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To: Board Members

Date: January 27, 2017

From: Robert Stephanopoulos
Assistant Executive Officer

Telephone: (916) 575-7170

Subject: Agenda Item 14 – Legislative Proposals

A. Children’s Vision; [Education Code § 49455](#)

The most recent Children’s Vision bill, Senate Bill 402, introduced by Senator Mitchell, would have required (with an opt-out option) a pupil’s vision to be examined by a physician, optometrist, or ophthalmologist, as specified, and required the pupil’s parent or guardian to provide the results of the examination to the pupil’s school. This bill prohibited a school from denying admission to a pupil or taking any other adverse action against a pupil if his or her parent or guardian fails to provide the results of the examination. If the results of the examination were not provided to the school, this bill required a pupil’s vision to instead be appraised pursuant to existing law, as specified.

The bill passed out of both Senate Education Committee and Senate Health Committee with no “no” votes. However, the bill was placed on suspense and did not pass out of Senate Appropriations Committee. This is the farthest the bill has gotten.

As previously reported, the Board created a workgroup to work with stakeholders on this issue and present stronger legislation for the next legislative session. The workgroup, comprised of Rachel Michelin and Dr. Kawaguchi, met on February 18, April 28 and September 22 with stakeholders. Educators, optometrists, nurses, insurance agencies, legislative staffers and youth advocates came together to discuss important issues facing children’s vision and looked for ways we could collaborate to be successful in passing this important policy initiatives. During discussions, various data collection models were discussed and the work group looked at other state’s that have this time of exam in current law. The work group believed it was an easy to understand format, but would like to work with staff and stakeholders to customize it for students and parents in California.

During the November 2016 meeting, the Board passed the following motion:

“The Board sponsor the legislative concept (Attachment 1) and direction of the children’s vision workgroup and ask work group members, together with staff, to moving forward to introducing legislation in the 2017 legislat[ive] session.”

At the time of publications of Board meeting materials there are no updates for Children’s Vision, however, there may be at the Board meeting.

B. Inspection Authority; [BPC § 3030](#)

The Board was granted inspection authority through [SB1039](#). Effective January 1, 2017, the Board's inspection authority is granted by the following section:

"The board may at any time inspect the premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed. The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect premises for which registration has lapsed or is delinquent."

The intent of this language was to give the Board inspection authority for all locations optometry is being practiced and dispensing is taking place. However, the current language appears to unintentionally limit the inspection authority and, at least, causes confusion as to what exactly the Board's authority is.

Staff Recommendation:

Support a legislative proposal to amend the statute to the following:

The board, [or its designated agent](#), may at any time inspect ~~the~~ [any](#) premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed. ~~The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect premises for which registration has lapsed or is delinquent.~~

C. Unlicensed Practice; [BPC § 3040](#)

The Board's authority to investigate and take action against unlicensed individuals comes from BPC § [3040](#):

"It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry."

BPC § [3006](#) defines "advertising" as the following:

As used in this chapter, the term "advertise" and any of its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

When investigating unlicensed practice cases, the Board's Enforcement Unit receives questions from the Division of Investigation, the Deputy Attorney General's Office, attorneys, and others as to whether "advertising" is the same as "offering" services. While the Board is able to take action against unlicensed individuals who offer services set forth in BPC § 3041, Board staff would like to amend the statute to provide clarification – thus reducing confusion and decreasing time spent providing further explanation.

Staff Recommendation:

Support a legislative proposal to amend BPC § 3040 to the following:

~~“It is unlawful for a person to advertise, offer, or provide any services set forth in Section 3041 engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without a valid, unrevoked California optometrist license. having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.”~~

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.”

D. NPDB Continuous Query; Eligibility for Licensure; BPC § 3046

The National Practitioners Databank (NPDB) is the national databank relating to disciplinary boards. Information contained in the databank is provided by state regulatory agencies and other entities that are required to report disciplinary information.

As previously reported, the Board began checking the NPDB for all out of state applicants in June 2016. Part of this check includes enrolling the applicants into the continuous query feature. Therefore, the Board is notified whenever discipline or other reportable action is reported to the NPDB – similar to subsequent arrest notifications through DOJ.

However, staff believes that relying solely on the applicants’ self-disclosure of licenses in other states is not in the best interest of consumer protection. Applicants who have been disciplined in another state have the ability to submit an application, choose not to disclose other state licenses, and be issued a license without the Board checking NPDB.

In addition, many optometrists, after becoming licensed in California, seek licensure in other states. Similarly to initial applications, relying on the self-disclosure of prior discipline during the renewal process is also not in the best interest of consumer protection. Likewise, relying on other regulatory agencies to report to the Board is also insufficient. These instances leave ample opportunity for disciplined optometrists to continue providing care to California patients, despite another agency deeming them unsafe to practice.

Staff Recommendation:

Support a legislative proposal to amend existing statute in order to authorize the Board to enroll all applicants and licensees into NPDB’s continuous query system.

E. License Barriers for Out-of-State Licensed Optometrists; BPC § 3057

During a 2016 Little Hoover Commission hearing, the Board was described as having “huge barriers to move across state lines.” The Board’s 2016 Sunset Report identified the following as a new issue for the Board to address:

“Assess and remove unnecessary license barriers, such as BPC § 3057(a)(6), while still adequately protecting the health and safety of California consumers.”

BPC § 3057(a)(6) prohibits the Board from considering an application from any out of state applicant who has ever “had his or her license to practice optometry revoked or suspended in any state where the person holds a license.” This requirement removes all discretionary ability from the Board to evaluate the underlying circumstances or consider any rehabilitation efforts. An out of

state applicant may have faced revocation in another state for a violation that may not even apply to California laws. In addition, another state may have revoked and subsequently reinstated a license after considering rehabilitation efforts (similar to California). However, how the statute is written, that out of state applicant can never become licensed in California.

Staff believes this places an unreasonable barrier to licensure in California and should be struck in statute. The Board has discretion to review discipline by other states through BPC § 3057(a)(4),(5), and (7):

(a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

...

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the National Practitioner Database and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

...

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.

Thus, staff believes sufficient consumer protections will remain without BPC § 3057(a)(6).

Staff Recommendation:

Support a legislative proposal to strike BPC § 3057(a)(6)

F. Foreign Graduate Pathways; Eligibility for Examinations; BPC § [3057.5](#)

Pursuant to BPC § 3057.5, the Board sponsors foreign graduates to take the National Board of Examiners in Optometry (NBEO). However, BPC § [3046](#) requires, in part, that all applicants graduate from an accredited school of optometry in order to obtain a California optometry license. Thus, even if foreign graduates pass the NBEO, they are still required to obtain an accredited degree.

This sponsorship process takes a significant amount of staff time to review and process, and there is no fee for the sponsorship application. In addition, offering sponsorship has only proven to create confusion among foreign applicants, because they believe this process will lead to licensure in California. However, until foreign graduates obtain a degree from an accredited college of optometry (available through accelerated programs), the Board believes this time-consuming process will never benefit California patients or further develop California's workforce.

In November 2014, the Board approved sponsoring legislation to create a licensure pathway for foreign graduates. However, the bill ([SB 496](#)) died after receiving strong opposition from the Southern California College of Optometry (SCCO) and the California Optometric Association.

SCCO's opposition letter (Attachment 2), asserted that "[t]he clinical (i.e. patient care) experience from a bachelor's or master's degree does not carry the equivalency necessary because the scope

of practice is extremely limited in overseas jurisdictions. For example, it is illegal in some countries to do retinoscopy. Passing an exam question on red eyes is different than the experience of treating patients with red eyes. As a result, the proposed pathway may have the unintended consequence of fostering false hope for patient safety in California.”

NBEO’s examination passing rates of sponsored candidates appear to support these statements, with exam scores up to 47% lower than students enrolled in or graduated from an accredited college of optometry (Attachment 3).

Foreign graduates do have a pathway to become licensed in California through an Advanced Standing Program.

An Advanced Standing Program customizes a curriculum based on the foreign graduate transcripts. The curriculum can take between two to four years, and will result in a degree from the accredited school. The following schools offer the Advanced Standing Program:

- New England College of Optometry,
- State University of New York College of Optometry, and
- Salus University Pennsylvania College of Optometry

This existing pathway ensures optometrists providing care to California consumers are held to the same educational requirements.

While this pathway exists, there are no Advanced Standing Programs on the West Coast. California accredited schools have indicated there is not a large demand for the program. However, Western University College of Optometry is interested in administering such a program with input from SCCO and UC Berkeley.

Staff Recommendation:

Support a legislative proposal to repeal BPC § 3057.5

G. RDO Program’s Registration Expiration and Renewal Authority; BPC § [2420](#) and [2423](#)

The RDO registrations expire under the Medical Practice Act (BPC § 2420 and 2423).

Staff Recommendation:

Support a legislative proposal to move the renewal section to the applicable RDO statutes

Children's Vision Leg Proposal
v. 10.20.2016

1. Comprehensive eye exam within 6 months prior to initial enrollment in a California public school. Comprehensive eye examination shall include tests for distance and near visual acuity, binocular vision (including convergence ability, eye alignment, and depth perception), accommodation, objective and subjective refraction, pupil assessment, color vision, and eye health evaluations..
2. California Children's Vision Form: Documentation demonstrating completion of comprehensive eye exam to include; Name of Physician or Optometrist, date of exam, recommendations by attending doctor, signature of attending doctor, signature of parent/guardian releasing info (not sure if needed), opt out of comprehensive eye exam statement for parent/guardian including signature, and opt out at school vision screening including parent/guardian signature. This form to be distributed by California Public School with enrollment materials In summary, this form will serve multiple functions:
 - a. Documentation demonstrating completion of comprehensive eye exam
 - b. Opt out option for comprehensive eye exam by parent/guardian
 - c. Opt out option for vision screening in that school year if proof of comprehensive eye exam within 6 months prior to new school year and waived by parent/guardian.
 - d. Information from attending doctor on special vision needs.
3. School screenings:
 - a. If documentation demonstrating completion of a comprehensive eye examination is not provided to the school, then during the kindergarten year or upon first enrollment or entry, and in grades 2, 5, and 8, the pupil's vision shall be appraised by the school nurse or other person authorized under Section 49452.
4. If documentation demonstrating completion of comprehensive exam within 6 months is provided to school, parent may waive school vision screening for that school year by filling out, signing, and submitting California Children's Vision Form to school prior to school vision screening.
5. Allow information on completed California Children's Vision Form to be shared with a child's assigned teacher/s.
6. Schools will annually distribute, receive back, summarize/tally data into the following categories:
 - a. Total number students enrolled
 - b. Total number of forms received
 - c. Documentation demonstrating completion of comprehensive eye exam completed within 6 months
 - d. Opt out of comprehensive eye exam
 - e. Opt out of vision screening
 - f. Total number of school screenings
7. This information shall be submitted to the California Dept. of Health¹ prior to the end of school year of the reporting period. California Dept. of Health will summarize data received annually prior to the end of the calendar year in which the school year ended and report that information to the California State Board of Optometry.

¹ This may be Dept. of Education or CDPH; will research and clarify if necessary



Marshall B.
KETCHUM UNIVERSITY

Southern California College of Optometry

Office of the Dean

March 26, 2015

Ms. Mona Maggio
Executive Officer
California State Board of Optometry
2450 Del Paso Rd, Suite 105
Sacramento, CA 95834

RE: SB 496 Pathway to Optometry Licensing

Dear Ms. Maggio:

We are writing in opposition to SB 496 “Pathway to Optometry Licensing” sponsored by Sen. Janet Nguyen.

While foreign graduates have an understandable desire to practice their profession in California, there already exists a clear pathway that recognizes the appropriate education and training of optometrists and assures the delivery of safe and competent care. The typical pathway includes 1) graduation with a doctorate of optometry degree from a school or college of optometry accredited by the Accreditation Council on Optometric Education (ACOE) and 2) passage of the National Board of Examiners in Optometry 3-part examination.

Both steps should be viewed in aggregate. In other words, passage of an examination alone does not constitute an adequate assessment for the safe and effective practice of optometry. Rather, the examination is an opportunity to support that the student and program learning outcomes were achieved by the accredited program. The critical element for the doctorate of optometry is the **clinical education and training** that prepares graduates to practice to the fullest scope as practiced by U.S. optometrists. The clinical (i.e. patient care) experience from a bachelor’s or master’s degree does not carry the equivalency necessary because the scope of practice is extremely limited in overseas jurisdictions. For example, it is illegal in some countries to do retinoscopy. Passing an exam question on red eyes is different than the experience of treating patients with red eyes. As a result, the proposed pathway may have the unintended consequence of fostering false hope for patient safety in California.

An alternative pathway is already available to foreign graduates. The accelerated pathway for obtaining a doctorate of optometry is available at both the New England College of Optometry and Salus University Pennsylvania College of Optometry. Completion of the degree is possible in 2 years rather than the traditional 4 year post-baccalaureate program.

Several more schools recognize some course work to obtain advanced standing at various stages in their program. Clinical training is a key element addressed in this path, and completion of the program leads to the accredited OD degree.

In summary, we believe that optometrists without a doctorate of optometry from an ACOE accredited school are NOT qualified to practice optometry in the United States. The public health and safety are best assured by optometrists having the appropriate education and clinical education verified by accreditation and examination. An individual's desire to practice still has an available pathway after acquiring needed clinical experience and education.

Reference

1. <http://www.arbo.org/faq.php#licensure> FAQ "I am an internationally educated optometrist – how do I get licensed in the U.S.?"
2. <http://www.aoa.org/about-the-aoa/what-is-a-doctor-of-optometry?sso=y>
3. New England College of Optometry <http://www.neco.edu/academics/international>
4. Salus University PCO http://www.salus.edu/od_international/

Sincerely,

Stanley Woo, O.D., M.S., M.B.A., FAAO
Dean
Southern California College of Optometry

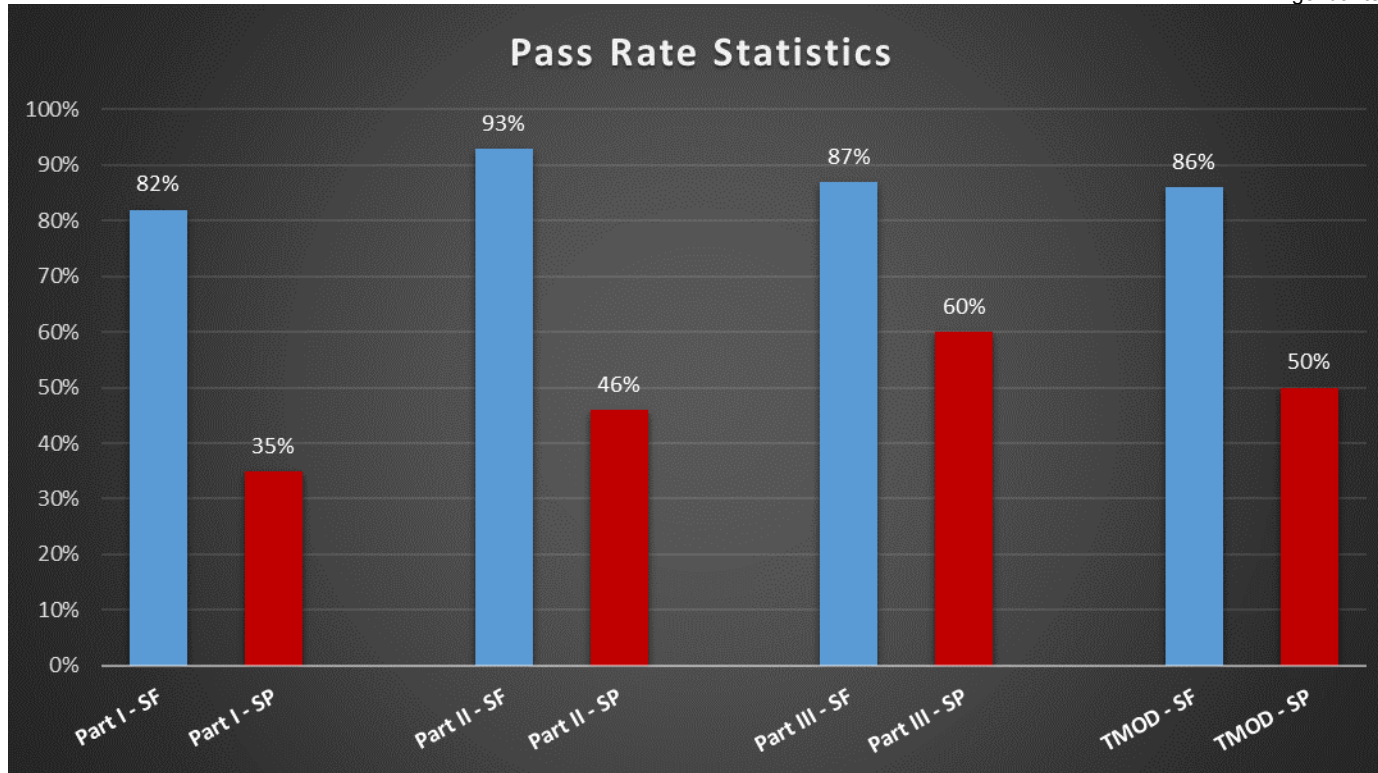
Kevin L. Alexander, O.D., Ph.D.
President
Marshall B. Ketchum University

Cc: Board of Optometry

Alex Arredondo, OD – President; Alexander Kim, MBA; Kenneth Lawenda, OD; Cyd Brandvein; Donna Burke, Secretary; Madhu Chawla, OD – VP; David Turetsky, OD; Glenn Kawaguchi, OD; William H. Kysella, Jr.; Rachel Michelin; Frank Giardina, OD

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***SF – Student First-timer, SP – Sponsored candidate**

****Pass Rates since the restructure of NBEO exams to Part I ABS (03/2009), Part II PAM (12/2009), and Part III CSE (04/2010).**

Candidates Passed / # Total Candidates

Part I (SF): 10,088 / 12,259

Part I (SP): **34 / 97**

Part II (SF): 11,407 / 12,250

Part II (SP): **38 / 82**

Part III (SF): 9,723 / 11,164

Part III (SP): **18 / 30**

TMOD (SF): 10,649 / 12,250

TMOD (SP): **41 / 82**