

## Final Minutes

# Board of Optometry

Public Meeting  
February 8, 2007

### 1. Call to Order

The meeting was called to order at 9:13 a.m. by Dr. Goldstein, OD, and a quorum was established. Board members present were Monica Johnson, Fred Naranjo and Roberto Vellanoweth; and Drs. Lee Goldstein, Susy Yu, Daniel Pollack, and Richard Simonds (all optometrists). Also present were the Executive Officer, Taryn Smith; Staff Counsel, Spencer Walker; Deputy Attorney General, Char Sachson; and staff members Gary Randolph, Margie McGavin, Krista Eklund, and Theresa Kubo

### 2. President's Report

Dr. Goldstein reported on the successful strategic planning meeting held on February 7, 2007 and announced two scheduled agenda items.

- Time certain at 11:00 a.m. for guest speakers of the Western University College of Optometry.
- The petitioner for reduction of penalty listed under agenda item 13 is scheduled to start at 1:30 p.m.

### 3. Approval of Minutes

The Board was asked to approve the minutes from the November 2006 board meeting.

**Move to approve as amended. M – Simonds, S – Vellanoweth, MSP – Unanimous.**

### 4. ARBO OE Tracker

The Association of Regulatory Boards of Optometry (ARBO) requested that the Board accept their OE Tracker program, which is an automated online service for optometrists and continuing optometric education providers to track continuing education (CE) courses.

The concept for OE Tracker is to provide a way to capture CE attendance at an educational meeting and transfer that data to a central electronic site where doctors and/or the state boards can record and verify attendance to complete state board CE requirements.

Participating optometrists are given an OE Tracker card and issued CE certificates. The certificates containing a “digital validation signature” number that uniquely

identifies course and individuals. Many of the nationwide CE providers are participating in OE tracker.

ARBO representatives attended the November 2006 board meeting and made a presentation to the Board. At that time, there were a number of concerns about the program raised by Board members and staff. Those concerns included:

- liability issues could arise from erroneous information in the database
- security of information – possible counterfeited certificates
- possible fees for licensees and/or CE providers for this service in the future
- impact on CE providers that do not have COPE approval

At the November meeting, the Board decided to table the request to see if the concerns listed above could be addressed.

In response, ARBO offered the following information:

- ARBO will never implement a mandatory fee for optometrists participating in OE Tracker. However, they may implement a tiered fee structure for a varied level of services.
- Courses and providers that are approved by the Board, but not COPE-approved, can be added to the database. The Board's course approval number will be added to the database so that the approval can be confirmed.
- ARBO may charge CE providers to register in their database, but they don't know when or how much.
- The digital signature on the certificates can be confirmed by accessing the database.

Dr. Susy Yu, O.D. reported on an online presentation hosted by ARBO as follows:

- probably as secure as possible
- good opportunity to leverage technology
- should reduce staff workload
- could be a good method of identifying OD's who need to be audited
- all COPE approved courses are in system

Ms. Smith stated that staff was unable to access the online presentation. Therefore, staff is not familiar with how the system works. Dr. Goldstein responded that there was no pressure to take action immediately.

**Move continued to next meeting. M – Yu, S – Vellanoweth, MSP – Unanimous.**

## **5. Western University College of Optometry**

### Guest Speakers

- Dr. Benjamin L. Cohen, Executive Vice-President for Academic Affairs & Chief Operating Officer
- Dr. Elizabeth Hoppe, Founding Dean for the College of Optometry

Drs. Cohen and Hoppe gave a half-hour presentation regarding the University's plans to open a new optometry program in Southern California. They are planning to begin offering classes in 2009 with initial enrollment planned for 40 – 70 students. Full enrollment capacity is projected to be 100 – 120 students per class. They are in process of initial application for professional accreditation. Drs. Cohen and Hoppe expressed interest in building and maintaining a good relationship with the board.

The Board thanked Drs. Cohen and Hoppe for their informative presentation and expressed interest in continuing work with the school.

## **6. Exam Development Workshops**

Board staff has been working closely with the Department of Consumer Affairs Office of Exam Resources (OER) to update and validate the California Laws and Regulations Exam as outlined below.

On December 11, 2006, approximately 6,000 letters were sent to all active and delinquent licensees. The Board received responses from over 100 licensed optometrists willing to assist the Board with its exam program. We have scheduled five two-day workshops as follows:

Reclassification:	March 4-5, 2007
Item Writing:	March 18-19, 2007
Item Review:	April 1-2, 2007
Exam Construction:	April 15-16, 2007
Passing Score:	June 10-11, 2007

Five different optometrists will attend each workshop. They will be paid \$100 per day, plus travel expenses. The workshops are estimated to cost approximately \$15,000, plus the fee for OER services. Board staff will monitor these expenditures very closely to avoid over-spending.

Workshop participants will be given continuing education credit and a certificate of appreciation from the Board.

While this plan is an important step toward validating the California Laws and Regulations Exam, it does not include a schedule or funds to conduct an occupational analysis of optometric practice in California. It will be necessary to pursue a budget enhancement to complete the exam validation process on an ongoing basis. If successful, the budget augmentation would take effect in Fiscal Year 2008/09.

## **7. Grand Rounds at SCCO**

The Southern California College of Optometry (SCCO) requested that the Board of Optometry review and approve a grand rounds course offered to optometrists to facilitate their meeting the requirements for glaucoma certification. The request was considered at the August Board meeting; however, a representative from SCCO was not in attendance. The Board tabled the issue until the November meeting and ask SCCO to send a representative to attend the meeting and respond to questions from the Board.

Dr. Davis Sendrowski, OD, Chief of Ocular Disease and Special Testing Services at the College's Eye Care Center represented SCCO at the November meeting. Dr. Sendrowski presented the course and responded to the Board's questions. After Dr. Sendrowski's presentation, the Board asked legal counsel to determine if the Board has legal authority to approve the program.

At the February 8, 2007 meeting, the Board's legal counsel, Spencer Walker, reported that the Board does not have the authority to approve such a course. He advised that staff should process any pending applications on an individual basis. The Board accepted the legal advice and took no further action on the request from SCCO.

#### **8. Report from the Legislative Committee**

The Board's Legislative Committee met on January 31, 2007 to discuss the Board's legislative initiatives and priorities. The Legislative Committee consists of:

- Dr. Lee Goldstein, OD, MPA
- Dr. Richard Simonds, OD
- Monica Johnson

Ms. Johnson reported that the Committee identified four legislative priorities for the 2007 and set a general plan for 2008 as follows:

Priority 1 - Fee increase. The need for increased revenue is well documented. The Board has already obtained an author and a vehicle for the fee increase (Assembly Bill 986 (Eng)). Ms. Smith reported that she met with representatives from the Department of Finance and representatives of DCA.

Priority 2 - Establish exemption from practice location registration requirements for optometrists practicing at temporary locations.

Staff explained that B&P Section 3070 requires optometrists to notify the board of all practice locations *before* beginning to practice at any location, and B&P Section 3075 requires all optometrists to post a license or evidence of licensure in each practice location.

The current laws do not contemplate the reality of optometric practice in which some optometrists practice at a given location on a temporary basis, i.e., nursing homes or prisons.

Additionally, the requirement that the registration prior to commencing practice does not take into account the time it takes Board to process applications. Therefore, the nature of temporary practice is not conducive to pre-registration.

The Dental Board also requires dentists to register practice locations, but B&P Section 1658(b) provides for temporary dental practice in nursing homes, schools, and other public institutions. The Committee voted to seek amendment to the Optometry Practice Act to accommodate temporary practice in similar manner as is set forth in B&P Section 1658 (B).

Priority 3 - Make it mandatory for optometrists to respond to Board requests for information regarding complaints.

Staff explained that the proposal arose as a result of previously reported staff shortage at the Department of Consumer Affairs' Division of Investigation (DOI).

Unfortunately, DOI does not have sufficient staff resources to investigate most of the Board's complaints. In lieu of in-person interviews conducted by DOI investigators, as was the process in the past, Board staff is writing letters to request information and/or documentation. (Note: Cases that require interviews of respondent and/or witnesses are still referred to DOI.)

During the discussion, it was clarified that the Board has the following options for gathering information in response to a complaint:

- Write a letter requesting response
- Obtain patient records via a signed release statement from the patient
- Subpoena documents (this requires approval from the Director and is very rarely done by other DCA Boards)
- In particularly egregious cases, the Board could file an accusation without response from the optometrist
- Refer to DOI to conduct formal investigation

Ms. Sachson stated that the proposal would provide more consumer protection and that is important to resolve complaints as early as possible. When an investigation is necessary, it can take at least six months to obtain a patient file, which may become lost or adulterated in the interim. She said the sooner information is obtained, the better and with more authority, the better.

Tim Hart addressed the Board on behalf of the California Optometric Association (COA) and he expressed COA's concerns with charging an optometrist with unprofessional conduct for his or her failure to comply with a request from the Board. He suggested that the Board could place the cost of investigation on the optometrists who fail to respond.

Ms. Smith clarified that staff is looking to resolve these issues at a much lower level and that issuing a citation with a fine associated with it may gain compliance within 60 days versus six months or longer. The cost for handling an issue in this manner would be small versus the cost to refer a case to DOI for formal investigation and prosecution.

The Board instructed staff to develop additional justification for the proposal to include information regarding the frequency, type and severity of cases that the proposal is meant to address.

Priority 4 - Establish patient record retention requirements.

The following legislative proposals were determined to be in need of more research and were tabled as possible legislation to pursue in 2008.

Priority 5 - Expansion of the scope of optometric practice.

Priority 6 - Enhance mandatory reporting requirements for malpractice settlements.

Priority 7 - Remove “optometry” and “optometrist” as requirements for fictitious business names.

The Board took no action on the proposal to strike language in section 3077 as it was determined to be unnecessary.

## 8. **Executive Officer’s Report**

Ms. Smith reported on the following topics:

### Online Disciplinary History

Online information regarding licensees’ disciplinary history has been improved. The information displayed on the Board’s website now indicates whether or not the licensee has a disciplinary history. If there is none, the website states, “A search of our records indicates that this optometrist does not have any reportable disciplinary history.” If there is disciplinary history, a message is displayed indicating that, “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 for more information.” In such cases, enforcement staff will search our records and respond via email. It is anticipated the workload will be reduced from 100 per month to less than 5 per month.

### Automated Voice Repose System

Board staff is working with telecommunications staff at the Department of Consumer Affairs to take advantage of features available with the new phone system, which was installed when the Board relocated to its current offices. Currently, the Board uses a separate stand-alone automated voice response system at a monthly cost of \$700. The new computer-based telephone system provides an automated voice response at no additional cost. Telecommunications staff has completed a training program on how to program this feature in the phone system and is in the process of programming our system. Board staff has updated scripts and will begin working with telecommunications staff on implementation this month. This is expected to save the Board approximately \$8,400 annually.

Web Updates

The following information has been posted on the Board’s website:

1. Posted meeting agendas for February 7 - 8, 2007 meetings in Sacramento
2. Posted Fact Sheets as follows:
  - Renewal of optometric license
  - Licensure by endorsement
  - Lacrimal irrigation and dilation certification
  - Therapeutic pharmaceutical agent (TPA) certification
3. Posted summary of changes in law that took effect in 2005, 2006 and 2007
4. Improved information posted regarding the disciplinary history of individual optometrists.

Automated Email

There are now over 500 verified email addresses on the Board’s mass email list. Notices are sent whenever major changes are posted on the Board’s website. The attached report indicates the 75% of the interested parties are licensees with the remaining 25% being unlicensed. The areas of interest breakdown as follows:

Regulation and /or Law Changes	5 (11%)
Newsletter	24 (5%)
Meeting Agendas	1 (<1%)
All of the Above	433 (84%)

Licensing Activity (November 1, 2006 – January 30, 2007)

<b>Applications</b>	<b>Pending</b>	<b>Received</b>	<b>Issued</b>
Optometrist	0	23	16
Branch Office License	11	25	14
Statement of Licensure	101	71	207
Corporate Registration	0	7	12
Fictitious Name Permit	30	52	22
Glaucoma Certificates	9	1	1

Pending Applications

	<b>11/05</b>	<b>02/06</b>	<b>06/06</b>	<b>09/06</b>	<b>11/06</b>	<b>2/07</b>
Branch Offices	24	10	8	15	17	11
Statements of Licensure	267	231	212	221	219	101
Corporations	26	15	15	19	19	0
Fictitious Name Permits	24	17	45	34	16	30
Glaucoma certificates	3	0	12	8	5	11

The most significant change is the decreased backlog of Statement of Licensure applications. The Board has dedicated a full time employee to processing applications for Statement of Licensure since October 10, 2006. Prior to October 2006, the position was a part-time position, which was insufficient to keep up with the workload. In the past three months, staff has processed approximately 130 more applications than received. This suggests that the backlog may be corrected within 3 months.

#### *Elimination of Board Registration of Optometric Corporations*

Effective January 1, 2007, optometric corporations are no longer required to register with the Board of Optometry in addition to the Secretary of State. Staff has drafted a letter to all optometrists who are associated with a registered optometric corporation advising that the corporation will no longer be registered with the Board. The letter also states that “optometric corporations are still required to meet all other legal requirements regarding officers, shareholders, directors, formation, etc., as established in Business and Professions Code Sections 3160-3167 and Corporations Code Sections 13400-13410. Additionally, optometric corporations that advertise under a false or fictitious business name must obtain a fictitious name permit (FNP) from the Board of Optometry.

Although the Board is no longer requiring registration of an optometric corporation, the Board has maintained its authority to regulate optometric corporations and the Board may take disciplinary action against optometrists who are not in compliance with the law.”

There are approximately 775 optometric corporation registrations. Approximately 250 of those have been issued Fictitious Name Permits and/or Branch Office Licenses. These FNPs and BOLs must be transferred to the appropriate individual optometrists, instead of the optometric corporation. Additionally, the BOL and FNP applications forms must be updated. Staff expects to issue the letter to the corporations this month. The transition process will likely take at least three months.

#### *Licensure for Out of State Applicants*

Effective January 1, 2006, optometrists who were licensed outside of California prior to January 2000 and wish to practice in California may now obtain licensure without being required to take and pass the entry level exam. This pathway to licensure is patterned after the American Optometric Association’s “licensure by endorsement.” Such out of state applicants will be required to meet certain criteria to demonstrate eligibility, including their education and license history, criminal background check, and pass the California Laws and Regulations Exam. The next Law Exam will be administered in April 2007. In the meantime, staff has developed an application form and fact sheet for out of state applicants. The application must be approved by the Office of Administrative Law (OAL) via the regulatory process. To date, staff has received approximately 25 inquiries regarding this process.

#### *Applicant Tracking System (ATS)*

ATS is a comprehensive program that interfaces with our automated system for tracking licenses. Multiple regulatory programs within the Department of Consumer Affairs already using ATS. Implementing ATS is another effort to make the

Licensing Program more efficient and eliminate the backlogs. The \$70,000 set up cost is built into the operating budget for Fiscal Year 2006/07.

Progress on the implementation of the Board’s Applicant Tracking System (ATS) is on schedule. Staff personnel who will be utilizing the system have submitted the appropriate application forms, notice letters and have reviewed and approved the administrative CAS codes to be used. Training for hands on use of the system should be scheduled by the end of the month. This project is currently ahead of schedule with a projected implementation date of July 1, 2007.

iLicensing

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

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

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

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

Enforcement Program

Enforcement Activity (November 1, 2006 – January 31, 2007)

Complaints Filed	33
Complaints Closed	43
Complaints to Investigation	0
Investigations Closed	2
Cases referred to the AG	2
Accusations Filed	0
Statement of Issues Filed	0
Disciplinary Action Taken	0
Probation Termination	0

### State Board of Optometry Budget

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

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

For discussion on pursuit of a fee increase in 2007, please see report on Agenda Item 8 (Legislative Committee Report).

### Pending Litigation

Please see attached memo from the Board's legal counsel regarding N.A.O.O. vs. Lockyer, et. al. January 29, 2007.

### Disaster Preparedness / Risk Assessment

On April 18, 2006, the Governor issued Executive Order S-04-06 (Attached), which mandates that all state agencies prepare Continuity of Operations/Continuity of Government plans. The Governor's Office of Emergency Services has published a template plan to assist state agencies when developing a continuity plan. The Board developed its own continuity plan, based on the aforementioned template, and submitted it on September 1, 2006. Board staff has been participating in the Department of Consumer Affairs' working group to review, update and further standardize the plans.

Mr. Walker reported on the status of the N.A.O.O. lawsuit.

- ALJ has issued an order restraining the department from enforcing sections 655, 2556, and 3130 (including the various associated regulations).
- A hearing on a request for a stay of this order has been continued until March 2007.

## **9. Future Agenda Items**

Dr. Yu requested staff look into the legality of transmitting eyeglass and contact lens prescriptions in electronic format.

## **10. Future Meeting Dates**

The Board is scheduled to meet in 2007 as follows:

- May 17, 2007 (Los Angeles)
- August 16, 2007 (San Francisco)

- November 15, 2007 (San Diego)

The meetings will begin at 10:00 a.m.

**11. Public Comment**

No comments

**13. Petition for Reduction of Penalty**

Under direction from an Administrative Law Judge, the Board held a Petition for Reduction of Penalty filed by Vincent Hsu. After the public hearing, the Board went into closed session to deliberate.

**14. Closed Session**

Session closed to public.

**15. Adjournment**

The meeting was adjourned at 1:45 p.m.

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Monica Johnson, Secretary

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Date