

Board of Optometry
Public Meeting
March 3, 2008
Ziggurat
707 Third Street
West Sacramento, CA 95605

1. Call to Order

The meeting was called to order by Dr. Goldstein, O.D. at 9:12 a.m. and a quorum was established. Board members present were public members Mary Rosas, Monica Johnson and Fred Naranjo; and Drs. Lee Goldstein, Susy Yu, Richard Simonds, Alejandro Arredondo, Martha Burnett-Collins and Kenneth Lawenda. Also present were the Executive Officer, Taryn Smith; Staff Counsel, Spencer Walker; Deputy Attorney General, Char Sachson; and staff members Margie McGavin, Gary Randolph, Jeff Robinson, and Michelle Linton.

Board member Katrina Semmes arrived at 9:30 a.m.

2. Approval of Minutes

The Board was asked to approve the minutes of the November 15, 2007 Board meeting.

Move to approve minutes as amended. M - Simonds; S - Lawenda; MSP – Unanimous.

3. President's Report

The President of the Board, Lee Goldstein, O.D. reported on recent Board-related activities as follows:

- Rulemaking process.
- Presentation to students at SCCO (Southern California College of Optometry) – *Presentation given by Lee Goldstein, Monica Johnson, and Gary Randolph, Exam Coordinator.*
- COA's (California Optometric Association) sponsorship of SB 1406.
- Changes to Board's legal counsel.

4. Legislative Update

Senate Bill 963 (Ridley-Thomas)

SB 963 proposes to overhaul the sunset process for all boards within the Department of Consumer Affairs. The bill was introduced in 2007 and passed though the house of origin and is now pending a hearing in the Assembly Business and Professions Committee. Board staff anticipates a hearing on the bill will held in the spring of this year. A summary of SB 963 is listed below.

Summary

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs and makes their funds as separate accounts within the Professions and Vocations Fund. Under existing law, the revenue for a certain amount of these accounts, other than fine and penalty revenues, are continuously appropriated to the board.

Existing law generally makes the regulatory boards inoperative on a specified date, unless that date is deleted or extended by subsequent legislation, and subjects these boards as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified.

This bill would delete those provisions making the boards inoperative on a specified date and subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make each of those boards subject to review by a standing policy committee of the Legislature upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, which the bill would create in the Department of Consumer Affairs.

The bill would, upon the committee's determination that a board is deficient, as specified, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board, as specified. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings by a board within the department if required to promote or protect the interests of consumers, as defined, and would require the office to perform other specified duties. The bill would require the office to charge each board a fee to support the office's functions and would thereby make an appropriation by expanding the expenditure purposes of a continuously appropriated fund.

The bill would create the Consumer Advocate Fund where these fees would be deposited and would be available to the office upon appropriation by the Legislature. The bill would require the director to report annually to the Governor and the Legislature, as specified, on the office's operations.

The bill would require boards within the department to enter into an agreement with the department for the performance of administrative and ministerial functions and would require the Director of Consumer Affairs, prior to January 1, 2010, to replace the existing technology system serving the department and its component boards and to charge each board its pro rata share of the cost to replace the system.

The bill would also require each board within the department to adopt performance measures, as specified, and report quarterly to the director and the chief of the Office of Consumer Advocate relating to those measures. The bill would also require boards to post the information on their internet web site and to report the information to the

Legislative Analyst's Office, the Legislature, and the Department of Finance. The bill would require the Office of the Consumer Advocate to report to the Legislature if a board failed to meet its performance measures. The bill would also require those boards to post annually on their internet web sites the number of reports in specified categories that it received that year for its licensees.

The bill would allow a person to serve as the public member of more than one of these boards and would require all members of these boards, as well as bureau chiefs, to report annually to their appointing authority on their goals and objectives and success in achieving them, which would be posted on the board's Internet Web site.

The bill would require the department to report to the Legislature and Governor if a board was unable to meet because of a lack of a quorum or vacancy. The bill would require members of these boards and other state boards to report ex parte communications, as defined, in the board's minutes.

The bill would require boards within the department, the State Bar, the Office of Real Estate Appraisers, and other state boards that license professions or businesses to adopt regulations to provide incentives to licensees to provide services on a pro bono basis and to adopt regulations prior to June 30, 2009, establishing regulatory board staffing requirements.

5. Discussion and Possible Action to Amend or Add California Code of Regulations Sections:

CCR Section 1524 (Fees)

The Board of Optometry sought and obtained authority to increase fees via Assembly Bill 986, which was signed into law and took effect January 1, 2008. While the bill increased the maximum fee that may be charged, it did not establish the actual fee. The Board must set the fee via the regulatory process.

The Board was asked to authorize staff to begin the rulemaking process to set the fees.

Move to accept recommendation. M – Rosas; S – Johnson; MSP – Unanimous

Move to begin rulemaking process to set the fees. M – Johnson; S – Lawenda; MSP Unanimous

CCR Section 1568 (Therapeutic Pharmaceutical Agents Usage – Purpose and Requirements)

The Board instructed staff to begin the rulemaking process to amend California Code of Regulation Section 1568 at the May 17, 2007 meeting. The proposed amendment would address a problem for out-of-state licensed optometrists who graduated prior to January 1, 1996 to meet licensure requirements in California.

Staff began the rulemaking process and during the legal review of the Board's Initial Statement of Reasons for the proposed regulation, a concern was raised that the State Office of Administrative Law (OAL) may determine that the Board may not have the authority to decide issues of equivalency as proposed in the regulation.

Legal counsel from the Office of Administrative Law agreed to meet with Board staff and its legal counsel in order to make a preliminary determination of the proposed regulation. It was determined that the Board could and should move forward with the proposed regulation.

Staff issued Initial Statement of Reasons on November 20, 2007.

Background

On January 1, 2007, Senate Bill 579 (Statutes 2006, Chapter 302) took effect which allows the State Board of Optometry to license an out of state licensed optometrist provided they meet certain specified requirements. Included in the requirements is compliance with certification requirements to use Therapeutic Pharmaceutical Agents (TPA) set forth in B&P Section 3041.3.

Applicants will have a very difficult time meeting all of the requirements for TPA certification. Specifically, Section 3041.3(b) requires that an applicant who graduated from an accredited school of optometry prior to January 1, 1996 must, among other things, complete a preceptorship service of no less than 65 hours. The preceptor shall be board certified and licensed in good standing with the Medical Board of California.

Because the preceptorship service involves treatment by the participating optometrist, the optometrist must hold a license to practice optometry in the state where the preceptorship service occurs. This requirement would prevent an out of state licensed optometrist from completing the preceptorship service here in California because they would have to be licensed in California as well. The only way to complete the preceptorship service would be to train in another state with a board-certified ophthalmologist who is currently licensed in California. This presents a problem for the applicant.

However, B&P Section 3041.3(d)(1) allows out-of-state applicants to request that the Board waive requirements in Section 3041.3(b) (which includes the 65-hour preceptorship) based on fulfillment of TPA requirements in another state. The Board shall grant the request for a waiver if it determines that the completed requirement was equivalent to California requirements. Business and Professions Code Section 3041.3(d)(3) authorizes the State Board of Optometry to decide all issues relating to the equivalency of an optometrist's education or training and for a *committee to recommend protocol* for the Board to use in this regard. Implementing this authority would require a regulation.

Amendments to CCR Sections

- CCR Section 1505 (Notification of Intention to Engage in Practice)
- CCR Section 1506 (Certificates – Posting)
- CCR Section 1508 (Statement of Licensure)
- CCR Section 1509 (Temporary Practice – Defined)

The Board was asked to consider adopting the proposed amendments and additions to California Code of Regulations, Title 16, Division 15.

A Motion was not necessary for 1505 which was provided for informational purposes.

Move to amend 1506(c) as proposed. M – Rosas; S – Collins; MSP – Unanimous

Move to adopt 1508. M – Simonds; S – Lawenda; MSP – Unanimous

Move to adopt 1509 proposed text and begin regulatory process. M - Collins; S - Simonds; MSP – Unanimous

6. Extended Optometric Clinics

In 1955, Business and Professions Code Section 3042.5 was added to provide an exemption of an optometric license to persons practicing optometry who were actually enrolled as undergraduate or graduate students of optometry in the clinical departments of schools or colleges of optometry accredited by the board providing however, that such practice shall be entirely confined to the operations of the clinical department of the accredited school or college of optometry and shall be carried on only in pursuing the study of optometry.

In 1973, the Board promulgated California Code of Regulation (CCR) Section 1507 to provide that if optometry students at the undergraduate and graduate level provide optometric services at an “extended optometric clinical facility” employed by an approved optometry school for the purpose of optometric instruction, and that this service is performed outside the primary campus, then the extended optometric clinical facility is determined to be part of the optometric education program of the approved optometry school. Section 1507 also required that extended optometric clinical facilities as defined in the code, shall be registered with the Board.

It is the intent of section 1507 to provide a procedure whereby an extended optometric clinical facility may be identified by the Board as an adjunct to, and an extension of, the clinical department of an approved optometry school.

Board staff has determined that in recent years, California schools of optometry utilizing extended optometric clinical facilities for the purpose stated above, have not registered these facilities with the Board as required under CCR 1507§(d).

Board staff has notified both Southern California College of Optometry and U.C. Berkeley School of Optometry of this oversight and the schools have responded that they will comply with the regulation. Board staff is working with the schools and anticipates that the schools will fully comply.

7. Strategic Plan Update

GOAL 1 – LICENSING

Provide applicants and licensees a fast, accurate and cost effective process for obtaining and maintaining licensure registration and certifications required to practice optometry in the State of California.

Objectives	Status / Comments	Target Completion Date
Successfully implement automated cashiering and license tracking system (Applicant Tracking System (ATS))	ATS launched on 7/1/07. Licensing and cashiering functions are fully implemented.	Completed
Establish “retired” license via legislation	Will require legislation	01/01/10
Develop procedures for continuing education audits and promulgate necessary regulations to implement.	Request for additional staff to perform audit submitted to DCA Aug 2007 Funding for additional staff is pending approval of Governor’s Budget for 2008/09.	12/31/08
Explore alternatives to publishing address of record on the Board’s website when licensee is not practicing optometry and make necessary changes in statute, regulation and/or procedure to implement best alternative.	Preliminary discussion with DCA IT staff in Aug 2007. DCA is working on similar issue for other board. Optometry might “piggyback” on the work done for the other program.	06/30/08
Implement online license renewals (iLicensing)	Scheduled for implementation in Fiscal Year 2008/09	07/01/09

GOAL 2 – EXAMINATIONS

Provide a fair, valid and legally defensible licensing exam and exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in the State of California.

Objectives	Status / Comments	Target Completion Date
Successfully implement computer based testing for California Laws and Regulations Examination	Computer based testing can be implemented at no cost to the Board. Board staff to met with Office of Exam Resources to establish implementation plan. There should be approx. 150 questions banked before computerized exam is implemented.	07/31/08
Perform ongoing exam development and validation workshops of California Laws and Regulations Examination	Workshops held in fiscal year 2006/07. Board adopted new exam on July 12, 2007. New exam administered for the first time in Aug. 2007. Candidate handbook published in January 2008. One time budget enhancement approved for Fiscal year 2008/09. Contract with OER for Fiscal year 2008/09 under development.	Ongoing
Perform occupational analysis of optometric practice in California and compare results with California Laws and Regulations Examination and with the National Board of Examiners in Optometry (NBEO)	Request for funding submitted to DCA Aug. 2007. Request was approved in November 2007. Funds are pending Governor's Budget for Fiscal year 2008/09.	06/30/09

Goal 3 – Legal and Regulatory

Establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost-effective practices.

Objectives	Status / Comments	Target Completion Date
Participate in scope expansion discussions, as appropriate	COA intends to introduce scope expansion legislation in the 2007.	08/31/08
Pursue legislation necessary to implement other strategic goals and objectives.	Necessity to be identified.	TBD
Pursue changes to California Code of Regulations to implement new laws affecting optometry	Section 1568 – Regulation to establish equivalency for out of state applicants requirements under DCA review. Projected effective date: July 2008. Section 1509 – Regulation to define temporary practice presented to board in March 2008.	Ongoing
Successfully participate in Sunset Review process and extend the Board's sunset date.	Optometry Practice Act set to become inoperative on 7/1/10. However, sunset review process is under review in the legislature. SB 963 proposes to revamp the process.	07/01/10

GOAL 4 – ENFORCEMENT

Protect the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of optometry in the State of California.

<i>Objectives</i>	<i>Status / Comments</i>	<i>Target Completion Date</i>
Develop and implement training program for subject matter experts	This project was previously placed on hold due to staff turnover and workload.	12/31/08
Develop and implement alternative means to investigate complaints in lieu of the Division of Investigations	Enforcement staff has been conducting informal investigations. DOI has agreed to obtain specific types of documents, i.e., financial or legal documents. DOI is not conducting formal investigations for the board at this time. DOI has agreed to escort board staff if/when a face to face interview of a probationer is necessary. Enforcement staff to meet with staff from other boards to explore further investigative options. Will work with legal counsel on authority and procedure for issuing subpoenas. Enforcement staff attended investigation training in December 2007.	03/31/08
Explore feasibility of gaining site inspection authority	Will require legislation and budget enhancement	01/01/10
Implement case management approach to enforcement procedures	New enforcement staff is in training and new internal processes are being developed.	04/30/08
Explore options for improving inquiries into insurance fraud cases		06/30/08
Explore options for fighting unlicensed practice of optometry	This is a DCA priority	02/29/08

GOAL 5 – EDUCATION AND OUTREACH

Proactively educate, inform and engage consumers, licensees, optometry students and other stakeholders about the practice of optometry and the laws and regulations governing the same.

<i>Objectives</i>	<i>Status / Comments</i>	<i>Target Completion Date</i>
Publish common causes for discipline of optometrists	List of disciplinary actions taken 1995-present completed. Should be completed in time for board presentation to new graduates of optometry school.	01/31/08
Develop and disseminate a "Starter Kit for New ODs"	Should be completed in time for board presentation to new graduates of optometry school.	01/31/0
Develop and implement program to outreach to optometry students in California	2 board members and board staff presented an overview of the board's purpose and to SCCO 4 th year students in Feb. 2008. SCCO and Board staff to explore increasing visits to up to once a year. Same presentation scheduled for UCB in May 2008.	Completed and ongoing
Develop and implement plan to outreach to licensed optometrists at continuing education events	<i>Board staff attended COA Monterey Symposium in Nov. 2007. Staff scheduled to attend OptoWest in March 2008.</i>	02/28/08
Attend consumer outreach and health fairs	<i>Request for funds to attend outreach events submitted to DCA Aug 2007.</i>	Ongoing
Publish updated consumer information, including, but not limited to: Different levels of certification and scope of optometric practice How to file a complaint & what to expect after filing a complaint	Fact sheet on license certifications published in March 2008. Information on how to file a complaint and what to expect after filing published online.	Completed and ongoing

GOAL 6 – ORGANIZATIONAL EFFECTIVENESS

Develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.

<i>Objectives</i>	<i>Status / Comments</i>	<i>Target Completion Date</i>
Pursue additional funding for equipment and staff needed to meet strategic goals	Funding for new digital printer and fax machine in Fiscal year 2008/09 budget.	Ongoing
Identify staff training needs and establish corresponding training plan	Staff were promoted and duties were reassigned in January and February 2008. Training on new duties is underway. Training plans to be developed in next quarter.	12/31/07
Re-establish the Board's national presence as a regulator of optometry	Governor's office has authorized the board to send one representative out of state to attend ARBO annual conference in Seattle in June 2008.	Ongoing
Develop training program for new Board members	Suggest develop written material and establish buddy system. Explore possibility that DCA to develop a board member manual.	02/29/08

8. Executive Officer's Report

Taryn Smith reported on the following:

Update Printed Licenses

Staff has requested the printed licenses more clearly reflect the different levels of certification (therapeutics, lacrimal irrigation, and/or glaucoma) in March 2007. The request was given a low priority at the time but is now an active request and staff met with EDD liaisons to discuss options for improving printed licenses in December 2007. A mock up of the revised license is attached to this report, as is a sample of the current license. Please note that the revised license is printed on "security" paper which, when reproduced, will print "void" all over the license. This is an enhanced security feature for all licenses. Staff is also researching options for improving the original wall certificate that is issued upon licensure.

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 for July 1, 2009, Board staff will be working with DCA staff to identify baseline requirements to be built into the system. The Board's budget for iLicensing for the current and next fiscal is reflected below:

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

Enforcement Program

The Board's enforcement program is staffed with two full-time employees. One of the positions was vacant from December 1, 2007 to January 1, 2008. The Board promoted an existing employee from the licensing program into the enforcement program effective January 1, 2008.

HIPDB

In order to come into compliance with federally mandated reporting requirements, the new enforcement representative was solely focused on inputting disciplinary histories into the Health Integrity and Protection Data Bank (HIPDB). The HIPDB is a national data bank of adverse actions taken against licensed health care professionals. The Board was notified on October 26, 2007 that it must report adverse actions taken on licensed optometrists from 2001 to present. Board staff responded with a corrective action plan to comply by the end of January 2007. Staff changes delayed full compliance, but all qualified adverse actions have been posted as of February 8, 2008.

Backlog

Due to the vacant position and other priority assignments, we now have a backlog of approximately 37 pending complaints. The Board's new enforcement representative is currently being trained on complaint intake processes.

Investigations

Both enforcement employees attended a three-day training course titled "National Certified Investigator/Inspector Basic Training," which was offered by the Council on Licensure, Enforcement and Regulations.

Enforcement staff met with the Chief of the Department of Consumer Affairs' Division of Investigations (DOI) to discuss the possibility of DOI providing the Board with investigatory services in the future. DOI explained their current staffing situation and projections to be fully staffed. The new investigators will be in training for one year and then they will begin working on the current backlog. Therefore, DOI anticipates it will be about two years before they will be prepared to provide full services to the Board. In the meantime, DOI agreed to accompany Board staff on probation interviews in the field. They also said they might be able to assist with document collection, i.e., financial documents.

Board staff is scheduled to meet with representatives of other similar sized boards to discuss pooling expertise and resources on probation monitoring and investigations.

Board staff continue to consult with legal counsel and the Board's Deputy Attorney General liaison on how to proceed with developing an investigatory *file*.

State Board of Optometry Budget

Budget projection indicates that the board is operating well within its operating budget in the current fiscal year.

Unlicensed BCP

The Department of Consumer Affairs is pursuing a budget change proposal (BCP) on unlicensed activity to establish a three-year pilot outreach program to educate consumers on the importance of using licensed professionals. Each board and bureau will obtain an increased appropriation for their share based on their number of licensees. Meetings with board executive officers and bureau chiefs are scheduled to review the BCP.

Web Updates

Board staff provided a demonstration of the Board's new website at the November 15, 2007 Board meeting. At the meeting, staff received numerous suggestions on improvement of content, and the look and feel of the website. These included:

- Link to Healthy Families and other vision programs available to the public
- Provide definitions of the "related" licenses, i.e., SOLs, BOLs, and FNPs
- Define the various certifications
- Add board phone number to disciplinary information
- Link to upcoming outreach events
- List of partners regarding diabetes outreach
- Information on tamper-resistant Rx pads

While these are all valuable suggestions, they have not been implemented due to staffing changes and other priorities. The recommended changes will be made as soon as possible.

Voice Over IP System

The Board offices were set up with a voice over IP system when we relocated to the Del Paso Road site. Unfortunately, the new phone system has not provided reliable phone or fax service to the Board.

Board staff began documenting bad connections on incoming and outgoing calls in July 2007. The typical problem has been when the connection “breaks up” and we hear only parts of what the caller is saying. This created frustration on the part of callers as well as staff. Worse yet, voicemail messages have been intelligible and we have not been able to return calls.

After copious testing by representatives from the Department of Consumer Affairs’ Office of Information Services, it was determined that there was a problem with the network configuration. The problem was reported to have been corrected on November 8, 2007. However, the board office continued to have sporadic phone service. For example, there was a total loss of service from January 23, 2008 – January 25, 2008. Board staff posted a notice on the webpage requesting the public to email the board. It is unknown how many members of the public were affected by the loss of phone service.

Additionally, the fax machines did not work in the board office from December 2007 through early March 2008. We are advised that the telephone company set up a “quick fix” to the problem, but the systemic problem persists.

Outreach

Two Board members and two staff members made a site visit to the Southern California College of Optometry (SCCO) to address approximately 70 4th year students. The Board representatives gave a 45 minute power point presentation regarding the Board’s role as a public entity charged with protecting the public through regulation of the practice of optometry. Students were also given a primer on the licensing and enforcement programs.

Board staff attended the Monterey Symposium, which is a large continuing education conference sponsored by the California Optometric Association. Staff interacted with licensees, answered questions and distributed printed informational materials.

Dr. Goldstein made a presentation to the COA House of Delegates that included recent Board activities and a reminder about certain licensing requirements.

9. Future Agenda Items

10. Future Meeting Dates

The Board of Optometry is scheduled to meet in 2008 as follows:

- June 17, 2008 (Tues) – Ziggurat in Sacramento
- September 3, 2008 (Wed) – Western University of Health Sciences in Pomona
- November 20, 2008 (Thurs) – Los Angeles – Site TBD

11. Public Comment

12. Petitions of Reduction of Penalty for Reinstatement of Licensure

Petitions for reduction of penalty for reinstatement of licensure were heard for:

- Alan Kirsch, OD
- Anh Le, OD

A petition for reinstatement of licensure , Dr. Wyman Chan, OD was scheduled to be heard. However, Dr. Chan cancelled the hearing after the agenda was published.

13. Closed Session

The Board voted to adopt the following:

- Proposed stipulated surrender of license and order in the matter of the accusation against Gregory Lawrence Tom, OD
- Stipulated Settlement and Disciplinary Order in the matter of the accusation against Lawrence Edwin Young, OD

14. Open Session

15. Adjournment

The meeting adjourned at 2:45pm

Monica Johnson, Secretary

Date