



CALIFORNIA STATE BOARD OF
OPTOMETRY

Board Meeting

Friday, September 13, 2013

Western University of Health Sciences
College of Optometry
Pomona, CA



MEMBERS OF THE BOARD

Alejandro Arredondo, OD, President
Monica Johnson, JD, Vice President
Alexander Kim, MBA, Secretary
Donna Burke
Madhu Chawla, OD
Fred Dubick, OD, MBA, FAAO
Glenn Kawaguchi, OD
William Kysella, Jr.
Kenneth Lawenda, OD



**CALIFORNIA STATE BOARD OF
OPTOMETRY**
QUARTERLY BOARD MEETING AGENDA

Western University of Health
Sciences, College of Optometry
309 E. Second Street
Health Education Center (HEC
Building), 2nd Floor, Vision Science
Lab 2205
Pomona, CA 91766

And via teleconference at
140 C Tower Street
Beaconsfield, Quebec, H9W6R2

Friday, September 13, 2013
10:00 a.m. – 4:00 p.m.
(or until conclusion of business)

ORDER OF ITEMS SUBJECT TO CHANGE

FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum
2. Petitions for Reinstatement of License
 - A. Dr. Gregory Tom
 - B. Dr. Stephen Schroeder
 - C. Dr. Larry Thornton
 - D. Dr. Lawrence Young

FULL BOARD CLOSED SESSION

3. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION

4. Discussion and Possible Action on Newsletter Article Regarding Co-Location and Business and Professions Code Section 655
5. Future Board Meeting Dates and Locations, and Suggestions for Future Agenda Items
6. 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)]
7. Adjournment

PUBLIC COMMENTS: Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: September 13, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 1 – Call to Order and Establishment of Quorum**

Dr. Alejandro Arredondo, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Alejandro Arredondo, O.D., Board President, Professional Member

Monica Johnson, ESQ, Board Vice President, Public Member

Alexander Kim, MBA, Board Secretary, Public Member

Donna Burke, Public Member

Madhu Chawla, O.D., Professional Member

Fred Dubick, O.D., MBA, FAAO, Professional Member

Glenn Kawaguchi, O.D., Professional Member

William Kysella, Jr., Public Member

Kenneth Lawenda, O.D., Professional Member

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To: Board Members

Date: September 13, 2013

From: Jessica Sieferman
Enforcement Lead

Telephone: (916) 575-7170

Subject: Agenda Item 2A. In the Matter of the Petition for Reinstatement of Revoked License No. OPT 10427 – Gregory Lawrence Tom

Dr. Gregory Lawrence Tom, Petitioner, was issued Optometrist License Number 10427 by the Board on September 22, 1994. On March 26, 2007, the Board filed an Accusation against Petitioner charging him with violating laws and regulations of the Optometry Practice Act. The Petitioner entered into a Stipulated Surrender of License, adopted by the Board, effective April 3, 2008.

On or about February 23, 2009, the Petitioner filed a Petition for Reinstatement of License, which the Board granted effective January 1, 2010. Petitioner's license was reinstated, immediately revoked, the revocation was stayed, and the license was placed on probation for five years. The Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation on November 19, 2010, which the Board denied, effective August 16, 2011.

On or about August 19, 2011, the Board filed a Petition to Revoke Probation against the Petitioner. By Decision and Order effective August 29, 2012, the Board adopted a Proposed Decision granting the Board's Petition. Petitioner's license was revoked effective August 29, 2012.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decisions and Orders, Default Decision and Accusation
3. Certification of Non-Licensure

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To: Board Members

Date: September 13, 2013

From: Jessica Sieferman
Enforcement Lead

Telephone: (916) 575-7170

**Subject: Agenda Item 2B. In the Matter of the Petition for Reinstatement of
Revoked License No. OPT 8321 – Stephen G. Schroeder**

Dr. Steven G. Schroeder, Petitioner, was issued Optometrist License Number 8321 by the Board on September 15, 1985. On February 20, 2007, the Board filed an Accusation against Petitioner charging him with violating laws and regulations of the Optometry Practice Act. The Board, by Decision and Order effective June 18, 2007, adopted a Stipulated Settlement and Disciplinary Order, which revoked Petitioner's license. The revocation was stayed and the license was placed on probation for five years.

On or about July 15, 2008, the Board filed an Accusation and Petition to Revoke Probation against Petitioner. The Board, by Decision and order effective October 3, 2008, adopted a Stipulated Revocation of License and Order resolving said Accusation and Petition. Petitioner's license was revoked.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decisions and Orders, Default Decision and Accusation
3. Certification of Non-Licensure

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To: Board Members

Date: September 13, 2013

From: Jessica Siefertman
Enforcement Lead

Telephone: (916) 575-7170

Subject: Agenda Item 2C. In the Matter of the Petition for Reinstatement of Revoked License No. OPT 6369 – Larry Franklin Thornton

Dr. Larry Franklin Thornton, Petitioner, was issued Optometrist License Number 6369 by the Board on October 3, 1977. On December 31, 2002, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on disciplinary action taken against Petitioner by the Kentucky Board of Optometric Examiners. Petitioner did not file a Notice of Defense and his license was revoked by a Default Decision on July 14, 2003.

This is Petitioner's fourth Petition for Reinstatement of his revoked license. The first was filed in 2006. On February 17, 2007, the Board denied his Petition for Reinstatement after a hearing before the Board on November 16, 2006. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The second Petition for Reinstatement was filed in 2008. On October 10, 2008, the Board denied his Petition for Reinstatement after a hearing before the Board on September 3, 2008. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The third Petition for Reinstatement was filed in 2011. On July 10, 2012, the Board denied his Petition for Reinstatement after a hearing before the Board on May 18, 2012. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decisions and Orders, Default Decision and Accusation
3. Certification of Non-Licensure

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To: Board Members

Date: September 13, 2013

From: Jessica Siefertman
Enforcement Lead

Telephone: (916) 575-7170

Subject: Agenda Item 2D. In the Matter of the Petition for Reinstatement of Revoked License No. OPT 8618 – Lawrence Edwin Young

Dr. Lawrence Edwin Young, Petitioner, was issued Optometrist License Number 8618 by the Board on October 2, 1986. On March 26, 2007, the Board filed an Accusation against Petitioner charging him with violating laws and regulations in the Optometry Practice Act. Petitioner did not file a Notice of Defense and his license was revoked by a Default Decision; however, after filing a motion to vacate the Default Decision and Order, the Board stayed the effective date of said Decision and order and ultimately vacated said Decision and Order effective August 17, 2007.

By Decision and Order effective April 3, 2008, the Board adopted a Stipulated Settlement and Disciplinary Order revoking Petitioner's license. The revocation was stayed and the Petitioner's license was placed on probation for three years.

On January 27, 2010, the Board filed an Accusation and Petition to Revoke Probation against the Petitioner. Effective February 12, 2011, the Board adopted a Proposed Decision and Order granting said Accusation and Petition. The Petitioner's license was revoked.

This is the Petitioner's second Petition for Reinstatement of his revoked license. The first was filed on February 2, 2012. On July 9, 2012, the Board denied his Petition for Reinstatement after a hearing before the Board on March 30, 2012. The denial was based upon the Board's finding that the Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decisions and Orders, Default Decision and Accusation
3. Certification of Non-Licensure

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To: Board Members

Date: September 13, 2013

From: Jessica Sieferman
Enforcement Lead

Telephone: (916) 575-7184

Subject: Agenda Item 3 – Full Board Closed Session

Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters.

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Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members

Date: September 13, 2013

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7170

**Subject: Agenda Item 4 – Discussion and Possible Action on Newsletter Article
Regarding Co-Location and Business and Professions Code Section 655**

Action Requested: It is requested that the Board consider a new version of the educational article regarding prohibited business relationships allowing control of an optometrist's practice. The new version was written by the Department of Consumer Affairs (Department). After discussion, it is requested that the Board either vote to approve the new version of the article, make edits to the new article, or continue to use the current version of the article. The Board could also refer this issue to its Public Relations/Outreach committee which is composed of members Alexander Kim and Donna Burke.

Background: On the week of August 26, 2013, the Department relayed to the Board that the Administration had requested that the Board remove from its website the article summarizing the litigation that affected the Board's authority to enforce Business and Professions Code (BPC) section 655. On August 29, 2013, the Board complied with this request and the Department offered to re-write the article.

Regardless of what form the article will take, this information is extremely important and must be disseminated to consumers and licensees as soon as possible. It has been informally estimated that about half of the Board's licensee population (4,500) are impacted because they are either directly or indirectly employed by or contracting with optical retailers. Furthermore, because many optical retailers have hundreds of chain stores throughout California, a large amount of consumers are impacted because they are receiving eye care from optometrists working in these businesses. At this time, it cannot be revealed when the Board will start taking disciplinary action on optometrists that are not in compliance with BPC section 655 because all Board investigations are confidential (Government Code section 6254 (f)).

Attached:

- 1) Original Article – "Prohibited business relationships allowing control of the optometrist's practice"
- 2) New article written by the Department of Consumer Affairs

Prohibited business relationships allowing control of the optometrist's practice

By Alejandro Arredondo, O.D, Board President
and Mona Maggio, Executive Officer

The Board of Optometry has received a variety of inquiries regarding the recent conclusion of litigation that affected the Board's authority to enforce Business and Professions Code (BPC) § 655, which prohibits business and financial relationships between optometrists and registered dispensing opticians, and between optometrists and optical companies that engage in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. On June 13, 2012, BPC § 655 was upheld as constitutional by the Ninth Circuit Court of Appeals in *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144 (9th Cir. 2012). The optical industry plaintiffs then petitioned the Supreme Court of the United States for certiorari review, but on February 19, 2013, the Court declined to hear the case, and the Ninth Circuit decision upholding the law became final. (*Nat'l Ass'n of Optometrists & Opticians v. Harris*, 133 S.Ct. 1241 (2013).) As a result, the Board may once again enforce BPC § 655.

Due to these recent developments, optometrists are encouraged to discuss their optometric practices and business structure with knowledgeable legal experts, as the Board cannot advise individual optometrists on the propriety of their business relationships. However, be advised that the Board may take disciplinary action against optometrists who do not comply with the law.

The highest priority of the Board is protection of the public. The intent of BPC § 655 is the same as it was when it was enacted in 1969 - to prevent interference with the optometrist-patient relationship by optical companies and retailers, and to ensure that all medical decisions are made by the licensed optometrist. The optometrist-patient relationship is built on trust that should not be abused. The Board is mandated to prevent that from happening.

BPC § 655, subdivision (a) prohibits an optometrist from having a membership, proprietary interest, co-ownership, landlord-tenant relationship, or profit-sharing arrangement in any form, directly or indirectly, with a registered dispensing optician. The same relationships, plus those involving stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or others between optometrists and optical companies are also prohibited under subdivision (c). Pursuant to BPC § 652, the Board may take disciplinary action for unprofessional conduct against an optometrist who violates § 655, and by its terms an optometrist may also be found guilty of a misdemeanor for its violation.

BPC § 655 has also been interpreted broadly to prohibit any relationship where a registered dispensing optician exerts control over an optometrist's practice. (*California Assn. of Dispensing Opticians v. Pearle Vision* (1983) 143 Cal.App.3d 419, 429.) This is

in line with California's long-standing public policy against permitting lay persons to practice any of the medical arts or to exercise control over decisions made by healing arts practitioners. (*Painless Parker v. Board of Dental Exam* (1932) 216 Cal. 285, 296.)

An optometrist may also be disciplined for unprofessional conduct under BPC § 3110, subdivision (a) for "directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of [the Optometry Practice Act]." Under BPC § 3070, the practice of optometry is the performing or the controlling of any of the acts set forth in BPC § 3041, which describes the acts authorized by an optometry license and includes the prescribing of contact and spectacle lenses. Aiding and abetting the unlicensed practice of optometry by allowing a registered dispensing optician or optical company to have any control over an optometrist's prescribing of ophthalmic devices constitutes unprofessional conduct under BPC § 3110 (a).

Under limited circumstances, California Code of Regulations, title 16, § 1514 allows an optometrist to lease space from a retailer (commercial, mercantile concern), but BPC § 655 and 2556 still prohibit the optometrist from being a tenant of an optical company or registered dispensing optician. In addition, under regulation § 1514, the optometrist is prohibited from allowing the retailer to control any aspect of the optometrist's practice. The practice must be owned by the optometrist and in every phase be under his or her exclusive control. The rented space must be definite and apart from space occupied by other occupants of the premises. All signs and advertising must be separate and distinct from that of any other occupant and may not have any legends, such as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, and there may be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he or she is leasing space.

BPC § 3109 also prohibits optometrists from being directly or indirectly employed by anyone who is not a licensed optometrist or by any company or corporation, except that an optometrist may be employed by a licensed ophthalmologist or by a Knox-Keene plan licensed under the Health and Safety Code. Under BPC § 655 and 3109, an optometrist may not be employed, directly or indirectly, by a registered dispensing optician or by an optical company and allowing control of the optometrist's practice is considered aiding and abetting the unlicensed practice of optometry, which is prohibited by BPC § 3110, subdivision (a). An optometrist may not be employed by a Knox-Keene Health Care Service Plan that is owned by a registered dispensing optician or an optical company, as such employment is a violation of § 655 and 3110, subdivision (a).

From the Board's perspective, the following types of optometric practice ownership and operating structures are prohibited:

- An optometrist working for a business owned or operated by a non-optometrist.
- An optometrist operating an optometric practice as a limited liability company, limited liability partnership, or general corporation. Moscone-Knox professional corporations are appropriate.

- An optometrist engaging a management service organization to arrange for, advertise, or provide optometric services rather than only provide administrative services for an optometrist's practice (non-optometrist exercising control over an optometrist's practice, even where an optometrist owns and operates the business).
- An optometrist acting as "optometric director" other than for an optometry practice.
- An optometrist receiving incentives directly or indirectly from a registered dispensing optician or optical company for examining a particular number of patients per day or writing a particular volume of prescriptions for eyewear.
- An optometrist working inside an optical retail store owned by a registered dispensing optician.
- An optometrist employed by a Knox-Keene plan that is owned by a registered dispensing optician or optical company.
- An optometrist employed by a Knox-Keene plan that has interlocking directors with an optical company, or where an optical company has oversight of the Knox-Keene vision care plan.

An optometrist is responsible for the ultimate overall care of the patient, including treatment options available to the patient. From the Board's perspective, the following health care decisions should be made by a licensed optometrist and would constitute the unlicensed practice of optometry if determined or controlled by an unlicensed person:

- How much time to spend with a patient.
- Which diagnostic tests should be administered to a patient or the need for retinal photographs.
- Determining the need for referrals to, or consultation with, an ophthalmologist or other specialist.
- Whether to prescribe corrective lenses for a patient, and whether a patient needs more than one pair of corrective eyewear.
- What kinds of products to prescribe for a patient, whether proprietary products of an optical company, stock on hand, or ordering specific products.

In addition, from the Board's perspective, the following "business" or "management" decisions resulting in control over an optometrist's practice, should be made by a licensed optometrist and not by an unlicensed person or entity:

- Determining the hours and days of the week that the optometrist's office will be open to see patients.
- Determining how many patients an optometrist will see in a given period of time or how many hours an optometrist will work.
- In what intervals to schedule patients.
- Whether to accept patients on a walk-in basis without an appointment.
- The number of eye exams to be given per day, week, or month.
- Whether to dispense prescription eyewear or not.
- The selection, hiring, or firing of optometrists and optometric assistants.

- Approving of the selection of optometric equipment and supplies for the optometry practice.
- Determining whether to enter into contractual relationships with third-party payers.
- How to advertise the professional optometric practice.
- Ownership of the optometric records of patients is an indicator of control, including determining the contents thereof, and should be retained by a licensed optometrist.

The types of decisions and activities described above cannot be delegated to an unlicensed person, including, for example, management service organizations. While an optometrist may consult with unlicensed persons in making the "business" or "management" decisions described above, the optometrist must retain the ultimate responsibility for, or approval of, those decisions.

In the examples above, non-optometrists would be engaged in the unlicensed practice of optometry, and the Board may take disciplinary action against an optometrist that has aided and abetted the unlicensed practice of optometry. During the time that BPC § 655 was not enforced, several optical retailers established relationships with optometrists that may be prohibited by BPC § 655 or otherwise.

Many optical retailers that directly or indirectly employ or contract with optometrists are currently engaged in discussions with representatives of the Attorney General's Office to evaluate the legality of their ongoing operations. Optometrists may wish to contact the commercial or retail entities they have relationships with to inquire whether they are engaged in such discussions or whether any changes are being made to comply with the law.

To view the full history of the litigation in Nat'l Ass'n of Optometrists & Opticians v. Harris, BPC § 655 and other pertinent provisions of law, please visit the Board's Web site at www.optometry.ca.gov.

LONG

What the resolution of *National Association of Optometrists & Opticians v. Harris* means to you

The Board of Optometry has received a number of inquiries regarding the recent conclusion of *National Association of Optometrists and Opticians v. Harris*, and what it means to some of our licensees.

This litigation upheld the constitutionality of Business and Professions Code Sections 655 and 2556. B & P Code Section 655 prohibits business and financial relationships between optometrists and registered dispensing opticians, and between optometrists and optical companies that manufacture, sell, or distribute lenses, frames, or other such appliances. (To view the full history of the litigation in *Nat'l Ass'n of Optometrists & Opticians v. Harris*, B & P Code Section 655 and other pertinent provisions of law, please visit the Board's Web site at www.optometry.ca.gov and look under the "What's New" section.)

Now that the litigation has concluded, the Board's priority is to ensure compliance with the law and to help our licensees find pathways to compliance. Many optical retailers that directly or indirectly employ or contract with optometrists are currently engaged in discussions with representatives of the Attorney General's Office to evaluate the legality of their ongoing operations. Our licensees may wish to contact the commercial or retail entities they have relationships with to inquire as to whether or not they are engaged in such discussions or whether they are making changes to comply with the law. We realize that full compliance will not occur overnight but we hope that our licensees are making a good faith effort in working toward compliance.

As always, the highest priority of the Board is protection of the public. The intent of B & P Code Section 655 is to prevent interference with the optometrist-patient relationship by optical companies and retailers and to ensure that all medical decisions are made by the licensed optometrist. In ensuring compliance, a good first step would be for optometrists to ensure that they are the ones making health care decisions for their patients. There are some decisions that constitute the unlicensed practice of optometry if they are determined to be controlled by someone who is unlicensed. These include but are not limited to determining:

- How much time to spend with a patient;
- Which diagnostic tests should be administered to a patient or the need for retinal photographs;
- The need for referrals to, or consultation with, an ophthalmologist or other specialist;
- Whether to prescribe corrective lenses for a patient, and whether a patient needs more than one pair of corrective eyewear; and
- What kinds of products to prescribe for a patient, whether proprietary products of an optical company, stock on hand, or ordering specific products.

Another step optometrists can take is to ensure that they control certain business or management decisions about their practices. These include but are not limited to having control over:

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- The hours and days of the week that the optometrist's office will be open to see patients, how many patients will be seen in any given period of time, the number of eye exams to be given per day, week or month, and how many hours an optometrist will work;
- Whether to accept patients on a walk-in basis, without an appointment;
- Whether to dispense prescription eyewear or not;
- The selection, hiring, or firing of optometrists and optometric assistants;
- The selection and approval of optometric equipment and supplies for the optometry practice;
- Whether to enter into contractual relationships with third-party payers;
- How to advertise the professional optometric practice; and
- Ownership and retention of the optometric records of patients.

Ensuring compliance with B & P Code Section 655 with respect to business relationships is likely to raise the most questions.

Several optical retailers that directly or indirectly employ or contract with optometrists have been in discussions with the Attorney General's Office to evaluate the legality of their ongoing operations. Optometrists who currently have relationships with commercial or retail entities may wish to contact them to inquire if they are engaged in such discussions. They may also wish to discuss their practices with knowledgeable legal experts.

While the Board cannot advise individual optometrists on the propriety or legality of their business relationships, we can state in broad general terms the types of ownership, operating structures, and operating practices that are prohibited under B & P Code Section 655. They include, but are not limited to:

- An optometrist working for a business owned or operated by a non-optometrist;
- An optometrist operating an optometric practice as a limited liability company, limited liability partnership, or general corporation (Moscone-Knox professional corporations are appropriate);
- An optometrist working inside an optical retail store owned by a registered dispensing optician;
- An optometrist employed by a Knox-Keene plan that is owned by a registered dispensing optician or optical company;
- An optometrist employed by a Knox-Keene plan that has interlocking directors with an optical company, or where an optical company has oversight of the Knox-Keene vision care plan; and
- An optometrist acting as "optometric director" other than for an optometry practice

The Board realizes that *Nat'l Ass'n of Optometrists & Opticians v. Harris* will mean that some of our licensees may have to make difficult choices. We are anxious to help our licensees make the transition, and will be posting additional information as necessary on our Web site as issues arise.

SHORT

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As always, the highest priority of the Board is protection of the public. The intent of B & P Code Section 655 is to prevent interference with the optometrist-patient relationship by optical companies and retailers and to ensure that all medical decisions are made by the licensed optometrist. In ensuring compliance, a good first step would be for optometrists to ensure that they are the ones making health care decisions for their patients. There are some actions that constitute the unlicensed practice of optometry if it is determined that the acts are controlled by someone who is unlicensed. These include but are not limited to determining:

- How much time to spend with a patient;
- Which diagnostic tests should be administered to a patient or the need for retinal photographs;
- The need for referrals to, or consultation with, an ophthalmologist or other specialist;
- Whether to prescribe corrective lenses for a patient, and whether a patient needs more than one pair of corrective eyewear; and
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- The hours and days of the week that the optometrist's office will be open to see patients, how many patients will be seen in any given period of time, the number of eye exams to be given per day, week or month, and how many hours an optometrist will work;
- Whether to accept patients on a walk-in basis, without an appointment;
- Whether to dispense prescription eyewear or not;
- The selection, hiring, or firing of optometrists and optometric assistants;
- The selection and approval of optometric equipment and supplies for the optometry practice;
- Whether to enter into contractual relationships with third-party payers;
- How to advertise the professional optometric practice; and
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The Board realizes that *Nat'l Ass'n of Optometrists & Opticians v. Harris* will mean that some of our licensees may have to make difficult choices. We are anxious to help our licensees make the transition, and will be posting additional information as necessary on our Web site as issues arise.

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To: Board Members

Date: September 13, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 5 – Future Board Meeting Dates and Locations, and Suggestions for Future Agenda Items**

Future Board Meeting Dates and Locations:

- October 25, 2013; Sacramento – STRATEGIC PLANNING ONLY
- November 1, 2013; TBD
- January 10, 2014; TBD

Members of the Board and the public may suggest items for staff research and discussion at future meetings.

2450 Del Paso Road, Suite 105
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(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: September 13, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 6 – Public Comment for Items Not on the Agenda**

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)].

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To: Board Members

Date: September 13, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 7 – Adjournment
