STATE BOARD OF OPTOMETRY
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Meeting Minutes

Friday, October 19, 2012

Location 1
Department of Consumer Affairs
1625 N. Market Blvd., El Dorado Room
Sacramento, CA 95834

Location 2
Southern California College of Optometry
2575 Yorba Linda Blvd.,
Fullerton, CA 92831

And via Telephone at the Following Locations:

3301 E Main Street, Suite 1006
Ventura, CA

2675 Saturn Avenue
Huntington Park, CA 90255

140 C Tower Street
Beaconsfield, Quebec H9W 6B2

5500 Military Trail
Jupiter, FL 33458-2869

Members Present
Alex Arredondo, O.D., Board President
Alexander Kim, M.B.A., Secretary
Ken Lawenda, O.D., Professional Member
Madhu Chawla, O.D., Professional Member
Glenn Kawaguchi, O.D., Professional Member
William Kysella, Public Member
Fred Dubick, O.D., MBA Professional Member

Staff Present
Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Lydia Bracco, Enforcement Analyst
Cheree Kimball, Enforcement Analyst
Rob Stephanopoulos, Enforcement Analyst
Brad Garding, Enforcement Technician
Michael Santiago, Legal Counsel

Excused Absence
Donna Burke, Public Member
Monica Johnson, Vice President

Guests
On File

12:00 p.m.

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 12:00 p.m. Dr. Arredondo called roll and a quorum was established. Professional Member, Madhu Chawla, O.D. arrived later.

Dr. Arredondo asked Executive Officer, Mona Maggio at the Southern California College of Optometry (SCCO) location, and her staff at the Department of Consumer Affairs (Sacramento) location to introduce themselves. Staff members present included Andrea Leiva, Policy Analyst; Lydia Bracco, Cheree Kimball and Rob Stephanopoulos, all Enforcement Analysts; and Brad Garding, Enforcement Technician.
Dr. Arredondo invited visitors at the Sacramento location to introduce themselves. The Sacramento guests were California Optometric Association (COA) Executive Director, Bill Howe; COA External Relations

Manager, Jason Gabhart; Contract Lobbyist for Lenscrafters – EYEXAM, Kathryn Austin-Scott; and, Consultant for the California State Senate Business, Professions, and Economic Development Committee, Le Ondra Clark.

Dr. Arredondo invited visitors at SCCO to introduce themselves. SCCO's Vice President of Advancement and Marketing, Paul Stover introduced himself.

Dr. Arredondo welcomed everyone in attendance.

2. Discussion & Possible Action on the Draft 2012 Sunset Review Report

Ms. Maggio provided an overview of the draft 2012 Sunset Review Report, which is due to the Senate Committee on November 1, 2012. The draft was sent to the Members prior to the meeting for review. Comments received from the Members have been considered and entered into the report with tracking.

The purpose of today's review is to ensure that staff has answered all of the questions from the Senate Committee completely and to the Board's satisfaction.

Ms. Maggio asked the Members if they have any additional comments or edits to Section 1 - "*Background and Description of the Board and Regulated Profession – History and Function of the Board".* There were no additional comments or edits.

Ms. Maggio directed the Members attention to the make-up and functions of the Board's committees. Changes were made to the Board committee description identifying that the Board has four committees, one additional committee and workgroups are appointed as needed.

Professional Member, Ken Lawenda, O.D. commented on the statement "the committees meeting on an "as needed" basis pursuant to the Board's Administrative Procedure Manual." He requested that the procedure for meeting on an as needed basis be explained in detail.

Ms. Maggio responded that the reason for having the committees meet on an as needed basis would be appropriately discussed at a future meeting. Ms. Maggio explained that this report covers what has been accomplished since the last Sunset Committee review. Ms. Maggio stated that she will place on the next meeting agenda a discussion regarding scheduling out committee meetings for the next year. Dr. Lawenda explained that he brought this up because page 66 implies that committee meetings are normally set when that is not the case. He asked that page 66 be changed to match the language on page 6. Ms. Leiva stated that when she wrote the section on page 66, she was thinking about board meetings. It was just an oversight and she will change the wording to reflect committee information as well.

Ms. Maggio, Ms. Leiva, Staff Counsel, Michael Santiago, and Dr. Arredondo briefly discussed the options on how to deal with edits during this meeting. Mr. Santiago suggested that the Members provide Ms. Leiva with notes of what they want reflected, then she will draft the actual text. The actual text does not need to be discussed at this meeting.

Ms. Maggio stated for the record that Dr. Chawla joined the group and there are now seven Members present.

Professional Member, Glenn Kawaguchi, O.D. questioned the mixture of public and professional members on each of the committees and if the numbers reflected what was discussed at the August 10, 2012 Board meeting. He was not present at that meeting. Ms. Maggio clarified that the numbers are capturing what has occurred up until staff began writing this report and this was just the structure of committees in the past. During the August 10, 2012 meeting, Members only expressed interested on what committees they wanted to participate in. Ms. Maggio explained that the selections have not yet been finalized by the President and Vice President. Dr. Arredondo suggested finalizing the committees at the next meeting.

Public Member, William Kysella Jr. inquired and Ms. Leiva clarified that the language which states committees are comprised of three public and one professional; or, two public and one professional are not rules to determine the composition of the committees and will not be included in the report. The Board can determine the composition of committees however they choose. Ms. Leiva added that she will delete this language and the Members will receive an updated version. She does not want anyone to hold on to that old language because it is not part of the report. Ms. Leiva also noted that she edited the language to reflect that Dr. Kawaguchi did not attend the August 10, 2012 meeting.

Ms. Leiva asked if anyone had questions about current and previous Board members.

Dr. Lawenda asked if it might be helpful to include how often the committees meet in an effort to document to the Senate that this Board is doing a very efficient job. Ms. Maggio responded that an additional table would need to be included if the Members want this information added. She explained that this table is the template which the Senate Committee provided for the Board. Dr. Arredondo stated that if the Senate Committee is satisfied with this template, then he is satisfied with it as well. Ms. Leiva confirmed that it is her understanding that this template has all the information the Senate Committee is seeking. Dr. Arredondo asked if there was additional feedback on this issue. Professional Member, Dr. Dubick, O.D. expressed his satisfaction with the current template. Dr. Arredondo asked and Dr. Lawenda confirmed that he is also okay with this decision. There was no opposition to the decision.

Ms. Maggio requested review of page 21 and asked if there were questions or comments regarding the Board and Committee Member Roster. Dr. Kawaguchi suggested noting that the selections are not finalized. Ms. Leiva agreed and stated that she will make the change.

Next, Ms. Maggio provided a brief overview of page 22 where the question was asked if in the past four years, the Board was unable to hold any meetings due to a lack of quorum. Ms. Maggio explained that there were two occasions in which the Board had to reschedule due to lack of quorum; however, both meetings were successfully rescheduled.

Regarding the next topic, "*Major Changes since the Last Sunset Review*", Ms. Maggio announced that the first issue under this category is the "*Reorganization*" of the Board.

Ms. Leiva explained that in the paragraph describing the reorganization, Public Member, Monica Johnson added a comment to clarify the reason for the increase in staff. The reason for staff increase is due to the Board's number of licensees increasing. Ms. Leiva stated that she will add Ms. Johnson's comment. There are no other changes.

Ms. Maggio reported that after the topic of reorganization, the report contains a chart showing staff increases and decreases since 2002 and provides explanations for the staffing changes.

The next topic is the Board's "*Relocation"* in 2011 to its new office. This topic is followed by "*Change in Leadership".* Ms. Maggio added one comment to the last paragraph where she noted that she started working for the Board in 2008, not 2009.

Ms. Maggio announced the next topic which is "*Strategic Planning".* The report identifies each plan and how the mission statement has changed.

The next topic is "*Legislative Activity".* Ms. Leiva stated that this section lists all legislation which is relevant to the Board. There were no comments from the Members.

Regarding the next topic, "*Regulation Activity*", Ms. Leiva did not receive any comments.

Next, Ms. Leiva reported on the "*Glaucoma Certification Requirements"* regulation. She explained that Dr. Arredondo had requested information be added which explains that upon passage, this regulation was challenged by the California Academy of Eye Physicians and Surgeons (CAEPS) and the California

Medical Association. As requested, Ms. Leiva added a portion of text showing that despite the legal challenges, this regulation was upheld, and that the Board continues to implement this regulation without issues. Optometrists are becoming glaucoma certified more efficiently, which is what the Legislature had intended.

"*Pending Regulations"* is the next topic in the report and Ms. Leiva did not receive comments from the Members.

Ms. Maggio suggested changing "The Board anticipates meeting in November" to "meeting on December 14, 2012" since this is the Board's next scheduled meeting date.

Ms. Maggio announced the next topic, "*Major Studies".* In 2009 the Board conducted two major studies since the last Sunset Review.

Comprehensive Audit of the National Boards of Examiners in Optometry (NBEO)
In cooperation with the Office of Professional Examination Services (OPES), the Board conducted a comprehensive audit and review of the NBEO to ensure that the licensing examination met the needs of California candidates and covered the requirements to ensure protection of California consumers. The results revealed that the licensing examination of the NBEO did meet all of the professional guidelines and technical standards outlined in Business and Professions Code 139, which covers testing requirements.

Occupational Analysis – Office of Professional Examination Services
An occupational analysis, in cooperation with the OPES, was conducted to confirm that the Board's California Laws and Regulations Examination (CLRE) is fair, Job-related, and legally defensible.

The next section of the report covers "*National Association Activity".* The Board is a current member of the Association of Regulatory Boards of Optometry (ARBO); however, despite Board member interest, the Board has not participated in any committees, workshops, working groups, or task forces related to its membership in this national association. This is due to travel constraints associated with California's ongoing budget shortfalls.

There were no comments from the Members on this section.

Ms. Maggio reported that although the Board is not a member of the COA a good working relationship between the Board and the COA exists. Board staff is invited to three events held by the COA annually:

- *Monterey Symposium* – Typically licensing and enforcement staff attend and answer questions from optometrists, and provide information and guidelines on various topics.
- *Legislative Day* – Staff meet with students and discuss what the Board can provide for them.
- *House of Delegates* – The COA house of Delegates are a ten member board of trustees who govern and consist of COA members from each of the local optometric societies, California optometry schools and colleges, and COA sections. In the past few years staff has not attended due to budget constraints.

Ms. Leiva announced that she received an edit request for clarity on page 30 regarding the COA House of Delegates, and she made the requested change.

The next topic addresses the question: "*If the Board is using a national exam, how is the Board involved in its development, scoring, analysis, and administration?*" Ms. Leiva reported there were some minor edits to the document originally, but she did not receive any more edits from the Members.

Ms. Maggio announced the next section (Section 2 – "*Performance Measures and Customer Satisfaction Surveys").* Ms. Leiva asked if there were any comments.

Mr. Kysella asked and Ms. Leiva confirmed that the quarterly and annual performance measures

have been completed and not overlooked. Dr. Arredondo opened the floor to any further discussion and there was none.

Ms. Maggio reported that the comments received regarding Section 3 – "*Fiscal and Staff" Issues* have been made. She asked if there were any additional comments. There were no comments.

Ms. Maggio added that the organization charts for the past four fiscal years (effective at beginning of the fiscal year) will be added.

Ms. Leiva reported that she did not receive any substantive comments from the Members on *Section 4 – "Performance Measures"* under the Licensing Program section. Ms. Leiva received a clarifying edit from Ms. Johnson. The edit clarifies that the revision of forms was conducted. Ms. Leiva stated that she also made Ms. Johnson's suggested edits to the fingerprinting question.

Ms. Leiva reported that under the section regarding "*Examinations",* the space with an empty chart has been completed and she provided completed copy to the members via e-mail. She explained that she needed to update the numbers for the California Laws and Regulations Exam (CLRE) because she needed to separate out the probationers (who also take the CLRE). She assured the numbers are now accurate.

Ms. Leiva explained that the National Examination Data is not broken down by attempts (first, second, and third) as requested. This is because the National Board of Examiners in Optometry (NBEO) reports their data statewide, as the candidates do not know what state they are going to practice in when they take the exam.

Ms. Maggio requested clarification regarding Ms. Johnson's edit to the fingerprinting question which says. "Have all current licensees been fingerprinted? If not, explain." Ms. Leiva responded that the justification to the question makes more sense if the paragraphs are flipped, as the second paragraph address the question immediately.

Ms. Leiva stated she did not receive any additional comments for the next section, *"School Approvals".* Nor did she receive comments for section "*Continuing Education/Competency Requirements."*

Mr. Kysella and Ms. Maggio requested adding the cities to the California colleges of optometry under the "*Schools Approvals"* section.

The Board then discussed Section 5 – "*Enforcement Program".* Regarding the issue under this topic "Formal Discipline", Ms. Maggio announced that the target date of 365 days has been changed to 540 days. The change was made for consistency with all of the other DCA boards and bureaus, who have their target date set at 540 days.

Mr. Kysella asked and Mr. Santiago responded that unless the number is adopted at 540 in today's meeting, it should remain at 365 since the Board previously set 365 as the target date. Ms. Maggio suggested leaving it at 365 and identifying in this report that this Board is the only board using a target date of 365. Ms. Maggio added that this Board can vote on the target date at the next meeting in December. Mr. Kysella recommended voting and adopting the change now since a quorum is present.

Mr. Santiago advised against making any last minute changes now since the Sunset Review Report is a snapshot of how the Board is performing. Therefore, the report (as is) most accurately reflects the Board's performance and progress from the last report to the present. Ms. Maggio stated she will bring this issue to the December meeting for discussion. She noted that it is unrealistic to believe this Board will move its formal disciplines through more quickly than the other boards when the other boards are using a 540 target date.

Dr. Lawenda inquired and Ms. Leiva confirmed a typo was made as to the Fiscal Year (FY) dates. Ms. Maggio asked and Ms. Leiva responded that no additional comments were received from the Members related to the "*Enforcement Statistics.*"

Dr. Lawenda asked and Ms. Maggio replied that the Board does receive complaints from other governmental agencies and other business entities (e.g. insurance companies). Dr. Lawenda asked and Ms. Maggio responded that when a complaint is received about a Knox-Keene plan, we do not receive those complaints. The complaints we receive are complaints against individual optometrists.

The Board then discussed Section 6 – "*Public Information Policies."* Ms. Leiva reported that she did not receive any additional comments from the Members. She asked the Members if they had any comments now. Dr. Lawenda noticed a typo which Ms. Leiva noted. There were no additional comments.

Regarding Section 7 – "*Online Practice Issues,"* Ms. Leiva stated she received one comment from Ms. Johnson who inquired if the word telehealth is one word or should be hyphenated. Ms. Leiva noted this and stated she would research the answer. There were no other comments received.

Dr. Lawenda, Ms. Leiva, and Mr. Kysella briefly discussed when the minutes should ideally be posted to the website for Members review. Ms. Maggio advised that this should be addressed at the next meeting. Dr. Arredondo continued this issue to the December Board Meeting. There were no further comments to Section 7.

Ms. Leiva reported that she received one comment from Public Member, Donna Burke regarding a typo in Section 8 – *"Workforce Development and Job Creation."* There were no other comments received from the Members.

No comments were received regarding Section 9 – *"Current Issues".*

Ms. Maggio provided a brief overview of Section 10 – *"Board Action and Response to Prior Sunset Issues."* The issues/questions in this report derived from the 2003 Sunset Review Report.

Ms. Maggio reported there was some action taken by the Board regarding Issue #5 – Should the Board adopt supervision and training standards for unlicensed optometric assistants? A regulation was drafted but the time allotment for submittal to the Office Adminstrative Law expired, and the regulation packet was never resubmitted. Ms. Maggio stated that this packet will be brought back to the Board for review and discussion at the December Board Meeting. Ms. Leiva did not receive any additional feedback from the Members regarding this section.

Ms. Maggio provided a brief overview of Section 11 – " *New Issues".* She explained that this is an opportunity for the Board to inform the Senate Committee of solutions to issues identified by the Board and by the Senate Committee. Ms. Leiva stated she did not receive additional comments other then those noted in the report.

Ms. Leiva announced that Ms. Austin-Scott wished to speak to the Board regarding the Registered Dispensing Optician Program issue. This issue discusses the Board and the Medical Board of California's (MBC) interest to transfer the duties, powers, purposes, responsibilities and jurisdiction of the Registered Dispensing Optician (RDO) Program from the purview of the MBC to the Board of Optometry.

The primary problem with current oversight of the RDO program is enforcement. The MBC is tasked with multiple enforcement objectives with finite resources. This transfer will ensure more complete and efficient regulation of individuals with RDO registrations and licenses, and streamline the delivery of government services.

Ms. Scott provided a brief overview of her client's concerns. The National Association of Optometrists and Optician (NAOO) is made up of retail optometrists and opticians comprising of approximately 500 optical stores in California. She stated that she is not aware of any other state in which optometrists and opticians are regulated by the same Board because they are essentially considered competitors. This is a huge concern of the NAOO. Ms. Scott also discussed another concern of the NAAO which is that there is a lawsuit pending related to opticianry and optometry and the relationship between the two. Business and Professions Code 655 prohibits a business relationship between opticians and optometrists. Because of these concerns, the NAOO does not think that the the RDO profession should go under the oversight of the Board.

Dr. Arredondo stated that he is interested in obtaining the perspective from the Medical Board as to why they are interesting in transferring jurisdiction. Ms. Maggio responded that the MBC's Executive Officer has shared with her that the MBC is interested in redirecting programs that are not specifically physician related.

Ms. Scott cited examples of instances where various parts of a profession are regulated separately.

Dr. Dubick reiterated that this is a Sunset Review. Since the pending lawsuit related to this issue has been going on for the last ten years, it needs to be included in the report. However, he stated that he does not believe this is the appropriate platform to discuss the details of the issue. Dr. Chawla agreed with Dr. Dubick and suggested addressing this issue at a future meeting.

Dr. Kawaguchi proposed re-evaluating some of the wording within the section (e.g. "this transfer will ensure"). He believes the "will" is an assumption the Board should be careful of, and he suggested using more neutral wording.

Ms. Scott questioned the process. She stated that she believes the Senate Business and Professions Committee does consider this a part of where the Board may want to take new policy.

Mr. Kysella commented that discussion of this issue is necessary. Additionally he explained why this section, as worded, makes it sound as though the issue has already been debated and approved, and can even be viewed by the Senate as the Board's recommendation/endorsement of where it wishes to go with this. If further discussion is to take place, then slightly neutralizing the language may make it clear to the Senate that this issue is on the table and something the Board is discussing and considering.

Ms. Scott stated that because the NAOO is the lead plaintiff in the pending lawsuit, she wants to state for the record that the NAOO is currently opposed to the transfer of oversight. Ms. Clark, from the Senate Business and Professions Committee announced that she will be the one actually reviewing the Board's report. She explained that if something is uncertain, the Board should qualify that fact by stating in the section that the topic is ongoing. If however, there is something the Board wishes the Senate go forward on, this needs to be qualified as well.

Drs. Lawenda and Dubick discussed what qualifies as "ongoing" work (e.g. Member work, staff work) and how it should be qualified. Mr. Kysella reiterated his concerns of using absolute wording like "the transfer will ensure".

Ms. Clark recommended that the Board consult with the MBC regarding their wording because when the report comes before the Senate Committee, it is important that both reports are consistent.

The Members, and Mr. Santiago agreed with Mr. Kysella's comments. Ms. Leiva noted that she wil make the language more neutral. Ms. Leiva will also qualify that this issue is an ongoing discussion; as well as work with the MBC on uniform, consistent language.

Ms. Maggio requested a vote to approve the report.

Mr. Santiago asked and Ms. Maggio confirmed that she is requesting the Board approve the draft report as edited; grant the Executive Office authority to make non-substantive changes, and delegate authority to the Board President to approve the final draft.

M - Alexander Kim moved to approve the Board's draft of the Sunset Review as amended by comments given today by Board members. S – Madhu Chawla seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

M - Fred Dubick moved to grant the Executive Office authority to make any non-substantive changes to the Sunset Review Report. S - Alex Arredondo seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

M – Fred Dubick moved to delegate authority to the Board President to approve the final Sunset Review Report. S – William Kysella seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Chawla	X		
Dr. Lawenda	X		
Mr. Kysella	X		
Dr. Dubick	X		
Dr. Kawaguchi	X		

3. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a)

There were no comments from Sacramento.

There were no comments from Southern California.

4. Adjournment

M – William Kysella moved to adjourn the meeting. S - Ken Lawenda seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	**X**		
Mr. Kim	**X**		
Dr. Chawla	**X**		
Dr. Lawenda	**X**		
Mr. Kysella	**X**		
Dr. Dubick	**X**		
Dr. Kawaguchi	**X**		

The meeting was adjourned at 4:15 p.m.

Alexander Kim, Secretary

Date