

FINAL MINUTES

**OF THE PUBLIC MEETING
OF THE BOARD OF OPTOMETRY
MAY 19, 2005**

1. Call to Order

The meeting was called to order at 9:15 AM by Dr. Hernandez and a quorum was established. Present were Ms. Rosas, and Drs. Goldstein, Hernandez, Pollack, Yarwood, and Yu. Also present were Staff Members Krista Eklund, Jane Flint, Rex Farmer, and Taryn Smith and Staff Counsel Don Chang and Char Sachson.

Mr. Naranjo arrived at 9:25 a.m.

2. Approval of Minutes

Move to approve the minutes of the February 17, 2005 meeting. M - Hernandez, S - Yarwood, MSP - Unanimous.

3. President's Report

Dr. Hernandez reported that he was asked to participate in a public meeting conducted by the Department of Managed Health Care. The purpose of the meeting was to obtain input from interested parties regarding a request from specialized vision plans to assess an additional co-payment for providing dilated fundus examinations. Dr. Hernandez gave testimony as to how the dilated fundus exam is performed and when it is indicated. He advised the meeting attendees that he was present as an individual practitioner, and he was not representing the Board.

4. Report on Status of Board Sponsored Legislation - Assembly Bill 488 (Bermudez).

Dr. Hernandez reported on the progress of Assembly Bill 499 (Bermudez), which passed through the Assembly was scheduled for hearings in the Senate.

5. Discussion and Possible Action on Pending Legislation Affecting Optometry.

A. Senate Bill 231 (Figueroa) -Malpractice Judgements.

Move to support language in Section 802 of Senate Bill 231. M - Goldstein, S - Hernandez, MSP - Unanimous.

B. Senate Bill 649 (Margett) - Spot Bill.

This is a spot bill, so no action was taken.

C. Assembly Bill 370 (Aghazarian) -Statue of Limitations.

Move to support with amendments to remove cite and fines from the statute of limitations in Section 3137.

M - Goldstein, S - Hernandez, MSP - Unanimous.

- D. Assembly Bill 579 (Aanastad) - Advertising Free Eye Exams.
Move to support SB 579. M - Goldstein, S - Rosas, MSP - Unanimous.
- E. Assembly Bill 446 (Negrete McLeod) - Secret Settlements.
Move to support AB 446. M - Goldstein, S - Yu, MSP - Unanimous.
- F. Assembly Bill 1382 (Nakanishi) - Plano Contact Lenses
Move to support AB 1382. M - Yu, S - Hernandez, MSP - Unanimous.

6. Update and Possible Action on Pending Amendments to California Code of Regulations.

A. Section 1508, Optometric Assistants.

At the January 2004 public meeting, the Board approved proposed regulatory language for a new California Code of Regulation Section 1508 defining supervising optometrist responsibilities vis-à-vis optometric assistants and authorized staff to proceed with the rule making process.

A public hearing was conducted in the Board office November 16, 2004 with a comment of support for the proposed new section provided by the California Optometric Association. The language has been reviewed by the Department of Consumer Affairs' Legislation and Regulation Review Division. This review generated a concern that proposed language inadequately specifies who would write the optometry office's policy statement.

Move to present language for public comment for 15 days and authorize the Executive Officer to adopt language if no objections. M -Pollack,
S - Goldstein, MSP - Unanimous.

Move to give Executive Officer authority to make non-substantive editorial changes to language. M - Hernandez, S - Goldstein, MSP - Unanimous.

B. Section 1522, Infection Control Guidelines.

The Board approved proposed regulatory language, at the January 2004 public meeting to establish a California Code of Regulations Section 1522 to provide infection control guidelines for licensees to utilize in their optometric practices. A public hearing was conducted on November 16, 2004 with a comment of support by the California Optometric Association. At the February 2005 public board meeting concerns were raised regarding discretionary provision of proposed language. At this public meeting Mr. Chang suggested removing permissive language making language mandatory, and publishing infection control guidelines as an educational tool. A request was made by enforcement to have guidelines to assist with enforcement issues.

Move to publish the "Infection Control Guidelines" as a guideline rather than regulation. M -Yarwood, S -Naranjo, MSP -Unanimous.

C. Section 1566 and 1566.1, Consumer Notice.

At the November 2004 public meeting the Board approved proposed regulatory language to amend California Code of Regulations Sections 1566 and 1566.1 to reflect changes in federal law concerning the release of contact lens prescriptions. At the February 7, 2005 public hearing, the California Optometric Association provided a comment of opposition to the proposed regulation amendment. Department of Consumer Affairs' Legislation and Regulation Review Divisions Review generated a comment that the contact lens release provision of the proposed amendment should be clarified and strengthened to eliminate potential confusion by consumers.

Move to strike "if a fitting is required". M - Hernandez, S - Goldstein, MSP - Unanimous.

Move to present a 15 day public notice and, if no objections, go forward with amendment. M - Hernandez, S - Goldstein, MSP - Unanimous.

7. Strategic Plan Update

Ms. Smith provided a progress report on the Board's strategic plan.

8. Executive Officer's Report

Ms. Smith reported on:

Recruitment of Expert Witnesses - Ten application have been received to date.

MOU with DHS - DHS legal office is undergoing staff changes. Project is currently on hold.

Enforcement Program Data - There are currently 124 open cases. Since 1/31/05, \$16,755 has been assessed in fines with \$6,554 collected. Regarding cost recovery on current cases, there is a balance due of \$67,720.91.

Investigator Training - Training program for investigators is projected to begin this summer.

Licensing Program -Staff has streamlined review procedures.

Office Relocation - Board offices will move to building in same area but separate from the new DCA headquarters. It is estimated the Board's rent will be reduced by approximately \$17,064 annually.

Budget -Board's fund is projected to be depleted in fiscal year 2006/07. Board

staff continues to work with the California Optometric Association and legislative staff on a fee increase.

Public Outreach and Education - New communication feature added to website. Interested parties can sign up to receive email alerts when important new Information is posted on the Board's website.

Pending Litigation

Re: Consumer Cause v. National Vision - California Supreme Court ordered depublication of the Second District's decision.

Re: People v. Cole National Corporation; Pearle Vision, Inc. - The California Supreme Court granted Pearle Vision's petition for review in the Cole National v. Hamilton Case.

Re: N.A.A.O. Lens Crafters Inc., et al, v. Bill Lockyer and Kathleen Hamilton - The Attorney General's Office argued that the Federal Court should abstain in the N.A.A.O. case until the California Supreme Court makes a decision on the Knox-Keene issues. The Judge stayed all of the proceedings in the case.

9. Enforcement Committee Report

The board was advised of Enforcement Committee efforts to recruit new expert witnesses. Staff will work with board member(s) to develop a mock test case to be given to potential expert witnesses.

10. Continuing Education Committee Report

Dr. Yu, Chair of the CE Committee, reported that the Committee met on May 19, 2005 and recommends amending California Code of Regulations Section 1536 to eliminate the CPR requirement for license renewal and instead allow CE credit for those who choose to be CPR certified, as well as those who participate in child or elder abuse detection.

Motion to amend CCR Section 1536 as recommended by the CE Committee. M-Yu. S – Goldstein. MSP - Unanimous.

The Committee also denied applications for approval for CPR courses from Medic First Aid International and ACPRA.

11. Task Force on Graduates of Foreign Schools of Optometry Report

The Task Force held a meeting on March 17, 2005 to discuss possible changes in policy or procedure for applications from graduates of foreign (unaccredited) schools of optometry. Don Chang, Legal Counsel, provided legislative history and advised that any change in policy or procedure being contemplated would require a change

in the law. Board decided to leave the status quo and instructed-staff to monitor the situation.

12. Petition for Reduction of Penalty or Early Termination of Probation.

The Petition was denied.

13. Discussion and Possible Action on Disciplinary Matter(s) -Closed Session Pursuant to Government Code Sections 11126(c) (3) and 1123 (c) (1).

Closed session.

14. Open Session

15. Public Comment

No comment.

16. New Business

Dr. Hernandez and Ms. Smith will review committee structure.

17. Adjournment

The meeting adjourned at 4:00 PM.

ORIGINAL SIGNED

Audrey Noda, Secretary
Board of Optometry