



STATE BOARD OF OPTOMETRY
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MEETING MINUTES

October 22-23, 2009

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

Members Present

Lee Goldstein, OD, MPA
 Board President
 Susy Yu, OD, MBA, FAAO
 Board Vice President
 Monica Johnson, Public Member
 Board Secretary
 Alejandro Arredondo, OD
 Katrina Semmes, Public Member
 Kenneth Lawenda, OD
 Fred Naranjo, MBA, Public Member

Staff Present

Mona Maggio, Executive Officer
 Margie McGavin, Enforcement Manager
 Cheree Kimball, Enforcement Analyst
 Andrea Leiva, Policy Analyst
 Jeff Robinson, Licensing Analyst
 Michael Santiago, Staff Counsel

Guest List

On File

Members Absent

Edward Rendon, Public Member

Thursday, October 22, 2009

FULL BOARD OPEN SESSION

1. **Call to Order – Establishment of a Quorum**

Board President, Lee Goldstein, OD called the meeting to order at 9:10 a.m. Dr. Goldstein called roll and a quorum was established.

2. **Welcome and Introductions**

Dr. Goldstein welcomed everyone in attendance. Board members, staff, and members of the audience were invited to introduce themselves.

3. **Approval of Board Meeting Minutes**

A. *July 16, 2009 Board Meeting*

Monica Johnson moved to approve the minutes of the July 16, 2009 Board Meeting as distributed. Dr. Kenneth Lawenda seconded. The Board voted unanimously (7-0) to pass the motion.

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

B. August 24, 2009 Board Meeting

Monica Johnson noted a correction to her last name. Dr. Kenneth Lawenda moved to approve the minutes of the August 24, 2009 Board Meeting as amended. Monica Johnson seconded. The Board voted unanimously (7-0) to pass the motion.

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

4. President's Report

Dr. Goldstein announced the appointment of Brian Stiger as the new Director of the Department of Consumer Affairs (DCA). His appointment became effective August 11, 2009.

Dr. Goldstein reported on the following:

A. California Optometric Association President's Council

On September 11-12, 2009, Dr. Goldstein served as moderator for the California Optometric Association's (COA) President's Council. This informational meeting brings optometric societies together annually to set priorities that ultimately go before the COA's Board of Directors. As a result of this meeting, a few matters of interest were brought forward that may appear on future Board meeting agendas. Two matters of interest are Board Certification, and how and whether to change the branch office law.

B. Department of Consumer Affairs

On Tuesday, October 20, 2009 Dr. Goldstein and Board staff participated in a public relations outreach effort pertaining to consumer safety associated with the dispensing and selling of cosmetic contact lenses without a proper license, their proper handling, care and use. Andrea Leiva was recognized for facilitating the press conference along with the DCA Public Affairs Office. Dr. Goldstein thanked the Spirit Halloween Store in the Natomas area for hosting the press conference. Sacramento television stations News 10, KCRA, Univision and CTNS (PacSat) covered the event. The press conference was aired during the noon and evening news.

C. Other Items of Interest

On Saturday, October 17, 2009, Dr. Goldstein presented the Peter's Memorial Lecture at the University of California Alumni Association's Annual Meeting. Topics of discussion included glaucoma certification regulations, Therapeutic Pharmaceutical Agent (TPA) certification, and the legislative process.

5. Executive Officer's Report

Mona Maggio reported on the following:

A. Budget Report

The Board closed out the 2008/2009 Fiscal Year with total expenditures of \$1,057,786.53 out of a total budget authority of \$1,499,368. Total revenue for FY 2008/09 was \$1,118,235.40.

Ms. Maggio explained that the Board of Optometry ("Board") has participated in various budget exercises in the past year, most notably Executive Order S-09-09. This order requires

California state government departments, regardless of funding source, to submit a plan to their Agency Secretary that provides for a reduction of the amount of the department's appropriation to be encumbered by new contracts, extended contracts or purchases from statewide master contracts in the renegotiations of contracts. All purchasing was suspended until the spending reduction plans were approved. On August 6, 2009, the Board received approval from the Department of Consumer Affairs ("DCA"), through the State Consumer Services Agency, of our proposed reduction plan for fiscal year 2009/10 and staff was able to resume normal business operations.

B. Operations

Ms. Maggio reported that a suite on the first floor at 2420 Del Paso Road has become available and DCA Facilities Management is currently in negotiations with the lessor regarding rent and suite improvements. The move is tentatively planned for next fiscal year. In order to make space available for new staff, the Board's Enforcement Unit is temporarily relocating to space at the Bureau of Security and Investigative Services across the hall from the Board.

C. Other

Ms. Maggio announced that after 35 years with DCA, Patty Harris is now the Chief Deputy Director of the Victims Compensation and Government Claims Board. Over the past six months Ms. Harris served in three senior management positions simultaneously and provided the stability DCA desperately needed during a difficult period. Ms. Harris has served the DCA as its Deputy Director for Boards and Bureaus for the past 4+ years and was the Executive Officer for the Board of Pharmacy for many years.

Dr. Goldstein raised the topic of the new computer-based testing format for administering the California Laws and Regulations Exam, which is scheduled to roll out by April 2010.

Dr. Goldstein stated that he attended part of the implementation meeting and learned that computer-based testing will cost less and offer more convenience to the applicants.

Ms Maggio added that the new testing vendor has 13 testing sites throughout California and 10 additional testing sites throughout the United States. Candidates will be able to go to any location and schedule their own exams on the dates and times that are convenient for them.

Ms. Maggio asked the Board's Legal Counsel, Michael Santiago, to report on an administrative petition filed with the DCA, on or about September 23, 2009, by the California Academy of Eye Physicians & Surgeons (CAEPS), the California Medical Association and the American Glaucoma Society.

Mr. Santiago reported that a revised petition was filed with the DCA on or about October 12, 2009. Petitioners are requesting that the DCA direct the Board and the Medical Board of California to join the investigation of the incidents surrounding the patients who were allegedly blinded while being treated at the Veteran's Affairs of Palo Alto Healthcare System. Secondly, petitioners request that the DCA direct the Board to withdraw its findings and recommendations on clinical training requirements for glaucoma certification required by Senate Bill (SB) 1406 pending the results of the requested investigation; and thirdly, to suspend any "watering down" or elimination of clinical training requirements until an investigation into the Veteran's Affairs of Palo Alto Healthcare Systems scandal is complete and its findings and recommendations can be included into the implementation of SB 1406. The DCA has 30 days to respond to the petition. Mr. Santiago noted that the DCA is at the stage of researching and drafting a response. The Board will be notified when the response goes out.

Monica Johnson inquired about the timeline after the department's response. Mr. Santiago clarified and explained the Department's response to the petition will be in writing. If the petition is denied the petitioners may request reconsideration. The department may then issue another response based on the reconsideration.

6. Enforcement Program Update

Margie McGavin provided an overview of enforcement program updates.

A. Enforcement Model

On September 10, 2009, the DCA released its suggestions for a new enforcement model for the healing arts boards based on three elements: 1) increased accountability; 2) greater efficiency; and 3) putting consumers first. The model currently focuses on the healing arts boards, but inclusion of the other boards is forthcoming subsequent to greater implementation of the model.

Ms. McGavin explained that in order to implement this new enforcement model, the Board's enforcement staff and Ms. Maggio have been cooperating with the DCA Executive Staff by being involved in the following:

- *State and Consumer Services Agency:* Meetings and discussions along with DCA boards and bureaus,
- *Workload Staffing Study and Justification:* Ms. McGavin noted that Optometry's enforcement program has been mainly impacted due to a lack of staffing and resources. Thus, in preparation for the multiple boards' Budget Change Proposal sponsored by the DCA, Enforcement staff is projecting the need for new positions that will be effective July 2010. Staff augmentations identified for the Board of Optometry include: Staff Manager, Staff Services Analyst, Office Technician, and Part-Time Optometrist Consultant.
- *Best Practices Committee:* Ms. McGavin is a member of the DCA Best Practices Committee, which was created to establish best practice recommendations in four functional areas in enforcement by the end of December 2009. Representatives from various boards and bureaus make up the four components of the Best Practices Committee. Currently, the committee is drafting surveys to be sent to other government agencies, private sector companies with enforcement units, and other states consumer agencies for further gathering of data useful in putting together an enforcement model.
- *Enforcement Academy:* Ms. McGavin has also attended the meetings to develop an enforcement academy that is intended for new and seasoned DCA enforcement personnel. The purpose of the academy is to enhance the mission, visions and values of the DCA, strengthen the relationship between the Boards and Bureaus, while developing standard practices and procedures throughout DCA enforcement programs.

Ms. McGavin noted that the Center for Public Interest Law (CPIL) is very active in providing suggestions to be considered in developing a plan to improve the enforcement programs of the DCA health care related boards.

B. Substance Abuse Coordination Committee

Ms. McGavin provided an overview of SB 1441, signed by the Governor on September 28, 2008, which established the Substance Abuse Coordination Committee (SACC) within the DCA. This committee is comprised of the Executive Officers of the healing arts boards within DCA, and a designee from the State Department of Alcohol Drug Programs. The bill required the committee to develop, by January 1, 2010, uniform and specific standards in specific areas that each healing arts board would be required to follow when addressing the issue of a substance abusing licensee and ensuring public protection.

The SACC held its first meeting in March 2009 to initiate the process of developing the standards for sixteen (16) areas. The SACC determined that the most efficient way to meet the time lines established in SB 1441 was to create a smaller work group to develop the standards. The work group is comprised of individuals within DCA who have the expertise in the areas of diversion, probation, and enforcement. The work group is charged with developing draft

standards that can be applied to both licensees in diversion programs and licensees on probation. The proposed standards were drafted and presented at a public meeting to solicit public comment. Following this meeting, the work group reviews the public comments and prepares the proposed standards to present to the SACC. To date, the work group has completed 15 of the 16 standards. The SACC met on October 14, 2009, to review and approve the 15 draft standards. It is anticipated that the work group and the SACC will complete their work in November 2009 and provide the guidelines to the Legislature. Ms McGavin noted that the Legislature is already looking at the drafted guidelines.

Once the standards are approved by the SACC, each healing arts board will be required to follow the standards, which will be much more stringent. In terms of impact to the Board's enforcement program, it's anticipated that another revision of our guidelines will be required. Additionally, regulations will probably need to be drafted upon implementation of the standards.

Ms. McGavin added, following probationers who need to be tested is another area in which the Board of Optometry will be impacted. Formerly the Division of Investigation (DOI) did the testing. The DCA is looking at securing a contract whereby enforcement staff can send probationers out to be tested and not have to go through DOI.

C. Program Statistics

Ms. McGavin reported that the enforcement staff has been diligently processing complaints and conducting in-house investigations. In the last fiscal year, 25% more cases were processed and there has been a 45% increase in case closures. Despite the hiring of brand new staff, enforcement is still conducting it's own investigations and looks forward to utilizing experts more frequently, and in the beginning of an investigation by having an expert on staff.

D. Other

CAS Database: Ms. McGavin explained that after reviewing the action codes available for use in the CAS system, and identifying which codes are needed to accurately track complaints and disciplinary actions, the enforcement unit has begun utilizing these codes which will assist in reporting in greater detail. In the future the unit will utilize the AD Hoc Reporting tool to create statistical reports regarding enforcement actions and complaint processes.

Another component of the Enforcement Model will be a new database system that will replace and combine data generated currently from the CAS system, the Applicant Tracking System (ATS), and Ad Hoc reporting. This information technology system is to be established by December 31, 2012.

Ms. McGavin provided an overview on the Franchise Tax Board's (FTB) Interagency Intercept Collection Program and the illegal sale of cosmetic contact lenses.

Ms. McGavin reported the FTB operates the Interagency Intercept Collection Program on behalf of the State Controller's Office. The FTB intercepts the tax refunds of people who owe delinquent amounts to other California State and local agencies, including the Department of Consumer Affairs (DCA). The Legislature has empowered the FTB to also intercept California Lottery prizes. Once intercepted, the refunds and lottery prizes are redirected to the agencies owed the debts.

Ms. McGavin noted the Board has not utilized this program in the past. The enforcement unit is in the process of using this program to recover costs from those licensees who are delinquent in their fines and/or cost recovery.

She added that the Board has occasionally been informed, by both the public and our licensees, of the illegal practice of the sale of contact lenses for cosmetic purposes by unlicensed businesses such as clothing and accessory stores, and swap meets. In August 2009, the enforcement staff contacted the DCA Unlicensed Activity Unit for their assistance in

enforcing this illegal practice. The enforcement staff has met with representatives from the Unlicensed Activity Unit as well as the Medical Board's Registered Dispensing Opticians program to assess the issue and plan for the enforcement of the illegal sales.

Ms. McGavin noted the Unlicensed Activity Unit has identified 35 unregistered businesses selling contact lenses to Californians. Each of these businesses will be receiving a letter requesting they cease and desist the sale of contact lenses without the proper licensure. If the sale of contact lenses continues, the businesses will then be issued a citation and referred to the District Attorney's (DA) office.

Ms. McGavin opened the floor to questions from Board members. Discussion ensued among the Board members regarding the Board's liability (if any) if patients were to be harmed by unregistered lenses, and where vendors are obtaining their supply of these lenses.

Ms. McGavin clarified that the Board is not liable for harm done to patients by usage of non-prescription cosmetic contact lenses because the vendors are unlicensed, thus making this a criminal issue. This is why they are referred to the DA's office. She stated that it is not yet known where vendors are obtaining their supply of cosmetic lenses, but the Unlicensed Activity Unit is actually purchasing these lenses, so hopefully much more will become known, as the unit delves further into its investigation. Dr. Goldstein noted that there are probably a number of sources for these lenses including American/domestic lenses that are somehow diverted; used lenses, and those coming from overseas.

Tim Hart, COA Director of Government and External Affairs observed that COA sponsored AB 1382 in 2005. Under current law, lenses are regulated medical devices. The passing of the bill made it a requirement to obtain an examination and a prescription for lenses. Therefore in addition to unlicensed activity, the Food and Drug Administration (FDA) has the authority to impound unregistered lenses. He added that they have a toll free number where people can file complaints. He noted that one COA member saw 30 cases of scratched corneas and infections a year due to the use of these lenses. Teenagers and young adults are the targeted market.

Ms. McGavin provided an overview and status report on enforcement action postings.

At the last Executive Leadership Forum held in August 2009, the issue regarding enforcement actions posted on each board, bureau or program's web site was discussed, as well as, the Executive Office's recommendations for uniformity and accessibility.

The Board of Optometry currently posts the following statement on the license look-up page if that licensee has any type of disciplinary action. *"A search of our records reveals that this optometrist may have been involved in a complaint that resulted in disciplinary action or a citation. You should contact the Board of Optometry at optometry@dca.ca.gov for more information."*

Ms. McGavin stated that staff is currently in the process of obtaining the ability to post on the Board's website the links of the actual disciplinary actions, in their entirety, any time a search of a licensee is performed, making it unnecessary to contact the Board for this information. It is anticipated that these recommendations will be completed by December 31, 2009.

Ms. McGavin responded to questions from Craig Kliger, MD and clarified that complaints are not public knowledge at any time until it results in disciplinary action. She added that patients are not identified in the disciplinary action documents. Typically, initials are used in place of patient names; or patients are referred to as "a patient" or "the patient".

7. Licensing Program Update

A. Program Statistics

Jeff Robinson, Licensing Analyst, provided for the Board a comprehensive explanation of the licensing process (i.e. license types, processes, and time frames). In fiscal years 2007-08, 2008-09 and during the first quarter of fiscal year 2009-2010, the Board has received a total of 1,762 optometrist, statements of licensure, branch office license and fictitious name permit applications. 1,628 licenses, certificates and permits have been issued with approximately 134 of them either pending approval or deficient.

8. Legislation and Regulation Update

Andrea Leiva, Policy Analyst, presented an overview update of Legislation and Regulation.

California Code of Regulations (CCR) Section 1571. Requirements for Glaucoma Certification

Ms. Leiva reported that the proposed regulation for glaucoma certification requirements was approved on August 24, 2009 and a motion was made to begin the rulemaking process. Staff is still working on compiling the initial package for the first submission to the Office of Administrative Law (OAL) in order to notice this proposal.

CCR Section 1569. Scope of Practice Repeal

Ms. Leiva noted that this regulation mimics Statute 3041, which was the Scope of Practice prior to the passing of SB 1406. It was decided that since this regulation does not add anything to SB 1406, it would be best to repeal it since it is an unnecessary duplication of the language. Additionally, repealing a regulation is a much quicker process than a formal rulemaking process to amend a regulation.

Ms. Leiva stated that the proposal to repeal this regulation was approved on July 16, 2009 and a motion was made to begin the rulemaking process. It was submitted to OAL on August 18, 2009 and published in the California Regulatory Notice Register on August 28, 2009. The 45-day comment period ends on October 12, 2009 and no hearing has been scheduled, as this action is not considered controversial. However, the Board will hold a hearing if it receives a written request for a public hearing from an interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. If no comments or requests are received, staff will continue on and make the final submission to the Department for approval and then to OAL.

Monica Johnson moved for the Board to adopt the proposed language and direct staff to move forward with the rulemaking process. Katrina Semmes seconded. The Board voted unanimously (6-0) to pass the motion.

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

Fred Naranjo was not present to vote.

CCR 1525, 1525.1, 1525.2. Fingerprinting Regulations

Ms. Leiva explained these regulations allow the Board to retroactively fingerprint licensees who were not formerly fingerprinted. The proposal to add fingerprinting requirements via regulation was approved by the Board on February 27, 2009, submitted to OAL on June 16, 2009 and published in the California Regulatory Notice Register on June 26, 2009. The regulatory hearing was held on August 11, 2009, the day after the 45-day comment period ended, and no comments were received for consideration. The Board made the final approval of this package on August 24, 2009 and motioned staff to make the final filing with OAL. Currently, the DCA's Legal Unit and Executive Office are reviewing the package. Once approved, the package will go to Agency and Finance. This can take up to 5 months, depending on the workload of these other departments. Once the package is approved, staff will file with OAL.

9. Discussion and Possible Action Pertaining to Board Certification

Dr. Susy Yu led this discussion and presented the update:

Dr. Yu reported the Board held its initial discussion regarding board certification at its meeting in February 2009 and during the May 15, 2009 meeting, the Board moved to endorse the concept. The final proposal for Board Certification was presented for vote at the Association of Regulatory Boards of Optometry (ARBO) Annual Meeting in June 2009.

At this time, the American Optometric Association, the American Academy of Optometry, the American Optometric Student Association, and the Association of Schools and Colleges of Optometry have entered into a joint Memorandum of Understanding (MOU). ARBO's response is pending. ARBO sought legal counsel and was advised not to sign the MOU.

Dr. Goldstein advised that no action is required of the Board. He noted that this subject is highly controversial and a huge matter of concern to doctors.

10. Discussion and Possible Action to Initiate a Rulemaking to Amend California Code of Regulations (CCR), Title 16, Section 1520, Hand Washing to Infection Control Guidelines

Ms. Leiva presented the background regarding the proposed language for CCR, Section 1520.

The proposed language expands and renames California Code of Regulations (CCR) section 1520. Hand Washing Facilities, and requires all Board licensees to follow minimum infection control guidelines in their practice in order to reduce the risk of transmission of infectious diseases or agents.

Ms. Leiva explained the proposed regulation is based off a document issued by The Centers for Disease Control and Prevention (CDC) entitled *Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2007*. Within the document are established Standard Precautions, which combines the major features of the Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions except sweat, nonintact skin, and mucous membranes may contain transmissible infectious agents.

She added that with optometrists now able to perform venipuncture, because of the scope or practice expansion authorized by SB1406, the Board feels it is important to clarify what is expected of California optometrists in regards to infection control. By adopting these Standard Precautions, the Board is not only publishing proven procedures that reduce minimize or eliminate the transmission of infectious agents, but is specifically identifying additional grounds for potential disciplinary action for failure to follow industry-accepted standards designed to protect patients and optometry practitioners.

Monica Johnson moved to adopt the proposed language and direct staff to move forward with the rulemaking process. Dr. Kenneth Lawenda seconded. The Board voted unanimously (7-0) to pass the motion.

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

11. Discussion and Possible Action Pertaining to Proposed Rulemaking CCR, Title 16, Section 1571, Requirements for Glaucoma Certification

Mr. Santiago provided the final language that will be submitted with the rulemaking package. The Board reviewed and approved draft language for Glaucoma Certification at the August 24, 2009 Board Meeting. The amendments made since the last approval are only for clarification. No substantive changes were made.

Dr. Kenneth Lawenda moved to adopt the proposed language and direct staff to continue on with the rule making process. Dr. Alejandro Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

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

12. Discussion and Possible Action to Initiate a Rulemaking to Amend CCR, Title 16, Section 1505, Notification of Intention to Engage in Practice and Adopt CCR, Title 16, Section 1509(a) Temporary Practice – Defined. Section 1509(b)

Ms. Leiva reported that board staff could attempt to make a *Change without regulatory effect* to California Code of Regulations Section 1505. The reference to an optometrist as a “certificate holder” would be changed to “licensee.” Both are used interchangeably, but Board staff prefers “licensee” for clarity purposes. This change fits the criteria of a change without regulatory effect because it does not materially alter any requirement, right, responsibility, or condition, prescription or other regulatory element of the CCR provision. The Office of Administrative Law has 30 working days to review this type of change.

If, after a change without regulatory effect is attempted and rejected, staff will begin a regular rulemaking to make the change from “certificate holder” to “licensee.”

Monica Johnson moved to amend California Code of Regulations Section 1505. Dr. Susy Yu seconded. The Board voted unanimously (7-0) to pass the motion.

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

At this time Ms. McGavin addressed the Board regarding the need to define temporary practice as stipulated in Business and Professions (B&P) Code, Section 3070, and the challenges and difficulty staff faces in defining temporary practice.

Executive Officer, Mona Maggio, clarified that staff is requesting the Board direct staff to meet and work with the Practice Committee in a public meeting, examine B&P Code 3070, and look at defining temporary practice with language that staff can bring back to the Board for legislative proposal and possible regulations.

Monica Johnson moved to direct staff to work with the Practice Committee to define necessary regulations and possible legislation to define temporary practice. Katrina Semmes seconded. The Board voted unanimously (7-0) to pass the motion.

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

13. Discussion and Possible Action Pertaining to Licensure by Equivalency

Ms. Maggio led the discussion regarding the question, should the Board consider sponsoring legislation to allow licensure by equivalency, reciprocity, or endorsement?

Staff reports occasional inquiries pertaining to reciprocity. Callers are informed of the licensure requirements in California.

Ms. Maggio advised that B&P Code 3053 states: "All examinations shall be practical in character, designed to ascertain applicants' fitness to practice the profession of optometry and conducted in the English language. The Board may, by rule or regulation, accept the examination given by other agencies or organizations which it deems equivalent to the examination required to determine an applicant's fitness to practice optometry."

Dr. Kenneth Lawenda recused himself from a vote on this matter.

The Board agreed that consistency in requirements is necessary and declined to take action.

14 . Discussion and Consideration of Legislative Proposals for 2010 Legislative Session

A. Amendment to Business and Professions Code (BPC) Section 3046, Eligibility Requirements for Licensure

Ms. Maggio brought forth staff's proposal (regarding Section 3046) to change the language from singular examination to plural examinations. This was a typographical error when the initial language was drafted (AB 2464, Chap. 426, Stats. 2004).

She reported that current law states a candidate for licensure is required to have graduated from an accredited school of optometry, passed the required examination, and not met any grounds for denial established in BPC Section 480; however candidates for licensure in California must pass both the National Board of Examiners in Optometry (NBEO) exam and the California Laws and Regulations Exam (CLRE).

She explained the Board is seeking to clarify for applicants for licensure that they must pass both required licensing examinations.

There has been no problem identified with the current statute, nor has the Board received any questions pertaining to the current language, this is "clean-up" legislation.

Dr. Susy Yu moved to take the matter of changing examination to examinations before legislative discussions and empower the Executive Officer and Board President to work on having the language change included in a special bill that may be needed to make the amendment. Dr. Kenneth Lawenda seconded. The Board voted (6-0) to pass the vote.

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

Fred Naranjo was not present to vote.

B. Add Business and Professions Code Section 3070.1, Optometric Services in Long Term Care Facilities and Other Non-traditional Settings

Ms. Maggio explained that optometrists who practice in a variety of non-traditional optometric settings, i.e., long term healthcare facilities, skilled nursing facilities, psychiatric facilities, intermediate care facilities, etc., have asked the Board to set minimum standards and clarify what is required for optometrists who work in these settings. Additionally, due to low overhead costs and potentially high profit margins, increasing numbers of optometrists are providing this type of care either part-time or as a sole mode of practice. California laws are vague and do not adequately address notification, standard of practice and record keeping requirements for optometrists who practice in health facilities.

Staff suggests the solution is to add proposed language to BPC Section 3070.1 to define optometric care in non-traditional settings.

Monica Johnson moved to delegate authority to the Board President and Executive Officer to move forward with legislation related to Business and Professions Code, Section 3070.1. Dr. Kenneth Lawenda seconded. The Board voted unanimously (6-0) to pass the vote.

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

Fred Naranjo was not present to vote.

At this time Dr. Goldstein raised his concern regarding the “Equipment” section of the proposed language. He explained that not all of the equipment noted is necessary for every practice situation. He suggested that he would be more amenable to specifying the kinds of testing the doctors need to be capable of doing; and therefore, have in their position the necessary equipment to perform those tests.

Dr. Turetsky commented by suggesting language and practices which address particular issues he has encountered in the past working in these settings. His suggestions are as follows:

1. Use the term residents instead of patients. This allows for staff to be treated as well.
2. A copy of the prescription must be kept by the optometrist.
3. Somebody should sign for the delivery of prescription devices, i.e., eyeglasses. Medical audits frequently to determine that patients are receiving what optometrists are saying they are receiving.
4. Add the language of ‘Physician’s Order’ and only see patients who have an order from their attending physician. Dr. Turetsky warns that the legal counsel for his business has advised that’s the person who has the ultimate authority over the patient’s care.

Dr. Goldstein reminded members and staff that language may change as the bill proceeds through the legislative process.

Monica Johnson moved to have staff make the suggested edits and begin the process of finding an author to carry this proposed legislation. Dr. Kenneth Lawenda seconded. The Board voted unanimously (7-0) to pass the motion.

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

C. Amendment BCP Section 3147.7, Applicability of Provision to Out-of-State Licensees

Ms. Maggio reported that current law allows a California licensed optometrist whose California license has expired to renew the expired license providing that the optometrist provides satisfactory proof he or she holds an active license from another state. In this event, the person may renew his or her license in the manner provided for under BPC section 3147 by paying all accrued renewal and delinquency fees.

She added, currently, optometrists who have let their California license expire, but who possess an active license in another state, are presumed to be qualified and competent to practice in California and are allowed to renew their delinquent California license by only having to complete an application, and pay all accrued renewal and delinquent fees. With regards to

optometrists who have been practicing out of state for a number of years, staff believes it is important for them to take the California Law Exam.

Therefore the proposed solution is to amend BPC section 3147.7 to require out-of-state licensed optometrists who let their California license lapse into a delinquent status for three or more years take and pass the California Law Examination, submit proof of completion of continuing education required within the past two years in addition to the other license renewal requirements.

Discussions ensued on this matter and Katrina Semmes brought forth a concern that under current law, an out-of-state optometrist with a delinquent California license extending over three years, only needs to show proof of an active license in another state, and pay the accrued renewal and delinquent fees to renew his or her California license. The concern is that an active license in another state doesn't constitute "actually practicing". He or she may be paying the renewal fees to keep the license active, and not necessarily be practicing.

The Board agreed to continue this agenda item.

15. Review of the Board of Optometry's Continuing Education Program

Mr. Robinson introduced a review of the Board's Continuing Education Program.

He reported that effective April 28, 2009, amendments to California Code of Regulations (CCR) section 1524 allowed the Board to begin charging an application fee for approval of a continuing education (CE) course.

Mr. Robinson stated that the Board recognizes CE courses officially sponsored, or accredited, by any accredited school or college of optometry; any national or state affiliate of the American Optometric Association; the American Academy of Optometry, the Optometric Extension Program, and courses approved by the Association of Regulatory Boards of Optometry known as COPE (Council on Practitioner Education). He added that since 1996 Board staff and CE Committee members have, on average, reviewed and approved over 600 courses per year.

Mr. Robinson stated that over the years, many California-licensed optometrists have contacted the Board to inquire about CE courses they believe should be considered by the Board for approval.

It is the opinion of Board staff that CE requirements be revisited by the CE Committee and, ultimately, reviewed by Board members for consideration to propose that CCR 1536 be revised and expanded.

Cheree Kimball, Enforcement Analyst, provided an update on CE Audits. Ms. Kimball stated she does not believe any action is needed, as this notification is merely informational. She reported that staff plans to begin the CE Audits again in November 2009. Ms. Kimball anticipates she will be able to provide a report on the outcome of the audits at the January 2010 Board Meeting.

16. Discussion and Possible Action Pertaining to Public Disclosure Policy

Ms. Maggio provided Board Members with the DCA's public disclosure policy and noted this is not an item requiring action. She explained that initially staff wanted to bring it before the Board to look at what is currently disclosed when responding to inquiries from the public. Ms. Maggio noted that with the new Enforcement Model under development and the resulting changes (including disclosure to the public), it is premature for the Board to take any action at this time. After the DCA comes forward with their model, staff will bring this agenda item back with staff recommendations for the Board's review.

17. Inquiries from the California Academy of Eye Physicians & Surgeons (CAEPS)

Mr. Santiago discussed the following three topics:

Blepharitis

On or about September 14, 2009, the Board received a facsimile (fax) from CAEPS expressing its opinion that treating blepharitis and other adnexal inflammations is not currently part of the optometric scope of practice in California because this language was deleted in SB 1406.

On or about September 17, 2009, the Board received another fax from CAEPS addressing points made by the California Optometric Association's (COA) letter to CAEPS dated September 10, 2009.

It is the opinion of Board staff that it was the intent of the California Legislature to expand, not reduce the scope of optometric practice in California.

Mr. Santiago stated he discussed this with Ms. Maggio and he's requesting additional time for him and staff to consult with technical experts regarding issues that came up. This subject will be continued at a future meeting.

Venipuncture

On or about June 30, 2009, the California State Board of Optometry (Board) received a facsimile fax from the California Academy of Eye Physicians & Surgeons (CAEPS) pertaining to the privilege authorized in Senate Bill (SB) 1406 to allow optometrists to perform venipuncture. The opinion expressed by CAEPS is that optometrists are limited to performing blood glucose tests only by means of venipuncture and are prohibited from performing fingerstick blood glucose tests because this type of procedure is not defined in B&P Code section 3041.

Mr. Santiago addressed this discussion about whether Therapeutic Pharmaceutical Agent (TPA) certified optometrists can use the less invasive fingerstick blood glucose tests because this type of procedure is not defined in the B&P Code, Section 3041. BPC Section 3041 (e)(4) allows a TPA-certified optometrist to perform venipuncture for testing patients suspected of having diabetes. Mr. Santiago stated that it's clear the Legislative intent was to allow TPA-certified optometrists the ability to test a patient for diabetes by puncturing the skin to collect a sample of blood. Therefore it would be reasonable and consistent with Legislative intent that a related procedure to venipuncture that is less invasive would be included in the authority of a TPA-certified optometrist to puncture a patient's skin to collect a blood sample. He also stated that patients perform the blood glucose fingerstick test on themselves, via a machine, taking it out of the realm of needing any special authorization to perform.

TLC

On or about August 24, 2009, the Board received a fax from CAEPS about a program established by TLC Laser Eye Centers that allows the co-management of Latisse patients by ophthalmologists and optometrists. CAEPS requested the Board review the program and provide guidance to CAEPS so that they may appropriately advise its members.

On September 24, 2009, Board Staff contacted the TLC and received vague information.

Monica Johnson moved to authorize staff to contact TLC and ask for the names of optometrists affiliated with the TLC Latisse Program; to authorize staff to contact the affiliated optometrists and inform them that under current law optometrists cannot treat hypotrichosis nor prescribe Latisse; and to contact the Medical Board regarding their enforcement process on this matter. Dr. Alejandro Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

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

18. Public Comment for Items Not on the Agenda

Dr. Goldstein opened the floor to public comment at this time. Issues brought forth for future discussion are as follows:

- Filling ophthalmological prescriptions without a surety bond.
Response: Although the Board recommended that this be addressed in the Board's newsletter, legal counsel, Michael Santiago stated that it is not in the Board's jurisdiction and legal advice should not be given for this reason. The California Optometric Association has already addressed this issue, and it would be a good idea to put a link on the Board's web site leading to COA's response for licensees and consumers who are seeking clarification.
- Allergan has produced an implant (Ozerdex) which is inserted into the eye to release anti-inflammatory medication. Is this on the list of approved TPA's?
Response: It is not on the list of approved TPA's. This is not a product that an optometrist can use.
- What about permanent cosmetics?
Response: Board staff will do research on this topic and respond at a future Board meeting.
- The Board should place an Infectious Control Fact Sheet on the website for consumer outreach.
Response: Board staff will create a fact sheet and post it on the Board web site.
- Board needs to make certain that optometrists in the military are not paying dues.
Response: Board staff will do research on this topic and respond at a future Board meeting.
- How many optometrists are only DPA (Diagnostic Pharmaceutical Agents) certified?
The Board would like a response by the next Board meeting.

19. Adjournment

Dr. Kenneth Lawenda moved to adjourn the meeting. Katrina Semmes seconded. The Board voted unanimously (7-0) to pass the motion.

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

The meeting was adjourned at 4:14 p.m.



STATE BOARD OF OPTOMETRY
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MEETING MINUTES

October 22-23, 2009

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

Members Present

Lee Goldstein, OD, MPA
 Board President
 Susy Yu, OD, MBA, FAAO
 Board Vice President
 Monica Johnson, Public Member
 Board Secretary
 Alejandro Arredondo, OD
 Katrina Semmes, Public Member
 Kenneth Lawenda, OD
 Fred Naranjo, MBA, Public Member

Staff Present

Mona Maggio, Executive Officer
 Margie McGavin, Enforcement Manager
 Cheree Kimball, Enforcement Analyst
 Andrea Leiva, Policy Analyst
 Jeff Robinson, Licensing Analyst
 Michael Santiago, Staff Counsel

Guest List

On File

Members Absent

Edward Rendon, Public Member

Friday, October 23, 2009 **FULL BOARD OPEN SESSION**

20. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, OD called the meeting to order at 9:11 a.m. Dr. Goldstein called roll and a quorum was established.

21. Welcome and Introductions

Welcome by Board President Dr. Lee Goldstein, O.D. Board members, staff, and members of the audience were invited to introduce themselves.

22. Election of Officers

Dr. Susy Yu moved for Lee Goldstein to remain president of the Board. Monica Johnson seconded. The Board voted (6 - Ayes; 0 - No; 1 abstention) to pass the motion.

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

Dr. Susy Yu moved for Monica Johnson to remain as Secretary of the Board. Katrina Semmes seconded. The Board voted (6 - Ayes; 0 - No; 1 abstention) to pass the motion.

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

A secret ballot was conducted for Dr. Alejandro Arredondo or Dr. Kenneth Lawenda to serve as Vice President. Dr. Arredondo will serve as Vice President of the Board.

23. Ethical Decision Making for Regulators

Presentation by DCA Staff Counsel Michael Santiago

Michael Santiago gave the Board a presentation with two objectives. First, to create awareness of potential ethical dilemmas that board members may have to contend with, and secondly, to provide strategies for dealing with and avoiding those dilemmas.

24. Strategic Planning

Facilitated by Sarah Boire, DCA Strategic Organization, Leadership, and Individual Development (SOLID)

The Board reviewed and revised the current mission, vision, and value statements and determined dates for future strategic planning meetings to complete the process.

The SWOT Analysis brought forth the following questions:

A) Assessment

- 1) Who are we?
- 2) Where are we now?
- 3) What constraints do we work under?

B) Environmental Scan

- 1) What are the trends in the broader environment?
- 2) What is the marketplace like and how is it likely to change?
- 3) What are the new emerging technologies?

C) Strategic Vision

- 1) Where do we want to go?
- 2) What problems are we trying to solve?

D) Plan

- 1) What are our strategic goals and objectives?
- 2) What objectives do we need to put into place?

E) Evaluation

- 1) How did we score against our measures of success?
- 2) Where did we fall short?
- 3) What lessons can we learn from this?
- 4) How can we incorporate those lessons into our next plan?

F) Mission

- 1) Why do we exist?
- 2) Who are our customers?
- 3) What are our customer's needs?
- 4) How will we serve our customers?

25. Occupational Analysis Overview
Presented by the Office of Professional Examination Services

Monica Johnson moved to approve the final results of the 2009 Occupational Analysis. Katrina Semmes seconded. The Board voted (6 - Ayes; 0 – No; 0) to pass the motion.

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

Fred Naranjo was not present to vote.

26. Public Comment for Items Not on the Agenda

No public comment was presented.

27. Suggestions for Future Agenda Items; Selection of Future Meeting Dates

Board members and Staff members agreed upon the following tentative meeting dates:

Board Meeting	Date	Location
Strategic Planning 1 day	December 1, 2009	Sacramento
Public Board Meeting 1 day Enforcement Issues	January 21, 2010	Los Angeles
Healing Arts Roundtable 1 day Board Officers and Staff	January 2010	Sacramento
Public Board Meeting 2 days	March 25-26	San Diego
Public Board Meeting 1 day 2010 Regulatory Next Practices: A Working Conference (Formerly known as Professionals Achieving Consumer Trust Summit)	July 26-28, 2010 The Conference is scheduled for 3 days; Our meeting date will be assigned by DCA.	Sacramento
Public Board Meeting 1 day	August Teleconference	Southern CA
Public Board Meeting 2 days	October 2010	Bay Area
Legislation and Regulation 1 day Committee	December 17, 2010	Los Angeles
Practice Committee 1 day	December 17, 2010	Sacramento

28. Adjournment

Dr. Kenneth Lawenda moved to adjourn the meeting. Katrina Semmes seconded. The Board voted unanimous (7-0) to pass the motion.

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

The meeting was adjourned at 2:42 p.m.