

## Final Minutes

### **BOARD OF OPTOMETRY**

#### **PUBLIC MEETING**

**NOVEMBER 17, 2005**

**1. Call to Order**

The meeting was called to order at 9:17 a.m. by Dr. Hernandez and a quorum was established. Present were Ms. Galvan and Noda, Mr. Naranjo, and Drs. Goldstein, Hernandez, Kame, and Yarwood,. Also present were Staff Members Krista Eklund, Jane Flint, Rex Farmer, and Taryn Smith and Staff Counsel Don Chang.

**2. Approval of Minutes**

Move to approve the minutes of the August 18, 2005 meeting. M - Goldstein, S - Noda, MSP - Unanimous.

**3. President's Report**

Dr. Hernandez reported that Assembly Bill 488 (Bermudez) has been signed into law and will take affect on January 1, 2006. He also announced the new committee assignments as follows:

**Legislation and Regulations Committee**

Edward Hernandez, OD  
Page Yarwood, OD  
Lee Goldstein, OD  
Audrey Noda

**Continuing Education Committee**

Daniel Pollack, OD  
Greg Kame, OD

**Enforcement Committee**

Lee Goldstein, OD  
Fred Naranjo

**Exam Committee**

Page Yarwood, OD  
Susy Yu, OD  
Mary Rosas

**4. Update on Legislation Affecting Optometry**

Ms. Smith reported that the following legislation affecting optometry has been signed into law and will take affect on January 1, 2006:

A. Assembly Bill 488 (Bermudez) – The provisions of AB 488 are largely technical in nature and will streamline and modernize the codes governing the practice of optometry to reflect current practice and standard of care. The bill reorganizes the Optometry Practice Act for ease of reference and re-words the Act for clarity and consistency. In addition to the technical changes, AB 488 makes the following substantive changes to the Business and professions Code:

- Changes in the Board's enforcement program,
- Modifies information required on receipts for optometric goods and services and conditions when a receipt is required, and
- Repeals the 30-day grace period for a delinquency fee.

- B. Senate Bill 231 (Figueroa) – Business and Professions Code Section 802 currently provides that all settlements or arbitration awards over \$3,000 in a claim or action for damage for death or personal injury caused by negligence, error or omission in practice or by unauthorized rendering of professional services by an optometrist must be reported to the Board. Among other things, SB 231 amends Business and Professions Code Section 802 to include requiring any judgment in a malpractice action against an optometrist to be report to the Board. Failure to comply with this requirement is considered a crime.
- C. Assembly Bill 370 (Aghazarian) – This bill establishes statute of limitations for the Board to take disciplinary action against optometrists. With a few exceptions, any accusation filed against an optometrist shall fbe filed within three years after the Board discovers the act or omission alleged, or within seven years after the act of omission alleged, whichever occurs first.
- D. Ms. Smith also reported that Assembly Bill 579 (Aanastad) is inactive, Assembly Bill 446 (Negrete McLeod) was vetoed and Assembly Bill 1382 (Nakanishi) is a two-year bill.

## **5. Discuss and Possible Action to Amend or Repeal Statutes Regarding Optometric Corporations**

The Board was asked to consider eliminating the requirement for optometric corporations to register with the Board after having already done so with the Secretary of State. Optometric corporations are regulated by statutes set forth in the Corporations Code and the Business & Professions Code. This model exists for most, if not all, other health care professionals that may incorporate. However, optometric corporations are the only health care corporations found to be required to register with both the Secretary of State *and* its regulatory board. The purpose of the registration with the Board is unclear; however we do note that similar requirements were repealed for dentistry and psychology in 1997 and 1980 respectively. Tim Hart of the California Optometric Association reported that the COA would have no problem with eliminating the registration requirement.

Dr. Hernandez motioned to seek an author and legislation to amend both the Corporations Code Business and Professions Code as necessary to eliminate the certificate of registration for optometric corporations. Ms. Galvan-Rosas seconded the motion, which passed unanimously.

## **6. Discuss and Possible Action to Repeal California Code of Regulations**

Ms. Smith reported on regulations that have been identified as needing to be repealed as obsolete or now absent statutory authority. She suggested the regulations should be repealed because the laws upon which they are based have changed or been deleted since the regulations were implemented. Based on input from legal counsel, the Board did not vote to repeal CCR Sections 1517 (Substantial Relationship Criteria), 1561 (Topical Therapeutic Agents), 1562 (Pharmacology Courses), or 1563 (Pharmacology Examination).

Dr. Goldstein moved to repeal CCR Section 1510 (Professional Inefficiency). Dr. Yarwood seconded the motion, which passed unanimously.

Dr. Goldstein motioned to repeal CCR Section 1515 (Advertising of Services). Ms. Rosas seconded the motion, which passed unanimously.

Dr. Goldstein motioned to repeal CCR Section 1530 (Exam Results). Dr. Yarwood seconded the motion, which passed unanimously.

## **7. Discuss and Possible Action Regarding License Mobility (Process for Out-of-State Optometrists Seeking Licensure in California)**

The Board discussed the current process for licensed optometrists practicing out-of-state who wish to obtain a license in California. Such applicants must meet a number of requirements, including passing Parts I, II and III of the national exam (NBEO). Most licensees practicing today have already passed exams that are equivalent to the current version of NBEO Parts I and II, but not Part III because it was administered in its current form for the first time in 2000. Therefore, out-of-state optometrists who were licensed before 2000 desiring licensure in California must take and pass the NBEO Part III, in addition to meeting all the other license requirements.

The Board discussed requiring a practitioner with years of experience to sit for an entry-level exam is not the best way to protect the public from unqualified practitioners. It would be more appropriate to rely on the practitioner's record since becoming licensed, such as disciplinary actions or malpractice cases, to determine if licensure is warranted.

The Board was asked to consider implementing a more equitable avenue for licensure of out-of-state practitioners, which would require a change in the law. Draft amendments to the Optometry Practice Act were provided for the Board's consideration. The amendments were based on the American Optometric Association model for "Licensure by Endorsement" and existing statutes in place for dentists wishing to obtain licensure in California.

Dr. Goldstein motioned to instruct staff to continue working with the California Optometric Association on legislation that would facilitate licensure for out-of-state optometrists. Ms. Rosas seconded the motion, which carried unanimously.

## **8. Enforcement Committee Report**

Dr. Goldstein, Chair of the Enforcement Committee, provided a report on their November 16, 2005 meeting. Dr. Goldstein reported that the changes in the Board's probation monitor program were successfully implemented and that he will work with enforcement staff on reviewing the Board's Standards for Reinstatement or Reduction of Penalty. The Board was asked to review the Recommended Guidelines for Disciplinary Orders and Condition of Probation, which were re-drafted by the Board's liaison to the Attorney General's Office, Char Sachson. Board members were invited to provide feedback to Ms. Smith for presentation at the next Board meeting.

## **9. Exam Committee Report**

The Exam Committee met for the first time on November 16, 2005. Dr. Yarwood was elected to Chair the Committee. Dr. Yarwood reported to the Board that the Committee was provided information on the components of a defensible licensing exam, which include regular occupational analysis, test scoring and item analysis, and criterion-referenced passing scores. Members were then briefed on the history of the licensing exams for optometrists in California.

Members determined that the Board's exam plan is dependent on results of the NBEO occupational analysis, which is anticipated to be released in December 2005. Staff was instructed to perform the following after the NBEO issues the occupational analysis:

- Set up focus groups in the spring of 2006
- Develop a budget concept paper to increase the Board's exam budget
- Talk to the Department of Consumer Affairs' exam experts to determine alternatives to the multiple choice law exam

The next Exam Committee meeting will be scheduled after the NBEO occupational analysis is issued.

#### **10. Strategic Plan Update**

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

#### **11. Executive Officer's Report**

Ms Smith reported on the following:

- Staff has developed a plan for relocating the Board offices. The Board is scheduled to move the week of January 9, 2006. The Board's new address will be 2420 Del Paso Blvd., Suite 255, Sacramento, CA 95834. Staff will mail "we've moved" notices to all licensees and interested parties. All of the Board's phone numbers will change. Incoming calls to the current phone number will be forwarded to the new phones for about 3 months. Outgoing voice and e-mail messages will include notice of new address and phone numbers. All printed materials will be updated to reflect the new address.
- Staff has streamlined review procedures and updated forms in order to reduce processing delays in the Licensing Program
- In an effort to protect our licensees from identity theft, license renewal notices will no longer be issued with licensees' social security number (SSN) preprinted on the renewal. The practice of printing the SSN on renewals began in the 1990's when a state program was established to improve the collection of family support payments from people holding a professional license issued by the state of California. Under this program, parents who owe family support payments are tracked by SSN and matched up with license numbers. If a licensee is found to be in arrears of family support payments, he/she is advised that his/her license could be in jeopardy if he/she fails to make court ordered payment(s) in a timely manner. After receiving a number of complaints from licensees, staff from the Optometry Board and other Boards began working with the

Department to terminate this practice and the Department recently announced that renewals will no longer contain SSNs effective December 1, 2005.

- Staff has been working on developing training sessions to educate investigators on the practice of optometry and the laws regulating it. The sessions will be held at Southern California College of Optometry and Berkeley School of Optometry. The training was originally envisioned to take place this summer, but it was postponed pending the outcome of AB 488 (Bermudez). In the meantime, staff has been working with DOI and the schools to develop the training program and projected costs associated with the training. The Board's Liaison to the Attorney General's Office will assist with training content and presentation. Expert witnesses will also be invited to attend the training.
- Staff continues to work with the Department of Health Services (DHS) to identify and take action on Medi-Cal fraud cases. An Inter-Agency Agreement between the DHS and the Board of Optometry was adopted by the Board at the February meeting. DHS recently reported that they were interested in expanding the agreement to include all other health care boards within the Department of Consumer Affairs. Board staff has requested, and DHS has agreed, that the Agreement with the Board of Optometry not be held up while DHS works with the other board and suggested the Agreement serve as a pilot. Unfortunately, DHS legal office has undergone numerous staff changes, so the project temporarily was placed on hold. A meeting between DHS and Board staff took place on August 24, 2005. Board staff is awaiting a draft of the Agreement from DHS.
- The Board's revenue continues to fall significantly short of its expenditures and reserve funds continues to shrink. As previously reported and discussed, a fee increase will be necessary. The only question is when it should be pursued. Budget estimates for Fiscal Year 2006/07 initially indicated an immediate need for a fee increase. However, it has since been determined that the one-time savings generated by the reduced use of investigators from the Division of Investigations are sufficient to delay pursuit of a fee increase until the 2006 legislative session.

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

## **12. Future Meeting Dates**

The Board scheduled the following dates from meeting in 2006:

- February 2, 2006 in Los Angeles

- June 8, 2006 in Fullerton at the Southern California College of Optometry
- August 24, 2006 in Sacramento
- November 16, 2006 in San Diego

**13. Petition for Reduction of Penalty or Early Termination of Probation**

The petition was denied.

**14. Discuss and Possible Action on Disciplinary Matter(s) and Shavhoveisi v. State Board of Optometry - Closed Session Pursuant to Government Code Sections 11126(c)(3), 11126(c)(1) and 11126(e)(2)(A)**

Closed Session.

**15. Open session**

**16. Public comment**

There was no comment from the public.

**17. New business**

There was no new business.

**18. Adjournment**

The meeting adjourned at 4:00 p.m.

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Audrey Noda, Secretary