



STATE BOARD OF OPTOMETRY
 2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
 P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov



**Meeting Minutes
 Wednesday, March 6, 2013**

DRAFT

**California State Board of Optometry
 2450 Del Paso Road, Suite 105
 Sacramento, CA 95834**

And Via Teleconference at the Following Locations:

Southern California College
 of Optometry
 TVCI Room
 2575 Yorba Linda Blvd.
 Fullerton, CA 92831

3301 E. Main Street, Suite 1006
 Ventura, CA 93003

1919 S. State College Blvd.
 Anaheim, CA 92806

6035 Belleau Wood Lane
 Sacramento, CA 95822

3808 Riverside Drive, Suite 100
 Burbank, CA 91505

140 C Tower Street
 Beaconsfield, Quebec
 H9W 6B2

Kaiser/Department of Optometry
 5601 De Soto Avenue
 Woodland Hills, CA 91367

<u>Members Present</u>		<u>Staff Present</u>
Alex Arredondo, O.D., Board President		Mona Maggio, Executive Officer
Monica Johnson, Vice President		Andrea Leiva, Policy Analyst
Ken Lawenda, O.D., Professional Member		Don Chang, Legal Counsel
Madhu Chawla, O.D., Professional Member		
Donna Burke, Public Member		
Glenn Kawaguchi, O.D., Professional Member		
Bill Kysella, Public Member		
Fred Dubick, O.D., M.B.A. Professional Member		
<u>Excused Absence</u>		<u>Guests</u>
Alex Kim, M.B.A., Secretary		On File

FULL BOARD OPEN SESSION

- 1. Call to Order – Roll Call – Establishment of a Quorum**
 Board President, Alex Arredondo, O.D. called the meeting to order at 9:03 a.m. Dr. Arredondo called roll and a quorum was established. The meeting then went into recess until 9:30 a.m. to ensure a member of the public representing the Center for Public Interest Law (CPIL) was able to arrive at the Southern California College of Optometry (SCCO) location. The meeting was called to order once again at 9:30 a.m. Dr. Arredondo asked all guests to introduce themselves at the Sacramento and SCCO locations.
- 2. Sunset Review Report: Discussion of Questions/Comments from the Sunset Review Committee and Approval of Responses to Questions/Comments**

Ms. Maggio introduced this agenda item and explained that the board received a total of seven sunset issues that require a response to the Senate Committee on Business, Professions and Economic Development (Committee). Of the seven, the Board is being asked to address four (#1, #4, #5 and #6) at the Board's Sunset Review hearing on Monday, March 11, 2013. Ms. Maggio shared that she will be presenting before the Committee with Dr. Arredondo, Ms. Burke, and Ms. Leiva. The hearing may need to continue on March 12, 2013. In the event the Board has to present on the second day, Ms. Burke will be available to step in for Dr. Arredondo.

Staff has completed draft responses to all issues for the Board's consideration. Upon the Board's approval, staff must finalize the responses and submit a final copy to the Committee. Senate Bill 304 (Price) has been introduced and proposes to extend the Board's Sunset date from January 1, 2014 to January 1, 2018. Ms. Maggio anticipates the Board's Sunset date will be extended.

Ms. Maggio requested that the members review, make edits, if any, and approve the Board's draft Sunset Issue responses. Ms. Maggio also requested that the members direct staff to finalize the draft Sunset Issue responses and submit them to the legislature by the hearing date.

Ms. Leiva introduced the first issue. The Committee recommended that the Board conduct an occupational analysis for optometric assistants as was directed at the Board's last Sunset Review in 2002. The proposed Board response states that the Board agrees with the Committee's recommendation and has already started working to obtain the funds necessary to conduct the occupational analysis. On January 25, 2013, the Board met with the Department of Consumer Affairs' Office of Professional Examination Services (OPES) to discuss the history of this issue, the project objectives and expected outcomes of an occupational analysis for optometric assistants, the project plan (i.e., start dates, major events), and projected costs. The total projected OPES costs are \$40,882.00. The Board's projected costs are \$25,828.92. The total cost to the Board will be \$66,710.92.

The Board will work with DCA to draft a Budget Change Proposal (BCP) to pay for the occupational analysis. If the proposal is approved, work will begin in Fiscal Year 2014-2015. OPES' proposed completion date is June 30, 2015. At that time, the Board will review the results and OPES' recommendations and determine next steps. Possible outcomes include developing regulations to implement the analysis' recommendations, or the need to create a certification process under the Board's oversight for optometric assistants. The latter outcome would require legislation and a permanent Staff Services Analyst.

Dr. Arredondo opened the floor for comments and questions. There were none and the members agreed with the proposed response.

Ms. Maggio introduced the second issue. The Committee recommended that the Board should work with the Department of Consumer Affairs (DCA) to ensure they are provided funds to apply for the National Practitioner Databank (NPDB) and the Health Integrity and Protection Databank (HIPDB). The proposed Board response states that the Board agrees with the Committee recommendation and will work with DCA to obtain the necessary resources. This may include drafting additional BCPs for funds and staffing, or increasing licensing fees via legislation or the regulatory process.

Dr. Arredondo opened the floor for comments and questions.

Ms. Johnson commented that she is surprised that the Board is not checking these databases and is glad that staff will be working on obtaining resources to do so. Mr. Kysella asked whether the Board can start using the databases now for newer applicants. Ms. Maggio responded that without funding, using the databases is not possible, even for newer applicants. Ms. Maggio explained that if a BCP was approved to obtain funding, work would begin July 2014. She is not confident that a BCP of this nature will be approved in this economic climate.

Ms. Burke and Ms. Johnson asked what could be done in the meantime. Ms. Maggio responded that currently the Board has a mechanism in place to examine an applicant's professional background and criminal history. All applicants are fingerprinted and out-of-state applicants must provide a letter from their respective Board that they are in good standing. Ms. Johnson asked that this information be included in the Board's responses to the Committee.

Dr. Harue Marsden from SCCO suggested that the Board could have the applicants submit their own background check and the Board would not incur any costs. That is what they do at SCCO. Ms. Maggio replied that while that is a good idea, legislation would be necessary to implement it.

There were no further comments on the second issue.

Ms. Maggio introduced the third issue which is based on circumstances that have led to the time lag in cases being referred to the Attorney General for processing. The Committee recommends that the Board specify what additional measures can be taken to expedite processing of enforcement cases. The Board's response is a specific assessment of what staff is currently doing, the number of parties involved, and how staff is working with the other parties to expedite cases. Ms. Maggio also noted that last year's numbers were high due to the fingerprint issue (discussed at prior meetings) where the information coming in from the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) was not interfacing with the Board's database.

When Board staff identified the technical issue, there were a number of fingerprint results that had been held up and not received by the Board. Some of these fingerprint results included conviction histories that needed to be investigated. Board staff made the decision to use the date that the fingerprint results were released to the Board by the DOJ rather than the more recent date after the results were received by the Board staff. This allowed for more technically accurate statistics, but significantly elevated the case processing times shown in the statistics.

Dr. Arredondo opened the floor for comments and questions.

Mr. Kysella asked for an explanation of what PC23 Orders are (4th page, second to last paragraph of the Agenda). Legal Counsel, Don Chang defined PC23 Orders as a temporary suspension of license as a condition of probation. When a licensee is facing criminal charges, the Board's representative(s) have the authority to enter the proceedings and request this. Mr. Kysella and Mr. Chang briefly discussed alternate text, for clarification purposes, of PC23 Orders. Staff agreed to amend the text to read "Penal Code 23" (PC23) Orders".

Ms. Johnson expressed a concern. She explained that because the Board's staffing increased significantly from 2009 to 2012, and this increase is noted simultaneously in the same section, she would not want a conclusion to be made that during the highest staffing year, the Board was still unable to move cases to the Attorney General. She requested that this information be clarified. Staff agreed to comply.

Ms. Leiva introduced the fourth issue which is a discussion to determine if the Board should be granted the authority to inspect an optometrist's practice. The Committee requested that the Board provide a plan for increasing the workload of its enforcement officers considering the existing budget and staffing constraints. The Board's proposed response is that in order for the Board to successfully implement inspection authority in a way that would benefit public safety, the Board would need to request a new position. The new position would have to be an inspector classification, and the candidate would need to be an optometrist. The current staff at the Board is not qualified to perform inspection duties because they are not optometrists and are needed to perform the job duties they currently have. If current staff were to attempt to take on this increased workload, it would cause a negative ripple effect on all enforcement activities because current

duties would be neglected. Also, since they are not specialists in the practice related issues, it would be a waste of resources because they would not be as effective as an optometrist in spotting issues. The Board will need to submit a BCP to obtain the inspector position and spending authority, or an augmentation to its budget line to contract with an optometrist to conduct inspections.

In the meantime, the Board plans to continue handling cases that require an investigator the same way they have been handled in the past. That involves enforcement staff conducting a desk investigation and identifying the types of violations that require an inspection. Then, Board staff requests that an investigator be sent into the field from the Department of Investigation (DOI). If DOI needs an optometrist to develop an investigative plan, one of the Board's experts will be called upon to assist. Additionally, the Board will meet with other healing arts boards that currently have inspection authority to learn about and evaluate their programs. Based on the information collected from other programs, the Board will develop its BCP and strengthen the justification for the need to obtain inspection authority for the profession of optometry.

Ms. Maggio added that inspection authority for particular circumstances will be included. For example, if an optometrist is on probation for insurance fraud, a monitor would be in place to inspect patient files for billing purposes. Or if there is an issue of that falls under Infection Control Guidelines, an optometrist would inspect the office to ensure that the probationer has complied with all infection control – patient safety requirements.

Dr. Arredondo expressed his concern about having someone randomly inspect an office without a solid justification for doing an inspection. In response, Ms. Johnson asked when an inspection would be required. Ms. Maggio responded that this issue will be brought before the Legislation and Regulation Committee. The Committee will need to create a statute that must go through the legislative process and be signed into law by the Governor, and then regulations could be developed to identify criteria for inspections taking place. Although the Board currently does not have a defining statute, inspections are taking place as part of investigations when allegations of unprofessional conduct have been made, and as part of probation. Mr. Kysella asked and Mr. Chang confirmed that several other boards have statute authority for random inspections.

Dr. Arredondo stated that optometrists who wish to be on any kind of insurance plan are already having their offices inspected by the insurance groups. Therefore it may be a red flag if an optometrist is not on any insurance plan; otherwise, these inspections are already being done. Dr. Arredondo reiterated his dislike of the idea of random inspections. Mrs. Burke commented that her interpretation is that something has to have occurred which warrants an inspection before one is performed.

Ms. Maggio explained that she was not aware that insurance companies perform inspections as this is not information that is shared with the Board. She added that if this Board was to follow the model of the pharmacy and dental boards, a licensed individual would perform the inspections. She explained that when a DOI investigator is utilized, Board staff contracts with one of its experts to assist the DOI investigator in what to look for.

Dr. Dubick shared his belief that the point of issue # 4 really ties back to issue # 3 which is: It is taking too long for the Board to process enforcement files. The Board does not have control over DOI investigators; therefore, if the Board had an inspector (already trained in what to look for) this would give the Board control over the timeline and prioritization of what needs to get done, making the entire process more efficient. He added that this is the bottom line of what consumer protection is all about. Mr. Kysella agreed.

Dr. Arredondo asked Ms. Maggio how the Board should proceed. Ms. Maggio replied that staff will make clear in the response that more research (with other boards) and more discussions on this issue will take place.

Ms. Maggio introduced the fifth issue which asks why the Board's BCP was denied. Ms. Maggio reported that this issue has to do with staffing and resources. Staff recommendations include that the Board should inform the Committee of its plan to continue carrying out its various duties if no additional staff is allocated for the Board. The Board may want to explore the possibility of hiring temporary or part-time staff to assist with completing critical tasks. The Board response explains that this possibility has already been explored; however, the Board's budget does not have sufficient funding for re-direction of resources that would support hiring of temporary or part-time permanent staff, and an assessment of actions the Board plans to take.

Ms. Leiva introduced the sixth issue which deals with license portability for military personnel and their spouse. Ms. Leiva reported that currently many bills are being introduced to assist military personnel and their families. Committee staff recommends the Board make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses if called to active duty and they have to relocate to California. The Board should also consider waiving the fee for reinstating the license of an active duty military licensee. The Board agrees with the Committee and currently complies with BPC § 114 and 115, which requires the Board to reinstate the license of an optometrist without examination or penalty, who's license expired while he or she was on active duty in the California National Guard or the United States Armed Forces. Ms. Leiva explained that waiving the fees for reinstating a license would require legislation or regulation. This discussion will be brought to the May 2013 Board meeting unless the Board wishes to have a special Legislation and Regulation Committee Meeting for the purpose of this discussion.

Ms. Leiva reported that the Board has been in compliance with other statutes that have been in law for twenty years. An example would be the exception of continuing education requirements for licensees serving in the military. Also if their license expires while in the military, they can make their license active and current without any penalties or examination if they meet certain requirements. Dr. Arredondo opened the floor for comments and questions. There were none.

Dr. Arredondo introduced the seventh issue with asks if the current Board should continue to license and regulate optometrists. Ms. Leiva reported that Committee staff recommends that optometrists continue to be regulated by the current Board and be renewed again in four years. Mr. Kysella inquired and the Boards consultant from the Assembly Business and Professions Committee explained that all the professions have their extensions set at four years. This is the guideline. Ms. Maggio opened the floor for additional comments. There were no other comments.

Monica Johnson moved to approve the proposed responses to the Sunset Committee's questions with edits. Ken Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Lawenda	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

3. Discussion and Possible Action Pertaining to California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

Ms. Leiva reported on this item. This regulation was approved by the Office of Administrative Law (OAL) without issue on February 27, 2013 and it will become effective on April 1, 2013. This agenda item was a place holder in the event there was an issue with this rulemaking package. A full update will be provided at the Board's May 10, 2013, meeting. Ms. Maggio and Members expressed gratitude for Ms. Leiva's excellent work on the rulemaking package.

4. Public Comment for Items Not on the Agenda

Dr. Arredondo opened the floor to comments not on the agenda.

Public guest at the Southern California College of Optometry (SCCO) location, Michelle Penya commented that the Anaheim location on the agenda was not accessible. Ms. Maggio explained the unforeseen circumstances which caused this occurrence.

5. Suggestions for Future Agenda Items

Dr. Arredondo asked if any Members had suggestions for future agenda items.

Ms. Johnson suggested having a committee meeting discuss the Agenda Item 2 discussions. Ms. Maggio stated that a committee meeting will be scheduled to address Senate Bill 1111 provisions. Agenda Item 2 issues may possibly be discussed at that time as well.

Dr. Arredondo requested that his concerns regarding the Board obtaining a professional inspector be discussed at length to prevent overbearing authority.

Dr. Marsden announced that legislation is being introduced which would add certain components to screenings of children's vision. The added components would make school vision screenings more comprehensive.

6. Adjournment

The meeting was adjourned at 10:39 a.m.

Bill Kysella moved to adjourn the meeting. Donna Burke seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Lawenda	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		

Alexander Kim, Board Secretary

Date