

**FINAL MINUTES
OF THE PUBLIC MEETING
OF THE BOARD OF OPTOMETRY
July 9, 2004**

1. Call to Order

The meeting was called to order at 8:40 a.m. by Dr. Hernandez. Present were Ms. Noda, Messieurs De La Cruz and Naranjo, and Drs. Goldstein, Hernandez, Kame, Pollack, Yarwood and Yu. Also present were Staff Members Rex Farmer, Jane Flint, and Taryn Smith, and Staff Counsel Don Chang.

2. Approval of Minutes

Move to approve the minutes of the April 16, 2004 meeting. M – Goldstein, S – Naranjo, MSP, unanimous.

3. Assembly Bill 2464 (Pacheco)

The bill has passed through Senate and Assembly Business and Professions Committee. It must pass through Appropriations Committee and then the floor of both houses before being signed into law. If the Governor signs the bill, it will take affect on January 1, 2005.

In the course of negotiating with the author's office and staff in the Business and Professions (B&P) Committee, the Board President authorized amendments in addition to those previously approved by the Board. The following additional amendments to Sections 3041.1, 3059 and 3075 of the B&P Code were accepted:

- B&P Section 3041.1 – Language previously deleted from Section 3025.6 was replaced verbatim into Section 3041.1 to correct an oversight. The language is moved to a more appropriate section of the law.

- B&P Section 3059 – The board approved deleting the continuing education subcategories entirely. However, in order to keep with the intent of the law, committee staff suggested the hourly requirement be removed and the sub-categories remain. This suggestion was approved.
- B&P Section 3075– The Board approved amendments to delete existing language in Section 3075 and adding text.
- Section 3075 (a) currently requires optometrists to post a notice of licensure. Analysis of the proposed amendments by B&P Committee staff found that the proposed amendments to Section 3071 appropriately clarify the intent of deleted language in Section 3075 (a).
- Section 3075 (b) gives the Board authority to issue such notice of licensure to optometrists who are employed at or own more than one location. The proposed added language to Section 3075 would have established the Board’s authority to require optometrists employed at more than one location to apply for and obtain a Statement of Licensure (SOL), which reflects current practices. It has since been determined that the Board does not have the authority to issue a “license” to be employed. Issuing a license implies that the Board has authority to scrutinize and deny an application, thereby keeping an optometrist from accepting employment. Optometrists who own more than one location are required by B&P

Section 3077 to obtain a Branch Office License.

Based on the above, the proposed new language for section 3075 was found to be unnecessary and deleted. Also deleted was the Board's statutory authority to collect an application fee for the Statement of Licensure (SOL). AB 2464 will be amended to reinstate authority to collect the application fee.

Starr Shulman addressed the following concerns with the bill on behalf of the California Academy of Ophthalmology:

- The bill is silent on the implementation of certification provisions of open angle glaucoma that still need to be addressed.
- Ocular exercises and vision training have not been proven to be effective, and carefully performed and thoughtfully reported studies have not been made available.
- In no instance should the Board adopt any rules and regulations, which unlawfully expand or extend the then current definition of optometric practice.

Dr. Hernandez thanked Ms. Shulman for her comments and stated that with regard to primary open angle glaucoma and visual therapy, the intent of this legislation was to clean up and clarify. There is a moratorium on the increase of scope of practice, and therefore the section referred to will not be dealt with at all in this bill.

**Move to support AB 2464
(Pacheco) M – Goldstein, S –
Pollack, MSP, unanimous.**

4. Discussion and Possible Adoption of
Proposed Changes to Business and
Professions Code, Division 2, Chapter 7,

Staff has continued the review of the law and presented proposed amendments for inclusion in a bill in the next legislative session. The proposed amendments would:

- Eliminate the 6 month cap for the Board's reserves
- Change "certificate" to "license"
- Clarifies delinquent renewal requirements for California licensed optometrists who are practicing out of state
- Eliminate \$25.00 cap for delinquent fee
- Eliminates \$16.00 pass-through of renewal fees to UC Berkeley
- Eliminates \$175.00 refund for ineligible candidates
- Increase the renewal cycle from 2 to 4 years and increase the renewal fee from \$300 to \$600
- Eliminates fee for restoration of a license after suspension for failure to comply with branch office license requirements
- Eliminates unnecessary text

Move to seek legislation on the following issues of consensus:

- **Amend Section 3145**
- **Amend Section 3147**
- **Amend Section 3147.5**
- **Amend Section 3147.6**
- **Amend Section 3150**
- **Amend Section 3152**
- **Amend Section 3152.5**
- **Repeal Section 3153**

This legislation would:

- **Eliminate the 6 month cap for the Board's reserves**
- **Change "certificate" to "license"**
- **Clarifies delinquent renewal requirements for California licensed optometrists who are practicing out of state**
- **Eliminate \$25.00 cap for delinquent fee**
- **Eliminates \$175.00 refund for ineligible candidates**
- **Eliminates fee for restoration of a license after suspension for failure to comply with branch office license requirements**
- **Eliminates unnecessary text**

M – Goldstein, S – Yu, MSP, unanimous.

The following issues are to be revisited:

- Amendment of Section 3146 (Elimination of \$16.00 pass-through of renewal fees to UC Berkeley)
- Repeal Section 3148 (Increase the renewal cycle from 2 to 4 years and increase the renewal fee from \$300 to \$600)

5. Licensing Program Procedures and Statutory Requirements: Business and Professions Code, Division 2, Chapter 7, Articles 4 (Registration) and 8 (Optometric Corporations)

Staff has identified two areas for potential improvement in the licensing program: improve internal processes and revise the licensure requirements via statutory changes.

The overall licensing program is undocumented and confusing, which causes confusion and delays in the licensing program. In response, a corrective action plan has been developed.

Options to Modify Branch Office Licenses:

- Eliminate branch office licensure
- Eliminate or modify branch office restrictions
- Require all optometrists who own a practice to apply for and obtain a license for each location. Applicants could be required to self certify that facility is in compliance with minimum standards and legal requirements.

The current licensure of corporations could be considered duplicative or over-regulation because optometric corporations are approved by the Secretary of State prior to applying with the Board. Additionally, optometry is the only identified health care profession required to obtain specific licensure for corporations.

Move to continue the issue of revising licensure requirements to a future meeting with a thoroughly outlined staff report detailing the Board's ability to streamline this procedure, pros and cons and proposed language for changing the law. MSP, M – Goldstein, S – Yu, unanimous.

Dr. Goldstein, Don Price representing Vision Service Plan, and Bill Gould, Attorney at Law, representing the California Optometric Association spoke against revising licensure requirements with regard to branch office licensing.

Bill Gould, Attorney at Law, representing the California Optometric Association spoke

against revising licensure requirements with regard to optometric corporations.

Move to continue issue of optometric corporation registration to a later date to be determined. M – Goldstein, S – YU, MSP, unanimous.

It was agreed that the issue of Fictitious Name Permits would be revisited at a later date.

6. Discussion and Possible Action to Modify Enforcement Statutes: Business and Professions Code, Division 2, Chapter 7, Articles 5 (Revocation and Suspension) and 6 (Offenses Against the Chapter)

Staff recommended possible amendments and/or additions, modeled after the Medical Board statutes, to the Business and Professions Code.

The Board requested that staff propose language on the following areas:

- Explicitly state the authority and powers of the Board to enforce the Optometry Practice Act i.e., investigations, inspections, discipline, deny or issue a probationary license or public letter of reprimand
- Provide for the prompt revocation of the license of any person who is subject to or becomes subject to Section 290 of the Penal Code (required to register as a sex offender)
- Provide that a licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the

following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code

- Explicitly provide for the Board's delegation of authority to conduct investigations and inspections and institute proceedings to the executive officer or his or her designee
- Add provisions making privileged communication between an optometrist and his or her patients shall not apply to investigations or proceedings
- Establish civil penalties for a licensee failing to comply with a request for clinical records, as follows:
 - A licensee who fails or refuses to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the Board, within 15 days of receiving the request and authorization, shall pay to the Board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.
- Further define grounds for disciplinary action to include:
 - Sexual misconduct
 - fraud or misrepresentation
 - gross negligence
 - incompetence
 - repeated negligent acts
 - conviction of a crime
 - failure to refer

- failure to maintain adequate & accurate records
- use of alcoholic beverages or controlled substances
- false statement in application
- practice without valid, unrevoked, unexpired license
- employing of suspended or unlicensed optometrist
- permitting another to use license
- alteration of license
- use or attempt to use a fraudulently issued, counterfeited, materially altered license
- failing to follow infection control guidelines
- violating any provision or term of the Moscone-Knox Professional Corporation, or of any rules and regulations duly adopted under those laws
- The purchase, sale or alteration of any degree, diploma, license, affidavit, transcript, or other evidence required for issuing any license or diploma that has been purchased, fraudulently issued, counterfeited, or materially altered
- Amend or delete language that requires the use of a suffix when a prefix is used. Current law requires an optometrist using the prefix "Dr." to use the suffix "O. D." i.e., Dr. John Doe, O. D., which is redundant.
- Add provisions requiring that probationary licensees reimburse the Board for the costs

associated with probation monitoring

Starr Shulman representing the California Academy of Ophthalmology spoke against amending or deleting language that requires the use of a suffix when a prefix is used.

The Board requested that the following issues be further researched and reported on at a future meeting:

- Define “specialist” or remove prohibition against advertising as “specialist”
- Amend prohibition against the advertising of free services, to allow for nonprofit organizations to advertise such charity services or allow such advertisement by all so long as advertisement is not false or misleading

7. Enforcement Committee Report

The Enforcement Committee reported on the recommended changes to the Probation Monitor Program and collaboration with Department of Health Services on Medi-Cal Fraud Investigations

8. Executive Officer’s Report

Ms. Smith highlighted the following items from the Executive Officer's Report:

- Online renewals for licensees
- The moratorium on expenditures for legal services was lifted on July 1, 2004. All of the Board’s cases are once again being processed by the assigned Deputy Attorney General.
- AG increased the rate from \$120.00 to \$132.00 per hour for standard attorney services, and

from \$52.00 to \$91.00 for
paralegal services.

- Meeting with the Department of health Services(DHS)
- Probation monitoring
- Publications
- Outreach Events
- Website
- Pending Litigation
- Budget
- Legislative Update
- Foreign Graduates

9. Public Comment

None

10. New Business

None

11. Discuss and Possible Action on
Disciplinary Matter(s) - Closed Session
Pursuant to Government Code Sections
11126(c)(3) and 11126(c)(1)

The Board voted to increase the penalty in the decision after non-adoption in the matter of the accusation against Bert McCoy.

The Board voted to adopt the default decision in the matter of the accusation and petition to revoke probation against William Shasky.

The Board voted to adopt the proposed decision in the matter of the Accusation against Richard Bozner.

The Board voted to deny the request for reconsideration and affirm its prior decision in the matter of the accusation against Brett Cornelison.

The Board voted to increase the penalty in the decision after non-adoption in the matter of the accusation against Marshall Skolnik.

12. Annual Performance Review of
Executive Officer – Closed Session
Pursuant to Government Code Section
1126(a)(1)

Open Session

13. Adjournment

Page A. Yarwood, O. D., M. S., F.A.A.O.
Secretary