Lawenda, OD; Cyd Brandvein; Donna Burke, Secretary; Madhu Chawla, OD – VP; David Turetsky, OD; Glenn Kawaguchi, OD; William H. Kysella, Jr.; Rachel Michelin; Frank Giardina, OD

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To: Board Members

Date: April 24, 2015

From: Madhu Chawla, O.D.
Board Vice President

Telephone: (916) 575-7170

Subject: Agenda Item 22. Update on the Advisory by the California State Board of Optometry to Licensees Pertaining to Business and Professions Code (BPC) Section 655, Prohibition of Business Arrangements Between Optometrists and Opticians or Person in Optical Product Business and BPC Section 2556, Unlawful Practice

During the February 24, 2015 meeting, the Board requested the Public Relations Committee, Dr. Chawla and Mr. Kim, work on an updated educational message to the Board's licensees in regards to BPC Section 655 or revisit the Board's original article and send their recommendations to the individual Board members for feedback.

Rather than going back to the individual Board members a second time, the Public Relations Committee decided to bring the message back to the full Board for review and discussion.

However, since the February meeting, Alexander Kim has been thanked for his service on the Board. Dr. Chawla is working to absorb the work Mr. Kim was initially doing, and would like to provide an update to the Board during the meeting.

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To: Board Members

Date: April 24, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: **Agenda Item 23 – Discussion and Possible Action Pertaining to Proposed Legislation (Assembly Bill 595, Alejo), Registered Dispensing Opticians Certificates. Including Discussion and Possible Action Pertaining to Proposed Amendments from the National Association of Opticians and Optometrists (NAOO), the California Optometric Association (COA), and Other Stakeholders to Amend BPC Sections Impacting Business Arrangements Between Optometrists and Registered Dispensing Optician (BPC §655 and §2556)**

Background:

AB 595 (Attachment 1), authored by Assembly Member Luis Alejo, amends several Business and Professions Code (BPC) sections relating to the prohibited business relationships between Optometrists and Registered Dispensing Opticians. Specifically, this bill removes the prohibited business relationships.

However, based on the amended April 14, 2015 text, this bill *“would prohibit a licensed registered dispensing optician or a manufacturer or distributor of optical goods that is renting or leasing office space to or from, sharing office space with, or receiving space from an optometrist from engaging in conduct that would influence or interfere with the clinical decisions, as defined, of that optometrist, as specified.”* The bill would also *“prohibit an optometrist that is using or sharing office space with a registered dispensing optician from giving or receiving, among other things, a fee or thing of material value, to or from any person in return for referral of patients or to secure patients.”*

Prior to the official posting of the April 14, 2015 text, the NAOO provided Board staff and other various stakeholders with the attached cover memo (Attachment 2) and language. In addition, Board staff also received proposed amendments from COA (Attachment 3).

With the assistance of legal counsel, Dr. Madhu Chawla, OD, and Donna Burke, staff reviewed AB 595 and proposed amendments from NAOO and COA. After an extensive review, staff believes the proposed amendments from COA provide stronger protections to the public. However, there were several sections from NAOO’s proposed amendments that strengthen protections and provide further clarification. Staff believes those sections should be added.

In addition, this bill amends BPC § 3077 – Branch Office License and removes the requirement that an optometrist must be present 50% of the time the office is open for the practice of optometry. In a previous workgroup, staff drafted proposed amendments to BPC § 3077 (Attachment 4), and believes these amendments would provide additional clarity to AB 595.

Action Requested:

Please review and discuss AB 595 and staff's proposed amendments. After review and discussion, please direct staff to issue one of the following formal positions on AB 595:

- **Support if Amended:** This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.
- **Oppose:** The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.
- **Oppose Unless Amended:** The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Attachments:

1. AB 595 (with staff highlights)
2. NAOO cover memo to stakeholders
3. COA proposed amendments (with staff recommendations from AB 595 language in color)
4. Staff's proposed amendments to BPC§ 3077

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 595

Introduced by Assembly Member Alejo
(Principal coauthor: Assembly Member Dodd)
(Coauthors: Assembly Members Dababneh and Cristina Garcia)
(Coauthor: Senator Bates)

February 24, 2015

An act to amend ~~Section 2555 of~~ Section 3077 of, to add Sections 3090.1 and 3109.1 to, to repeal Section 2556 of, and to repeal and add Sections 655 and 2555 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 595, as amended, Alejo. Registered dispensing opticians: ~~certificates; optometrists; practices.~~

(1) *The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime. Existing law requires individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons and optometrists for prescription lenses and kindred products to register with the Division of Licensing of the Medical Board of California as a registered dispensing optician, and makes a violation of the provisions governing registered dispensing opticians a crime.*

(2) *Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement, in any form, whether directly or indirectly, with any person licensed as a registered*

dispensing optician, and prohibits a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form directly or indirectly with a licensed optometrist. Existing law also prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Under existing law, a violation of the above provisions by a licensed optometrist and any person, whether or not licensed, who participates with a licensed optometrist in violating those provisions constitutes a misdemeanor.

This bill would delete those provisions. The bill instead would prohibit a licensed registered dispensing optician or a manufacturer or distributor of optical goods that is renting or leasing office space to or from, sharing office space with, or receiving space from an optometrist from engaging in conduct that would influence or interfere with the clinical decisions, as defined, of that optometrist, as specified. The bill would prohibit an optometrist that is using or sharing office space with a registered dispensing optician from giving or receiving, among other things, a fee or thing of material value, to or from any person in return for referral of patients or to secure patients. The bill would make a violation of these provisions punishable as a misdemeanor.

(3) Existing law permits a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated similar negligent acts by the registrant or an employee, as provided.

This bill would delete those provisions. The bill similarly would permit a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated negligent acts by the registrant or an employee, as provided, and additionally would permit the certificate to be suspended, revoked, or subjected to probation for unprofessional conduct, which includes repeated interference with the optometrist's clinical judgment or compliance with prevailing clinical standards. The bill authorizes

assessment of administrative fines for violation of specified provisions of law and requires registered dispensing opticians to cooperate with investigations into a complaint or alleged violation of law.

(4) Under existing law, it is unlawful for a registered dispensing optician to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.

This bill would delete those prohibitions.

(5) The Optometry Practice Act prohibits a person from having an office for the practice of optometry unless he or she is licensed to practice optometry, and requires an optometrist that has more than one office to comply with certain provisions of the act, including, among others, that an optometrist obtain a branch office license for any additional office. The act prohibits more than one branch office license from being issued to an optometrist or any 2 or more optometrists, jointly. The act requires an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office on or after that date to notify the board, as specified.

The bill would delete the prohibition of an optometrist or 2 or more optometrists, jointly, from having more than one branch office, and would delete the requirement that an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office to notify the board. The bill would prohibit a person from having any proprietary interest in an office for the practice of optometry unless he or she is licensed to practice optometry. The bill would specify that a branch office is any additional office that is not the principal place of business of an optometrist, as specified.

(6) The Optometry Practice Act prohibits an optometrist from directly or indirectly accepting employment from any person not having a valid, unrevoked license as an optometrist, except that the act authorizes an optometrist to be employed by a physician and surgeon who practices in the specialty of ophthalmology or by a health care service plan.

This bill would require an optometrist to report to the State Board of Optometry any action or circumstance that the optometrist reasonably and in good faith believes is an attempt by a registered dispensing optician, or an employee or agent thereof, to interfere with the

optometrist's independent clinical judgment or compliance with prevailing clinical standards. The bill would require the State Board of Optometry to report these complaints to the Division of Licensing of the Medical Board of California.

(7) The bill also would require the State Board of Optometry to receive any complaint made to a state board or department related to care provided to a patient by a licensed optometrist.

(8) A violation of the optometry laws and the law governing registered dispensing opticians is a crime. Therefore, by expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the issuance of a certificate of dispensing optician upon registration. Existing law permits a certificate to be suspended, revoked, or subjected to probation for violations of regulations or laws, as specified, or for incompetence, gross negligence, or repeated similar negligent acts by the registrant or an employee, as provided.~~

~~This bill additionally would permit a certificate to be suspended, revoked, or subjected to probation for unprofessional conduct, as defined. This bill also would permit a certificate to be suspended, revoked, or subjected to probation for actions by the registrant's agent.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

- 1 *SECTION 1. Section 655 of the Business and Professions Code*
- 2 *is repealed.*
- 3 ~~655. (a) No person licensed under Chapter 7 (commencing~~
- 4 ~~with Section 3000) of this division may have any membership,~~
- 5 ~~proprietary interest, coownership, landlord-tenant relationship, or~~
- 6 ~~any profit-sharing arrangement in any form, directly or indirectly,~~
- 7 ~~with any person licensed under Chapter 5.5 (commencing with~~
- 8 ~~Section 2550) of this division.~~

~~(b) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form directly or indirectly with any person licensed under Chapter 7 (commencing with Section 3000) of this division.~~

~~(c) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.~~

~~Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.~~

SEC. 2. Section 655 is added to the Business and Professions Code, to read:

655. (a) A person registered under Chapter 5.5 (commencing with Section 2550), (registered dispensing optician), a person who is engaged in the manufacture, sale or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products that is renting or leasing office space, directly or through an intermediary, to or from or otherwise using or sharing office space with, or receiving space from, any person licensed under Chapter 7 (commencing with Section 3000), (optometrist), shall not engage in conduct that would influence or interfere with the clinical decisions of that optometrist including, but not limited to, the following:

(1) Setting quotas for the number of exams or limiting the amount of time that an optometrist can spend with an individual patient.

(2) Holding an optometrist responsible for the sale of, or requiring that person to sell, the eyewear of a registered dispensing optician.

1 (3) Providing compensation to an optometrist for the sale of
2 the eyewear of a registered dispensing optician.

3 (b) The optometrist's clinical decisions means the judgment
4 necessary to perform or control any acts as set forth in Section
5 3041.

6 (c) An optometrist that is renting or leasing space to or from
7 or otherwise using or sharing office space with any registered
8 dispensing optician shall not give or receive a fee, salary,
9 commission, or thing of material value, in any manner or under
10 any pretext, to or from any person, firm, or corporation for either
11 of the following:

12 (1) In return for the referral of optometric patients.

13 (2) In order to secure optometric patients.

14 (d) In connection with the transactions described in (a), all of
15 the following shall be met:

16 (1) Registered dispensing opticians shall ensure signs and
17 displays concerning the optometrist's office shall have the name
18 of the doctor or doctors of optometry and the nature of the
19 relationship between the registered dispensing optician and the
20 optometrist.

21 (2) The optometrist's office shall have a separate telephone
22 listing and number from that of the registered dispensing optician,
23 but may be accessible from a general number that the public
24 associates with the premises.

25 (3) Registered dispensing opticians shall not:

26 (A) Constrain the optometrist in scheduling patients, the fees
27 charged for optometric services, the amount of time spent with a
28 patient, or the number of patients to be seen in a particular time
29 period. The optometrist may contract to provide or arrange for
30 the provision of optometric services during agreed-upon hours
31 and days.

32 (B) Limit the optometrist's participation in managed care or
33 insurance plans.

34 (C) Have an interest in the optometrist's patient records, to
35 which the optometrist shall have 24-hour access, including physical
36 access or electronic access.

37 (D) Advertise that it performs eye examinations or other
38 optometric services that it is not permitted to lawfully perform
39 under state law.

1 (4) The parties shall execute a written agreement, with
2 commercially reasonable terms, providing that rent payments are
3 not affected by either party's referral of any person or sales of
4 product by either party, and a term of at least one year, terminable
5 only for cause as defined under the agreement or at the expiration
6 of the agreement on at least 60 days' written notice.

7 (5) Optometric office space inside an optical dispensary shall
8 be definite and distinct from space occupied by other occupants
9 of the premises and shall include at least one private room for the
10 exclusive use of providing optometric services to patients by the
11 optometrist.

12 (6) Forms used by the optometric office shall be separate from
13 those of the registered dispensing optician.

14 (7) The optometrist shall be free to practice to the full scope of
15 his or her license under law, and shall control the hiring, staffing,
16 training, and office and employment policies of the individuals
17 employed or engaged to assist the optometrist in the management
18 and administrative aspects of his or her practice and in patient
19 care. The optometrist may contract for the provision of technician
20 and administrative services. Nothing herein shall limit the right
21 of the optometrist and the registered dispensing optician to agree
22 to restrict the optometrist from offering or selling spectacles,
23 lenses, frames, contact lenses or other optical goods to the
24 optometrist's patients or to the public in the occupied space during
25 the term of the written agreement.

26 (8) The optometrist shall be responsible for and shall maintain
27 full and independent control of information disseminated to the
28 public through any advertising or other commercial medium when
29 that information relates to optometric services being provided by
30 the optometrist, whether or not that advertising is paid for or
31 sponsored by the optometrist. It is not a violation of this section
32 to include in an advertisement that is not disseminated by the
33 optometrist a statement advertising the availability of optometric
34 services, including eye examinations, by an independent doctor of
35 optometry located adjacent to or in proximity to a registered
36 dispensing optician or a statement containing substantially similar
37 language.

38 (e) A violation of this section is punishable as a misdemeanor.

39 SEC. 3. Section 2555 of the Business and Professions Code is
40 repealed.

~~2555.—Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.~~

SEC. 4. Section 2555 is added to the Business and Professions Code, to read:

2555. (a) *Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540), any regulation adopted under this chapter or Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, unprofessional conduct or repeated negligent acts performed by the registrant or by an employee of the registrant. Unprofessional conduct includes, but is not limited to, repeated interference with the independent clinical judgment of an optometrist or the optometrist's compliance with prevailing clinical standards for the practice of optometry and when the registered dispensing optician knows or has reason to know that the repeated interference is impairing the optometrist's ability to provide appropriate health care to his or her patients. Nothing herein shall limit the ability of the optometrist to file a complaint about the registered dispensing optician's interference directly with any state regulatory agency with authority to oversee the practice of optometry or of registered dispensing opticians. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.*

(b) *If the division determines during a proceeding conducted in accordance with subdivision (a) that a registered dispensing optician has violated Section 655, the division may assess an*

1 *administrative fine of up to five thousand dollars (\$5,000) for the*
2 *first violation and up to twenty-five thousand dollars (\$25,000)*
3 *for any subsequent violation that occurs within three years after*
4 *the division's finding of a first violation. If a registered dispensing*
5 *optician's second violation of Section 655 occurs after three years*
6 *of its first violation, then the division shall assess a fine of up to*
7 *five thousand dollars (\$5,000). This section is not to be construed*
8 *to limit the division's existing authority to enforce the provisions*
9 *of subdivision (a) or any other law.*

10 *(c) Registered dispensing opticians shall comply with all*
11 *requests for information by the division within 30 days after the*
12 *request. Failure to provide to the division, as directed, lawfully*
13 *requested copies of documents relating to a complaint or alleged*
14 *violation of the law shall constitute unprofessional conduct on the*
15 *part of the registered dispensing optician, unless the registered*
16 *dispensing optician is unable to provide the documents within the*
17 *time period for good cause, including, but not limited to, inability*
18 *to access the documents in the time allowed.*

19 *(d) Failure to cooperate and participate in any division*
20 *investigation pending against a registered dispensing optician*
21 *relating to a complaint or alleged violation of the law shall also*
22 *constitute unprofessional conduct by the registered dispensing*
23 *optician. This subdivision shall not be construed to deprive a*
24 *registered dispensing optician of any privilege guaranteed by the*
25 *Constitution of the United States or any other constitutional or*
26 *statutory privileges. The registered dispensing optician's assertion*
27 *of any applicable constitutional, statutory, or other privilege,*
28 *including, but not limited to, attorney-client privilege or attorney*
29 *work product privilege, is not a violation of this section.*

30 *(e) If the registered dispensing optician disputes a determination*
31 *by the division regarding a complaint or violation of the law, the*
32 *registered dispensing optician may appeal the division's decision*
33 *to an independent administrative law judge pursuant to Chapter*
34 *5 (commencing with Section 1100) of Part 1 of Division 3 of Title*
35 *2 of the Government Code. Penalties, if any, shall be paid when*
36 *all appeals have been exhausted and the division's decision has*
37 *been upheld. In the event that the division's position has been*
38 *upheld, after all appeals have been exhausted the registered*
39 *dispensing optician shall be responsible for payment of all costs*
40 *associated with the prosecution of the matter.*

(f) A registered dispensing optician shall not discharge, terminate, suspend, threaten, harass, or retaliate or discriminate against an optometrist because that optometrist files a complaint as set forth in Section 3109.1 or any other complaint against a registered dispensing optician, or for lawful acts done by an optometrist in disclosing information relating to any complaint against a registered dispensing optician. When an optometrist files a complaint against a registered dispensing optician, the optometrist shall have all of the protections provided in Section 1102.5 of the Labor Code.

SEC. 5. Section 2556 of the Business and Professions Code is repealed.

~~2556. It is unlawful to do any of the following: to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.~~

SEC. 6. Section 3077 of the Business and Professions Code is amended to read:

3077. ~~As~~(a) As used in this section, "office" means any office or other place for the practice of optometry.

~~(a) No~~

(b) A person, singly or in combination with others, may ~~have~~ not have any proprietary interest in an office unless he or she is licensed to practice optometry under this chapter.

~~(b)~~

(c) An optometrist, or two or more optometrists jointly, may have one office without obtaining a branch office license from the board.

~~(e) On and after October 1, 1959, no~~

(d) An optometrist, ~~and no~~ or two or more optometrists jointly, may not have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. ~~The additional office, for the purposes of this chapter, additional offices.~~
An additional office that is not the optometrist's principal place

1 *of practice, as described by Section 3070, constitutes a branch*
 2 *office: office for purposes of this chapter.*

3 ~~(d) Any optometrist who has, or any two or more optometrists,~~
 4 ~~jointly, who have, a branch office prior to January 1, 1957, and~~
 5 ~~who desire to continue the branch office on or after that date shall~~
 6 ~~notify the board in writing of that desire in a manner prescribed~~
 7 ~~by the board.~~

8 ~~(e) On and after January 1, 1957, any optometrist, or any two~~
 9 ~~or more optometrists, jointly, who desire~~ *Any optometrist who*
 10 *desires to open a branch office that is not his or her principal place*
 11 *of business shall notify the board in writing in a manner prescribed*
 12 *by the board.*

13 ~~(f) On and after January 1, 1957, no~~ *A branch office may not*
 14 *be opened or operated without a branch office license. Branch*
 15 *office licenses shall be valid for the calendar year in or for which*
 16 *they are issued and shall be renewable on January 1 of each year*
 17 *thereafter. Branch office licenses shall be issued or renewed only*
 18 *upon the payment of the fee therefor prescribed by this chapter.*

19 ~~On or after October 1, 1959, no more than one branch office~~
 20 ~~license shall be issued to any optometrist or to any two or more~~
 21 ~~optometrists, jointly.~~

22 (g) Any failure to comply with the provisions of this chapter
 23 relating to branch offices or branch office licenses as to any branch
 24 office shall work the suspension of the optometrist license of each
 25 optometrist who, individually or with others, has a branch office.
 26 An optometrist license so suspended shall not be restored except
 27 upon compliance with those provisions and the payment of the fee
 28 prescribed by this chapter for restoration of a license after
 29 suspension for failure to comply with the provisions of this chapter
 30 relating to branch offices.

31 (h) The holder or holders of a branch office license shall pay
 32 ~~the annual~~ *biennial* renewal fee therefor in the amount required
 33 by this chapter between the first day of January and the first day
 34 of February of each ~~year~~ *renewal period*. The failure to pay the
 35 fee in advance on or before February 1 of each year during the
 36 time it is in force shall ipso facto work the suspension of the branch
 37 office license. The license shall not be restored except upon written
 38 application and the payment of the penalty prescribed by this
 39 chapter, and, in addition, all delinquent branch office fees.

~~(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly.~~

~~Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.~~

~~(j)~~

~~(i) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.~~

~~(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:~~

~~(1) Complies with the definition of an optometric corporation in Section 3160.~~

~~(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.~~

~~(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.~~

~~Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an~~

~~optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.~~

SEC. 7. Section 3090.1 is added to the Business and Professions Code, to read:

3090.1. The State Board of Optometry shall receive any complaint made to a state board or department related to care provided to a patient by a licensed optometrist under Chapter 7 (commencing with Section 3000).

SEC. 8. Section 3109.1 is added to the Business and Professions Code, to read:

3109.1. (a) An optometrist shall report to the board any action or circumstance that the optometrist reasonably and in good faith believes constitutes a continued and unresolved attempt to interfere with his or her independent clinical judgment or compliance with prevailing clinical standards for the practice of optometry by a registered dispensing optician or any employee or agent of the registered dispensing optician that violates Section 655.

(b) The board shall report the complaint to the Division of Licensing of the Medical Board of California, and the division shall investigate the complaint pursuant to Section 2555.

(c) A registered dispensing optician shall not discharge, terminate, suspend, threaten, harass, or in any other manner retaliate or discriminate against an optometrist that files a good faith complaint pursuant to this section or any other law, or for lawful acts done by an optometrist in disclosing information relating to any complaint against a registered dispensing optician. When an optometrist files a good faith complaint against a registered dispensing optician, the optometrist shall have all of the protections provided in Section 1102.5 of the Labor Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 2555 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~2555. Certificates issued hereunder may in the discretion of~~
6 ~~the division be suspended or revoked or subjected to terms and~~
7 ~~conditions of probation for violating or attempting to violate this~~
8 ~~chapter, Chapter 5.4 (commencing with Section 2540) or any~~
9 ~~regulation adopted under this chapter or, Chapter 5.4 (commencing~~
10 ~~with Section 2540), or Section 651, 654, or 655, or for~~
11 ~~incompetence, gross negligence, unprofessional conduct, or~~
12 ~~repeated negligent acts performed by the registrant or by an~~
13 ~~employee or agent of the registrant. Unprofessional conduct~~
14 ~~includes, but is not limited to, repeated interference with the~~
15 ~~independent clinical judgment of an optometrist or with compliance~~
16 ~~by an optometrist with prevailing clinical standards for the practice~~
17 ~~of optometry. The proceedings shall be conducted in accordance~~
18 ~~with Chapter 5 (commencing with Section 11500) of Part 1 of~~
19 ~~Division 3 of Title 2 of the Government Code, and the division~~
20 ~~shall have all the powers granted therein.~~

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TO: Optical Stakeholders

FROM: National Association of Optometrists and Opticians (NAOO)

DATE: March 27, 2015

RE: Proposed Amendments to AB 595 (Alejo, principal co-author Dodd)

Thank you for your participation in the stakeholder meetings that were convened earlier this year. Additionally, we have been appreciative of the continued dialogue with stakeholders and the input we have received from California Optometric Association (COA).

Attached please find a mock-up of amendments that have been submitted to Legislative Counsel. While we recognize that Legislative Counsel may make some drafting changes, we felt it important to get this document out so stakeholders could begin reviewing and offering comments.

Additional work may be necessary, and while we recognize that there are some issues that, to date, we have not been able to address, we hope that the summary below and the attached amendments will continue to engender constructive dialogue.

Drafting Philosophy

In approaching how best to capture the input received from stakeholders to date, and ultimately propose amendments, the coalition moved away from detailing the variety of business arrangements that exist in California today. The amendments proposed focus on the principles discussed in the stakeholder meetings including statutory protections and prohibitions that reflect and protect those principles. The goal is to draft a statute that protects doctor's clinical judgment, and provides greater transparency for both patients and regulatory entities.

Stakeholder Input

The draft language seeks to reflect many of the concerns raised throughout discussions with stakeholders. The specific concerns are outlined below, along with where the proposed language addresses the issue.

- Transparency through enhanced regulatory communication

During the stakeholder meetings, concerns were raised that the Board of Optometry does not feel that it always receives all of the necessary information to fulfill its

oversight responsibilities with regard to licensees that practice in co-located models.

- To attempt to address this concern, please see the proposed legislative language included in Sec. 9. This section requires all Boards/Agencies that receive a complaint about an Optometrist submit that complaint to the Board of Optometry. (mock-up page 9)

- Protections for Doctors' Clinical Judgment

Specific prohibitions on RDO's included in the language address concerns that an RDO would influence or interfere with the clinical decision of an Optometrist.

- Prohibition on setting quotas for the number of exams or limits related to time that an OD may spend with a patient. See: Sec. 2, amended 655 (a) (1) (mock-up page 1)
- Prohibition against holding optometrists responsible for the sale of eyewear, or requiring the person to sell the eyewear of a registered dispensing optician. See: Sec. 2, amended 655 (a) (2) (mock-up page 1)
- Prohibition against providing compensation to an optometrist for the sale of the eyewear of the registered dispensing optician. See: Sec. 2, amended 655 (a) (3) (mock-up page 1)

- Concerns related to an Optometrists Practice

- RDO shall not constrain the optometrist in scheduling patients or setting fees. See: Sec. 2, amended 655 (d)(3) (i) (mock-up page 2)
- RDO shall not have an interest in the patient records of the optometrist and the optometrist shall have 24-hour access to such records. See: Sec. 2, amended 655 (d)(3) (iii) (mock-up page 2)
- Parties shall execute written agreements. Rent payments shall not be affected by either party's referrals or product sales. Term of such agreements shall be of at least one year, terminable only for cause as defined by the agreement, or at the expiration of the agreement on at least sixty days written notice. Sec. 2, amended 655 (d)(4) (mock-up page 2)
- Optometric office space – Definite and Distinct. See: Sec. 2, amended 655 (d)(5) (mock-up page 3)
- Separate forms –Forms used by the optometric office shall be separate from those of the registered dispensing optician. See: Sec. 2, amended 655 (d)(6) (mock-up page 3)

- Optometrist shall control the hiring, staffing, training of the individuals employed or engaged to assist the optometrist in the management and administrative aspects of his/her practice and in patient care. See: Sec. 2, amended 655 (d)(7) (mock-up page 3)
- Optometrist may have multiple practices, limitations on the numbers of practices have been removed. See: Sec 6, amended 3077 (mock-up page 6)
- Optometrists shall control advertising of their practice with they located next to an RDO. See: Sec 2 , amended 655 (d)(8) (mock-up page 3)

- Grievances, Penalties and Protection from Retaliation

- RDO certificates may be suspended or revoked for unprofessional conduct including repeated interference with the independent clinical judgment of an optometrist. See: Sec. 4, amended 2555 (a) (mock-up page 4)
- Medical Board may assess administrative fines if proceeding determines that RDO has violated section 655. See: Sec. 4, amended 2555 (b) (mock-up page 4)
- RDO shall comply with requests for information by the division within 30 days. See: Sec. 4, amended 2555 (c) (mock-up page 4)
- RDO shall not retaliate or discriminate against an optometrist because that optometrist files a complaint. See: Sec. 4, amended 2555 (f) (mock-up page 5) and Sec. 7, added 3109.1 (c) (mock-up page 9)

The coalition has heard specific concerns about various components of the many models that exist in California to provide Optometry services. The attached language approaches the issue by directly addressing the concerns related to the heart of the models, the relationship between the optician and Optometrist (entity). This will allow for transparency and clear direction for the future.

The language is expected to be in print by April 7th. We welcome any and all comments. Please reach out to Dennis Loper or Meghan Loper at 916.448.7843 as soon as possible.

Thank you,

National Association of Optometrist and Opticians (NAOO)

655. (a) for the purpose of this chapter, an "optical company" is any person or entity who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

(b) Indirect landlord/tenant relationship means a person licensed under Chapter 7 (commencing with Section 3000) may have a landlord/tenant relationship with a third party that is not a person or entity employed or otherwise affiliated, directly or indirectly, with a person licensed under Chapter 5.5 (commencing with Section 2550) or an optical company, but who also leases to a person licensed under Chapter 5.5 (commencing with Section 2550) or an optical company.

(c) No person licensed under Chapter 5.5 (commencing with Section 2550) or any optical company shall own or have an ownership interest in any health care service plan licensed pursuant to Section 1340 of the Health & Safety Code that offers vision care services and contracts or employs persons licensed under Chapter 7 (commencing with Section 3000).

(d) No person licensed under Chapter 5.5 (commencing with Section 2550) or any optical company shall engage in conduct that would influence or interfere with the professional decisions of any person licensed under Chapter 7 (commencing with Section 3000), including, but not limited to, the following:

1. Setting quotas for the number of exams or limit the amount of time that an optometrist can spend with an individual patient.
2. Holding an optometrist responsible for the sale of, or requiring that person to sell, the eyewear of a registered dispensing optician or optical company.
- ~~1-3.~~ 3. Providing compensation to an optometrist for the sale of the eyewear of a registered dispensing optician or optical company.

(~~a~~d) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, ~~directly or indirectly~~, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division.

(~~b~~e) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form ~~directly or indirectly~~ with any person licensed under Chapter 7 (commencing with Section 3000) of this division.

(~~e~~f) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, ~~directly or indirectly~~, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with an optical company. ~~any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.~~

Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(g) Notwithstanding Section 655 (d) through (f), an optometrist may enter into an indirect landlord/tenant relationship with a registered dispensing optician or optical company if all of the following conditions are met:

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

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

(3) All signs, advertising, [patient forms](#), and displays shall likewise be separate and distinct from that of the other occupants and have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

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

(5) Except for a statement that an independent doctor of optometry is located on premises, there shall be no linking of the optometrist's name, practice, or fees in advertising or in any other manner with that of the registered dispensing optician or optical company from which he or she is leasing space.

(6) The term of the lease shall be at least ~~5-2~~ (~~fivetwo~~) years, only terminable by the landlord for non-payment of rent, license suspension, license revocation or death of the optometrist. The optometrist may terminate the lease pursuant to the lease terms.

(7) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, [sales of products by either party](#) or patient referrals.

(8) The optometrist's office shall have a separate telephone listing and number from that of the registered dispensing optician or optical company, but which may be accessible from a general number that the public associates with the premises.

(9) The optometrist shall solely control the hiring, staffing, training, and office and employment policies of individuals employed or engaged to assist the optometrist in the management of administrative aspects of his or her practice and in patient care.

Section 2555 of the Business and Professions Code is repealed

Section 2555 of the Business and Professions Code is added to read: 2555.

(a) Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or 2540), any regulation adopted under this chapter or Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, unprofessional conduct or repeated negligent acts performed by the registrant or by an employee of the registrant. Unprofessional conduct includes, but is not limited to, interference with the independent professional judgment of an optometrist or the optometrist's compliance with standards of care for the practice of optometry.

(b) If the division determines during a proceeding conducted in accordance with subdivision (a) that a registered dispensing optician has violated section 655, the division may assess an administrative fine of up to twenty-five thousand dollars (\$25,000).

(c) Registered dispensing opticians shall comply with all requests for information by the division within 30 days after the request. Failure to provide to the division, as directed, lawfully requested copies of documents

relating to a complaint or alleged violation of the law shall constitute unprofessional conduct on the part of the registered dispensing optician, unless the registered dispensing optician is unable to provide the documents within the time period for good cause, including, but not limited to, inability to access the documents in the time allowed.

(d) Failure to cooperate and participate in any division investigation pending against a registered dispensing optician relating to a complaint or alleged violation of the law shall also constitute unprofessional conduct by the registered dispensing optician. This subdivision shall not be construed to deprive a registered dispensing optician of any privilege guaranteed by the Constitution of the United States or any other constitutional or statutory privileges. The registered dispensing optician's assertion of any applicable constitutional, statutory, or other privilege, including, but not limited to, attorney-client privilege or attorney work product privilege, shall not be a violation of this section.

(f) A registered dispensing optician shall not discharge, terminate, suspend, threaten, harass, or retaliate or discriminate against an optometrist because that optometrist files a complaint as set forth in Section 3109.1 or any other complaint against a registered dispensing optician, or for lawful acts done by an optometrist in disclosing information relating to any complaint against a registered dispensing optician. When an optometrist files a complaint against a registered dispensing optician, the optometrist shall have all of the protections provided in Section 1102.5 of the Labor Code

2556. It is unlawful to do any of the following: to advertise the furnishing of, or to furnish, the services of a ~~refractionist~~, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a ~~refractionist~~, an optometrist, or a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.

Insert New Section in the Optometry Code.

The Optometry Board Shall receive any complaint made to a state Board or department related to the provision of care provide by a licensed Optometrist under Chapter 7 (commencing with 3000) to a patient.

State Boards and departments related to the provision of care provided by a licensed optometrist under Chapter 7 (commencing with 3000) to a patient shall provide a copy of all complaints made against a licensed optometrist.

§3077. BRANCH OFFICE LICENSES

As used in this section "office" means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have-own an office unless he or she is registered licensed to practice optometry under this chapter.

(b) An optometrist, or two or more optometrists jointly, may have-own one office without obtaining a further branch office license ~~from the board~~.

~~(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. The~~ Any additional office, for the purposes of this chapter, constitutes a branch office and requires a branch office license for each office.

~~(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall notify the board in writing of that desire in a manner prescribed by the board.~~

~~(e) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed by the board.~~

~~(f) On and after January 1, 1957, n~~ No branch office may be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1st of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter. On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.

~~(g) A branch office license issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under paragraph (4) of subdivision (a), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the branch office license was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.~~

~~(f) If the board revokes or suspends the license to practice optometry of an individual optometrist or any member of a corporation or group to whom a branch office license has been issued under this section, the revocation or suspension of the license to practice optometry shall also constitute revocation or suspension of the branch office license. Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the certificate of registration of each optometrist who, individually or with others, has a branch office. A certificate of registration so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a certificate of registration after suspension for failure to comply with the provisions of this chapter relating to branch offices.~~

~~(h) The holder or holders of a branch office license shall pay the annual renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each year. The failure to pay the fee in advance on or before February 1st of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.~~

~~(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly. Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.~~

~~(j) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.~~

~~(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:~~

~~(1) Complies with the definition of an optometric corporation in Section 3160.~~

~~(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.~~

~~(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.~~

~~Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.~~

Added 1955 ch 1602 § 6, ch 1623 § 2. Amended Stats 1959 ch 2059 § 1; Stats 1996 ch 312 § 1 (SB 1536), effective July 29, 1996; Stats 2006 ch 564 § 1 (AB 2256), effective January 1, 2007.

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To: Board Members

Date: April 24, 2015

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7184

Subject: **Agenda Item 24, Discussion and Possible Action Pertaining to Proposed Legislation (SB 622 Hernandez), Impacting the Profession of Optometry; Including BPC §3041, Acts Constituting Practice of Optometry. Including Discussion and Possible Action Pertaining to Proposed Amendments from the California Optometric Association.**

Background:

SB 622 (Attachment 1), authored by Senator Ed Hernandez, amends the following Business and Professions Code (BPC) sections: An act to amend Section 3041 of, to add Sections 3041.4, 3041.5, 3041.6, 3041.7, and 3041.8 to, and to repeal and add Sections 3041.1, 3041.2, and 3041.3 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor

This bill expands the scope of optometry to include, but limited to: diagnosis and treatment of eyelid disorders, including hypotrichosis and blephritis; expands the use of diagnostic and therapeutic pharmaceutical agents, including tests and procedures. Amends glaucoma certification to include treating glaucoma caused by increase in intraocular pressure caused by steroid mediation. Adds two new certifications:

1. Anterior Segment Laser Certification
2. Minor Procedure Certification
3. Immunization Certification (a staff recommendation)

Staff worked with two Board experts in review of the proposed language, Dr. Lee Goldstein, O.D. and Dr. Cory Vu, O.D.

Future Steps

Once the bill becomes law, regulations will need to be promulgated to specify the certification processes and fees. Staff will also work with the Department of Consumer Affairs Budget Office on any fiscal tied to this bill.

Action Requested:

Please review and discuss SB 622 and staff's proposed amendments. Provide any additional suggested edits. After review and discussion, please direct staff to issue one of the following formal positions on SB 622:

- **Support if Amended:** This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.

- **Oppose:** The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.
- **Oppose Unless Amended:** The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Attachments:

1. SB 622 (with staff highlights and comments for the Board's consideration)

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 622

Introduced by Senator Hernandez

February 27, 2015

~~An act to amend Section 2842 of the Business and Professions Code, relating to vocational nursing.~~ *An act to amend Section 3041 of, to add Sections 3041.4, 3041.5, 3041.6, 3041.7, and 3041.8 to, and to repeal and add Sections 3041.1, 3041.2, and 3041.3 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Hernandez. ~~Vocational nursing.~~ *Optometry.*

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and 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 authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. The act requires optometrists treating or diagnosing eye disease, as specified, to be held to the same standard of care to which physicians and surgeons and osteopathic physician and surgeons are held. The act makes a violation of any of its provisions a crime. All moneys collected pursuant to the act, except where otherwise provided, are deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.

This bill would revise and recast those provisions. The bill would additionally define the practice of optometry as the provision of habilitative optometric services, and would authorize the board to allow optometrists to use nonsurgical technology to treat any authorized condition under the act. The bill would authorize an optometrist to use diagnostic pharmaceutical agents, as specified, including, but not limited to, oral and topical diagnostic pharmaceutical agents that are not controlled substances. The bill would authorize an optometrist to independently initiate and administer vaccines, as specified, for a person 3 years of age and older, if the optometrist meets certain requirements, including, but not limited to, that he or she is certified in basic life support for health care professionals. The bill would additionally authorize an optometrist certified to use therapeutic pharmaceutical agents to, among other things, be certified to use anterior segment lasers, as specified, and to be certified to perform specified minor procedures, as specified, if certain requirements are met.

The bill would require the board to charge a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use anterior segment lasers. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

Because a violation of the act is a crime, this bill would expand the scope of an existing crime and would, therefore, result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Vocational Nursing Practice Act provides for the licensure and regulation of the practice of vocational nursing by the Board of Vocational Nursing and Psychiatric Technicians within the Department of Consumer Affairs. The act requires the board to consist of 11 members, including one member that is a licensed vocational nurse or registered nurse who has had no less than 5 years' experience as a teacher or administrator in an accredited school of vocational nursing. This bill would require that the vocational nurse or registered nurse's experience be in an accredited school of vocational nursing approved by the board.~~

DIGEST KEY

Vote: MAJORITY Appropriation: ~~NO~~YES Fiscal Committee: ~~NO~~YES Local Program: ~~NO~~YES

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 3041 of the Business and Professions Code is amended to read:

3041.

(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of *habilitative or* rehabilitative optometric services, and is the doing of any or all of the following:

- (1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.
- (2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.
- (3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.
- (4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.
- (5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

~~(b)(1)An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:~~

~~(A)Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.~~

~~(B)Ocular allergies of the anterior segment and adnexa.~~

~~(C)Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.~~

~~(D)Traumatic or recurrent conjunctival or corneal abrasions and erosions.~~

~~(E)Corneal surface disease and dry eyes.~~

~~(F)Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.~~

~~(G)Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).~~

(2)For purposes of this section, “treat” means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c)In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

- (1)Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.
- (2)Topical lubricants.
- (3)Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient’s condition worsens 21 days after diagnosis.
- (4)Topical and oral anti-inflammatories. In using steroid medication for:
 - (A)Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient’s condition worsens 72 hours after the diagnosis, or if the patient’s condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.
 - (B)Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient’s condition worsens 72 hours after diagnosis.
 - (C)Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient’s condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient’s condition has not resolved one week after diagnosis.
- (5)Topical antibiotic agents.
- (6)Topical hyperosmotics.
- (7)Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).
 - (A)The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.
 - (B)If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient’s diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient’s glaucoma medication.
- (8)Nonprescription medications used for the rational treatment of an ocular disorder.
- (9)Oral antihistamines.
- (10)Prescription oral nonsteroidal anti-inflammatory agents.
- (11)Oral antibiotics for medical treatment of ocular disease.
 - (A)If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.
 - (B)If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.
- (12)Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periorcular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periorcular varicella zoster viral dermatitis.
 - (A)If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient’s condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient’s condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.
 - (B)If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient’s condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient’s condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.
- (13)Oral analgesics that are not controlled substances.
- (14)Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d)In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient’s file of the information provided to the ophthalmologist, the ophthalmologist’s response, and any other relevant information. Upon the consulting ophthalmologist’s request and with the patient’s consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e)An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

- (1)Corneal scraping with cultures.
- (2)Debridement of corneal epithelia.
- (3)Mechanical epilation.
- (4)Venipuncture for testing patients suspected of having diabetes.
- (5)Suture removal, with prior consultation with the treating physician and surgeon.
- (6)Treatment or removal of sebaceous cysts by expression.
- (7)Administration of oral fluorescein to patients suspected as having diabetic retinopathy.
- (8)Use of an auto-injector to counter anaphylaxis.

- (9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid-fast stain, urinalysis, tear fluid analysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.
- (10) A clinical laboratory test or examination classified as waived under CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.
- (11) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
- (12) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.
- (13) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonpenetrating, be no deeper than the midstroma, and require no surgical repair upon removal.
- (14) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.
- (f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:
- (1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.
- (2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.
- (3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:
- (A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.
- (B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.
- (4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.
- (5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.
- (g) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.
- (h) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.
- (i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.
- (j) For purposes of this chapter, "glaucoma" means either of the following:
- (1) All primary open-angle glaucoma.
- (2) Exfoliation and pigmentary glaucoma.
- (k) For purposes of this chapter, "adnexa" means ocular adnexa.
- (l) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.
- (b) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to this chapter. Satisfactory completion of the required educational and examination requirements shall be a condition for the issuance of an original optometrist license or required certifications pursuant to this chapter.*
- (c) The board may authorize optometrists to use nonsurgical technology to treat a condition authorized by this chapter.*

SEC. 2.

Section 3041.1 of the Business and Professions Code is repealed.

~~3041.1.~~

~~With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.~~

SEC. 3.

Section 3041.1 is added to the Business and Professions Code, to read:

3041.1.

(a) (1) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to this section may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

- (A) Through medical treatment, infections of the anterior segment and adnexa.
- (B) Ocular allergies of the anterior segment and adnexa.
- (C) Ocular inflammation that is nonsurgical in cause, except when comanaged with the treating physician and surgeon.
- (D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.
- (E) Corneal and conjunctival surface disease and dry eyes disease.
- (F) Ocular pain that is nonsurgical in cause, except when comanaged with the treating physician and surgeon.
- (G) Eyelid disorders, including, but not limited to, hypotrichosis and blepharitis.

(2) For purposes of this section, “treat” means the use of therapeutic pharmaceutical agents, as described in subdivision (b), and the procedures described in subdivision (c).

(3) For purposes of this chapter, “adnexa” means ocular adnexa.

(b) In diagnosing and treating the conditions listed in subdivision (a), an optometrist certified to use therapeutic pharmaceutical agents pursuant to this section may use all of the following diagnostic and therapeutic pharmaceutical agents:

(1) Oral and topical diagnostic and therapeutic pharmaceutical agents that are not controlled substances. The use of pharmaceutical agents shall be limited to the use for which the drug has been approved for marketing by the federal Food and Drug Administration (FDA).

(2) Notwithstanding paragraph (1), an optometrist certified to use therapeutic pharmaceutical agents may use a drug in a way for which the drug has not been approved for marketing by the FDA if all of the following requirements are met:

(A) The drug is approved by the FDA.

(B) The drug has been recognized for treatment of the condition by either of the following:

(i) The American Hospital Formulary Service’s Drug Information.

(ii) Two articles from major peer reviewed medical journals that present data supporting the proposed off-label use or uses as generally safe and effective, unless there is clear and convincing contradictory evidence presented in a major peer reviewed medical journal.

(3) Notwithstanding paragraph (1), 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 federal Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be used. The use of these controlled substances shall be limited to five days.

(c) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to this section may also perform all of the following:

- (1) Corneal scraping with cultures.
- (2) Debridement of corneal epithelia.
- (3) Mechanical epilation.

- (4) Collection of a blood specimen by finger prick method or venipuncture for testing patients suspected of having diabetes.
 - (5) Suture removal, with prior consultation with the treating health care provider.
 - (6) Treatment or removal of sebaceous cysts by expression.
 - (7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.
 - (8) Use of an auto-injector to counter anaphylaxis.
 - (9) Ordering of clinical laboratory and imaging tests related to the practice of optometry.
 - (10) A clinical laboratory test or examination classified as waived under CLIA and related to the practice of optometry.
 - (11) Skin test to diagnose ocular allergies. Skin tests shall be limited to the superficial lawver of the skin.
 - (12) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
 - (13) The prescription of therapeutic contact lenses, diagnostic contact lenses, or biological or technological corneal devices.
 - (14) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.
 - (15) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion and confirmation of 10 procedures under the supervision of an ophthalmologist or California licensed optometrist who is certified in lacrimal irrigation and dilation. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.
 - (16) Use of mechanical lipid extraction of meibomian glands and nonsurgical techniques.
 - (17) Notwithstanding subdivision (b), administration of injections for the diagnoses or treatment of conditions of the eye and adnexa, excluding intraorbital injections and injections administered for cosmetic effect, provided that the optometrist has satisfactorily received four hours of practical continuing education on performing all injections authorized by this paragraph.
- (d) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in this section, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.
- (e) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:
- (1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.
 - (2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.
 - (3) Successfully completes a minimum of 20 hours of self-directed education.

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

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

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

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

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

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

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

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

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

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

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

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

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

(h) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(i) Except as authorized by this chapter, the practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (c). This section does not limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

(j) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 4.

Section 3041.2 of the Business and Professions Code is repealed.

~~3041.2.~~

~~(a) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.~~

~~(b) Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.~~

SEC. 5.

Section 3041.2 is added to the Business and Professions Code, to read:

3041.2.

(a) For purposes of this chapter, "glaucoma" means any of the following:

- (1) All primary open-angle glaucoma.
- (2) Exfoliation and pigmentary glaucoma.

(3) Increase in intraocular pressure caused by steroid medication.

(b) An optometrist certified pursuant to Section 3041.1 shall be certified for the treatment of glaucoma, as described in subdivision (a), in patients over 18 years of age after the optometrist meets the following applicable requirements:

- (1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.
- (2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.
- (3) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board.
- (4) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and are not described in paragraph (2) or (3), submission of proof of satisfactory completion of the requirements for certification established by the board.

SEC. 6.

Section 3041.3 of the Business and Professions Code is repealed.

~~3041.3.~~

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

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

- ~~(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California;~~
- ~~(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an~~

ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

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

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

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

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

~~(7)Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).~~

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

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

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

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

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

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

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

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

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

SEC. 7.

Section 3041.3 is added to the Business and Professions Code, to read:

3041.3.

(a) For the purposes of this chapter, "anterior segment laser" means any of the following:

(1) Therapeutic lasers appropriate for treatment of glaucoma.

(2) Notwithstanding subdivision (a) of Section 3041.2, peripheral iridotomy for the prophylactic treatment of angle closure glaucoma.

(3) Therapeutic lasers used for posterior capsulotomy secondary to cataract surgery.

(b) An optometrist certified to treat glaucoma pursuant to Section 3041.2 shall be additionally certified for the use of anterior segment lasers after submitting proof of satisfactory completion of a course that is approved by the board, provided by an accredited school of optometry, and developed in consultation with an ophthalmologist who has experience educating optometric students. ~~developed in consultation with an ophthalmologist who has experience education optometric students, that is approved by the board, and provided by an accredited California school of optometry.~~

(1) The board-approved course shall be a minimum of 16 hours in length, and include a test for competency of the following:

(A) Laser physics, hazards, and safety.

(B) Biophysics of laser.

(C) Laser application in clinical optometry.

(D) Laser tissue interactions.

(E) Laser indications, contraindications, and potential complications.

(F) Gonioscopy.

(G) Laser therapy for open-angle glaucoma.

(H) Laser therapy for angle closure glaucoma.

(I) Posterior capsulotomy.

(J) Common complications of the lids, lashes, and lacrimal system.

(K) Medicolegal aspects of anterior segment procedures.

(L) Peripheral iridotomy.

(M) Laser trabeculoplasty.

(2) The school of optometry shall require each applicant for certification to perform a sufficient number of anterior segment laser procedures to verify that the applicant has demonstrated competency to practice independently. At a minimum, each applicant shall complete 14 anterior segment laser procedures on live humans.

(c) The board, by regulation, shall set the fee for issuance and renewal of a certificate authorizing the use of anterior segment lasers at an amount no higher than the reasonable cost of regulating anterior segment laser certified optometrists pursuant to this section. The fee shall not exceed one hundred fifty dollars (\$150).

SEC. 8.

Section 3041.4 is added to the Business and Professions Code, to read:

3041.4.

(a) For the purposes of this chapter, "minor procedure" means either of the following:

(1) Removal, destruction, or drainage of lesions of the eyelid and adnexa clinically evaluated by the optometrist to be noncancerous, not involving the eyelid margin, lacrimal supply or drainage systems, no deeper than the orbicularis muscle, and smaller than five millimeters in diameter.

(2) Closure of a wound resulting from a procedure described in paragraph (1).

(b) An optometrist certified to treat glaucoma pursuant to Section 3041.2 shall be additionally certified to perform minor procedures after submitting proof of satisfactory completion of a course that is approved by the board, provided by an accredited school of optometry, and developed in consultation with an ophthalmologist who has experience teaching optometric students. ~~developed in consultation with an ophthalmologist who has experience education optometric students, that is approved by the board, and provided by an accredited California school of optometry.~~

(1) The board-approved course shall be a minimum of 32 hours in length and include a test for competency of the following:

(A) Minor surgical procedures.

(B) Overview of surgical instruments, asepsis, and the state and federal Occupational Safety and Health Administrations.

(C) Surgical anatomy of the eyelids.

(D) Emergency surgical procedures.

(E) Chalazion management.

(F) Epiluminence microscopy.

(G) Suture techniques.

(H) Local anesthesia techniques and complications.

(I) Anaphylaxis and other office emergencies.

(J) Radiofrequency surgery.

(K) Postoperative wound care.

(2) The school of optometry shall require each applicant for certification to perform a sufficient number of minor procedures to verify that the applicant has demonstrated competency to practice independently. At a minimum, each applicant shall complete five minor procedures on live humans.

SEC. 9.

Section 3041.5 is added to the Business and Professions Code, to read:

3041.5.

(a) An optometrist may independently initiate and administer vaccines listed on the routine immunization schedules recommended by the federal Advisory Committee on Immunization Practices (ACIP), in compliance with individual ACIP vaccine recommendations, and published by the federal Centers for Disease Control and Prevention (CDC) for persons three years of age and older.

(b) In order to initiate and administer an immunization described in subdivision (a), an optometrist shall do all of the following:

(1) Complete an immunization training program endorsed by the CDC or the Accreditation Council for Pharmacy Education that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and shall maintain that training.

(2) Be certified in basic life support for health care professionals.

(3) Comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the State Department of Public Health.

SEC. 10.

Section 3041.6 is added to the Business and Professions Code, to read:

3041.6.

An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.

SEC. 11.

Section 3041.7 is added to the Business and Professions Code, to read:

3041.7.

Optometrists diagnosing or treating eye disease 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 when a situation or condition occurs that is beyond the optometrist's scope of practice.

SEC. 12.

Section 3041.8 is added to the Business and Professions Code, to read:

3041.8.

It is the intent of the Legislature that the Office of Statewide Health Planning and Development, under the Health Workforce Pilot Projects Program, designate a pilot project to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.

SEC. 13.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 2842 of the Business and Professions Code is amended to read:~~
~~2842.~~

~~(a) Each member of the board shall be a citizen of the United States and a resident of the State of California. The board shall have the following composition:~~

~~(1) Two members shall be duly licensed vocational nurses who have been licensed for a period of not less than three years prior to appointment.~~

~~(2) Two members shall be licensed psychiatric technicians, each of whom shall have had not less than five years' experience in a psychiatric hospital, or in a psychiatric unit of a hospital licensed by the State Department of Health Services, or a private institution licensed by the State Department of Health Services.~~

~~(3) One member shall be a licensed vocational nurse or registered nurse who shall have had not less than five years' experience as a teacher or administrator in an accredited school of vocational nursing approved by the board.~~

~~(4) Six members shall be public members who are not licentiates of the board or any other board under this division or of any board referred to in Sections 1000 and 3600.~~

~~(b) No person may serve as a member of the board for more than two consecutive terms.~~

~~(c) Per diem and expenses of members of the board who are licensed psychiatric technicians shall be paid solely from revenues received pursuant~~

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To: Board Members

Date: April 24, 2015

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: Agenda Item 25 – Suggestions for Future Agenda Items

2450 Del Paso Road, Suite 105
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To: Board Members

Date: April 24, 2015

From: Alejandro Arredondo, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 26 – Adjournment

Adjournment