



STATE BOARD OF OPTOMETRY
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Meeting Minutes January 11, 2011

California State Board of Optometry
 Elihu Harris Building
 1515 Clay Street, Room 15
 Oakland, CA 94612

Members Present

Lee Goldstein, OD, MPA
 Board President
 Alejandro Arredondo, OD
 Board Vice President
 Monica Johnson
 Board Secretary
 Susy Yu, OD, MBA, FAAO
 Fred Naranjo, MBA, Public Member
 Donna Burke, Public Member
 Alexander Kim, MBA, Public Member
 Kenneth Lawenda, OD

Staff Present

Mona Maggio, Executive Officer
 Margie McGavin, Enforcement Manager
 Andrea Levia, Policy Analyst
 Jessica Sieferman, Probation Monitor
 Jeff Robinson, Lead Licensing Analyst
 Michael Santiago, Staff Counsel
 Char Sachson, Deputy Attorney General

Guest List

On File

Members Absent (Excused)

Edward Rendon, MA, Public Member

Tuesday, January 11, 2011

10:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 10:01 a.m.
 Dr. Goldstein called roll and a quorum was established. Board members, staff, and members of the audience were invited to introduce themselves.

Public member, Fred Naranjo arrived at 10:24 a.m.

2. President's Report

A. Welcome and Introductions

Dr. Goldstein welcomed the Board's two new public members, Donna Burke and Alexander Kim. Dr. Goldstein noted that he had attended every Board meeting held in the last eight years and that Enforcement Manager, Margie McGavin had also attended every Board meeting since her hire date.

Dr. Goldstein reported that the Department of Consumer Affairs (DCA) Board Chairs have engaged in monthly conference calls. The Podiatry Board initiated communication

regarding continuing competency. In general these conference calls have been very useful, sometimes resulting in reports to the Board President.

Dr. Goldstein announced two upcoming meetings related to the California Optometric Association (COA):

- 1) House of Delegates - Dr. Goldstein will be on the panel of this annual meeting which covers topics important to the profession. Chief topic of discussion from the Board will be glaucoma certification.
February 4-5, 2011
Visalia Marriott
- 2) Legislative Day - All optometrists are welcome to attend and participate.
March 23, 2011

3. Approval of Board Meeting Minutes

A. July 28, 2010 Meeting

Kenneth Lawenda moved to accept the July 28, 2010 minutes. Alejandro Arredondo seconded. The Board voted (4 – Ayes; 0 – No; 3 – Abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Ms. Johnson			X
Ms. Burke			X
Mr. Kim			X

B. October 22, 2010 Meeting

Dr. Goldstein, public member Monica Johnson, and Dr. Craig Kliger (representing the California Academy of Eye Physicians and Surgeons) discussed their concerns that some comments were noted as inaudible. It is their belief that not all of the comments noted as inaudible are completely inaudible, and the October 22, 2010 minutes should be revised to include all comments received.

Monica Johnson moved to continue approval of the October 22, 2010 minutes and direct staff to revise the minutes to reflect all comments received from Board and public members. Kenneth Lawenda seconded. The Board voted (6 – Ayes; 0 – No; 1 – Abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Ms. Johnson	X		
Ms. Burke	X		
Mr. Kim			X

4. Director’s Report

Representative from the Department of Consumer Affairs (DCA)

Gil De Luna, representing DCA Director, Brian Stiger, welcomed the new Board members. Mr. De Luna reported on the following:

- Chief Deputy Director, Bill Young has retired. Deputy Director, Board and Bureau Relations, Kimberly Kirchmeyer has taken over some of Mr. Young's duties. Mr. De Luna reports that he has taken over some of Ms. Kirchmeyer's duties as well.
- On August 31, 2010 the DCA received Governor Schwarzenegger's directive to cease hiring of employees, only allowing interdepartmental transfers. The Department has continued to follow this directive, and is working to determine the exemption process under the new administration.
- The Department continues to encourage this Board to move forward with the Consumer Protection and Enforcement Initiative (CPEI) regulations in order to expedite the Board's investigation and prosecution processes. DCA has completed gathering data on the performance measurements and they are posted on the DCA website. These measurements address cycle time, volume of complaints, customer service, and probation monitoring. The department encourages this Board to review these performance measurements, which include timelines for processing the Board's complaints and disciplinary actions.
- The Department wants to thank this Board for moving forward with implementation of Senate Bill (SB) 1441 "Uniform Standards". The Department encourages this Board to move forward with the regulatory process for the amendments.
- The Department also encourages this Board to webcast as needed. DCA can provide this service to the Board, which improves transparency and assists with auditory issues. Additionally encouraged is the posting of meeting materials on the Board's website.
- The BreZE project is moving forward, and Sean O'Conner with the Board of Behavioral Sciences (BSS) will provide a report later in this meeting.
- DCA is changing the way it pays its expert consultants. A contract will need to be in place for all of those who assist with enforcement and testing.

Mr. De Luna opened the floor to questions. Ms. Johnson inquired about two issues:

- 1) Does the hiring freeze apply to all boards, even if they're a special funded board? Mr. De Luna responded: "Yes".
- 2) Does a timeline exist for which board meeting materials are to be posted on board websites? Mr. De Luna responded: "The agenda materials can be posted later, but the actual agenda should be posted no later than 10 days prior to the meeting".

Dr. Kenneth Lawenda inquired and he, Ms. Johnson, and Mr. De Luna discussed that sensitive material should be redacted before web posting. Material posted on the website should be solely for the public. Mr. De Luna added that if the meeting is webcasted, the posted agenda should note that there is webcasting. The DCA has two mobile units that can come and webcast meetings.

Public member, Donna Burke inquired as to what impact the hiring freeze may have on the Department and what level of vacancies exist. Mr. De Luna responded that the freeze has definitely impacted every board and bureau. If there's a vacancy within a department, an employee may transfer but both parties have to agree, which makes transferring difficult. At this time, it is very difficult for an employee to promote. The freeze has impacted individual workloads. He concluded that under the current economic crises, we must do whatever we can.

Policy Analyst, Andrea Leiva asked how far in advance are we required to have expert witness contracts in place? Mr. De Luna responded that the contracts process is a 90 day process.

5. Executive Officer's Report

Executive Officer, Mona Maggio introduced DCA Budget Manager, Cynthia Dines. Ms. Dines provided a presentation of the Board's budget.

A. Budget Update

Ms. Dines provided an analysis of the Board's fund condition. The Board began fiscal year (FY) 2009/10 with a beginning balance of \$806,000 + a prior year adjustment of \$9,000 equaling \$815,000. Revenues and transfers and total resources brought the balance to \$2,388,000. The Board's expenditures totaled \$1,167,000 leaving a fund balance of 1.2 million. This is a very good figure, and where we want to be. The Board could operate 8.9 months without receiving any revenue into the next year. Ms. Dines answered questions from members (i.e budget change proposals, budget authority, hiring).

Dr. Kliger asked if any history has been maintained regarding budget fluctuations. Ms. Dine explained that the Board has never had a cash flow issue with expenditures during times of lower revenue; and that, we have enough of a revenue base to offset the months where less revenue is received.

Ms. Dines provided a summary of the Governor's proposed budget. She reported on healthcare adjustments, workforce cap, position cuts, and the impact on the boards and bureaus' operations. She provided a summary of the Board of Optometry FY 2010-11 expenditure projection and reported that budgets projects the Board of Optometry will realize a savings of about 6.2% of its budget.

B. Board Operations

Ms. Maggio reported that the Architectural drawings for our move are near completion and will be submitted for permits. Plan checks typically take anywhere from 1-8 weeks. Once permitted, it's anticipated there will be four weeks of construction. We hope to take occupancy by April.

She stated there are, currently, nine Board members, and two member vacancies, one professional member and one public member. Both are gubernatorial appointments.

Public member, Fred Naranjo asked why our rent for office space will double. Ms. Maggio explained that several of our enforcement staff are currently housed in the Bureau of Security and Investigative Services (BSIS) due to insufficient office space. Ms. Maggio added that our revenue base should be sufficient for both a manager position and the doubling of our rent. Ms. Maggio explained that there are few options and flexibility, in choosing where and how boards and bureaus move. Ms. Dines provided an overview of the very specific process that has to be undertaken for a move to occur.

Dr. Kliger questioned (from a public standpoint), is there a process in place for ensuring the Board does not overspend creating a public safety issue. Ms. Maggio responded that the budget office is that safety net. It's the budget Office's responsibility to make certain every board and bureau does not overspend on its budget or create a situation that would cause harm in any fiscal year. She provided examples of how this works.

C. Selection of Board Meeting Dates for 2011

Board members and staff discussed future meeting dates. The dates agreed upon are as follows:

- April 11 or 12 in Los Angeles

- August 5 in Sacramento
- November 4 in Southern California

D. Other

There was nothing else reported.

6. Examination/Licensing Program Report

Policy Analyst, Andrea Leiva reported on the following:

A. California Laws and Regulations Examination (CLRE)

Ms. Leiva stated that in 2011 the Board will hold four workshops to develop 2011 – 2012's CLRE. She reported that a variety of licensees continue to apply to the workshops and thanks to them, we have a fair, psychometrically sound, valid, and legally defensible examination.

The upcoming workshops are as follows:

- **March 27-28, 2011 (Sunday & Monday): Item Writing and Review Workshop and**
- **April 24-25, 2011 (Sunday & Monday): Item Writing and Review Workshop**
Purpose: To review the current questions in the California Laws and Regulations examination and to write new questions. Participants will receive training on how to write an exam question and will work in conjunction with a testing specialist to develop examination questions. **Worth 8 CE credits.**
- **June 13, 2011 (Monday): Exam Construction**
Purpose: In this workshop, subject matter experts will select questions for the 2011 California Laws and Regulations Examinations. Participants will evaluate items for each content area included in the examination and select those that best represent the knowledge required for entry into the profession. **Worth 4 CE credits.**
- **June 27, 2011 (Monday): Passing Score**
Purpose: This workshop establishes the passing score of the 2011 California Laws and Regulations Examinations. Under the facilitation of a testing specialist, participants will apply minimum competence standard to establish a criterion-referenced passing score. **Worth 4 CE credits.**

December 2, 2010, staff attended a client and vendor meeting with the Board's CLRE vendor, Psychological Services Inc. (PSI). These meetings are held annually to ensure that PSI is meeting the needs of their computer-based testing clients. It was established at this meeting that PSI continues to be the DCA's testing vendor of choice and this was reflected by the positive scores they received in a customer satisfaction survey completed by all participating programs prior to the meeting.

B. National Board of Examiners in Optometry (NBEO)

Lead Licensing Analyst, Jeff Robinson reported on the NBEO's announcement of the opening of their Clinical Skill Examination (CSE) center.

C. Operational Improvements

Mr. Robinson provided an overview of operational improvements.

Last September, the NBEO announced the conversion of its twice-yearly administration of Part III CSE to a more stable, consistently administered examination than what is currently provided. This format will allow candidates to take the examination at one site, the NBEO's National Center of Clinical Testing in Optometry (NCCTO) located in Charlotte, NC, throughout the year. It is the NBEO's belief that

this new format will allow “*great flexibility in the timing of the evaluation of a candidate’s clinical optometric skills.*”

Job Creation Initiative.

In September, 2010 per the direction of the Governor’s Office, the DCA’s Licensing for Job Creation Unit (LJC) began collecting optometrist license statistics to better gauge the processing time required from the submission of an application for licensure to the date of issuance of the license. The information gathered is meant to relate to the Governor’s Office and the California State and Consumer Services Agency (SCSA) how quickly an applicant for a California optometrist license can begin their contribution to California’s work force after an application for licensure has been received.

D. Program Statistics

Mr. Robinson provided a report on the Board’s licensing statistics through the end of November 2010. He noted that a section of his report indicates an abnormally high percentage of pending applications which more often than not isn’t an accurate statistic. Status codes and descriptions need to be manually entered into the Applicant Tracking System (ATS) electronic file. This is a slow process but once completed the percentages will change dramatically.

7. Enforcement Program Report

Press Conference

Enforcement Manager, Margie McGavin reported that on October 26, 2010, the California State Board of Optometry hosted a press conference at the Spirit Halloween Store located within the Arden Fair Mall in Sacramento. Media covering this event included News 10 Sacramento, Capitol Television news Service, DCA Media Department, and Capitol Weekly newspaper. A photo of a staff member was featured in the November 4, 2010 issue of Capitol Weekly.

Dr. Goldstein addressed the media about the dangers of purchasing cosmetic contact lenses without a prescription from an unlicensed individual. Additionally, Mr. Naranjo made a plea for public awareness due to the potential of serious eye health problems that can occur from wearing lenses without the proper fit and care instructions necessary to maintain eye health.

To garner further public attention, Board staff dressed in costumes and modeled a variety of decorative lenses, including the red contacts featured on *Twilight* vampires, jaguar eyes, and flames.

A. Unlicensed Activity

Ms. McGavin provided an overview of unlicensed activity. Since April 2010, the Board has received fifteen complaints against unlicensed vendors (retail stores, tattoo parlors, gas stations, etc.) selling cosmetic contact lenses. Upon receipt of these complaints, Enforcement staff issues an “Educational Letter” detailing the laws and regulations related to the matter, specifically stating that it is unlawful to dispense lenses without a prescription. If the vendor does not respond to two of the Board’s attempts to gain compliance, the case is forwarded to the Division of Investigation for confirmation of sales and issuance of a misdemeanor citation to a clothing store.

The Board also recruited the Unlicensed Activity Unit (ULA), within the Division of Investigation, to pursue their own findings of unlicensed activity related to the sale of cosmetic lenses. ULA dispensed Educational Letters to twenty two vendors and

received nine notices of compliance. Due to an exemplified lack of follow-through, the Board has elected to discontinue services with ULA at this time.

Ms. McGavin and Board members discussed methods of educating the public and the vendors, how vendors obtain the cosmetic lenses, and how staff finds out about this unlicensed activity.

Training

Ms. McGavin reported that on October 25, 2010, enforcement staff members, Cheree Kimball, Jessica Siefertman, Lydia Bracco, and herself attended a training course administered by the Department of Consumer Affairs which was conducted by the DCA's biological fluid testing vendor, Pharmatech. This course, titled "Understanding the Drug Testing Process" was designed to provide information regarding the roles and responsibilities of the board/bureau and their licensees. It also provided information regarding various types of drugs, their brand and street names, methods of administration, effects on the user, signs of use and the types of detection tests used by the vendor.

Ms. Kimball and Ms. Siefertman have been actively involved in the DCA's design of the new database system, BreZE. They have been diligently working with the team on identifying the processes to be used by DCA's boards and bureaus in both the enforcement and licensing areas. They have dedicated a significant amount of time to this project, which has been an important investment to ensure the Board's processing needs and requirements are met.

B. Fingerprint Program

Ms. McGavin provided an overview of the fingerprint program. In order to identify the number of licensees who did not have fingerprints on file, staff used data from the Department of Justice (DOJ) and the Board's records. It was found that more licensees than expected had either not submitted fingerprints, or if they had, the fingerprints were not sent to the Federal Bureau of Investigation (FBI), which is now a requirement.

C. Probation Program

Probation Monitor, Jessica Siefertman reported on the Probation Program.

Ms. Siefertman met with the Board of Registered Nursing (BRN), to explore the feasibility of creating an ACCESS database, similar to that of BRN's, in order to more accurately capture probation statistics. After the meeting, it was determined that creating such a database would not be in the Board's best interest. Instead, Board staff continues to clean the data in the Consumer Affairs System (CAS) in preparation for DCA's BreZE database.

Phamatech, DCA's biological fluid testing vendor, continues to randomly drug test probationers throughout California. In addition, Phamatech has made various arrangements with collection sites throughout the country to accommodate DCA with traveling probationers. To date, the Board has had probationers drug tested in California, Oregon, Washington, and Georgia.

Ms. Siefertman announced that on January 6, 2011, she conducted probation interviews at the Division of Investigation (DOI) in Ontario, California. More interviews are scheduled at the DOI in Sacramento, California on January 20, 2011. These interviews are to review and ensure compliance of each term and condition of their stipulated settlement/decision and disciplinary order.

Ms. Sieferman and Ms. Maggio are actively participating in DCA's Probation Monitoring Workgroup. This workgroup is creating a class and manual for all probation monitors throughout DCA.

Ms. Sieferman provided an overview of the Probation Program Statistics for the Board.

Ms. Sieferman, Drs' Goldstein and Lawenda, Ms. Johnson, and Ms. McGavin discussed the probation program's tolling system.

D. Expert Witness Training

Ms. McGavin provided an overview of the Expert Witness Training Program, which the Board's Enforcement Unit is developing for new Expert Witnesses. It is estimated to take place in Fall 2011. The Board seeks to recruit optometrists whose licenses are in good standing and who have a comprehensive understanding of the Board's laws and regulations as well as an ability to determine the Standard of Care as it relates to their review of complaint cases.

In preparation for training, the Board will post a recruitment link to the Website's homepage as well as implement a mass-mailing to optometrists who have been licensed for three to ten years. Additionally, the Board will develop an Expert Witness handbook that will be included in a training packet as reference material.

E. Statistics/Performance Measures

Ms. McGavin provided a report of closed and pending disciplinary cases.

Deputy Attorney General, Char Sachson, Ms. McGavin, and Board members discussed the accusation/conviction process.

8. DCA BreEZe Project

A. Presentation by Sean O'Connor, DCA BreEZe Business Project Manager

Sean O'Connor provided a summary of the BreEZe Project and answered questions. He explained his role as the liaison between Boards and Bureaus and the BreEZe Project Team to ensure the BreEZe system meets the business needs of its users. He announced that he feels qualified for this project because he has over ten years of civil service experience, all gained at the California Department of Consumer Affairs.

Mr. O'Connor presented an overview of the scope and status of BreEZe. He explained that BreEZe is the modernized licensing and enforcement database that will replace the Department of Consumer Affairs' current legacy systems.

B. Bidder Work Sessions

The Department does not want to bring in a person to custom build a system as there are inherent dangers in that endeavour. Rather the Department wishes to procure a preformed licensing database that can be configured to suit our needs. The database will work similar to Microsoft Windows. There will be software upgrades throughout.

The Bidder Work Sessions were comprised of representative (Subject Matter Experts) from the various boards and bureaus under DCA, the BreEZe Project Team and potential solution vendors. Enforcement Analyst, Cheree Kimball, and Probation Monitor, Jessica Sieferman represented the Board in the Working Sessions. These work sessions lasted seventeen business days over most of October and the first week of November.

Once the bid process has concluded and the final BreEZe Project has been awarded to a vendor, working sessions will resume. These sessions will again go over the project requirements, this time with the goal of building the final product and ensuring that it meets the business needs of DCA and boards and bureaus under DCA.

C. Forms Workgroup

Ms. Leiva reported on the Forms Workshop. This Workgroup meets twice a month and is comprised of representatives from the various boards and bureaus under the DCA. Ms. Leiva is representing the Board in this workgroup.

This Workgroup's efforts are intended to streamline and simplify the DCA's forms inventory in preparation for BreEZe implementation. The extent to which standardization is achieved is anticipated to correspondingly offset BreEZe development costs.

Ms. Leiva announced that the Workgroup is currently in the process of finalizing a complaint form package for consumers which will contain the following: A Consumer Complaint Form, Authorization for Release of Patient Records, and an Acknowledgement Letter to Consumer of Receipt of Complaint. Upon completion of the complaint form package, the Workgroup will begin to standardize business forms and applications, such as Fictitious Name Permits, Branch Office Licenses, and Statement of Licensures. The Workgroup's target completion date is sometime in July 2011.

D. Reports Workgroup

Ms. Sieferman provided an overview of the Reports Workgroup which is comprised of representatives from the various boards and bureaus under DCA. Ms. Sieferman is representing the Board in this Workgroup.

The Reports Workgroup's goal was to develop and document reporting requirements for the BreEZe Request For Proposal to ensure the selected vendor's solution will meet the BreEZe users and stakeholders reporting needs. To accomplish this, the Workgroup has completed an inventory of existing reports, identified relevant existing reports that need to continue in the new system, and determined any additional reports needed by users and stakeholders. The completion of this Workgroup was December 15, 2010.

E. Data Conversion Workgroup

Ms. Sieferman reported on the Data Conversion Workgroup which meets once a week and is comprised of representatives from the various boards and bureaus under the DCA. Ms. Sieferman is representing the Board in this workgroup.

She explained that the ultimate goal of the Workgroup is to facilitate a smooth data conversion process for the BreEZe Project. To achieve this goal, the Workgroup will study and draw conclusions about the quality of existing source data and then develop policies, guidelines, and business rules related to the conversion of that source data into the new or targeted BreEZe system. The Workgroup must also identify the existing data that can be deleted due to retention schedules. In addition, the Workgroup will document its results, conclusions, policies, and guidelines in a clear and comprehensive manner.

The Workgroup is now focusing on its next deliverable, the Data Cleanliness Study. In order to identify data that must be converted into the BreEZe system, boards and bureaus completed a survey of secondary databases that are used to track data outside of Consumer Affairs Systems (CAS) and Applicant Tracking System (ATS).

This survey identified over 200 secondary databases; however, half of these databases are estimated to serve the same functionalities of ATS and CAS and, if entered into ATS and CAS, may not need additional conversion. The Workgroup is currently contacting those boards and bureaus utilizing the secondary databases to identify exactly what data cannot be entered into ATS and CAS.

9. Review of Rulemaking Calendar

A. Discussion and Possible Approval of Response Considering the Comment Submitted During the 15-day Comment Period Pertaining to the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1536, Continuing Optometric Education

Ms. Leiva provided an update of CCR, Title 16, Section 1536. She reported that this regulation was posted for an additional 15-day comment period because of a comment received against the regulation. The comment received was from Adolphus Lages, OD who disagrees with #2, Teaching. He states that “Every optometrist should have equal opportunity to earn credits, but only a few educators would qualify in this case. All optometrists are not asked to give a class, and on top of this, they are getting paid.”

Staff Recommendation

Staff recommends that the Board reject Dr. Lages’ comment because it does not pertain to any of the proposed changes being made to the regulation or the modified text. Furthermore, Dr. Lages’ reasoning is incorrect. The regulation states:

“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.”

Thus, even if an educator gave the course regularly, they would only be able to get credit for teaching the course one time in two years. Since the course has to also provide continuing education for those optometrists who are not educators, then any optometrist could gain the same amount of continuing education by just attending the course. This type of arrangement results in all optometrists earning credits through equal opportunity. The comment from Dr. Lages that the educators are getting paid is out of the Board’s control. If teaching the course, or just taking the course, result in the same amount of CE credit being obtained by the participant, then that individual has met the Board’s requirements.

Monica Johnson moved to reject the comment and move forward with CCR Section 1536. Donna Burke seconded. The Board voted unanimously (6 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Ms. Johnson	X		
Mr. Kim	X		

Dr. Goldstein commented on section (5) which states that four hours of CE credit shall be granted for a cardiopulmonary resuscitation (CPR) course from the American Red Cross or the American Heart Association. He noted that at the last Board meeting, this was amended to include “or course approved by the Board. He wants to make certain we continue with the amended wording.

Dr. Kliger commented on section (i) which states:

*“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.”*

He noted that should an individual continue in the armed forces for more than two years, they would never have to do the CE.

Dr. Goldstein responded and noted that it is assumed that while they may be licensed in California, they are obtaining their CE licensure courses through the umbrella of the armed forces.

B. Status of Title 16, CCR Sections 1520, Infection Control Guidelines, 1518, Fictitious or Group Names, 1523, Licensure Examination Requirements, 1531, Licensure Examination, 1532, Re-Examination, and 1561 Topical Pharmaceutical Agents Usage – Purpose and Requirements

Ms. Leiva reported on section 1520. This regulation was approved by the office of Administrative Law (OAL) on December 20, 2010 and will become effective January 19, 2011. She announced that staff will post the approved language on the Board's website, update the California Laws and Regulation's Book, and create a user-friendly factsheet for licensee's and the public's reference which will also be posted on the Board's website.

Ms. Leiva added that Section's 1518, 1523, 1531, 1532, and 1561 were all part of the same rulemaking package. They were all submitted to the OAL for approval on December 29, 2010. Now we are just awaiting feedback from the OAL.

C. Status of Title 16, CCR Section 1571, Requirements for Glaucoma Certification

Ms. Leiva reported that these requirements became effective January 8, 2011. The next steps are as follows:

- Pursuant to the regulation, the accredited California schools and colleges of optometry must cooperatively develop the Case Management Course and Grand Rounds Program, which must then be approved by the Board. The Board will be establishing a committee in order to accomplish this final requirement and will be determining potential dates for this committee to meet.
- Staff is finalizing an inter-agency agreement to hire a consultant from California State University in order to facilitate the upcoming meetings to develop the two courses with the schools and colleges of optometry.
- Staff has sent out invitations requesting participation to the Southern California College of Optometry (SCCO), UC Berkeley School of Optometry, and Western University of Health Sciences College of Optometry. Staff is requesting two representatives from each school. The schools have been asked to consider the following criteria when choosing participants for this important committee:
 - 1) A thorough understanding of their school's curriculum, resources, staff strengths, etc.,
 - 2) The ability to be a strong decision-maker, and
 - 3) The ability to speak authoritatively for their school.

Ms. Leiva announced that Dr. Goldstein will serve as Chair of the committee, and Ms. Maggio will serve as the Vice Chair. Dr. Alex Arredondo will also be participating in the committee.

Ms. Leiva reported that staff has been receiving many calls from California licensees interested in beginning CCR 1571's Preceptorship Program. A proposed response form has been developed that can be used by licensees to track the glaucoma patients preceptored. Included with that form is an application for glaucoma certification which must be turned in to the Board upon completion of the program. Staff requests that the Board review the form and application to ensure its adequacy for certification purposes.

Dr. Kliger asked, for the treatment of glaucoma, who will write the prescriptions. Dr. Goldstein replied that the person who can legally write the prescription will be the one to write it. Dr. Kliger expressed his belief that this should be clarified more fully in writing so that it isn't missed by those involved.

Dr. Kliger described his regret that the two professions have not been able to develop regulations acceptable to both groups. He restated his group's belief that patient safety is at risk, and announced the California Academy of Eye Physicians and Surgeon's (CAEPS) filing of a lawsuit against the Board. He restated his belief that his organization's proposals were rebuffed by the Board and the California Optometric Association (COA).

D. Discussion and Action to Approve Draft Language and Recommend to the Board to Commence a Rulemaking to Add and Amend Regulations Pertaining to Senate Bill (SB) 1111 to Division 15, Title 16 of the CCR

This discussion was deferred to the next Board meeting.

E. Discussion and Action to Approve Draft Language and Update Disciplinary Guidelines and Recommend to the Board to Commence a Rulemaking to Add and Amend Regulations Pertaining to SB 1441 to Division 15, Title 16 of the CCR

This discussion was deferred to the next Board meeting.

Legal counsel, enforcement staff, Board members, and Dr. Kliger discussed proposed language changes of Title 16 of the CCR, and reasons for the changes, for the following sections/subsections:

- 720.2(b) – Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender license,
- 720.10 – Revocation for sexual misconduct,
- 726(a) and (b) – Sexual misconduct,
- 720.12 – Denial of application for registered sex offender,
- 720.14 – Confidentiality agreements regarding settlements,
- 720.16(d) and (f) – Failure to provide documents,
- 720.18(d) – Failure to comply with court order,
- 737 – Failure to provide information or cooperate in an investigation,
- 802.1 – Failure to report an arrest, conviction, etc.,
- 720.32 – Psychological or medical evaluation of applicant.

Ms. Sachson expressed her concern that automatic revocation for sexual misconduct is too severe/restrictive. It removes the Board's discretion to make decisions on a case by case basis.

Legal counsel, enforcement staff, Board members, and Dr. Kliger discussed SB 1441 (Ridley-Thomas) Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

Ms. Sachson explained that this regulation would result in an automatic suspension of licensure. She envisions a licensee who's had a few DUI's followed by being a year or two sober and now their going to be suspended from practice. Her opinion is that this seems extreme.

Ms. Sachson expressed another concern that the 30 day suspension for negative drug testing will have a huge impact on trying to settle cases. She believes that the practical implications would be so burdensome that individuals will choose to go to hearing and take their chances with a judge rather than try to settle.

Ms. Sachson stated that "major violations" can be just about anything. Any infraction of code, such as failing to update their address, could be considered a "major" violation according to the language.

Ms. Leiva and Mr. Santiago replied that because the Uniform Standards have been adopted, we cannot make Ms. Sachson's suggested changes.

Ms. Sachson commented that the posting of a notice of probation in the office of a probationer will be viewed as punitive. She argued "we are in the business of rehabilitating and disciplining probationers, not in punishing them. She believes this requirement will put a lot of licensees out of business.

DCA Board/Bureau Relations Representative, Gil DeLuna reiterated that consumer protection is paramount. It's the boards/bureaus and the Department's responsibility to protect the public.

Ms. Sachson replied that "disciplinary information is available to the public on the internet. This is going to put people out of business which we are not in the business of doing".

Board members, Legal Counsel, and staff discussed moving this term to an optional term.

Ms. Sachson's final concern is that of the requirement to re-take and pass the licensure examinations. She explained this is a "standard term". It's not optional, which subjects every probationer to re-licensure examination.

Ms. Maggio responded that she believes everyone on probation should have to take the California Laws and Regulations Exam (CLRE). She suggested keeping the CLRE standard and making the National Board of Examiners in Optometry (NBEO) an optional term should there be a need for it. Ms. Sachson agreed.

Ms. Siefertman reported that the requirement for probationers to function as an optometrist for a minimum of 24 hours per week for the entire term of his/her probation is becoming an issue for optometrists. She explained that on probation, they are finding it difficult to become re-credentialed with Vision Services Plan (VSP) and other insurances and lose their employment as a result.

Dr. Goldstein suggested, and Board members and staff discussed reducing the minimum number of hours to sixteen hours per month for the entire term of probation.

Board members and Staff members discussed remedial courses, structured to the need according to the violation, versus regular continuing education.

Mr. DeLuna submitted for clarification that the Board accepts the language of sections:

- 1502 – Delegation of Certain Functions,
- 1575 – Uniform Standards Related to Substance Abuse and Disciplinary Guidelines,
- 1575.2 – Unprofessional Conduct
- 1523 – Licensure and Examination Requirements

He did not agree with the Board’s wishes to see the language of 1575.1 (Required Actions Against Registered Sex Offenders) changed to state “the board shall have the discretion to:”

Monica Johnson moved to continue this agenda item to the next Board meeting. Kenneth Lawenda seconded. The Board voted unanimously (7 – 0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Yu	X		
Dr. Arredondo	X		
Dr. Lawenda	X		
Ms. Johnson	X		
Ms. Burke	X		
Mr. Kim	X		

10. Legislative Update

Ms. Leiva provided a status report of the following bills:

A. Assembly Bill (AB) 2683, Health Facilities

This bill was approved by the Governor on September 30, 2010 and became effective January 1, 2011.

Dr. David Turetsky requested clarification regarding the maintenance of each prescription as a part of the patient’s record. Board members, legal counsel, and staff discussed Dr. Turetsky’s question.

Ms. McGavin announced that upon Vision Services Plan’s (VSP) request, staff met with VSP and a representative from the Department of Health Care Services on December 20, 2010 to discuss VSP’s plan to amend their policies and agreements regarding their network optometrists in order to comply with AB 2683. VSP is looking to recognize claims for VSP patient services rendered in health facilities, such as nursing homes, and requested Board staff’s guidance in order to ensure their policies and agreements include all the requirements in AB 2683.

She explained that as of August 1, 2010, VSP has been conducting a nursing home pilot program with the participation of two groups of optometrists who are already following the requirements established by AB 2683. The pilot has been extended until the end of March 2011 in order to streamline VSP’s administrative processes and the potential policies and agreements that will be used in California and possibly nation-wide.

Ms. McGavin added that although the Board has no jurisdiction in any matters between VSP and their network, optometrists, or billing issues (and vice versa), sharing information regarding this newly recognized type of practice and its implementation will be beneficial for the Board and other providers to ensure patient safety remains the main priority and to measure AB 2683’s effectiveness.

Board staff is also conducting outreach to licensees in order to inform them of this new law. The information is posted on the Board's website and other outreach documents will be developed as needed. It is still too early to tell if there will be a need for regulations in order to fine-tune the new requirements.

B. AB 2500, Licensees, Military Service

This bill was approved by the Governor on September 25, 2010 and became effective January 1, 2011.

This bill authorizes a licensee whose license expired while on active duty as a member of the California National Guard (CNG) or the United States Armed Forces (USAF) to reinstate his or her license without re-examination or penalty, unless the licensing agency determines that the applicant has not actively engaged in the practice of optometry while on active duty. Previous law was more restrictive and only allowed this type of reinstatement if the licensee had served during periods of war.

Ms. Leiva explained that the next steps for staff are to research and possibly draft a license renewal application specific for the licensees identified in AB 2500. Additionally, staff will consider drafting regulations to identify the criteria that could be used by the Board to evaluate these renewal applications.

C. AB 2699, Licensure Exemption, State of Emergency

This bill was approved by the Governor on September 23, 2010 and became effective January 1, 2011.

This bill provides an exemption from licensure and regulation requirements to optometrists, licensed or certified in good standing in another state or states, which offer or provide eye care services through a sponsored event. Eye care must be provided as follows:

- To uninsured or underinsured persons,
- On a short-term voluntary basis,
- In association with a sponsoring entity that registers with the California State Board of Optometry, and provides specified information to the county health department of the county in which the health care services will be provided, and
- Without charge to the recipient or a 3rd party on behalf of the recipient.

Ms. Leiva explained that the requirements in this bill cannot be fully implemented until each health board establishes regulations. The Department of DCA will be assisting the boards by developing customizable proposed regulatory language and initial statement of reasons to justify the need for the regulations and the forms required to apply for this status.

Dr. Goldstein stated his belief that regulations for emergency situations are more important than regulations for providing services at free clinics.

D. AB 2783, Professions and Vocations, Military Personnel

This bill was approved by the Governor on August 17, 2010 and became effective January 1, 2011.

This bill requires the Board to develop rules and regulations that provide methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the practice of optometry. These rules and regulations shall also specify how this education, training and experience may be used to meet the licensure requirements for optometrists. The Board must consult with the

Department of Veterans Affairs and the Military Department before adopting any rules and regulations.

Ms. Leiva explained the next steps for staff. Current licensure requirements mandate that an applicant for an optometrist license in California must possess a doctor of optometry degree from an accredited school or college of optometry. In order to explore whether compliance with AB 2783 is possible, staff will review if other states count the education, training and experience obtained in the armed services towards licensure. Staff will also talk with other DCA healing arts boards to discover if there are already established paths for licensure by evaluating this type of experience.

E. SB 1489, Omnibus Bill

This bill was approved by the Governor on September 30, 2010 and became effective on January 1, 2011.

This bill enacts, amends, or repeals a number of provisions in the practice of optometry. The changes made by this bill are non-controversial and are intended to clarify, update and strengthen licensing laws.

Ms. Leiva explained the next steps staff will take. Board staff is conducting outreach to licensees in order to inform them of these new changes. The information is posted on the Board's website and other outreach documents will be developed as needed.

F. Legislative Proposal Pertaining to Business and Professions Code Section 3059, Continuing Education Requirements

Ms. Leiva reported that this proposal came from the Board's continuing education auditor. Staff would like the Board to consider and discuss the proposed statutory language. In order to implement this proposal, legislation would need to be initiated with the assistance of an author to carry the bill.

She explained that BPC Section 3059 currently indicates that 35 hours should be taken not just in "the diagnosis, treatment, and management of ocular disease" but specifically in glaucoma, ocular infection, ocular inflammation, topical steroids, systemic medication and pain medication. When enforcement staff is auditing licensees as part of the Enforcement CE Audit Program, many questions arise when certificates are received for courses relating to dry eyes or allergy eyes, or the co-management of Lasik surgery. The last, in particular, does potentially involve infection, inflammation, steroids and medication, but does not typically involve ocular disease. Thus, it is difficult for the Board CE auditor to determine if certain courses fall under the categories listed in Business and Professions Code (BPC) Section 3059. This is resulting in licensees failing their audit, which is forcing the Board to inactivate their license until they complete their CE.

Staff would like to propose some statutory language that may make it much simpler for the CE Auditor to complete her audits, and possibly much easier for licensees since they'd be able to take a broader spectrum of CE courses.

Dr. Goldstein replied that he does not see this as an issue worth pursuing. He stated that the examples provided do not seem to be difficult to interpret, and that, in his opinion, courses on dry eyes and the co-management of Lasik surgery do fall within the scope of the diagnosis, treatment, and management of ocular disease. He added that perhaps we need to be more specific about what the concerns are.

Ms. Leiva, Mr. Robinson, Ms. McGavin and Dr. Goldstein, and Ms. Johnson discussed possible resources the CE Auditor may utilize for CE course descriptions.

11. Public Comment for Items Not on the Agenda

There was no public comment given.

12. Suggestions for Future Agenda Items

There were no suggestions given.

13. Continued Competency for Healthcare Professionals

Presentation by the Citizens Advocacy Center (CAC)

David Swankin, President and CEO of CAC, and a partner in the law firm of Swankin and Turner and Rebecca LeBuhn, Co-Founder and Chair, Board of Directors

Dr. Goldstein welcomed guests David Swankin and Rebecca LeBuhn of the Citizens Advocacy Center.

Mr. Swankin is an attorney specializing in regulatory and administrative law. He has a broad background in both government and public interest advocacy.

Ms. LeBuhn is responsible for research, policy development, and publications for CAC. She has coordinated public participation in government regulatory proceedings, private sector decision-making and technical standards development.

Mr. Swankin and Ms. LeBuhn provided an overview of the Citizen's Advocacy Center. The CAC began looking at health professional continuing competency in the early 1990's believing that, from a consumer protection point of view, it does not make sense to assess a professional's competence only once in the course of a career.

Ms. LeBuhn and Mr. Swankin initiated a discussion on the challenges of implementing valid and reliable programs to accomplish continued competency and how to reach the goal of state-based programs that assure the public of the ongoing competency of their clinicians and other health professionals.

FULL BOARD CLOSED SESSION

Pursuant to Government Code Section 11126 (c)(3), the Board Convened to Closed Session to Deliberate on Disciplinary Decisions

13. Proposed Decision in the Matter of the Accusation Against Collin Hugh Vaughn, OD, License Number OPT 12990

Administrative Law Judge, Rebecca Freie prepared a Proposed Decision for the Board's consideration in the matter of this accusation.

14. Proposed Decision in the Matter of the Accusation Against Lawrence Young, OD, License Number OPT 8618

Administrative Law Judge, Julie Cabos-Owen prepared a Proposed Decision for the Board's consideration in the matter of this accusation.

15. Stipulated Settlement and Disciplinary Order, Marc Douglass Dea, OD, License Number OPT 11124

- 16. **Stipulated Settlement and Disciplinary Order, Phillip McEldowney, OD, License Number OPT 9741**

- 18. **Stipulated Settlement and Disciplinary Order, Scott Weinberg, OD, License Number OPT 8136**

- 19. **Stipulated Settlement and Disciplinary Order, Edward Rabb Neil, OD, License Number OPT 6522**

Pursuant to Government Code Section 11126 (c)(3), the Board convened to close session to deliberate on the above disciplinary decisions

FULL BOARD OPEN SESSION

- 20. **Adjournment**
The meeting was adjourned at 4:55 p.m.

Monica Johnson, Board Secretary

Date