



CALIFORNIA STATE BOARD OF
OPTOMETRY

Board Meeting

Friday, November 1, 2013

UC Berkeley School of Optometry



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
Bruce Givner, Esq.
Glenn Kawaguchi, OD
William Kysella, Jr.
Kenneth Lawenda, OD



CALIFORNIA STATE BOARD OF
OPTOMETRY



QUARTERLY BOARD MEETING AGENDA

**UC Berkeley School of Optometry
Minor Hall, Room 491
Berkeley, CA 94720-2020**

**Friday, November 1, 2013
9:30 a.m. – 5:00 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. Welcome – President's Report
3. Discussion and Possible Action on Senate Bill 1111; Provision 720.10 Pertaining to Revocation for Sexual Misconduct or Sexual Contact with a Patient, Which May Not be Stayed
4. Approval of August 16, 2013 Board Meeting Minutes
5. Petition for Reduction of Penalty or Early Termination of Probation - Dr. James Herzman, O.D., OPT 10935

FULL BOARD CLOSED SESSION

6. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters
7. Pursuant to Government Code Section 11126(a)(1), the Board will meet in closed session to discuss the continued employment of the Executive Officer unless the Executive Officer exercises her right to have this agenda item heard in open session. If the matter is heard in open session, the Board may still meet in closed session to conduct its deliberations pursuant to Government Code section 11126(a)(4)
8. If necessary, depending on the action of Agenda Item 7, the Board will meet in closed session pursuant to Government Code section 11126(a)(1) to discuss and take possible action regarding the appointment of an Acting or Interim Executive Officer

FULL BOARD OPEN SESSION

9. Process for Selection of a New Executive Officer (if necessary, depending on the action of Agenda Item 7)
10. Executive Officer's Report
 - A. Budget
 - B. Personnel

- C. Examination and Licensing Programs
 - D. Enforcement Program
 - E. Strategic Planning
 - F. BreEZe
11. Discussion and Possible Action on Regulations Affecting the Board of Optometry
- A. California Code of Regulations (CCR) Section 1570. Educational Equivalency – Addition of Newly Accredited Optometry Schools
 - B. CCR Section 1506. Certificates Posting – Clarification of SOL Expiration Date
 - C. Update on rulemaking package pertaining to CCR Section 1524. Retired License Status Fees
 - D. Update on rulemaking package pertaining to CCR Sections 1516. Applicant Medical Evaluations and 1582. Unprofessional Conduct Defined
12. Discussion About Senate Bill 492 Workgroup to Expand the Scope of Practice of Optometrists
13. Discussion and Possible Action on Legislation Affecting the Board of Optometry
- A. Legislation Signed by the Governor and Effective January 1, 2014
 - 1. Assembly Bill 258 (Chávez) State agencies: veterans
 - 2. Assembly Bill 480 (Calderon) Service contracts
 - 3. Assembly Bill 512 (Rendon) Healing arts: licensure exemption
 - 4. Assembly Bill 1057 (Medina) Professions & vocations: licenses: military service
 - 5. Senate Bill 305 (Lieu) Healing arts: boards - optometry sunset bill
 - 6. Senate Bill 724 (Emmerson) Liability: charitable vision screenings
 - 7. Senate Bill 809 (DeSaulnier) Controlled substances: reporting
 - 8. Senate Bill 821 (Committee on Business, Professions & Economic Development) Healing arts
 - B. Legislation That Will Continue to be Monitored in 2014
 - 1. Assembly Bill 186 (Maienschein) Professions & vocations: military spouses: temporary licenses
 - 2. Assembly Bill 213 (Logue) Healing arts: licensure/certification requirement: military experience
 - 3. Senate Bill 430 (Wright) Pupil health: vision examination: binocular function
 - 4. Senate Bill 492 (Hernandez) Optometrist: practice: licensure
 - 5. Senate Bill 723 (Correa) Veterans (Vetoed)
 - C. Legislative Proposals
 - 1. Clarification of Licensure Requirement – Treatment and Management of Ocular Disease
Component of the National Board of Examiners in Optometry Examination
 - 2. Clarification of License Reinstatement Requirements – Fees
 - 3. Clarification of Retired License Status Provisions
 - 4. Define as Unprofessional Conduct the Failure to Provide Services Purchased by a Patient
 - 5. Other Non-Substantive Amendments
14. Tour of UC Berkeley Optometry Clinic (4:00 p.m. approximately)
15. 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)]*
16. Suggestions for Future Agenda Items
17. 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: November 1, 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

Bruce Givner, Esq., Public 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: November 1, 2013

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 2 – Welcome – President’s Report

Welcome by President Alejandro Arredondo, O.D.

- A. Welcome by Dennis Levi, O.D., Ph.D., Dean, Berkeley School of Optometry
- B. Executive Officer Status and Staff Update
- C. Sunset Date Extension
- D. Resolution by Senator Ed Hernandez Commemorating Board’s Centennial
- E. Other

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To: Board Members

Date: November 1, 2013

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 3 – Discussion and Possible Action on Senate Bill 1111; Provision 720.10 Pertaining to Revocation for Sexual Misconduct or Sexual Contact with a Patient; Which May Not be Stayed

Action Requested: It is requested that the Board consider adopting the rest of Provision 2 as a regulation (see **bolded** paragraph on page 2). The Board must then direct staff to begin the regulatory process if the provision is adopted.

Background: On February 17, 2010, the Department of Consumer Affairs (Department) introduced Senate Bill 1111 (Negrete McLeod) to enact the Consumer Health Protection Enforcement Initiative (CPEI), which was intended to strengthen various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards. This bill was a response to various articles in 2009 by the Los Angeles Times charging that the Board of Registered Nursing (BRN) often took over three years to act on complaints of egregious misconduct and that during that time, problem nurses continued to practice and provide care to the detriment of patients. The bill failed passage in the Senate Business, Professions and Economic Development Committee (Committee) in April 2009.

However, as part of its continued efforts to reduce the average enforcement completion timelines from three years or more to between 12 and 18 months, the Department identified nine provisions from Senate Bill 1111 that could be implemented via regulation. Many of these provisions are modeled after laws that are currently in effect for the Medical Board, Dental Board, the Board of Psychology, and Pharmacy Board, to name a few. The Department and the Committee are strongly encouraging all health arts boards that do not have these provisions to adopt them as soon as possible.

After review of the nine provisions at its May 2013 and August 2013 Board meetings, the Board determined that the following would improve the Board's enforcement processes and voted to implement them as regulations:

- Provision 5 – Partial adoption. Define the failure to comply with a court order as unprofessional conduct. The non-adopted portion that defined the failure to provide documents as unprofessional conduct is already in BPC section 3110 (x).
- Provision 6 – Permit the Board to conduct a psychological or physical evaluation on an applicant if deemed necessary.
- Provision 8 – Define the failure to provide information or cooperate in an investigation as unprofessional conduct.

- **Provision 9** – Partial adoption. Define as unprofessional conduct the failure to report to the Board within 30 days a felony indictment or charge, and any felony or misdemeanor conviction. The non-adopted portion pertained to including language defining the failure to report an arrest within 30 days as unprofessional conduct.

The remaining provisions were implemented as follows:

- **Provision 1** - Not adopted and will not be considered further. This provision would have given delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license. The Board wanted to retain its discretion on this matter.
- **Provision 2** – **Partial implementation by Senate Bill 305 (Lieu, Chapter 516, Statutes of 2013). Strengthens the Board’s authority to revoke a license for sexual misconduct. The non-adopted portion made revocation mandatory for such acts and removed all discretion from the Board and an Administrative Law Judge. That section was considered controversial and will be discussed by the Board today for possible adoption. The Committee continues to recommend that this provision be fully adopted. The California Optometric Association (COA) is opposed and the Board originally rejected adopting the entire provision at its August 2013 meeting.**
- **Provision 3** – Implemented by Senate Bill 305 (Lieu, Chapter 516, Statutes of 2013). Requires the Board to deny the application for licensure of a registered sex offender.
- **Provision 4** – Implemented for all healing arts boards by Assembly Bill 2570 (Leno, Chapter 561, Statutes of 2012). Defines participating in gag clauses regarding settlements as unprofessional conduct.
- **Provision 7** - Implemented by Senate Bill 305 (Lieu, Chapter 516, Statutes of 2013). Defines sexual misconduct as unprofessional conduct.

COA Issue: COA continues to have concerns with the adoption of Provision 2 in its entirety because the Board and the Administrative Law Judge would no longer have discretion when determining if a licensee should be revoked for sexual misconduct.

If the Board chooses to fully implement Provision 2, COA requests that an amendment be added that would exempt a bona fide dating relationship between a licensee and their patient (See attached COA letter).

Staff Recommendation: It is recommended that the Board adopt Provision 2 in its entirety, as originally proposed, to offer maximum consumer protection, be in line with other health Boards within the Department of Consumer Affairs, and to follow the recommendations of the Committee (See attached letter from the Committee). While the Committee recommends to add the provision via regulation, because a portion of it was added in a new BPC Section – 3090.5, that is no longer possible. The provision would need to be added to BPC 3090.5. via legislation.

Attachments:

- 1) Proposed legislative language to complete implementation of Provision 2
- 2) SB 305 excerpt - SB 1111 Changes to Optometry Practice Act
- 3) Letter from California Optometric Association
- 4) Letter from Senate Business, Professions, and Economic Development Committee

**PROPOSED LANGUAGE
LEGISLATIVE CHANGE**

Added text is in underline and deleted text in in ~~strikerough~~.

3090.5.

The board may revoke a license issued to a licensee upon a decision, made in a proceeding as provided in Section 3092, that contains a finding of fact of either of the following:

- (a) The licensee has engaged in an act of sexual abuse, misconduct, or relations with a patient, as described in paragraph (2) of subdivision (m) of Section 3110.
- (b) The licensee has been convicted of a crime described in paragraph (3) of subdivision (m) of Section 3110.

The decision shall not contain an order staying the revocation of the license.

SEC. 12.

Section 3010.5 of the Business and Professions Code is amended to read:

3010.5.

(a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, ~~2014~~, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~, 2018, deletes or extends that date. ~~The Notwithstanding any other law, the~~ repeal of this section renders the board subject to ~~the~~ review ~~required by Division 1.2 (commencing with Section 473).~~ *by the appropriate policy committees of the Legislature.*

SEC. 13.

Section 3014.6 of the Business and Professions Code is amended to read:

3014.6.

(a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, ~~2014~~, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~, 2018, deletes or extends that date.

SEC. 14.

Section 3046 of the Business and Professions Code is amended to read:

3046.

In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examinations for licensure, ~~and~~ not have met any of the grounds for denial established in Section ~~480~~- 480, *and not be currently*

required to register as a sex offender pursuant to Section 290 of the Penal Code. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 15.

Section 3056 of the Business and Professions Code is amended to read:

3056.

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

- (1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.
- (2) Is currently licensed in another state.
- (3) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five continuous years.
- (4) Has attained, at an accredited California school or college of optometry, the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.
- (5) Has successfully passed the board's jurisprudence examination.
- (6) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.
- (7) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.
- (8) Has met the requirements of Section 3041.3 regarding the use of therapeutic pharmaceutical agents under subdivision (e) of Section 3041.
- (9) Has never had his or her license to practice optometry revoked or suspended.
- (10) (A) Is not subject to denial 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.
- (11) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.
- (12) Files an application on a form prescribed by the board.

(b) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(c) The term “in good standing,” as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person’s professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 16.

Section 3057 of the Business and Professions Code is amended to read:

3057.

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

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Submits proof that he or she has been in active practice in a state in which he or she is licensed for a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of his or her application under this section.

(5) 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.

(6) Has furnished a signed release allowing the disclosure of information from the Healthcare Integrity and Protection Data Bank 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) Has never had his or her license to practice optometry revoked or suspended.

(8) (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.

(9) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(10) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(11) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(12) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(13) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(14) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical exam or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board is authorized to do both of the following:

(1) Approve an application where the person's time in active practice is less than that specified in paragraph (4) of subdivision (a), if a sufficient period in active practice can be verified by the board and all other requirements of subdivision (a) are satisfied by the person.

(2) Reduce or waive the fees required by paragraph (13) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 17.

Section 3090.5 is added to the Business and Professions Code, to read:

3090.5.

The board may revoke a license issued to a licensee upon a decision, made in a proceeding as provided in Section 3092, that contains a finding of fact of either of the following:

(a) The licensee has engaged in an act of sexual abuse, misconduct, or relations with a patient, as described in paragraph (2) of subdivision (m) of Section 3110.

(b) The licensee has been convicted of a crime described in paragraph (3) of subdivision (m) of Section 3110.

SEC. 18.

Section 3110 of the Business and Professions Code is amended to read:

3110.

The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that licensee provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that currently requires the person to register as a sex offender pursuant to Section 290 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

- (o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.
- (p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.
- (q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.
- (r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.
- (s) The practice of optometry without a valid, unrevoked, unexpired license.
- (t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.
- (u) Permitting another person to use the licensee's optometry license for any purpose.
- (v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.
- (w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.
- (x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.
- (y) Failure to refer a patient to an appropriate physician in either of the following circumstances:
 - (1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.
 - (2) As required by subdivision (c) of Section 3041.



California Optometric Association

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October 22, 2013

Andrea Leiva, Policy Analyst
California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
andrea.leiva@dca.ca.gov

VIA E-MAIL

**RE: Comment Letter on SB 1111 Regulations Pertaining to Department of Consumer Affairs
Consumer Protection Enforcement Initiative**

Dear Ms. Leiva:

The California Optometric Association (COA) would like to extend our appreciation for the opportunity to comment on the above-cited possible regulations, which seek to streamline the California State Board of Optometry's (SBO) enforcement and disciplinary process. The COA strongly supports the intent of the regulations, which we believe is to increase patient safety; however, we continue to have concerns with provision #2 relating to the revocation of a licensee's license for sexual misconduct.

Under provision #2, the SBO and an Administrative Law Judge will no longer have discretion when determining if a license should be revoked for sexual misconduct. We believe that current law, which allows for a discretionary review of facts, is sufficient. Each misconduct case should be viewed independent from the other cases, and the specific facts of each case should be weighed by the SBO and the judge in order to determine the most appropriate punishment. Therefore, the provision is unnecessary. Should the SBO choose to implement provision #2, the COA requests that an amendment be added that would exempt a bona fide dating relationship between a licensee and their patient, similar to the gift exemption afforded elected officials. See Regulations of the Fair Political Practices Commission, Title 2, Division 6, Section 18942(a)(17)(A). Specifically, we would request the following language be added to the regulation:

"This section shall not apply to a licensee who is in a bona fide dating relationship with a patient during the time the act of sexual contact occurred".

We respectfully ask that SBO consider the impact that this proposal will have on the practice of optometry, as we believe that the proposal is unnecessary. While we understand the intent, and the need for patient safety, we believe the current authority given to the SBO is sufficient, and additional regulations are not the solution.

As always, we appreciate your consideration of our views. Please don't hesitate to call if we can provide additional information to support our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Redman".

Dave Redman, OD
Chair, COA Legislation & Regulation Committee

"Setting the standard in eyecare"

Letter from Senate Business, Professions, and Economic
Development Committee to be provided
at the meeting.

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To: Board Members

Date: November 1, 2013

From: Krista Eklund
Office Technician

Telephone: (916) 575-7170

Subject: **Agenda Item 4 – Approval of Board Meeting Minutes**

A. August 16, 2013



STATE BOARD OF OPTOMETRY
 2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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Friday, August 16, 2013

DRAFT

**Department of Consumer Affairs
 1625 North Market Boulevard, First Floor Hearing Room
 Sacramento, CA 95834**

<u>Members Present</u>	<u>Staff Present</u>
Alejandro Arredondo, O.D, Board President	Mona Maggio, Executive Officer
Alexander Kim, MBA, Board Secretary, Public Member	Andrea Leiva, Policy Analyst
Donna Burke, Public Member	Jessica Sieferman, Enforcement Lead
Madhu Chawla, O.D, Professional Member	Cheree Kimball, Enforcement Analyst
Fred Dubick, O.D, MBA, FAAO, Professional Member	Brad Garding, Enforcement Technician
Glenn Kawaguchi, O.D, Professional Member	Lydia Bracco, Enforcement Analyst
William Kysella, Jr., Public Member	Rob Stephanopoulos, Enforcement Analyst
Kenneth Lawenda, O.D., Professional Member	Jeff Robinson, Licensing Analyst
Bruce Givner, Public Member	Michael Santiago, Senior Legal Counsel
<u>Excused Absence</u>	<u>Guest List</u>
Monica Johnson, JD, Vice President, Public Member	On File

9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Board President, Alejandro (Alex) Arredondo, O.D. called roll and a quorum was established. The meeting was called to order at 9:06 a.m.

2. Welcome – President’s Report

Dr. Arredondo reported on the following:

A. Association of Regulatory Board of Optometry (ARBO) Annual Meeting June 23-25, 2013

Executive Officer, Mona Maggio attended the ARBO Annual Meeting, which she explained, was the first time she was able to attend one of ARBOs meetings. Ms. Maggio stated that she found the meeting to be inspirational, educational, and a great opportunity to network with other administrators of boards of optometry, and meet with optometrists throughout the United States. Educational sessions included continuing education, laws and regulations, scope of practice expansions, and state reports from each state and provinces in Canada, belonging to ARBO.

B. Full Accreditation of Western University of Health Sciences, College of Optometry

Dr. Arredondo congratulated the Western University of Health Sciences, College of Optometry for receiving their full accreditation.

C. *Department of Consumer Affairs (DCA)*

Dr. Arredondo introduced and welcomed Deputy Director of Board and Bureau Relations, Christine J. Lally. Ms. Lally was appointed as Deputy Director of Board and Bureau Relations in June 2013. She has served as Assistant Secretary of Communications and Legislation for the California Technology Agencies since 2011. Additionally, Ms. Lally served as Deputy Secretary of Legislative Affairs at the California State and Consumer Services Agency in 2011.

Ms. Lally expressed appreciation for the opportunity to attend the meeting, and the opportunity to become a resource for the various DCA boards and bureaus. She explained her function as liaison between the DCA board/bureau Executive Officers and Members. Additionally, she works closely with the Governor's Office on appointments and policies pertaining to boards and bureaus.

3. **Continuing Education (CE)**

A. ***Presentation from the Association of Regulatory Boards of Optometry (ARBO), Optometric Education (OE) Tracker Program, Benefits for Licensees and Member Boards***

ARBO Program Coordinator, Sierra Rice, and OE TRACKER Committee Chair from Tennessee, Dr. Richard Orgain provided a presentation on the OE Tracker and the benefits it provides to licensing boards and licensees. Dr. Orgain is a practicing optometrist in Hendersonville, Tennessee as well as a member of multiple optometric societies. Ms. Rice has been serving as the Program Coordinator for ARBO for two years. She is responsible for the implementation of the OE tracker by state boards of optometry, CE providers, licensed optometrists, and for uploading CE attendance data submitted by CE providers.

Ms. Rice reported that the OE Tracker system electronically captures, verifies, and stores CE attendance data to benefit licensing boards, optometrists, and CE providers. As of August 2013, the OE Tracker has 46,421 registered, active optometrists, for which 45,457 have some CE data in their accounts. In California, 6,237 licensees are registered with OE Tracker, for which 5,389 have some CE data in their accounts. The value of the OE Tracker system for licensing boards is provision of an easy and quick method of auditing 100% of licensees. The value for optometrists is the ability to check CE in their account 24/7 and keep track of hours accumulated in each state, as well as the requirements for each state. The OE Tracker provides general and detailed types of reports/transcripts.

Dr. Orgain demonstrated how his CE would be managed by the OE Tracker according to optometry laws and regulations of Tennessee.

Professional Member, Dr. Kenneth (Ken) Lawenda asked and Dr. Orgain and Ms. Rice responded that currently 15 states utilize the OE Tracker in some aspect. Also, the OE Tracker provides access to uploaded CE data from state to state where an optometrist is licensed.

Dr. Arredondo inquired and Ms. Rice clarified that CE courses which are 'Counsel of Optometric Practitioner Education' (COPE) approved are already categorized. For non-COPE approved courses, the CE provider is contacted to determine which category the course falls under.

Licensing Analyst, Jeff Robinson stated that if he and OE Tracker were unable to categorize a course, he would forward the course to the CE Committee for acceptance or denial.

Public Member, Donna Burke questioned and it was explained that usually, a licensee knows which category a CE course belongs in prior to taking a course. Dr. Orgain added that for COPE-approved courses, an outline of the course is provided prior to registration.

Enforcement Lead, Jessica Sieferman asked and Dr. Orgain responded that optometrists with a revoked or suspended license may utilize the OE Tracker system as well. The OE Tracker is a database that keeps track of education regardless of status of practice (i.e. retired, some form of suspension).

Professional Member, Dr. Fred Dubick inquired and Dr. Orgain explained how non-COPE approved courses are accepted or rejected. Non-COPE approved courses must fit into a category that COPE already has. If it does not fit into one of COPE's categories, it falls upon the state board to determine whether or not the course meets that board's criteria.

Ms. Rice concluded the presentation with an explanation that OE Tracker reports are customizable. Custom reports can be created, from the general reports. Also a website handbook is available with "how to" assistance on using the application. Whatever makes auditing and verification easier for each board is what ARBO aims to provide through the OE Tracker database.

B. Discussion and Possible Action to Amend California Code of Regulations Section 1536 to Include Medical Coursework as Acceptable CE for Optometrists

Mr. Robinson reported on this action item. Board staff is requesting that Board Members allow the CE Committee to re-examine California Code of Regulations (CCR) section 1536(e) and grant them the opportunity to discuss possible amendments to the regulation before a full Board at a later time.

Over the years staff has received numerous inquiries from its licensed optometrists seeking answers as to why the American Medical Association's (AMA) Continuing Medical Education (CME) courses are not given the same recognition by the Board as are the American Optometric Association (AOA), the American Academy of Optometry (AAO), the Optometric Extension Program (OEP), or the Association of Regulatory Boards of Optometry's (ARBO) Council on Optometric Practitioner Education (COPE).

They contend that many of the AMAs courses are greatly beneficial to optometrists. They seek these courses out primarily, because many of the courses the Board approves, or COPE approves, tend to be a repeat of something previously taken, and they desire to take something new.

California-licensed optometrists often attend these and other courses that could contribute to the advancement of professional skill and knowledge in the practice of optometry but are unable to receive CE credit for completing them because the provider has not been approved as meeting the required standards of the Board which may change in the future if California Senate Bill (SB) 492 (Hernandez), the act to amend Business and Professions Code sections 3041, 3041.1, and 3110, is passed and becomes law.

The AMA accredits their own courses and is not interested in submitting their courses for COPE approval. Consequently, although the Board might wish to approve and give credit for many of these CME courses, it cannot do so because of the limitations in section 1536(e).

Because the AMA is not interested in forwarding individual course information to the Board, for Board approval, staff is proposing that the CE Committee examine this further and decide if the Board should give blanket approval for AMA ophthalmological courses, as is done with COPE approved courses.

Dr. Arredondo inquired and Policy Analyst, Andrea Leiva clarified, that the Board has authority to make the changes through regulation, and it does not need to go through the Legislature.

Dr. Arredondo opened the floor for questions.

Ms. Burke inquired of Mr. Robinson about the reference of SB 492 which the DCA is in opposition of. Mr. Robinson responded that staff has received word that SB 492 will probably be “put on a shelf” for a year, but that it is not over yet.

Dr. Dubick does not see any reason why the CE Committee cannot take a look at this and bring some full recommendations back to the Board in the future. Dr. Arredondo agreed.

Public Member, William (Bill) Kysella expressed his one concern that the Committee focus on AMA courses that relate specifically to optometry practice. Dr. Arredondo responded that this is where the CE Committee would sort out what courses are relevant and which are not.

Ms. Leiva announced that Dr. Pam Miller, O.D. requested this item be placed on the agenda and that she is present to comment on the issue.

Dr. Miller introduced herself. She has a solo practice in Southern California, and she was a member of this Board for nine years when the issue of mandatory education first came about. Dr. Miller believes the issue of expansion of practice needs to be addressed before laws become effective. She stated that as optometry expands its scope of practice, and as this Board looks at extending the licensure and educational requirements, it is incumbent upon this Board to address these issues prior to laws being changed. Optometrists are becoming much more responsible for the overall care of their patients. She urges this Board to use this opportunity proactively and take a much more aggressive stance in terms of continuing education before SB 492 becomes law. Dr. Miller is happy to assist the Board on this issue.

Dr. Lawenda stated that he does not see any problems with education being offered to ophthalmologists or physicians with regards to areas of treatment, and he inquired what the concern might be and why the Board would be resistant in approving CME courses.

Mr. Kysella reiterated his one concern that there exist AMA certified courses not relevant to the practice of optometry, therefore having blanket approval of AMA certified courses may not be appropriate.

Public Member, Alexander Kim expressed his belief that this is a great issue for the CE Committee to consider. Anything which expands the role of optometrists and increases partnership with other healthcare providers assists in making health care more affordable.

Donna Burke moved to send the Discussion and Possible Action to Amend California Code of Regulations Section 1536 to Include Medical Coursework as Acceptable CE for Optometrists to the Continuing Education Committee. Madhu Chawla seconded. The Board voted unanimously (8-0) to pass the motion.

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

C. Discussion and Possible Action to Approve Request for CE Extension/Exemption Form

Mr. Robinson provided an overview of this discussion.

When an optometrist licensee has had difficulty in meeting their CE requirement due to an unforeseen circumstance, it has been Board staff’s practice to allow the licensee to submit a letter requesting an extension or exemption from the requirement as is allowed in CCR section 1536(i)(1-3). Board staff has come to the conclusion that the completion and submission of a form might best serve, and help streamline the process, as well as enable staff to keep a better record of those who are granted extensions or exemptions. Board staff relied upon examples of other board’s forms for creation ideas for two forms (one for the licensee requesting extension or exemption and one for the health practitioner). Mr. Robinson provided copies of the two forms for Board member review.

Dr. Arredondo opened the floor for comments regarding the forms.

Ms. Burke, Mr. Robinson, and Ms. Maggio discussed the purpose of the forms, the criteria for determination and the method of obtaining determining information. Ms. Burke would like to see criteria established for consistency in the event the Board is ever challenged.

Fred Dubick moved to approve the use of the forms staff development and allow staff to move forward with making the process more efficient. Glenn Kawaguchi seconded. The Board voted unanimously (8-0) to pass the motion.

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

FULL BOARD CLOSED SESSION

- 4. Pursuant to Government Code Section 11126(e) the Board Will Meet in Closed Session for Discussion and Possible Action on – Nat’l Ass’n of Optometrists & Opticians v. Harris, 133 S. Ct. 1241 (2013) Pending Litigation.**

The Board met in closed session for discussion and possible action on Nat’l Ass’n of Optometrists & Opticians v. Harris, 133 S. Ct. 1241 (2013).

FULL BOARD OPEN SESSION

The Board reconvened into open session. Dr. Arredondo called roll and a quorum was established.

- 5. Approval of Board Meeting Minutes**

A. May 10, 2013

There were only two edits made to the minutes. Alexander Kim requested that his full name be used in the minutes. Dr. Arredondo clarified that he was also at the Southern California College of Optometry’s graduation.

Ken Lawenda moved to approve as amended the May 10, 2013 minutes. Bill Kysella seconded. The Board voted unanimously (8-0) to pass the motion.

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

6. **Executive Officer’s Report**

A. **Budget Report** – Wilbert Rumbaoa, Department of Consumer Affairs (DCA) Budget Office

Budget Analyst, Wilbert Rumbaoa, and Budget Manager, Cynthia Dines presented an overview of the 2013/2014 Budget Report.

The Board’s budget for fiscal year (FY) 2012-2013 was \$1,693,603. The year-end report reveals expenditures as of June 30, 2012 as \$1,433,044, or 85% of the budget. The fiscal year end surplus is \$213,803 or 12.6%. The analysis of the Board’s fund condition reveals 7.8 months reserve in FY 2012-13 and 7.3 months in FY 2013-14.

The Board’s budget for fiscal year 2013-2014 is \$1,841,000. Estimated revenue is 1.8 million dollars as well. This amount will change slightly based on directive from the Governor, budget letters and adjustments to the budget.

Ms. Dines reported on the Board’s Analysis of Fund Condition. The fund appears to be balanced. Revenues are slightly less than expenditures which may change in the future (i.e., budget change proposals, etc.).

Dr. Lawenda requested Ms. Dines update the Board on the \$1 million dollar General Fund repayment which is still outstanding. Ms. Dines responded that when loans are given to the General Fund, a “scheduled” repayment plan does not occur. However, if a board’s funds begin to decrease, and/or the board is not able to fund its mandated activities, the department requests repayment of the loan. She stated that there has not been a problem with receiving repayment when needed.

Dr. Arredondo inquired and Ms. Dines explained that the Department of Finance (which is the Governor’s financial advisor) implements the policies. The money is actually held in the General Fund with interest. When the loan is repaid, the interest is paid as well.

Dr. Arredondo opened the floor to further questions and there were none.

B. **Examination Development Overview** – Bob Holmgren, Office of Professional Examination Services

Supervising Personnel Selection Consultant of the Office of Professional Examination Services (OPES), Bob Holmgren, Ph.D. reported on the OPES examination development process. OPES is the “in-house” DCA licensure examination group. They develop the optometry California Laws and Regulations Examination (CLRE) as well as a number of other exams for various boards and bureaus in DCA.

Mr. Holmgren provided the Members with packets of background material summarizing what they do. OPES performs all aspects of the examination validation process, including occupational analyses, examination development, test scoring and statistical analyses, and audits. OPES follows the highest technical and professional standards in the industry and is committed to ensuring that examinations for licensure are psychometrically sound, job-related, and legally defensible.

OPES provides oversight for DCA's master contract for computer-based testing administration, and a Quality Assurance Program to ensure that the computer-based testing vendor is providing the level of examination security to meet contract requirements.

Dr. Lawenda asked and Mr. Holmgren explained that the CLRE specifically focuses on applicants and OPES is not involved in continuing education. Therefore, if someone already has a license and the laws and regulations change, the licensure exam would not address that issue.

Ms. Maggio added that new laws and regulations are posted on the Board's website, included in the newsletter and emailed via Mail Serve to everyone on the interested parties list.

Dr. Dubick questioned the rationale for the 180 day wait period for re-examination. Mr. Holmgren responded that although he's not completely certain of the answer, the primary concern of OPES is preventing overexposure of test questions. Multiple forms are created and each form contains a different sampling of test questions. The 180 day wait period is a common decision OPES makes to avoid applicants returning to take the same form with the same sampling. The 180 days period is also consistent with other boards and bureaus.

Mr. Kysella asked and Mr. Holmgren explained that although he does not have a breakdown (in figures) of graduates taking the exam for the first time versus repeat candidates, typically new grads study hard and do quite well on the exam. Another finding is that the more times an applicant retakes the exam, the more likely it is he or she fails the exam. However, they are fewer in number than those who pass.

BreEZe Overview and Status – Amy Cox O'Farrell, Deputy Director, DCA, Office of Information Services

Ms. Maggio introduced Deputy Director, Office of Information Services, Amy Cox-O'Farrell, and Chief Deputy Director, Awet Kidane.

Ms. O'Farrell became the Department's Chief Information Officer in February 2012. She oversees all of DCA's information technology (IT) and telecommunications services. She has been serving the state for more than 30 years and held numerous positions within DCA.

Mr. Kidane was appointed as Chief Deputy Director in January 2012. He oversees the internal operations of the Department. Prior to his appointment with DCA, Mr. Kidane served in various positions in the state Legislature, where he was a chief of staff, a senior advisor, and a consultant.

Ms. O'Farrell and Mr. Kidane presented an overview (and status) of the BreEZe program.

Mr. Kidane reported that BreEZe is one of the most important and successful IT projects DCA has seen thus far. In addition to Chief Deputy Director, Mr. Kidane is also Executive Sponsor of this project.

BreEZe is an enterprise licensing and enforcement tracking system. The goal is for BreEZe to provide all DCA organizations with an enterprise system that supports all applicant tracking, licensing, renewal,

enforcement, monitoring, cashiering, and data management capabilities. The project was attempted in years past and was unsuccessful for various reasons. DCA is working with Accenture to design, configure, and implement BreEZe which will replace the Department's current Consumer Affairs System (CAS). Mr. Kidane believes that BreEZe will cut down on backlogs and streamline all processes. He spoke about the project going live and estimated implementation date, cost of the system, designing and testing the system, the boards involvement in the process with subject matter experts (SMEs) and full disclosure, transparent communication.

Mr. Kidane opened the floor to questions and concerns from the Board.

Mr. Kysella asked and Mr. Kidane responded that a CE tracker will be included in the BreEZe system if a board communicates need of it.

Dr. Arredondo questioned the cost. Mr. Kidane explained that DCA's boards too variable in size and demands for a figure to be estimated. He assured the Board that the exact cost will be provided, as it becomes known, and it will not be an overwhelming, unexpectedly huge figure.

Ms. Burke inquired and Mr. Kidane stated that although pulling staff away to work on BreEZe has impacted board's other goals and objectives, staff has delivered. He believes staff recognized that not investing the time right now, would drastically increase the cost down the road, as someone who is not knowledgeable of their board would be making design decisions on their behalf.

Ms. Maggio announced for the Board that optometry staff is very involved in the BreEZe process. Most everyone in the office participates at some level. Some staff are SMEs who assist with Release 1 projects. All staff is performing various data clean-up projects in preparation to ensure that only the most current and accurate data is transferred over to the new system.

Ms. O'Farrell added some comments about the fiscal impact of BreEZe on the Analysis of Fund Condition. She explained that the augmentation of Program Expenditures for state operations in the current FY and in FY 2015-16 includes money necessary to fund the BreEZe project. These figures represent the project based on first approval of the project (2011 Special Project Report). A current report should be approved in the next few months. This first report assumes that BreEZe has been up and running and that by now expenditures are being recovered (paid back). Therefore the figures in the upcoming report will probably be lower than those in this initial report. The report funding will be adjusted as soon as the control agencies approve the new project report.

C. ***Enforcement Program and Consumer Protection Initiative*** – Michael Gomez, DCA, Deputy Director, Division of Investigation and Enforcement Programs

Ms. Maggio introduced Deputy Director of DCA Division of Investigation and Enforcement Programs, Michael Gomez.

Mr. Gomez was appointed in October 2012 to oversee DCA's enforcement activities. Formerly, Mr. Gomez worked as Bureau Chief with the Commission on Peace Officer Standards and Training and has more than 30 years' worth of law enforcement experience. He also served as Vice Mayor of Dixon, California and was Chief of DCA's Division of Investigation from 1995 to 2004.

Mr. Gomez provided an overview of the Enforcement Program and Consumer Protection Enforcement Initiative (CPEI).

Mr. Gomez reported that prior to 2010, DCA received media attention regarding the backlog and delays of complaints and investigations. Additionally, there was criticism regarding the fact that certain practitioners were still treating patients. Although, the complaints had not been completely

investigated, it was public perception that the complaints were of such an egregious nature that the department should have taken actions to suspend these practitioners from seeing patients during the course of the investigations.

DCA responded by exploring strategies for resolving these issues which resulted in the CPEI. This initiative created the Best Practices policy measures for healing arts boards, and quarterly performance measures. A budget change proposal (BCP) established positions throughout the healing arts boards.

At the time CPEI was developed, the Division of Investigation (DOI) had open cases well beyond two years. CPEI identified case complexity models for determining which cases should be investigated at the board level and which should be referred to DOI for formal investigation. Additionally, CPEI monitors intake, investigation, and adjudication cycle times for each board and bureau throughout DCA.

Dr. Lawenda questioned and Mr. Gomez explained that SB 304 which in an effort of enforcement reform moves all enforcement staff investigating Medical Board practitioners to the DOI, creates a separate unit with the division. Therefore, staff currently providing services to the Board of Optometry will not be impacted by these changes.

D. Enforcement Program – Statistics and Update

Enforcement Lead, Jessica Sieferman reported on the enforcement unit statistics.

The enforcement unit has long been aware of optometry students', applicants', and optometrists' reluctance to communicate with enforcement staff. So staff has been working on efforts to build communication with the licensees and applicants, and help them understand that enforcement is not here to go after licensees. The Enforcement Unit's primary mission is consumer protection and seeks to obtain compliance at the lowest level possible. The majority of cases received by the Board are closed without action after obtaining compliance and educating optometrists, referred to another agency, or closed because no violation is found.

On average, complaints that result in Disciplinary Action taken against a licensee consist of less than 3% of the total volume of complaints received each fiscal year. Further Disciplinary Actions resulting from allegations of Incompetence and/or Gross Negligence consist of less than 1% of the total volume of complaints received each fiscal year.

The Enforcement Unit encourages applicants and optometrists to contact staff to discuss their concerns, and is striving to correct the perception that the Board is "out to get optometrists".

Dr. Arredondo agreed with Ms. Sieferman regarding public perception and shared his own perception of enforcement prior to becoming a Board member.

Mr. Kysella inquired about the "Enforcement Statistical Overview" handout that was provided to the Members. His original interpretation was that during FY 2012/2013 there were no cases of sexual misconduct and just for unprofessional conduct. Ms. Sieferman clarified that this report is based upon how violations are coded. For example if an optometrist was convicted of sexual misconduct, it may have been coded as a conviction case rather than sexual misconduct.

Mr. Kysella requested that staff report on how cases are coded at the next meeting. Ms. Sieferman explained that it can be done but will take some time because there are 20 years of turnover of people coding things differently. Mr. Kysella clarified that he is interested 2009 to current.

Ms. Maggio added that three cases of sexual misconduct coded as conviction have been identified which staff will correct. Mr. Kysella and Ms. Sieferman discussed violation types.

E. Examination and Licensing Program – Statistics and Update

Ms. Sieferman reported that in the past, Board staff reported licensing statistics based on data obtained from reports created by the Board's Applicant Tracking System (ATS). After a concern was raised regarding the accuracy of the licensing statistics during the previous Board meeting, Board staff began researching probable causes for inconsistent data.

Board staff discovered multiple flaws in the ATS reports and the data from which it pulls. These flaws involve multiple people from different units entering inconsistent data since ATS' creation. In addition, the Fictitious Name Permits (FNPs) and Branch Office Licenses (BOLs) are issued only in the Consumer Affairs System (CAS), whereas the Optometric Licenses (OPTs) and Statement of Licensures (SOLs) are issued through ATS and transferred to CAS. Neither ATS nor CAS was designed to track cycle times for issuing a license.

In an attempt to present the most accurate statistics for the Members, Board staff has spent numerous weeks creating AdHoc Reports based on the date application and fees were received and when licenses were issued. Ms. Sieferman put parameters on reports to pull accurate data. The problem is that putting parameters on a report places reliance on the data being correct, which is not always the case.

Therefore, in order to ensure complete accuracy, as of July 1, 2013 Board staff is manually tracking all license applications. This is a very time consuming process but does ensure accuracy. Since July 1, the situation is resolved but it is 100% manually done. Hopefully this process will be alleviated with the implementation of BreZE.

Dr. Lawenda observed that the pending complaints have increased according to the Performance Measures. Ms. Sieferman clarified that not all of the pending complaints are from the same FY. Some have rolled over from previous fiscal years.

F. Strategic Planning Update

Ms. Maggio reported that on March 13, 2013, she and Ms. Leiva met with Shelly Menzel and Terrie Meduri with the DCA, SOLID Training Solutions to discuss the development of the Board Strategic Plan. It was agreed to create a strategic plan for the period of 2014 – 2018. A preliminary schedule of the Optometry Strategic Plan Schedule has been drafted and is attached. The Board session is scheduled for October 25, 2013.

7. Discussion and Possible Action on Regulations Affecting the Board of Optometry

A. SB 1111 Provisions are as follows:

- (1) Board delegation to the Executive Officer regarding stipulated settlements to revoke or surrender a license.
- (2) Revocation for sexual misconduct.
- (3) Denial of application for registered sex offender.
- (4) Confidentiality agreements regarding settlements (Gag Clauses).
- (5) Failure to provide documents and failure to comply with court order.
- (6) Psychological or medical evaluation of applicant.
- (7) Sexual misconduct
- (8) Failure to provide information or cooperate in an investigation.
- (9) Failure to report an arrest, conviction, etc.

Ms. Leiva provided an overview of the SB 1111 Provisions. At its May 10, 2013 meeting, the Board adopted provisions 5, 6, and 8, and rejected provision 1 as recommended by the SB 1111 Regulations Committee. The Board requested additional information on the nine provisions. Ms. Leiva requested

that the Board consider provisions 2, 3, 7, and 9 to determine which regulations to adopt. She informed the Board that they must then direct staff to begin the regulatory process for all approved provisions.

Mr. Kidane provided a brief background of SB 1111. He then urged the Board, on behalf of the Department, to approve all of these standards/provisions. He stated that although they are not in law, consumer protection is the Department's and the Board's mission. The Department strongly urges the Board to fully implement all of the requirements because it furthers transparency and consumer protection and is in the best interest of the consumer.

Mr. Gomez added that during his tenure in law enforcement, and protection of the public, he also served as an advisor to the executive officers and staff regarding enforcement tools they could and should provide to their board for decision making. Additionally, he explained there was a time when the Legislature was looking to create a Uniform Enforcement Act. The provisions of SB 1111 begin to create a small portion of best practices called uniform standards.

Dr. Arredondo reported that SB 1111 caused a lot of controversy at the Board's last meeting, and asked why SB 1111 did not pass during the legislative process. Mr. Gomez stated his belief that at the time SB 1111 was introduced to the Legislature the Uniform Enforcement Proposal was just too much to digest. However, a pattern of uniform standards exists now throughout the boards.

Mr. Kidane agreed. He stated that the fact of the Legislative proposal not making it into law, should not preclude the Board from adopting all of the standards. It is the right thing to do.

Dr. Arredondo questioned and Mr. Kidane explained that pursuant to guidelines set forth, this Board, uses certain guidelines and definitions to provide guidance to the Administrative Law Judge (ALJ) and the Deputy Attorney General (DAG) on how they prosecute.

Dr. Lawenda asked if by adopting provision 2 of the standards the Members would be unable to ever question the ALJ's judgment and be able to respond to the complainant. Mr. Kysella clarified that currently, a DAG goes before the ALJ and makes a recommendation that the Board members can either accept or reject. Adoption of proposal 2 requires the ALJ to revoke the license of someone convicted of sexual misconduct which may not be stayed. It removes discretion from both the ALJ and the Board.

Mr. Kysella made the argument that if some 18 year old (for example) became a registered sex offender for having relations with his/her high school sweetheart, and six years later he/she is married and decides he/she wants to become a professional health care provider, provision number 3 requires automatic denial of an application. There can be no discussion and no discretion. He made the point that this may be constitutionally inappropriate. Additionally, the system currently in place protects consumers without such extreme steps.

Mr. Kysella closed his argument by reading an excerpt from Frontiers Magazine, June 11, 2013 issue. The article states that an 18 year old Florida High School student (Catlin Hunt) was expelled and charged with a felony over her consensual relationship with a 15 year old classmate which began when Catlin was 17 years. The 15 year old's parents demanded Catlin be arrested and charged stating she made their daughter gay. In eight to ten years, if these proposals pass, the ALJ will have no right to give Catlin a license to practice optometry in California even if she becomes an exemplary student.

William Kysella moved to reject the SB 1111 proposed regulation changes to CCR 1575. Fred Dubick seconded. The Board voted unanimously (7-0) to pass the motion.

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

William Kysella moved to accept the committee's recommendation to not implement provision 3 of the SB 1111 provisions. Kenneth Lawenda seconded. The Board voted 6-Yes; 0-No; 1 Abstention to pass the motion.

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

William Kysella moved to accept the committee recommendation to reject provision 7 by striking through the proposed 1575.2 language. Alexander Kim seconded. The Board voted 5 – Aye; 1 – No; and 1 – Abstention to pass the motion.

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

Donna Burke moved to accept the committee recommendation to delete the language pertaining to arrests, add clarifying language that any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government of the United States military should be related to the practice of optometry, and discuss with the Board if the language pertaining to misdemeanors should be kept in the regulation. Fred Dubick seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Dr. Lawenda	X		
Dr. Chawla	X		
Mrs. Burke	X		

Mr. Kysella	X		
Dr. Dubick	X		

B. Fees for Retired License Statuses

Ms. Leiva provided an update on the fees for retired license statuses. At its December 14, 2012 meeting, the Board voted to initiate a rulemaking to establish the retired license status fees. The rulemaking action was printed in the California Regulatory Notice Register on March 1, 2013, and the 45-day comment period for the public started on March 1, 2013 and ended on April 15, 2013. The hearing was on the same date. No comments were received from the public. On May 10, 2013, the Board voted to continue with the rulemaking package. The package is currently being reviewed by the Department of Consumer Affairs. The Board has until May 1, 2014 to complete this rulemaking package.

8. Discussion and Possible Action to Approve Guidelines for Closing an Optometric Practice

Ms. Siefertman provided an update on this agenda item.

Over the past year, the Board of Optometry’s Enforcement Program has seen an increase in consumer complaints regarding optometrists closing their practice without any form of patient notification. Additionally, Board staff have received an increased number of phone calls from families of optometrist who have passed away and requested guidance on who can help facilitate patient care and record transfer.

While the Board has attempted to educate optometrist about this in the past, further outreach is needed. The law requires that medical records be accessible to patients, but it does not specifically address how that should be handled by an optometrist when a practice is closed.

To help address this issue, the Practice and Education Committee assisted staff in drafting language to be posted on our website, published in our newsletter and used in future outreach events. The Committee Members did not believe new legislation was required, as the Enforcement Program has successfully taken action against optometrists who have abandoned their practice.

Kenneth Lawenda moved to accept the Committee recommendations. Donna Burke seconded. The Board voted unanimously (7-0) to pass the motion.

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

9. Discussion and Possible Action to Approve the Board’s Probation Monitoring Plan

Ms. Siefertman provided an update on this agenda item.

Part of the “Worksite Monitor” condition in the Board’s new Disciplinary Guidelines (for non-substance abusing licensees) requires the Board to propose a worksite monitoring plan. The worksite monitor can either agree with the proposed plan or submit a revised worksite monitoring plan for Board approval.

On March 8, 2013 and July 12, 2013, the Practice and Education Committee Members provided assistance in drafting the Plan. The Plan was drafted using the previous Probation Monitoring Guidelines, comments from the Committee and documents from the Medical Board.

William Kysella moved to accept implementation of the monitor plan as directed by the Committee. Alexander Kim seconded. The Board voted unanimously (7-0) to pass the motion.

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

10. Discussion and Possible Action on Legislation Affecting the Board of Optometry

Ms. Leiva reported on the following bills:

- A. **Assembly Bill 186 (Maienschein) Professions and vocations: military spouses: temporary licenses**
Status: Two-year bill.
Recommended Position: Watch

- B. **Assembly Bill 213 (Logue) Licensure and Certification requirements: military experience**
Status: Two-year bill.
Recommended Position: Watch

- C. **Assembly Bill 258 (Chavez) State agencies: veterans**
Status: Third reading in Senate Appropriations Committee.
Staff Comments: Adding the question to the Board’s forms will not be a significant workload or cost.
Recommended Position: Watch

- D. **Assembly Bill 480 (Calderon) Service contracts**
Status: Third reading in Senate Appropriations Committee.
Staff Comments: Last year, a similar bill, AB 1926 (Solorio), was held in the Senate Appropriations Committee suspense file and died.
Recommended Position: Watch

- E. **Assembly Bill 512 (Rendon) Healing arts: Licensure exemption**
Status: Passed Senate and ordered to Assembly for concurrence.
Staff Comments: The Board has implemented the regulations; effective April 15, 2013.
Recommended Position: Watch

- F. **Assembly Bill 1057 (Medina) Professions and vocations: licenses: military service**
Status: Third reading in Senate Appropriations Committee.
Staff Comments: Costs would be minor and absorbable within existing resources to implement this bill. This bill accommodates for BreEZe, which is a huge consideration for the Board.

- G. **Senate Bill 305 (Price) Healing arts: boards: optometry board sunset bill**
Status: The Board has submitted its report and had its hearing.
Staff Comments: The next step is for the Board to make a motion to draft and send a letter to the Governor supporting the bill and requesting his signature.
Recommended Position: Continue support of this bill.

Madhu Chawla moved to direct staff to draft and send a letter to the Governor supporting SB 305 and requesting his signature. Donna Burke seconded. The Board voted unanimously (7-0) to pass the motion.

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

H. Senate Bill 430 (Wright) Pupil health: vision appraisal: binocular function

Status: Assembly Health Committee. Hearing date – August 13, 2013.

Staff Comments: With the Board's approval, a letter with a position of "oppose unless amended" was sent to the author. The Board recommended that the bill be amended to require comprehensive eye examinations, not just vision appraisals with an added binocular function test. The author made the amendments recommended by the Board and the Board's position was changed to "support."

Recommended Position: Continued support.

I. Senate Bill 492 (Hernandez) Optometrist: practice; licensure

Status: Two-year bill.

Staff Comments: With the Board's approval, a letter with a position of "support if amended" was sent to the author on July 29, 2013, DCA opposed the May 8, 2013 version of this bill.

Recommended Position: Watch. Because this is a two-year bill and will not be heard again until this time next year, it is best to watch the bill. This bill will probably be amended again as the author works with stakeholders to determine how to best expand the scope of optometrists. The Board is one of those stakeholders and will continue to provide input and participate in the process.

J. Senate Bill 723 (Correa) Veterans

Status: Assembly Appropriations suspense file. The suspense file is a holding place for bills which carry appropriations over \$50,000 or more.

Staff Comments: This bill will most likely be implemented by DCA and the Board will assist.

Recommended Position: Watch.

K. Senate Bill 724 (Emmerson) Liability: charitable vision screenings

This bill was approved by the Governor on July 11, 2013. It will become effective January 1, 2014.

Summary: Provides qualified immunity from liability for damage or injury to a nonprofit charitable organization that provides vision screenings and, if applicable, donated or recycled glasses, as well as participating licensed optometrists, ophthalmologists, or trained volunteers who work with such non-profit charitable organizations to provide charitable vision screenings under appropriate conditions.

L. Senate Bill 809 (DeSaulneir & Steinberg) Controlled substances: reporting

Status: Assembly Business, Professions, and Consumer Protection Committee. Hearing date - August 13, 2013.

Staff Comments: Optometrists that are Therapeutic Pharmaceutical Agents (TPA) certified are permitted to prescribe codeine and hydrocodone with compounds, a schedule III drug, for a maximum of three days for specified conditions. If a TPA certified optometrist chooses to prescribe codeine and hydrocodone, then they must obtain a Drug Enforcement Agency (DEA) registration. To gain access

to the Controlled Substance Utilization Review and Evaluation System (CURES) database, an optometrist must have a DEA registration. At this time, the Board does not have a tracking mechanism to determine which TPA certified optometrists have DEA registrations. As a result, all TPA certified optometrists will be affected by the CURES fee attached to optometrist renewal fees. As of May 2013, that is a total of 6, 877 licensees. The bill does permit the health boards to determine if the proposed fee of \$6 should be lowered if it is found that a lower fee will provide sufficient monies to fund CURES.

Recommended Position: Support.

M. Senate Bill 829 (Senate BP & CP Committee) Healing Arts: Omnibus

Status: Assembly Appropriations Committee.

Staff Comments: This proposal was submitted by the Board earlier this year and was deemed non-Controversial, one of the criteria to be included in the omnibus bill.

Recommended Position: Continue support and direct staff to draft and send a letter to the Governor requesting his signature.

Madhu Chawla moved to direct staff to draft and send a letter to the Governor supporting SB 829 and requesting his signature. Donna Burke seconded. The Board voted unanimously (7-0) to pass the motion.

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

11. 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)]

Dr. Arredondo opened the floor to public comment. There were no comments.

12. Suggestions for Future Agenda Items

Dr. Arredondo opened the floor to suggestions for future agenda items.

Dr. Arredondo restated his concern about the Los Angeles School District’s eye exams. Not much is known about how the Los Angeles schools are performing their eye examinations which makes Dr. Arredondo uncomfortable. He suggested future discussion regarding this concern.

Dr. Chawla suggested a discussion regarding possibly extending the allowable hours of online CE for glaucoma certified optometrists.

Ms. Burke requested a future report from Ms. Siefertman on the National Practitioners Data Bank data merge.

Dr. Arredondo sought clarification and Ms. Leiva confirmed that the Practice and Education and the CE Committees have been merged. Dr. Arredondo announced Dr. Lawenda’s interest in serving on this

Committee and suggested placing this as an item on the next agenda.

13. Petitions for Reduction of Early Termination of Probation

- A. Dr. Susanne Anderson, O.D., OPT 6613
- B. Dr. Jeffery Hall, O.D., OPT 6242

FULL BOARD CLOSED SESSION

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

Pursuant to Government Code Section 11126(c)(3), the Board met in Closed Session for discussion and possible action on disciplinary matter.

FULL BOARD OPEN SESSION

15. Adjournment

Fred Dubick moved to adjourn the meeting. Donna Burke seconded. The Board voted unanimously (7-0) to pass the motion.

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

The meeting was adjourned.

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

To: Board Members

Date: November 1, 2013

From: Jessica Sieferman
Enforcement Lead

Telephone: (916) 575-7170

Subject: Agenda Item 5. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation

Dr. James Stuart Herzman, O.D. (Petitioner) was issued Optometrist License Number 10935 by the Board on September 2, 1997. On January 27, 2005, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on a prohibited relationship between an Optometrist and a Registered Dispensing Optician (RDO), and falsely representing facts in the application and securing of a Fictitious Name Permit. On March 10, 2006, Petitioner's license was revoked, the revocation was stayed and was placed on three (3) years probation, subject to certain terms and conditions. Effective May 26, 2006, Petitioner's probation tolled because he has been practicing in Nevada which is outside the Board's jurisdiction. Petitioner's probation remains tolling.

The Petitioner is requesting the Board to grant his Petition for Reduction of Penalty and Early Termination of Probation.

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

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of Stipulated Settlement and Disciplinary Order, Accusation
3. Certification of Licensure



AHN

Board of Optometry

2420 Del Paso Road, Suite 255
 Sacramento, CA 95834
 (916) 575-7170/(866) 585-2666
www.optometry.ca.gov



Jessica Sieferman

Fax
 916-575-7292

**PETITION FOR REDUCTION OF PENALTY
 OR EARLY TERMINATION OF PROBATION**

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST) (MIDDLE) (LAST)			CERTIFICATE OF REGISTRATION NO.	
James Stuart Herzman			10935-T	
2. ADDRESS (NUMBER) (STREET)			DATE OF BIRTH	
10490 Laurelwood Dr			01/21/1969	
(CITY) (STATE) (ZIP CODE)			TELEPHONE	
Truckee CA 96161			(530) 550-1533	
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5'8" 150 Blue Blond				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
U. C. Berkeley School of Optometry				
ADDRESS (NUMBER) (STREET)				
380 Minor Hall				
(CITY) (STATE) (ZIP CODE)				
Berkeley CA 94720				
5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
NV	343-t	05/01/99	02/28/14	Current

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
Carson City, NV	02/01/13	08/29/13	Optometry
Carson City, NV	02/02/10	08/29/13	Ophthalmology
Reno, Nv	04/01/12	02/01/13	Optometry

- 7. Are you or have you ever been addicted to the use of narcotics or alcohol? YES NO
- 8. Are you or have you ever suffered from a contagious disease? YES NO
- 9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? YES NO
- 10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) YES NO
- 11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) YES NO
- 12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? YES NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

- 13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.
- 14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.
- 15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.
- 16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.
- 17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.
- 18. List all optometric literature you have studied during the last year.
- 19. List all continuing education courses you have completed since your license was disciplined.
- 20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 8.29.13 Signature *Juan R.*

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

13. Please see attached Stipulated Settlement, agency case #2004-79. Disciplinary action was taken against my license on March 10, 2006 and was to run until March 10, 2009. This action included five causes for discipline which are:

1. Prohibited arrangement between an Optometrist and Registered Dispensing Optician.
2. False Statement in Respondents Application for Fictitious Name Permit.
3. Unprofessional Conduct: False representation of Facts.
4. Unprofessional Conduct: Accepting Employment by Improper Person.
5. Fraud in Securing Permit.

The time period for which the accusations occurred was from January 1998 until April 1999 (not 2002, I can provide documentation to help support time line if desired). I do have a letter from the Deputy Attorney General which states "Any settlement will incorporate language changing the "end date" of your clients association with Harbor Optometry to "April, 1999." I would like to firmly establish these dates as I will explain in discussing why I feel my license should be restored. Also please note that although I believe the language was corrected, in section 4 of my accusation it states "On or about June 26, 1986, the board issued Fictitious Name Permit Number 2458 to Respondent Herzman.....". Obviously this would have been impossible since I did not graduate Optometry School until May, 1997.

I would like to point out that although there are five causes for discipline, they can really be lumped into two causes (the 1st and 4th cause relate to accepting employment by improper person and 2nd, 3rd, and 5th clause deal with false representation of facts in regards to the Fictitious name permit.).

14. I respectfully request that my license be fully restored and the disciplinary action be dismissed for the following reasons:

1. Rehabilitation regardless of Probation/ Irrelevant to the Manner in which I practice Optometry.

In reading previous decisions of the Board it is my opinion that the chief function of any disciplinary action is to be sure that a Doctor does not pose a risk to his patients and has learned from his mistakes. I have never in California had any complaints related to patient care. I have now practiced for 14 years in Nevada and have never had a complaint in regards to patient care or been subject to any other disciplinary actions. My experience in this manner has taught me a great deal about business and law as it pertains to the practice of Optometry. Like all professionals I have learned and matured in 14 years and especially in the first 5 years after optometry school. As proof of this I would like to point to a business opportunity I examined in 2002. I was looking for an opportunity in my home town, but did not have the financial ability to start cold. I was introduced to an optician who had an established optical, and we decided to look at a side by side arrangement. In short, after exploring the idea for a year, and retaining legal council (Craig Steinberg) I determined that there would be no way to proceed in a legal and ethical manner and therefore did not. Please note that this was full 2 years before I was contacted by the DOI investigator. The actions on my part which resulted in this complaint are from 1999 and are not consistent with how I currently conduct myself professionally.

2. Length of time since original accusations has occurred.

It has now been 14 years since the date from which the original accusations have occurred. My probation was set run from March 2006 until March, 2009 but due to tolling I have been unable to serve it (see #3). I feel that 14 years since my original accusation and 7 years after my probation was to start has provided ample time for rehabilitation (see 1 above) and punishment (see #4 below). I respectfully ask the Board to take this into consideration and to consider as I have previously mentioned that I have matured professionally.

3. Impossibility of me to reasonably serve my probation.

In my stipulated settlement, and in contacts with enforcement officers, it has been stated that I cannot serve my probation while practicing outside of the State of California. I had requested (via my lawyer) during our original negotiations for the stipulated settlement that I be allowed to serve my probation while practicing outside of the state and this request was denied. Therefore I have been unable to serve probation while practicing out of state.

I have also been informed that I have to notify any potential employer of my probationary status and have to give them a copy of my Stipulated Settlement. This has effectively made it prohibitive to find fill in work in California as Doctors obviously do not want to hire persons on probation.

Furthermore, I currently (and for the last 14 years) reside in Truckee, CA. The nearest large markets for practice opportunities is Reno, NV. I have practiced in Reno and Carson City NV for the last 14 years without incident. The nearest large towns in California where I could potentially practice would either be Auburn or Grass Valley, CA. These are both more than a 1 hour drive over Donner Summit (which receives lots of snow in the winter). In looking at previous Petitions for Reduction in Penalties, there appears to be a minimum time requirement "24 hours per week for 6 consecutive months". I am assuming that to fully satisfy my probation, I would have to maintain this employment in a California Market for the entire three years. This would put hardship on me financially and on my family as I would have to rent a house in a different market and spend at least three nights a week away from my home and family.

Also, as practical matter, it would most likely be impossible to find a employment opportunity as a) no Doctor is usually willing to hire an Optometrist on Probation, b) even if a Doctor was willing to, I would not be able to get on insurance panels to see patients and c) even if I found a commercial sublease, they also require you to be on certain insurance panels which are impossible to get on while on probation.

4. Inability to be on insurance panels and/or work in Nevada/ Indefinite probation.

I am currently an independent contractor for an Ophthalmologic Group in Carson City NV. I have recently been rejected by two insurances companies (Tri Care and St Mary's). Both have stated that this is due to the probation on my California license, even though I am practicing in Nevada. I have contacted both insurance companies they have informed me the only way I can become a member of their panels is to have my probation lifted in California. I also assume that if I started or joined a commercial or private practice in Nevada I would run in to the same problems. I understand that that the reason for any disciplinary action is to be sure that a Doctor does not pose a risk to his patients, has learned from his mistakes and has been properly punished for any mistakes he or she have made . However, I do not believe it is the desire or intent of the board to permanently and indefinitely restrict some one's ability to practice to their fullest potential and affect the ability of a person to make a living. With my current probation I have been restricted from joining certain medical panels and have had my earning potential reduced. As written this has effectively put me on an indefinite and not servable probation which I believe is not the intent of the board.

5. Disciplinary action was from my first job out of optometry school.

The original accusation stems from my very first job in Optometry. As I am sure members of the Board who do not have previous business backgrounds have found, your understanding of the practice and business of optometry (or other professions) grows exponentially during your first 5 years of practice. I fully understand that ignorance of the law is not a defense and in no way suggest that this in any way excuses my actions. Also, I do fully understand the serious results and consequences of my actions. There has never been any intent or malice in my actions. In

making their decision I ask that the Board take into consideration these actions occurred as a result of naivety and lack of proper understanding on my part

6. Disciplinary action was result of my full cooperation with the Board/DOI.

I ask that the Board take into consideration that my disciplinary action was the result of my full cooperation with DOI's investigation. In 2004, Nickie Bach from the DOI contacted me and stated she was investigating a case of fraudulent billing using my license number by Harbor Optometry and Dr. Smith. Obviously this deeply concerned me and I wanted to cooperate fully and I agreed to meet with her. We met on June 2nd 2004 and I gave her my full cooperation. I want to point out that before we met, I did ask her about contacting a lawyer and she assured me a lawyer was not needed as this investigation was about Harbor Optometry and Dr. Smith, not about me. When we met, I again asked her about having a lawyer present, she informed me that a lawyer was not needed as these questions were about Harbor Optometry and Dr. Smith, and that this information could not be used against me and that by law she would have to inform me if this information could be used against me. Obviously this was a false hood. I did address these concerns with my lawyer in negotiating my stipulated settlement. However, my understanding as per my lawyer is that DOI investigators are not subject to the same disclosure requirements as peace officers. I would like to point this out not to justify any of my actions, but to show I fully cooperated with DOI investigator Ms. Bach and the Board in their investigation fraudulent billing by Harbor Optometry and Dr. Smith.

7. Able to have income in retirement.

As stated in section 4 this stipulated settlement has put me effectively on an indefinite probation. In the future as retirement approaches I would like to have the flexibility to provide fill in coverage for Doctors in California. As I have stated previously this is effectively impossible. If my license were returned to full status, I would be able to provide fill in/vacation and better provide for my retirement.

8. Remorse over actions and punishment even with stayed probation.

I fully and completely understand the consequences and serious nature of the accusations and nature of my disciplinary action. I have now been dealing with my mistake and lack of judgment since 2004. The countless hours of sleep lost, hours of dealing with rejections from insurance companies, meetings with my lawyer and investigators, \$4300 in legal fees, loss of work days from being unable to get on insurance panels and remorse over my actions weighing on me during these past 9 years have all acted as forms of punishment, even in the staying of my probation.

In closing, words cannot express how truly sorry I am that a lack of judgment on my part. I have made a great mistake which I wish I could go back and undo. In making their decision, I hope

the Board will consider that is my truest desire to put this incident behind me, and that by lifting my probation the board will allow me to move forward and serve the field of Optometry to my fullest capacity in a productive, ethical, and legal manner.

Pertinent History of Case

I have written this to further expand on answers for question 14 above and provide a basis for why I feel my probation should be dismissed. I graduated Optometry School in May 1997 and began looking for jobs in fall 1997. Sometime during the fall I was contacted by Felix Schrayber of Harbor Optometry (which served low income recent immigrants of Russia and other minorities) and had a subsequent interview. During the interview Mr. Schrayber informed me that due to health reasons they need an optometrist to work at Harbor. He also led me to believe he was conducting the interview for the current Doctor (I believe the Doctors name was Mario Carcomo). I was paid by an account in the name of Dr. Carcomo and thus believed I was working for another optometrist. To the best of my knowledge this did not come up when the DOI investigator contacted me and hence is not in the original complaint. It was later (3-6 months) that Mr. Schrayber informed me the Doctor whom I believed I was working for would not be returning. It was at this time that I entered the "verbal shared space agreement" per item 19 in my accusation. To the best of my knowledge **at the time** I was still within the rules set by the California Board of Optometry.

I would like to address several items in #20 of my accusation which states "As Herzman became more knowledgeable about the running an optometry business, it seemed the Schrayber's were running it (Harbor Optometry) more then he was. As a result, Herzman began looking for a new practice. Herzman eventually found a new practice, however *he continued to work at Harbor Optometry* while he was waiting for his new practice to be built." First, I had been looking for jobs in the Reno/Truckee area before this as it was my desire to move there. Second, my understanding **at the time** was that even though the Schrayber's were running it more, I was still within the laws of the Board, but that in future a potential conflict might arise. Third, Ms. Bach seemed to put great emphasis on "*he continued to work at Harbor*". This seems to indicate that there was an intent or malice on my part. **To the best of my knowledge at the time** I was within the laws. Second, I had been hired by Lake Tahoe Eye Care and was waiting on them; I was not waiting on an office I was building. My time line for leaving was based on a start date determined by Lake Tahoe Eye Care, not me. Third, as I had just graduated I was faced with significant student loan repayments and therefore needed income. And lastly, I did not want to abandon my patients, most of who were receiving long overdue eye care and were deeply grateful.

As I have stated previously this was first job out of optometry school. I do not have a business background and 1 semester of practice management did not leave me fully prepared for business aspect of optometry. I am fully aware ignorance of the law is no excuse. I do not offer this information as an excuse. Rather, as I stated in answers to question 14, I would like to point out my actions were the result of naivety and lack of judgment on my part, not intent and malice. I now fully understand (and have understood since my second job in 1999) that the proper course of action would have been to contact the Board of Optometry and/or legal counsel when any potential questions or conflicts arise.

15. Work History Since Disciplinary Action.

January, 2010- Present

Center for Advanced Eye Care-Doctor in Ophthalmology Setting. Optometrist in a group setting (2 Ophthalmologist, 2 Optometrist). Provide all types of Ophthalmologic/Optometric care including Cataract, Glaucoma, Diabetic, Refractive Surgery, Macular Degeneration and emergency care.

Center For Advanced Eye Care
1104 N. Division St.
Carson City, NV, 89703
775-882-9123

February 2013- Present

Pritchett Eye Care -- Doctor for a multi Doctor five-location practice. Office provided general eye exams and emergency treatment. Provided experience in a private practice setting and how a successful multi practice office runs.

Pritchett Eye Care
5961 Los Altos Pkwy Ste #101
Reno, NV 89436
775-359-2020

April 2012 --February 2013

Dr. James Herzman/Primary lease holder Wal Mart- Primary doctor and leaseholder at Walmart in Reno. Responsible for management of doctor's office, employees and billing insurance. Office provides general eye exams and limited emergency treatment.

250 Vista Knoll Pkwy
Reno, NV, 89506

September 2011-January 2013

Hemmer Eye Care LLC- Doctor for Hemmer Eye Care LLC in Carson City, NV. Office provides general eye exams and limited emergency treatment.

3200 Market St.
Carson City, NV, 89706
775-885-0200

September 2009- October 2010

Hemmer Eye Care LLC- Doctor for Hemmer Eye Care LLC in Reno. Office provides general eye exams and limited emergency treatment.

5164 Meadowood Mall Cir Ste F
Reno, NV, 89502
775-885-0200

September 2008 – December 2009

Dr. James Herzman-Primary doctor and leaseholder adjacent to Jens Optical House in Minden NV. Responsible for management of doctor's office, employees and billing insurance. Office provides general eye exams and limited emergency treatment.

1687 Hwy 395 Ste 2A
Minden, NV 89423
775-783-8866

August 2007- September 2008

Dr. James Herzman-Eyemasters- Primary doctor and leaseholder at Eyemasters in Reno. Responsible for management of doctor's office, employees and billing insurance. Office provides general eye exams and limited emergency treatment.

Dr. James Herzman
5164 Meadowood Mall Cir Ste F
Reno, NV, 89502
775-829-0400

October 2006-July 2007

Pritchett Eye Care – Doctor for a multi Doctor five-location practice. Office provided general eye exams and emergency treatment. Provided experience in a private practice setting and how a successful multi practice office runs.

Pritchett Eye Care
5961 Los Altos Pkwy Ste #101
Reno, NV 89436
775-359-2020

March 2002 – October 2006

Dr. James Herzman-Sears- Primary doctor and leaseholder at Sears in Reno. Responsible for management of doctor's office, employees and billing insurance. Office provides general eye exams and limited emergency treatment.

Dr. James Herzman
5400 Meadowood Mall Cir.
Reno, NV, 89502
775-829-0400

May 2001 – Sept 2002

Dr. James Herzman- Sole Practitioner in a private practice purchased from Gail Galantoumini. Responsible for all aspects of business management as well as providing general eyeglass and contact lens exams.

No Longer in business, no current address.

April, 1999- May 2001

Lake Tahoe Eye Care- Primary Doctor as an employee in a new high volume commercial setting. Helped to open and build large patient base. Responsible for limited management of doctors office and staff. Provide general glass and contact lens exams. Also provide limited walk in emergency treatment.

No longer in Business, no current address.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

Unfortunately due to the tolling of my probation while practicing out of state I have been unable to start and/or complete any of the disciplinary actions in my stipulated statement. However, as previously stated even before I had this disciplinary action I have learned the importance of retaining legal counsel to help clarify laws when any business related questions arise.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your licensed was disciplined.

None currently. Probation tolled while practicing out of state.

18. List all optometric literature you have studied during the last year.

Optometry Times

Review of Optometry

Review of Ophthalmology

Contact Lens Spectrum

Optometric Management

West Coast Retina-Case of the Month

Eye On OCT by Carl Zeiss

19. List all continuing education courses you have completed since you license was disciplined.

Date	CE hours	Course
------	----------	--------

Aaron J. Hemmer, OD
Hemmer Eye Care, LLC
3200 Market Street
Carson City, NV 89706

October 16, 2013

Jessica Sieferman, Enforcement Lead
California State Board of Optometry
2450 Del Paso Rd., Suite 105
Sacramento, CA 95834

Re: Dr. James S. Herzman, Optometrist

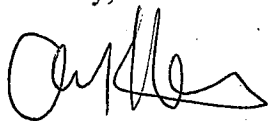
To whom it may concern,

Dr. Jim Herzman has asked me to communicate with you, on his behalf, in regards to his upcoming California State Board of Optometry hearing. I understand Dr. Herzman's California optometry license is in a probationary status.

Dr. Herzman worked as an optometrist in my practice on a weekly basis during 2011 and 2012. My staff and I, and most importantly our patients, had an overwhelmingly positive experience with Dr. Herzman. Dr. Herzman's honest and caring approach to the practice of optometry has led me to believe that he holds his patient's best interest above all other considerations. I am unable to recall a single situation in which Dr. Herzman conducted himself in any manner worthy of having his license under probation.

It is my recommendation that the probation placed on Dr. Herzman's California optometry license be removed.

Sincerely,



Aaron J. Hemmer, OD

Melanie A. Hemmer, OD MS
Hemmer Eye Care, LLC
3200 Market Street
Carson City, NV 89706

October 16, 2013

Jessica Sieferman, Enforcement Lead
California State Board of Optometry
2450 Del Paso Rd., Suite 105
Sacramento, CA 95834

Re: Dr. James S. Herzman, Optometrist

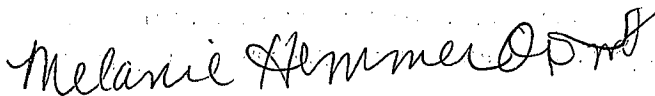
To whom it may concern,

I am writing this letter in support of terminating Dr. Herzman's probation. I have had the pleasure of knowing Dr. Herzman both professionally and personally for over five years. During this time he has always conducted himself in a professional manner. He has always maintained a high level of ethics in dealing with coworkers, employees, and patients. He has also maintained a high level of care for his patients and has excellent relationships with co-managing doctors.

A few years ago, I took over as the optometrist at a retail location where Dr. Herzman held the lease. He was extremely helpful and professional with the transition. He later returned to work there as my partner part-time. He was always very easy to work with for me, my staff, and our patients. He handled signing leases, contracts, and other business matters with integrity.

Although I have since left that location, I remain in contact with Dr. Herzman. I would not hesitate to recommend him to colleagues and/or patients as a great optometrist and person.

Sincerely,



Melanie Hemmer, OD MS

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


In the Matter of the Accusation Against:)	Agency Case No. 2004 79
)	
JAMES STEWART HERZMAN, O.D.)	OAH No.
10141 West River Street)	
Truckee, CA 96161)	
)	
Respondent.)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Optometry as its Decision in the above-entitled matter.

This Decision shall become effective March 10, 2006.

It is so ORDERED February 9, 2006


EDWARD P. HERNANDEZ, O. D.
PRESIDENT
BOARD OF OPTOMETRY

1 BILL LOCKYER, Attorney General
of the State of California
2 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-7859
6 Facsimile: (916) 327-8643

7 Attorneys for Complainant

8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2004-79

11 JAMES STUART HERZMAN
12 10141 West River Street
13 Truckee, California 96161

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Certificate of Registration No. 10935

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19
20 PARTIES

21 1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
22 Optometry. She brought this action solely in her official capacity and is represented in this
23 matter by Bill Lockyer, Attorney General of the State of California, by Kent D. Harris, Deputy
24 Attorney General.

25 2. Respondent James Stuart Herzman (Respondent) is represented in this
26 proceeding by attorney Hal Taylor, Esq., whose address is 557 Washington Street, Lower Level,
27 Reno, Nevada 89503.
28

1 paragraph are made by respondent herein for purposes of this stipulation, for any other
2 disciplinary proceedings by the Board, or their successors, and for any petition under
3 Government Code section 11522, or application for licensure, and shall be inadmissible and have
4 no force or effect in any other case or proceeding. In the event this settlement is not adopted by
5 the Board, the stipulations will not become effective and may not be used for any purpose.

6 9. Respondent agrees that his Optometrist License is subject to discipline and
7 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
8 Order below."

9 RESERVATION / AMENDMENT OF ACCUSATION

10 10. The stipulations made by Respondent herein are only for the purposes of
11 this proceeding, or any other proceedings in which the State Board of Optometry is involved, and
12 shall not be admissible in any other criminal or civil proceeding.

13 11. The stipulations made by Respondent herein are made with the specific
14 understanding that the accusation attached hereto is amended as follows:

15 A. On page 2, line 12 of the accusation, the date of June 26, 1986 is
16 changed to March 20, 1998;

17 B. On page 8 line 22, of the accusation the date of June 26, 1986 is
18 stricken;

19 C. On page 7, line 6, of the accusation the date of December 12, 2002 is
20 changed to April, 1999;

21 D. On page 7, line 17, of the accusation the date of December 12, 2002 is
22 changed to April 1999;

23 CONTINGENCY

24 11. This stipulation shall be subject to approval by the State Board of
25 Optometry. Respondent understands and agrees that counsel for Complainant and the staff of
26 the State Board of Optometry may communicate directly with the Board regarding this
27 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
28 signing the stipulation, Respondent understands and agrees that he may not withdraw his

1 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
2 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
3 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
4 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
5 further action by having considered this matter.

6 12. The parties understand and agree that facsimile copies of this Stipulated
7 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
8 force and effect as the originals.

9 13. In consideration of the foregoing admissions and stipulations, the parties
10 agree that the Board may, without further notice or formal proceeding, issue and enter the
11 following Disciplinary Order:

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Certificate of Registration No. 10935 issued to
14 Respondent James Stuart Herzman is revoked. However, the revocation is stayed and
15 Respondent is placed on probation for three (3) years on the following terms and conditions.

16 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws,
17 and all rules governing the practice of optometry in California.

18 2. **Cooperate with Probation Surveillance.** Respondent shall comply with
19 the board's probation surveillance program; including but not limited to allowing access to the
20 probationer's optometric practice(s) and patient records upon request of the board or its agent.

21 3. **Tolling of Probation If Respondent Moves Out-of-State.** The period of
22 probation shall not run during the time Respondent is residing or practicing outside the
23 jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of
24 California to reside or practice elsewhere, Respondent is required to immediately notify the board
25 in writing of the date of departure, and the date of return, if any.

26 4. **Completion of Probation.** Upon successful completion of probation,
27 Respondent's certificate will be fully restored.

28

1 5. **Violation of Probation.** If Respondent violates probation in any respect,
2 the board, after giving Respondent notice and opportunity to be heard, may revoke probation and
3 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
4 filed against Respondent during probation, the board shall have continuing jurisdiction until the
5 matter is final, and the period of probation shall be extended until the matter is final.

6 6. **Education Course.** Within 90 days of the effective date of this decision,
7 and on an annual basis thereafter, Respondent shall submit to the board for its prior approval an
8 educational program or course to be designated by the board, which shall not be less than 40
9 hours per year, for each year of probation. This program shall be in addition to the Continuing
10 Optometric Education requirements for re-licensure, and shall be obtained with all costs being
11 paid by Respondent. Following the completion of each course, the board or its designee may
12 administer an examination to test Respondent's knowledge of the course. Respondent shall
13 provide written proof of attendance in such course or courses as are approved by the board.

14 Respondent may submit for approval and complete the education course at any
15 time after the effective date of this decision, even if he continues to reside in Nevada, and the
16 term of probation is tolled. The Board will accept successful completion of this condition prior
17 to respondent returning to practice in California.

18 7. **Reexamination.** Within 60 days of the effective date of this decision, or
19 within some other time as prescribed in writing by the board, Respondent shall take and pass an
20 oral or written exam, in a subject to be designated and administered by the board or its designee.
21 If Respondent fails this examination, Respondent must take and pass a re-examination as
22 approved by the board. The waiting period between repeat examinations shall be at six month
23 intervals until success is achieved. The Respondent shall pay the cost of any such examination.
24 If Respondent fails the first examination, Respondent shall cease the practice of optometry
25 until the re-examination has been successfully passed, as evidenced by written notice to
26 Respondent from the board. Failure to pass the required examination no later than 100 days
27 prior to the termination date of probation shall constitute a violation of probation.

28

1 Respondent may complete this condition at any time after the effective date of this
2 decision, even if he continues to reside in Nevada, and the term of probation is tolled. The Board
3 will accept successful completion of this condition prior to respondent returning to practice in
4 California.

5 8. **Restriction as to Branch Offices.** During the period of probation, the
6 Respondent shall be restricted as to the number and location of branch offices which the
7 Respondent may operate or in which the Respondent may have any proprietary interest as
8 designated and approved in writing by the board.

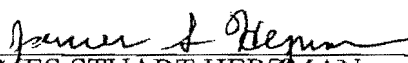
9 9. **Cost Recovery.** Respondent shall reimburse the Board for its reasonable
10 costs of investigation and prosecution of this matter in the amount of \$5891.12. Said amount
11 shall be paid no later than six (6) months prior to the end of probation. Said amount may be paid
12 in payments or as a lump sum.

13 Respondent may complete this condition at any time after the effective date of this
14 decision, even if he continues to reside in Nevada, and the term of probation is tolled. The Board
15 will accept successful completion of this condition prior to respondent returning to practice in
16 California.

17
18 ACCEPTANCE

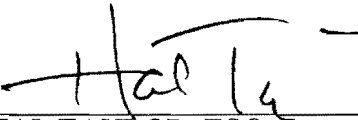
19 I have carefully read the above Stipulated Settlement and Disciplinary Order and
20 have fully discussed it with my attorney, Hal Taylor, Esq.. I understand the stipulation and the
21 effect it will have on my Certificate of Registration. I enter into this Stipulated Settlement and
22 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
23 Decision and Order of the State Board of Optometry.

24 DATED: 10.20.05.

25
26 
27 JAMES STUART HERZMAN
Respondent

1 I have read and fully discussed with Respondent James Stuart Herzman the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: 10/20/05

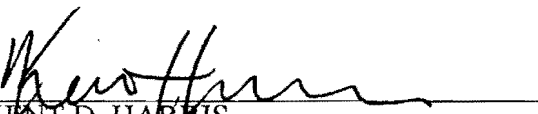
5
6 
7 HAL TAYLOR, ESQ.
8 Attorney for Respondent

9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the State Board of Optometry of the Department of Consumer
12 Affairs.

13
14 DATED: 12/16/05

15 BILL LOCKYER, Attorney General
16 of the State of California

17 
18 KENT D. HARRIS
19 Deputy Attorney General

20 Attorneys for Complainant

21 DOJ Docket/Matter ID Number: 03581110SA2005100240
22 Herzman stipulation.wpd

23
24
25
26
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28

Accusation No. 2004-79

Exhibit A

1 BILL LOCKYER, Attorney General
of the State of California
2 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-7859
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7
8
9 **BEFORE THE**
10 **STATE BOARD OF OPTOMETRY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2004 79 (Herzman)
2002 237 (Smith)

13 JAMES STUART HERZMAN, O.D.
10141 West River Street
14 Truckee, California 96161

A C C U S A T I O N

15 Certificate of Registration to Practice Optometry No. 10935

16 and

17 BARRY MAURICE SMITH, O.D.
809 Harbor Boulevard
18 West Sacramento, California 95691
-and-
19 9748 E. Lompoc Avenue
Mesa, Arizona 85212

20 Certificate of Registration to Practice Optometry No. 6556

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

25 1. Taryn Smith ("Complainant") brings this Accusation solely in her official
26 capacity as the Executive Officer of the State Board of Optometry ("Board"), Department of
27 Consumer Affairs.

28 ///

1 **Respondent Herzman**

2 2. On or about September 2, 1997, the Board issued Certificate of
3 Registration to Practice Optometry Number 10935 to James Stuart Herzman, O.D. ("Respondent
4 Herzman"). The certificate of registration to practice optometry was in full force and effect at all
5 times relevant to the charges brought herein and will expire on January 31, 2005, unless renewed.

6 3. On or about February 10, 1998, the Board received an Application for a
7 Fictitious Name Permit from Respondent Herzman. On or about February 1, 1998, Respondent
8 certified under penalty of perjury that all statements made on the application were true and
9 correct and that the optometric practice conducted at 809 Harbor Boulevard, West Sacramento,
10 California (hereinafter "809 Harbor Boulevard"), was "wholly owned and entirely controlled by"
11 Respondent.

12 4. On or about June 26, 1986, the Board issued Fictitious Name Permit
13 Number 2458 to Respondent Herzman authorizing the use of the fictitious name, "Harbor
14 Optometry", in conjunction with the optometric practice located at 809 Harbor Boulevard. The
15 fictitious name permit was canceled on or about December 18, 2002.

16 **Respondent Smith**

17 5. On or about September 11, 1978, the Board issued Certificate of
18 Registration to Practice Optometry Number 6556 to Barry Maurice Smith, O.D. ("Respondent
19 Smith"). The certificate of registration to practice optometry expired on December 31, 2004.

20 6. On or about October 9, 2002, the Board received an Application for a
21 Fictitious Name Permit from Respondent Smith. On or about October 7, 2002, Respondent
22 certified under penalty of perjury that all statements made on the application were true and
23 correct and that the optometric practice conducted at 809 Harbor Boulevard was "wholly owned
24 and entirely controlled by" Respondent.

25 7. On or about December 18, 2002, the Board issued Fictitious Name Permit
26 Number 2875 to Respondent Smith authorizing the use of the fictitious name, "Harbor
27 Optometry", in conjunction with the optometric practice located at 809 Harbor Boulevard. The
28 fictitious name permit was canceled effective January 17, 2004.

1 STATUTORY PROVISIONS

2 8. Business and Professions Code ("Code") section 3090 states, in pertinent
3 part:

4 The certificate of registration of any person registered under this chapter,
5 or any former act relating to the practice of optometry, may be revoked or
suspended for a fixed period by the board for any of the following:

6 (a) Violating or attempting to violate, directly or indirectly, or assisting in
7 or abetting the violation of, or conspiring to violate, any provision of this chapter
8 or of the rules and regulations adopted by the board pursuant to this chapter and in
9 accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of
10 Division 3 of Title 2 of the Government Code. The proceedings under this article
11 shall be conducted in accordance with Chapter 5 (commencing with Section
12 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board
13 shall have all the powers granted therein.

14 (b) Unprofessional conduct . . .

15 9. Code section 118, subdivision (b), provides, in pertinent part, that the
16 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
17 action during the period within which the license may be renewed, restored, reissued or
18 reinstated.

19 10. Code section 652 states, in pertinent part:

20 Violation of this article (Bus. & Prof. Code § 650, et seq.) in the case of a
21 licensed person constitutes unprofessional conduct and grounds for suspension or
22 revocation of his or her license by the board by whom he or she is licensed, or if a
23 license has been issued in connection with a place of business, then for the
24 suspension or revocation of the place of business in connection with which the
25 violation occurs . . .

26 11. Code section 655 states, in pertinent part:

27 (a) No person licensed under Chapter 7 (commencing with Section 3000)
28 of this division may have any membership, proprietary interest, coownership,
landlord-tenant relationship, or any profit-sharing arrangement in any form,
directly or indirectly, with any person licensed under Chapter 5.5 (commencing
with Section 2550) of this division.

Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

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12. Code section 3095 states:

The securing of a certificate of registration as an optometrist or of any other license or permit issued by the board by willfully given false information or a willfully made false statement, in a material regard on any application to the board, or by fraud or deceit practiced upon the board constitutes a cause to revoke or suspend the certificate of registration or the other license or permit.

13. Code section 3096.6 states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct. Section 3120 shall not apply to this section.

14. Code section 3103 states:

Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms "accepting employment to practice optometry" as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a certificate under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

15. Code section 3126 states that it is unlawful to willfully make any false statement in a material regard in an application for an examination before the board or for a certificate of registration as an optometrist or any other license or permit issued by the board.

16. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///
///

1 **RESPONDENT HERZMAN**

2 **FACTUAL BACKGROUND**

3 17. On or about April 16, 2003, the Board received a complaint from Joy
4 Cornelison ("Cornelison"), Appeal and Hearing Coordinator for Vision Service Plan ("VSP").
5 Cornelison stated that from May 2000, through March 2001, Respondent Smith (hereinafter
6 "Smith") submitted claims on behalf of Harbor Optometry to VSP using the signature and tax
7 identification number of Respondent Herzman (hereinafter "Herzman"), and that the billings
8 were improper and false. The Board requested that the Division of Investigation ("DOI") of the
9 Department of Consumer Affairs investigate VSP's allegations.

10 18. DOI investigator Nickie Bach ("Bach") interviewed Herzman on June 2,
11 2004. Herzman admitted, in substance, the following:

12 19. In or about 1998, Herzman accepted a part-time position at Harbor
13 Optometry. Felix Shrayber, a registered dispensing optician¹, and his wife, Irina, a registered
14 dental assistant, ran Harbor Optometry. Herzman entered into a verbal "shared lease space
15 agreement" with the Shraybers. Herzman examined the clients, Felix Shrayber ordered and
16 dispensed glasses, and Irina Shrayber acted as the "office manager" and handled billings.
17 Herzman and the Shraybers were the only employees at Harbor Optometry. Herzman received
18 an income (in the form of checks) from the Shraybers based upon the examination fees. Irina
19 Shrayber completed all of the patients' claims and billing forms. Herzman signed the forms and
20 Irina would process them. When Herzman began working at Harbor Optometry, the client base
21 was already established by the Shraybers.

22 20. As Herzman became more knowledgeable about running an optometry
23 business, it seemed that the Shraybers were "running it (Harbor Optometry)" more than he was.
24 As a result, Herzman began looking for a new practice. Herzman eventually found a new

25

26

27 1. On or about April 15, 1988, the Registered Dispensing Optician Program, Department of Consumer
28 Affairs, issued Spectacle Lens Dispenser Registration Number 1660 and Contact Lens Dispenser Registration
Number 631 to Felix Shrayber. Both registrations are current and valid and will expire on February 28, 2007,
unless renewed.

1 practice; however, *he continued to work at Harbor Optometry* while he was waiting for his new
2 office to be built.

3 21. Bach showed Herzman copies of certain VSP claim forms that had been
4 submitted under his name (the claim forms were also submitted under the name, "Harbor Vision
5 Center, Inc."²) Herzman denied being affiliated with Harbor Optometry on the dates indicated
6 (September 2002). Herzman identified the "federal tax ID number" as his Social Security
7 Number but denied that the accompanying signatures were his. Herzman admitted that Felix
8 Shrayber may have assisted him in setting up a Harbor Optometry business account at Wells
9 Fargo Bank.

10 22. Bach obtained a copy of a letter dated December 12, 2002, that Herzman
11 wrote to the Board, notifying the Board that, "*effective immediately*", he was transferring his
12 interest in Harbor Optometry to Smith.

13 23. Bach interviewed Smith on June 26, 2004, and July 20, 2004. Smith
14 admitted, in substance, the following:

15 24. Smith worked at Harbor Optometry from January 2000, through January
16 18, 2004, providing eye exams. Smith worked for the Shraybers three to five days per week,
17 depending on the patient load. Smith examined approximately 15 to 20 patients per day, but on
18 "busy" days, he could examine up to 30 patients. Smith's salary was based on the number of
19 exams he provided. Felix Shrayber issued checks to Smith that were drawn on a Wells Fargo
20 account. The Shraybers were responsible for all of the billings and controlled the bank
21 accounts. Smith paid the Shraybers a "management fee."

22 ///

23 ///

24 ///

25 ///

26 ///

27 _____

28 2. Harbor Vision Center became incorporated on January 3, 2001. Irina Shrayber was designated as the president and registered agent of the corporation.

1 FIRST CAUSE FOR DISCIPLINE

2 (Prohibited Arrangement Between
3 Optometrist and Registered Dispensing Optician)

4 25. Respondent Herzman's certificate of registration to practice optometry is
5 subject to disciplinary action pursuant to Code section 652 in that Respondent violated Code
6 section 655, subdivision (a). In and between 1998 and December 12, 2002, Respondent, by his
7 own admission, had a membership, proprietary interest, coownership, landlord-tenant
8 relationship, or a profit-sharing arrangement with Felix Shrayber, a registered dispensing
9 optician, as follows:

10 a. In or about 1998, Respondent accepted a part-time position at an
11 optometric practice known as "Harbor Optometry" which was owned, managed, controlled
12 and/or operated by Felix Shrayber, a registered dispensing optician, and his wife, Irina, a
13 registered dental assistant.

14 b. In or about 1998, Respondent entered into a verbal "shared lease space
15 agreement" with Felix Shrayber, a registered dispensing optician, and his wife, Irina, a
16 registered dental assistant.

17 c. In and between 1998 and December 12, 2002, Respondent provided eye
18 examinations for the clients of Harbor Optometry and received an income from Felix Shrayber,
19 a registered dispensing optician, and his wife, Irina, a registered dental assistant, based upon the
20 examination fees (Respondent's checks were issued by the Shraybers).

21 SECOND CAUSE FOR DISCIPLINE

22 (False Statement in Respondent's Application for Fictitious Name Permit)

23 26. Respondent Herzman's certificate of registration to practice optometry is
24 subject to disciplinary action pursuant to Code section 3090, subdivision (a), in that on or about
25 February 1, 1998, Respondent violated Code section 3126. Respondent willfully made a false
26 statement in a material regard on his Application for a Fictitious Name Permit by certifying that
27 the optometric practice conducted at 809 Harbor Boulevard, West Sacramento, California was
28 "wholly owned and entirely controlled by" Respondent. In fact, the optometric practice known

1 as "Harbor Optometry" was owned, managed, controlled and/or operated by Felix Shrayber, a
2 registered dispensing optician, and his wife, Irina, a registered dental assistant, as more
3 particularly set forth in paragraph 25 above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: False Representation of Facts)**

6 27. Respondent Herzman's certificate of registration to practice optometry is
7 subject to disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional
8 conduct, as defined in Code section 3096.6. On or about February 1, 1998, Respondent
9 knowingly made or signed a document directly related to the practice of optometry that falsely
10 represented the existence or nonexistence of a state of facts, as set forth in paragraph 26 above.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct: Accepting Employment by Improper Person)**

13 28. Respondent Herzman's certificate of registration to practice optometry is
14 subject to disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional
15 conduct, as defined in Code section 3103. In or about 1998, Respondent directly or indirectly
16 accepted employment to practice optometry from Felix Shrayber, a registered dispensing
17 optician, and his wife, Irina, a registered dental assistant.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Fraud in Securing a Permit)**

20 29. Respondent Herzman's certificate of registration to practice optometry is
21 subject to disciplinary action pursuant to Code section 3090, subdivision (a), in that on or about
22 February 1, 1998, and June 26, 1986, Respondent violated Code section 3095. Respondent
23 secured Fictitious Name Permit Number 2458 from the Board authorizing the use of the
24 fictitious name, "Harbor Optometry", in conjunction with the optometric practice located at
25 809 Harbor Boulevard, West Sacramento, California, by willfully giving false information or
26 willfully making a false statement in a material regard on his Application for a Fictitious Name
27 Permit, as set forth in paragraph 26 above.

28 ///

1 SEVENTH CAUSE FOR DISCIPLINE

2 **(False Statement in Respondent's Application for Fictitious Name Permit)**

3 32. Respondent Smith's certificate of registration to practice optometry is
4 subject to disciplinary action pursuant to Code section 3090, subdivision (a), in that on or about
5 October 7, 2002, Respondent violated Code section 3126. Respondent willfully made a false
6 statement in a material regard on his Application for a Fictitious Name Permit by certifying that
7 the optometric practice conducted at 809 Harbor Boulevard, West Sacramento, California was
8 "wholly owned and entirely controlled by" Respondent. In fact, the optometric practice known
9 as "Harbor Optometry" was owned, managed, controlled and/or operated by Felix Shrayber, a
10 registered dispensing optician, and his wife, Irina, a registered dental assistant, as more
11 particularly set forth in paragraph 31 above.

12 EIGHTH CAUSE FOR DISCIPLINE

13 **(Unprofessional Conduct: False Representation of Facts)**

14 33. Respondent Smith's certificate of registration to practice optometry is
15 subject to disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional
16 conduct, as defined in Code section 3096.6. On or about October 7, 2002, Respondent
17 knowingly made or signed a document directly related to the practice of optometry that falsely
18 represented the existence or nonexistence of a state of facts, as set forth in paragraph 32 above.

19 NINTH CAUSE FOR DISCIPLINE

20 **(Unprofessional Conduct: Accepting Employment by Improper Person)**

21 34. Respondent Smith's certificate of registration to practice optometry is
22 subject to disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional
23 conduct, as defined in Code section 3103. In or about January 2000, Respondent directly or
24 indirectly accepted employment to practice optometry from Felix Shrayber, a registered
25 dispensing optician, and his wife, Irina, a registered dental assistant.

26 ///

27 ///

28 ///

1 TENTH CAUSE FOR DISCIPLINE

2 (Fraud in Securing a Permit)

3 35. Respondent Smith's certificate of registration to practice optometry is
4 subject to disciplinary action pursuant to Code section 3090, subdivision (a), in that on or about
5 October 7, 2002, and December 18, 2002, Respondent violated Code section 3095. Respondent
6 secured Fictitious Name Permit Number 2875 from the Board authorizing the use of the
7 fictitious name, "Harbor Optometry", in conjunction with the optometric practice located at
8 809 Harbor Boulevard, West Sacramento, California, by willfully giving false information or
9 willfully making a false statement in a material regard on his Application for a Fictitious Name
10 Permit, as set forth in paragraph 32 above.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the State Board of Optometry issue a decision:

- 14 1. Revoking or suspending Certificate of Registration to Practice Optometry
15 Number 10935, issued to James Stuart Herzman, O.D.;
- 16 2. Revoking or suspending Certificate of Registration to Practice Optometry
17 Number 6556, issued to Barry Maurice Smith, O.D.;
- 18 3. Ordering James Stuart Herzman, O.D. and/or Barry Maurice Smith, O.D.
19 to pay the State Board of Optometry the reasonable costs of the investigation and enforcement
20 of this case, pursuant to Business and Professions Code section 125.3;
- 21 4. Taking such other and further action as deemed necessary and proper.

22 DATED: 1/27/05

23
24 

25 TARYN SMITH
26 Executive Officer
27 State Board of Optometry
28 Department of Consumer Affairs
State of California
Complainant



STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 · F (916) 575-7292 www.optometry.ca.gov



CERTIFICATION

The undersigned, Mona Maggio hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the California State Board of Optometry (Board), and that in such capacity she has custody of the official records of the Board.

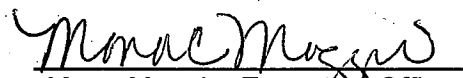
On this 8th day of October 2013, the Executive Officer examined said official records of the Board and found that **James Stuart Herzman** graduated from the University of California Berkeley in 1997, and is the holder of Certificate of Registration to Practice Optometry No. 10935, which was granted to him effective September 2, 1997. Said Certificate of Registration expired on January 31, 2011 and has not been renewed. The current address of record for said Certificate of Registration is 10490 Laurelwood Drive, Truckee, CA 96161.

Said records further reveal that on or about August 6, 1997, **James Stuart Herzman** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that, effective March 10, 2006, as the result of disciplinary action taken in Case number CC 2004-79, the Board revoked Certificate of Registration to Practice Optometry No. 10935. However, the revocation was stayed and the Certificate was placed on probation for a period of three (3) years.

Said records further reveal that, effective May 26, 2006, **James Stuart Herzman's** probation tolled because he was practicing in Nevada which is outside the Board's jurisdiction.
James Stuart Herzman's probation remains tolling.

Given under my hand and the seal of the California State Board of Optometry, at Sacramento, California, this 8th day of October 2013.


Mona Maggio, Executive Officer

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

To: Board Members

Date: November 1, 2013

From: Jessica Sieferman
Enforcement Lead

Telephone: (916) 575-7184

Subject: **Agenda Item 6 – 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.

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

To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 7 – Full Board Closed Session**

Pursuant to Government Code Section 11126(a)(1), the Board will meet in closed session to discuss the continued employment of the Executive Officer unless the Executive Officer exercises her right to have this agenda item heard in open session. If the matter is heard in open session, the Board may still meet in closed session to conduct its deliberations pursuant to Government Code section 11126(a)(4).

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

To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 8 – Full Board Closed Session**

If necessary, depending on the action of Agenda Item 7, the Board will meet in closed session pursuant to Government Code section 11126(a)(1) to discuss and take possible action regarding the appointment of an Acting or Interim Executive Officer.

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

To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 9 – Process for Selection of a New Executive Officer**

If necessary, depending on the action of Agenda Item 7.

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

To: Board Members

Date: November 1, 2013

From: Mona Maggio
Executive Officer

Telephone: (916) 575-7170

Subject: Agenda Item 10 – Executive Officer’s Report

A. Budget

The Board of Optometry (Board) is a Special Fund California state government agency, which means it supports its operations entirely through fees. The Board’s licensees pay renewal and application fees that fund operations, including complaint investigation, and licensing examination administration. Renewal fees represent the vast majority of revenue. Application fees and other forms of income (i.e., interest, fines, etc.) make up the remaining balance of the Board’s revenues. The Board does not receive any funds from the state General Fund (GF).

Although categorized as a Special Fund agency, the Board’s budget is incorporated into the Governor’s budget. Upon approval of the Governor’s budget, the Board is permitted to spend its funds. Any increase to the Board’s spending authority is requested through the Budget Change Proposal (BCP) process. BCPs are typically sought for additional staff, to increase in a position’s time base (half time to full time), or funding for a position that was established without funds or to increase spending authority for a special project such as an occupational analysis. BCP requests are prepared a year in advance.

The Board’s expenditures are attributed to three major categories: Personnel, Operating Expenses and Equipment (OE&E), and Enforcement. Personnel expenses include salaries and wages, employee benefits, and board member per diem. Operating Expenses and Equipment (OE&E) includes items such as supplies, postage, examination development, travel, and departmental pro rata (e.g. office rent, IT and data services). Enforcement expenses are comprised of costs associated with the formal disciplinary process and complaint investigations.

The Board’s budget for fiscal year 2012-2013 was \$1,433,044. The budget report reveals expenditures as of September 30, 2013 as \$478,881 or 51% of the budget. As of September 30, 2013 the surplus is \$157,208 or 8.5%. The analysis of the Board’s fund condition reveals 7.9 months reserve in FY 2012-13 and 6.8 months FY 2013-14.

The Board’s budget for fiscal year 2013-2014 is \$1,841,000. This amount is subject to change based on Governor’s directives, budget letters and adjustments to the budget. Because of the increase in rent, and the costs of the implementation of BreEZe, the Board will have to watch it’s spending very closely to ensure it does not overspend.

In response to California’s budget shortfalls, loans from special fund agencies to the GF have been part of the solution. In 2010/2011 the Board loaned the GF 1 million dollars. In order to be repaid, the Board would have to request repayment and show a need for the funds to be repaid.

Attachments

1. FY 2012-13 Expenditure Projection
2. Analysis of Fund Condition

B. Personnel

Mona Maggio, Executive Officer is on temporary medical leave. The Board will need to consider during closed session if an Acting or Interim Executive Officer is needed for the duration of Ms. Maggio's medical leave.

Andrea Leiva accepted a Staff Services Manager 1 position at the Bureau of Security and Investigative Services. She will be the Policy and Administration Manager at the Bureau. After almost five years of working at the Board, her final day is November 1, 2013. She will be available for a couple of weeks after her November 4 start date at the Bureau to assist with transitioning her projects to the remaining staff.

Staff will be working to recruit new staff for the following vacancies:

- 1) Associate Governmental Analyst (Policy)
- 2) Office Assistant (Receptionist)
- 3) Two temporary employees to assist when current staff is out of the office working on BreEZe.

C. Examination and Licensing Programs

Attachment 3 - To be provided at the meeting.

D. Enforcement Program

Prepared by Jessica Sieferman, Enforcement Lead/Probation Monitor

National Practitioner Data Bank Update

As previously reported in the May 2013 Board Meeting, the National Practitioners Data Bank (NPDB) and the Healthcare Integrity & Protection Data Bank (HIPDB) merged. Now, instead of two fees (one for each data bank) per licensee, there is only one fee (\$4.75 One-Time fee per use or \$3.25 Continuous fee per year).

The 2012 Sunset Legislative Committee recommended that "[t]he Board should work with DCA to ensure that they are provided funds to apply for the NPDB and HIPDB." In order to fund a continuous query, the Board would have to increase its initial optometrist licensing and all subsequent renewal fees by \$6.50.

While the funding may be unclear, Ms. Sieferman worked with NPDB staff to explore the feasibility of implementing a continuous query, given the Board's current staffing resources. Ms. Sieferman created an AdHoc report containing all active licensees and the necessary information NPDB requires for a "valid record." Now, Ms. Sieferman is working with NPDB to import the report to through NPDB's Web site. This will significantly decrease the amount of staff time originally estimated to manually input each licensee. Should the Board decide to raise licensing and renewal fees and implement the continuous query in the future, Board staff would only need to input any new licensees and applicants.

Enforcement Statistics and Performance Measures

In the beginning of October, the Enforcement Unit set a goal to meet the DCA's Performance Measures by the end of the fiscal year. Knowing the Board will soon be involved in Release 2 for BreEZe and resources will be pulled thin, the Unit has cracked down hard on our pending cases in order to still meet

our goal. With the benefit of a fully staffed Unit, we were able to close a record of 70 cases. We went from 138 cases pending in the beginning of October to 89.

FY 2013-2014:

	July	August	September	October*
Received	38	24	8	21
Pending	162	147	138	89
Closed	11	39	17	70

Compared to previous fiscal years:

	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014*
Received	197	295	318	254	91
Pending	66	134	170	135	89
Closed	264	227	282	289	137

*As of October 25, 2013

Attachments

4. Performance Measures

E. Strategic Planning

Prepared by Andrea Leiva

The strategic planning meeting for the full Board has been re-scheduled to December 2, 2013. This will be a public meeting in Sacramento at the Department of Consumer Affairs. The Board's strategic planner, Dennis Zanchi has already completed a survey of stakeholders, one-on-one interviews with the members and Executive Officer, and a strategic planning session with staff. At the December 2 meeting, the Board will have the chance to review the results of all the collected information in an environmental scan report, and review the mission, vision, and values. The Board will also review and possibly approve the staff's suggested objectives and/or develop new objectives for each of the Board's major functions of licensing, exams, outreach, enforcement, and legislation/regulation.

F. BreEZe

Prepared by Jessica Sieferman, Enforcement Lead/Probation Monitor

As previously reported, BreEZe will replace the existing Consumer Affairs System (CAS), Applicant Tracking System (ATS), and multiple "workaround" systems with an integrated, industry-proven system for use by the DCA organizations.

The goal is for BreEZe to provide all DCA organizations with an enterprise system that supports all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. BreEZe will be web-enabled to allow application, renewal, and payment processing via the Internet for applicants and licensees. Furthermore, BreEZe will allow the public to file complaints and lookup licensee information and complaint status through the Internet. As part of the BreEZe implementation, interfaces to electronically share data with internal and external systems will be established; existing data will be converted and migrated into BreEZe; user training will be conducted; and system documentation will be created.

Release 1, comprised of ten DCA Boards, went live on October 8, 2013. The Board of Optometry is currently in Release 2. The schedule for Release 2 and Release 3 Boards has not been released, but it is estimated to become available shortly.

Once Release 2 starts, Board staff will be heavily involved in BreEZe's design, testing, and implementation for several months. This may have an impact on licensing and enforcement cycle times.

**BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2012-13 EXPENDITURE PROJECTION**

September 30, 2013

OBJECT DESCRIPTION	FY 2012-13		FY 2013-14				
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES 9/30/2012	BUDGET STONE 2013-14	CURRENT YEAR EXPENDITURES 9/30/2013	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	351,486	74,563	440,847	93,696	21%	363,671	77,176
Statutory Exempt (EO)	77,956	19,489	81,732	21,045	26%	81,732	0
Temp Help Reg (907)	25,118	6,458	3,628	5,004	138%	30,000	(26,372)
Temp Help (Exam Proctors)							0
Board Member Per Diem	6,800	800	7,353	600	8%	6,800	553
Committee Members (DEC)							0
Overtime	841	553					0
Staff Benefits	194,426	43,516	264,830	49,550	19%	192,323	72,507
TOTALS, PERSONNEL SVC	656,627	145,379	798,390	169,895	21%	674,526	123,864
OPERATING EXPENSE AND EQUIPMENT							
General Expense	8,019	4,445	15,519	2,570	17%	15,400	119
Fingerprint Report	5,860	931	5,306	539	10%	6,400	(1,094)
Minor Equipment	10,408		6,100	0	0%	0	6,100
Printing	8,140	2,848	7,523	7,712	103%	10,000	(2,477)
Communications	5,425	1,041	5,446	935	17%	5,000	446
Postage	14,075	2,850	11,056	3,042	28%	15,000	(3,944)
Insurance			0				0
Travel In State	20,833	1,635	7,651	3,807	50%	22,000	(14,349)
Travel, Out-of-State			0				0
Training	737	159	1,037	0	0%	0	1,037
Facilities Operations	105,595	103,377	58,676	106,623	182%	103,405	(44,729)
Utilities			0				0
C & P Services - Interdept.	79		2,943	0	0%	0	2,943
C & P Services - External	10,094	33,171	25,000	0	0%	0	25,000
DEPARTMENTAL SERVICES:							
OIS Pro Rata	119,375	32,675	152,988	38,247	25%	152,988	0
Admin Pro Rata	94,224	25,983	104,702	26,176	25%	104,702	0
Interagency Services	0		146	0	0%	0	146
IA w/ OER	24,264		0			0	0
DOI-Pro Rata	4,111	1,040	3,364	841	25%	3,364	0
Public Affairs Pro Rata	5,097	1,471	4,730	1,183	25%	4,730	0
CCED Pro Rata	6,748	1,805	4,018	1,005	25%	4,018	0
INTERAGENCY SERVICES:							
Consolidated Data Centers	769	18	14,509	85	1%	500	14,009
DP Maintenance & Supply	4,435		942	0	0%	2,000	(1,058)
Central Admin Svc-Pro Rata	80,753	20,188	65,849	16,462	25%	65,849	0
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight	0		484	0	0%	0	484
Exam Site Rental							0
C/P Svcs-External Expert Administrative	8			98		98	(98)
C/P Svcs-External Expert Examiners	0		25,703	0	0%	0	25,703
C/P Svcs-External Subject Matter	12,323			350		12,000	(12,000)
ENFORCEMENT:							
Attorney General	148,591	10,918	229,055	42,133	18%	253,000	(23,945)
Office Admin. Hearings	13,079		37,930	0	0%	13,000	24,930
Court Reporters	1,488	143		150		1,500	(1,500)
Evidence/Witness Fees	3,800	10,200	35,921	3,650	10%	6,800	29,121
DOI - Investigations	120,843	30,834	213,512	53,378	25%	213,512	0
Major Equipment			8,500	0		0	8,500
Special Items of Expense							0
Other (Vehicle Operations)							0
TOTALS, OE&E	829,173	285,732	1,048,610	308,986	29%	1,015,266	33,344
TOTAL EXPENSE	1,485,800	431,111	1,847,000	478,881	51%	1,689,792	157,208
Reimb. - State Optometry Fund	(5,488)	(600)					0
Sched. Reimb. - Fingerprints	(7,252)	(1,960)	(6,000)	(588)	10%	(6,000)	0
Sched. Reimb. - Other	(4,800)	(1,450)		(1,205)			0
Probation Monitoring Fee - Variable				(1,200)			0
Unsched. Reimb. - Investigative Cost Recover	(35,167)	(3,889)		(8,895)			0
Unsch. DOI ICR Administrative Case	(49)						0
Unsched. Reimb. - ICR - Prob Monitor				(100)			0
NET APPROPRIATION	1,433,044	423,212	1,841,000	466,894	25%	1,683,792	157,208
SURPLUS/(DEFICIT):							8.5%

0763 - State Board of Optometry

Analysis of Fund Condition

Prepared 10/24/13

(Dollars in Thousands)

	Actual 2012-13	Budget Act CY 2013-14	BY 2014-15
NOTE: \$1 Million Dollar General Fund Repayment Outstanding			
BEGINNING BALANCE	\$ 961	\$ 1,269	\$ 1,069
Prior Year Adjustment	\$ 13	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 974</u>	<u>\$ 1,269</u>	<u>\$ 1,069</u>
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 27	\$ 19	\$ 21
125700 Other regulatory licenses and permits	\$ 153	\$ 137	\$ 144
125800 Renewal fees	\$ 1,538	\$ 1,550	\$ 1,569
125900 Delinquent fees	\$ 10	\$ 11	\$ 11
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ 3	\$ 3	\$ 3
150300 Income from surplus money investments	\$ 4	\$ 3	\$ 3
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ 1
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
Totals, Revenues	<u>\$ 1,737</u>	<u>\$ 1,725</u>	<u>\$ 1,753</u>
Transfers to Other Funds			
GF loan per item 1110-001-0763 BA of 2011	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	<u>\$ 1,737</u>	<u>\$ 1,725</u>	<u>\$ 1,753</u>
Totals, Resources	<u>\$ 2,711</u>	<u>\$ 2,994</u>	<u>\$ 2,822</u>
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	\$ 1	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 8	\$ 8	\$ -
1110 Program Expenditures (State Operations)	\$ 1,433	\$ 1,841	\$ 1,878
CURES	\$ -	\$ 76	\$ -
Total Disbursements	<u>\$ 1,442</u>	<u>\$ 1,925</u>	<u>\$ 1,878</u>
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,269	\$ 1,069	\$ 944
Months in Reserve	7.9	6.8	5.9

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.

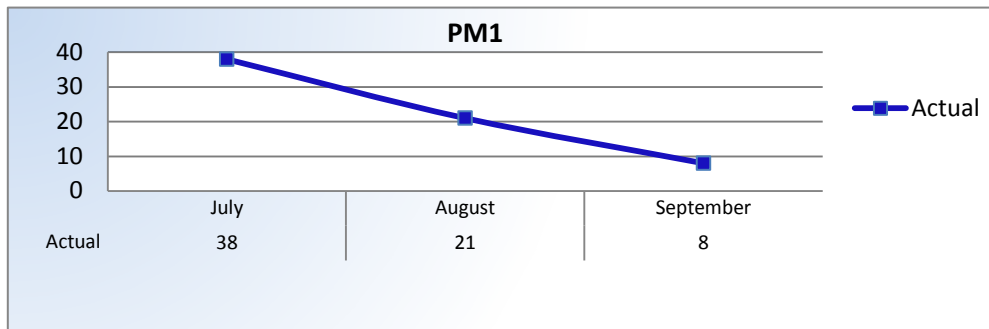
Performance Measures

Q1 Report (July - September 2013)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

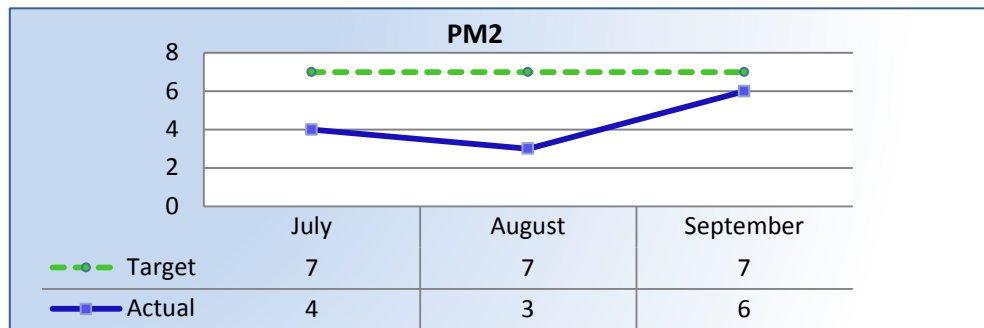


Total Received: 67 Monthly Average: 22

Complaints: 59 | Convictions: 8

PM2 | Intake

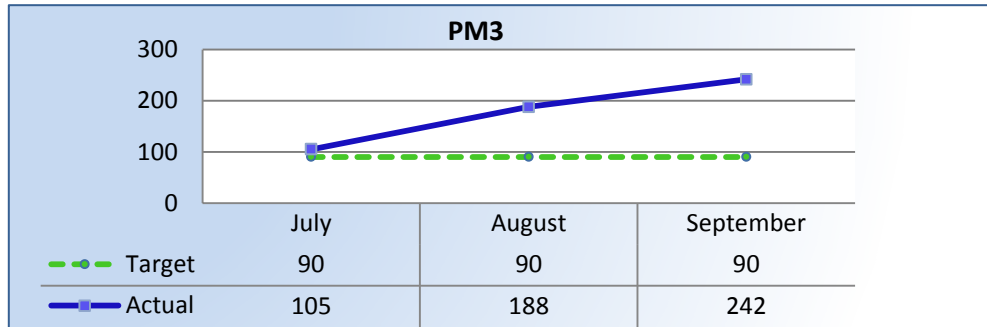
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 7 Days | Actual Average: 4 Days

PM3 | Intake & Investigation

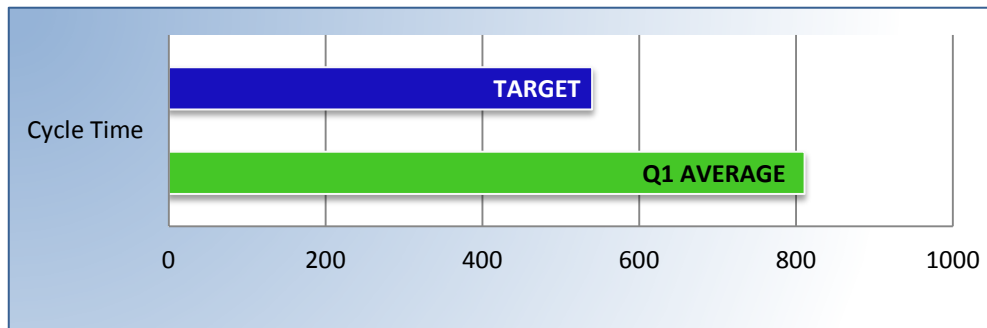
Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.



Target Average: 90 Days | Actual Average: 186 Days

PM4 | Formal Discipline

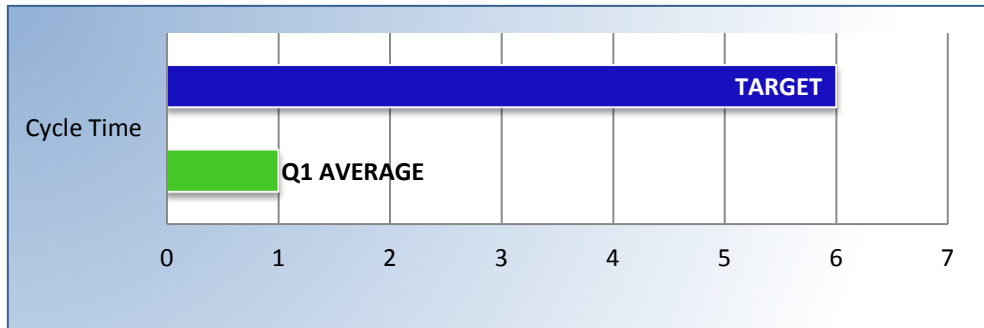
Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board and prosecution by the AG).



Target Average: 540 Days | Actual Average: 811 Days

PM7 | Probation Intake

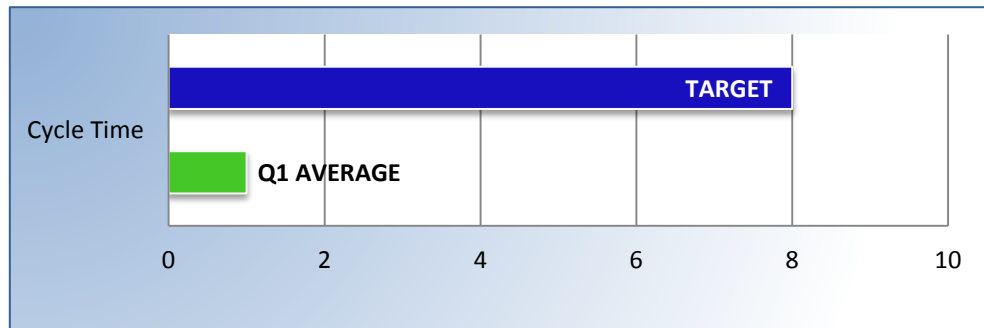
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 25 Days | Actual Average: 1 Day

PM8 | Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.



Target Average: 14 Days | Actual Average: 1 Day

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
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www.optometry.ca.gov

To: Board Members

Date: November 1, 2013

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 11 – Discussion and Possible Action on Regulations Affecting the Board of Optometry

Action Requested: It is requested that the Board consider the following regulatory proposals and if approved, instruct staff to begin the rulemaking process. Items C and D are only updates and no action is required.

A. California Code of Regulations (CCR) Section 1570. Educational Equivalency – Addition of Newly Accredited Optometry Schools

Background:

Business and Professions Code (BPC) Section 3023, Accreditation of Schools, states: “For the purpose of this chapter, the board shall accredit schools, colleges and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrists.” The Board uses the Accreditation Council on Optometric Education (ACOE) to conduct audits and reports of compliance as the approval of the schools/colleges of optometry. The ACOE is the only accrediting body for professional optometric degree (O.D.) programs, optometric residency programs and optometric technician programs in the United States and Canada. Both the U.S. Department of Education and the Council on Higher Education Accreditation recognize the ACOE as a reliable authority concerning the quality of education of the programs the Council accredits.

The ACOE has accredited or pre-accredited 21 schools and colleges of optometry. California has three Schools that are fully accredited; The University of California, Berkeley, School of Optometry, Southern California College of Optometry, Fullerton, and Western University of Health Sciences, College of Optometry, Pomona.

The Board considers the didactic courses offered by the other 19 schools/colleges of optometry accredited by the ACOE to be equivalent to those in California. Schools/colleges of optometry that are in the pre-accreditation process are reviewed each year until the program has its first graduating class at which time it becomes fully accredited. The ACOE conducts a formal reevaluation visit at least every eight years for professional optometric degree (O.D.) or optometric residency programs.

However, all accredited programs are reviewed annually through an annual reporting process, and the ACOE may visit more frequently if deemed necessary through the annual reporting process. The Board receives and reviews the copy of each report prepared by ACOE. The Board has no legal requirement to approve international schools of optometry.

Issue:

CCR Section 1570 - Educational Equivalency, lists the accredited schools/colleges of optometry that have a didactic course that the Board considers equivalent to those in California. The following schools/colleges are either ACOE accredited, or will be ACOE accredited this year, similar to Western University's college of optometry that was accredited this year.

- Inter American University of Puerto Rico, School of Optometry
Bayamon, Puerto Rico (Full Accreditation)
- University of Montreal, École d Optométrie
Montreal, Quebec (Full Accreditation)
- MCPHS University School of Optometry
Worcester, Massachusetts (Preliminary Accreditation)
- Midwestern University Arizona College of Optometry
Glendale, Arizona (Preliminary Accreditation)
- University of the Incarnate Word Rosenberg School of Optometry
San Antonio, Texas (Preliminary Accreditation)

The above schools/colleges are not listed in the CCR Section 1570 but should be. This will ensure optometry students graduating from these schools can practice in California if they choose to, and not have to re-take equivalent courses in California.

Staff Recommendation:

It is recommended that the Board add these schools to CCR Section 1570.

Proposed Language:

Please note: New language is underlined, deleted language is in ~~strikethrough~~.

§ 1570. Educational Equivalency.

Didactic courses at the following schools and colleges of optometry shall be considered equivalent to those given in California:

- (a) University of Alabama at Birmingham School of Optometry
Birmingham, Alabama
- (b) University of Waterloo, School of Optometry and Vision Science
Ontario, Canada
- (c) Nova Southeastern University, College of Optometry
~~North Miami Beach~~ Ft. Lauderdale, Florida
- (d) Illinois College of Optometry
Chicago, IL
- (e) Indiana University, School of Optometry
Bloomington, Indiana

- (f) New England College of Optometry
Boston, Massachusetts
- (g) Ferris State University Michigan College of Optometry
Big Rapids, Michigan
- (h) University of Missouri, St. Louis, School College of Optometry
St. Louis, Missouri
- (i) State University of New York, State College of Optometry
New York, New York
- (j) The Ohio State University, College of Optometry
Columbus, Ohio
- (k) Northeastern State University Oklahoma College of Optometry
Tahlequah, Oklahoma
- (l) Pacific University, College of Optometry
Forest Grove, Oregon
- (m) Pennsylvania College of Optometry, at Salus University
Philadelphia Elkins Park, Pennsylvania
- (n) Southern College of Optometry
Memphis, Tennessee
- (o) University of Houston, College of Optometry
Houston, Texas
- (p) Inter American University of Puerto Rico, School of Optometry
Bayamon, Puerto Rico
- (q) University of Montreal, École d Optométrie
Montreal, Quebec
- (r) MCPHS University School of Optometry
Worcester, Massachusetts
- (s) Midwestern University Arizona College of Optometry
Glendale, Arizona
- (t) University of the Incarnate Word Rosenberg School of Optometry
San Antonio, Texas

Note: Authority cited: Sections 3025 and 3041.2, Business and Professions Code. Reference: Sections 3041.1 and 3041.3, Business and Professions Code.

HISTORY

1. New section filed 7-7-97; operative 8-6-97 (Register 97, No. 28).

B. CCR Section 1506. Certificates Posting – Clarification of SOL Expiration Date

Background:

Pursuant to BPC Section 3070, prior to beginning the practice optometry, an optometrist must obtain a Statement of Licensure (SOL) from the Board to be placed in all practice locations other than their principal place of practice. The SOL must be renewed biennially, on the same date as an optometrist (OPT) license. The SOL renewal date was tied to the OPT license renewal date to ensure renewals are completed timely.

Issue:

It is not clear to licensees that their SOL must be renewed on the same day that their OPT license is renewed. While BPC Section 3152 (l) and CCR section 1524 (j)(1) state that SOLs must be renewed biennially for a \$40 fee, nothing in current law explicitly states that an SOL must be renewed on the same date as an OPT license. This has resulted in licensees purchasing new SOLs when they did not have to because they did not know a renewal form was on its way and licensees completely disregarding the renewal form for the SOL because they did not know renewal was mandatory. Also, not having this language explicitly in law creates enforcement difficulties due to the lack of clarity.

To ensure it's clear that an SOL is renewed on the same date as an OPT license, CCR Section 1506, the regulation that specifies the requirements of an SOL, should also include language stating the specific renewal time. Fictitious Name Permits, Branch Office, and OPT licenses all have language within the regulations that describe what is required to obtain such a license or permit, stating specifically when the permit or license must be renewed (i.e., "The permit shall be renewed annually with a renewal fee of \$40 due on January 31 each year).

Staff Recommendation:

For consistency with other optometrist licenses and permits, it is recommended that CCR Section 1506 be amended to include information that an SOL is renewed at the same time as an OPT license.

Proposed Language:

Please note: New language is underlined, deleted language is in ~~strikethrough~~.

§ 1506. Certificates -Posting.

(a) A certificate of registration, i.e., original wall certificate, is an original certificate of registration and license to practice optometry in California granted by the Board to a natural person who has qualified for the same pursuant to the provisions of Chapter 7 of Division 2 of the Code and it may not be assigned or transferred to another person but shall; notwithstanding whether it is replaced by a certification of the issuance of a certificate of registration, i.e., duplicate wall certificate, as provided by subdivision (b) of this section; remain valid and in force unless it is revoked or suspended and not reinstated or it is expired and not renewed or restored.

(b) A certification of the issuance of a certificate of registration is a certification by the Board that the person named thereon to whom it is conveyed is the holder of the certificate of registration designated thereon and shall be issued to such person as prima facie evidence that such person is the holder of such certificate of registration designated thereon and to replace the same or a previous certification of the issuance of a certificate of registration issued to the same person, provided that:

(1) There is furnished proof satisfactory to the Board of a change in name authorized by law of such person or of the loss of, destruction of or severe damage to such certificate of registration or previous certification of the issuance of such certificate of registration.

(2) Such certificate of registration or previous certification of the issuance of such certificate of registration is, unless it is lost or destroyed, surrendered to the Board.

(3) There is payment of the fee prescribed by Section 3152(h) of the code for the issuance of a certification of registration.

(c) The principal place of practice of an optometrist shall be deemed by the Board to be that office, other than his/her branch office or offices, wherein he/she owns, singly or jointly with any others, the practice of optometry, provided however:

(1) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in a single office as an employee, that office shall be his/her principal place of practice.

(2) Where the optometrist does not own a practice, singly or jointly with any others, but practices optometry in two or more offices as an employee, he/she shall inform the Board in writing as to which of such offices shall be deemed his/her principal place of practice.

(d) When the optometrist owns, singly or jointly with any others, the practice of optometry in more than one office or is employed to practice optometry in more than one office and it is infeasible to have his/her certificate posted in more than one of such offices, he/she shall have a numbered statement of licensure issued by the Board and signed by its executive officer conspicuously posted in each of such additional offices wherein he/she owns, singly or jointly with any others, the practice of optometry or wherein he/she practices optometry as an employee, provided that:

(1) He/she shall first send a written request to the Board for such statement of licensure or statements of licensure and shall include in such request the exact location of the office wherein it or each of them is to be posted in lieu of his/her certificate.

(2) He/she shall not have a statement of licensure posted in any office other than as authorized by such statement of licensure.

(3) A statement of licensure shall not be altered or assigned.

(4) A statement of licensure shall be renewed biennially on the same date as an optometrist license with a renewal fee of \$40.

~~(4)~~ (5) A statement of licensure is to be immediately surrendered to the Board by the optometrist to whom it is issued upon the occurrence of any of the following:

(A) His/her certificate becomes expired, is suspended or is revoked.

(B) He/she terminates ownership of the practice or his/her employment to practice optometry in the office wherein he/she is authorized by such statement of licensure to post the same in lieu of his/her certificate.

(C) The office wherein he/she is authorized by such statement of licensure to post the same becomes the only office wherein he/she has ownership of the practice and/or practices optometry as an employee.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Section 3075, Business and Professions Code.

HISTORY

1. Amendment filed 6-28-67; effective thirtieth day thereafter (Register 67, No. 26).
2. Amendment filed 8-7-69; effective thirtieth day thereafter (Register 69, No. 32).
3. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9.)
4. Amendment filed 10-25-83; effective thirtieth day thereafter (Register 83, No. 44).

C. Update on rulemaking package pertaining to CCR Section 1524. Retired License Status Fees

Action Requested: None. This is an update.

Update: At its December 14, 2012 meeting, the Board voted to initiate a rulemaking to establish the retired license status fees. The rulemaking action was printed in the California Regulatory Notice Register on March 1, 2013, and the 45-day comment period for the public started on March 1, 2013 and ended on April 15, 2013. The hearing was on the same date. No comments were received from the public. On May 10, 2013, the Board voted to continue with the rulemaking package.

The package has been approved by the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency. The package is currently being reviewed at the Department of Finance. If the Department of Finance approves this package, then it will return to the Board for final submission to the Office of Administrative Law. The Board has until March 1, 2014 to complete this rulemaking package.

Attachments:

- 1) Proposed Language

D. Update on rulemaking package pertaining to CCR Section 1516. Applicant Medical Evaluations and 1582. Unprofessional Conduct Defined

Action Requested: None. This is an update.

Update: At its August 16, 2013 meeting, the Board voted to initiate a rulemaking to give the Board authority to compel an applicant to submit to a psychological or physical examination, and further define unprofessional conduct. The rulemaking action was printed in the California Regulatory Notice Register on October 18, 2013, and the 45-day comment period for the public started on October 18, 2013 and will end on December 2, 2013. The hearing will be on the December 2, 2013 in Sacramento at the Department of Consumer Affairs. A report on the hearing will take place at the Board's January 2014 meeting and next steps will be determined then. The Board has until October 18, 2014 to complete this rulemaking package.

Attachments:

- 1) Proposed Language
- 2) Notice of Regulatory Action

**BOARD OF OPTOMETRY
ORDER OF ADOPTION**

Amend section 1524 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1524. FEES

The following fees are established:

(a) Application fee for certificate of registration as an optometrist by examination.....	\$275
(b) Biennial renewal of a certificate of registration as an optometrist.....	\$425
(c) Delinquency fee for failing to renew a certificate of registration timely.....	\$50
(d) Application fee for a branch office license.....	\$75
(e) Annual renewal of a branch office license.....	\$75
(f) Penalty fee for failure to renew a branch office license timely.....	\$25
(g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration.....	\$25
(h) Application fee for a fictitious name permit.....	\$50
(i) Annual renewal of a fictitious name permit.....	\$50
(1) Delinquency fee for failure to renew a fictitious name permit timely.....	\$25
(j) Application fee for a statement of licensure.....	\$40
(1) Biennial renewal of a statement of licensure.....	\$40
(2) Penalty fee for failure to renew a statement of licensure timely.....	\$20
(k) Application fee for a certificate to use therapeutic pharmaceutical agents.....	\$25
(l) Application fee for approval of a continuing education course.....	\$50
(m) Application fee for a certificate to treat primary open angle glaucoma.....	\$35
(n) Application fee for a certificate to perform lacrimal irrigation and dilation.....	\$25
<u>(o) Application fee for a retired license.....</u>	<u>\$25</u>
<u>(p) Application fee for a retired license with a volunteer designation.....</u>	<u>\$50</u>
<u>(q) Biennial renewal for a retired license with a volunteer designation.....</u>	<u>\$50</u>

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3075, 3078, 3151, 3151.1, 3152 and 3152.5, Business and Professions Code.

BOARD OF OPTOMETRY PROPOSED LANGUAGE

Amend Section 1516 and add Section 1582 in Division 15 of Title 16 of the California Code of Regulations as follows:

§ 1516. Application Review and Criteria for Rehabilitation.

(a) In addition to any other requirements for licensure, whenever it appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board. The applicant shall pay the full cost of the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

~~(a)~~(b) When considering the denial of a ~~certificate of registration license~~ under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a ~~certificate of registration license~~, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b)~~(c) When considering the suspension or revocation of a ~~certificate of registration license~~ on the grounds that the ~~registrant licensee~~ has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

~~(e)~~(d) When considering a petition for reinstatement of a ~~certificate of registration license~~ under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481, ~~and 482,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.

1582. Unprofessional Conduct.

In addition to the conduct described in Section 3110 of the Code, "unprofessional conduct" also includes, but is not limited to the following:

(a) Failure to cooperate and participate in any Board investigation pending against the licensee. This includes, but is not limited to, failure to respond to a Board request for information or evidence within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the information within this time period for good cause. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(b) Failure to report to the Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military that is related to the practice of optometry.

(c) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the Board.

NOTE: Authority cited: Sections 3090 and 3110, Business and Professions Code. Reference: Sections 480, 3010.1, 3010.5, 3024, and 3025, Business and Professions Code.

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the California State Board of Optometry (hereafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
2420 Del Paso Road, Yosemite Room
Sacramento, California 95834
Monday, December 2, 2013
10:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on Monday, December 2, 2013, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 3023, 3023.1, 3025, 3090, and 3110 of the Business and Professions Code, and to implement, interpret or make specific sections 475, 480, 481, 482, 3010.1, 3010.5, 3024, 3025, and 3056 of said Code, and section 11522 of the Government Code, the Board is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST:

The Board's highest priority is protection of the public, as mandated by Business and Professions Code (BPC) section 3010.1. To meet this mandate, the Board issues licenses to eligible applicants to practice optometry. The Board also investigates complaints against licenses, disciplines licensees for violation of state law, and monitors licensees placed on probation. BPC section 3025 authorizes the Board to adopt rules and regulations as necessary to administer and enforce the provisions of the chapters of the BPC for which it is responsible. In order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate, the Board is proposing the following changes:

Amend Section 1516. Application Review and Criteria for Rehabilitation

Existing law authorizes the Board to compel a licensee to submit to a physical or mental health examination if the licensee's ability to practice in a competent manner may be impaired due to physical or mental illness. Existing law also authorizes the Board to deny a license for any act that would warrant discipline if done by a licensee.

This regulatory proposal would give the Board authority to require an applicant to be examined by one or more physicians and surgeons, or psychologists designated by the Board if it appears that the applicant is unable to practice optometry safely due to a mental or physical illness.

Policy Statement Overview/Anticipated Benefits of Proposal: Adoption of this proposed amendment will allow the Board to prevent these individuals from obtaining a license, resulting in enhanced consumer protection. Specifically, the Board would be permitted to take proactive measures and avoid the current process in place which requires the Board to issue the license first to obtain jurisdiction over the individual, and then order an examination. The licensee is allowed to practice as they wait for their results, putting consumers in potential harm. This proposal would prevent that from happening.

Adopt section 1582. Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a licensee or to deny an application for licensure for unprofessional conduct. Existing regulations do not define unprofessional conduct to prohibit a licensee of the Board from the following activities:

- 1) Failing to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory rights or privilege;
- 2) Failing to report to the Board within 30 days the bringing of an indictment or information charging a felony against the licensee;
- 3) Failing to report to the Board within 30 days the conviction of the licensee of any felony or misdemeanor;
- 4) Failing to report to the Board within 30 days any disciplinary action related to the practice of optometry taken by another licensing entity state-wide or the federal government, or the United State military; and
- 5) Failing to comply with a court order, issued in the enforcement of a subpoena, to release records.

This regulatory proposal would define the activities listed above as unprofessional conduct.

Policy Statement Overview/Anticipated Benefits of Proposal: Adoption of these proposed amendments further defining unprofessional conduct is expected to enhance consumer protection and allow the Board to complete investigation more quickly. Consumers will be better protected because the Board will be able to take action against licensees who refuse to cooperate in Board investigations or who actively subvert Board investigations.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal, and it is not inconsistent or incompatible with existing state regulations. Existing regulations currently outline several unprofessional conduct provisions, and set forth disciplinary guidelines. The proposed regulations expand upon these existing provisions and do not contradict or obstruct them in any way.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

The proposed regulatory changes would only affect licensees or applicants who are the subject of Board disciplinary action, if certain violations are committed or a mental or physical evaluation is deemed necessary. A business owned by a licensee that is deemed to be in violation of state law may be affected if the license is revoked, surrendered, or suspended.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees, if the individual is represented by legal counsel. The disciplinary order impacts vary and could include loss of the licensee's employment income or business if their license is revoked, surrendered, or suspended.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulations may affect small businesses owned by licensees of the Board deemed to be in violation of state law and the license is revoked, surrendered or suspended. However, the Board only has authority to take administrative and disciplinary action against a licensee and not a business. The Board estimates that approximately 1-3 of the Board's licensees will be affected by this proposal.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased because this proposal will improve the efficiency of the enforcement process, and address weakness in current law. Also, the Board would be allowed to more quickly prevent individuals who may be in violation of the law from practicing optometry and causing more patient harm. This proposal will have no effect on worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost

effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Andrea Leiva, Policy Analyst
Address:	2450 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	916-575-7182
Fax No.:	916-575-7292
E-Mail Address:	andrea.leiva@dca.ca.gov

The backup contact person is:

Name:	Mona Maggio, Executive Officer
Address:	2450 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	916-575-7170
Fax No.:	916-575-7292
E-Mail Address:	mona.maggio@dca.ca.gov

WEBSITE ACCESS:

Materials regarding this proposal can be found at <http://www.optometry.ca.gov/lawsregs/propregs.shtml>.

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

To: Board Members **Date:** November 1, 2013

From: Andrea Leiva **Telephone:** (916) 575-7182
Policy Analyst

Subject: **Agenda Item 12 – Discussion About Senate Bill 492 Workgroup to Expand the Practice of Optometrists**

Action Requested: None. If the members have recommendations for the working group, Board staff can share the information with the Chair.

Update:

Assemblymember Susan A. Bonilla and Senator Ed Hernandez, O.D. have formed a working group to discuss and develop, if possible, a consensus legislative proposal for the certification of optometrists that would authorize the performance of certain advanced procedures in a manner that prioritizes the fuller utilization of optometric education and capacity, increased collaboration between health professions, and enhanced consumer protection.

The working group is chaired by Assemblymember Bonilla and is comprised of the following stakeholders:

- Senator Ed Hernandez and staff;
- California Optometric Association;
- California Academy of Eye Physicians and Surgeons;
- California Medical Association;
- Representatives from a California accredited school or college of optometry;
- Representatives from a Department of Ophthalmology in California;
- An expert in educational curricula;
- Senate Business, Professions and Economic Development Committee;
- Board of Optometry;
- Department of Consumer Affairs; and
- Other participants, as needed, to provide additional expertise.

The working group began meeting on October 15, 2013 and will continue to do so weekly until January 7, 2014. Any certification proposal must address the specific amount of education, training and clinical experience required for each advanced procedure to ensure patient safety and access, and must be supported to the greatest extent possible by reliable research, data and expert opinion.

Board staff is providing advice and expertise in the areas of consumer protection, what will be required on the Board's end to implement the bill if signed by the Governor (i.e., regulations, costs, staffing needs,

BreEZe, etc.), and best practices of healing arts regulatory entities. Board staff's main concerns are as follows:

- 1) If the bill will outline the number of pathways that may be needed for currently licensed optometrists to become certified to perform the new advanced procedures;
- 2) If the bill will address the appropriate number of training hours needed to ensure competency and consumer protection; and
- 3) If the Legislature will consider the Board's staffing needs to implement the bill in a timely manner.

So far, the first two meetings staff has attended have been very collaborative, but there is still much to discuss and decisions to be made by all stakeholders. The goal of the working group is to craft a bill that all parties can agree with, which will reduce opposition, and hopefully gain approval from the Governor.

Attachments:

1. Working Group Proposal and Meeting Agenda
2. Senate Bill 492 – As in print 08-05-2013 (starting point of discussions)

SB 492 WORKING GROUP PROPOSAL

For the purpose of forming a working group to discuss and develop, if possible, a consensus legislative proposal for the certification of optometrists that would authorize the performance of certain advanced procedures in manner that prioritizes the fuller utilization of optometric education and capacity, increased collaboration between professions, and enhanced consumer protection, the following is proposed:

1. Working Group Purpose

- a. A working group will be assembled and chaired by Assembly Member Bonilla, and given the task of working in good faith to design a certification process and draft legislative language that would be carried by Senator Hernández to allow optometrists to perform certain advanced procedures.
- b. The working group will adopt a robust meeting schedule (as often as once every two weeks but no less than once every four weeks) with the goal of completing its task no later than February 1, 2014.
- c. Any certification proposal shall address the specific amount of additional education, training and clinical experience required for each advanced procedure to ensure patient access and safety, and shall be supported to the greatest extent possible by reliable research, data and expert opinion.

2. Working Group Agenda

- a. Develop the basic requirements for one or more advanced certifications for optometrists to perform one or more specified procedures. Such requirements shall include educational and experiential qualifications, regulatory oversight and consumer protections, appropriate fees, and any other provisions necessary for the effectively implementation of the proposal.
- b. Specify advanced procedures authorized by the proposed certification or certifications, including but not limited to:
 1. **(Oct 15) [Room 125; 2-4pm]**
 - a. Administration of immunizations for influenza, Herpes Zoster Virus, and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency in compliance with individual Advisory Committee on Immunization Practices vaccine recommendations;
 - b. Additional technical corrections to the May 8, 2013 version of SB 492.
 2. **(Oct 22) [Room 125; 2-4pm]** Excision, scraping, and biopsy, or any combination of those, of superficial lesions of the eyelid and adnexa;
 3. **(Oct 29) [Room 317; 2-4pm]** Cauterization or suture repairs of the eyelid and conjunctiva;
 4. **(Nov 5) [Room 125; 2-4pm]** Injections for the treatment of conditions of the eye and adnexa, excluding intra-orbital injections and injections administered for cosmetic effect;
 5. **(Dec 3) [Room 125; 2-5pm]**
 - a. Therapeutic lasers used for posterior capsulotomy secondary to cataract surgery;
 - b. Therapeutic lasers appropriate for treatment of glaucoma and peripheral iridotomy for the prophylactic treatment of angle closure glaucoma;
 6. **(Jan 7) [TBD]** Any other noninvasive technology authorized by the California Board of Optometry for the treatment of conditions within the scope of practice, or other advanced procedure recommended for discussion by the Chair.
- c. Specify the necessary training, education and clinical experience, with quantitative measures, that would be required for advanced certification of current optometric licensees (including those from out of state) and students enrolled in accredited schools of optometry, including supervision requirements.
- d. Specify appropriate measures to ensure effective regulatory oversight and consumer protection under the certificate proposal.

3. Working Group Composition & Conduct

- a. Assemblywoman Bonilla will chair the working group, direct its agenda and lead its discussions, to be assisted or represented by staff at her discretion, and will be joined in that effort by Sen. Hernández.
- b. Senator Hernández will be assisted or represented by staff at his discretion.
- c. Invited stakeholder representatives (15+):
 - a. Regulated professions (including representatives/lobbyists) (6):
 - i. Three representatives designated by California Optometric Association (COA)
 - ii. Two representatives designated by the California Academy of Eye Physicians and Surgeons (CAEPS)
 - iii. One representative designated by the California Medical Association
 - b. Academia (5): (present as needed)
 - i. Two representatives from academic staff of an accredited school of optometry in California selected by COA
 - ii. Two representatives from academic staff of a Department of Ophthalmology in California selected by CAEPS
 - iii. One expert in educational curricula agreeable to both COA and CAEPS
 - c. Governmental representatives: (4)
 - i. One staff representative of the Senate Business, Professions and Economic Development Committee
 - ii. One staff representative of the Board of Optometry
 - iii. One staff representative of the Department of Consumer Affairs
 - d. Other participants that might provide additional expertise for a specific meeting's discussion may be invited on a meeting-to-meeting basis at the discretion of the Chair.

* * *

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 492

Introduced by Senator Hernandez

February 21, 2013

An act to amend Sections ~~3041 and 3041.1~~ *3041, 3041.1, and 3110* of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. Optometrist: practice: licensure.

The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. Any violation of the act is a crime.

~~This bill would add the provision of habilitative optometric services to the definition of the practice of optometry. The bill would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided. The bill would also delete limitations on certain kinds of diagnostic tests an optometrist can order and would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests, as provided.~~

This bill would include the provision of habilitative optometric services within the scope of practice of optometry. The bill would expand the scope of practice of optometrists who are certified to use therapeutic pharmaceutical agents by, among other things, authorizing those optometrists to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration for use in treating the eye conditions covered by these provisions. The bill would also expand the ability of an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat certain diseases, as provided. The bill would require the board to grant a certificate to an optometrist for the use of advanced procedures, which include the administration of certain immunizations, if the optometrist meets certain educational requirements.

Existing law requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.

This bill would expand this requirement to include diagnosing other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's scope of practice.

This bill would delete obsolete provisions and make conforming changes.

Because this bill would change the definition of a crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Business and Professions
2 Code is amended to read:

3 3041. (a) The practice of optometry includes the prevention
4 and diagnosis of disorders and dysfunctions of the visual system,
5 and the treatment and management of certain disorders and
6 dysfunctions of the visual system, as well as the provision of
7 habilitative or rehabilitative optometric services, and is the doing
8 of any or all of the following:

9 (1) The examination of the human eye or eyes, or its or their
10 appendages, and the analysis of the human vision system, either
11 subjectively or objectively.

12 (2) The determination of the powers or range of human vision
13 and the accommodative and refractive states of the human eye or
14 eyes, including the scope of its or their functions and general
15 condition.

16 (3) The prescribing or directing the use of, or using, any optical
17 device in connection with ocular exercises, visual training, vision
18 training, or orthoptics.

19 (4) The prescribing of contact and spectacle lenses for, or the
20 fitting or adaptation of contact and spectacle lenses to, the human
21 eye, including lenses that may be classified as drugs or devices by
22 any law of the United States or of this state.

23 (5) The use of topical pharmaceutical agents for the purpose of
24 the examination of the human eye or eyes for any disease or
25 pathological condition.

26 (b) (1) An optometrist who is certified to use therapeutic
27 pharmaceutical agents, pursuant to Section 3041.3, may also
28 diagnose and treat the human eye or eyes, or any of its or their
29 appendages, for all of the following conditions:

1 (A) Through medical treatment, infections of the anterior
2 segment and adnexa.

3 (B) Ocular allergies of the anterior segment and adnexa.

4 (C) Ocular ~~inflammation~~, *inflammation* nonsurgical in ~~cause~~
5 *cause*, except when comanaged with the treating physician and
6 surgeon.

7 (D) Traumatic or recurrent conjunctival or corneal abrasions
8 and erosions.

9 (E) Corneal surface disease and dry eyes. *Treatment for purposes*
10 *of this subparagraph includes, but is not limited to, the use of*
11 *mechanical lipid extraction of meibomian glands using nonsurgical*
12 *techniques.*

13 (F) Ocular ~~pain~~, *pain* nonsurgical in ~~cause~~ *cause*, except when
14 comanaged with the treating physician and surgeon.

15 (G) Pursuant to subdivision (f), glaucoma in patients over 18
16 years of age, as described in subdivision ~~(j)~~. *(l)*.

17 (H) Eyelid disorders, including hypotrichosis and blepharitis.

18 (2) For purposes of this section, “treat” means the use of
19 therapeutic pharmaceutical agents, as described in subdivision (c),
20 and the procedures described in subdivision (e).

21 (c) In diagnosing and treating the conditions listed in subdivision
22 (b), an optometrist certified to use therapeutic pharmaceutical
23 agents pursuant to Section 3041.3 may use all therapeutic
24 pharmaceutical agents approved by the United States Food and
25 Drug Administration for use in treating eye conditions set forth in
26 this chapter, including codeine with compounds and hydrocodone
27 with compounds as listed in the California Uniform Controlled
28 Substances Act (Division 10 (commencing with Section 11000)
29 of the Health and Safety Code) and the ~~United States~~ *federal*
30 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use
31 of ~~these agents~~ *controlled substances* shall be limited to three
32 days.

33 (d) In any case that an optometrist consults with a physician
34 and surgeon, the optometrist and the physician and surgeon shall
35 both maintain a written record in the patient’s file of the
36 information provided to the physician and surgeon, the physician
37 and surgeon’s response, and any other relevant information. Upon
38 the request of the optometrist or physician and surgeon and with
39 the patient’s consent, a copy of the record shall be furnished to the
40 requesting party.

- 1 (e) An optometrist who is certified to use therapeutic
2 pharmaceutical agents pursuant to Section 3041.3 may also perform
3 all of the following:
- 4 (1) Corneal scraping with cultures.
 - 5 (2) Debridement of corneal epithelia.
 - 6 (3) Mechanical epilation.
 - 7 (4) Venipuncture for testing patients suspected of having
8 diabetes.
 - 9 (5) Suture removal, upon notification of the treating physician
10 and ~~surgeon~~. *surgeon or optometrist*.
 - 11 (6) Treatment or removal of sebaceous cysts by expression.
 - 12 ~~(7) Administration of oral fluorescein.~~
 - 13 ~~(8)~~
 - 14 (7) Use of an auto-injector to counter anaphylaxis.
 - 15 ~~(9)~~
 - 16 (8) Ordering of appropriate laboratory and diagnostic imaging
17 tests for conditions authorized to be treated pursuant to this section.
 - 18 ~~(10)~~
 - 19 (9) A clinical laboratory test or examination classified as waived
20 under CLIA and designated as waived in paragraph (9) necessary
21 for the diagnosis of conditions and diseases of the eye or adnexa,
22 or if otherwise specifically authorized by this chapter. *the federal*
23 *Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C.*
24 *Sec. 263a) (CLIA). These laboratory tests are required to be*
25 *performed in compliance with both CLIA and all clinical*
26 *laboratory licensing requirements in Chapter 3 (commencing with*
27 *Section 1200), and any ancillary personnel utilized shall be in*
28 *compliance with those same requirements.*
 - 29 ~~(11)~~
 - 30 (10) Punctal occlusion by plugs, excluding laser, diathermy,
31 cryotherapy, or other means constituting surgery as defined in this
32 chapter.
 - 33 ~~(12)~~
 - 34 (11) The prescription of therapeutic contact lenses, including
35 lenses or devices that incorporate a medication or therapy the
36 optometrist is certified to prescribe or provide.
 - 37 ~~(13)~~
 - 38 (12) Removal of foreign bodies from the cornea, eyelid, and
39 conjunctiva with any appropriate instrument other than a ~~scalpel~~
40 : *scalpel*. Corneal foreign bodies shall be nonperforating, be no

1 deeper than the midstroma, and require no surgical repair upon
2 removal.

3 ~~(14)~~

4 (13) For patients over 12 years of age, lacrimal irrigation and
5 dilation, excluding probing of the nasal lacrimal tract. The board
6 shall certify any optometrist who graduated from an accredited
7 school of optometry before May 1, 2000, to perform this procedure
8 after submitting proof of satisfactory completion of 10 procedures
9 under the supervision of an ophthalmologist *or lacrimal irrigation*
10 *and dilation certified optometrist* as confirmed by the
11 ophthalmologist *or lacrimal irrigation and dilation certified*
12 *optometrist*. Any optometrist who graduated from an accredited
13 school of optometry on or after May 1, 2000, ~~shall be~~ *is* exempt
14 from the certification requirement contained in this paragraph.

15 ~~(15) Administration of immunizations for influenza, Herpes~~
16 ~~Zoster Virus, and additional immunizations that may be necessary~~
17 ~~to protect public health during a declared disaster or public health~~
18 ~~emergency.~~

19 ~~(16)~~

20 (14) In addition to diagnosing and treating conditions of the
21 visual system pursuant to this section, testing for ~~and, diagnoses~~
22 *and diagnosis* of diabetes mellitus, hypertension, and
23 hypercholesterolemia.

24 (f) The board shall grant a certificate to an optometrist certified
25 pursuant to Section 3041.3 for the treatment of glaucoma, as
26 described in subdivision ~~(j)~~; (l), in patients over 18 years of age
27 after the optometrist meets the following applicable requirements:

28 (1) For licensees who graduated from an accredited school of
29 optometry on or after May 1, 2008, submission of proof of
30 graduation from that institution.

31 (2) For licensees who were certified to treat glaucoma under
32 this section prior to January 1, 2009, submission of proof of
33 completion of that certification program.

34 ~~(3) For licensees who have substantially completed the~~
35 ~~certification requirements pursuant to this section in effect between~~
36 ~~January 1, 2001, and December 31, 2008, submission of proof of~~
37 ~~completion of those requirements on or before December 31, 2009.~~

38 “Substantially completed” means both of the following:

1 ~~(A) Satisfactory completion of a didactic course of not less than~~
2 ~~24 hours in the diagnosis, pharmacological, and other treatment~~
3 ~~and management of glaucoma.~~

4 ~~(B) Treatment of 50 glaucoma patients with a collaborating~~
5 ~~ophthalmologist for a period of two years for each patient that will~~
6 ~~conclude on or before December 31, 2009.~~

7 ~~(4)~~

8 (3) For licensees who completed a didactic course of not less
9 than 24 hours in the diagnosis, pharmacological, and other
10 treatment and management of glaucoma, submission of proof of
11 satisfactory completion of the case management requirements for
12 certification established by the board pursuant to Section 3041.10.

13 ~~(5)~~

14 (4) For licensees who graduated from an accredited school of
15 optometry on or before May 1, 2008, and not described in
16 paragraph ~~(2), (3), or (4)~~, (2) or (3), submission of proof of
17 satisfactory completion of the requirements for certification
18 established by the board pursuant to Section 3041.10.

19 (g) *The board shall grant a certificate to an optometrist certified*
20 *pursuant to subdivision (f) for the use of advanced procedures, as*
21 *described in subdivision (h), after the optometrist meets the*
22 *following applicable requirement:*

23 (1) *For licensees who graduated from an accredited school of*
24 *optometry that includes satisfactory curriculum on advanced*
25 *procedures, as determined by the board, on or after May 1, 2016,*
26 *submission of proof of graduation from that institution.*

27 (2) *For licensees who graduated from an accredited school*
28 *before May 1, 2016, submission of proof of completion of a 32-hour*
29 *course that includes clinical training in advanced procedures and*
30 *is approved the board.*

31 (h) *For the purposes of this chapter, “advanced procedures”*
32 *means any of the following:*

33 (1) *Therapeutic lasers used for posterior capsulotomy secondary*
34 *to cataract surgery.*

35 (2) *Therapeutic lasers appropriate for treatment of glaucoma*
36 *and peripheral iridotomy for the prophylactic treatment of angle*
37 *closure glaucoma.*

38 (3) *Excision, scraping, and biopsy, or any combination of those,*
39 *of superficial lesions of the eyelid and adnexa.*

40 (4) *Cauterization or suture repairs of the eyelid and conjunctiva.*

- 1 (5) *Injections for the treatment of conditions of the eye and*
- 2 *adnexa described in paragraph (1) of subdivision (b), excluding*
- 3 *intraorbital injections and injections administered for cosmetic*
- 4 *effect.*
- 5 (6) *Administration of immunizations for influenza, Herpes Zoster*
- 6 *Virus, and additional immunizations that may be necessary to*
- 7 *protect public health during a declared disaster or public health*
- 8 *emergency in compliance with individual Advisory Committee on*
- 9 *Immunization Practices (ACIP) vaccine recommendations*
- 10 *published by the federal Centers for Disease Control and*
- 11 *Prevention (CDC) for persons three years of age or older.*
- 12 (7) *Any noninvasive technology authorized by the board for the*
- 13 *treatment of conditions described in paragraph (1) of subdivision*
- 14 *(b).*
- 15 ~~(g)~~
- 16 (i) *Other than for prescription ophthalmic devices described in*
- 17 *subdivision (b) of Section 2541, any dispensing of a therapeutic*
- 18 *pharmaceutical agent by an optometrist shall be without charge.*
- 19 ~~(h) The~~
- 20 (j) *Except as authorized by this section, the practice of optometry*
- 21 *does not include performing surgery. “Surgery” means any*
- 22 *procedure in which human tissue is cut, altered, or otherwise*
- 23 *infiltrated by mechanical or laser means. ~~“Surgery” does not~~*
- 24 ~~*include those procedures specified in subdivision (e).*~~ *Nothing in*
- 25 *this section shall limit an optometrist’s authority to utilize*
- 26 *diagnostic laser and ultrasound technology within his or her scope*
- 27 *of practice.*
- 28 ~~(i)~~
- 29 (k) *An optometrist licensed under this chapter is subject to the*
- 30 *provisions of Section 2290.5 for purposes of practicing telehealth.*
- 31 ~~(j)~~
- 32 (l) *For purposes of this chapter, “glaucoma” means either of the*
- 33 *following:*
- 34 (1) *All primary open-angle glaucoma.*
- 35 (2) *Exfoliation and pigmentary glaucoma.*
- 36 ~~(k)~~
- 37 (m) *For purposes of this chapter, “adnexa” means ocular adnexa.*
- 38 ~~(t)~~

1 (n) In an emergency, an optometrist shall stabilize, if possible,
2 and immediately refer any patient who has an acute attack of angle
3 closure to an ophthalmologist.

4 SEC. 2. Section 3041.1 of the Business and Professions Code
5 is amended to read:

6 3041.1. With respect to the practices set forth in Section 3041,
7 optometrists diagnosing or treating eye disease or diagnosing other
8 diseases shall be held to the same standard of care to which
9 physicians and surgeons and osteopathic physicians and surgeons
10 are held. An optometrist shall consult with and, if necessary, refer
11 to a physician and surgeon or other appropriate health care provider
12 if a situation or condition occurs that is beyond the optometrist's
13 scope of practice.

14 SEC. 3. Section 3110 of the Business and Professions Code is
15 amended to read:

16 3110. The board may take action against any licensee who is
17 charged with unprofessional conduct, and may deny an application
18 for a license if the applicant has committed unprofessional conduct.
19 In addition to other provisions of this article, unprofessional
20 conduct includes, but is not limited to, the following:

21 (a) Violating or attempting to violate, directly or indirectly
22 assisting in or abetting the violation of, or conspiring to violate
23 any provision of this chapter or any of the rules and regulations
24 adopted by the board pursuant to this chapter.

25 (b) Gross negligence.

26 (c) Repeated negligent acts. To be repeated, there must be two
27 or more negligent acts or omissions.

28 (d) Incompetence.

29 (e) The commission of fraud, misrepresentation, or any act
30 involving dishonesty or corruption, that is substantially related to
31 the qualifications, functions, or duties of an optometrist.

32 (f) Any action or conduct that would have warranted the denial
33 of a license.

34 (g) The use of advertising relating to optometry that violates
35 Section 651 or 17500.

36 (h) Denial of licensure, revocation, suspension, restriction, or
37 any other disciplinary action against a health care professional
38 license by another state or territory of the United States, by any
39 other governmental agency, or by another California health care

1 professional licensing board. A certified copy of the decision or
2 judgment shall be conclusive evidence of that action.

3 (i) Procuring his or her license by fraud, misrepresentation, or
4 mistake.

5 (j) Making or giving any false statement or information in
6 connection with the application for issuance of a license.

7 (k) Conviction of a felony or of any offense substantially related
8 to the qualifications, functions, and duties of an optometrist, in
9 which event the record of the conviction shall be conclusive
10 evidence thereof.

11 (l) Administering to himself or herself any controlled substance
12 or using any of the dangerous drugs specified in Section 4022, or
13 using alcoholic beverages to the extent, or in a manner, as to be
14 dangerous or injurious to the person applying for a license or
15 holding a license under this chapter, or to any other person, or to
16 the public, or, to the extent that the use impairs the ability of the
17 person applying for or holding a license to conduct with safety to
18 the public the practice authorized by the license, or the conviction
19 of a misdemeanor or felony involving the use, consumption, or
20 self administration of any of the substances referred to in this
21 subdivision, or any combination thereof.

22 (m) Committing or soliciting an act punishable as a sexually
23 related crime, if that act or solicitation is substantially related to
24 the qualifications, functions, or duties of an optometrist.

25 (n) Repeated acts of excessive prescribing, furnishing or
26 administering of controlled substances or dangerous drugs specified
27 in Section 4022, or repeated acts of excessive treatment.

28 (o) Repeated acts of excessive use of diagnostic or therapeutic
29 procedures, or repeated acts of excessive use of diagnostic or
30 treatment facilities.

31 (p) The prescribing, furnishing, or administering of controlled
32 substances or drugs specified in Section 4022, or treatment without
33 a good faith prior examination of the patient and optometric reason.

34 (q) The failure to maintain adequate and accurate records
35 relating to the provision of services to his or her patients.

36 (r) Performing, or holding oneself out as being able to perform,
37 or offering to perform, any professional services beyond the scope
38 of the license authorized by this chapter.

39 (s) The practice of optometry without a valid, unrevoked,
40 unexpired license.

1 (t) The employing, directly or indirectly, of any suspended or
2 unlicensed optometrist to perform any work for which an optometry
3 license is required.

4 (u) Permitting another person to use the licensee's optometry
5 license for any purpose.

6 (v) Altering with fraudulent intent a license issued by the board,
7 or using a fraudulently altered license, permit certification or any
8 registration issued by the board.

9 (w) Except for good cause, the knowing failure to protect
10 patients by failing to follow infection control guidelines of the
11 board, thereby risking transmission of blood borne infectious
12 diseases from optometrist to patient, from patient to patient, or
13 from patient to optometrist. In administering this subdivision, the
14 board shall consider the standards, regulations, and guidelines of
15 the State Department of Health Services developed pursuant to
16 Section 1250.11 of the Health and Safety Code and the standards,
17 guidelines, and regulations pursuant to the California Occupational
18 Safety and Health Act of 1973 (Part 1 (commencing with Section
19 6300) of Division 5 of the Labor Code) for preventing the
20 transmission of HIV, hepatitis B, and other blood borne pathogens
21 in health care settings. As necessary, the board may consult with
22 the Medical Board of California, the Board of Podiatric Medicine,
23 the Board of Registered Nursing, and the Board of Vocational
24 Nursing and Psychiatric Technicians, to encourage appropriate
25 consistency in the implementation of this subdivision.

26 (x) Failure or refusal to comply with a request for the clinical
27 records of a patient, that is accompanied by that patient's written
28 authorization for release of records to the board, within 15 days
29 of receiving the request and authorization, unless the licensee is
30 unable to provide the documents within this time period for good
31 cause.

32 (y) Failure to refer a patient to an appropriate physician ~~in either~~
33 ~~of the following circumstances:~~ *if an examination of the eyes*
34 *indicates a substantial likelihood of any pathology that requires*
35 *the attention of that physician.*

36 ~~(1) Where an examination of the eyes indicates a substantial~~
37 ~~likelihood of any pathology that requires the attention of that~~
38 ~~physician.~~

39 ~~(2) As required by subdivision (e) of Section 3041.~~

1 *SEC. 4. It is the intent of the Legislature that the Office of*
2 *Statewide Health Planning and Development, under the Health*
3 *Workforce Pilot Projects Program, designate a pilot project*
4 *intended to test, demonstrate, and evaluate expanded roles for*
5 *optometrists in the performance of management and treatment of*
6 *diabetes mellitus, hypertension, and hypercholesterolemia.*

7 ~~SEC. 3.~~

8 *SEC. 5. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

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To: Board Members

Date: November 1, 2013

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: **Agenda Item 13 – Discussion and Possible Action on Legislation Affecting the Board of Optometry**

Action Requested: Items A and B are only updates and no action is required. Item C will not be discussed today because additional research is required before presenting to the full Board.

A. Legislation Signed by the Governor and Effective January 1, 2014

See attached to read these bills in their entirety.

1. Assembly Bill 258 (Chávez) State agencies: veterans

This bill will:

Require, on or after July 1, 2014, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

Next steps:

Staff will work to update its applications and forms to include the question by July 1, 2014.

2. Assembly Bill 480 (Calderon) Service contracts

This bill will:

Include in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation and other requirements of the act. By expanding the definition of service contract, the bill would expand the scope of a crime and, thus, would impose a state-mandated local program. The bill would provide that a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration is not included in the definition of service contract. The bill would also define optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.

Next steps:

Staff will monitor this bill to see how it will affect licensed optometrists, if at all. If necessary, educational materials will be created to provide guidance to affected optometrists.

3. Assembly Bill 512 (Rendon) Healing arts: licensure exemption

This bill will:

Existing law provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. Existing law also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

This bill would delete the January 1, 2014, date of repeal, and instead allow the exemption to operate until January 1, 2018.

Next steps:

None. The Board has already completed its regulations for implementation, and has information and instructions on its website so out-of-state practitioners can apply.

4. Assembly Bill 1057 (Medina) Professions & vocations: licenses: military service

This bill will:

Require each board, commencing January 1, 2015, to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

Next steps:

Staff will work to update its applications and forms to include the question by January 1, 2015.

5. Senate Bill 305 (Lieu) Healing arts: boards - optometry sunset bill

This bill will:

In addition to various other health boards, this bill would extend the operation of the Board of Optometry until January 1, 2018 (Sunset date).

This bill would also add to the license eligibility requirements under the optometry act that the applicant is not currently required to register as a sex offender, as specified. The bill would make conviction of a crime that currently requires a licensee to register as a sex offender unprofessional conduct and would expressly specify that commission of an act of sexual abuse or misconduct, as specified, constitutes unprofessional conduct, subject to an exception for an optometrist treating his or her spouse or person in an equivalent domestic relationship. The bill would also state that those acts of unprofessional conduct shall be considered crimes substantially related to the qualifications, functions, or duties of a licensee. The bill would also expressly specify that the board may revoke a license if the licensee has been found, in an administrative proceeding, as specified, to have been convicted of sexual misconduct or convicted of a crime that currently requires the licensee to register as a sex offender.

Next steps:

Staff will work to familiarize themselves with the new enforcement language so it can be utilized appropriately.

6. Senate Bill 724 (Emmerson) Liability: charitable vision screenings**This bill will:**

Limit the liability of a nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening and, if applicable, the provision of donated or recycled eyeglasses, if specified conditions are met. The bill would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.

Next steps:

Staff will work to familiar themselves with this new section of law and add it to its law book. Staff will also work to add educational materials on its website for consumers and licensees focusing on both parties' rights.

7. Senate Bill 809 (DeSaulnier) Controlled substances: reporting**This bill will:**

Will establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would, beginning April 1, 2014, require an annual fee of \$6 to be assessed on specified licensees, including licensees authorized to prescribe, order, administer, furnish, or dispense controlled substances, and require the regulating agency of each of those licensees to bill and collect that fee at the time of license renewal. The bill would authorize the Department of Consumer Affairs to reduce, by regulation, that fee to the reasonable cost of operating and maintaining CURES for the purpose of regulating those licensees, if the reasonable regulatory cost is less than \$6 per licensee. The bill would require the proceeds of the fee to be deposited into the CURES Fund for the support of CURES, as specified. The bill would also permit specified insurers, health care service plans, qualified manufacturers, and other donors to voluntarily contribute to the CURES Fund, as described.

This bill would require, by January 1, 2016, or upon receipt of a federal Drug Enforcement Administration registration, whichever occurs later, health care practitioners authorized to prescribe, order, administer, furnish, or dispense controlled substances, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under their care. The bill would require the Department of Justice, in conjunction with the Department of Consumer Affairs and certain licensing boards, to, among other things, develop a streamlined application and approval process to provide access to the CURES database for licensed health care practitioners and pharmacists. The bill would make other related and conforming changes.

Next steps:

Staff will be working with the Department of Consumer Affairs (Department) to finalize implementation of this bill. The Department has already established a CURES fund in preparation for the collection of the \$6 annual fee required by this bill. It is not anticipated that any statutory or

regulatory changes will be required by the Board to accommodate the fee. The Department will be meeting with all health boards affected to obtain feedback and come to agreement on how the fee will be displayed on the renewal forms so the fee can begin to be assessed by April 1, 2014. Licensed optometrists that are Therapeutic Pharmaceutical Agents (TPA, TPG, TLG) certified will be charged \$12, since renewals are biennial. About 5,200 optometrists are affected at this time, but this number will change as new doctors become licensed and others cancel their license. This fee will be assessed regardless of whether a TPA certified optometrist exercises their authority to prescribe the scheduled drugs specified in the optometry practice act.

Although the bill allows for a reduction of the fee via regulation, the Department of Justice (DOJ) and the Department are not recommending this. The Department is working closely with DOJ and it has been determined that all health practitioners with the authority to prescribed controlled substances must pay the full \$6 annually for successful funding and implementation of the CURES database. Once the revenue begins to come in, considering whether the fee should be reduced will be revisited.

8. Senate Bill 821 (Committee on Business, Professions & Economic Development) Healing arts

This bill will:

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. That act refers to the authorization to practice optometry issued by the board as a certificate of registration.

This bill would instead refer to that authorization issued by the board as an optometrist license and would make other technical and conforming changes.

Next steps:

None.

B. Legislation That Will Continue to be Monitored in 2014

Language has not been attached as these bills will be revisited at the January 2014 meeting when the legislative session starts again.

1. Assembly Bill 186 (Maienschein) Professions & vocations: military spouses: temporary licenses

This bill proposes to:

Require the boards within DCA to issue a 12-month temporary license to an applicant who is a military spouse or domestic partner while the license application is being processed, if certain requirements are met.

2. Assembly Bill 213 (Logue) Healing arts: licensure/certification requirement: military experience

This bill proposes to:

Require the State Department of Public Health, upon the presentation of evidence by an applicant for licensure or certification, to accept education, training, and practical experience completed by an applicant in military service toward the qualifications and requirements to receive a license or certificate for specified professions and vocations if that education, training, or experience is equivalent to the standards of the department. If a board within the Department of Consumer Affairs

or the State Department of Public Health accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the bill would, not later than January 1, 2015, require those schools seeking accreditation or approval to have procedures in place to evaluate an applicant's military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification, as specified.

3. Senate Bill 430 (Wright) Pupil health: vision examination: binocular function

This bill proposes to:

Requires a child at an elementary schools to, upon first enrollment in a private or public elementary school, receive a vision examination for a physician, optometrist, or ophthalmologist and require that screening to include a test for binocular function, refraction and eye health.

4. Senate Bill 492 (Hernandez) Optometrist: practice: licensure

This bill proposes to:

Expand the scope of practice of optometrists (see Agenda Item 12).

5. Senate Bill 723 (Correa) Veterans (Vetoed)

This bill was vetoed by the Governor, so it is back in the Senate where the veto is being considered. The Legislature has 60 days to override a veto with a 2/3 vote in each house.

This bill proposes to:

Require the Employment Development Department (EDD), and the Department of Consumer Affairs (DCA), on or before January 1, 2015, to jointly send a report to the Legislature containing best practices by state government agencies around the nation in facilitating the credentialing/licensing of veterans by using their documented military education and experience.

C. Legislative Proposals

This item will not be discussed today because additional research is required before presenting to the full Board.

1. Clarification of Licensure Requirement – Treatment and Management of Ocular Disease Component of the National Board of Examiners in Optometry Examination
2. Clarification of License Reinstatement Requirements – Fees
3. Clarification of Retired License Status Provisions
4. Define as Unprofessional Conduct the Failure to Provide Services Purchased by a Patient
5. Other Non-Substantive Amendments

Assembly Bill No. 258

CHAPTER 227

An act to add Section 11019.11 to the Government Code, relating to state agencies.

[Approved by Governor September 6, 2013. Filed with
Secretary of State September 6, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 258, Chávez. State agencies: veterans.

Existing law provides for the governance and regulation of state agencies, as defined. Existing law provides certain benefits and protections for members of the Armed Forces of the United States.

This bill would require, on or after July 1, 2014, every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, to request that information in a specified manner.

The people of the State of California do enact as follows:

SECTION 1. Section 11019.11 is added to the Government Code, to read:

11019.11. (a) Every state agency that requests on any written form or written publication, or through its Internet Web site, whether a person is a veteran, shall request that information only in the following format: "Have you ever served in the United States military?"

(b) This section shall apply only to a written form or written publication that is newly printed on or after July 1, 2014.

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Assembly Bill No. 480

CHAPTER 421

An act to amend Section 9855 of the Business and Professions Code, relating to service contracts.

[Approved by Governor September 30, 2013. Filed with
Secretary of State September 30, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 480, Ian Calderon. Service contracts.

Existing law, the Electronic and Appliance Repair Dealer Registration Law, regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances, and makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefore subject to specified criminal penalties.

This bill would include in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the bureau and other requirements of the act. By expanding the definition of service contract, the bill would expand the scope of a crime and, thus, would impose a state-mandated local program. The bill would provide that a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration is not included in the definition of service contract. The bill would also define optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) “Service contract” means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of an electronic set or appliance, as defined by this chapter, and their accessories or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, optical products, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” shall not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services. “Service contract” shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

(b) “Service contract administrator” or “administrator” means a person who performs or arranges the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract unless all service contracts under which the service contract administrator is obligated to perform are insured under a service contract reimbursement insurance policy.

(c) (1) “Service contract seller” or “seller” means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(2) “Service contract seller” or “seller” also means a third party, including an obligor, who is not the seller, manufacturer, or repairer of the product. However, a third party shall not be an obligor on a service contract unless the obligor obtains a service contract reimbursement insurance policy for all service contracts under which the third party is obligated under the terms of a service contract.

(3) “Service contract seller” or “seller” shall not include the following:

(A) A bank or bank holding company, or the subsidiary or affiliate of either, or a financial institution, licensed under state or federal law, selling or offering to sell a service contract unless that entity is financially and legally obligated under the terms of a service contract.

(B) An electrical device manufacturer or electrical contractor who constructs, installs, or services electrical devices, which include any unit of an electrical system intended to carry electrical energy as part of a building’s

electrical system, including raceways, conductors, invertors, conduit, wires, switches, or other similar devices.

(d) “Service contractholder” means a person who purchases or receives a service contract from a service contract seller.

(e) “Service contractor” means a service contract administrator or a service contract seller.

(f) “Service contract reimbursement insurance policy” means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) “Obligor” is the entity financially and legally obligated under the terms of a service contract.

(h) “Optical products” means prescription and nonprescription eyewear. “Optical products” shall not include contact lenses of any kind.

(i) The terms “consumer goods,” “manufacturer,” “retail seller,” “retailer,” and “sale” shall have the same meanings ascribed to them in Section 1791 of the Civil Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Assembly Bill No. 512

CHAPTER 111

An act to amend Section 901 of the Business and Professions Code, relating to healing arts.

[Approved by Governor August 16, 2013. Filed with
Secretary of State August 16, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 512, Rendon. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

Existing law provides, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. Existing law also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board.

This bill would delete the January 1, 2014, date of repeal, and instead allow the exemption to operate until January 1, 2018.

The people of the State of California do enact as follows:

SECTION 1. Section 901 of the Business and Professions Code is amended to read:

901. (a) For purposes of this section, the following provisions apply:

(1) “Board” means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) “Health care practitioner” means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) “Sponsored event” means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) “Sponsoring entity” means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) “Uninsured or underinsured person” means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she does all of the following:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (d).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to comply with this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(l) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

Assembly Bill No. 1057

CHAPTER 693

An act to add Section 114.5 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 10, 2013. Filed with Secretary of State October 10, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1057, Medina. Professions and vocations: licenses: military service. Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a licensee or registrant whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces to, upon application, reinstate his or her license without penalty and without examination, if certain requirements are satisfied, unless the licensing agency determines that the applicant has not actively engaged in the practice of his or her profession while on active duty, as specified.

This bill would require each board, commencing January 1, 2015, to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

The people of the State of California do enact as follows:

SECTION 1. Section 114.5 is added to the Business and Professions Code, to read:

114.5. Commencing January 1, 2015, each board shall inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

Senate Bill No. 305

CHAPTER 516

An act to amend Sections 1000, 2450, 2450.3, 2530.2, 2531, 2531.06, 2531.75, 2532.6, 2533, 2570.19, 3010.5, 3014.6, 3046, 3056, 3057, 3110, 3685, 3686, 3710, 3716, and 3765 of, and to add Sections 144.5 and 3090.5 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 3, 2013. Filed with
Secretary of State October 3, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 305, Lieu. Healing arts: boards.

(1) Existing law requires specified regulatory boards within the Department of Consumer Affairs to require an applicant for licensure to furnish to the board a full set of fingerprints in order to conduct a criminal history record check.

This bill would additionally authorize those boards to request and receive from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation and would authorize a local or state agency to provide those records to the board upon request.

(2) The Chiropractic Act, enacted by an initiative measure, provides for the licensure and regulation of chiropractors in this state by the State Board of Chiropractic Examiners. Existing law specifies that the law governing chiropractors is found in the act.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature as if these provisions were scheduled to be repealed on January 1, 2018. This bill would also make nonsubstantive changes to conform with the Governor's Reorganization Plan No. 2.

(3) Existing law, the Osteopathic Act, provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California.

This bill would require that the powers and duties of the board, as provided, be subject to review by the appropriate policy committees of the Legislature. The bill would require that the review be performed as if these provisions were scheduled to be repealed as of January 1, 2018.

(4) Existing law, the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, provides for the licensure and regulation of speech-language pathologists, audiologists, and hearing aid dispensers by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. The act authorizes the board to appoint an executive

officer. Existing law repeals these provisions on January 1, 2014, and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

The Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act also authorizes the board to refuse to issue, or issue subject to terms and conditions, a license on specified grounds, including, among others, securing a license by fraud or deceit.

This bill would additionally authorize the board to refuse to issue, or issue subject to terms and conditions, a license for a violation of a term or condition of a probationary order of a license or a term or condition of a conditional license issued by the board, as provided. The bill would also delete an obsolete provision and make other technical changes.

(5) Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of occupational therapists, as defined, by the California Board of Occupational Therapy. Existing law repeals those provisions on January 1, 2014, and subjects the board to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the board to review by the appropriate policy committees of the Legislature.

(6) Existing law, the Naturopathic Doctors Act, until January 1, 2014, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law also specifies that the repeal of the committee subjects it to review by the appropriate policy committees of the Legislature.

This bill would extend the operation of these provisions until January 1, 2018, and make conforming changes.

(7) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. The Respiratory Care Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Each of those acts authorizes the board to employ an executive officer. Existing law repeals these provisions on January 1, 2014, and subjects the boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

This bill would extend the operation of these provisions until January 1, 2018, and provide that the repeal of these provisions subjects the boards to review by the appropriate policy committees of the Legislature.

(8) The Optometry Practice Act prescribes license eligibility requirements, including, but not limited to, not having been convicted of a crime, as specified. The act defines unprofessional conduct to include, committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist. Under the act, the board may take action against a licensee who is charged with unprofessional conduct, and may deny an application

for a license if the applicant has committed an act of unprofessional conduct. Under existing law, commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action against any healing arts licensee, subject to a specified exception for a physician and surgeon.

This bill would add to the license eligibility requirements under the act that the applicant is not currently required to register as a sex offender, as specified. The bill would make conviction of a crime that currently requires a licensee to register as a sex offender unprofessional conduct and would expressly specify that commission of an act of sexual abuse or misconduct, as specified, constitutes unprofessional conduct, subject to an exception for an optometrist treating his or her spouse or person in an equivalent domestic relationship. The bill would also state that those acts of unprofessional conduct shall be considered crimes substantially related to the qualifications, functions, or duties of a licensee. The bill would also expressly specify that the board may revoke a license if the licensee has been found, in an administrative proceeding, as specified, to have been convicted of sexual misconduct or convicted of a crime that currently requires the licensee to register as a sex offender.

(9) The Respiratory Care Act also prohibits a person from engaging in the practice of respiratory care unless he or she is a licensed respiratory care practitioner. However, the act does not prohibit specified acts, including, among others, the performance of respiratory care services in case of an emergency or self-care by a patient.

This bill would additionally authorize the performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

This bill would make legislative findings and declarations as to the necessity of a special statute for the persons described above.

The people of the State of California do enact as follows:

SECTION 1. Section 144.5 is added to the Business and Professions Code, to read:

144.5. Notwithstanding any other law, a board described in Section 144 may request, and is authorized to receive, from a local or state agency certified records of all arrests and convictions, certified records regarding probation, and any and all other related documentation needed to complete an applicant or licensee investigation. A local or state agency may provide those records to the board upon request.

SEC. 2. Section 1000 of the Business and Professions Code is amended to read:

1000. (a) The law governing practitioners of chiropractic is found in an initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of

Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith,” adopted by the electors November 7, 1922.

(b) The State Board of Chiropractic Examiners is within the Department of Consumer Affairs.

(c) Notwithstanding any other law, the powers and duties of the State Board of Chiropractic Examiners, as set forth in this article and under the act creating the board, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.

SEC. 3. Section 2450 of the Business and Professions Code is amended to read:

2450. There is a Board of Osteopathic Examiners of the State of California, established by the Osteopathic Act, which shall be known as the Osteopathic Medical Board of California which enforces this chapter relating to persons holding or applying for physician’s and surgeon’s certificates issued by the Osteopathic Medical Board of California under the Osteopathic Act.

Persons who elect to practice using the term of suffix “M.D.,” as provided in Section 2275, shall not be subject to this article, and the Medical Board of California shall enforce the provisions of this chapter relating to persons who made the election.

Notwithstanding any other law, the powers and duties of the Osteopathic Medical Board of California, as set forth in this article and under the Osteopathic Act, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.

SEC. 4. Section 2450.3 of the Business and Professions Code is amended to read:

2450.3. There is within the jurisdiction of the Osteopathic Medical Board of California a Naturopathic Medicine Committee authorized under the Naturopathic Doctors Act (Chapter 8.2 (commencing with Section 3610)). This section shall become inoperative on January 1, 2018, and, as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other provision of law, the repeal of this section renders the Naturopathic Medicine Committee subject to review by the appropriate policy committees of the Legislature.

SEC. 5. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) “Board” means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(b) “Person” means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A “speech-language pathologist” is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

(3) Conducting hearing screenings.

(4) Performing suctioning in connection with the scope of practice described in paragraphs (1) and (2), after compliance with a medical facility’s training protocols on suctioning procedures.

(e) (1) Instrumental procedures referred to in subdivision (d) are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy.

(2) Nothing in this subdivision shall be construed as a diagnosis. Any observation of an abnormality shall be referred to a physician and surgeon.

(f) A licensed speech-language pathologist shall not perform a flexible fiber optic nasendoscopic procedure unless he or she has received written verification from an otolaryngologist certified by the American Board of Otolaryngology that the speech-language pathologist has performed a minimum of 25 flexible fiber optic nasendoscopic procedures and is competent to perform these procedures. The speech-language pathologist shall have this written verification on file and readily available for inspection upon request by the board. A speech-language pathologist shall pass a flexible fiber optic nasendoscopic instrument only under the direct authorization of an otolaryngologist certified by the American Board of Otolaryngology and the supervision of a physician and surgeon.

(g) A licensed speech-language pathologist shall only perform flexible endoscopic procedures described in subdivision (e) in a setting that requires the facility to have protocols for emergency medical backup procedures, including a physician and surgeon or other appropriate medical professionals being readily available.

(h) “Speech-language pathology aide” means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(i) (1) “Speech-language pathology assistant” means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible for the extent, kind,

and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold a valid and current license issued by the board, a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing, or other credential authorizing service in language, speech, and hearing issued by the Commission on Teacher Credentialing that is not issued on the basis of an emergency permit or waiver of requirements. For purposes of this paragraph, a “clear” credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher Credentialing. Nothing in this section referring to credentialed supervising speech-language pathologists expands existing exemptions from licensing pursuant to Section 2530.5.

(j) An “audiologist” is one who practices audiology.

(k) “The practice of audiology” means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading, and the selling of hearing aids.

(l) A “dispensing audiologist” is a person who is authorized to sell hearing aids pursuant to his or her audiology license.

(m) “Audiology aide” means any person meeting the minimum requirements established by the board. An audiology aide may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. The board may by regulation exempt certain functions performed by an industrial audiology aide from supervision provided that his or her employer has established a set of procedures or protocols that the aide shall follow in performing these functions.

(n) “Medical board” means the Medical Board of California.

(o) A “hearing screening” performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(p) “Cerumen removal” means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision

shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not simultaneously supervise more than two audiologists for purposes of cerumen removal.

SEC. 6. Section 2531 of the Business and Professions Code is amended to read:

2531. (a) There is in the Department of Consumer Affairs the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in which the enforcement and administration of this chapter are vested. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall consist of nine members, three of whom shall be public members.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 7. Section 2531.06 of the Business and Professions Code is amended to read:

2531.06. (a) The board is vested with the duties, powers, purposes, responsibilities, and jurisdiction over the licensing and regulation of hearing aid dispensers as provided under Article 8 (commencing with Section 2538.10).

(b) In the performance of the duties and the exercise of the powers vested in the board under this chapter, the board may consult with hearing aid dispenser industry representatives.

(c) For the performance of the duties and the exercise of the powers vested in the board under this chapter, the board shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former Hearing Aid Dispensers Bureau.

(d) All regulations in Division 13.3 (commencing with Section 1399.100) of Title 16 of the California Code of Regulations are continued in existence under the administration of the board until repealed by regulation.

SEC. 8. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the

powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 9. Section 2532.6 of the Business and Professions Code is amended to read:

2532.6. (a) The Legislature recognizes that the education and experience requirements of this chapter constitute only minimal requirements to assure the public of professional competence. The Legislature encourages all professionals licensed and registered by the board under this chapter to regularly engage in continuing professional development and learning that is related and relevant to the professions of speech-language pathology and audiology.

(b) The board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed in the preceding two years not less than the minimum number of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license or registration.

(c) (1) The board shall prescribe the forms utilized for and the number of hours of required continuing professional development for persons licensed or registered under this chapter.

(2) The board shall have the right to audit the records of any applicant to verify the completion of the continuing professional development requirements.

(3) Applicants shall maintain records of completion of required continuing professional development coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(d) The board shall establish exceptions from the continuing professional development requirements of this section for good cause as defined by the board.

(e) (1) The continuing professional development services shall be obtained from accredited institutions of higher learning, organizations approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, the California Medical Association's Institute for Medical Quality Continuing Medical Education Program, or other entities or organizations approved as continuing professional development providers by the board, in its discretion.

(2) No hours shall be credited for any course enrolled in by a licensee that has not first been approved and certified by the board, if the board has sufficient funding and staff resources to implement the approval and certification process.

(3) The continuing professional development services offered by these entities may, but are not required to, utilize pretesting and posttesting or

other evaluation techniques to measure and demonstrate improved professional learning and competency.

(4) An accredited institution of higher learning, an organization approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, and the California Medical Association's Institute for Medical Quality Continuing Education Program shall be exempt from any application or registration fees that the board may charge for continuing education providers.

(5) Unless a course offered by entities listed in paragraph (4) meets the requirements established by the board, the course may not be credited towards the continuing professional development requirements for license renewal.

(6) The licensee shall be responsible for obtaining the required course completion documents for courses offered by entities specified in paragraph (1).

(f) The board, by regulation, shall fund the administration of this section through professional development services provider and licensing fees to be deposited in the Speech-Language Pathology and Audiology Board Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section.

(g) The continuing professional development requirements adopted by the board shall comply with any guidelines for mandatory continuing education established by the Department of Consumer Affairs.

SEC. 10. Section 2533 of the Business and Professions Code is amended to read:

2533. The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The record of the conviction shall be conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) (1) The use or administering to himself or herself of any controlled substance.

(2) The use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology or audiology safely.

(3) More than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section.

(4) Any combination of paragraph (1), (2), or (3).

The record of the conviction shall be conclusive evidence of unprofessional conduct.

(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

(f) Incompetence, gross negligence, or repeated negligent acts.

(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.

(h) Use by a hearing aid dispenser of the term “doctor” or “physician” or “clinic” or “audiologist,” or any derivation thereof, except as authorized by law.

(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

(j) Any cause that would be grounds for denial of an application for a license.

(k) Violation of Section 1689.6 or 1793.02 of the Civil Code.

(l) Violation of a term or condition of a probationary order of a license issued by the board pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(m) Violation of a term or condition of a conditional license issued by the board pursuant to this section.

SEC. 11. Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

(b) The members of the board shall consist of the following:

(1) Three occupational therapists who shall have practiced occupational therapy for five years.

(2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.

(3) Three public members who shall not be licentiates of the board, of any other board under this division, or of any board referred to in Section 1000 or 3600.

(c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board. The Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

(d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services

to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.

(e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to, or have a household member who is, an occupational therapist or an occupational therapy assistant, and may not have had, within two years of the appointment, a substantial financial interest in a person regulated by the board.

(f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.

(g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.

(h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(i) Members of the board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.

(j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.

(k) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 12. Section 3010.5 of the Business and Professions Code is amended to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 13. Section 3014.6 of the Business and Professions Code is amended to read:

3014.6. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 14. Section 3046 of the Business and Professions Code is amended to read:

3046. In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examinations for licensure, not have met any of the grounds for denial established in Section 480, and not be currently required to register as a sex offender pursuant to Section 290 of the Penal Code. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 15. Section 3056 of the Business and Professions Code is amended to read:

3056. (a) The board may issue a license to practice optometry to a person who meets all of the following qualifications:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Is currently licensed in another state.

(3) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five continuous years.

(4) Has attained, at an accredited California school or college of optometry, the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.

(5) Has successfully passed the board's jurisprudence examination.

(6) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.

(7) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(8) Has met the requirements of Section 3041.3 regarding the use of therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(9) Has never had his or her license to practice optometry revoked or suspended.

(10) (A) Is not subject to denial 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.

(11) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.

(12) Files an application on a form prescribed by the board.

(b) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(c) The term “in good standing,” as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person’s professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 16. Section 3057 of the Business and Professions Code is amended to read:

3057. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Submits proof that he or she has been in active practice in a state in which he or she is licensed for a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of his or her application under this section.

(5) 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.

(6) Has furnished a signed release allowing the disclosure of information from the Healthcare Integrity and Protection Data Bank 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) Has never had his or her license to practice optometry revoked or suspended.

(8) (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.

(9) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(10) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(11) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(12) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(13) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(14) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical exam or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board is authorized to do both of the following:

(1) Approve an application where the person's time in active practice is less than that specified in paragraph (4) of subdivision (a), if a sufficient period in active practice can be verified by the board and all other requirements of subdivision (a) are satisfied by the person.

(2) Reduce or waive the fees required by paragraph (13) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term “in good standing,” as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person’s professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

SEC. 17. Section 3090.5 is added to the Business and Professions Code, to read:

3090.5. The board may revoke a license issued to a licensee upon a decision, made in a proceeding as provided in Section 3092, that contains a finding of fact of either of the following:

(a) The licensee has engaged in an act of sexual abuse, misconduct, or relations with a patient, as described in paragraph (2) of subdivision (m) of Section 3110.

(b) The licensee has been convicted of a crime described in paragraph (3) of subdivision (m) of Section 3110.

SEC. 18. Section 3110 of the Business and Professions Code is amended to read:

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that licensee provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that currently requires the person to register as a sex offender pursuant to Section 290 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

(n) Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood borne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041.

SEC. 19. Section 3685 of the Business and Professions Code is amended to read:

3685. Notwithstanding any other law, the repeal of this chapter renders the committee subject to review by the appropriate policy committees of the Legislature.

SEC. 20. Section 3686 of the Business and Professions Code is amended to read:

3686. This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 21. Section 3710 of the Business and Professions Code is amended to read:

3710. (a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 22. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 23. Section 3765 of the Business and Professions Code is amended to read:

3765. This act does not prohibit any of the following activities:

(a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.

(e) Respiratory care services in case of an emergency. "Emergency," as used in this subdivision, includes an epidemic or public disaster.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

(h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department

of Public Health of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the board.

(i) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

SEC. 24. The Legislature finds and declares that a special law, as set forth in Section 18 of this act, is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

Senate Bill No. 724

CHAPTER 68

An act to add Section 1714.26 to the Civil Code, relating to liability.

[Approved by Governor July 11, 2013. Filed with
Secretary of State July 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 724, Emmerson. Liability: charitable vision screenings.

Existing law provides immunity to a food facility that donates edible food for any damage or injury resulting from the consumption of the donated food, and to any nonprofit charitable organization or food bank that receives and distributes edible food for any injury or death due to the food, except as specified.

This bill would limit the liability of a nonprofit charitable organization, or participating licensed optometrist, ophthalmologist, or volunteer working with a nonprofit charitable organization for any damage or injury resulting from the provision of vision screening and, if applicable, the provision of donated or recycled eyeglasses, if specified conditions are met. The bill would make the limitation of liability inapplicable if an action is brought by an officer of a state or local government pursuant to state or local law or if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes specified types of misconduct.

The people of the State of California do enact as follows:

SECTION 1. Section 1714.26 is added to the Civil Code, to read:

1714.26. (a) Except for damage or injury resulting from gross negligence or a willful act, there is no liability for any damage or injury on the part of a nonprofit charitable organization that provides vision screenings and, if applicable, provides donated or recycled eyeglasses, or a participating licensed optometrist, ophthalmologist, or trained volunteer who works with such a nonprofit charitable organization in the performance of vision screenings, if all of the following conditions are met:

(1) The vision screening is provided to address ocular health concerns and, if applicable, to provide a temporary solution in the form of donated or recycled eyeglasses until the patient can get a full examination and eyeglasses.

(2) The vision screening is not intended to replace a full ocular health examination provided by a licensed optometrist or ophthalmologist.

(3) The patient signs a waiver acknowledging that the services provided are a temporary solution until the patient can get a full examination by a licensed optometrist or ophthalmologist.

(4) Each vision screening is supervised by an attending licensed optometrist or ophthalmologist.

(5) The eyeglass prescription determinations and ocular health recommendations are provided by an attending licensed optometrist or ophthalmologist.

(6) A written prescription is not provided to the patient.

(7) The eyeglasses provided to the patients are a close or approximate match, within tolerances allowed by the attending licensed optometrist or ophthalmologist, to the prescription determined during the vision screening.

(8) The vision screening and eyeglasses are provided without a charge.

(9) The optometrist, ophthalmologist, or volunteer is authorized by the nonprofit organization to provide the vision screening and eyeglasses on behalf of the nonprofit organization and is acting within the scope of his or her authorized responsibilities and the guidelines of the nonprofit charitable organization when providing the vision screening or eyeglasses.

(10) The nonprofit charitable organization provides procedural, risk management, and quality control training, as applicable, to the participating optometrist, ophthalmologist, or volunteer who provides the vision screening or eyeglasses.

(b) The limitation of liability provided in subdivision (a) is not applicable if an action is brought by an officer of a state or local government pursuant to state or local law.

(c) The limitation of liability provided in subdivision (a) is not applicable if the conduct of the nonprofit charitable organization, optometrist, ophthalmologist, or volunteer includes any of the following types of misconduct:

(1) A crime of violence.

(2) A hate crime.

(3) An act involving a sexual offense.

(4) An act involving misconduct in violation of federal or state civil rights laws.

(5) An act performed while the defendant was under the influence of drugs or alcohol.

(d) For the purposes of this section:

(1) “Nonprofit charitable organization” means an organization exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(2) “Vision screening” means a test or examination of an individual using a portion of the usual examination procedures in a comprehensive eye examination and refraction, that are selected or directed by an attending licensed optometrist or ophthalmologist, and are within the guidelines of the nonprofit charitable organization.

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Senate Bill No. 809

CHAPTER 400

An act to add Sections 208, 209, and 2196.8 to the Business and Professions Code, and to amend Sections 11164.1, 11165, and 11165.1 of, and to add Section 11165.5 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 27, 2013. Filed with
Secretary of State September 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 809, DeSaulnier. Controlled substances: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature, to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would, beginning April 1, 2014, require an annual fee of \$6 to be assessed on specified licensees, including licensees authorized to prescribe, order, administer, furnish, or dispense controlled substances, and require the regulating agency of each of those licensees to bill and collect that fee at the time of license renewal. The bill would authorize the Department of Consumer Affairs to reduce, by regulation, that fee to the reasonable cost of operating and maintaining CURES for the purpose of regulating those licensees, if the reasonable regulatory cost is less than \$6 per licensee. The bill would require the proceeds of the fee to be deposited into the CURES Fund for the support of CURES, as specified. The bill would also permit specified insurers, health care service plans, qualified manufacturers, and other donors to voluntarily contribute to the CURES Fund, as described.

(2) Existing law requires the Medical Board of California to periodically develop and disseminate information and educational materials regarding various subjects, including pain management techniques, to each licensed physician and surgeon and to each general acute care hospital in California.

This bill would additionally require the board to periodically develop and disseminate to each licensed physician and surgeon and to each general acute care hospital in California information and educational materials relating to the assessment of a patient's risk of abusing or diverting controlled substances and information relating to CURES.

(3) Existing law permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care. Existing law also authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

This bill would require, by January 1, 2016, or upon receipt of a federal Drug Enforcement Administration registration, whichever occurs later, health care practitioners authorized to prescribe, order, administer, furnish, or dispense controlled substances, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under their care. The bill would require the Department of Justice, in conjunction with the Department of Consumer Affairs and certain licensing boards, to, among other things, develop a streamlined application and approval process to provide access to the CURES database for licensed health care practitioners and pharmacists. The bill would make other related and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Controlled Substance Utilization Review and Evaluation System (CURES) is a valuable preventive, investigative, and educational tool for health care providers, regulatory agencies, educational researchers, and law enforcement. Recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support CURES and its Prescription Drug Monitoring Program (PDMP). The CURES PDMP is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate diversion of prescription drugs. Without a dedicated funding source, the CURES PDMP is not sustainable.

(b) Each year CURES responds to more than 800,000 requests from practitioners and pharmacists regarding all of the following:

(1) Helping identify and deter drug abuse and diversion of prescription drugs through accurate and rapid tracking of Schedule II, Schedule III, and Schedule IV controlled substances.

(2) Helping practitioners make prescribing decisions.

(3) Helping reduce misuse, abuse, and trafficking of those drugs.

(c) Schedule II, Schedule III, and Schedule IV controlled substances have had deleterious effects on private and public interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death. It is the intent of the Legislature to work with stakeholders to fully fund the operation of CURES which seeks to mitigate those deleterious effects and serve as a tool for ensuring safe patient care, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.

(d) The following goals are critical to increase the effectiveness and functionality of CURES:

(1) Upgrading the CURES PDMP so that it is capable of accepting real-time updates and is accessible in real-time, 24 hours a day, seven days a week.

(2) Upgrading the CURES PDMP in California so that it is capable of operating in conjunction with all national prescription drug monitoring programs.

(3) Providing subscribers to prescription drug monitoring programs access to information relating to controlled substances dispensed in California, including those dispensed through the United States Department of Veterans Affairs, the Indian Health Service, the Department of Defense, and any other entity with authority to dispense controlled substances in California.

(4) Upgrading the CURES PDMP so that it is capable of accepting the reporting of electronic prescription data, thereby enabling more reliable, complete, and timely prescription monitoring.

SEC. 2. Section 208 is added to the Business and Professions Code, to read:

208. (a) Beginning April 1, 2014, a CURES fee of six dollars (\$6) shall be assessed annually on each of the licensees specified in subdivision (b) to pay the reasonable costs associated with operating and maintaining CURES for the purpose of regulating those licensees. The fee assessed pursuant to this subdivision shall be billed and collected by the regulating agency of each licensee at the time of the licensee's license renewal. If the reasonable regulatory cost of operating and maintaining CURES is less than six dollars (\$6) per licensee, the Department of Consumer Affairs may, by regulation, reduce the fee established by this section to the reasonable regulatory cost.

(b) (1) Licensees authorized pursuant to Section 11150 of the Health and Safety Code to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances or pharmacists licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2.

(2) Wholesalers and nonresident wholesalers of dangerous drugs licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2.

(3) Nongovernmental clinics licensed pursuant to Article 13 (commencing with Section 4180) and Article 14 (commencing with Section 4190) of Chapter 9 of Division 2.

(4) Nongovernmental pharmacies licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2.

(c) The funds collected pursuant to subdivision (a) shall be deposited in the CURES Fund, which is hereby created within the State Treasury. Moneys in the CURES Fund shall, upon appropriation by the Legislature, be available to the Department of Consumer Affairs to reimburse the Department of Justice for costs to operate and maintain CURES for the purposes of regulating the licensees specified in subdivision (b).

(d) The Department of Consumer Affairs shall contract with the Department of Justice on behalf of the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Board of the Medical Board of California, the Osteopathic Medical Board of California, the Naturopathic Medicine Committee of the Osteopathic Medical Board, the State Board of Optometry, and the California Board of Podiatric Medicine to operate and maintain CURES for the purposes of regulating the licensees specified in subdivision (b).

SEC. 3. Section 209 is added to the Business and Professions Code, to read:

209. The Department of Justice, in conjunction with the Department of Consumer Affairs and the boards and committees identified in subdivision (d) of Section 208, shall do all of the following:

(a) Identify and implement a streamlined application and approval process to provide access to the CURES Prescription Drug Monitoring Program (PDMP) database for licensed health care practitioners eligible to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances and for pharmacists. Every reasonable effort shall be made to implement a streamlined application and approval process that a licensed health care practitioner or pharmacist can complete at the time that he or she is applying for licensure or renewing his or her license.

(b) Identify necessary procedures to enable licensed health care practitioners and pharmacists with access to the CURES PDMP to delegate their authority to order reports from the CURES PDMP.

(c) Develop a procedure to enable health care practitioners who do not have a federal Drug Enforcement Administration (DEA) number to opt out of applying for access to the CURES PDMP.

SEC. 4. Section 2196.8 is added to the Business and Professions Code, to read:

2196.8. The board shall periodically develop and disseminate information and educational material regarding assessing a patient's risk of abusing or diverting controlled substances and information relating to the Controlled Substance Utilization Review and Evaluation System (CURES), described in Section 11165 of the Health and Safety Code, to each licensed physician and surgeon and to each general acute care hospital in this state. The board shall consult with the State Department of Public Health, the boards and committees specified in subdivision (d) of Section 208, and the Department

of Justice in developing the materials to be distributed pursuant to this section.

SEC. 5. Section 11164.1 of the Health and Safety Code is amended to read:

11164.1. (a) (1) Notwithstanding any other provision of law, a prescription for a controlled substance issued by a prescriber in another state for delivery to a patient in another state may be dispensed by a California pharmacy, if the prescription conforms with the requirements for controlled substance prescriptions in the state in which the controlled substance was prescribed.

(2) All prescriptions for Schedule II, Schedule III, and Schedule IV controlled substances dispensed pursuant to this subdivision shall be reported by the dispensing pharmacy to the Department of Justice in the manner prescribed by subdivision (d) of Section 11165.

(b) Pharmacies may dispense prescriptions for Schedule III, Schedule IV, and Schedule V controlled substances from out-of-state prescribers pursuant to Section 4005 of the Business and Professions Code and Section 1717 of Title 16 of the California Code of Regulations.

SEC. 6. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that

may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section

208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

SEC. 7. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before January 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before January 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES PDMP.

(B) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal DEA registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Any subscriber accessing information for any other reason than caring for his or her patients.

(C) Any authorized subscriber shall notify the Department of Justice within 30 days of any changes to the subscriber account.

(2) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the

process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(c) In order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the Department of Justice pursuant to this section shall be considered medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a prescriber or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.

SEC. 8. Section 11165.5 is added to the Health and Safety Code, to read:

11165.5. (a) The Department of Justice may seek voluntarily contributed private funds from insurers, health care service plans, qualified manufacturers, and other donors for the purpose of supporting CURES. Insurers, health care service plans, qualified manufacturers, and other donors may contribute by submitting their payment to the Controller for deposit into the CURES Fund established pursuant to subdivision (c) of Section 208 of the Business and Professions Code. The department shall make information about the amount and the source of all private funds it receives for support of CURES available to the public. Contributions to the CURES Fund pursuant to this subdivision shall be nondeductible for state tax purposes.

(b) For purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug, substance, or immediate precursor listed in any schedule in Section 11055, 11056, or 11057 of the Health and Safety Code.

(2) "Health care service plan" means an entity licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(3) "Insurer" means an admitted insurer writing health insurance, as defined in Section 106 of the Insurance Code, and an admitted insurer writing workers' compensation insurance, as defined in Section 109 of the Insurance Code.

(4) "Qualified manufacturer" means a manufacturer of a controlled substance, but does not mean a wholesaler or nonresident wholesaler of

dangerous drugs, regulated pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code, a veterinary food-animal drug retailer, regulated pursuant to Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, or an individual regulated by the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, or the California Board of Podiatric Medicine.

O

Senate Bill No. 821

CHAPTER 473

An act to amend Sections 1613, 1915, 1926.2, 3024, 3025, 3040, 3041.2, 3051, 3057.5, 3077, 3093, 3098, 3103, 3106, 3107, 3109, 3163, 4053, 4107, 4980.36, 4980.397, 4980.398, 4980.399, 4980.40, 4980.43, 4980.50, 4984.01, 4984.7, 4984.72, 4989.68, 4992.05, 4992.07, 4992.09, 4992.1, 4996.1, 4996.3, 4996.4, 4996.9, 4996.17, 4996.18, 4996.28, 4999.33, 4999.45, 4999.46, 4999.47, 4999.50, 4999.52, 4999.53, 4999.55, 4999.64, and 4999.100 of, and to add Section 4021.5 to, the Business and Professions Code, and to amend Section 14132 of the Welfare and Institutions Code, relating to healing arts.

[Approved by Governor October 1, 2013. Filed with
Secretary of State October 1, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 821, Committee on Business, Professions and Economic Development.
Healing arts.

(1) Existing law, the Dental Practice Act, establishes the Dental Board of California, which was formerly known as the Board of Dental Examiners of California. Existing law requires the board to have and use a seal bearing its name. Existing law creates, within the jurisdiction of the board, a Dental Hygiene Committee of California, that is responsible for regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions.

This bill would amend those provisions to remove an obsolete reference to the former board and to make other technical changes.

(2) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. That act refers to the authorization to practice optometry issued by the board as a certificate of registration.

This bill would instead refer to that authorization issued by the board as an optometrist license and would make other technical and conforming changes.

(3) Existing law, the Pharmacy Law, governs the business and practice of pharmacy in this state and establishes the California State Board of Pharmacy. Existing law prohibits the board from issuing more than one site license to a single premises except to issue a veterinary food-animal drug retailer license to a wholesaler or to issue a license for compound sterile injectable drugs to a pharmacy.

This bill would additionally authorize the board to issue more than one site license to a single premises to issue a centralized hospital packaging

license. The bill would also establish a definition for the term “correctional pharmacy.”

Existing law authorizes the board to issue a license as a designated representative to provide supervision in a wholesaler or veterinary food-animal drug retailer. Existing law requires an individual to meet specified requirements to obtain and maintain a designated representative license, including a minimum of one year of paid work experience related to the distribution or dispensing of dangerous drugs or devices or meet certain prerequisites.

The bill would require the one year of paid work experience to obtain a designated representative license to be in a licensed pharmacy, or with a drug wholesaler, drug distributor, or drug manufacturer. The bill would also make related, technical changes.

(4) Existing law provides for the licensure and regulation of marriage and family therapists, licensed educational psychologists, licensed clinical social workers, and licensed professional clinical counselors by the Board of Behavioral Sciences. Existing law makes various changes to the licensing and associated eligibility and examination requirements for marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors, effective January 1, 2014.

This bill would delay the implementation of these and other related changes until January 1, 2016.

Existing law requires all persons applying for marriage and family therapist or licensed professional clinical counselor licensure examinations to have specified hours of experience, including experience gained by an intern or trainee as an employee or volunteer.

This bill would specify that experience shall be gained by an intern or trainee only as an employee or volunteer.

Existing law establishes a \$75 delinquent renewal fee for a licensed educational psychologist and for licensed clinical social workers.

This bill would instead specify that \$75 is the maximum delinquent renewal fee.

Existing law requires an applicant for registration as an associate clinical social worker to meet specified requirements. Existing law also defines the application of social work principles and methods.

This bill would additionally require that all applicants and registrants be at all times under the supervision of a supervisor responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who is responsible to the board for compliance with all laws, rules, and regulations governing the practice of clinical social work. The bill would also specify that the practice of clinical social work includes the use, application, and integration of the coursework and experience required.

Existing law requires a licensed professional clinical counselor, to qualify for a clinical examination for licensure, to complete clinical mental health experience, as specified, including no less than 1,750 hours of direct counseling with individuals or groups in specified settings and not more

than 250 hours of experience providing counseling or crisis counseling on the telephone.

This bill would specify that the hours of direct counseling may be with individuals, groups, couples or families and would instead require not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth.

(5) The bill would also make other technical, nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 1613 of the Business and Professions Code is amended to read:

1613. The board shall have and use a seal bearing the name “Dental Board of California.”

SEC. 2. Section 1915 of the Business and Professions Code is amended to read:

1915. No person other than a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

- (1) Applying nonaerosol and noncaustic topical agents.
- (2) Applying topical fluoride.
- (3) Taking impressions for bleaching trays.

(c) A registered dental assistant acting in accordance with the rules of the dental board in performing the following procedures:

- (1) Polishing the coronal surfaces of teeth.
- (2) Applying bleaching agents.
- (3) Activating bleaching agents with a nonlaser light-curing device.
- (4) Applying pit and fissure sealants.

(d) A registered dental assistant in extended functions acting in accordance with the rules of the dental board in applying pit and fissure sealants.

(e) A registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions licensed in another jurisdiction, performing a clinical demonstration for educational purposes.

SEC. 3. Section 1926.2 of the Business and Professions Code is amended to read:

1926.2. (a) Notwithstanding any other provision of law, a registered dental hygienist in alternative practice may operate one mobile dental hygiene clinic registered as a dental hygiene office or facility. The owner or operator of the mobile dental hygiene clinic or unit shall be registered and operated in accordance with regulations established by the committee, which regulations shall not be designed to prevent or lessen competition in service areas, and shall pay the fees described in Section 1944.

(b) A mobile service unit, as defined in subdivision (b) of Section 1765.105 of the Health and Safety Code, and a mobile unit operated by an entity that is exempt from licensure pursuant to subdivision (b), (c), or (h) of Section 1206 of the Health and Safety Code, are exempt from this article. Notwithstanding this exemption, the owner or operator of the mobile unit shall notify the committee within 60 days of the date on which dental hygiene services are first delivered in the mobile unit, or the date on which the mobile unit's application pursuant to Section 1765.130 of the Health and Safety Code is approved, whichever is earlier.

(c) A licensee practicing in a mobile unit described in subdivision (b) is not subject to subdivision (a) as to that mobile unit.

SEC. 4. Section 3024 of the Business and Professions Code is amended to read:

3024. The board may grant or refuse to grant an optometrist license as provided in this chapter and may revoke or suspend the license of any optometrist for any of the causes specified in this chapter.

It shall have the power to administer oaths and to take testimony in the exercise of these functions.

SEC. 5. Section 3025 of the Business and Professions Code is amended to read:

3025. The board may make and promulgate rules and regulations governing procedure of the board, the admission of applicants for examination for a license as an optometrist, and the practice of optometry. All of those rules and regulations shall be in accordance with and not inconsistent with the provisions of this chapter. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

SEC. 6. Section 3040 of the Business and Professions Code is amended to read:

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.

SEC. 7. Section 3041.2 of the Business and Professions Code is amended to read:

3041.2. (a) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.

(b) Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.

SEC. 8. Section 3051 of the Business and Professions Code is amended to read:

3051. All applicants for examination for an optometrist license in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

SEC. 9. Section 3057.5 of the Business and Professions Code is amended to read:

3057.5. Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who meets all of the following requirements to take the examinations for an optometrist license:

- (a) Is over 18 years of age.
- (b) Is not subject to denial of a license under Section 480.
- (c) Has a degree as a doctor of optometry issued by a university located outside of the United States.

SEC. 10. Section 3077 of the Business and Professions Code is amended to read:

3077. As used in this section, “office” means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have an office unless he or she is licensed to practice optometry under this chapter.

(b) An optometrist, or two or more optometrists jointly, may have one office without obtaining a branch office license from the board.

(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. The additional office, for the purposes of this chapter, constitutes a branch office.

(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall notify the board in writing of that desire in a manner prescribed by the board.

(e) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed by the board.

(f) On and after January 1, 1957, no branch office may be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1 of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter.

On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.

(g) Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the optometrist license of each optometrist who, individually or with others, has a branch office. An optometrist license so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a license after suspension for failure to comply with the provisions of this chapter relating to branch offices.

(h) The holder or holders of a branch office license shall pay the annual renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each year. The failure to pay the fee in advance on or before February 1 of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.

(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly.

Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.

(j) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have

an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

(1) Complies with the definition of an optometric corporation in Section 3160.

(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.

(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.

SEC. 11. Section 3093 of the Business and Professions Code is amended to read:

3093. Before setting aside the revocation or suspension of any optometrist license, the board may require the applicant to pass the regular examination given for applicants for an optometrist license.

SEC. 12. Section 3098 of the Business and Professions Code is amended to read:

3098. When the holder uses the title of "Doctor" or "Dr." as a prefix to his or her name, without using the word "optometrist" as a suffix to his or her name or in connection with it, or, without holding a diploma from an accredited school of optometry, the letters "Opt. D." or "O.D." as a suffix to his or her name, it constitutes a cause to revoke or suspend his or her optometrist license.

SEC. 13. Section 3103 of the Business and Professions Code is amended to read:

3103. It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses, or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a licensed optometrist in the manner permitted by law.

SEC. 14. Section 3106 of the Business and Professions Code is amended to read:

3106. Knowingly making or signing any license, certificate, or other document directly or indirectly related to the practice of optometry that

falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

SEC. 15. Section 3107 of the Business and Professions Code is amended to read:

3107. It is unlawful to use or attempt to use any license or certificate issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license or certificate.

SEC. 16. Section 3109 of the Business and Professions Code is amended to read:

3109. Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms “accepting employment to practice optometry” as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a license under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

SEC. 17. Section 3163 of the Business and Professions Code is amended to read:

3163. Except as provided in Section 3078, the name of an optometric corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall include the words optometric corporation or wording or abbreviations denoting corporate existence, provided that the articles of incorporation shall be amended to delete the name of a former shareholder from the name of the corporation within two years from the date the former shareholder dies or otherwise ceases to be a shareholder.

SEC. 18. Section 4021.5 is added to the Business and Professions Code, to read:

4021.5. “Correctional pharmacy” means a pharmacy, licensed by the board, located within a state correctional facility for the purpose of providing pharmaceutical care to inmates of the state correctional facility.

SEC. 19. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Notwithstanding Section 4051, the board may issue a license as a designated representative to provide sufficient and qualified supervision in a wholesaler or veterinary food-animal drug retailer. The designated representative shall protect the public health and safety in the handling,

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To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 14 – Tour of UC Berkeley Optometry Clinic (4:00 p.m. approximately)**

2450 Del Paso Road, Suite 105
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To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 15 – 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: November 1, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 16 – Suggestions for Future Agenda Items

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

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To: Board Members

Date: November 1, 2013

From: Alejandro Arredondo O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 17 – Adjournment
