



Board of Optometry
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Final Minutes

BOARD OF OPTOMETRY

Public Meeting

August 24, 2006

1. Call to Order

The meeting was called to order at 9:25 a.m., by Dr. Goldstein and a quorum was established. Present were Ms. Johnson and Noda, Mr. Naranjo, and Drs. Goldstein, Hernandez and Simonds. Also present were staff members Taryn Smith, Margie McGavin, Gary Randolph, and Staff Counsels Don Chang and Spencer Walker. Ms. Rosas arrived at 9:45 a.m.

2. Approval of Minutes

Move to approve minutes as amended. M – Simonds, S – Johnson, MSP – Unanimous.

3. Update and Possible Action on Pending Legislation

Taryn Smith reported on the following Legislative updates.

A. *Assembly Bill 579 (Aanastad)*

As of August 16, 2006, AB 579 had passed through both houses of the legislature and was en route to the Governor's desk. There has been no opposition to the bill, therefore, it is anticipated that the Governor will sign the bill and it will take effect on January 1, 2007.

B. *Assembly Bill 1382 (Nakanishi)*

This bill was enrolled and forwarded to the Governor on August 14, 2006. There has been no opposition to the bill, therefore, it is anticipated that the Governor will sign the bill and it will take effect on January 1, 2007.

C. *Assembly Bill 2256 (Assembly Business and Professions Committee)*

The bill has passed through its house of origin and is making its way, unopposed, through the Senate.

D. *Senate Bill 1476 (Figueroa)*

The bill has passed through its house of origin and is making its way, unopposed, through the Senate.

4. Pending Regulation Changes

Amendments to California Code of Regulations Section 1579 (Citable Offenses)

At the June 2006 meeting, it was reported that the rulemaking file was submitted to the Office of Administrative Law (OAL) for review on March 23, 2006. The file was rejected due to technical procedural problems, which were addressed by adopting modified language as presented by legal counsel.

The required 15-day notice was published on July 26, 2006. Staff is now preparing the file for re-submittal to the Office of Administrative Law. If the file is approved, the regulation will take effect 30 days after filing with the Secretary of State.

5. Executive Officer's Report

Licensing Exam

The California Law Exam was administered to 286 candidates throughout the United States this April. After scoring the test, the Department of Consumer Affairs' Office of Examination Resources (OER) issued a Test Scoring and Item Analysis (TSIA) report, which provides statistical analysis of each question in the exam. Based on recommendations from OER, one of the exam questions was eliminated, making it necessary to re-score the exam answer sheets. Revised exam results were issued in mid-July.

Board staff met with the State Office of Examination Resources (OER) to discuss a strategy for revising the current California Laws and Regulations Examination, passage of which is required for licensure as an optometrist in California (California Code of Regulations §1523(e) and Business and Professions Code §3046).

The Board initiated the meeting with OER as a result of OER's recommendations in recent Test Scoring and Item Analysis Reports that some of the items on the California Laws and Regulations Exam should be replaced and/or revised and that the current California Laws and Regulations Exam does not reflect the scope of practice expansion.

Additionally, the National Board of Examiners in Optometry (NBEO) completed a national study of clinical practice of doctors of optometry, which the Board received in March 2006. The current occupational analysis (OA) for the optometry profession in California was completed in 2001, and does not include the expansion of the scope of practice that was enacted in 2001.

The Board is required to be in compliance with the Business and Professions Code, Section 139, which requires all of the Boards and Bureaus within DCA to conduct occupational analyses and exam validation studies in a psychometrically sound manner on a regular basis. In order to meet the requirements set forth in B&P 139, a new OA should be performed that will reflect the current optometry profession in California. After the OA for California practice is completed, a comparison of the NBEO profiling report and the California OA should be completed, which will result in a new examination plan for the California Laws and Regulations Exam.

To bring the Board into compliance with the Business and Professions Code, Section 139, a two-phase strategy is planned:

Phase I to begin April / May 2007 pending funding

1. The Board will verify whether the expansion of the scope of practice is included in the NBEO exam.
2. The Board will begin to recruit licensees who are in good standing with the Board as subject matter experts (SMEs). The SMEs will participate in workshops to update the current California Laws and Regulations Exam.
3. SMEs should be from different geographical areas within the state, should represent various specialties and work settings (if any), and should demonstrate an experience mix within the profession. Half the SMEs should have no more than five years of licensed experience so that the perspective of the newly licensed optometrist is maintained. Six to nine SMEs are required for each examination development workshop. Examination development workshops typically last two to three days.
4. OER will assist the Board in updating the current California Laws and Regulations Exam by validating the current exam with the 2001 OA and including the expansion of scope, if necessary. Items will be validated to the new exam plan and problematic items will be reviewed or replaced, and new items will be written. An item bank will be created and maintained by OER. OER, with the assistance of SMEs, will construct one to two forms of the California Laws and Regulations Exam and conduct a passing score workshop. The plan is to begin work on this step in April 2007.

Phase II to begin FY 2007/08 pending funding

5. The OER will conduct a new OA and compare the NBEO report to arrive at a new examination plan for the California Laws and Regulations Exam through a series of workshops.
6. The OER will work with the Board to develop two California Laws and Regulations Exam forms every fiscal year. This work will include the one or more of the following workshops: item writing, item review, exam construction, and passing score.

Applicant Tracking System

The Board was scheduled to begin converting its manual application review process to an automated system, known as the Applicant Tracking System (ATS), in July 2006. However, due to workload issues within the Department of Consumer Affairs' Office of Information Services, which oversees the ATS system, the implementation date has been delayed until November 2006. ATS is a comprehensive program that interfaces with our automated system for tracking licenses. Multiple regulatory programs within the Department of Consumer Affairs already use ATS. Implementing ATS is another effort to make the Licensing Program more efficient and eliminate the backlogs. The \$70,000 set up cost is built into the operating budget for Fiscal Year 2006/07.

iLicensing

The Board is scheduled to begin implementation of the Department of Consumer Affairs' iLicensing program, which is an on automated *online* service that accepts credit card payments and requests for the following functions:

- Initial license applications
- License renewal
- Address changes
- Requests for duplicate licenses
- Cashiering and reports

The Board is scheduled to begin implementation in Phase 4, which will take place January – April of 2009. Although the launch date is scheduled three years away, Board staff will be working with DCA staff to identify baseline requirements to be built into the system. The Board's budget for iLicensing over the next three years is reflected below:

Fiscal Year 2006/07	\$5,000
Fiscal year 2007/08	\$17,000
Fiscal Year 2008/09	\$13,000

Enforcement Program

The Board recruited expert witnesses to act as consultants for the Enforcement Program last year. Ten applications have been received to date. At the February 2005 Board meeting, the Board instructed staff to work with Board member(s) to develop a test enforcement case. The applicants would then be asked to review the test case and prepare an expert witness report of findings. The reports will be reviewed for demonstrated knowledge of standard of care, optometric practice, and applicable laws. Additional factors will include analytical and writing skills.

Test case development was placed on hold pending the success of the Board-sponsored legislation to recast and revise the enforcement statutes in the Optometry Practice Act (Assembly Bill 488 (Bermudez)). The bill was signed into law and took effect January 1, 2006. The applicants, as well as existing experts, will have to be informed of the changes before they are tested on their knowledge of the laws.

Staff was instructed to develop training sessions to educate investigators on the practice of optometry and the laws regulating it. The sessions will be held at Southern California College of Optometry and Berkeley School of Optometry. The training was originally envisioned to take place this summer, but it was postponed pending the outcome of AB 488 (Bermudez). In the meantime, staff has worked with DOI and the schools to develop the training program and projected costs associated with the training. The Board's Liaison to the Attorney General's Office will assist with training content and presentation. Expert witnesses will also be invited to attend the training.

Note: These projects were placed on hold due to staff changes in the Enforcement Program. The new Enforcement Manager reported to work for the board in March of this year and has begun working on these projects.

State Board of Optometry Budget

The Board's reserve fund continues to shrink. As previously reported and discussed, a fee increase will be necessary. The only question is when it should be pursued. Budget estimates for Fiscal Year 2006/07 initially indicated an immediate need for a fee increase. However, it has since been determined that the savings generated by the reduced use of investigators from the Division of Investigations are sufficient to delay pursuit of a fee increase until the 2006/07 legislative session.

Fee increases are notoriously difficult to implement via legislation and always require cooperation from the Administration, the Legislature and the profession. Staff has met on numerous occasions with representatives from the Administration to discuss the Board's budget and will continue to do so. Board staff has also discussed this issue with staff from policy committees in the Assembly and Senate. The California Optometric Association has already indicated they would support the Board's efforts to increase revenue. Staff will continue to monitor the situation for the best time to go forward with a fee increase.

The budget for Attorney General's fees for Fiscal Year 2005/2006 is \$186,622. The Board spent \$195,760.50, which was \$9,138.50 over the budget.

Medi-Cal Re-Enrollment Project

On May 30, 2006, the Department of Health Services informed the board that it is currently re-enrolling 571 optometrist in Los Angeles County for the purpose of authorizing Medi-Cal services at the addresses listed on their applications. At that time 58 of the 107 renewal applications being reviewed showed addresses not registered with the board and that 85% are in need of a Fictitious Name Permit.

DHS and the Board are working cooperatively to notify the optometrists that they are not in compliance with registration requirements, which will delay their re-enrollment.

California Code of Regulations Section 51000.5(f) & 51000.5(g)(2) states that the provider [Optometrist] has 35 days to resubmit the application with all deficiencies corrected or they will be deactivated. What this means is that they must be in compliance with the Board before the Health Services will authorize them to provide Medi-Cal services.

Because of the immediate time frame involved, the Department of Health Services has requested that the Optometry Board expedite applications to correct or update these deficiencies. To date, Board staff has corrected about 10 of the deficiencies. As of August 22, 2006, DHS reports that there may be up to 60 optometric applications for re-enrollment that may be required to correct their records with the Board before the re-enrollment process is completed.

Disaster Preparedness Risk Assessment

The changing threat paradigm and recent emergencies, including localized acts of nature, accidents, technological emergencies, and military or terrorist attack-related incidents, have shifted awareness to the need for viable plans to ensure the capability of state agencies to continue their essential functions. On April 18, 2006, the Governor issued Executive Order S-04-06 (Attached), which mandates that all state agencies prepare Continuity of Operations/Continuity of Government plans. The Governor's Office of Emergency Services has published a template plan to assist state agencies when developing a continuity plan. The Board will develop its own continuity plan, based on the aforementioned template, for submittal by September 1, 2006.

6. Strategic Planning Update

Taryn Smith provided a status report on the Board's strategic plan and efforts to recruit a strategic planning consultant. Pending approval of a consultant, the Board agreed to set a target date for strategic planning on November 16, 2006.

7. Report on New Fictitious Name Permit Requirements

Staff reported that the new Fictitious Name Permit (FNP) requirements were implemented. The revised form was approved by legal counsel and posted on the Board's website. Anyone requesting an application will be given the new FNP application. However, all pending FNP applications that were submitted on the old form will be processed in accordance with the previous standards and policies.

8. Request for Approval of Grand Rounds Program at SCCO

The Southern California College of Optometry (SCCO) requested that the Board of Optometry review and approve a grand rounds course that was offered to optometrists in order to meet the requirements for certification to treat primary open angle glaucoma. The Board was advised that the Board President, Lee Goldstein, the Executive Officer, Taryn Smith, and the Board's legal counsel, Don Chang, attended a meeting at SCCO to discuss the glaucoma training program. SCCO also provided a written course description. Based on the information provided, the Board's legal counsel expressed concerns that the program did not meet the legal criteria for glaucoma certification.

In the course of their discussion, the Board determined that they need clarification on two outstanding issues regarding the glaucoma certification program offered by SCCO, which are outlined below.

- It is unclear that participating optometrists meet the legislative mandate for collaborative treatment of 50 patients by reviewing copies of patient records prepared by other optometrists.
- The level of participation by each of the optometrists during the initial meeting where a patient is evaluated is unclear.

Move to continue the agenda item and invite SCCO to attend the next Board meet to respond to the Board's questions. M – Simonds, S – Johnson, Abstain – Hernandez, MSP – Unanimous.

9. Closed Session

- The Board voted to adopt the proposed stipulated settlement and disciplinary order in the matter of the accusation against Jason Haruo Nakagawa, O.D.
- The Board voted to adopt the proposed stipulation to surrender license in the matter of the accusation against Paul Lawton Washburn, O.D.
- The Board voted to adopt the proposed decision in the matter of the petition for reduction of penalty or early termination of probation of Howard Joel Weiss, O.D.

10. Open Session

11. Public Comment

Tim Hart, from the California Optometric Association, reported that he had discussed a fee increase with the COA Legislative Committee and that there was no opposition at that time. He also reported that 1 800 Contacts is sponsoring bills in 12 states and two bills in Congress regarding private label contact lenses.

12. Future Agenda Items

None were submitted.

13. Adjournment

The meeting was adjourned at 11:45 a.m.

Monica Johnson, Secretary

Date