



Board Meeting

Friday, August 28, 2015

1747 North Market Boulevard
First Floor Hearing Room
Sacramento, CA 95834

MISSION

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

VISION

To ensure excellent optometric care for every Californian.

VALUES

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 for our programs, services, and process through the employee empowerment and professional development.

MEMBERS OF THE BOARD

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



CALIFORNIA STATE BOARD OF
OPTOMETRY



QUARTERLY BOARD MEETING AGENDA

Friday, August 28, 2015

9:00 a.m. – 5:00 p.m.

(or until conclusion of business)

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 of resources.

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. President's Report
 - A. Welcome and Introductions
 - B. Solicitation and Possible Appointment of Committees
 - C. 2016 Board Meeting Dates
4. Approval of Board Meeting Minutes
 - A. January 23, 2015
 - B. April 23-24, 2015
 - C. June 12, 2015
5. Board Member Communications with Interested Parties
6. Department of Consumer Affairs Report
7. Executive Officer's Report
 - A. BreEZe Database
 - B. Strategic Plan
 - C. Budget
 - D. Personnel
 - E. Examination and Licensing Programs
 - F. Enforcement Program
8. Consideration and Approval of the Board Member Handbook

9. Update and Possible Action on Legislation Impacting the Practice of Optometry
 - A. [AB 595](#) (Alejo) Registered Dispensing Opticians: Certificates
 - B. [AB 684](#) (Alejo) Healing arts: licensees: disciplinary actions
 - C. [AB 789](#) (Calderon) Contact Lens Sellers: Fines
 - D. [AB 1253](#) (Steinorth) Optometry: license: retired volunteer service designation
 - E. [AB 1359](#) (Nazarian) Optometry: therapeutic pharmaceutical agents certification
 - F. [SB 349](#) (Bates) Optometry: mobile optometric facilities
 - G. [SB 402](#) (Mitchell) Pupil health: vision examinations
 - H. [SB 496](#) (Nguyen) Optometry: graduates of a foreign university: examinations and licensure
 - I. [SB 622](#) (Hernandez) Optometry
 - J. [SB 800](#) (Committee on Business, Professions & Economic Development) Healing arts
10. Update and Possible Action on California Code of Regulations (CCR)
 - A. Consideration of Recommendations to Amend CCR §1506 – “Certificates Posting” to Include Certification Explanations After Optometrist License Number and Clarify Existing Language
 - B. Rulemaking Pertaining to CCR §1516, Applicant Medical Evaluations and CCR §1582, Unprofessional Conduct Defined
 - C. Rulemaking Pertaining to CCR §1536; Consideration of Proposed Revisions to add Continuing Education Credits for Subject Matter Experts Participating in Law Examination Workshops, Child and Elderly Abuse Detection Courses, and Increase Amount Accepted for Board Meeting Participation
11. Future Agenda Items
12. Petition for Reduction of Penalty or Early Termination of Probation (12:30 p.m.)
 - A. Duc Bui, OPT 11044
13. **FULL BOARD CLOSED SESSION**
 - A. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters and the Above Petition
 - B. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session to Interview Candidates for and Consider Appointment of an Executive Officer
14. **RETURN TO OPEN SESSION**
15. 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: August 28, 2015

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

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

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

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

Cyd Brandvein, Vice President, Public Member

Rachel Michelin, Secretary, Public Member

Alejandro Arredondo, O.D., Professional Member

Donna Burke, Public Member

Frank Giardina, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

William H. Kysella, Jr., Public Member

Mark Morodomi, Public Member

David Turetsky, O.D., Professional Member

Lillian Wang, O.D., Professional Member

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www.optometry.ca.gov

To: Board Members

Date: August 28, 2015

From: Madhu Chawla, 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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To: Board Members

Date: August 28, 2015

From: Madhu Chawla, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 3 - President's Report

The Board's Mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.

A. Welcome and Introductions

Introductions of Board staff and members of the public (voluntary)

B. Solicitation and Possible Appointment of Committees

The Board currently has the following committees:

- Practice and Education
Advises Board staff on practice related matters, including standards of practice and scope of practice issues. Reviews staff responses to proposed regulatory changes that may affect optometric practice. Also reviews requests for approval of continuing education courses, and offers guidance to Board staff regarding continuing education issues.
- Consumer Protection
Oversees the development and administration of legally defensible licensing examinations and consulting on improvements/enhancements to licensing and enforcement policies and procedures.
- Public Relations – Outreach
Assists with the development of outreach and development of educational materials to the Board's stakeholders.

Currently, there is not a Legislation and Regulation Committee, as these issues have been handled by the full Board. Temporary committees were created in the past to focus on specific issues. However, in order to adequately meet the Board's Strategic Plan, Goal 3 (Law and Regulation) objectives, staff is requesting a permanent Legislation and Regulation Committee.

C. 2016 Board Meeting Dates

- January 22, 2016 – Southern California

- April 22, 2016 - Oakland
- August 26, 2016 – Sacramento
- November 18, 2016 – Southern California

In addition, depending on pending legislation, the Board may hold meetings on the following dates:

- May 20, 2016
- June 10, 2016

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To: Board Members

Date: August 28, 2015

From: Rachel Michelin
Board Secretary

Telephone: (916) 575-7170

Subject: Agenda Item 4 – Approval of Board Meeting Minutes

- A. January 23, 2015 (Attachment 1)
- B. April 23-24, 2015 (Attachment 2)
- C. June 12, 2015 (Attachment 3)



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

Action Meeting Minutes
Friday, January 23, 2015

Van Nuys State Building
 6150 Van Nuys Blvd., Auditorium
 Van Nuys, CA 91411

And by telephone at the following location:

140 C Tower Street
 Beaconsfield, Quebec H9W6B2
 Canada

<u>Members Present</u>	<u>Staff Present</u>
Alejandro Arredondo, O.D., Board President	Mona Maggio, Executive Officer
Madhu Chawla, O.D., Vice President, Professional Member	Jessica Siefertman, Staff Services Manager
Donna Burke, Board Secretary, Public Member	Michael Santiago, Senior Legal Counsel
Cyd Brandvein, Public Member	
Frank Giardina, O.D., Professional Member	
Glenn Kawaguchi, O.D., Professional Member	
Alexander Kim, MBA, Public Member	
William H. Kysella, Jr., Public Member	
Kenneth Lawenda, O.D., Professional Member	
Rachel Michelin, Public Member	<u>Guest List</u>
David Turetsky, O.D., Professional Member	On File

9:00 a.m.

FULL BOARD OPEN SESSION

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

The meeting was called to order at 9:07 a.m.

2. President's Report – Welcome and Introductions

3. Public Comment for Items Not on the Agenda

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

{No action was taken on this item.}

4. Department of Consumer Affairs Report - Christine Lally, Deputy Director Board and Bureau Relations

{No action was taken on this item}

5. Executive Officer's Report

{No action was taken on this item}

6. Approval of the Board Meeting Minutes**A. June 23, 2014**

Kenneth Lawenda moved to accept the minutes as amended. Frank Giardina seconded. The Board voted 8-Aye, 0-No, and 2-Abstention to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Chawla	X				
Dr. Giardina	X				
Mr. Kim	X				
Mr. Kysella			X		
Dr. Lawenda	X				
Ms. Michelin			X		
Dr. Turetsky	X				

B. August 8, 2014

Madhu Chawla moved to accept the minutes as amended. Frank Giardina seconded. The Board voted 9-Aye, 0-No, and 1-Abstention to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Chawla	X				
Dr. Giardina	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin			X		
Dr. Turetsky	X				

C. November 21, 2014

{No action was taken on this item}

7. Discussion and Possible Action Regarding Potential Legislation Impacting Business and Professions Code (BPC) §655, Prohibition of Business Arrangements Between Optometrists and Opticians or Persons in Optical Product Business and BPC §2556, Unlawful Practice

David Turetsky moved to direct staff to draft a newsletter for optometrists informing them of the current legislative status of Business and Professions Code Sections 655 and 2556, and have it brought before the Outreach Committee for review and approval before posting to the Board's website; Additionally to direct staff to draft a newsletter for optometry students informing them of the same and have it brought before the Education Committee before presenting to the students. Kenneth Lawenda seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Chawla	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

8. Discussion and Possible Action to Amend Business and Professions Code §3003. “Optometrist” and §3098, Use of “Dr.” or “O.D.” to Allow Use of the Title Optometric Physician

{No action was taken on this item}

9. Discussion and Possible Action to Amend the Board Member Handbook

Agenda Item 9 was tabled to the upcoming April 2015 meeting.

10. Discussion and Possible Action Regarding a Resolution in Support of Comprehensive Eye Examinations for all School Aged Children

Donna Burke moved to adopt the proposed language resolution to support comprehensive eye examination for all school-aged children. Rachel Michelin seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

11. Update Pertaining to the North Carolina State Board of Dental Examiners v. Federal Trade Commission Case

{No action was taken on this item}

12. Legislation

A. Update on Legislative Proposals Approved at the November 21, 2014 Board Meeting

{No action was taken on this item}

B. Discussion and Possible Action to Add Business and Professions Code §3070.2, Requirements to Practice in a Mobile Optometric Facility or Portable Optometric Facility

Frank Giardina moved to adopt staff's recommended draft language to add section 3070.2, and the amendments that were made during this meeting. Donna Burke seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

C. Discussion and Possible Action to Amend §49455 of the Education Code to Change the Requirement from "Vision Appraisal" to "Comprehensive Eye Exam"

Donna Burke moved to sponsor legislation to amend 49455 of the Education Code as presented and edited by staff today's meeting, and also to direct staff to seek an author for the bill. Glenn Kawaguchi seconded. That Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Mr. Kim	X				
Mr. Kysella	X				
Dr. Lawenda	X				
Ms. Michelin	X				
Dr. Turetsky	X				

13. Update on Rulemaking Pertaining to California Code of Regulations §1516. Applicant Medical Evaluations and §1582. Unprofessional Conduct Defined

{No action was taken on this item}

14. Discussion and Possible Action to Approve the Revised Executive Officer's Duty Statement

{No action was taken on this item}

15. Suggestions for Future Agenda Items

{No action was taken on this item}

16. Petitions for Reduction of penalty or Early Termination of Probation (1:30 p.m.)

The following petitions were heard by the Board.

- A. Gregory Tom, OPT 10427
- B. Leland Toy, OPT 6128
- C. David Bradley, OPT 7747
- D. Stephen Schroeder, OPT 8321

17. Petition for Reinstatement of License

- A. Larry Franklin Thornton

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

18. Adjournment



Board of Optometry
2450 Del Paso Road, Suite 105, Sacramento, CA 95834
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BOARD MEETING ACTION MINUTES
April 23-24, 2015
Department of Consumer Affairs, HQ2
1747 North Market Boulevard
First Floor Hearing Room
Sacramento, CA 95834

DRAFT

Members Present	Staff Present
Madhu Chawla, O.D., Vice President, Professional Member	Mona Maggio, Executive Officer
Donna Burke, Board Secretary, Public Member	Jessica Sieferman, Assistant Executive Officer
Cyd Brandvein, Public Member	Nooshin Movassaghi, Policy Analyst
Frank Giardina, O.D., Professional Member	Rob Stephanopoulos, Enforcement Analyst
Glenn Kawaguchi, O.D., Professional Member	Cheree Kimball, Enforcement Analyst
William H. Kysella, Jr., Public Member	Nancy Day, Licensing Technician
Rachel Michelin, Public Member	Claire Yazigi, Legal Counsel
Mark Morodomi, Public Member	
David Turetsky, O.D., Professional Member	
Lillian Wang, O.D., Professional Member	
Excused Absense	Guest List
Alejandro Arredondo, O.D., Board President, Professional Member	On File

Thursday, April 23rd**1:00 p.m.****FULL BOARD OPEN SESSION****1. Call to Order/Roll Call and Establishment of a Quorum**

As Board President, Alex Arredondo was unable to attend the meeting, Vice President, Madhu Chawla called roll and a quorum was established.

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)]

There were no actions on this agenda item.

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

The following petitions were heard. Administrative Law Judge, Dian Vorters presided over the Hearings. Deputy Attorney General, Sheila Vasantharam represented the people of the state of California.

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**

Frank Giardina moved to vote whether the Board should set term limits for officers. Dave Turetsky seconded. The Board voted 3-Aye; 6-No; 1-Abstention; the motion did not pass.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla		X			
Ms. Burke	X				
Ms. Brandvein		X			
Dr. Giardina		X			
Dr. Kawaguchi			X		
Mr. Kysella		X			
Ms. Michelin	X				
Mr. Morodomi		X			
Dr. Turetsky	X				
Dr. Wang		X			

Rachel Michelin moved to direct staff to work with the Board Member Handbook Committee to incorporate the suggestions made at today's meeting and bring those back to the full Board at the August 28th meeting. Lillian Wang seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

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) §1536

Cyd Brandvein moved to add subsection 6 to 1536 (c) to read “any continuing education course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association continuing medical education credits that contributes to the advancement or professional skill and knowledge in the practice of optometry and to instruct staff to proceed with formal rulemaking.” Bill Kysella seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Frank Giardina moved to instruct staff to initiate the formal rulemaking process to move section 1571(b) regarding the continuing education requirements for glaucoma certification to section 1536 for clarification and continuity of continuing education law. Also to correct the non-substantive typo identified above section 1571(b) as recommended. Dave Turetsky seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

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

Rachel Michelin moved direct the Consumer Notice Workgroup to change the documentation language to become more user-friendly and bring these results back to a future Board meeting. Donna Burke seconded. The Board voted 9-Aye; 1-No to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina		X			
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

7. Discussion and Possible Action Pertaining to the Legality of Online Refractions Pursuant to the Laws Governing Optometry in the State of California

Donna Burked moved to direct staff to look into updating regulations to more specifically address how a refractive eye exam is conducted; direct staff to look into updating regulations to more specifically address the requirements for corrective lens prescriptions; 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; bring these results back to the board at a future Board meeting. Rachel Michelin seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

8. Update on the Supreme Court Decision Regarding the North Carolina Board of Dental Examiners v. the Federal Trade Commission

No action was taken on this agenda item.

9. Update on Rulemaking Pertaining to Title 16, CCR §1516, Applicant Medical Evaluations and §1582, Unprofessional Conduct Defined

No action was taken on this agenda item.

10. Adjournment

Rachel Michelin moved to adjourn the meeting. Frank Giardina seconded. The Board voted unanimously (10-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo				X	
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

Members Present	Staff Present
Alejandro Arredondo, O.D., President, Professional Member	Mona Maggio, Executive Officer
Madhu Chawla, O.D., Vice President, Professional Member	Jessica Sieferman, Assistant Executive Officer
Donna Burke, Board Secretary, Public Member	Rob Stephanopoulos, Enforcement Analyst
Cyd Brandvein, Public Member	Nooshin Movassaghi, Policy Analyst
Frank Giardina, O.D., Professional Member	Pricilla Torres-Fuentes, Receptionist/ Cashier
Glenn Kawaguchi, O.D., Professional Member	Brad Garding, Enforcement Technician
William H. Kysella, Jr., Public Member	Jeff Robinson, Licensing Analyst
Rachel Michelin, Public Member	Nancy Day, Licensing Analyst
Mark Morodomi, Public Member	Kristina Eklund, Licensing Technician
David Turetsky, O.D., Professional Member	Cheree Kimball, Enforcement Analyst
Lillian Wang, O.D., Professional Member	Lydia Bracco, Administrative Assistant
Excused Absences	Guest List
None	On File

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

FULL BOARD OPEN SESSION

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

Board President, Alejandro Arredondo, O.D. called roll and a quorum was established.

12. President's Report – Welcome and Introductions

No action was taken on this agenda item.

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)]

No action was taken on this agenda item.

14. Ethics Training Summary by Legal Counsel

No action was taken on this agenda item.

15. Department of Consumer Affairs Report

No action was taken on this agenda item.

16. Executive Officer's Report

- A. Bagley-Keen-Discussions Between Board Meetings**
- B. BreZE**
- C. Strategic Plan**
- D. Budget**
- E. Examination and Licensing Programs**

Cyd Brandvein moved for the Board to create a workgroup of two Members to look at the need for Departmental approval for out-of-state travel to attend the Association of Regulatory Boards of Optometry (ARBO) annual conference; to take a hard look at how it best aligns with the Board's strategic plan, as well as how it will help the citizens in our state; to look into the possibility of modifying or amending and/or rescinding the request letter that was already submitted for 2016 and possibly prepare a new package for review. Donna Burke seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

F. Enforcement Program

17. Vote on Whether to Approve Board Meeting Minutes

A. November 21, 2014

Rachel Michelin moved to approve the November 21, 2014 meeting minutes. Alejandro Arredondo seconded. The Board voted 8-Aye; 3-Abstention to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla			X		
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi			X		
Dr. Turetsky	X				
Dr. Wang			X		

B. January 23, 2015

Draft minutes for the January 23, 2015 are still under review.

Rachel Michelin moved that staff be permitted to revert to action minutes with any recorded public meeting whether by webcast or tape, however in the event a public meeting does not have a webcast or recording staff will revert back to written minutes . Donna Burke seconded. Madhu Chawla moved for a friendly amendment to the motion that if any Board member wishes that his or her comment be included in the minutes, he/she may state that directive and the comment will be added in detail to the minutes. Donna Burke seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

C. February 24, 2015

Madhu Chawla moved to approve the February 24, 2015 minutes as amended. Cyd Brandvein seconded. The Board voted 7-Aye; 4-Abstention to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina			X		
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin			X		
Mr. Morodomi			X		
Dr. Turetsky	X				
Dr. Wang			X		

18. Election of Officers

Board Members voted for Madhu Chawla or Donna Burke for President. The Board voted 8 – Dr. Chawla; 3 – Ms. Burke; Dr. Chawla will be Board President effective July 1, 2015.

Member	Madhu Chawla, O.D.	Donna Burke
Dr. Arredondo	X	
Dr. Chawla	X	
Ms. Burke		X
Ms. Brandvein	X	
Dr. Giardina		X
Dr. Kawaguchi	X	
Mr. Kysella	X	
Ms. Michelin	X	
Mr. Morodomi	X	
Dr. Turetsky		X
Dr. Wang	X	

Madhu Chawla nominated Cyd Brandvein for Vice President. Board Members voted unanimously (11-0) for Ms. Brandvein. Ms. Brandvein will become Vice President effective July 1, 2015.

Member	Aye	No
Dr. Arredondo	X	
Dr. Chawla	X	
Ms. Burke	X	
Ms. Brandvein	X	
Dr. Giardina	X	
Dr. Kawaguchi	X	
Mr. Kysella	X	
Ms. Michelin	X	
Mr. Morodomi	X	
Dr. Turetsky	X	
Dr. Wang	X	

Madhu Chawla nominated Rachel Michelin for Secretary. Board Members voted unanimously (11-0) for Ms. Michelin. Ms. Michelin will become Secretary effective July 1, 2015.

Member	Aye	No
Dr. Arredondo	X	
Dr. Chawla	X	
Ms. Burke	X	
Ms. Brandvein	X	
Dr. Giardina	X	
Dr. Kawaguchi	X	
Mr. Kysella	X	
Ms. Michelin	X	
Mr. Morodomi	X	

Dr. Turetsky	X	
Dr. Wang	X	

19. Discussion and Possible Approval of the Revised Executive Officer's Duty Statement

William Kysella moved to approve the revised Executive Officer's duty statement. Lillian Wang seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

20. Update on the Recruitment Process and Timeline for Selecting a New Executive Officer

No action was taken on this agenda item.

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

No action was taken on this agenda item.

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 Arrangement Between Optometrists and Opticians or persons in Optical Product Business and BPC §2556, Unlawful Practice

William Kysella moved to direct staff to post a draft statement on the Board's website as an update to the 2015 statement striking the last sentence of the second paragraph. Mark Morodomi seconded. William Kysella moved for a friendly amendment to his original motion to include directing staff to add the statement that "any legislation related to Section 655 may be found at:" and include a link for legislation information. Mark Morodomi seconded. The Board voted 7-Aye; 2-No; 2-abstention to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				

Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein			X		
Dr. Giardina		X			
Dr. Kawaguchi		X			
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky			X		
Dr. Wang	X				

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)

No action was taken on this 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

Mark Morodomi moved to approve staff's proposed amendments and support if amended. Frank Giardina seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina	X				
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				

25. Suggestions for Future Agenda Items

No action was taken on this agenda item.

26. Adjournment

No action was taken on this agenda item. There were no objections and the meeting was adjourned.

**Board of Optometry**

2450 Del Paso Road, Suite 105, Sacramento, CA 95834

P: (916) 575-7170 F: (916) 575-7292 www.optometry.ca.gov

**ACTION MEETING MINUTES**

June 12, 2015

Teleconference

DRAFT

2450 Del Paso Road
First Floor, Sequoia Room
Sacramento, CA 95834

7488 Shoreline Drive, #B-1
Stockton, CA 95219

Juniper Serra Building
320 West Fourth Street, Suite 630
Los Angeles, CA 90013

Starbucks
44 Plaza Circle
Orange, CA 92866

Community Health Centers
Optometry
150 Tejas Place
Nipomo, CA 93444

Oakland Marriott City Center
1001 Broadway, 2nd Floor
Oakland, CA 9607

Moraga Country Club
1600 St. Andrews Drive
Moraga, CA 94556

Members Present	Staff Present
Alejandro Arredondo, O.D., Board President, Professional Member	Jessica Sieferman, Acting Executive Officer
Madhu Chawla, O.D., Vice President, Professional Member	Nooshin Movassaghi, Policy Analyst
Donna Burke, Board Secretary, Public Member	Cheree Kimball, Enforcement Analyst
Frank Giardina, O.D., Professional Member	Rob Stephanopoulos, Enforcement Analyst
Cyd Brandvein, Public Member	Claire Yazigi, Legal Counsel
William H. Kysella, Jr., Public Member	Tim McDonough, DAG Liaison
Rachel Michelin, Public Member	
Mark Morodomi, Public Member	
David Turetsky, O.D., Professional Member	Guest List
Lillian Wang, O.D., Professional Member	On File

Friday, June 12th
9:00 a.m.

FULL BOARD OPEN SESSION**1. Call to Order/Roll Call and Establishment of a Quorum**

Board President, Alex Arredondo requested that President-Elect, Madhu Chawla facilitate the Board meeting, as she was at the Sacramento location, which had the most members and guests. President-Elect Madhu Chawla called roll and a quorum was established.

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)].

{No action was taken on this item.}

3. Discussion and Possible Action on Assembly Bill 684: Healing arts: licensees: disciplinary actions

Madhu Chawla moved to delay taking a position to allow the authors of the bill to take the Board's concerns into consideration. In a letter to the author, Board staff will outline the following concerns to be addressed:

- Consumer protection
- The effective date to address the gold rush/attrition issue using the Medical Board's suggested edits and not subsection D
- Statute of limitations
- Criminal enforcement, since the district attorney is not a state agency

Dr. Arredondo seconded. The Board voted 9-Aye; 0-No; 1-Abstention; the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke			X		
Ms. Brandvein	X				
Dr. Giardina	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky	X				
Dr. Wang	X				
Mr. Kysella	X				

Rachel Michelin requested that the next meeting concerning this bill be an in-person meeting.

FULL BOARD CLOSED SESSION

4. Pursuant to Government Code Section 11126(e), the Board Will Meet in Closed Session to discuss pending litigation – *Anthony Rudick, O.D.; Ridge Eye Care, Inc., v. State Board of Optometry*, Superior Court of the State of California for the County of Sacramento, Case KG13708526
5. 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

6. Suggestions for Future Agenda items

Mr. Morodomi stated he would like a report on how enforcement prioritizes cases.

7. Adjournment

There were no objections and the meeting was adjourned.

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

To: Board Members

Date: August 28, 2015

From: Madhu Chawla, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 5 – Board Communications with Interested Parties

As indicated in its Strategic Plan, the Board values integrity and transparency, stating the following:

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.

In an effort to promote these values, Board Members are encouraged to publicly disclose any communications with interested parties.

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

To: Board Members

Date: August 28, 2015

From: Madhu Chawla
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 6 – Department of Consumer Affairs Report

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

To: Board Members

Date: August 28, 2015

From: Jessica Sieferman
Acting Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 7 – Executive Officer’s Report

A. BreEZe Database

Staff continues to work with the Department of Consumer Affairs (DCA) to ensure BreEZe meets the Board’s needs. The Organizational Change Management (OCM) Team and staff completed mapping licensing and enforcement as-is processes in July. The OCM Team is now examining the to-be BreEZe processes and identifying any potential gaps. The OCM Team will then work with staff to confirm and rectify those gaps.

The Board’s Data Validation (DV) Team completed its fifth DV test run ahead of schedule on July 29, 2015. The sixth 10-day test run will start on August 26, 2015. In addition, staff completed User Acceptance Training (UAT) on August 13, 2015 and will officially start UAT full-time on September 23, 2015.

Staff has also reached out to faculty at some of the colleges of optometry to solicit a few individuals to participate in UAT activities. Staff believes faculty and students bring a fresh and unique perspective to this process and look forward to their input.

B. Strategic Plan

The Strategic Plan Report (Attachment 1) provides an update on the status of each Board objective.

C. 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 Board budget is \$1,850,617.

Expenditures as of Month 12: \$1,764,150.
Expenditure Report (Attachment 2)

Board Fund Condition

As of Month 12, the Board's Fund Condition reflects \$1,845,000 revenue collected and 9.7 months in reserve (Attachment 3).

General Fund Loans

The Board's loan balance to the General Fund remains \$1 million dollars. Boards with repayment schedules are in or close to a negative fund reserve.

D. Personnel

The Board's Executive Officer, Mona Maggio, retired on April 30, 2015. Ms. Maggio devoted thirty years to state service and consumer protection. Ms. Maggio was given a Resolution from Senator Hernandez acknowledging her years of public service and dedication. Her commitment was appreciated by the Board, its staff, licensees, and consumers.

The Board's Assistant Executive Officer, Jessica Sieferman was appointed the Board's Acting Executive Officer until the Board appoints Ms. Maggio's replacement.

E. Examination and Licensing Programs

OPES and Board staff held six law examination workshops from March through June 2015. The increased outreach for subject matter experts proved successful. The Board turned away many licensees interested in participating and has a waitlist of over 20 potential subject matter experts who requested to be contacted once new workshop dates are established.

The Board's licensing unit continues to identify opportunities to improve and streamline its processes. Staff has been working closely with Board legal counsel to improve our licensing applications. Once completed, staff will bring the applications (and suggested regulatory amendments) to the Board for approval.

On July 21, 2015, Ms. Sieferman met with DCA to discuss the Board's Licensing Performance Measures Targets. As discussed in prior meetings, DCA is required to report Licensing Performance Measures to the Governor's Office as part of Performance Based Budgeting. DCA anticipates displaying performance targets in the 2016-17 Governor's Budget and actual performance data in the 2017-18 Governor's Budget. DCA is primarily obtaining the licensing data from either its legacy database – Applicant Tracking System (ATS) - or BreEZe.

However, due to current constraints in ATS, staff is manually tracking all applications the Board receives using an Excel spreadsheet. Using this data, the licensing unit will set its targets to mirror a 15% improvement.

Please see Attachment 4 for licensing statistics.

F. Enforcement Program

CURES 2.0

In June 2015, Jessica Sieferman participated in UAT for the new CURES 2.0 system implemented by the Department of Justice (DOJ). During UAT, Ms. Sieferman and the DOJ were able to develop a Board specific report to help identify suspicious prescribing behavior. Based on this report, the Board's enforcement program initiated 52 cases and is working with the Division of Investigation for further investigation.

In July 2015, the DOJ initiated a "soft launch and phased rollout" in order to ensure a smooth transition from the current system. As indicated in Attachment 5, CURES 2.0 is being rolled out to users in phases over the next several months, beginning with early adoption by a select group of users who currently use CURES and meet the CURES 2.0 security standards, including minimum browser

specifications. Select Regulatory Board staff, including Ms. Sieferman, was included in the initial rollout.

As a reminder, all optometrists who possess a TPA certification (including TPL, TPG and TLG) and a Drug Enforcement Administration (DEA) number will need to register for CURES 2.0 by January 1, 2016.

Any questions related to CURES 2.0 should contact the DOJ at cures@doj.ca.gov or by phone at (916) 227-3843.

National Practitioner's Databank (NPDB)

The Board submitted a Budget Change Proposal to secure funding in order to enroll applicants and licensees into the NPDB continuous query program. The continuous query program would immediately notify the Board whenever disciplinary action has been taken against a practitioner. Staff believes that this is an essential enforcement tool to ensure all licensees are safe to practice in California.

The Board may take action against a licensee or deny an application for licensure pursuant to BPC Section 3110 (h) if there has been disciplinary action by another state or governmental agency. State Licensing, Certification and other governmental agencies are required to report adverse actions taken against a practitioner to the NPDB and supply a copy of that action to the applicable state licensing boards. However, the Board rarely receives these reports and they can arrive years after the action occurred. In addition, this relies on the applicable agencies knowing where the practitioners are licensed. If another state board does not know the practitioner is also licensed or applying for licensure in California, they would not know to send the report to the Board. Likewise, if the practitioner does not disclose they are or were licensed in another state, the Board would have no knowledge such license existed.

As such, there could be several licensees who have been disciplined in states without the Board's knowledge. Staff believes this poses a threat to public safety, because optometrists may be practicing in California despite having been deemed a threat to public safety in another state.

Goal 4 of the Board's Strategic Plan states that "[t]he 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 order to ensure all California optometrists are safe to practice, the Board requires the right tools to enforce its statutes. Staff believes NPDB's continuous query program is one of these tools.

If this BCP is not approved, the Board would have to redirect existing funds. This may lead to the loss of temporary staff help, which would negatively impact our licensing application timelines and increase existing permanent staff workload.

Enforcement Caseload, Restructure, and Process Change

Over the last four fiscal years (10/11-13/14), the Board operated with the most enforcement staff it has ever had. On average, the enforcement unit annually received 277 cases and closed 276 cases.

In comparison, in FY 14/15, the Board operated with three enforcement staff – all of which have been actively involved in BreZE activities. The unit also received the most amount of cases compared to prior years. In order to address the staffing challenges and the increased workload, the enforcement unit restructured how it handles and assigns cases. In addition, it identified several opportunities to streamline its processes. As a result, staff was able to close more cases than ever. Staff is anticipating an increase in disciplinary actions as a result of the CURES related cases, but believes the streamlined processes will help overall disciplinary cycle times.

	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Received	295	318	254	242	404
Closed	227	282	288	307	308
Pending	134	170	136	71	167
Actions Filed	9	3	18	8	6
Staff	6	6	5	5	3

Please refer to Attachments 6 and 7 for the Quarter 4 and Fiscal Year 2014/15 Enforcement Performance Measures, prepared by DCA.

Attachments

1. Strategic Plan Report
2. Expenditure Report
3. Fund Condition Report
4. Licensing Statistics
5. CURES Notice
6. Q4 Enforcement Performance Measures
7. FY 14/15 Enforcement Performance Measures

**STATE BOARD OF OPTOMETRY
STRATEGIC PLAN STATUS REPORT
August 13, 2015**

Licensing Goal 1 <i>The Board provides applicants and licensees a method for obtaining and maintaining license registration, business licenses, and certifications required to practice optometry in California.</i>	
Objective 1.1: Work with DCA to ensure successful implementation of the BreEZe system including ATS data clean-up to prepare for migration.	STATUS/ COMPLETION DATE
Board staff is actively participating in BreEZe activities such as Organizational Change Management (OCM), Data Validation (DV), and User Acceptance Testing (UAT). Through multiple DV runs, staff is able to continuously clean erroneous data.	Ongoing (End date has been extended thru Jan. 2016).
Objective 1.2: Inform licensees about the new online services that will be available with the launch of BreEZe.	STATUS/ COMPLETION DATE
Board staff met with schools in April and May 2015 to inform them about BreEZe features and benefits. The Schools were instructed to contact the Board with any questions regarding the BreEZe system. Board staff will continue to provide additional outreach to students and faculty members. Staff is working with the BreEZe team and publications unit to create and disseminate information to its licensees and profession associations.	Ongoing.
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
	No update.
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>	
Objective 2.1: Perform an occupational analysis to ensure examination integrity and address possible scope of practice expansion.	STATUS/ COMPLETION DATE
	No update.
Objective 2.2: Evaluate the benefit and cost of increasing the frequency of offering the California Law and Regulations Examination.	STATUS/ COMPLETION DATE
It was previously reported that the benefit did not outweigh the cost of increasing the frequency of offering the CLRE exam; however, Board staff is reevaluating the cost benefit analysis.	No update.
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>	
Objective 3.1: Actively engage in the evaluation and/or development of scope-of-practice issues and any associated legislation. If required: 1. Promulgate regulations to implement legislative changes.	STATUS/ COMPLETION DATE

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.	
<p>Board staff participated in discussions pertaining to SB 622. The Board took a support if amended position; however, it did not make it through the legislative cycle. Staff will continue to participate in any future discussions regarding scope expansion.</p>	<p>Ongoing.</p>
Objective 3.2: Sponsor legislation to expand or clarify the Optometry Practice Act.	STATUS/ COMPLETION DATE
<p>The Board has sponsored:</p> <ul style="list-style-type: none"> • AB1253, which provides licensees with a retired license status <ul style="list-style-type: none"> ○ Status: chaptered July 16, 2015 • AB1359, addresses the method to earn TPA certification <ul style="list-style-type: none"> ○ ordered to a third reading June 30, 2015 • SB349, regarding mobile optometric facilities <ul style="list-style-type: none"> ○ hearing postponed April 16, 2015 • SB402, which relates to school vision screenings <ul style="list-style-type: none"> ○ held in committee May 28, 2015 • SB496, regarding foreign graduates <ul style="list-style-type: none"> ○ hearing postponed April 13, 2015 <p>Staff is currently evaluating the Optometry Practice Act to identify areas requiring expansion or clarification. Staff will continuously update the Board on any potential need for Board sponsored legislation.</p>	<p>Ongoing.</p>
Objective 3.3: Review regulations to determine need for clarity then revise and/or amend as needed.	STATUS/ COMPLETION DATE
<p>Staff has identified multiple regulations requiring revision. Rulemaking has been initiated regarding CCR §1536 to allow licensees to take Continuing Medical Education courses for license renewal. In addition, the rulemaking process continues on CCR §1516, which permits the Board to compel for a psychological examination, and further defines unprofessional conduct.</p> <p>Staff will work with Legislation/Regulation Committee to prioritize and develop/amend regulations for Board approval.</p>	<p>Ongoing.</p>
Objective 3.4: Inform and educate licensees and interested stakeholders about new or unfamiliar laws and regulations.	STATUS/ COMPLETION DATE
<p>The Board is using social media to reach out to licensees.</p>	<p>Ongoing.</p>
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
<p>In January 2015, the Medical Board of California voted to keep the RDO program under their regulatory authority.</p>	

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
<p>The Board's Enforcement Unit is currently being restructured in order to improve efficiencies with existing resources. Existing workload did not justify additional enforcement positions; however, with CURES 2.0 implementation and the ability to create Board-specific reports, there may be justification to pursue a BCP next fiscal year.</p>	<p>Ongoing.</p>
Objective 4.2: Work with DCA to ensure successful implementation of the BreEze system including CAS data clean-up to prepare for migration.	STATUS/ COMPLETION DATE
<p>Board staff is actively participating in BreEze activities such as Organizational Change Management (OCM), Data Validation (DV), and User Acceptance Testing (UAT). Through multiple DV runs, staff is able to continuously clean erroneous data.</p>	<p>Ongoing (End date has been extended thru Jan. 2016).</p>
Objective 4.3: Identify and implement process improvements in the Enforcement unit to reduce enforcement and discipline cycle times.	STATUS/ COMPLETION DATE
<p>The Board's Enforcement Unit is currently being restructured in order to improve efficiencies with existing resources. In addition, the Board's Enforcement Unit identified and eliminated unnecessary processes, which should improve discipline cycle times. Enforcement staff will continuously monitor the effectiveness of these changes.</p>	<p>Ongoing.</p>
Objective 4.4: Create inspection authority to enable the Board to inspect practice locations to proactively identify areas of non-compliance.	STATUS/ COMPLETION DATE
<p>As part of its "support if amended" position, the Board requested inspection authority be added to SB 622. However, as previously stated, SB 622 did not pass this legislative cycle; the Board will continue to pursue this objective next legislative cycle.</p>	<p>Ongoing.</p>
Objective 4.5: Increase enforcement efforts to address optometry practice in unlicensed locations.	STATUS/ COMPLETION DATE
<p>The Board's Enforcement Unit is proactively investigating potential unlicensed practice by companies offering online optometric services to California consumers. In addition, Staff (as the Board directed) is currently working on an outreach plan, including educational materials for the public so they are aware of the dangers of these online services.. Further, staff is working with DCA's publication unit to develop short PSA videos informing consumers about contact lens safety, including the potential dangers of receiving services from an unlicensed individual.</p>	<p>Ongoing.</p>
Objective 4.6: Increase communication to administrators of community and school clinics to educate administrators about the Board's complaint process.	STATUS/ COMPLETION DATE

	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
	No update.
5.2 Develop a communications plan that includes the following:	STATUS/ COMPLETION DATE
<p>a) Include inserts with renewal notices to optometrists with reminders about the requirement to make consumer protection information available to patients.</p> <p>b) Research the feasibility of using free public service announcements to disseminate optometric health information to consumers.</p> <p>c) Identify public relations agencies that could provide pro bono work to assist the Board with expanding outreach to consumers.</p> <p>d) Work with DCA's Office of Publications, Design and Editing to create multi-language consumer education materials.</p> <p>e) Expand social media by using more frequent messages and exploring additional online opportunities. Board staff is currently utilizing multiple social media platforms including Facebook, Twitter, and Youtube. The links to these social media sites are included in the signature blocks of all Board staff.</p> <p>f) Explore having a Board representative attend major optometric continuing education events for direct outreach to licensees.</p>	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
With the assistance of the DCA's OCM team, Board staff has mapped all current licensing and enforcement business processes. Once the to-be process maps are complete, Board staff can utilize	Ongoing.
6.2 Conduct a job analysis for all Board programs to identify areas for resource allocation and enhancement.	STATUS/ COMPLETION DATE
The Board's Enforcement, Licensing, and Administration Units are currently being restructured in order to improve efficiencies with existing resources. Staff will continuously monitor the effectiveness of these changes and present recommendations in the near future.	Ongoing.
6.3 Use the Individual Development Plan (IDP) process to increase professional development of Board staff.	STATUS/ COMPLETION DATE

<p>During the July staff meeting, sample IDP's and performance appraisals were distributed. Individual staff meetings will be set in September to review their specific IDP and explain how their performance will be appraised throughout the year. Quarterly meetings will be set to review IDP progress.</p>	<p>Ongoing.</p>
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**BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2014-15 EXPENDITURE PROJECTION**

FM 12

OBJECT DESCRIPTION	FY 2013-14		FY 2014-15				
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES 6/30/2014	BUDGET STONE 2014-15	CURRENT YEAR EXPENDITURES 6/30/2015	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	350,625	349,953	417,391	434,990	104%	434,990	(17,599)
Statutory Exempt (EO)	84,180	84,180	84,180	71,550	85%	71,550	12,630
Temp Help Reg (907)	25,669	25,083	41,000	68,314	167%	70,275	(29,275)
Temp Help (Exam Proctors)			0				0
Board Member Per Diem	9,200	9,200	7,353	12,500	170%	12,500	(5,147)
Committee Members (DEC)			0				0
Overtime	2,948	2,948	0	4,830		4,830	(4,830)
Staff Benefits	186,104	186,044	291,209	244,388	84%	244,388	46,821
TOTALS, PERSONNEL SVC	658,726	657,408	841,133	836,572	99%	838,533	2,600
OPERATING EXPENSE AND EQUIPMENT							
General Expense	7,200	6,950	15,654	8,907	57%	9,000	6,654
Fingerprint Report	2,818	2,818	5,306	3,308	62%	3,308	1,998
Minor Equipment	3,992	3,992	4,350	2,989	69%	2,989	1,361
Printing	12,330	12,330	12,023	1,803	15%	2,000	10,023
Communications	4,476	4,233	5,446	3,665	67%	4,000	1,446
Postage	14,850	14,850	13,056	15,066	115%	15,066	(2,010)
Insurance			0				0
Travel In State	38,846	38,046	31,458	38,273	122%	40,000	(8,542)
Travel Out-of-State	508	508	0				0
Training	85	85	1,037	0	0%		1,037
Facilities Operations	108,583	108,583	58,676	111,105	189%	111,105	(52,429)
Utilities			0				0
C & P Services - Interdept.	39,029	39,029	2,943	2	0%	2	2,941
C & P Services - External			0	30,465		30,465	(30,465)
DEPARTMENTAL SERVICES:							
OIS Pro Rata	140,852	142,337	180,455	180,901	100%	180,901	(446)
Admin Pro Rata	105,859	106,494	118,581	118,209	100%	118,209	372
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	3,409	3,708	4,128	111%	4,218	(510)
Public Affairs Pro Rata	3,921	4,792	3,625	3,131	86%	3,131	494
PCSD Pro Rata	3,865	4,102	3,939	4,119	105%	4,119	(180)
INTERAGENCY SERVICES:							
Consolidated Data Centers	673	663	4,509	315	7%	700	3,809
DP Maintenance & Supply	1,036	1,036	942	1,990	211%	2,000	(1,058)
Statewide Pro Rata	65,849	65,849	82,909	82,909	100%	82,909	0
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight	0	0	484	0	0%	0	484
Exam Site Rental			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	19,712		14,700		14,700	(14,700)
ENFORCEMENT:							
Attorney General	195,500	195,500	229,055	149,353	65%	153,000	76,055
Office Admin. Hearings	42,387	42,387	37,930	32,318	85%	33,000	4,930
Court Reporters	1,408	908		2,298		2,900	(2,900)
Evidence/Witness Fees	22,600	22,100	15,877	8,404	53%	9,000	6,877
DOI - Investigations	217,607	217,895	153,672	153,458	100%	153,672	0
Major Equipment		0	9,000		0%	0	9,000
Other Items of Expense				58		58	(58)
Vehicle Operations							0
TOTALS, OE&E	1,082,583	1,081,226	1,015,484	996,755	98%	1,005,334	10,150
TOTAL EXPENSE	1,741,309	1,738,634	1,856,617	1,833,327	198%	1,843,867	12,750
Reimb. - State Optometry Fund	(100)	(100)					0
Sched. Reimb. - Fingerprints	(4,508)	(4,508)	(6,000)	(3,871)	65%	(6,000)	0
Sched. Reimb. - Other	(4,790)	(4,790)		(3,760)			0
Probation Monitoring Fee - Variable	(15,000)	(15,000)		(17,633)			0
Unsched. Reimb. - Investigative Cost Recover	(48,869)	(48,869)		(43,913)			0
Unsch. DOI ICR Administrative Case							0
Unsched. Reimb. - ICR - Prob Monitor	(100)	(100)					0
NET APPROPRIATION	1,667,942	1,665,266	1,850,617	1,764,150	95%	1,837,867	12,750
SURPLUS/(DEFICIT):							0.7%

0763 - State Board of Optometry Analysis of Fund Condition

8/7/2015

(Dollars in Thousands)

2015 Budget Act

NOTE: \$1 Million Dollar General Fund Repayment Outstanding

BEGINNING BALANCE

Prior Year Adjustment

Adjusted Beginning Balance

Actual 2014-15	CY 2015-16	BY 2016-17	BY + 1 2017-18
\$ 1,438	\$ 1,458	\$ 1,562	\$ 1,627
\$ -	\$ -	\$ -	\$ -
\$ 1,438	\$ 1,458	\$ 1,562	\$ 1,627

REVENUES AND TRANSFERS

Revenues:

125600	Other regulatory fees
125700	Other regulatory licenses and permits
125800	Renewal fees
125900	Delinquent fees
141200	Sales of documents
142500	Miscellaneous services to the public
150300	Income from surplus money investments
160400	Sale of fixed assets
161000	Escheat of unclaimed checks and warrants
161400	Miscellaneous revenues
	Totals, Revenues

\$ 44	\$ 67	\$ 67	\$ 67
\$ 162	\$ 184	\$ 184	\$ 184
\$ 1,619	\$ 1,640	\$ 1,640	\$ 1,640
\$ 11	\$ 9	\$ 9	\$ 9
\$ -	\$ -	\$ -	\$ -
\$ 3	\$ 3	\$ 3	\$ 3
\$ 4	\$ 4	\$ 5	\$ 5
\$ -	\$ -	\$ -	\$ -
\$ 2	\$ 2	\$ 2	\$ 2
\$ -	\$ -	\$ -	\$ -
\$ 1,845	\$ 1,909	\$ 1,910	\$ 1,910

Totals, Revenues and Transfers

\$ 1,845	\$ 1,909	\$ 1,910	\$ 1,910
----------	----------	----------	----------

Totals, Resources

\$ 3,283	\$ 3,367	\$ 3,472	\$ 3,537
----------	----------	----------	----------

EXPENDITURES

Disbursements:

0840	State Controller (State Operations)
8880	Financial Information System for CA (State Operations)
1110	Program Expenditures (State Operations)

\$ -	\$ -	\$ -	\$ -
\$ 2	\$ 3	\$ -	\$ -
\$ 1,823	\$ 1,802	\$ 1,845	\$ 1,882

Total Disbursements

\$ 1,825	\$ 1,805	\$ 1,845	\$ 1,882
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FUND BALANCE

Reserve for economic uncertainties

\$ 1,458	\$ 1,562	\$ 1,627	\$ 1,655
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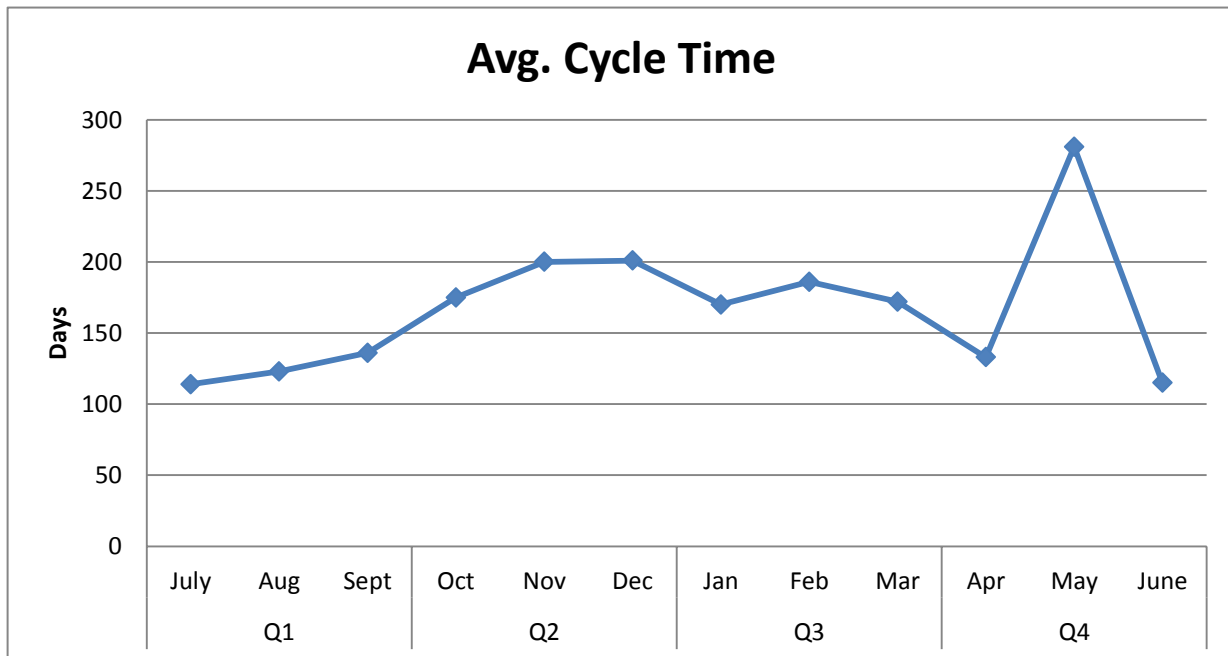
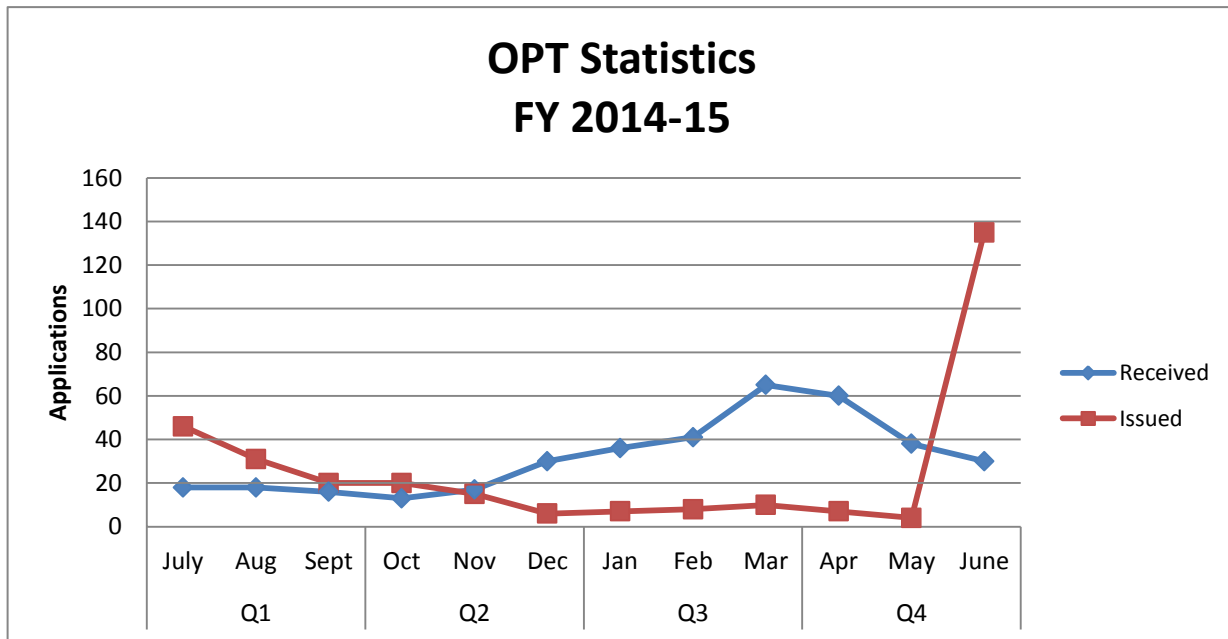
Months in Reserve

9.7	10.2	10.4	10.3
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NOTES:

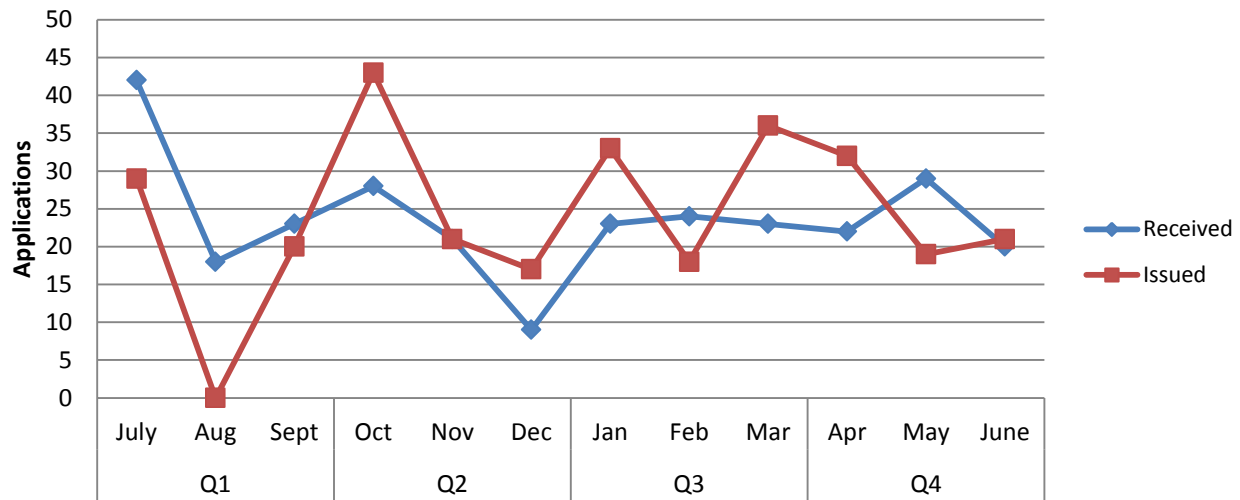
- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.

FY 2014-15														
			Q1			Q2			Q3			Q4		
			July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
OPTs	Received		18	18	16	13	17	30	36	41	65	60	38	30
	Issued		46	31	20	20	15	6	7	8	10	7	4	135
	Avg. Cycle Time		114	123	136	175	200	201	170	186	172	133	281	115
			FY TOTAL											
			382											
			309											
			134											

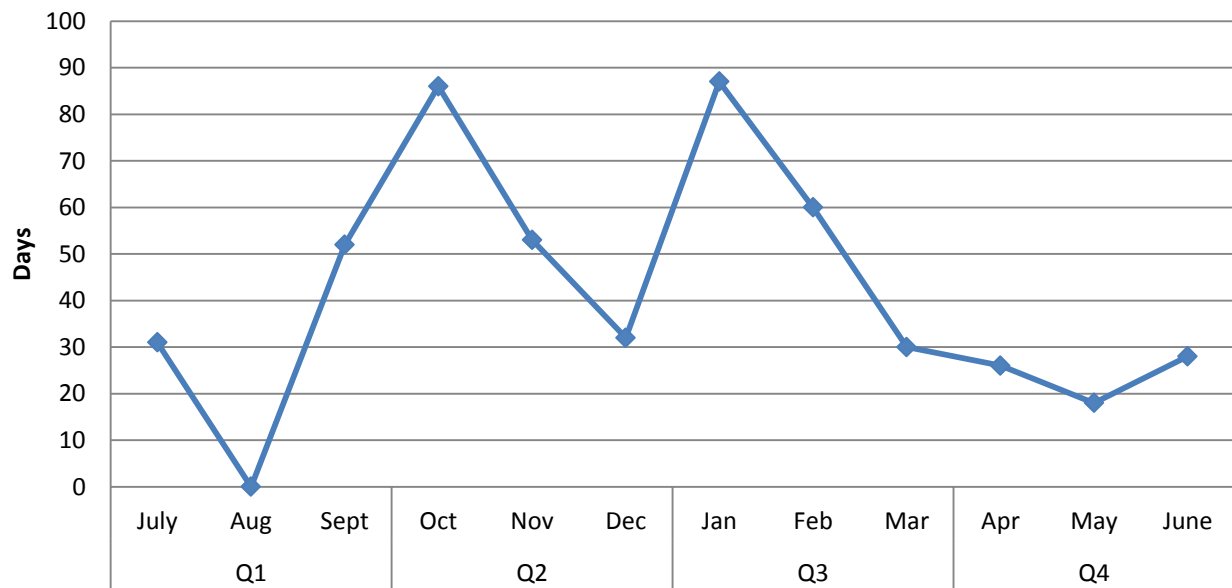


		FY 2014-15												FY TOTAL
		Q1			Q2			Q3			Q4			
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	
SOLs	Received	42	18	23	28	21	9	23	24	23	22	29	20	282
	Issued	29	0	20	43	21	17	33	18	36	32	19	21	289
	Avg. Cycle Time	31	0	52	86	53	32	87	60	30	26	18	28	49

SOL Statistics FY 2014-15

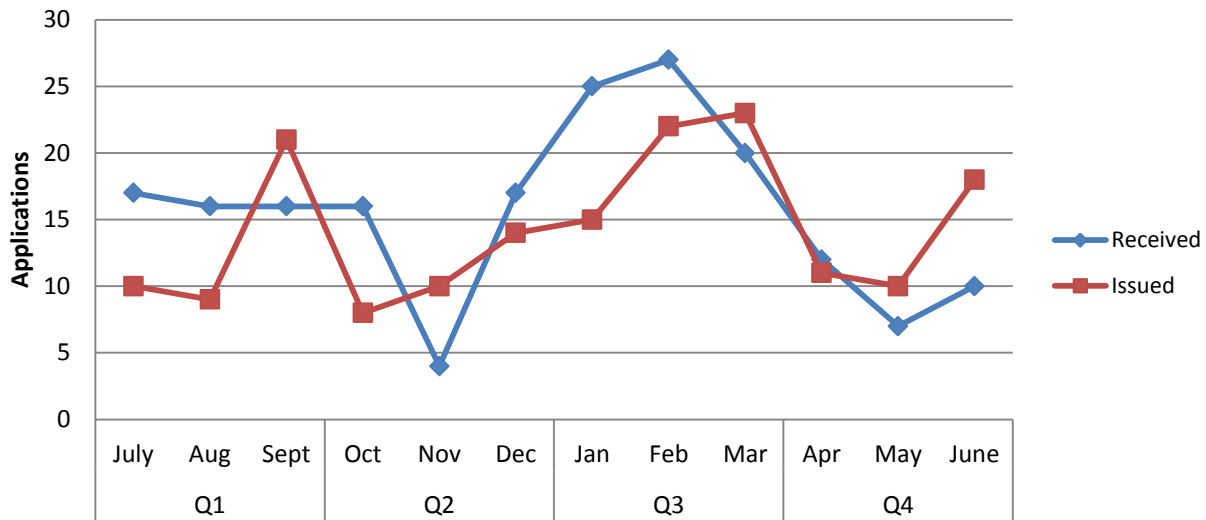


Avg. Cycle Time

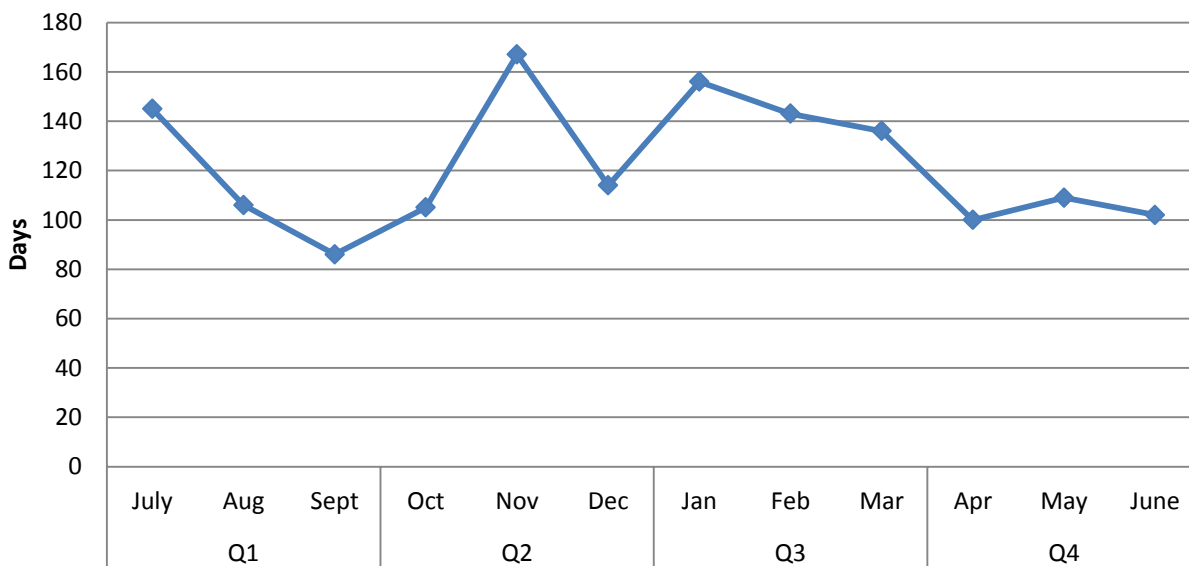


FY 2014-15														
			Q1			Q2			Q3			Q4		
			July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
FNPs	Received		17	16	16	16	4	17	25	27	20	12	7	10
	Issued		10	9	21	8	10	14	15	22	23	11	10	18
	Avg. Cycle Time		145	106	86	105	167	114	156	143	136	100	109	102
			FY TOTAL											
			187											
			171											
			122											

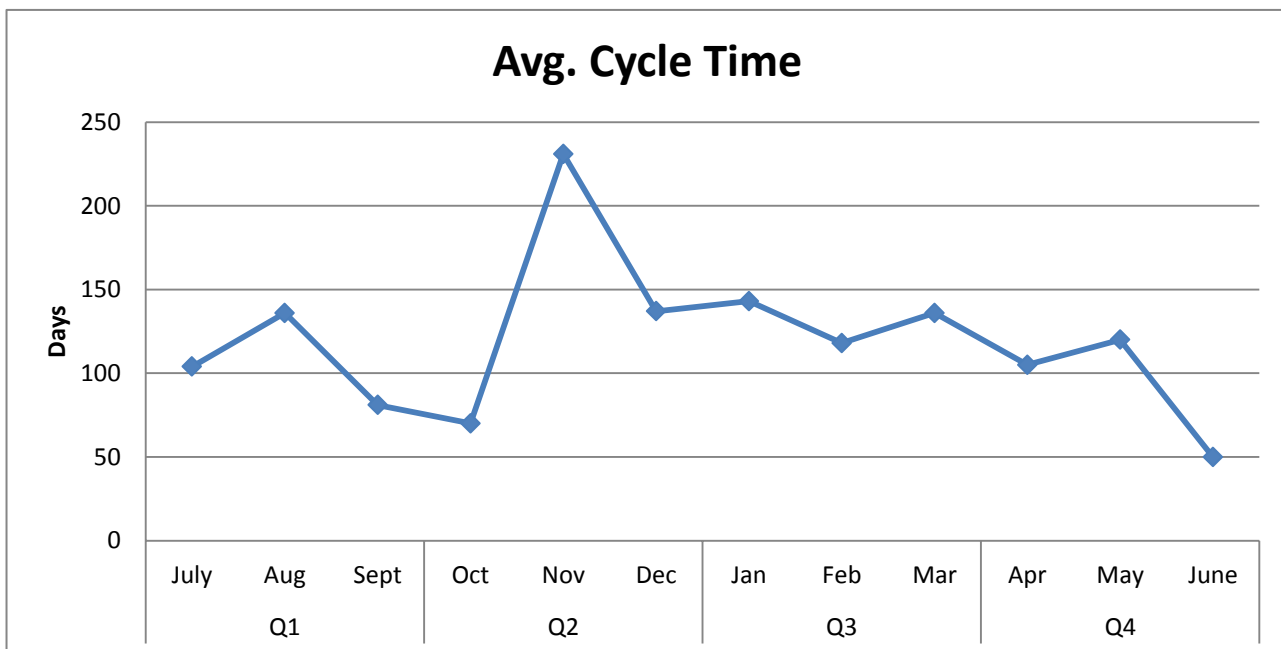
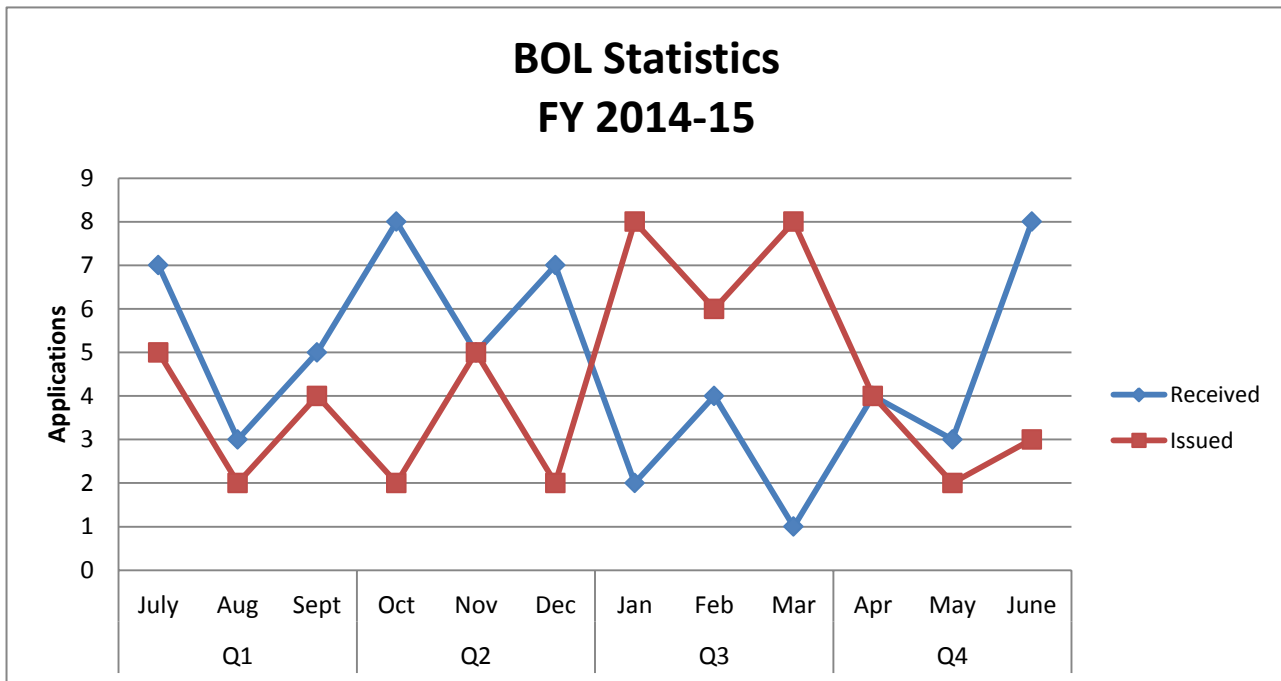
FNP Statistics FY 2014-15



Avg. Cycle Time



		FY 2014-15												FY TOTAL
		Q1			Q2			Q3			Q4			
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	
BOLS	Received	7	3	5	8	5	7	2	4	1	4	3	8	57
	Issued	5	2	4	2	5	2	8	6	8	4	2	3	51
	Avg. Cycle Time	104	136	81	70	231	137	143	118	136	105	120	50	126





CONTACT:
cures@doj.ca.gov
 (916) 227-3843

June 30, 2015

RE: CURES 2.0 Soft Launch and Phased Rollout

The Department of Justice (DOJ) and the Department of Consumer Affairs (DCA) are pleased to announce that the state’s new Controlled Substance Utilization Review and Evaluation System – commonly referred to as “**CURES 2.0**” – will go live on July 1, 2015. This upgraded prescription drug monitoring program features a variety of performance improvements and added functionality.

In order to ensure a smooth transition from the current system, CURES 2.0 will be rolled out to users in phases over the next several months, beginning with early adoption by a select group of users who currently use CURES and meet the CURES 2.0 security standards, including minimum browser specifications.¹ DOJ is currently identifying prescribers and dispensers who meet these criteria and will contact and coordinate their enrollment into CURES 2.0. For all other current users, access to CURES 1.0 will not change and no action is needed at this time. For users and entities not currently enrolled in CURES, further notification will be provided in August as to the enrollment/registration process.

Practitioners and health systems should begin to prepare for universal adoption of the system by January 2016, at which point all users will be required to meet CURES 2.0’s security standards. If you have any questions please contact cures@doj.ca.gov.

Thank you for your continued support of the CURES program.

¹ CURES 2.0 users will be required to use Microsoft Internet Explorer Version 11.0 or greater, Mozilla FireFox, Google Chrome, or Safari when accessing the system.

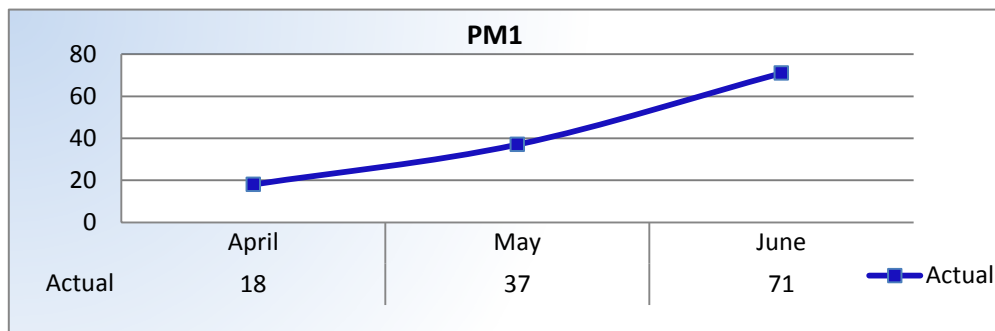
Performance Measures

Q4 Report (April - June 2015)

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

PM1 | Volume

Number of complaints and convictions received.

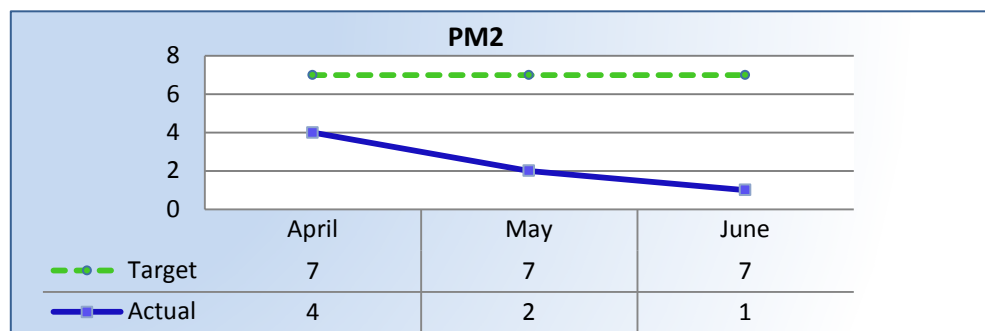


Total Received: 126 Monthly Average: 42

Complaints: 120 | Convictions: 6

PM2 | Intake

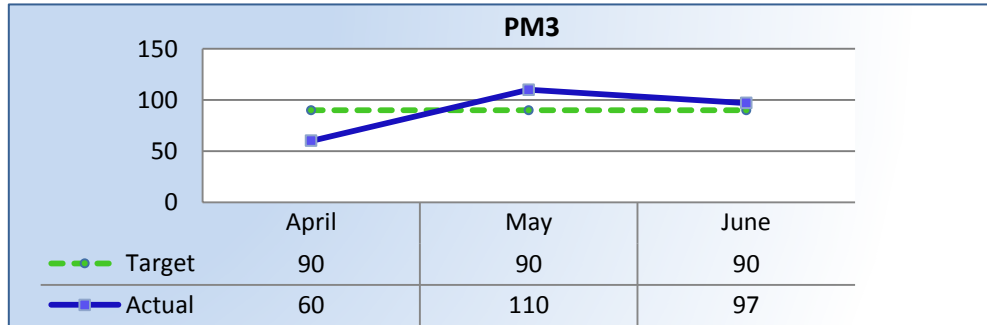
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 7 Days | Actual Average: 2 Days

PM3 | Intake & Investigation

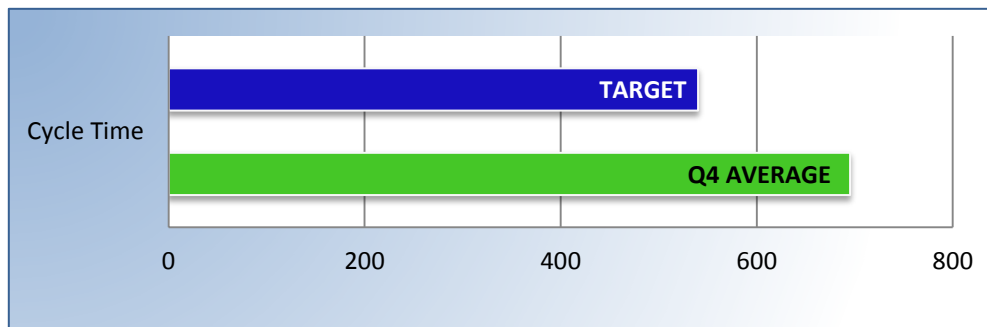
Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation)



Target Average: 90 Days | Actual Average: 97 Days

PM4 | Formal Discipline

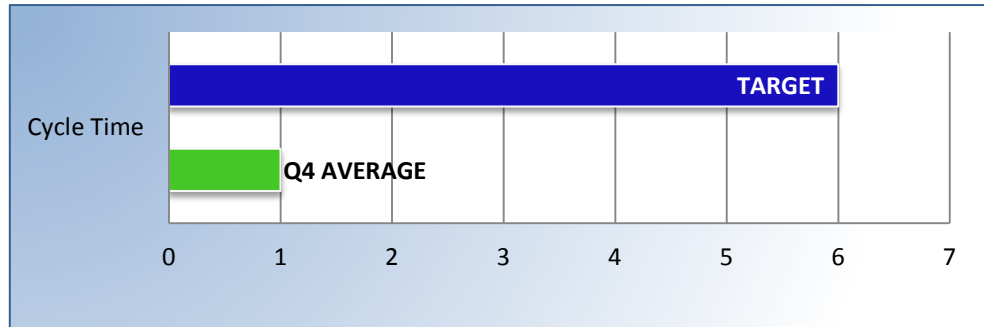
Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline. (Includes intake, investigation, and transmittal outcome)



Target Average: 540 Days | Actual Average: 695 days

PM7 | Probation Intake

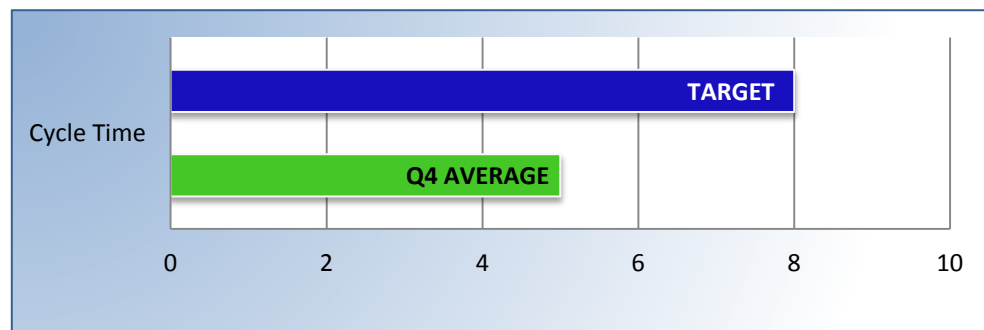
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 25 Days | Actual Average: 1

PM8 | Probation Violation Response

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



Target Average: 14 Days | Actual Average: 5

Board of Optometry

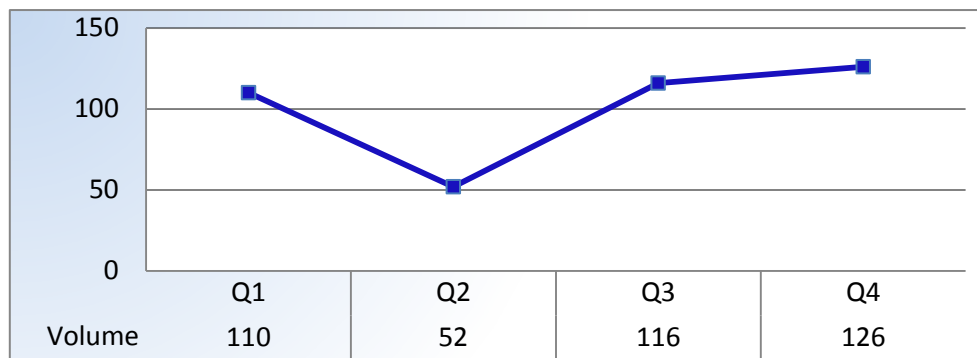
Performance Measures

Annual Report (2014 – 2015 Fiscal Year)

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

PM1 | Volume

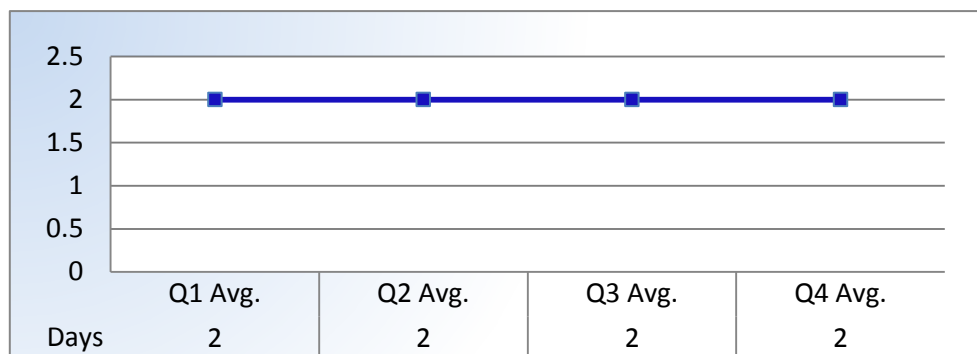
Number of complaints and convictions received.



Fiscal Year Total: 404

PM2 | Intake

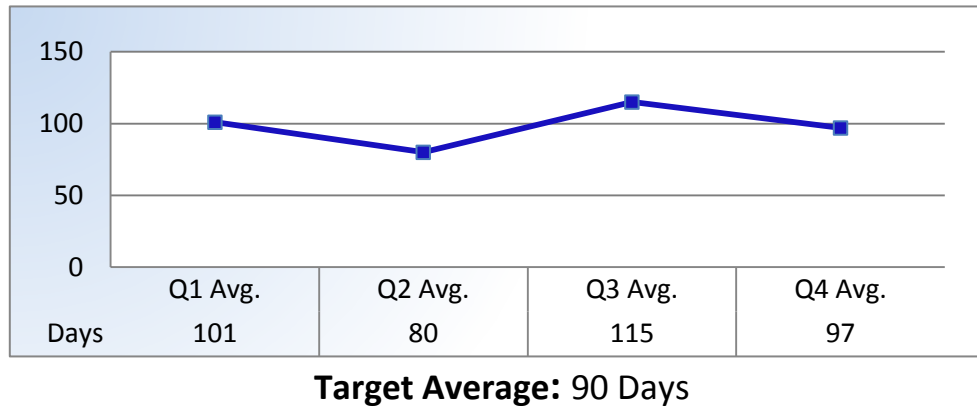
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 7 Days

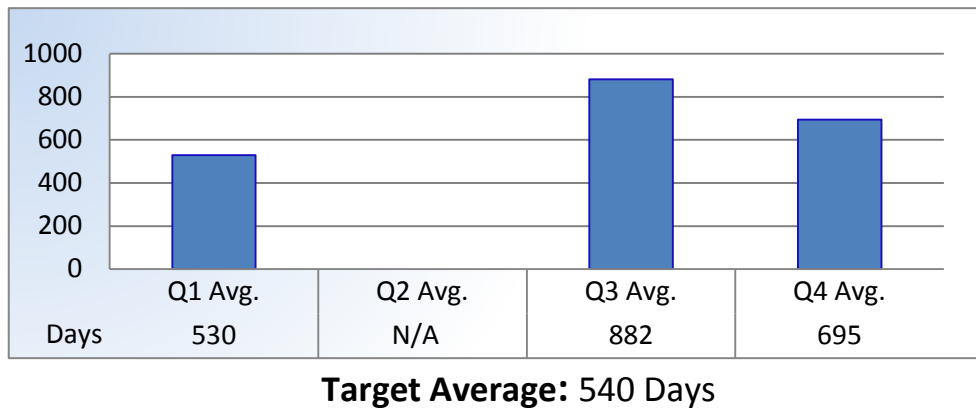
PM3 | Intake & Investigation

Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation)



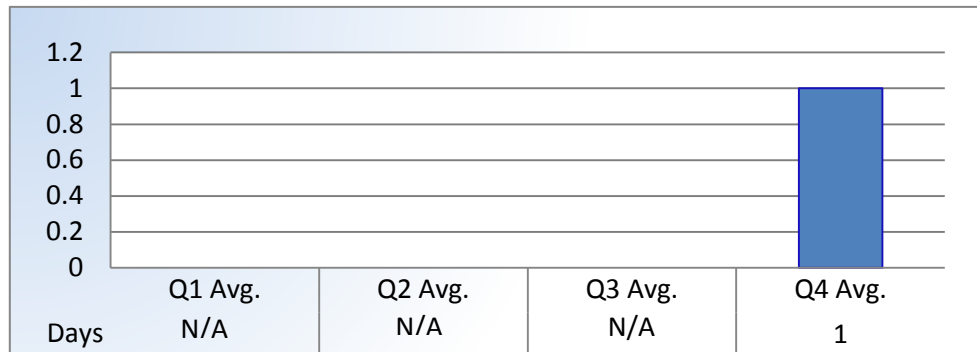
PM4 | Formal Discipline

Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline. (Includes intake, investigation, and transmittal outcome)



PM7 | Probation Intake

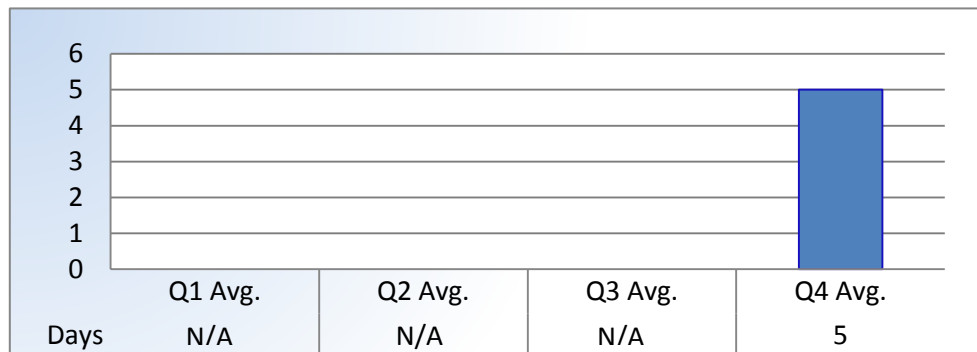
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 6 Days

PM8 | Probation Violation Response

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



Target Average: 8 Days

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

To: Board Members

Date: August 28, 2015

From: Jessica Sieferman
Assistant Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 8 – Consideration and Approval of the Board Member Handbook

Background

During the April 23-24, 2015 Board Meeting, the Board provided several edits to the draft Board Member Handbook. Staff worked with the Board Member Handbook Committee (Cyd Brandvein and Donna Burke) to incorporate those edits.

Action Requested

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

Attachment

1. Revised Board Member Handbook

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 <u>and receives direction from</u> the Board Members who provides direction to the EO in the areas of program administration, budget, strategic planning, and coordination of meetings
<u>Office of Administrative Hearings</u>	OAH	The state agency that provides neutral (unaffiliated with either party) judges to preside over administrative cases.
<u>Office of Administrative Law</u>	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.
<u>Regulation</u>	-	A standard that implements, interprets, or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.
<u>State Administrative Manual</u>	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 <u>Department of Finance</u> Director and the <u>Department of General Services</u> Director.
<u>Statute</u>	-	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 <u>Uniform Standards Related to Substance Abuse and Disciplinary Guidelines</u> 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
Diagnostic Pharmaceutical Agents (DPA)	Certified to use diagnostic pharmaceutical agents for examination purposes only. Not certified to treat diseases of the eye or its appendages.	BPC § 3041.2 , CCR § 1561
Therapeutic Pharmaceutical Agents (TPA) Certification	Certified to use therapeutic pharmaceutical agents to treat certain conditions of the human eye or any of its appendages. May also perform certain procedures on the eye as listed in California Business and Professions Code Section 3041. TPA is the minimum certification required in order to obtain licensure in California. 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	TPA certified with additional certification to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years. Required to perform lacrimal irrigation and dilation, an optometrist must be TPA certified.	BPC § 3041(e)(6) , BPC § 3041.3
Glaucoma Certification	TPA certified with additional certification to diagnose and treat primary open angle glaucoma in patients over the age of 18 years. 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 ~~a~~[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 ~~e~~[C](#)losed ~~s~~[S](#)ession 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 ~~e~~[C](#)losed ~~s~~[S](#)essions 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 ~~e~~[C](#)losed ~~s~~[S](#)essions must be held during a regular or ~~s~~[S](#)pecial ~~m~~[M](#)eeting (§ 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 ~~s~~Special ~~m~~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 ~~s~~Special ~~m~~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 ~~s~~Special ~~m~~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 ~~e~~Emergency ~~m~~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 ~~t~~ask ~~f~~orce ~~m~~Meetings are variations of Committee Meetings.

Board ~~m~~Meetings have historically been required to be noticed and open to the public, except where a ~~e~~losed ~~s~~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.](#))

[Agenda items align with the Board's mandate to protect the health and safety of California consumers.](#) 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, [where possible](#). 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 recommended by Board Members that may not have made the current Board Meeting agenda. [An item may be placed on the Board's agenda by the President, the Executive Officer, or by a vote of a majority of the members of the Board](#)

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 [DCA](#) 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.

Per Diem Expenses: Meals, lodging, and all appropriate incidental expenses incurred may be claimed when conducting State business while on travel status.

Per Diem Process for Board Members:

Each member must report their days worked on a timesheet and are compensated for each day worked \$100 (per diem).

Board Member timesheet needs to include:

- Month claiming per diem
- Dates claiming
- Place: Name of city where per diem is being claimed
- Time: start and end times Board Member conducted board business on that specific date
- Total hours: Total number of hours he/she conducted board business on that date*
- Service performed: committee meeting(s) attended, Board Meeting(s), etc

The EO must sign-off on the timesheet prior to submission to DCA's Office of Human Resources (OHR). OHR keys in the time and the check is issued (2-3 weeks) after it is keyed in by OHR

Board members are paid the \$100 per diem, in addition to their travel expenses reimbursements.

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~~ is available to answer questions, and [assist new Board Member with](#) understanding [ing their](#) 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

Generally, ~~the Board's legal counsel~~ Office of the Attorney General represents the Board for litigation and represents complainant for discipline cases. ~~accordingly for services rendered by the Office of the Attorney General.~~ The Board's DCA legal counsel provides "in-house" counsel, and impartial (or nonparty) counsel on discipline matters. It is the Board's policy to have DCA counsel present in closed sessions held pursuant to government code section 11126(c)(3), including deliberations on petition hearings.

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 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.

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~~ Counsel 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 (or in opposition to) the bill.

Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. The bill may also be held in the committee without a vote, if it appears likely that it will not pass. In the case of the Appropriations (or "Fiscal") Committee, the bill may be held in the "Suspense File" if the committee members determine that the bill's fiscal impact is too great, as weighed against the priorities of other bills that also impact the state's finances. 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~~ make an appropriation of state funds (except for the annual Budget Bill) or, that take effect immediately, generally require 27 votes in the Senate and ~~41~~ 54 votes (two-thirds vote) 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 **g**Governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is passed during the course of the regular in session, the **g**Governor must act within 12 days; ~~otherwise, he has 30 days to do so.~~ However, the Governor has 30 days to sign bills that are passed during the final days of the legislative year, usually in August or early September. A two-thirds vote from both houses can override the **g**Governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the **g**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:

- **No Position:** The Board may decide that the bill is outside the Board's jurisdiction or that it has other reasons to not have any position on the bill. The Board would not generally testify on such a bill.
- **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~~choose to adopt a neutral position. ~~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.

Board Members can access bill language, analysis, and vote history at <http://leginfo.legislature.ca.gov/> and watch all legislative hearings online at www.calchannel.com.

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.

After the Board has fulfilled this process, it must adopt a final version of the proposed rulemaking decision. Once this has been accomplished, the rulemaking action must be submitted to the Office of Administrative Law (OAL) for review within a year from the date the notice was published. OAL has 30 days to review the action.

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

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To: Board Members

Date: August 28, 2015

From: Nooshin Movassaghi
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 9 – Update and Possible Action on Legislation Impacting the Practice of Optometry**

The following bills, as currently written, impact the Board's functions and the practice of optometry. September 11, 2015 is the last day for each house to pass bills. The Governor can sign or veto passed bills in his possession until October 11, 2015. The most current bill language for each bill is attached.

A. Assembly Bill 595 (Alejo) Registered Dispensing Opticians: Certificates

Last Amended: April 15, 2015

Summary: This bill would authorize the Medical Board to revoke, suspend, or impose probationary conditions upon a registered dispensing optician's certificate for unprofessional conduct. Unprofessional conduct would be defined to include the repeated interference of a registered dispensing optician with the independent clinical judgment of an optometrist or with the optometrist's compliance with prevailing standards of practice for optometry.

Status: Two year bill

Recommendation: Watch

B. Assembly Bill 684 (Alejo) Healing arts: licensees: disciplinary actions

Last Amended: June 30, 2015

Summary: This bill until January 1, 2017, would prohibit an RDO or optometrist from being subject to discipline by the MBC, the Board, or other state agency with enforcement authority for engaging in any of the aforementioned business relationships. This bill would declare that it is to take effect immediately as an urgency statute.

Status: Senate Appropriations Hearing Date 8/17/15

Staff Comments: The Board's mission is to protect the health and safety of California consumers. While AB 684's urgency section clearly states how this bill protects businesses and licensees, it remains unclear how this bill protects consumers. BPC Section 655 was enacted for consumer

protection - to ensure patient care is solely based on optometrists' professional judgment and not the influence of lay corporations and other parties. After over a decade of litigation, the courts upheld the constitutionality of BPC Section 655, and the Board was able to enforce existing law. Licensees are responsible for complying with all laws governing their profession.

Recommendation: If the Board decides to take a formal position on AB 684, Board staff does not recommend taking a "Support" or "Support if amended" position, as it is not in the best interest of consumer protection.

C. Assembly Bill 789 (Calderon) Contact Lens Sellers: Fines

Last Amended: April 22, 2015

Summary: This bill would provide that physician, optometrist, registered dispensing optician, or registered nonresident contact lens seller shall not be subject to the pricing policy of a contact lens manufacturer that purports to establish a minimum advertised or selling price for contact lenses, and makes such a pricing policy unlawful and unenforceable.

Status: Two year bill

Recommendation: Watch

D. Assembly Bill 1253 (Steinorth) Optometry: license: retired volunteer service designation

Last Amended: June 3, 2015

Summary: This bill would require that retired licensees who wish to re-activate their licenses with retired volunteer service designation must follow standard license restoral procedures if the licensee has been retired for more than three years. These procedures include clinical skills and jurisprudence exams and payment of initial licensure fees.

Status: Chaptered by Secretary of State – Chapter 125, Statutes of 2015.

Recommendation: None

E. Assembly Bill 1359 (Nazarian) Optometry: therapeutic pharmaceutical agents certification

Last Amended: June 16, 2015

Summary: This bill would revise and update the requirements for obtaining therapeutic pharmaceutical agent (TPA) certification to, among other things, allow for TPA-certified optometrists to serve as preceptors.

Status: Floor on the Senate for third reading

Recommendation: Watch

F. Senate Bill 349 (Bates) Optometry: mobile optometric facilities

Last Amended: April 6, 2015

Summary: This bill would establish standards for the operation of mobile optometric facilities, including physical requirements, ownership limitations, record-keeping protocols.

Status: Two year bill

Recommended Position: Watch

G. Senate Bill 402 (Mitchell) Pupil health: vision examinations

Last Amended: May 4, 2015

Summary: This bill would revise the vision screening requirements for K-8 students, requiring a comprehensive eye exam by a physician or optometrist and increasing the frequency of required examinations. The bill would provide, however, that admission to school shall not be denied for failure to obtain a comprehensive eye exam and that a screening by a school nurse or other authorized personnel will be done if a comprehensive exam is not.

Status: Two year bill

Recommendation: None

H. Senate Bill 496 (Nguyen) Optometry: graduates of a foreign university: examinations

Last Amended: April 6, 2015

Summary: This bill would establish standards for licensure as an optometrist by graduates from foreign schools of optometry or medicine.

Status: Two year bill

Recommendation: None

I. Senate Bill 622 (Hernandez): Optometry

Last Amended: May 4, 2015

Summary: This bill would make various expansions in the scope of practice for optometrists and authorize certification in specified laser procedures, minor surgical procedures, and vaccinations.

Status: Two year bill

Recommendation: Watch

J. Senate Bill 800 (Committee on Business, Professions & Economic Development) Healing Arts

Last Amended: July 13, 2015

Overall Summary: This bill would make non-controversial and technical changes to various provisions pertaining to healing licensing programs of the Department of Consumer Affairs.

Pertinent Part Summary:

The Optometry Practice Act provides for the licensure and regulation of optometrists by the Board. The act prescribes license eligibility requirements, including, but not limited to, submitting proof that the person is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements, submitting proof that the person has been in active practice in a state in which he or she is licensed for a total of at least

5,000 hours in 5 of the 7 consecutive years immediately preceding the date of his or her application, and has never had his or her license to practice optometry revoked or suspended. For purposes of those provisions, "in good standing" includes the requirement that the person has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

This bill would delete that active practice requirement and would require that the license have never been revoked or suspended in any state where the person holds a license. The bill, with regard to making such a finding of mental incompetence, would replace a finding by a physician with a finding by a licensed psychologist or licensed psychiatrist.

Status: Assembly Appropriations Committee

Recommendation: None

Attachments

1. AB 595
2. AB 684
3. AB 789
4. AB 1253
5. AB 1359
6. SB 349
7. SB 402
8. SB 496
9. SB 622
10. SB 800 (pertinent part)

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~~

~~1 optometrist shall not be required to obtain a branch office license
2 solely as a result of his or her participation in an individual practice
3 association in which the members of the individual practice
4 association practice optometry in a number of different locations,
5 and each optometrist is listed as a member of that individual
6 practice association.~~

7 *SEC. 7. Section 3090.1 is added to the Business and Professions
8 Code, to read:*

9 *3090.1. The State Board of Optometry shall receive any
10 complaint made to a state board or department related to care
11 provided to a patient by a licensed optometrist under Chapter 7
12 (commencing with Section 3000).*

13 *SEC. 8. Section 3109.1 is added to the Business and Professions
14 Code, to read:*

15 *3109.1. (a) An optometrist shall report to the board any action
16 or circumstance that the optometrist reasonably and in good faith
17 believes constitutes a continued and unresolved attempt to interfere
18 with his or her independent clinical judgment or compliance with
19 prevailing clinical standards for the practice of optometry by a
20 registered dispensing optician or any employee or agent of the
21 registered dispensing optician that violates Section 655.*

22 *(b) The board shall report the complaint to the Division of
23 Licensing of the Medical Board of California, and the division
24 shall investigate the complaint pursuant to Section 2555.*

25 *(c) A registered dispensing optician shall not discharge,
26 terminate, suspend, threaten, harass, or in any other manner
27 retaliate or discriminate against an optometrist that files a good
28 faith complaint pursuant to this section or any other law, or for
29 lawful acts done by an optometrist in disclosing information
30 relating to any complaint against a registered dispensing optician.
31 When an optometrist files a good faith complaint against a
32 registered dispensing optician, the optometrist shall have all of
33 the protections provided in Section 1102.5 of the Labor Code.*

34 *SEC. 9. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 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.~~

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN ASSEMBLY MAY 11, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 684

Introduced by Assembly Members Alejo and Bonilla

February 25, 2015

An act to *amend Section 3137 of, and to add and repeal Sections 655.1 and 2556.1 of of*, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 684, as amended, Alejo. Healing arts: licensees: disciplinary actions.

Existing law prohibits a licensed optometrist and 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 each other. Existing law 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. Existing law makes a violation of these provisions by a licensed optometrist and any other persons, whether or not a healing arts licensee, who participates with a licensed optometrist subject to a crime.

Under existing law, the Medical Board of California is responsible for the registration and regulation of dispensing opticians. Existing law makes the State Board of Optometry responsible for the licensure of optometrists.

This bill, until January 1, 2017, would ~~prohibit a registered dispensing optician or optometrist~~ *exempt a licensed optometrist or an individual, corporation, or firm operating as a registered dispensing optician licensed or registered before the effective date of the bill, or an employee of such an entity, from being subject to discipline any action by the Medical Board of California, the State Board of Optometry, or other another state agency agency, or a district attorney with enforcement authority for engaging in any of the aforementioned business relationships. The bill, with respect to an action subject to the exemption, would toll, for the effective period of the exemption, specific limitation periods imposed on the filing of accusations.*

Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, or 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.

This bill, until January 1, 2017, would ~~prohibit a~~ *an individual, corporation, or firm operating as a registered dispensing optician before the effective date of the bill, or an employee of such an entity, from being subject to discipline any action for engaging in that aforementioned conduct.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

- 1 SECTION 1. Section 655.1 is added to the Business and
- 2 Professions Code, to read:

655.1. (a) Notwithstanding any other law, no *individual, corporation, or firm operating as a registered dispensing optician* ~~registered~~ pursuant to Chapter 5.5 (commencing with Section 2550) *before the effective date of this section, or an employee of such an entity, or an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section,* shall be subject to ~~discipline~~ any action by the Medical Board of California, the State Board of Optometry, ~~or other another~~ state ~~agency~~ agency, or a district attorney, with enforcement authority for engaging in any business relationship prohibited by Section 655.

(b) Nothing in this section shall be construed to imply or suggest that a registered dispensing optician or optometrist engaging in any business relationship is in violation of or in compliance with the law.

(c) *This section shall not apply to any business relationships prohibited by Section 655 registered and operating on or after the effective date of this section.*

(d) *Nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.*

~~(e)~~

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 2. Section 2556.1 is added to the Business and Professions Code, to read:

2556.1. (a) Notwithstanding any other law, ~~a person registered~~ *any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity,* shall not be subject to ~~discipline~~ any action for engaging in conduct prohibited by Section 2556, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

1 (b) Nothing in this section shall be construed to imply or suggest
2 that a person registered under this chapter is in violation of or in
3 compliance with the law.

4 (c) *This section shall not apply to any business relationships*
5 *prohibited by Section 2556 registered and operating on or after*
6 *the effective date of this section.*

7 (d) *Nothing in this section shall prohibit an individual,*
8 *corporation, or firm operating as a registered dispensing optician*
9 *from engaging in a business relationship with an optometrist*
10 *licensed pursuant to Chapter 7 (commencing with Section 3000)*
11 *before the effective date of this section at locations registered with*
12 *the Medical Board of California before the effective date of this*
13 *section.*

14 (e)

15 (e) This section shall remain in effect only until January 1, 2017,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2017, deletes or extends that date.

18 SEC. 3. *Section 3137 of the Business and Professions Code is*
19 *amended to read:*

20 3137. (a) Except as otherwise provided in this section, any
21 accusation filed against a licensee pursuant to Section 11503 of
22 the Government Code for the violation of any provision of this
23 chapter shall be filed within three years after the board discovers
24 the act or omission alleged as the ground for disciplinary action,
25 or within seven years after the act or omission alleged as the ground
26 for disciplinary action occurs, whichever occurs first.

27 (b) An accusation filed against a licensee pursuant to Section
28 11503 of the Government Code alleging fraud or willful
29 misrepresentation is not subject to the limitation in subdivision
30 (a).

31 (c) An accusation filed against a licensee pursuant to Section
32 11503 of the Government Code alleging unprofessional conduct
33 based on incompetence, gross negligence, or repeated negligent
34 acts of the licensee is not subject to the limitation in subdivision
35 (a) upon proof that the licensee intentionally concealed from
36 discovery his or her incompetence, gross negligence, or repeated
37 negligent acts.

38 (d) If an alleged act or omission involves any conduct described
39 in Section 726 committed on a minor, the 10-year limitations period

1 in subdivision (e) shall be tolled until the minor reaches the age
2 of majority.

3 (e) An accusation filed against a licensee pursuant to Section
4 11503 of the Government Code alleging conduct described in
5 Section 726 shall be filed within three years after the board
6 discovers the act or omission alleged as the ground for disciplinary
7 action, or within 10 years after the act or omission alleged as the
8 ground for disciplinary action occurs, whichever occurs first. This
9 subdivision shall apply to a complaint alleging conduct received
10 by the board on and after January 1, 2006.

11 (f) In any allegation, accusation, or proceeding described in this
12 section, the limitations period in subdivision (a) shall be tolled for
13 the period during which material evidence necessary for
14 prosecuting or determining whether a disciplinary action would
15 be appropriate is unavailable to the board due to an ongoing
16 criminal investigation.

17 (g) *In any allegation, accusation, or proceeding described in*
18 *this section regarding a violation of Section 655 and subject to*
19 *Section 655.1, the limitations period in subdivision (a) shall be*
20 *tolled during the effective period of Section 655.1.*

21 ~~SEC. 3.~~

22 SEC. 4. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

26 In order to protect various businesses, opticians, and optometrists
27 who engage in a business relationship that is prohibited by Section
28 655 or 2556 of the Business and Professions Code from discipline
29 by the Medical Board of California, the State Board of Optometry,
30 or other state agency with enforcement authority while the
31 Legislature, with the assistance of appropriate regulatory agencies,
32 develops a model that will allow California businesses to provide
33 services to patients and also protect the interests of practitioners,
34 it is necessary that this act take effect immediately.

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AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 789

Introduced by Assembly Member Calderon

February 25, 2015

An act to amend ~~Sections 2546.5 and~~ *Section 2546.10* of, *and to add Section 2543.5 to*, the Business and Professions Code, relating to contact lens sellers.

LEGISLATIVE COUNSEL'S DIGEST

AB 789, as amended, Calderon. ~~Nonresident contact lens~~ *Contact lens* sellers: prohibited practices: fines.

The Nonresident Contact Lens Seller Registration Act prohibits a person located outside California from shipping, mailing, or delivering, in any manner, contact lenses at retail to a patient at a California address unless registered with the Division of Licensing of the Medical Board of California. A violation of the act results in a fine of not less than \$1,000 or more than \$2,500 for each violation. *Under existing law only licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians have the right to dispense, sell, or furnish prescription ophthalmic devices at retail or to the person named in a prescription, except as provided in the act.*

This bill would raise the minimum fine *for a violation of the act* from \$1,000 to \$1,500. The bill would also specify that a *licensed physician and surgeon, licensed optometrist, registered dispensing optician, or registered nonresident contact lens seller* is not subject to any manufacturer's unilateral pricing policy, or similar practice or

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agreement, that purports to establish a minimum advertised or selling price for contact lenses, and would specify that any attempt by a manufacturer of prescribed contact lenses to impose ~~such that kind of~~ a policy or practice is contrary to public policy, unlawful, and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 2543.5 is added to the Business and
2 Professions Code, to read:

3 2543.5. A licensed physician and surgeon, licensed optometrist,
4 registered dispensing optician, or nonresident contact lens seller
5 shall not be subject to any manufacturer's unilateral pricing policy,
6 or similar practice or agreement, that purports to establish a
7 minimum advertised or selling price for contact lenses. Any attempt
8 by a manufacturer or distributor of prescribed contact lenses to
9 impose that kind of a policy or practice is contrary to public policy,
10 unlawful, and unenforceable.

11 ~~SECTION 1. Section 2546.5 of the Business and Professions~~
12 ~~Code is amended to read:~~

13 ~~2546.5. In order to obtain and maintain registration, a~~
14 ~~nonresident contact lens seller shall:~~

15 ~~(a) Be in good standing and either registered or otherwise~~
16 ~~authorized in the state in which the selling facility is located and~~
17 ~~from which the contact lenses are sold.~~

18 ~~(b) Comply with all directions and requests for information~~
19 ~~made by the board as authorized under this chapter.~~

20 ~~(c) Maintain records of contact lenses shipped, mailed, or~~
21 ~~delivered to patients in California for a period of at least three~~
22 ~~years.~~

23 ~~(d) Provide a toll-free telephone service for responding to patient~~
24 ~~questions and complaints during the applicant's regular hours of~~
25 ~~operation, but in no event less than six days per week and 40 hours~~
26 ~~per week. The toll-free number shall be included in literature~~
27 ~~provided with each mailed contact lens prescription. All questions~~
28 ~~relating to eye care for the lens prescribed shall be referred back~~
29 ~~to the contact lens prescriber.~~

~~(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:~~

~~WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.~~

~~(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.~~

~~(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of contact lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.~~

~~(h) It shall be considered a deceptive marketing practice for any nonresident contact lens seller to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.~~

~~(i) A registered nonresident contact lens seller shall not be subject to any manufacturer's unilateral pricing policy, or similar practice or agreement, that purports to establish a minimum advertised or selling price for contact lenses. Any attempt by a manufacturer of prescribed contact lenses to impose such a policy is contrary to public policy, unlawful, and unenforceable.~~

~~SEC. 2. Section 2546.10 of the Business and Professions Code is amended to read:~~

~~2546.10. (a) A person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand five hundred dollars (\$1,500) nor more than two thousand five hundred dollars (\$2,500) per violation. The fines collected pursuant to this section shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement.~~

~~(b) The Medical Board of California shall adopt regulations implementing this section and shall consider the following factors,~~

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1 including, but not limited to, applicable enforcement penalties,
2 prior conduct, gravity of the offense, and the manner in which
3 complaints will be processed.

4 (c) The proceedings under this section shall be conducted in
5 accordance with the provisions of Chapter 5 (commencing with
6 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
7 Code.

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Assembly Bill No. 1253

Passed the Assembly July 2, 2015

Chief Clerk of the Assembly

Passed the Senate June 29, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 3151.1 of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1253, 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 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 recast those provisions to 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 or a license that was issued, or that has expired and has gone unexpired, for specified periods, including over 5 years, if that licensee meets specified requirements. The bill would also require an applicant for a license with retired volunteer service designation whose retired license had been issued, or whose license had been expired, more than 3, but less than 5, years ago to 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.

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

SECTION 1. Section 3151.1 of the Business and Professions Code is amended to read:

3151.1. (a) The board shall issue, upon application and payment of the fee described in Section 3152, a license with retired volunteer service designation to an optometrist who satisfies any of the following:

(1) The applicant holds any of the following:

(A) A retired license issued within the last three years.

(B) A license that has not been renewed and has expired within the last three years.

(C) A license that is current and active.

(2) The applicant holds either of the following, and the applicant certifies on the application that he or she has completed an additional 50 hours of formal continuing optometric education coursework:

(A) A retired license issued more than three, but less than five, years ago.

(B) A license that has not been renewed and has expired more than three, but less than five, years ago.

(3) The applicant holds either of the following, and satisfies the requirements set forth in subdivisions (a) to (d), inclusive, of Section 3147.6:

(A) A retired license issued more than five years ago.

(B) A license that has not been renewed and has expired more than five years ago.

(b) The board shall not issue a license pursuant to this section to an applicant whose application would be subject to denial pursuant to Section 480.

(c) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation

is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(d) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision (c). 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.

Approved _____, 2015

Governor

AMENDED IN SENATE JUNE 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 *instead* refer to a therapeutic pharmaceutical agents (TPA) certification. The bill would delete certain requirements

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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~~ *ophthalmology* in good standing, and would require such an applicant to complete a minimum of ~~80~~ 100 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~~ *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)~~, (b) 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 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) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, with either a TPA-certified optometrist in good standing or a physician and surgeon board-certified in ~~ophthalmology~~ ophthalmology in good standing. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular and systemic disease. The preceptor shall certify completion of the preceptorship using a form approved by the board. 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 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.

(2) Successfully completes a minimum of ~~80~~ 100 hours of directed and accredited education in ocular and systemic diseases within two years prior to meeting the requirements of paragraph (1).

(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.

(c) The board shall grant a 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 passes all sections of the National Board of Examiners in Optometry's national board examination or its equivalent, as determined by the State Board of Optometry.

(d) The board shall grant a therapeutic pharmaceutical agents certification 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~~ *granted a therapeutic pharmaceutical agents agents certification*.

(1) In order to obtain a therapeutic pharmaceutical agents certification, 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~~, *agents certification*, 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 therapeutic pharmaceutical agents certification, 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~~, *agents certification*, 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

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- 1 fulfillment of the requirement in another state, if the board
- 2 determines that the completed requirement was equivalent to that
- 3 required in California, the requirement shall be waived.
- 4 (3) The State Board of Optometry shall decide all issues relating
- 5 to the equivalency of an optometrist's education or training under
- 6 this subdivision.

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AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 349

**Introduced by Senator Bates
(Coauthors: Senators Berryhill and Nguyen)**

February 24, 2015

An act to add Section 3070.2 to the Business and Professions Code, relating to ~~optometry~~, *optometry*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 349, as amended, Bates. Optometry: mobile optometric facilities.

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 each licensed optometrist, before engaging in the practice of optometry, to notify the board in writing of the address or addresses where he or she is to engage in the practice of optometry and of any changes in his or her place of practice. *Under existing law, 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 authorize an optometrist to engage in the practice of mobile optometry with a mobile optometric facility, as defined, if the optometrist meets certain requirements, including, but not limited to, that the optometrist maintain a primary business office separate from the mobile optometric facility, as specified. The bill would also require an optometrist to certify that any information included on a printed copy of an original document to a patient is true, accurate, and complete. The bill would require that the mobile optometric facility, among other things, has a vehicle identification number. The bill would exempt~~

~~mobile optometric facilities that are part of an extended optometric clinical facility, as defined, from these requirements.~~

This bill would define “mobile optometric facility” as mobile optometric equipment, including, but not limited to, a trailer or van that may be moved. The bill would limit ownership of a mobile optometric facility to a nonprofit or charitable organization, a governmental agency, or a school, as specified. The bill would require a mobile optometric facility, while providing services, to have access to, among other things, sufficient lighting around the perimeter of the work site from which the mobile optometric facility provides those services. The bill would require an owner of a mobile optometric facility to be responsible for certain things, including, but not limited to, maintaining the mobile optometric facility in good repair and in a clean and sanitary manner. The bill would also require the optometrist or owner of a mobile optometric facility to maintain and disclose patient records as specified. The bill would make these provisions operative on January 1, 2017.

This bill would require the board, by January 1, 2017, to 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. 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 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~~-yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares the necessity
- 2 of establishing regulations for mobile optometric facilities in order
- 3 to help secure the availability of quality vision care services for
- 4 patients who receive care in remote or underserved areas and for
- 5 patients who need specialized types of cost-effective health care.

SECTION 1.

SEC. 2. Section 3070.2 is added to the Business and Professions Code, to read:

3070.2. (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 facilities are limited to nonprofit, charitable organizations with federal tax-exempt status as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a mobile unit that is operated by a governmental agency.~~ *“Mobile optometric facility” does not include an extended optometric clinical facility, as defined in Section 1507 of Title 16 of the California Code of Regulations.*

~~(b) The purpose of this section is to provide requirements for mobile optometric facilities to provide optometric services as authorized in Section 3041, 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.~~

~~(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 registered by the optometrist with the board;~~

~~(D) Is owned or leased by the optometrist or by the employer of the optometrist;~~

~~(E) Is not located in or connected with a residential dwelling.~~

(b) The ownership of a mobile optometric facility shall be limited to a nonprofit or charitable organization, a governmental agency, or a school as provided in subdivision (e) of Section 1507 of Title 16 of the California Code of Regulations.

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(c) 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.

(2)

(d) The optometrist ~~maintains and discloses~~ or owner shall maintain and disclose patient records in the following manner:

(A)

(1) 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.

(B)

(2) 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).

~~(C) The optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient, pursuant to Section 3007. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.~~

(D)

(3) 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:~~ information.

(i) ~~Name.~~

(ii) ~~License number.~~

(iii) ~~The place of practice and the primary business office.~~

(A) The optometrist's name, license number, and contact information

(B) The mobile facility's owner, registration, and contact information.

(C) The location at which optometric services were provided.

1 ~~(iv)~~

2 (D) Description of the goods and services for which the patient
3 is charged and the amount charged.

4 ~~(E)~~

5 (4) For services provided at a schoolsite, a copy of consent by
6 the parent, guardian, or legal representative and referral or order
7 requesting optometric services from personnel in a school district
8 or county office of education, as defined in Section 49452 of the
9 Education Code and Section 591 of Title 5 of the California Code
10 of Regulations, shall be kept in the patient's medical record.

11 ~~(3) The optometrist possesses and appropriately uses the~~
12 ~~instruments and equipment required for all optometric services~~
13 ~~and procedures performed within the mobile optometric facility.~~

14 ~~(4) For mobile optometric facilities, the optometrist informs~~
15 ~~patients in writing of any condition that requires follow-up care~~
16 ~~or treatment.~~

17 ~~(5) Mobile optometric facilities shall comply with all consumer~~
18 ~~notice requirements of the board.~~

19 ~~(6) There is a written procedure for follow-up care of patients~~
20 ~~treated in a mobile optometric facility and that such procedure~~
21 ~~includes arrangements for treatment by a local health care~~
22 ~~professional.~~

23 ~~(7) The mobile optometric facility shall arrange for emergency~~
24 ~~medical care when indicated.~~

25 ~~(8) The mobile optometric facility shall do all of the following:~~

26 ~~(A) Have an access ramp or lift if services are provided to~~
27 ~~disabled persons.~~

28 ~~(B) Have adequate~~

29 ~~(e) A mobile optometric facility shall comply with applicable~~
30 ~~federal and state laws governing access for disabled individuals.~~

31 ~~(f) When providing services, a mobile optometric facility shall~~
32 ~~have access to all of the following:~~

33 ~~(1) Adequate equipment and supplies for cleaning, disinfection,~~
34 ~~and sterilization.~~

35 ~~(C) Have access to an~~

36 ~~(2) Adequate instruments and equipment required for all~~
37 ~~optometric services and procedures performed within the mobile~~
38 ~~optometric facility.~~

39 ~~(3) An adequate supply of clean clean, running water, including~~
40 ~~hot and cold water.~~

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- 1 ~~(D) Have ready access to toilet~~
- 2 (4) Toilet facilities.
- 3 ~~(E) Have a~~
- 4 (5) A covered, galvanized stainless steel or other noncorrosive
- 5 metal container for deposit of refuse and waste materials.
- 6 ~~(F) Comply~~
- 7 (6) Sufficient lighting around the perimeter of the work site from
- 8 which the mobile optometric facility provides any services.
- 9 (g) An owner of an optometric facility shall be responsible for
- 10 all of the following:
- 11 (1) Compliance with the applicable requirements of the Vehicle
- 12 Code, and shall have a vehicle identification number for the mobile
- 13 optometric facility. Code.
- 14 ~~(G) Maintain~~
- 15 (2) Maintaining the mobile optometric facility in good repair
- 16 and in a clean and sanitary manner.
- 17 ~~(H) Have a written policy~~
- 18 (3) Establishing written policies and procedures that include,
- 19 but are not limited to, all of the following:
- 20 (i)
- 21 (A) Scope of services.
- 22 (ii)
- 23 (B) Procedures for the performance of the services provided.
- 24 ~~(iii)~~
- 25 (C) Quality assurance.
- 26 ~~(iv)~~
- 27 (D) Infection control.
- 28 ~~(v)~~
- 29 (E) Medical record documentation of services provided, as
- 30 appropriate. provided.
- 31 ~~(vi) Transport for patients, including, but not limited to, a~~
- 32 ~~method of transportation, special equipment, necessary personnel,~~
- 33 ~~and protection from inclement weather.~~
- 34 ~~(vii)~~
- 35 (F) Emergency response and evacuation plan for the mobile
- 36 unit.
- 37 ~~(I) Maintain~~
- 38 (G) Arrangements for treatment by a local health care
- 39 professional.
- 40 (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:

(i)

(A) Patient record or identification number.

(ii)

(B) Name, age, and sex of patient.

(iii)

(C) Site, date, time, and as appropriate, duration of exam.

(iv)

(D) Printed optometrist name and license number.

(v)

(E) Signature or electronic signature, or the equivalent.

(d)

(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~~ Sections 3070 and 3077 in regard to providing notification to the board of each location at which he or she practices.

~~(e) Mobile optometric facilities that are part of an extended optometric clinical facility, as defined in Section 1507 of Title 16 of the California Code of Regulations, are exempt from the requirements of this section.~~

~~(f) The licensed primary business office shall be responsible for obtaining approval for parking of the mobile optometric facility as required by the local planning, zoning, and fire authorities. The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply with all local parking laws. Any parking restrictions developed by a primary business office or clinic for mobile units shall be strictly enforced by the primary business office or clinic. The primary business office or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.~~

(i) This section shall become operative on January 1, 2017.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

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1 infraction, eliminates a crime or infraction, or changes the penalty
 2 for a crime or infraction, within the meaning of Section 17556 of
 3 the Government Code, or changes the definition of a crime within
 4 the meaning of Section 6 of Article XIII B of the California
 5 Constitution.

O

AMENDED IN SENATE MAY 4, 2015

AMENDED IN SENATE APRIL 22, 2015

SENATE BILL

No. 402

Introduced by Senator Mitchell

February 25, 2015

An act to amend Section 49455 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, 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, unless the appraisal is 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 require a pupil's vision to be appraised in accordance with the above specified provisions only if the pupil's parent or guardian fails to provide the results of a vision examination conducted by a physician, optometrist, or ophthalmologist in accordance with specified provisions. The bill would prohibit a school from denying admission to, or taking adverse action against, a pupil if his or her parent or guardian fails to provide the results of the vision examination. The bill would require the department to adopt regulations, rather than guidelines, to implement these provisions.

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 49455 of the Education Code is amended to read:

49455. (a) During the kindergarten year or upon first enrollment or entry in a California school district of a pupil at an elementary school, and at least every second year thereafter until the pupil has completed grade 8, the pupil's vision shall be examined by a physician, optometrist, or ophthalmologist. This examination shall include tests for ~~visual acuity, binocular function, as well as refraction~~ distance and near visual acuity, eye tracking, binocular vision skills, including both eye teaming and convergence, accommodation, color vision, depth perception, intraocular pressure, pupil evaluation, objective and subjective refraction, and eye health evaluations. The parent or guardian of the pupil shall provide results of the *vision* examination to the school.

(b) A school shall not deny admission to a pupil or take any other adverse action against a pupil if his or her parent or guardian fails to provide the results of the vision examination to the school.

(c) (1) If the results of the vision 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.

(2) 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.

(3) 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 grade 1.

(4) 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 by a trained individual who meets requirements established by the department.

1 (d) Continual and regular observation of the pupil's eyes,
2 appearance, behavior, visual performance, and perception that may
3 indicate vision difficulties shall be done by the school nurse and
4 the classroom teacher.

5 (e) This section shall not apply to a pupil whose parents or
6 guardian file with the principal of the school in which the pupil is
7 enrolling, a statement in writing that they adhere to the faith or
8 teachings of any well-recognized religious sect, denomination, or
9 organization and in accordance with its creed, tenets, or principles
10 depend for healing upon prayer in the practice of their religion.

11 (f) The department shall adopt regulations to implement this
12 section, including training ~~requirements~~ *requirements*, and shall
13 provide participation data.

O

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 496

Introduced by Senator Nguyen

February 26, 2015

An act to amend Section 3057.5 of, *and to add Section 3058 to*, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Nguyen. Optometry: graduates of a foreign university: ~~examinations~~. *examinations and licensure*.

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. *This bill would also authorize the board to issue a license to a graduate of a foreign university who meets specified requirements, including requirements that the applicant have permission to take the examinations*

for an optometrist license, submit an application on a form approved by the board, and pay a prescribed fee for an application for licensure. 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 chapter,
- 4 the board shall permit a graduate of a foreign university who meets
- 5 all of the following requirements to take the examinations for an
- 6 optometrist license:
- 7 (1) Is over 18 years of age.
- 8 (2) Is not subject to denial of a license under Section 480.
- 9 (3) Has obtained any of the following:
- 10 (A) A degree as a doctor of optometry issued by a university
- 11 located outside of the United States.
- 12 (B) A degree from a school of optometry program located
- 13 outside of the United States that has a minimum of a four year or
- 14 equivalent curriculum leading to an optometry license in the
- 15 country where the program is located.
- 16 (C) A degree from a school of medicine located outside of the
- 17 United States and completed the necessary requirements to practice
- 18 in the field of ophthalmology in the country where the school of
- 19 medicine is located.
- 20 (4) Submits an application to obtain a letter of sponsorship on
- 21 a form approved by the board.
- 22 (5) Pays to the board the fee for an application for licensure
- 23 prescribed in subdivision (a) of Section 3152.

(b) (1) A graduate of a foreign university shall provide to the board any supporting documents requested by the board to establish that the requirement of paragraph (3) of subdivision (a) has been met. These supporting documents may include, but are not limited to, a curriculum vitae, official examination score, certificate of optometric or medical education, official school transcript, certified copy of optometric or medical diploma, official English translation, certificate of completion of postgraduate training, and certificate of clinical training.

(2) Every document provided pursuant to this subdivision shall be in English or translated into English by a certified United States translation service approved by the board.

(c) The board shall require a graduate of a foreign university to obtain an evaluation of his or her official school transcript by an education evaluation service approved by the board. The board shall determine from the evaluation whether the applicant has met the educational requirements that are reasonable and necessary to ensure that an optometrist has the knowledge to adequately protect the public health and safety.

(d) Notwithstanding paragraph (3) of subdivision (a), if a graduate of a foreign university does not meet the educational requirements that are reasonable and necessary to ensure that an optometrist has the knowledge to adequately protect the public health and safety, the board may establish alternative education requirements for the graduate of a foreign university to meet in order to ensure this knowledge. A graduate of a foreign university shall provide any supporting documents requested by the board to establish that these requirements are met.

(e) The board shall issue a letter of sponsorship, or its equivalent, required by the National Board of Examiners in Optometry, or its equivalent, to permit a graduate of a foreign university to take all examinations required for licensure. This letter of sponsorship shall expire two years from the date of issuance.

SEC. 2. Section 3058 is added to the Business and Professions Code, to read:

3058. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has obtained permission to take the examinations for an optometrist license pursuant to Section 3057.5.

(2) Has successfully passed the required examinations.

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1 (3) *Is not subject to denial of a license under Section 480.*

2 (4) *Has met the requirements described in paragraphs (1) to*
 3 *(5), inclusive, of subdivision (b) of Section 3041.3.*

4 (5) *Has provided the board with any other information requested*
 5 *by the board to the extent necessary to determine that the person*
 6 *has met the requirements for licensure under this chapter.*

7 (6) *Has submitted an application on a form approved by the*
 8 *board.*

9 (7) *Pays the fee for an application for licensure prescribed in*
 10 *subdivision (a) of Section 3152.*

11 (8) *Has no physical or mental impairment related to drugs or*
 12 *alcohol and has not been found mentally incompetent by a licensed*
 13 *psychologist or licensed psychiatrist so that the person is unable*
 14 *to undertake the practice of optometry in a manner consistent with*
 15 *the safety of a patient or the public.*

16 (b) *A license issued pursuant to this section shall expire as*
 17 *provided in Section 3146 and may be renewed as provided in this*
 18 *chapter, subject to the same conditions as other licenses issued*
 19 *under this chapter.*

20 ~~SEC. 2.~~

21 SEC. 3. No reimbursement is required by this act pursuant to
 22 Section 6 of Article XIII B of the California Constitution because
 23 the only costs that may be incurred by a local agency or school
 24 district will be incurred because this act creates a new crime or
 25 infraction, eliminates a crime or infraction, or changes the penalty
 26 for a crime or infraction, within the meaning of Section 17556 of
 27 the Government Code, or changes the definition of a crime within
 28 the meaning of Section 6 of Article XIII B of the California
 29 Constitution.

O

AMENDED IN SENATE MAY 4, 2015

AMENDED IN SENATE APRIL 9, 2015

SENATE BILL

No. 622

Introduced by Senator Hernandez

February 27, 2015

An act to amend ~~Section~~ *Sections 3041 and 3110* 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. 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 requires an optometrist, in certain circumstances, to refer a patient to an ophthalmologist or a physician and surgeon,*

including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis. 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 delete certain requirements that an optometrist refer a patient to an ophthalmologist or a physician and surgeon, including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis.* 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 *additionally* authorize an optometrist *certified* to use ~~diagnostic therapeutic~~ pharmaceutical agents, as specified, including, but not limited to, oral and topical ~~diagnostic pharmaceutical agents that are not controlled substances.~~ *agents to collect a blood specimen by finger prick method, to perform skin tests, as specified, to diagnose ocular allergies, and to use mechanical lipid extraction of meibomian glands and nonsurgical techniques.* 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,~~ *require the board to grant an optometrist certified to treat glaucoma a certificate for the use of specified immunizations if certain conditions are met, including, among others, that he or she the optometrist is certified in basic life support for health care professionals.* *support.* 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.~~ *lasers, a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use minor procedures, and a fee of not more than \$100 to cover the reasonable regulatory cost of certifying an optometrist to use*

immunizations. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.

This bill would declare the intent of the Legislature that the Office of Statewide Health Planning 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.

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.

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 3041 of the Business and Professions
- 2 Code is amended to read:
- 3 3041. (a) The practice of optometry includes the prevention
- 4 and diagnosis of disorders and dysfunctions of the visual system,
- 5 and the treatment and management of certain disorders and
- 6 dysfunctions of the visual system, as well as the provision of
- 7 habilitative or rehabilitative optometric services, and is the doing
- 8 of any or all of the following:
- 9 (1) The examination of the human eye or eyes, or its or their
- 10 appendages, and the analysis of the human vision system, either
- 11 subjectively or objectively.
- 12 (2) The determination of the powers or range of human vision
- 13 and the accommodative and refractive states of the human eye or
- 14 eyes, including the scope of its or their functions and general
- 15 condition.

(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) 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~~. *chapter, except as specified in Section 3041.3 related to the use of anterior segment lasers and in Section 3041.4 related to minor procedures.* 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~~ *promulgate regulations authorizing* optometrists to use *noninvasive*, nonsurgical technology to treat a condition authorized by this chapter. *The board shall require a licensee to take a minimum of four hours of education courses on the new technology and perform an appropriate number of complete clinical procedures on live human patients to qualify to use each new technology authorized by the board pursuant to this subdivision.*

SEC. 2. Section 3041.1 of the Business and Professions Code is repealed.

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.~~

(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.

(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.~~ *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~~

1 ~~contradictory evidence presented in a major peer reviewed medical~~
2 ~~journal.~~
3 ~~(3) Notwithstanding paragraph (1), codeine with compounds~~
4 ~~and hydrocodone with compounds as listed in the California~~
5 ~~Uniform Controlled Substances Act (Division 10 (commencing~~
6 ~~with Section 11000) of the Health and Safety Code) and the federal~~
7 ~~Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be~~
8 ~~used. The use of these controlled substances shall be limited to~~
9 ~~five days.~~
10 *(1) Topical pharmaceutical agents for the purpose of the*
11 *examination of the human eye or eyes for any disease or*
12 *pathological condition, including, but not limited to, topical*
13 *miotics.*
14 *(2) Topical lubricants.*
15 *(3) Antiallergy agents. In using topical steroid medication for*
16 *the treatment of ocular allergies, an optometrist shall consult with*
17 *an ophthalmologist if the patient's condition worsens 21 days after*
18 *diagnosis.*
19 *(4) Topical and oral anti-inflammatories.*
20 *(5) Topical antibiotic agents.*
21 *(6) Topical hyperosmotics.*
22 *(7) Topical and oral antiglaucoma agents pursuant to the*
23 *certification process defined in Section 3041.2.*
24 *(8) Nonprescription medications used for the rational treatment*
25 *of an ocular disorder.*
26 *(9) Oral antihistamines.*
27 *(10) Prescription oral nonsteroidal anti-inflammatory agents.*
28 *(11) Oral antibiotics for medical treatment of ocular disease.*
29 *(12) Topical and oral antiviral medication for the medical*
30 *treatment of herpes simplex viral keratitis, herpes simplex viral*
31 *conjunctivitis, periocular herpes simplex viral dermatitis, varicella*
32 *zoster viral keratitis, varicella zoster viral conjunctivitis, and*
33 *periocular varicella zoster viral dermatitis.*
34 *(13) Oral analgesics that are not controlled substances.*
35 *(14) Codeine with compounds and hydrocodone with compounds*
36 *as listed in the California Uniform Controlled Substances Act*
37 *(Division 10 (commencing with Section 11000) of the Health and*
38 *Safety Code) and the United States Uniform Controlled Substances*
39 *Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be*

1 *limited to five days, with a referral to an ophthalmologist if the*
2 *pain persists.*

3 (c) An optometrist who is certified to use therapeutic
4 pharmaceutical agents pursuant to this section may also perform
5 all of the following:

6 (1) Corneal scraping with cultures.

7 (2) Debridement of corneal epithelia.

8 (3) Mechanical epilation.

9 (4) Collection of a blood specimen by finger prick method or
10 venipuncture for testing patients suspected of having diabetes.

11 (5) Suture removal, with prior consultation with the treating
12 health care provider.

13 (6) Treatment or removal of sebaceous cysts by expression.

14 (7) Administration of oral fluorescein to patients suspected as
15 having diabetic retinopathy.

16 (8) Use of an auto-injector to counter anaphylaxis.

17 ~~(9) Ordering of clinical laboratory and imaging tests related to~~
18 ~~the practice of optometry.~~

19 ~~(10) A clinical laboratory test or examination classified as~~
20 ~~waived under CLIA and related to the practice of optometry.~~

21 (9) *Ordering of smears, cultures, sensitivities, complete blood*
22 *count, mycobacterial culture, acid fast stain, urinalysis, tear fluid*
23 *analysis, and X-rays necessary for the diagnosis of conditions or*
24 *diseases of the eye or adnexa. An optometrist may order other*
25 *types of images subject to prior consultation with the appropriate*
26 *physician and surgeon.*

27 (10) *A clinical laboratory test or examination classified as*
28 *waived under the Clinical Laboratory Improvement Amendments*
29 *of 1988 (CLIA)(42 U.S.C. Sec. 263a; Public Law 100-578) or any*
30 *regulations adopted pursuant to CLIA, and that are necessary for*
31 *the diagnosis of conditions and diseases of the eye or adnexa, or*
32 *if otherwise specifically authorized by this chapter.*

33 (11) Skin test to diagnose ocular allergies. Skin tests shall be
34 limited to the superficial layers of the skin.

35 (12) Punctal occlusion by plugs, excluding laser, diathermy,
36 cryotherapy, or other means constituting surgery as defined in this
37 chapter.

38 (13) The prescription of therapeutic contact lenses, diagnostic
39 contact lenses, or biological or technological corneal devices.

1 *devices that diagnose or treat a condition authorized under this*
 2 *chapter.*

3 (14) Removal of foreign bodies from the cornea, eyelid, and
 4 conjunctiva with any appropriate instrument other than a ~~scalpel~~
 5 ~~or needle~~. *scalpel*. Corneal foreign bodies shall be nonperforating,
 6 be no deeper than the midstroma, and require no surgical repair
 7 upon removal.

8 (15) For patients over 12 years of age, lacrimal irrigation and
 9 dilation, excluding probing of the nasal lacrimal tract. The board
 10 shall certify any optometrist who graduated from an accredited
 11 school of optometry before May 1, 2000, to perform this procedure
 12 after submitting proof of satisfactory completion and confirmation
 13 of 10 procedures under the supervision of an ophthalmologist or
 14 optometrist who is certified in lacrimal irrigation and dilation. Any
 15 optometrist who graduated from an accredited school of optometry
 16 on or after May 1, 2000, shall be exempt from the certification
 17 requirement contained in this paragraph.

18 (16) Use of mechanical lipid extraction of meibomian glands
 19 and nonsurgical techniques.

20 ~~(17) Notwithstanding subdivision (b), administration of~~
 21 ~~injections for the diagnoses or treatment of conditions of the eye~~
 22 ~~and adnexa, excluding intraorbital injections and injections~~
 23 ~~administered for cosmetic effect, provided that the optometrist has~~
 24 ~~satisfactorily received four hours of continuing education on~~
 25 ~~performing all injections authorized by this paragraph.~~

26 (d) In order to be certified to use therapeutic pharmaceutical
 27 agents and authorized to diagnose and treat the conditions listed
 28 in this section, an optometrist shall apply for a certificate from the
 29 board and meet all requirements imposed by the board.

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

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

1 (2) Completes a preceptorship of no less than 65 hours, during
2 a period of not less than two months nor more than one year, in
3 either an ophthalmologist's office or an optometric clinic. The
4 training received during the preceptorship shall be on the diagnosis,
5 treatment, and management of ocular, systemic disease. The
6 preceptor shall certify completion of the preceptorship.
7 Authorization for the ophthalmologist to serve as a preceptor shall
8 be provided by an accredited school of optometry in California,
9 or by a recognized residency review committee in ophthalmology,
10 and the preceptor shall be licensed as an ophthalmologist in
11 California, board certified in ophthalmology, and in good standing
12 with the Medical Board of California. The individual serving as
13 the preceptor shall schedule no more than three optometrist
14 applicants for each of the required 65 hours of the preceptorship
15 program. This paragraph shall not be construed to limit the total
16 number of optometrist applicants for whom an individual may
17 serve as a preceptor, and is intended only to ensure the quality of
18 the preceptorship by requiring that the ophthalmologist preceptor
19 schedule the training so that each applicant optometrist completes
20 each of the 65 hours of the preceptorship while scheduled with no
21 more than two other optometrist applicants.

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

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

28 (5) Passes the examination issued upon completion of the
29 80-hour didactic course required under paragraph (1) and provided
30 by the accredited school of optometry or residency program in
31 ophthalmology.

32 (6) When any or all of the requirements contained in paragraph
33 (1), (4), or (5) have been satisfied on or after July 1, 1992, and
34 before January 1, 1996, an optometrist shall not be required to
35 fulfill the satisfied requirements in order to obtain certification to
36 use therapeutic pharmaceutical agents. In order for this paragraph
37 to apply to the requirement contained in paragraph (5), the didactic
38 examination that the applicant successfully completed shall meet
39 equivalency standards, as determined by the board.

1 (7) Any optometrist who graduated from an accredited school
2 of optometry on or after January 1, 1992, and before January 1,
3 1996, shall not be required to fulfill the requirements contained in
4 paragraphs (1), (4), and (5).

5 (f) The board shall grant a certificate to use therapeutic
6 pharmaceutical agents to any applicant who graduated from a
7 California accredited school of optometry on or after January 1,
8 1996, who is licensed as an optometrist in California, and who
9 meets all of the following requirements:

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

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

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

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

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

28 (1) In order to obtain a certificate to use therapeutic
29 pharmaceutical agents, any optometrist who obtained his or her
30 license outside of California and graduated from an accredited
31 school of optometry prior to January 1, 1996, shall be required to
32 fulfill the requirements set forth in subdivision (e). In order for the
33 applicant to be eligible for the certificate to use therapeutic
34 pharmaceutical agents, the education he or she received at the
35 accredited out-of-state school of optometry shall be equivalent to
36 the education provided by any accredited school of optometry in
37 California for persons who graduated before January 1, 1996. For
38 those out-of-state applicants who request that any of the
39 requirements contained in subdivision (e) be waived based on
40 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.

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~~.
medication prescribed by the optometrist.

(4) *Increase in intraocular pressure caused by steroid medication not prescribed by the optometrist, after consultation and treatment approval by the prescribing physician.*

(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.

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

1 of a course that is approved by the board, provided by an accredited
2 school of optometry, and developed in consultation with an
3 ophthalmologist who has experience educating optometric students.
4 *The board shall issue a certificate pursuant to this section only to*
5 *an optometrist that has graduated from an approved school of*
6 *optometry.*

7 (1) The board-approved course shall be ~~a minimum of 16 at~~
8 *least 25 hours in length, and include a test for competency of the*
9 *following:*

- 10 (A) Laser physics, hazards, and safety.
- 11 (B) Biophysics of laser.
- 12 (C) Laser application in clinical optometry.
- 13 (D) Laser tissue interactions.
- 14 (E) Laser indications, contraindications, and potential
- 15 complications.
- 16 (F) Gonioscopy.
- 17 (G) Laser therapy for open-angle glaucoma.
- 18 (H) Laser therapy for angle closure glaucoma.
- 19 (I) Posterior capsulotomy.
- 20 (J) Common complications of the lids, lashes, and lacrimal
- 21 system.
- 22 (K) Medicolegal aspects of anterior segment procedures.
- 23 (L) Peripheral iridotomy.
- 24 (M) Laser trabeculoplasty.

25 (2) The school of optometry shall require each applicant for
26 certification to perform a sufficient number of *complete* anterior
27 segment laser procedures to verify that the applicant has
28 demonstrated competency to practice independently. At a
29 minimum, each applicant shall complete ~~14~~ 24 anterior segment
30 laser procedures on live ~~humans~~; *humans as follows:*

- 31 (A) *Eight YAG capsulotomy procedures.*
- 32 (B) *Eight laser trabeculoplasty procedures.*
- 33 (C) *Eight peripheral iridotomy procedures.*

34 (c) The board, by regulation, shall set the fee for issuance and
35 renewal of a certificate authorizing the use of anterior segment
36 lasers at an amount no higher than the reasonable cost of regulating
37 anterior segment laser certified optometrists pursuant to this
38 section. The fee shall not exceed one hundred fifty dollars (\$150).

39 (d) *An optometrist certified to use anterior segment lasers*
40 *pursuant to this section shall complete four hours of continuing*

education on anterior segment lasers as part of the required 50 hours of continuing education required to be completed every two years on the diagnosis, treatment, and management of glaucoma.

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).

(3) *Administration of injections for the diagnoses or treatment of conditions of the eye and adnexa authorized by this chapter, excluding intraorbital injections and injections administered for cosmetic effect.*

(4) *“Minor procedures” does not include blepharoplasty or other cosmetic surgery procedures that reshape normal structures of the body in order to improve appearance and self-esteem.*

(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. *The board shall issue a certificate pursuant to this section only to an optometrist that has graduated from an approved school of optometry.*

(1) The board-approved course shall be ~~a minimum of 32 hours~~ *at least 25 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) Epiluminescence microscopy.

- 1 (G) Suture techniques.
- 2 (H) Local anesthesia techniques and complications.
- 3 (I) Anaphylaxis and other office emergencies.
- 4 (J) Radiofrequency surgery.
- 5 (K) Postoperative wound care.
- 6 (L) *Injection techniques.*

7 (2) The school of optometry shall require each applicant for
8 certification to perform a sufficient number of minor procedures
9 to verify that the applicant has demonstrated competency to
10 practice independently. At a minimum, each applicant shall *perform*
11 *32 complete five minor procedures on live humans.*

12 *(c) The board, by regulation, shall set the fee for issuance and*
13 *renewal of a certificate authorizing the use of minor procedures*
14 *at an amount no greater than the reasonable cost of regulating*
15 *minor procedure certified optometrists pursuant to this section.*
16 *The fee shall not exceed one hundred fifty dollars (\$150).*

17 *(d) An optometrist certified to perform minor procedures*
18 *pursuant to Section 3041.1 shall complete five hours of continuing*
19 *education on the diagnosis, treatment, and management of lesions*
20 *of the eyelid and adnexa as part of the 50 hours of continuing*
21 *education required every two years in Section 3059.*

22 ~~SEC. 9. Section 3041.5 is added to the Business and Professions~~
23 ~~Code, to read:~~

24 ~~3041.5.—(a) An optometrist may independently initiate and~~
25 ~~administer vaccines listed on the routine immunization schedules~~
26 ~~recommended by the federal Advisory Committee on Immunization~~
27 ~~Practices (ACIP), in compliance with individual ACIP vaccine~~
28 ~~recommendations, and published by the federal Centers for Disease~~
29 ~~Control and Prevention (CDC) for persons three years of age and~~
30 ~~older.~~

31 ~~(b) In order to initiate and administer an immunization described~~
32 ~~in subdivision (a), an optometrist shall do all of the following:~~

33 ~~(1) Complete an immunization training program endorsed by~~
34 ~~the CDC or the Accreditation Council for Pharmacy Education~~
35 ~~that, at a minimum, includes hands-on injection technique, clinical~~
36 ~~evaluation of indications and contraindications of vaccines, and~~
37 ~~the recognition and treatment of emergency reactions to vaccines,~~
38 ~~and shall maintain that training.~~

39 ~~(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. 9. Section 3041.5 is added to the Business and Professions Code, to read:

3041.5. (a) The board shall grant to an optometrist a certificate for the use of immunizations described in subdivision (b), if the optometrist is certified pursuant to Section 3041.2 and after the optometrist meets all of the following requirements:

(1) Completes an immunization training program endorsed by the federal Centers for Disease Control (CDC) 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 maintains that training.

(2) Is certified in basic life support.

(3) Complies 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.

(b) For the purposes of this section, "immunization" means the administration of immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the CDC for persons 18 years of age or older.

(c) The board, by regulation, shall set the fee for issuance and renewal of a certificate for the use of immunizations at the reasonable cost of regulating immunization certified optometrists pursuant to this section. The fee shall not exceed one hundred dollars (\$100).

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. Section 3110 of the Business and Professions Code is amended to read:

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

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

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

1 (h) Denial of licensure, revocation, suspension, restriction, or
2 any other disciplinary action against a health care professional
3 license by another state or territory of the United States, by any
4 other governmental agency, or by another California health care
5 professional licensing board. A certified copy of the decision or
6 judgment shall be conclusive evidence of that action.

7 (i) Procuring his or her license by fraud, misrepresentation, or
8 mistake.

9 (j) Making or giving any false statement or information in
10 connection with the application for issuance of a license.

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

15 (l) Administering to himself or herself any controlled substance
16 or using any of the dangerous drugs specified in Section 4022, or
17 using alcoholic beverages to the extent, or in a manner, as to be
18 dangerous or injurious to the person applying for a license or
19 holding a license under this chapter, or to any other person, or to
20 the public, or, to the extent that the use impairs the ability of the
21 person applying for or holding a license to conduct with safety to
22 the public the practice authorized by the license, or the conviction
23 of a misdemeanor or felony involving the use, consumption, or
24 self-administration of any of the substances referred to in this
25 subdivision, or any combination thereof.

26 (m) (1) Committing or soliciting an act punishable as a sexually
27 related crime, if that act or solicitation is substantially related to
28 the qualifications, functions, or duties of an optometrist.

29 (2) Committing any act of sexual abuse, misconduct, or relations
30 with a patient. The commission of and conviction for any act of
31 sexual abuse, sexual misconduct, or attempted sexual misconduct,
32 whether or not with a patient, shall be considered a crime
33 substantially related to the qualifications, functions, or duties of a
34 licensee. This paragraph shall not apply to sexual contact between
35 any person licensed under this chapter and his or her spouse or
36 person in an equivalent domestic relationship when that licensee
37 provides optometry treatment to his or her spouse or person in an
38 equivalent domestic relationship.

39 (3) Conviction of a crime that requires the person to register as
40 a sex offender pursuant to Chapter 5.5 (commencing with Section

1 290) of Title 9 of Part 1 of the Penal Code. A conviction within
2 the meaning of this paragraph means a plea or verdict of guilty or
3 a conviction following a plea of nolo contendere. A conviction
4 described in this paragraph shall be considered a crime substantially
5 related to the qualifications, functions, or duties of a licensee.

6 (n) Repeated acts of excessive prescribing, furnishing, or
7 administering of controlled substances or dangerous drugs specified
8 in Section 4022, or repeated acts of excessive treatment.

9 (o) Repeated acts of excessive use of diagnostic or therapeutic
10 procedures, or repeated acts of excessive use of diagnostic or
11 treatment facilities.

12 (p) The prescribing, furnishing, or administering of controlled
13 substances or drugs specified in Section 4022, or treatment without
14 a good faith prior examination of the patient and optometric reason.

15 (q) The failure to maintain adequate and accurate records
16 relating to the provision of services to his or her patients.

17 (r) Performing, or holding oneself out as being able to perform,
18 or offering to perform, any professional services beyond the scope
19 of the license authorized by this chapter.

20 (s) The practice of optometry without a valid, unrevoked,
21 unexpired license.

22 (t) The employing, directly or indirectly, of any suspended or
23 unlicensed optometrist to perform any work for which an optometry
24 license is required.

25 (u) Permitting another person to use the licensee's optometry
26 license for any purpose.

27 (v) Altering with fraudulent intent a license issued by the board,
28 or using a fraudulently altered license, permit certification or any
29 registration issued by the board.

30 (w) Except for good cause, the knowing failure to protect
31 patients by failing to follow infection control guidelines of the
32 board, thereby risking transmission of bloodborne infectious
33 diseases from optometrist to patient, from patient to patient, or
34 from patient to optometrist. In administering this subdivision, the
35 board shall consider the standards, regulations, and guidelines of
36 the State Department of Public Health developed pursuant to
37 Section 1250.11 of the Health and Safety Code and the standards,
38 guidelines, and regulations pursuant to the California Occupational
39 Safety and Health Act of 1973 (Part 1 (commencing with Section
40 6300) of Division 5 of the Labor Code) for preventing the

1 transmission of HIV, hepatitis B, and other bloodborne pathogens
 2 in health care settings. As necessary, the board may consult with
 3 the Medical Board of California, the Board of Podiatric Medicine,
 4 the Board of Registered Nursing, and the Board of Vocational
 5 Nursing and Psychiatric Technicians, to encourage appropriate
 6 consistency in the implementation of this subdivision.

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

13 (y) Failure to refer a patient to an appropriate physician in either
 14 of the following circumstances:

15 ~~(1) Where physician if~~ an examination of the eyes indicates a
 16 substantial likelihood of any pathology that requires the attention
 17 of that physician.

18 ~~(2) As required by subdivision (e) of Section 3041.~~

19 ~~SEC. 13.~~

20 *SEC. 14.* No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 the only costs that may be incurred by a local agency or school
 23 district will be incurred because this act creates a new crime or
 24 infraction, eliminates a crime or infraction, or changes the penalty
 25 for a crime or infraction, within the meaning of Section 17556 of
 26 the Government Code, or changes the definition of a crime within
 27 the meaning of Section 6 of Article XIII B of the California
 28 Constitution.

1 to applicants who began graduate training during the period
 2 commencing on January 1, 1995, and ending on December 31,
 3 2003.

4 (2) An applicant who began graduate training on or after January
 5 1, 2004, shall show by evidence satisfactory to the board that he
 6 or she has completed a minimum of 15 contact hours of coursework
 7 in spousal or partner abuse assessment, detection, and intervention
 8 strategies, including knowledge of community resources, cultural
 9 factors, and same gender abuse dynamics. An applicant may request
 10 an exemption from this requirement if he or she intends to practice
 11 in an area that does not include the direct provision of mental health
 12 services.

13 (3) Coursework required under this subdivision may be
 14 satisfactory if taken either in fulfillment of other educational
 15 requirements for licensure or in a separate course. This requirement
 16 for coursework shall be satisfied by, and the board shall accept in
 17 satisfaction of the requirement, a certification from the chief
 18 academic officer of the educational institution from which the
 19 applicant graduated that the required coursework is included within
 20 the institution's required curriculum for graduation.

21 (g) An applicant holding a doctoral degree in psychology from
 22 an approved institution is deemed to meet the requirements of this
 23 section if both of the following are true:

24 (1) The approved institution offered a doctoral degree in
 25 psychology designed to prepare students for a license to practice
 26 psychology and was approved by the former Bureau for Private
 27 Postsecondary and Vocational Education on or before July 1, 1999.

28 (2) The approved institution has not, since July 1, 1999, had a
 29 new location, as described in Section 94823.5 of the Education
 30 Code.

31 ~~SEC. 33.~~

32 *SEC. 32.* Section 3057 of the Business and Professions Code
 33 is amended to read:

34 3057. (a) The board may issue a license to practice optometry
 35 to a person who meets all of the following requirements:

36 (1) Has a degree as a doctor of optometry issued by an accredited
 37 school or college of optometry.

38 (2) Has successfully passed the licensing examination for an
 39 optometric license in another state.

1 (3) Submits proof that he or she is licensed in good standing as
2 of the date of application in every state where he or she holds a
3 license, including compliance with continuing education
4 requirements.

5 (4) Is not subject to disciplinary action as set forth in subdivision
6 (h) of Section 3110. If the person has been subject to disciplinary
7 action, the board shall review that action to determine if it presents
8 sufficient evidence of a violation of this chapter to warrant the
9 submission of additional information from the person or the denial
10 of the application for licensure.

11 (5) Has furnished a signed release allowing the disclosure of
12 information from the National Practitioner Database and, if
13 applicable, the verification of registration status with the federal
14 Drug Enforcement Administration. The board shall review this
15 information to determine if it presents sufficient evidence of a
16 violation of this chapter to warrant the submission of additional
17 information from the person or the denial of the application for
18 licensure.

19 (6) Has never had his or her license to practice optometry
20 revoked or suspended in any state where the person holds a license.

21 (7) (A) Is not subject to denial of an application for licensure
22 based on any of the grounds listed in Section 480.

23 (B) Is not currently required to register as a sex offender
24 pursuant to Section 290 of the Penal Code.

25 (8) Has met the minimum continuing education requirements
26 set forth in Section 3059 for the current and preceding year.

27 (9) Has met the certification requirements of Section 3041.3 to
28 use therapeutic pharmaceutical agents under subdivision (e) of
29 Section 3041.

30 (10) Submits any other information as specified by the board
31 to the extent it is required for licensure by examination under this
32 chapter.

33 (11) Files an application on a form prescribed by the board,
34 with an acknowledgment by the person executed under penalty of
35 perjury and automatic forfeiture of license, of the following:

36 (A) That the information provided by the person to the board
37 is true and correct, to the best of his or her knowledge and belief.

38 (B) That the person has not been convicted of an offense
39 involving conduct that would violate Section 810.

(12) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(13) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical examination or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board may reduce or waive the fees required by paragraph (12) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

~~SEC. 34.~~

SEC. 33. Section 3509.5 of the Business and Professions Code is amended to read:

3509.5. The board shall elect annually a president and a vice president from among its members.

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To: Board Members

Date: August 28, 2015

From: Robert Stephanopoulos
Enforcement Analyst

Telephone: (916) 575-7185

Nooshin Movassaghi
Policy Analyst

Subject: Agenda Item 10 – Update and Possible Action on California Code of Regulations (CCR)

A. Consideration of Recommendations to Amend CCR §1506 – “Certificates Posting” to Include Certification Explanations After Optometrist License Number and Clarify Existing Language

Background

During 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.

Then Board President, Dr. Alejandro Arredondo, asked Dr. Turetsky, Ms. Donna Burke, and Ms. Cyd Brandvein to work on the consumer notice. Dr. Turetsky and Ms. Burke met with then Executive Officer, Mona Maggio, for the workgroup’s initial meeting; Ms. Brandvein was unavailable to participate at that time.

The workgroup reviewed and revised the [fact sheet](#) “What Do the Letters after an Optometrist’s License Mean?” for clarity and added a category for optometrists with “No Designation” for the optometrists who continue to practice with no certifications.

The workgroup recommended the Consumer Notice become part of Title 16, California Code of Regulations (CCR), §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.

After discussing the consumer notice during the April 23-24, 2015 Board Meeting, the Board voted (9-Aye; 1-No) to send the notice back to the workgroup, make it more “user-friendly,” and bring it back to a future Board meeting.

On July 23, 2015, the workgroup revised the Consumer Notice and developed proposed amendments to CCR §1506 for Board consideration. In addition, staff recommended amendments to clarify existing language. Staff believes these amendments align with the Board’s Strategic Plan Goal 3 (Law and Regulation), objective 3.3:

3.3 - Review regulations to determine need for clarity then revise and/or amend as needed.

Action Requested

Please consider the recommendations to adopt the Consumer Notice (Attachment 1) and amend CCR §1506 (Attachment 2). If approved, please direct staff to prepare the necessary documents to initiate the rulemaking process.

B. Rulemaking Pertaining to CCR §1516, Applicant Medical Evaluations and CCR §1582, Unprofessional Conduct Defined

Background:

At its August 16, 2013 meeting, the Board voted to initiate the rulemaking process to amend California Code of Regulations (CCR) § 1516 to give the Board authority to compel an applicant to submit to a psychological or physical examination and adopt CCR § 1582 to further define unprofessional conduct. The rulemaking package was sent to the Office of Administrative Law (OAL) on October 8, 2013, and the action was printed in the California Regulatory Notice Register (CRNR) on October 18, 2013; the 45-day public comment period started on October 18, 2013 and ended on December 2, 2013. The hearing was scheduled for December 2, 2013 in Sacramento at the Department of Consumer Affairs (DCA). However, due to the Executive Officer's medical leave of absence and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the DCA's Legal Division, the Board restarted the rulemaking process. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the CRNR withdrawing the Board's October 18, 2013 Notice. The unchanged rulemaking package was resubmitted to OAL, which was printed in the CRNR on August 8, 2014. A 45-day public comment period began August 8, 2014 and concluded September 22, 2014. The hearing was held on September 22, 2014 at the Board's office, and no comments were received.

Unfortunately, due to administrative oversight, some interested parties may not have received the notice, so a continuation notice was published on December 14, 2015. A continuation hearing was held on January 26, 2015. No comments were received. On April 1, 2015, the rulemaking package was approved by DCA and sent to the Business, Consumer Services, and Housing Agency (Agency).

On June 10, 2015, the Board's Acting Executive Officer, Jessica Siefertman, and Policy Analyst, Nooshin Movassaghi, met with DCA and Agency attorneys to discuss the rulemaking package. In order to clarify who could order the examination, Agency suggested adding the following bold italicized language to §1516:

(a) "In addition to any other requirements for licensure, whenever it appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board **president or his/her designee, in consultation with the Executive Officer and legal counsel,**..."

The OAL one year deadline was August 8, 2015. Staff requested and DCA Director Kidane granted an extension for this regulatory packet. The extended deadline is November 3, 2015.

Action Requested:

Please review and approve the suggested amendment to Title 16, CCR §1516 (Attachment 3). If approved, direct staff to circulate the revised text for 15 days and delegate the authority to the Executive Officer to complete the rulemaking process in the absence of any adverse comments.

C. Rulemaking Pertaining to CCR §1536; Consideration of Proposed Revisions to add Continuing Education Credits for Subject Matter Experts Participating in Law Examination Workshops, Child and Elderly Abuse Detection Courses, and Increase Amount Accepted for Board Meeting Participation

Background:

During the Board's April 23, 2015 meeting, the Board instructed staff to begin the rulemaking process to add [\(CCR\) §1536\(c\)\(6\)](#):

Any Continuing Education course approved for Category 1 of the American Medical Association or Category 1 of the American Osteopathic Association credits that contributes to the advancement of professional skill and knowledge in the practice of optometry.

In addition, the Board instructed staff, as part of the rulemaking to move the glaucoma CE requirements in CCR §1571 to CCR §1536 in order to consolidate the CE requirements.

The public hearing is scheduled for August 17, 2015. Staff will bring any public comments to the Board during the meeting for consideration.

On April 23, 2015, the Practice and Education Committee (Committee) met and discussed the following CE topics:

- Providing CE credit to licenses serving as Subject Matter Experts (SMEs) in the California Laws and Regulations Examination (CLRE) workshops.
 - Currently, licensees serving as SMEs in the CLRE workshops are given a \$100/day stipend, pursuant to their contracts. In the past, they were also given eight CE credits. However, the CE credits are not permitted in statute. Other state boards such as the [California Board of Psychology](#) and [Board of Behavioral Sciences](#) provide CE credit to licensees who assist in their examination process.
- Increasing the CE credit for attendance of a Board meeting
 - Currently, licensees who attend a full-day Board meeting to earn up to two credit hours of CE. The Committee stressed the importance of licensee attendance and participation at Board meetings, and felt licensees should earn more than two hours of CE credit.
- Requiring CE in child and elder abuse detection
 - As part of CE, [BPC §3059\(g\),\(h\)](#) states that the Board shall consider requiring courses in child and elderly abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children or elder persons (Attachment 4). However, the Board does not require this under CCR §1536.

[BPC §3051](#) does require applicants who graduated from Optometry school after September 1, 1997 to have received education in child abuse detection and the detection of alcoholism and other chemical substance dependency (Attachment 5).

[Iowa](#) Board of Optometry requires optometrists who examines, attends, counsels, or treats children and/or dependent adults complete two hours of training in child abuse and/or two hours of training in dependent adult abuse identification and reporting every five years (Attachment 6). Other state medical boards such as [Connecticut](#), [Delaware](#), and [Texas](#) have requirements in law for courses in abuse detection

Committee recommendation: Consider amending CCR §1536 to allow the Board to provide CE credit to SMEs, increase the amount of CE credit earned for Board meeting attendance from two CE credits to four credits, and require CE courses in abuse detection.

Action Requested:

Consider each Committee recommendation and the proposed language (Attachment 7). If approved, direct staff to amend the existing CCR §1536 rulemaking file and send notices for public hearing.

Attachments:

1. Consumer Notice
2. CCR §1506 Proposed Amendments
3. CCR §1516 Proposed Amendments
4. BPC §3059
5. BPC §3051
6. Iowa Board of Optometry Requirement
7. CCR §1536 Proposed Amendments



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CONSUMER NOTICE

Designations After an Optometrist's Name

Certifications allow an optometrist to provide specific 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. All optometrists may prescribe lenses.

TPA

Certified to use therapeutic pharmaceutical agents to treat certain conditions of the human eye or any of its appendages. May also perform certain procedures on the eye as listed in California Business and Professions Code Section 3041.

TPL

TPA certified with additional certification to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years.

TPG

TPA certified with additional certification to diagnose and treat primary open angle glaucoma in patients over the age of 18 years.

TLG

TPA certified with additional certification to diagnose and treat primary open angle glaucoma in patients over the age of 18 years as well as certification to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years.

DPA

Certified to use diagnostic pharmaceutical agents for examination purposes only. **Not certified** to treat diseases of the eye or its appendages.

No Designation

No designation indicates the optometrist is licensed to conduct exams for the overall health of the eyes and screen for disease, but **not certified** to use diagnostic pharmaceutical agents and **not certified** to treat diseases of the eye or its appendages.

Committee recommended insertion is underlined in bold green.

Staff's recommended insertions are underlined in blue and deletions in ~~red strikethrough~~.

§1506. LICENSES AND CONSUMER NOTICE ~~CERTIFICATES~~—POSTING

(a) A current license (previously referred to as a certificate of registration)~~certificate of registration, i.e., original wall certificate, is an original certificate of registration and license~~ is a license to practice optometry in the State of 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 a replaced ~~by a certification of the issuance of a certificate of registration~~license, 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 replacement license may be issued by the Board ~~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~~ there is payment of the fee prescribed by Section 3152(h) of the code for the issuance of a license and one of the following applies:

(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~~license or previous certification of the issuance of such ~~certificate of registration~~license.

(2) Such ~~certificate of registration~~license or previous certification of the issuance of such ~~certificate of registration~~license 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~~the optometrist branch office or offices, ~~wherein he/she owns, singly or jointly with any others, the practice of optometry, provided however~~unless:

(1) ~~Where~~if 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~~the optometrist's principal place of practice.

(2) ~~Where~~if 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~~the optometrist shall inform the Board in

writing as to which of such offices shall be deemed ~~his/her~~ the optometrist's principal place of practice.

(d) "Evidence of licensure" is a current license to practice optometry, a Statement of Licensure, or a Branch Office License. ~~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~~ Evidence of licensure and the Consumer Notice (rev. 8/15) issued by the Board ~~and signed by its executive officer~~ shall be conspicuously posted in each ~~of such additional office(s) wherein he/she~~ the optometrist 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 Evidence of licensure shall not be altered, or assigned. (4) A statement of licensure Evidence of licensure is to be immediately shall be surrendered to the Board ~~by the optometrist to whom it is issued upon the occurrence of~~ whenever the license ~~any of the following: (A) His/her certificate becomes expired~~ expires, is suspended or is revoked. Further, a Statement of Licensure or a Branch Office License shall be surrendered to the Board whenever the optometrist ceases practice at that location or terminates . ~~(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

**Committee and Staff
Proposed Amendments to CCR§1506
CLEAN COPY**

§1506. LICENSES AND CONSUMER NOTICE POSTING

(a) A current license (previously referred to as a certificate of registration) is a license to practice optometry in the State of 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. It may not be assigned or transferred to another person but shall; notwithstanding whether it is a replaced license; 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 replacement license may be issued by the Board to the same person, provided that there is payment of the fee prescribed by Section 3152(h) of the code for the issuance of a license and one of the following applies:

(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 license or previous certification of the issuance of such license.

(2) Such license or previous certification of the issuance of such license is, unless it is lost or destroyed, surrendered to the Board.

(c) The principal place of practice of an optometrist shall be deemed by the Board to be that office, other than the optometrist branch office or offices unless:

(1) 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 the optometrist's principal place of practice.

(2) The optometrist does not own a practice, singly or jointly with any others, but practices optometry in two or more offices as an employee, the optometrist shall inform the Board in writing as to which of such offices shall be deemed the optometrist's principal place of practice.

(d) "Evidence of licensure" is a current license to practice optometry, a Statement of Licensure, or a Branch Office License. Evidence of licensure and the Consumer Notice (rev. 8/15) issued by the Board shall be conspicuously posted in each office(s) wherein the optometrist practices optometry. Evidence of licensure shall not be altered. Evidence of licensure shall be surrendered to the Board whenever the license expires, is suspended or is revoked. Further, a Statement of Licensure or a Branch Office License shall be surrendered to the Board whenever the optometrist ceases practice at that location or terminates ownership of the practice.

Authority cited: Section 3025, Business and Professions Code

BOARD OF OPTOMETRY

MODIFIED TEXT

Changes to the originally proposed language are shown by bold for new text.

Amend Section 1516 and add Section 1582 in Division 15 of Title 16 of the California Code of Regulations as follows:

§ 1516. Application Review and Criteria for Rehabilitation.

(a) In addition to any other requirements for licensure, whenever it appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board **president or his/her designee, in consultation with the Executive Officer and legal counsel,** may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board. The applicant shall pay the full cost of the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

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

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

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

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code.

Reference: Sections 475, 480, 481, ~~and 482,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.

BUSINESS AND PROFESSIONS CODE - BPC
DIVISION 2. HEALING ARTS [500 - 4999.129]
(*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 7. Optometry [3000 - 3167]
(*Chapter 7 added by Stats. 1937, Ch. 423.*)

ARTICLE 3. Admission to Practice [3040 - 3060]
(*Article 3 added by Stats. 1937, Ch. 423.*)

3059.

(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.

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129]

(Division 2 enacted by Stats. 1937, Ch. 399.)

CHAPTER 7. Optometry [3000 - 3167]

(Chapter 7 added by Stats. 1937, Ch. 423.)

ARTICLE 3. Admission to Practice [3040 - 3060]

(Article 3 added by Stats. 1937, Ch. 423.)

3051.

All applicants for examination for an optometrist license in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

(Amended by Stats. 2013, Ch. 473, Sec. 8. Effective January 1, 2014.)

OPTOMETRISTS

CHAPTER 180	LICENSURE OF OPTOMETRISTS
CHAPTER 181	CONTINUING EDUCATION FOR OPTOMETRISTS
CHAPTER 182	PRACTICE OF OPTOMETRISTS
CHAPTER 183	DISCIPLINE FOR OPTOMETRISTS

CHAPTER 180 LICENSURE OF OPTOMETRISTS

[Prior to 6/13/01, see 645—Chapter 180]

645—180.1(154) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program or activity*” means a continuing education program or activity meeting the standards set forth in these rules.

“*Board*” means the board of optometry.

“*CELMO*” means the Council on Endorsed Licensure Mobility for Optometrists.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as an optometrist in the state of Iowa.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice optometry to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of optometrists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NBEO*” means the National Board of Examiners in Optometry.

“*Optometrist*” means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry to employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of the conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding Iowa Code section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy, with the exclusions cited in Iowa Code chapter 154.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 180.11(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“*TPA*” means therapeutic pharmaceutical agents.

[ARC 0899C, IAB 8/7/13, effective 9/11/13]

645—180.2(154) Requirements for licensure.

180.2(1) The following criteria shall apply to licensure:

a. An applicant shall complete a board-approved application form. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the Board of Optometry, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

c. An applicant shall submit the appropriate fees payable to the Board of Optometry. The fees are nonrefundable.

d. No application will be considered complete until official copies of academic transcripts sent directly to the board from an accredited school or college of optometry are received by the board and the applicant submits proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154.

e. An applicant shall pass all parts of the NBEO examination in effect at the time of application.

f. Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

g. Incomplete applications that have been on file in the board office for more than two years shall be:

- (1) Considered invalid and shall be destroyed; or
- (2) Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

h. An applicant shall provide an official verification regarding the status of the applicant's license from the board of examiners in each state in which the applicant is currently or was formerly licensed.

180.2(2) Rescinded IAB 8/7/13, effective 9/11/13.

[ARC 0899C, IAB 8/7/13, effective 9/11/13]

645—180.3(154) Licensure by endorsement. An applicant who has been a licensed optometrist under laws of another jurisdiction for three years or more shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

180.3(1) Submits to the board a completed application;

180.3(2) Pays the licensure fee;

180.3(3) Provides an official copy of the transcript sent directly from the school to the board office. The transcript shall show a doctor of optometry degree from an accredited school. In the case of foreign graduates, applicants shall provide evidence of adherence to the current requirements of the NBEO to sit for the NBEO examination;

180.3(4) Shows evidence of successful completion of the examination of the NBEO that was current at the time of initial licensure or successful completion of the examination that is currently offered by the NBEO;

180.3(5) Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a.* Licensee's name;
- b.* Date of initial licensure;
- c.* Current licensure status; and
- d.* Any disciplinary action taken against the license;

180.3(6) Provides a statement disclosing and explaining the applicant's involvement in civil litigation related to the practice of optometry in any jurisdiction of the United States, other nations or territories; and

180.3(7) Provides proof of current CELMO certification. Applicants who provide proof of current CELMO certification satisfy the educational requirements for licensure by endorsement. If an applicant is not CELMO-certified, then the applicant must show evidence of the following:

a. The applicant shall supply evidence of completion of a course that has particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa, provided by an institution accredited by a regional or professional accreditation organization that is recognized or

approved by the Council on Postsecondary Accreditation of the United States Department of Education; and

b. The applicant shall show evidence on the transcript of:

(1) Forty hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa; and

(2) An additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases.

c. If the transcript does not show evidence of 40 hours of didactic education; 60 hours of approved supervised clinical training in the examination, diagnosis and treatment of conditions of the human eye and adnexa; and 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, the applicant shall show satisfactory evidence of completion of a course that includes training in the above-listed areas.

d. Any transcript that shows graduation from an approved school of optometry after January 2, 1988, meets the requirement of 180.3(7) “*b.*”

e. Any transcript that shows graduation from an approved school of optometry after January 2, 1986, meets the requirement of 180.3(7) “*b*”(1) of 40 hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. Applicants need to also show evidence of completion of the requirement in 180.3(7) “*b*”(2).

f. An applicant for licensure by endorsement shall provide proof of licensure and evidence of three years of active practice in another state, territory or district of the United States immediately preceding the date of application which has a similar scope of practice to that required in Iowa as determined by the board. When the scope of practice is different, the applicant shall make available to the board evidence of completion of additional hours of training related to the area of the deficiency as prescribed by the board. The applicant may be exempt from the requirement of three years of active practice if, during the above-mentioned three-year period, the applicant was:

- (1) Teaching optometry;
- (2) A military optometrist;
- (3) A supervisory or administrative optometrist; or
- (4) A researcher in optometry.

180.3(8) Applicants for licensure by endorsement who were issued their Iowa licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

[ARC 0899C, IAB 8/7/13, effective 9/11/13]

645—180.4(147) Licensure by reciprocal agreement. Rescinded IAB 11/5/08, effective 12/10/08.

645—180.5(154) License renewal.

180.5(1) The biennial license renewal period for a license to practice optometry shall begin on July 1 of an even-numbered year and end on June 30 two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

180.5(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

180.5(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—181.2(154) and the mandatory reporting requirements of subrule 180.5(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

180.5(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "*e.*"

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "*e.*"

c. A licensee who, in the scope of professional practice or in the course of the licensee's employment responsibilities, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "*e.*"

Training may be completed through separate courses as identified in paragraphs "*a*" and "*b*" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "*a*" to "*c*," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 181.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "*a*" to "*e*."

180.5(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

180.5(6) A person licensed to practice optometry shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

180.5(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.12(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

180.5(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an optometrist in Iowa until the license is reactivated. A licensee who practices as an optometrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[ARC 9641B, IAB 7/27/11, effective 8/31/11]

645—180.6(272C) Exemptions for inactive practitioners. Rescinded IAB 8/3/05, effective 9/7/05.

645—180.7(272C) Lapsed licenses. Rescinded IAB 8/3/05, effective 9/7/05.

645—180.8(147) Duplicate certificate or wallet card. Rescinded IAB 11/5/08, effective 12/10/08.

645—180.9(147) Reissued certificate or wallet card. Rescinded IAB 11/5/08, effective 12/10/08.

645—180.10(17A,147,272C) License denial. Rescinded IAB 11/5/08, effective 12/10/08.

645—180.11(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

180.11(1) Submit a reactivation application on a form provided by the board.

180.11(2) Pay the reactivation fee that is due as specified in rule 645—5.12(147,154).

180.11(3) Provide verification of current competence to practice as an optometrist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 50 hours of continuing education within two years of application for reactivation unless the applicant provides proof of current CELMO certification. Proof of current CELMO certification satisfies continuing education requirements for the purpose of reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 100 hours of continuing education within two years of application for reactivation unless the applicant provides proof of current CELMO certification. If the applicant provides proof of current CELMO certification, the applicant must also verify completion of an additional 50 hours of continuing education within two years of application for reactivation.

[ARC 9641B, IAB 7/27/11, effective 8/31/11]

645—180.12(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 180.11(17A,147,272C) prior to practicing as an optometrist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

[Filed 5/25/01, Notice 4/4/01—published 6/13/01, effective 7/18/01]

[Filed 7/18/02, Notice 5/15/02—published 8/7/02, effective 9/11/02]

[Filed 1/15/03, Notice 11/13/02—published 2/5/03, effective 3/12/03]

[Filed 4/8/04, Notice 2/4/04—published 4/28/04, effective 6/2/04]

[Filed 7/8/05, Notice 5/11/05—published 8/3/05, effective 9/7/05]°

[Filed 1/13/06, Notice 10/26/05—published 2/1/06, effective 3/8/06]°

[Filed 1/12/07, Notice 11/8/06—published 1/31/07, effective 3/7/07]

[Filed 10/14/08, Notice 8/27/08—published 11/5/08, effective 12/10/08]

[Filed ARC 9641B (Notice ARC 9519B, IAB 5/18/11), IAB 7/27/11, effective 8/31/11]

[Filed ARC 0899C (Notice ARC 0680C, IAB 4/3/13), IAB 8/7/13, effective 9/11/13]

◊ Two or more ARCs

California Code of Regulations

§ 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-, as verified by the Board. Up to ~~two~~four 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.

(6) Any CE course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association Continued Medical Education credits that contributes to the advancement of professional skill and knowledge in the practice of optometry.

(7) Participation as a subject matter expert in the creation of the Board's California Laws and Regulation Exam. Subject matter experts will receive one hour of continuing education credit for each hour attending a Board sponsored workshop, not to exceed eight credits per renewal cycle.

(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

California Code of Regulations

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 skills 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.
- (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 signature(s) 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

(k) Licensees that are glaucoma certified pursuant to BPC section 1571 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.

California Code of Regulations

(l) A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years.

(m) A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats elder persons shall indicate on the renewal application completion of two hours of training in elder abuse identification and reporting in the previous five years.

(n) The licensee shall maintain written documentation for five years after mandatory training as identified in sections "l" and "m," including program date(s), content, duration, and proof of participation.

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).

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

To: Board Members

Date: August 28, 2015

From: Dr. Madhu Chawla, OD
President

Telephone: (916) 575-7170

Subject: Agenda Item 11 – Future Agenda Items

The Board may discuss and decide whether to place a matter on the agenda of a future meeting. Future agenda items currently include, but are not limited to, the following:

- Update on Online Refractions Pursuant to the Laws Governing Optometry in the State of California
- Update on Budget Change Proposal for Association of Regulatory Boards of Optometry's 2016 Annual Meeting
- National Board of Examiners (NBEO) and national board exams (parts I, II, and III)
- Enforcement Case Prioritization
- Update on Out of State Travel Request for attendance to the Association of Regulatory Boards of Optometry 2016 Annual Meeting
- Petition for Reduction of Penalty or Early Termination of Probation
- Update on the Supreme Court Decision Regarding the North Carolina Board of Dental Examiners v. Federal Trade Commission

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To: Board Members

Date: August 28, 2015

From: Robert Stephanopoulos
Enforcement Analyst

Telephone: (916) 575-7185

Subject: Agenda Item 12 - Petition for Reduction of Penalty or Early Termination of Probation

A. Duc Bui, OPT 11044

Dr. Duc Bui, O.D. (Petitioner) was issued Optometrist License Number 11044 by the Board on August 24, 1998. On February 12, 2013, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on Unprofessional Conduct: Insurance Fraud, Alteration of Medical Records, and False Representation of Facts. 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 his Petition for Reduction of Penalty or 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

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

GOVERNOR EDMUND G. BROWN JR.



STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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**PETITION FOR REDUCTION OF PENALTY
OR EARLY TERMINATION OF PROBATION**

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

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST) (MIDDLE) (LAST)	CERTIFICATE OF REGISTRATION NO.			
DUC BUI				
2. ADDRESS (NUMBER) (STREET)	DATE OF BIRTH			
4095 EVERGREEN VILLAGE SQ # 110	07-29-1964			
(CITY) (STATE) (ZIP CODE)	TELEPHONE			
SAN JOSE CA 95135	(408) 532-1308			
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5' 8" 140 BROWN BLACK				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
NOVA SOUTHEASTERN				
ADDRESS (NUMBER) (STREET)				
3301 COLLEGE AVE				
(CITY) (STATE) (ZIP CODE)				
FORT LAUDERDALE, FL 33314				
5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
CA	11044T	5-29-14	07-31-2016	ACTIVE

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

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
OPTOMETRY, SJ	2006	PRESENT	OPTOMETRY

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

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

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

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

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

Date 4-16-15 Signature Duc Bui

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

Dear Sir or Madam,

VSP (vision service plan) insurance company made allegations that my office overbilled them. I disputed the allegation, after an in depth conversation with VSP vice president and at his urging, I file a lawsuit against VSP for unethical conducts and that VSP claim was capricious and lacked evidence. The lawsuit was filed at Santa Clara County Superior Court case 109CV158165. at the hearing, there were no evidence found of any wrongdoing on my part. VSP and I entered into a settlement agreement. Part of the agreement was that VSP pay me a sum of money and I agree to leave VSP. I am no longer part of VSP network providers.

Three years after the settlement agreement was signed, VSP reported my case to the Board of Optometry, thereby violating the confidentiality of the agreement. I consulted with my lawyer, Dr. Craig Steinberg J.D., OD; and he advised me to accept the disciplinary action imposed because I did have the financial resources to go to trial.

Since my probation period began in December 11, 2013; I have made the following changes. First, I no longer do any billing through VSP. Second, I have hired a CPA to review my patients charts to ensure integrity in the billing process with other insurance companies. As a matter of fact, Eye Med Vision Care had recently issued a score of 100% for my office in their latest evaluation. Third, my practice no longer accept Medicare and Medical patients.

Fourth, I had taken courses in Medical Record Keeping, and Ethics.

Fifth, I have removed my office from all insurance networks. Therefore, there is no more billing done, thereby avoiding any future billing issues.

I hereby respectfully request that the Board lift the following requirements

1) Third party auditor - Since there is no billing processed by my office, billing audit is not applicable.

2) Worksite Monitor - Since billing is no longer exists, the billing review is not applicable. I will continue to abide all rules & regulations set by the Board.

Sincerely,

Duc Bui OD.



Association of Regulatory Boards of Optometry

**This Continuing Education (CE)
Certificate of Completion**

is awarded to

Duc Bui

*For the satisfactory completion of the
following course:*

**Applied Ethics for the Primary
Care Optometrist**

COPE ID: 38017-EJ Hours: 1 hour

Category: Ethics/Jurisprudence

Date: 2013-10-04

**Course Format:
Live**

**Provider:
Reed Exhibitions**

**Digital Validation:
10867419**

**Media Sponsor:
NONE**

Signature Agreement

Western Institute of Legal Medicine



Jointly sponsored by the American College of Legal Medicine
and the Western Institute of Legal Medicine

CERTIFICATE OF COURSE COMPLETION

The *Western Institute of Legal Medicine* certifies that **Duc Bui, O.D.** has participated in the course titled: ***Medical Record Keeping*** given on March 17 – 18, 2014, in San Mateo California, and is awarded **17.00 AMA PRA Category 1 Credits™**.

This activity has been planned and implemented in accordance with the Essential Areas and policies of the Accreditation Council for Continuing Medical Education through the joint sponsorship of the American College of Legal Medicine and the Western Institute of Legal Medicine. The American College of Legal Medicine is accredited by the ACCME to provide continuing medical education for physicians. The American College of Legal Medicine designates this live and enduring materials activity for a maximum of 19.00 AMA PRA Category 1 Credits™. Physicians should claim only the credit commensurate with the extent of their participation in the activity. The American College of Legal Medicine, CME Office has reviewed this activity's speaker and planner disclosures and resolved all identified conflicts of interest, if applicable.

CME Coordinator:

Dan Tennenhouse, M.D., J.D., F.C.I.M.

This registrant has completed all elements of this course needed for acceptance by the Medical Board of California as meeting the course work required as part of probation.

Western Institute of Legal Medicine

1700 South El Camino Real, Suite 204, San Mateo, California 94402
(650) 212-4904 Fax: (650) 212-4905 www.WILM-ed.org

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

In the Matter of the Accusation Against:

DUC BUI
10969 N. Wolfe Road
Cupertino, CA 95014
Optometrist License No. 11044

Respondent.

Case No. CC 2010-163

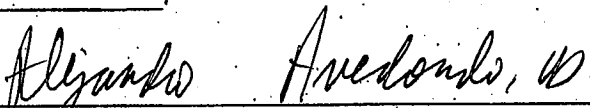
OAH No. 2013050949

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order are 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

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Facsimile: (510) 622-2270
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. CC 2010-163

DUC BUI
10969 N. Wolfe Road
Cupertino, CA 95014
Optometrist License No. 11044

OAH No. 2013050949

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

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

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Kim M. Settles, Deputy Attorney General.

2. Respondent Duc Bui (Respondent) is represented in this proceeding by attorney Craig S. Steinberg, O.D., whose address is:
Law Offices of Craig S. Steinberg, O.D.
5737 Kanan Road, Suite #540
Agoura Hills, California 91301

3. On or about August 24, 1998, the State Board of Optometry issued Optometrist License No. 11044 to Duc Minh Bui (Respondent). The Optometrist License will expire on July 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. CC 2010-163 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 28, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. CC 2010-163 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC 2010-163. 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 reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. For the purpose of settlement of the action pending against Respondent in Accusation No. CC 2010-163, and to avoid a costly administrative hearing, Respondent admits that if proven at an administrative hearing, there is a factual basis for discipline and Respondent hereby gives up

1 his right to contest the charges and allegations contained in Accusation No. CC 2010-163, and
 2 agrees to be bound by the Board's imposition of discipline as set forth in the disciplinary order
 3 below.

4 10. The admissions made by Respondent in this stipulation are only for the purposes of
 5 this proceeding, or any other proceedings in which the State Board of Optometry or other
 6 professional licensing agency is involved, and shall not be admissible in any other criminal or
 7 civil proceedings.

8 11. Respondent agrees that his Optometrist License is subject to discipline and he agrees
 9 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

10 CONTINGENCY

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

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

24 14. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an
 25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
 26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
 27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
 28

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 11044 issued to Respondent Duc Bui (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) 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

1 result in the filing of an accusation or petition to revoke probation or both.

2 **2. QUARTERLY REPORTS**

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

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

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

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

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

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

19 **3. COOPERATE WITH PROBATION MONITORING PROGRAM**

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

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

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

28 Failure to appear for any scheduled meeting or examination, or cooperate with the

1 requirements of the program, including timely submission of requested information, shall
 2 constitute a violation of probation and may result in the filing of an accusation and/or a petition to
 3 revoke probation against Respondent's Optometrist license.

4 4. PROBATION MONITORING COSTS

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

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

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

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

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

24 5. FUNCTION AS AN OPTOMETRIST

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

27 6. NOTICE TO EMPLOYER

28 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.

The 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)). The 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 the 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 \$4,962.50 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.

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

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

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

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

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

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

24 **10. COMMUNITY SERVICES**

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

1 charitable facility or agency, amounting to a minimum of twenty (20) hours per month of
 2 probation. Such services shall begin no later than 15 calendar days after Respondent is notified of
 3 the approved program.

4 11. VALID LICENSE STATUS

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

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

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

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

21 13. LICENSE SURRENDER

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

1 reinstatement.

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

4 14. VIOLATION OF PROBATION

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

12 15. COMPLETION OF PROBATION

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

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

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

21 17. WORKSITE MONITOR

22 Within 30 calendar days of the effective date of this decision, Respondent shall submit to
23 the Board or its designee for prior approval as a worksite monitor, the name and qualifications of
24 an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's
25 practice shall be monitored by the approved worksite monitor. The worksite monitor's license
26 scope of practice shall include the scope of practice of the Respondent that is being monitored.
27 The worksite monitor shall have an active unrestricted license, with no disciplinary action within
28 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.

The 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:

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

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

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

d. 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 dependent 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.

18. REMEDIAL EDUCATION

Respondent shall take and successfully complete the equivalency of 0.5 quarter units in each of the following areas pertaining to the practice of Optometry: ethics and medical billing. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as an optometrist, or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this decision. Successful completion is a grade of "C" or "70%" or better for any completed course.

Within 90 calendar days of the effective date of the decision Respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the Respondent. Units obtained for an approved course shall not be used for

1 continuing education units required for renewal of licensure.

2 19. EMPLOYMENT LIMITATIONS

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

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

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

10 20. AUDIT REQUIRED

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

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

18 The Board or its designee shall provide the approved auditor with copies of the decision(s)
19 and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the
20 decision(s), accusation(s), and proposed auditing plan, the auditor shall sign an affirmation that he
21 or she has reviewed the terms and conditions of the Respondent's disciplinary order, fully
22 understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth by
23 the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a
24 revised auditing plan with the signed affirmation for approval by the Board or its designee.

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

1 entire term of probation.

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

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

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

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

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

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

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

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

- 21 1. The Respondent's name;
- 22 2. License number;
- 23 3. Auditor's name and signature;
- 24 4. Auditor's license number;
- 25 5. Dates Respondent had face-to-face contact or correspondence (written and verbal)
26 with auditor;
- 27 6. The Respondent's compliance with this condition;
- 28 7. The Respondent's compliance with accepted auditing/accounting standards and

1 practices;

2 8. Any change in behavior and/or personal habits;

3 9. Assessment of the Respondent's ability to practice safely;

4 10. Recommendation dependent on Respondent's audit results and compliance with
5 this condition on whether to continue with current audit plan or modify the plan;

6 11. Other relevant information deemed necessary by the auditor, or the Board.

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

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

18 **21. LENS PRESCRIPTIONS - MAINTAIN RECORDS**

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

21 1. Name and address of the patient;

22 2. Date;

23 3. Price of the services and goods involved in the prescription;

24 4. Visual impairment identified for which the prescription was furnished.

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

27 **22. MEDICAL RECORD KEEPING COURSE**

28 Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a

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

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

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

17 ACCEPTANCE

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


23 DATED: 9-11-2013

Duc Bui
 24 DUC BUI

Respondent.

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

DATED: 9-18-13


Craig S. Steinberg, O.D.
Attorney for Respondent

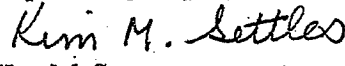
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 9-24-13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General


KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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90325751.doc

Exhibit A

Accusation No. CC 2010-163

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
KIM M. SETTLES
Deputy Attorney General
State Bar No. 116945
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P.O. Box 70550
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Facsimile: (510) 622-2270
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. CC 2010-163

**DUC BUI
10969 N. Wolfe Road
Cupertino, CA 95014**

ACCUSATION

Optometrist License No. 11044

Respondent.

Complainant alleges:

PARTIES

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

2. On or about August 24, 1998, the State Board of Optometry issued Optometrist License Number 11044 to Duc Bui (Respondent). The Optometrist License will expire on July 31, 2014, unless renewed.

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

STATUTORY PROVISIONS

5. Section 810 of the Code states in relevant part that:

“(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.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.”

6. Section 3105 of the Code provides that:

“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 that:

“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:

“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

1. conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
2. limited to, the following:

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

6.

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

10. 9. Penal Code section 550 states, in relevant part:

11. "(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any
12. person to do any of the following:

13. ...

14. "(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a
15. health care benefit.

16. (7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf
17. of, the claimant."

18. COST RECOVERY

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

23. FIRST CAUSE FOR DISCIPLINE

24. (Unprofessional Conduct – Insurance Fraud)

25. 11. Respondent has subjected his license to disciplinary action under Code section 810,
26. subdivisions (a)(1) and (2), in conjunction with Code section 3110, subdivisions (a), (e), and (f) in
27. that Respondent fraudulently submitted bills to Vision Service Plan (VSP), as follows:

28.

12. On or about June 2 and 3, 2009, VSP conducted an unannounced audit at Respondent's office of 83 patient records representing 138 claims submitted to VSP. The audit revealed that many of Respondent's records did not support the claims to VSP as follows:

- (a) There was no documentation to support an order for contact lenses.
- (b) Fittings were not sufficiently documented.
- (c) Patient exams were not documented.
- (d) Some orders for reader glasses were marked "rush" when the patient actually received sunglasses with Plano lenses.
- (e) Many claims were made for contact lenses only when the patient chart indicates that the patient received sunglasses or frames.

13. On or about March, 2011, VSP terminated its insurance contract with Respondent after an audit revealed that Respondent had submitted improper claims to VSP totaling \$357,300.00. Respondent repaid the restitution demand to VSP in the amount of \$357,300.00 for improper claims and \$9,674.00 for the cost of the VSP audit.

14. Incorporating by reference the allegations in Paragraphs 11 through 13, Respondent's conduct, in knowingly presenting false and fraudulent claims to VSP for payment, constitutes unprofessional conduct within the meaning of Code sections 810, subdivisions (a)(1) and (2) and provides grounds for disciplinary action under Code section 3110, subdivisions (a), (e), and (f).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Alteration of Medical Records)

15. Respondent has subjected his license to disciplinary action under Code section 3105, in conjunction with Section 3110, subdivisions (a) and (e), in that Respondent fraudulently submitted bills to VSP.

16. Incorporating by reference the allegations in Paragraphs 11 through 13, Respondent's conduct, in fraudulently submitting bills to VSP, necessarily involved altering, modifying and/or omitting information in the medical records of some of his patients, and creating a false medical record with fraudulent intent. This conduct constitutes unprofessional conduct within the

1 meaning of Code section 3105 and provides grounds for disciplinary action under Code section
 2 3110, subdivisions (a) and (e).

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – False Representation of Facts)**

5 17. Respondent is subject to disciplinary action under Code section 3106, in conjunction
 6 with Code section 3110, subdivision (e), in that Respondent fraudulently submitted bills to VSP.


7 18. Incorporating by reference the allegations in Paragraphs 11 through 16, Respondent's
 8 conduct, in fraudulently submitting bills to VSP, necessarily involved knowingly creating
 9 paperwork directly related to his practice of optometry that falsely represented facts regarding
 10 several of his patients. This constitutes unprofessional conduct within the meaning of Code
 11 section 3106 and provides grounds for disciplinary action under Code section 3110, subdivision
 12 (e).

13 **PRAYER**

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

- 16 1. Revoking or suspending Optometrist License Number 11044, issued to Duc Bui;
- 17 2. Ordering Duc Bui to pay the State Board of Optometry the reasonable costs of the
 18 investigation and enforcement of this case, pursuant to Business and Professions Code section
 19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: February 12, 2013


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

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 26 90268901.doc
 27
 28



STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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CERTIFICATION

The undersigned, Jessica Sieferman hereby certifies as follows:

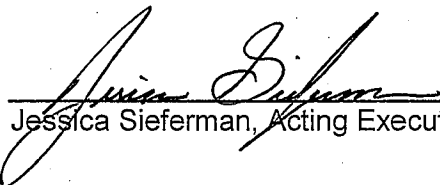
That she is the duly appointed, acting and qualified Acting Executive Officer of the California State Board of Optometry (Board), and that in such capacity she has custody of the official records of the Board.

On this 2nd day of July 2015, the Executive Officer examined said official records of the Board and found that **Duc Bui** graduated from Nova Southeastern University, School of Optometry in 1998, and is the holder of Certificate of Registration to Practice Optometry No. 11044, which was granted to him effective August 24, 1998. Said Certificate of Registration is currently in full force and effect and will expire July 31, 2016, unless renewed. The current address of record for said Certificate of Registration is 4095 Evergreen Village Square, San Jose, CA 95135.

Said records further reveal that on or about August 26, 1998, **Duc Bui** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that on or about February 12, 2013, the Board filed an Accusation against **Duc Bui**, in Case No. CC 2010-163. As a result of that action, the Board revoked Certificate of Registration No. 11044, effective December 11, 2013. However, the revocation was stayed and said Certificate of Registration was placed on probation for a period of five (5) years, with terms and conditions.

Given under my hand and the seal of the California State Board of Optometry, at Sacramento, California, this 2nd day of July 2015.


Jessica Sieferman, Acting Executive Officer

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

To: Board Members

Date: August 28, 2015

From: Board Staff

Telephone: (916) 575-7170

Subject: Agenda Item 13. FULL BOARD CLOSED SESSION

- A. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters and the Above Petition
- B. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session to Interview Candidates for and Consider Appointment of an Executive Officer

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To: Board Members

Date: August 28, 2015

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 14 – RETURN TO OPEN SESSION

Memo

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

To: Board Members

Date: August 28, 2015

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 15 – Adjournment
