



**Consumer Protection Committee
 Friday, September 13, 2019
 APPROVED MEETING MINUTES**

Teleconference Meeting Locations:

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| Department of Consumer Affairs 2420 Del Paso Road, 1 st Floor, (Yosemite Room) Sacramento, CA 95834 | Irvine Civic Center 1 Civic Center Plaza Room L 103 (First Floor) Irvine, CA 92606 California Eye Professionals 41637 Margarita Rd., Ste 100 Temecula, CA 92591 | Charter College Oxnard Campus 2000 Outlet Center Dr. #101 Oxnard, CA 93036 |
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| Members Present | Staff Present |
|-------------------------|--|
| Cyd Brandvein, Chair | Shara Murphy, Executive Officer |
| Martha Garcia, CLD, SLD | Marc Johnson, Policy Analyst |
| Debra McIntyre, OD | Jessica Swan, Administrative Analyst |
| David Turetsky, OD | Matt McKinney, Enforcement Analyst |
| | Cheree Kimball, Acting Assistant Executive Officer |
| | Anthony Pane, Board Counsel |
| | |
| Members Absent | Guest List |
| | On File |

Link for audio of Discussion:

https://www.optometry.ca.gov/meetings/20190913_cpc_audio.mp3

1. Call to Order/Roll Call/Establishment of Quorum

Time of Discussion: 00:00 / 01:04:01

Ms. Brandvein took roll call and a quorum was established. Ms. Brandvein was present at the Irvine location; Dr. Turetsky was present at the Sacramento, CA location; Dr. McIntyre was present at the Temecula, CA location; Ms. Garcia was present at the Charter College, Oxnard location.

2. Public Comment for Items Not on the Agenda

Time of Discussion: 01:32 / 01:04:01

There were no public comments.

3. Discussion and Possible Action Regarding Meeting Minutes

Time of Discussion: 01:50 / 01:04:01

- A. March 23, 2018**
- B. January 11, 2019**

David Turetsky moved to approve the March 23, 2018 and January 11, 2019 draft meeting minutes. Debra McIntyre seconded. The Committee voted (3-Aye; 0-No; 1-Abstention) and the motion passed.

| Member | Aye | No | Abstain | Absent | Recusal |
|---------------|-----|----|---------|--------|---------|
| Ms. Brandvein | | | X | | |
| Ms. Garcia | X | | | | |
| Dr. McIntyre | X | | | | |
| Dr. Turetsky | X | | | | |

4. Review, Discussion and Possible Action on Optometry Disciplinary Guidelines

Time of Discussion: 04:01 / 01:04:01

Mx. Kimball provided an overview of the Optometry Disciplinary Guidelines. She reported that this item has come to the Committee a few times, most recently with staff waiting on some language with changes from the Substance Abuse Coordination Committee (SACC). Dr. Turetsky inquired what the SACC is, and who sits on it. Mx. Kimball responded that there was legislation passed (Senate Bill) that directed the Department of Consumer Affairs (DCA) to set up a SACC to look at the specific number of mandatory biological fluid testing occurrences per year. The Executive Officers and Chiefs of all the health boards under DCA made up the committee. Several meetings were held to decide whether they wished to change the number of mandatory biological fluid tests per year. At the end of the evaluation, the committee presented language that was approved by DCA Legal. This language has been incorporated into the Optometry Disciplinary Guidelines.

Dr. McIntyre reported that she and Mr. Morodomi previously went through each item with a fine-tooth comb approximately a year ago. She asked if the other members have any objections to any of the changes or categorizations they made to the different disciplinary items or if they have any questions about the changes. Ms. Garcia commented that the Dispensing Optician Committee (DOC) has worked on the Optician Disciplinary Guidelines for a long time. She asked if work performed by the DOC would assist with the optometry part of the guidelines. Mx. Kimball explained that some formatting issues brought up by the DOC have been incorporated into this document.

Dr. Turetsky asked if the terms and conditions in the document are standard as compared to all the other health professions. Mr. Johnson confirmed that they are similar. Ms. Brandvein requested that staff perform a global search to ensure that the full title of the disciplinary

guidelines is consistent throughout the document. She requested additional formatting and clarifying changes for various items throughout the document.

Members and staff discussed language changes to the Disciplinary Guidelines to clarify the 30-day drug testing requirement, visual impairment, and mental or physical fitness. Dr. Turetsky noted on the “Failure to Follow Infection Control Guidelines” violation that 98% of optometrists have no idea they are required to understand Infection Control Guidelines. He stated that this does not stand out in the regulations. Members and staff discussed methods for reminding optometrists of these requirements.

Debra McIntyre moved to direct staff to develop a notice, for inclusion in renewal notices, that will be brought to either the next Public Relations and Outreach Committee or the Board for review. Martha Garcia seconded. The Committee voted unanimously (4-0) and the motion passed.

| Member | Aye | No | Abstain | Absent | Recusal |
|---------------|-----|----|---------|--------|---------|
| Ms. Brandvein | X | | | | |
| Ms. Garcia | X | | | | |
| Dr. McIntyre | X | | | | |
| Dr. Turetsky | X | | | | |

Ms. Brandvein asked why patients are noticed in some sections but not others. In section G, for example, why would the Board not notice a patient if there was a violation of quality? Ms. Murphy explained that the BPC code in that section, regarding standards for prescriptions, are name, date, and are not anything that impacts the larger scale of treatment. Since the BPC is so narrow, staff did not think it was appropriate to have to notify patients. Ms. Murphy explained that a notice to patients can disrupt the patient-doctor relationship; therefore, staff wanted to be thoughtful about the egregiousness of a violation. Ms. Brandvein questioned why the Board would not post that someone has been practicing without a valid license and was concerned this may not be in line with consumer protection. The words “as warranted” were added to allow the Board that flexibility. Ms. Brandvein also asked if the Board should error on the side of consumer protection caution, and draft a blanket notice to patients, if warranted, on each of the items, so that Board Members and staff have discretion over advising the public of egregious or semi-egregious acts.

Dr. Turetsky asked what the method of communicating would be other than posting it; Ms. Brandvein answered that it is on the internet. More importantly, when warranted, it would allow the Board to require that the patients be noticed. Dr. Turetsky asked if the Medical Board is doing something different now with physicians who have been on probation for substance abuse; Mr. Johnson replied that a law passed, which he believes is SB 1441, that required all patients, medical doctors, osteopaths and acupuncturists to provide all patients with a notification of their status. Dr. Turetsky asked if it would be on the practice’s website or would it have to be a written notice; Mr. Johnson stated he believes it had to be given directly to the patients. Ms. Brandvein asked if staff could look into this and if the issue could be discussed at the Board Meeting. She noted that she would rather have it as an option than not have it at all. Ms. Murphy clarified that she believes Ms. Brandvein is saying this should be a condition for all of the models; Dr. Turetsky is bringing up the fact that further back in our description of how

one goes about noticing patients and that there is simply the posting and the website posting; there is not a need nor option for the Board to give a physical notice to each patient.

Dr. Turetsky stated that staff overseeing probation deem it necessary, the Board should have the option of giving patients a written piece of paper, rather than just having it posted on the website, which many people will not look at.

Ms. Garcia asked how that specification would be incorporated into what the Board already has. Ms. Murphy responded by drawing the Members attention to page 27 of 57 of the guidelines where optional conditions are described; number 20 – “Notice to Patients.” She explained that this is where the language would be changed. Mr. Johnson added that it requires full disclosure of the licensee’s probation status, length of probation, practice restrictions, etc. to be given to the patient upon the first visit, which must be signed by the patient then added to the patient’s file. Ms. Murphy asked the Members for their thoughts on the language, which would allow the Board the option of requiring doctors of optometry to give a notice to each patient. Ms. Garcia asked if something could be said to the effect that “the Board reserves the right to request notification to patients in a different form?” Mr. Johnson answered by stating that the language from 1448 could be blended and adapted as an optional condition for number 20. He suggested: “at the discretion of the Board, a signed disclosure from the licensee to the patient shall be maintained in the patient’s file and signed.” Mx. Kimball asked if Members would also request that staff add to number 20, Notice to Patients the language “as warranted” to all of the model violations? Members confirmed that they want it added.

Dr. Turetsky asked if this applies to both optometrists and opticians. Ms. Murphy explained that there will be separate disciplinary guidelines; that some work has been done to the optician guidelines concerning formatting. Staff will go through this process with the DOC to develop optician guidelines separately.

Ms. Brandvein asked for clarification on a requirement that probationers attend a group therapy session; can they have the option of one-on-one counseling? Ms. Murphy stated that staff pulled out “support groups” from 19; however, staff included “individual clinicians” in optional conditions 28. She explained that there could be an instance where a support group might be of help to someone and an instance where it might not be beneficial. For that reason, they have not been grouped but the option is given to assign out each individually. Ms. Brandvein asked if it is necessary to call out that it is a 19(a) and a 19(b) so that people do not feel limited by the order in which this is written? Do we leave it up to the individual, or does the Board determine whether they participate in group support individual support? She feels the language makes it appear that they can only attend a group. Mx. Kimball explained that where it states “optional conditions” on page 27 or 57, it is just a differentiation between those that the Board considers mandatory in every probation order. The first 16 probation terms go in every probation order unless they do not apply. The optional conditions (19-39) are optional. They are options the Board can assign depending upon the violation if it is an appropriate term. If an individual sees the terminology: “It is not optional to participate in a group support meeting,” in their probation, they are required to attend a group counseling program. If it is somebody for whom the Board has assigned both group support and individual therapy, and they are participating in both, and they get to the year mark of their probation and decide (for example) they are making better progress in group support over individual psychotherapy, they can petition the Board to have that term stricken from their probation order.

Dr. Turetsky noted that the language in 27 of 57, number 33, needs to be changed to read “Prescriptions” only. The word “Lens” will be stricken from the text. Staff agreed.

Ms. Brandvein requested clarification of the next-steps. She asked if staff is asking the Members to approve taking this document to next Board meeting, for review and discussion, pending that all edits have been completed. Ms. Murphy confirmed this is correct.

David Turetsky moved to bring this document to the full Board, pending the completion of all edits that were provided to staff during this discussion. Debra McIntyre seconded. The Committee voted unanimously (4-0) and the motion passed.

| Member | Aye | No | Abstain | Absent | Recusal |
|---------------|-----|----|---------|--------|---------|
| Ms. Brandvein | X | | | | |
| Ms. Garcia | X | | | | |
| Dr. McIntyre | X | | | | |
| Dr. Turetsky | X | | | | |

Ms. Brandvein asked staff to add the new edits, discussed this day, to the Committee Report. She would like the Committee Report to include most of Mx. Kimball’s memorandum of agenda item number 4, with the additions; particularly where Members made notes to clarify that we were taking guidelines as is, such as the “at least 30 days of negative direct tests.” She stated that it would be helpful to call out some edits that could not be made due to the following reasons.

5. Future Agenda Items

Time of Discussion: 59:14 / 01:04:01

Ms. Brandvein asked if, during the last Board meeting, future meeting dates were left as to be determined; Ms. Murphy stated that the Board does not have dates secured yet.

Ms. Brandvein asked how the Committee wishes to pick up some of the strategic plan objectives and noted that a couple of strategic plan items were tabled to bring this forward. Ms. Garcia responded that everything depends on what the Board decides to do regarding the guidelines; if the Board wants the Committee to perform additional work on the guidelines. Dr. McIntyre was uncertain of what items were tabled. Dr. Turetsky asked if online refractions are an issue the Consumer Protection Committee was dealing with and decided to hold off on.

Ms. Garcia responded that the items prioritized for implementation were item 4.1, 4.3. The other two items were considered a low priority; they were item 4.6 and 4.7. Ms. Brandvein announced that these will be included as a future agenda item.

6. Adjournment

The meeting was adjourned.