

Final Minutes

BOARD OF OPTOMETRY

PUBLIC MEETING

AUGUST 18, 2005

1. Call to Order

The meeting was called to order at 9:06 a.m. by Dr. Hernandez and a quorum was established. Present were Ms Galvan and Noda 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 Attorney General's Office Liaison, Char Sachson.

Mr. Naranjo arrived at 9:35 a.m.

2. Approval of Minutes

Move to approve the minutes of the May 19, 2005 meeting. M - Goldstein, S - Yarwood, MSP - Unanimous.

3. President's Report

A time certain was announced for 11:00 regarding one of the disciplinary matters.

Dr. Hernandez reported that, as of the meeting date, AB 488 had made its way through all policy and appropriations committees and was set to be heard on Senate floor. Dr. Hernandez and Ms. Smith worked with the California Academy of Ophthalmology to remove opposition to the bill and negotiated language that was acceptable to COA and Ophthalmology. Ophthalmology subsequently removed their opposition. In response to recurring opposition from the Republican caucus AB 488 was amended to:

- Eliminate the increase in the delinquency fee for optometrist license
- Keep the 6-month cap on the boards reserve funds

These amendments were necessary because changes in the enforcement statutes were far too important to the Board to risk a veto. No further opposition from the Republican caucus is anticipated. If the Governor will sign the bill the new law will take affect January 1, 2006.

4. Election of Officers

Business and Professions Code Section 3014 requires that the Board of Optometry elect a President, Vice-President, and Secretary. Each of which will serve a one year term or until a qualified successor is elected.

Move to keep the same set of officers (President, Dr. Hernandez; Vice President, Dr. Yarwood; and Secretary, Ms. Noda). M - Goldstein, S - Naranjo, MSP - Unanimous.

5. Committee Assignments

Currently the Board of Optometry has five existing committees which include:

- Legislation and Regulations Committee
- Enforcement Committee
- Continuing Education Committee

- Fiscal Committee
- Communications Committee

The Board voted to make Legislation, Enforcement, and Continuing Education Committees standing committees. The Fiscal and Communications Committees will continue on an ad-hoc basis. The Board also voted to establish an Exam Committee to establish an exam plan for the California Laws and Regulations Exam. Dr. Hernandez will work with staff on Committee membership.

6. Update and Possible Action on Pending Legislation Affecting Optometry

Ms. Smith reported on the status of previously identified legislation that could affect the practice and regulation of optometry in California. No action was taken on any of the bills.

A. Assembly Bill 488 (Bermudez) - Optometry Practice Act.

Dr. Hernandez reported on the status of AB 488 during the President's Report.

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

Among other things, SB 231 would amend Business and Professions Code Section 802 to including requiring any *judgment* in a malpractice action against an optometrist to be reported to the Board. Failure to comply with this requirement would be considered a crime. The Board took a support position on the provision of the bill pertaining to optometry. As of the meeting date, SB 231 is set to Assembly Committee on Appropriations.

C. Senate Bill 649 (Margett) - Spot Bill currently at its third reading.

There was no activity to report on this bill.

D. Assembly Bill 370 (Aghazarian) - Statute of Limitations.

Bill 370 is a COA sponsored bill that is support by the Board of Optometry. AB 370 would establish statute of limitations for the Board to take disciplinary action against optometrists. With a few exceptions, any accusation filed against an optometrist shall be filed within three years after the Board discovers the act or omission alleged, or within seven years after the act or omission alleged, whichever occurs first. The exceptions to the statute of limitations listed above include cases alleging or involving:

- ◆ fraud or willful misrepresentation;
- ◆ incompetence, gross negligence, or repeated negligent acts if the licensee intentionally concealed his or her incompetence, gross negligence, or repeated negligent acts;
- ◆ sexual misconduct committed on a minor; and
- ◆ ongoing criminal investigations

As of the meeting date, the bill is set for third reading.

E. Assembly Bill 579 (Aanastad) - Advertising Free Eye Exams.

According to the sponsor (COA) AB 579 proposes to amend Business and Professions Code Section 3129 to modernize the current restriction on advertising free optometric services to allow publicizing charitable events, like free screenings, while still protecting consumers from "bait-and-switch" tactics. The Board took a support

position on this bill. According COA, there will be no action on AB 579 until the next Legislative session.

- F. Assembly Bill 446 (Negrete McLeod) - Secret Settlements.
AB Bill 446 proposes to make "gag clauses" in malpractice settlements illegal. The Board of Optometry took a support position on this bill. As of the meeting date, AB 446 is set for third reading.
- G. Assembly Bill 1382 (Nakanishi) - Plano Contact Lenses
AB 1382 provides that it is a deceptive marketing practice for any person to advertise that contact lenses may be obtained without confirmation of a valid prescription. The sponsor of the bill, COA, is negotiating provision of the bill with the Department of Health Services.

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

- A. Section 1536, Continuing Education
At the May 2005 Board meeting, the Board instructed staff to prepare language to amend California Code of Regulations, Title 16, Section 1536 to eliminate the renewal requirement for optometric license regarding cardiopulmonary resuscitation (CPR). The Board further instructed staff to amend the regulation to permit optometrist to gain continuing education credit for obtaining CPR certification and for courses on detecting child and elder abuse. Draft language was presented to the Board; however, the Board requested more information on abuse detection and CPR courses that are currently available.
Move to continue the discuss with input from staff. M - Goldstein, S - Yarwood, MSP - Unanimous.
- B. Section 1508, Optometric Assistants
Move to authorize Executive Office to modify and make text available to the public for 15 days. If there are no adverse comments, proceed with adopting language changes.
M - Goldstein, S - Yarwood, MSP - Unanimous.
- C. Section 1566 and 1566.1, Consumer Notice
Modified language was presented to public for 15 days with no comments received.
Move to adopt modified language. M - Goldstein, S - Yu, MSP - Unanimous.
- D. Section 1579, Citations and Fines.
Modified language was presented to public for 15 days with no comments received.
Move to adopt modified language. M - Goldstein, S - Galvan, MSP - Unanimous.

I. Discussion and Possible Action to Amend Business and Professions Code Regarding Optometric Corporations.

The Board discussed the feasibility of eliminating the duplicative requirement that optometric corporations register with the Board after having done so with the Secretary of State. Information regarding the regulatory, enforcement, licensing, public policy and fiscal impact was presented to the Board. The Board instructed staff to move forward with eliminating the ministerial functions while retaining authority to take action against corporate abuses.

J. Strategic Plan Update

Ms. Smith provided a status report on the Board's progress toward achieving its strategic goals.

K. Executive Officer's Report

Ms. Smith reported:

- Enforcement program activity including progress on recruitment of expert witnesses, investigator training and activity for the last quarter.
- Progress on the formalized agreement between the Board and the Department of Health Services was delayed but is now moving forward again.
- Relocation of the Board offices from downtown Sacramento to Natomas is scheduled to take place in January 2006.
- Licensing program data shows improvement in the backlog.
- The one-time savings generated by the reduced use of investigators from the Division of Investigations are sufficient to delay pursuit of a fee increase until the 2006 legislative session.
- A new communication feature on the Board's website allows interested parties to sign up to receive email alerts when the important new information is posted on the Board's website.
- Status of pending litigation regarding state regulation of optometric practice in California.

L. Enforcement Committee Report

The Enforcement Committee Chair, Dr. Goldstein, provided an update on the Board's enforcement monitor program, in which staff will begin conducting Probation Orientation Interviews to review the various terms and conditions of the probation. In order to implement the interview staff has produced a number of standardize forms that explain very specifically and clearly the terms and conditions of the probation.

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

The petition was granted.

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

Closed Session.

O. Open Session

P. Public Comment

No Comment

Q. Adjournment.

The meeting adjourned at 3.35 p.m.