

Board Meeting

Friday, January 23, 2015

Van Nuys State Building Auditorium Van Nuys, CA 91411





<u>MEMBERS OF THE BOARD</u> Alejandro Arredondo, OD, President Madhu Chawla, OD, Vice President Donna Burke, Secretary Cyd Brandvein Frank Giardina, OD Glenn Kawaguchi, OD Alexander Kim, MBA William H. Kysella, Jr. Kenneth Lawenda, OD Rachel Michelin David Turetsky, OD





QUARTERLY BOARD MEETING AGENDA Friday, January 23, 2015 9:00 a.m. – 5:00 p.m. (or until conclusion of business)

Van Nuys State Building 6150 Van Nuys Blvd., Auditorium Van Nuys, CA 91411 (818) 901-5425

140 C Tower Street Beaconsfield, Quebec. H9W 6B2

ORDER OF ITEMS SUBJECT TO CHANGE

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations of resources.

FULL BOARD OPEN SESSION

- 1. Call to Order/Roll Call and Establishment of a Quorum
- 2. President's Report Welcome and Introductions
- 3. Public Comment for Items Not on the Agenda Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]
- 4. Department of Consumer Affairs Report Christine Lally, Deputy Director Board and Bureau Relations
- 5. Executive Officer's Report
 - A. BreEZe Database
 - B. Budget
 - C. Personnel
 - D. Examination and Licensing Programs
 - E. Enforcement Program and CURES
- 6. Approval of Board Meeting Minutes
 - A. June 23, 2014
 - B. August 8, 2014
 - C. November 21, 2014
- 7. Discussion and Possible Action Regarding Potential Legislation Impacting Business and Professions Code (BPC) §655, "Prohibition of Business Arrangements Between Optometrists and Opticians or Persons in Optical Product Business and BPC §2556, Unlawful Practice

- 8. Discussion and Possible Action to Amend Business and Professions Code §3003, "Optometrist" and §3098, Use of "Dr." or "O.D." to Allow Use of the Title Optometric Physician
- 9. Discussion and Possible Action to Amend the Board Member Handbook
- 10. Discussion and Possible Action Regarding a Resolution in Support of Comprehensive Eye Examinations for all School Aged Children
- 11. Update Pertaining to the North Carolina State Board of Dental Examiners v. Federal Trade Commission Case
- 12. Legislation
 - A. Update on Legislative Proposals Approved at the November 21, 2014 Board Meeting
 - B. Discussion and Possible Action to Add Business and Professions Code §3070.2, Requirements to Practice in a Mobile Optometric Facility or Portable Optometric Facility
 - C. Discussion and Possible Action to Amend §49455 of the Education Code to Change the Requirement from "Vision Appraisal" to "Comprehensive Eye Exam"
- 13. Update on Rulemaking Pertaining to California Code of Regulations §1516, Applicant Medical Evaluations and §1582, Unprofessional Conduct Defined
- 14. Discussion and Possible Action to Approve the Revised Executive Officer's Duty Statement
- 15. Suggestions for Future Agenda Items
- 16. Petitions for Reduction of Penalty or Early Termination of Probation (1:30 p.m.)
 - A. Gregory Tom, OPT 10427
 - B. Leland Toy, OPT 6128
 - C. David Bradley, OPT 7747
 - D. Stephen Schroeder, OPT 8321
- 17. Petition for Reinstatement of License
 - A. Larry Franklin Thornton

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

FULL BOARD OPEN SESSION

18. Adjournment

The mission of the California State Board of Optometry is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the open meeting act. 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.

<u>NOTICE</u>: 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 Lydia Bracco 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.



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То:	Board Members	Date:	January 23, 2015
From:	Alejandro Arredondo O.D. Board President	Telephone:	(916) 575-7170

Subject: Agenda Item 1 – Call to Order and Roll Call/ 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

Madhu Chawla, O.D., Vice President, Professional Member

Donna Burke, Board Secretary, Public Member

Cyd Brandvein, Public Member

Frank Giardina, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

Alexander Kim, MBA, Public Member

William H. Kysella, Jr., Public Member

Kenneth Lawenda, O.D., Professional Member

Rachel Michelin, Public Member

David Turetsky, O.D., Professional Member



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То:	Board Members	Date:	January 23, 2015
From:	Alejandro Arredondo, O.D. Board President	Telephone:	(916) 575-7170
Subject:	Agenda Item 2 - President's Welcome, Intro	ductions and R	eport

Welcome, introductions and report by President Alejandro Arredondo, O.D.



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То:	Board Members	Date:	January 23, 2015
From:	Alejandro Arredondo O.D. Board President	Telephone:	(916) 575-7170
Subject:	Agenda Item 3 – Public Comment		

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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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject:	Agenda Item 4 – Department of Consumer Aff	airs Report	



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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject:	Agenda Item 5 – Executive Officer's Report		

A. BreEZe

Staff continues to work closely with the Department of Consumer Affairs (DCA) to ensure BreEZe will meet the needs of the Board, its licensees, and the public.

User Acceptance Testing (UAT):

DCA's BreEZe team provided staff an introduction to User Acceptance Testing (UAT) on December 31, 2014. During UAT, staff will work with DCA to run through a series of tests (scripts) to confirm the system can handle all possible required tasks in real-world scenarios. Over the next few months, DCA and Board staff will create a script inventory, develop detailed scripts and attend UAT process training. UAT is set to start in August 2015.

UAT Team:

- Jeff Robinson, Licensing Analyst
- Nancy Day, Licensing Technician
- Rob Stephanopoulos, Enforcement Analyst
- Krista Eklund, Licensing Technician (backup)
- Elvia Melendrez, Licensing Clerk (backup)

Data Validation (DV):

Data Validation is the process of inspecting and evaluating the accuracy of the data subjected to the conversion processes. The Vendor and DCA mutually agreed on a representative data set which contained a selection of simple, moderate, and complex translation scenarios to serve as the data sample in DV. This data set will now be utilized by the DV Team to examine data in both the legacy system as well as BreEZe to verify data accuracy.

DV Team:

- Cheree Kimball, Enforcement Analyst
- Pricilla Torres-Fuentes, Licensing Technician
- Lydia Bracco, Fingerprint Coordinator
- Brad Garding, Enforcement Analyst (backup)

The Board's BreEZe Single Point of Contact (SPOC), Jessica Sieferman, will participate in both UAT and DV activities.

B. Budget

2014/15 Budget

The 2013/2014 budget for the Board is \$1,810,000. As of January 31, 2014, the Board has spent \$879,557 reflecting 49% of the total budget.

As of December 31, 2014, total revenue collected is \$892,561.

Board Fund Condition

The Board's The Board's fund condition reflects 10 months in reserve.

General Fund Loans

The Board's loan balance to the General Fund is \$1 million dollars. Boards with repayment schedules are in or close to a negative fund reserve.

Each year all state agencies are required to spend 25% of their annual procurements with certified Small Business (SB) vendors and 3% with certified Disabled Veteran-Owned Business Enterprises

(DVBE). The Department of General Services encourages state agencies to exceed these minimum levels and requires agencies with participation levels below the minimum goals to prepare an improvement plan. For FY 2013/2014 the Department of Consumer Affairs (DCA) succeeded again in meeting both of these goals. DCA had a 38.69% SB participation and 4.13% DVBE participation on procurements which was an improvement over last year for both goals.

Data shows the Board did an excellent job of using DVBE and SB vendors In FY 2013/14 and helped DCA remain compliant with both goals. Board of Optometry had the following participation levels in FY 2013/2014:

DVBE \$	SB \$	Total \$	% DVBE	% SB
\$481.29	\$8,023.40	\$13,470.01	3.57%	59.56%

C. Personnel

On December 2, 2014, Jessica Sieferman was hired as the Staff Services Manager I (SSM I). This new position will serve as the Assistant Executive Officer handling more of the day to day operations and direct supervision of staff.

The Associate Governmental Program Analyst position now vacant due to Ms. Sieferman's promotion has been relocated to the Administration Unit for the purpose of hiring a policy analyst. Interviews have been held and an offer has been made and accepted.

D. Enforcement Program and CURES

The Board's Enforcement Program successfully met DCA's Performance Measure Targets for FY 14/15, Quarter 2. Enforcement staff will continue to work diligently to meet the Performance Measures, but some delays are expected during BreEZe UAT and DV activities.

Throughout the last few months, Board staff participated in multiple CURES meetings with DCA and the Department of Justice to assist in refining the CURES system and functional requirements. The CURES 2.0 system is set to "go-live" in July 2015. All optometrists who possess a TPA certification (including TPL, TPG and TLG) and a DEA # will need to register for CURES 2.0 by January 1, 2016.

However, pursuant to Business and Professions Code section 209(c), there is to be a procedure to enable those without DEA #s to "opt out of applying for access to CURES." To staff's knowledge, this procedure has yet to be created. Staff is researching this "opt out" method and will provide an update at the next Board meeting.

Customer Satisfaction Survey

The Department of Consumer Affairs (DCA) announced it has revised the Customer Satisfaction Survey that captures satisfaction with the complaint process. The DCA SOLID manages the survey in both postcard and survey format. The Board does participate in using the survey but does not have a large number of returns.

Why the Change?

- The previous survey did not meet the needs of DCA programs
- Over customization led to programs not being able to compare related data
- The return rate from consumers as low
- Few programs actively participated in the survey
- Previous Survey did not ask relevant questions
- Online survey was too lengthy
- Online survey did not match postcard survey, resulting in unreliable data.

What are the Benefits?

- Programs need a metric to measure quality and performance
- Data will help programs identify areas of improvement
- The revised survey promotes a transparent relationship with consumers
- Programs will be able to track annual changes and ultimately measure the value of the complaint/enforcement program
- Survey can be used as a quality review tool
- Managers can use data as an opportunity for staff to received kudos
- Data can help drive sunset review, BCPs and strategic planning objectives

E. Examination and Licensing Programs

<u>Meet With 3rd Year Students</u>. With the month of May approaching we have contacted representatives from the three California schools/colleges of optometry to set dates for our annual Student Outreach Presentation. Although we have yet to set specific dates, we expect to provide the presentations in the month of April. Once the dates are set we will send invitations Board Members for availability to join staff at this outreach event. We take one Member with us to each school.

<u>Continuing Education</u>: From July 1, 2014 through December 31, 2014 the Board received 49 "Requests for Approval of Continuing Education." Forty-four of those requests were approved and five are currently pending approval.

F. Information from the University of California, Berkeley, School of Optometry

At the November 21, 2014 meeting, the Board requested information from the University of California, School of Optometry (UCB) as to how it has been using the funds from license renewals.

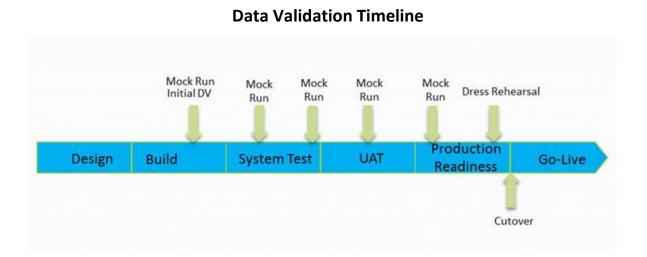
Dean Flanagan, UCB, School of Optometry provided the following response: "The Renewal Fee Funds so generously provided by the State Board are used for the designated purpose of supporting vision science research, as conducted through the UC Berkeley School of Optometry's Vision Science Group. Optometry's faculty investigators in Vision Science conduct basic and applied research involving both humans and animals, and have consistently yielded cutting-edge discoveries and applications in disciplines that include molecular genetics, clinical care, adaptive optics, neurobiology, cell biology, infectious disease, bioengineering, perception, computational modeling and public health. The funds support the Vision Science graduate research program, including partial support of the program's Student Affairs Officer, recruitment of Ph.D. students, weekly seminars (Oxyopia), the annual VSG symposia and meetings, for example the School's annual Vision Science research symposia, and the Bay Area Vision Research Day".

"Please note that the latest version of our annual magazine has an extensive overview of the ground breaking Berkeley Optometry vision science research over the last 90 years. Please let me know if require any additional copies".

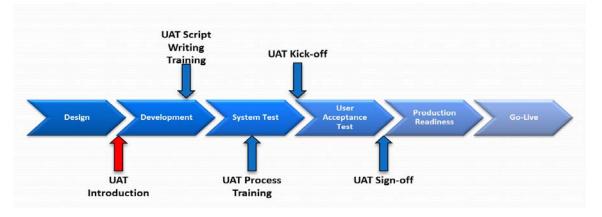
Copies of the magazine have been requested.

Attachments

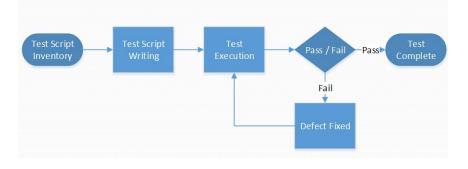
- 1. User Acceptance Testing and Data Validation Timelines
- 2. Expenditure Projection
- 3. Fund Condition
- 4. Enforcement Performance Measures
- 5. Customer Satisfaction Survey
- 6. Examination Statistics



User Acceptance Testing Timeline



Script Lifecycle



BOARD OF OPTOMETRY - FUND 0763 BUDGET REPORT FY 2014-15 EXPENDITURE PROJECTION

FM 6

	FY 20					2014-15		
OBJECT DESCRIPTION	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES 12/31/2013	BUDGET STONE 2014-15	CURRENT YEAR EXPENDITURES 12/31/2014	PERCENT	PROJECTIONS		
Object Description	(MONTH 13)	12/31/2013	2014-15	12/31/2014	SPENI	TO TEAR END	BALANCE	
ERSONNEL SERVICES								
Salary & Wages (Staff)	350,625	181,635	440,311	199,300	45%	382,281	58,03	
Statutory Exempt (EO)	84,180	42,090	81,732	42,930	53%	85,860	(4,12	
Temp Help Reg (907)	25,669	12,085	41,000	10,857	26%	29,792	11,20	
Temp Help (Exam Proctors)			0					
Board Member Per Diem	9,200	3,700	7,353	3,200	44%	7,700	(34	
Committee Members (DEC)			0					
Overtime	2,948		0	3,406		3,406	(3,40	
Staff Benefits	186,104	95,974	271,373	115,165	42%	220,900	50,47	
OTALS, PERSONNEL SVC	658,726	335,484	841,769	374,858	45%	729,939	111,83	
	7 000	0.007	45.054	F 000	220/	40.000	F 0F	
General Expense	7,200	2,867	15,654	5,239	33%	10,000	5,65	
Fingerprint Report	2,818	539	5,306	1,250	24%	3,750	1,55	
Minor Equipment	3,992	3,170	4,350	2,989	69%	4,000	35	
Printing	12,330	9,047	7,523	1,320	18%	5,200	2,32	
Communications	4,476	1,798	5,446	1,668	31%	4,300	1,14	
Postage	14,850	7,312	11,056	6,678	60%	14,000	(2,94	
nsurance Travel In State	38,846	15 712	0	12,664	166%	40.000	(32,34	
	508	15,712	7,651	12,004	100%	40,000	(32,34	
Travel, Out-of-State	85	0	1 027	0	00/			
Training Facilities Operations	108,583	0 107,491	1,037 58,676	109,650	0% 187%	109,650	1,03 (50,97	
Jtilities	100,000	107,491	56,676	109,050	107 70	109,050	(50,97	
C & P Services - Interdept.	39,029	0	2,943	37,000	1257%	37,000		
C & P Services - External	39,029	25,000	2,943	18,868	1257 %	18,868	(34,05 (1,86	
DEPARTMENTAL SERVICES:		20,000	17,000	10,000	11170	10,000	(1,00	
DIS Pro Rata	140,852	76,494	156,554	78,278	50%	156,554		
Admin Pro Rata	140,052	52,352	114,372	57,186	50%	114,372		
Interagency Services	00,009	02,352	14,372	0	0%	0	14	
IA w/ OPES	22,520	22,520	0	24,784	070	24,784	(24,78	
DOI-Pro Rata	3,392	1,682	3,580	1,790	50%	3,580	(24,70	
Public Affairs Pro Rata	3,921	2,366	3,380	1,748	50%	3,494		
PCSD Pro Rata	3,865	2,010	3,820	1,910	50%	3,820		
INTERAGENCY SERVICES:	0,000	2,010	0,020	1,010	0070	0,020		
Consolidated Data Centers	673	452	4,509	122	3%	700	3,80	
DP Maintenance & Supply	1,036	1,036	942	1,990	211%	1,990	(1,04	
Statewid Pro Rata	65,849	32,925	82,909	41,455	50%	82,909	(1,01	
EXAM EXPENSES:	00,010	01,010	0_,000	,	0070	0_,000		
Exam Supplies			0					
Exam Freight	0	0	484	0	0%	0	48	
Exam Site Rental		-	0					
C/P Svcs-External Expert Administrative	98	98	0	98		98	(9	
C/P Svcs-External Expert Examiners	0	0	20,703	0	0%	0	20,70	
C/P Svcs-External Subject Matter	22,299	2,081	_0,.00	1,506	0,0	1,506	(1,50	
ENFORCEMENT:	,	,		,		,	()	
Attorney General	195,500	104,805	229,055	52,335	23%	157,000	72,05	
Office Admin. Hearings	42,387	23,040	37,930	2,517	7%	44,000	(6,07	
Court Reporters	1,408	379	,	1,840		1,840	(1,84	
Evidence/Witness Fees	22,600	9,850	15,877	6,804	43%	21,000	(5,12	
DOI - Investigations	217,607	106,756	148,214	74,108	50%	148,214	(0,	
Major Equipment	,,,	0	9,000	0	0%	0	9,00	
Other Items of Expense		-	-,	58		58	(5	
Vehicle Operations							¥-	
OTALS, OE&E	1,082,583	611,782	968,231	545,855	56%	1,012,687	(44,45	
OTAL EXPENSE	1,741,309	947,266	1,810,000	920,713	101%	1,742,626	67,37	
Reimb State Optometry Fund	(100)	,				, ,	. ,	
Sched. Reimb Fingerprints	(4,508)	(931)	(6,000)	(1,421)	24%	(6,000)		
Sched. Reimb Other	(4,790)	(2,185)		(2,820)		(,,)		
Probation Monitoring Fee - Variable	(15,000)	(4,500)		(7,200)				
Jnsched. Reimb Investigative Cost Recover	(48,869)	(29,143)		(29,715)				
Jnsch - DOI ICR Administrative Case	(,	(_0,110)		(,,,,,))				
	(400)	(100)						
Unsched. Reimb ICR - Prob Monitor	<u>(100)</u> 1,667,942	(100) 910,407		879,557				
ET APPROPRIATION			1,804,000		49%	1,736,626	67,37	

0763 - State Board of Optometry Analysis of Fund Condition

(Dollars in Thousands)

NOTE: \$1 Million Dollar General Fund Repayment Outstanding		Actual 013-14	2	CY 014-15	20	BY 015-16
BEGINNING BALANCE	\$	1,270	\$	1,438	\$	1,383
Prior Year Adjustment	\$	10	\$	-	\$	-
Adjusted Beginning Balance	\$	1,280	\$	1,438	\$	1,383
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	\$	49	\$	50	\$	67
125700 Other regulatory licenses and permits	\$	172	\$	175	\$	184
125800 Renewal fees	\$	1,596	\$	1,594	\$	1,640
125900 Delinquent fees	\$	10	\$	9	\$	9
141200 Sales of documents	\$	-	\$	-	\$	-
142500 Miscellaneous services to the public	\$	2 4	\$	-	\$	-
150300 Income from surplus money investments	\$ ¢	4	\$ ¢	4	\$ ¢	4
160400 Sale of fixed assets 161000 Escheat of unclaimed checks and warrants	\$ \$	- 1	\$ \$	-	\$ \$	-
161400 Miscellaneous revenues	ֆ \$	I	э \$	-	ф \$	-
Totals, Revenues	<u>φ</u> \$	1,834	ہ \$	1,832	\$	- 1,904
Totals, Revenues	φ	1,004	φ	1,032	φ	1,904
Totals, Resources	\$	3,114	\$	3,270	\$	3,287
EXPENDITURES						
Disbursements:	¢		¢		¢	
0840 State Controller (State Operations) 8880 Financial Information System for CA (State Operations)	\$ \$	- 8	\$ \$	- 2	\$ \$	- 3
1110 Program Expenditures (State Operations)	φ \$	1,668	φ \$	1,885	φ \$	1,655
The Trogram Expenditures (State Operations)	Ψ		Ψ		Ψ	1,000
Total Disbursements	\$	1,676	\$	1,887	\$	1,658
FUND BALANCE						
Reserve for economic uncertainties	\$	1,438	\$	1,383	\$	1,629
Months in Reserve		9.1		10.0		11.6

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.

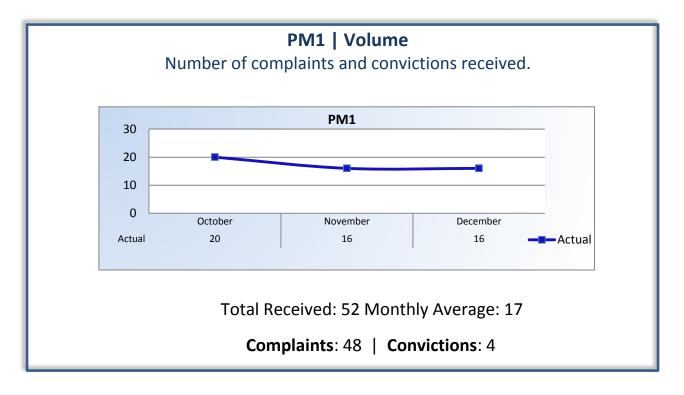
C. ASSUMES INTEREST RATE AT 0.3%.

Department of Consumer Affairs Board of Optometry

Performance Measures

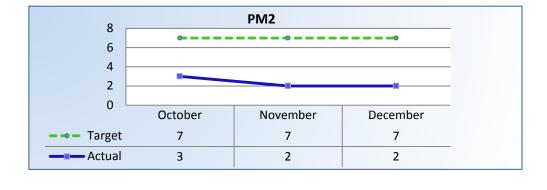
Q2 Report (October - December 2014)

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.

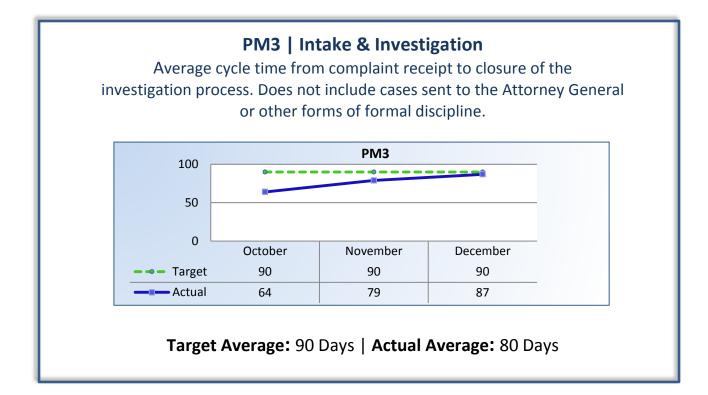


PM2 | Intake

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



Target Average: 7 Days | Actual Average: 2 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).

The Board did not have any cases closed in formal discipline this quarter.

Target Average: 540 Days | Actual Average: N/A

PM7 | Probation Intake

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

The Board did not contact any new probationers this quarter.

Target Average: 25 Days | Actual Average: N/A

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.

The Board did not report any new probation violations this quarter.

Target Average: 14 Days | Actual Average: N/A

BUSINESS REPLY MAIL

POSTAGE WILL BE PAID BY ADDRESSEE

DEPARTMENT OF CONSUMER AFFAIRS SOLID 1625 N. MARKET BLVD. SACRAMENTO, CA 95834-9954

> NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES



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Consumer Satisfaction Survey Help us improve our service! Please complete this survey, or take it online at: surveymonkey.com/s/consumeraffairs

- 1. Board/Bureau: _____
- 2. Complaint Number: _____

Rate the following, using the scale:	very po	oor	very	good
3. How well did we explain the complaint process to you?				
4. How clearly was the outcome of your complaint explained to you?				
5. How well did we meet the time frame provided to you?				
6. How courteous and helpful was staff?				
7. Overall, how well did we handle your complaint?				
8. If we were unable to assist you, were alternatives provided to you?	Y	Ν	N/A	
9. Did you verify the provider's license prior to service?	Y	Ν	N/A	

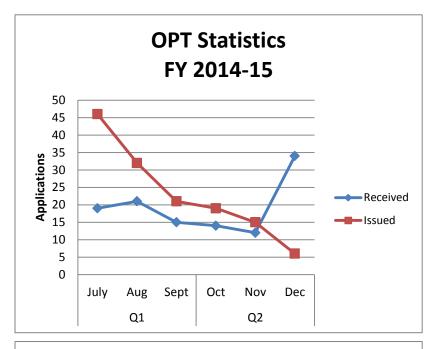
Comments

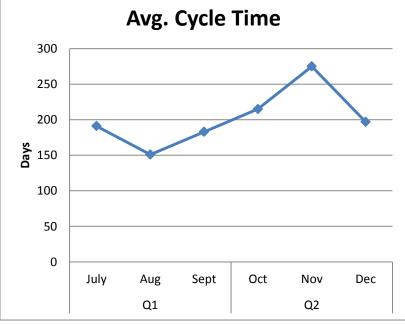


Scan this code to take online.

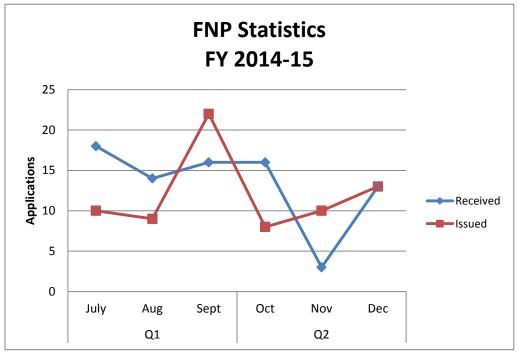
Your opinion matters. Thank you!

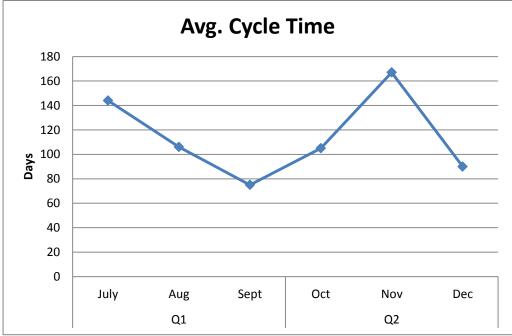
			FY 2014-15					
		Q1		Q2			FY	
		July	Aug	Sept	Oct	Nov	Dec	TOTAL
	Received	19	21	15	14	12	34	115
OPTs	Issued	46	32	21	19	15	6	139
90	Avg. Cycle Time	191	151	183	215	275	197	193



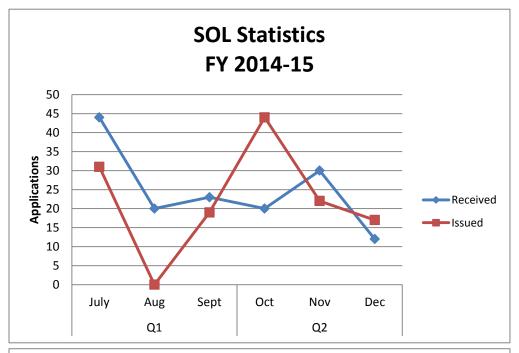


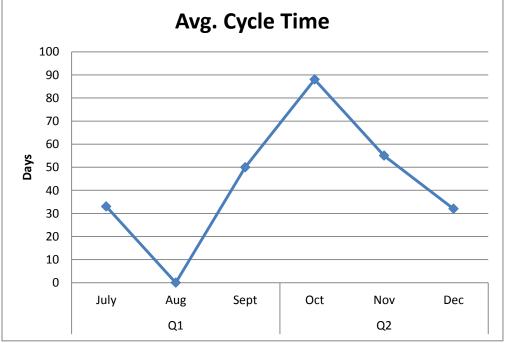
		Q1		Q2			FY	
		July	Aug	Sept	Oct	Nov	Dec	TOTAL
	Received	18	14	16	16	3	13	80
FNPs	Issued	10	9	22	8	10	13	72
Ľ	Avg. Cycle Time	144	106	75	105	167	90	107



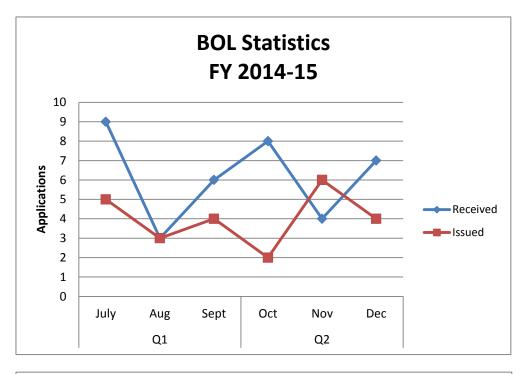


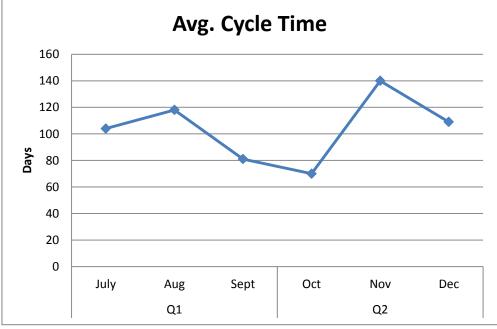
		FY 2014-15						
		Q1		Q2			FY	
		July	Aug	Sept	Oct	Nov	Dec	TOTAL
	Received	44	20	23	20	30	12	149
SOLS	Issued	31	0	19	44	22	17	133
SC	Avg. Cycle Time	33	_	50	88	55	32	57





		Q1			Q2			FY
		July	Aug	Sept	Oct	Nov	Dec	TOTAL
	Received	9	3	6	8	4	7	37
BOLS	Issued	5	3	4	2	6	4	24
B(Avg. Cycle Time	104	118	81	70	140	109	109







Me	то
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To:	Board Members	Date:	January 23, 2015
From:	Donna Burke Board Secretary	Telephone:	(916) 575-7170
Subject:	Agenda Item 6 – Approval of Board Meeting	Minutes	

- A. June 23, 2014
- B. August 8, 2014
- C. November 21, 2014

DRAFT

Meeting Minutes SPECIAL BOARD MEETING (Pursuant to Government Code Section 11125.4) Monday, June 23, 2014 Department of Consumer Affairs Hearing Room 1747 N. Market Blvd. Sacramento, CA 95834 And by telephone at the following locations

140 C Tower Street Beaconsfield, Quebec H9W6B2 Canada

555 W. 5th St., 21st Floor Los Angeles, CA 90013 To clear security, please call: (714) 329-0648

4349 E. Slauson Ave., Suite A Maywood, CA 90270

Members Present

Alejandro Arredondo, O.D, Board President Alexander Kim, MBA, Board Secretary Madhu Chawla, O.D. Frank Giardina, O.D. Bruce Givner Glenn Kawaguchi, O.D. Kenneth Lawenda, O.D. David Turetsky, O.D. 12100 Wilshire Blvd., Suite 445 Los Angeles, CA 90025

150 Tejas Place Nipomo, CA 93444

5601 De Soto Woodland Hills, CA 91367

518 North Moorpark Road Thousand Oaks, CA 91360

Excused Absence

Cyd Brandvein Donna Burke William Kysella

Staff Present

Mona Maggio, Executive Officer Jessica Sieferman, Lead Enforcement Analyst Robert Stephanopoulos, Enforcement Analyst Michael Santiago, Senior Legal Counsel

8:00 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 8:00 a.m.

2. Determination of Need for Special Meeting

Senior Legal Counsel, Michael Santiago explained Government Code Section 11125.4 (a) that provides for a special meeting to be called for specific reasons, with a 48 hour notice when compliance for the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state or when immediate action is required to protect the public interest. Consideration of pending legislation falls under the reasons allowed for a special meeting. as follows:

- 1) Senate Bill (SB) 492 was recently amended on June 16, 2014, only one week prior to today's date.
- SB 492 is being heard before the Committee on Business Professions and Consumer Protection (Committee) on June 24, 2014.
- The short time frame between amendment of the bill and when it goes to the Assembly Committee is less than 10 days. This means the Board would not be able to comply with the 10 day notice requirement of Government Code Section 11125.
- 4) In order for the Board to provide its input to the Committee, the Board needs to meet sooner than the 10 days' notice requirement.

Mr. Santiago requested that the Board make a motion based on the specific facts as presented.

Madhu Chawla moved that the Board determine the delay necessitated by providing notice 10 days prior to a meeting as required by Government Code Section 11125 would cause a substantial hardship on the Board. Glenn Kawaguchi seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.	X		
<mark>Donna Burke</mark>			X
Alexander Kim	X		
Cyd Brandvein			X
<mark>Madhu Chawla</mark>	X		
Frank Giardina, O.D.			X
Bruce Givner	X		
Glenn Kawaguchi, O.D.	X		
William Kysella			X
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.	X		

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

Executive Officer, Mona Maggio reported that at the May 10, 2013 meeting, the Board voted to send a letter in *Support if Amended* pertaining to the May 8, 2013 version of this bill. Staff sent the letter with the requested amendments to the author, sponsor, and member of the Senate Business, Professions and Economic Development Committee.

Ms. Maggio provided a background stating the State Board of Optometry is the licensing and regulatory body for the profession of optometry in California. 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 included but not limited to the examination of human eyes, the determination of powers or range of human vision, and the prescribing of contact and spectacle lenses.

Existing law authorizes optometrists, certified to use therapeutic pharmaceutical agents to diagnose and treat specific conditions, to use specified pharmaceutical agents and order specified diagnostic tests. Any violation of this act is a crime.

She explained that SB 492 would include the provision of habilitative optometric services with scope of practice 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 diagnosing

agents approved by the United States Food and Drug Administration (FDA), and indicate for use in diagnosing and treating eye conditions covered by these provisions.

The bill would modify the ability of an optometrist certified to use pharmaceutical agents to diagnose and treat certain diseases. The bill would require the Board to grant a certificate to an optometrist for the use of advanced procedures as defined if the optometrist meets certain educational and certification requirements. The Board would also be required to grant a certificate to an optometrist for immunizations if the optometrist meets certain educational and certifications if the optometrist meets certain educational and certification requirements.

SB 492 would authorize the Board to allow optometrists to use any non-invasive technology to treat specified conditions. The existing law requires optometrists, in diagnosing and treating eye disease, to be held to the same standard as physicians and surgeons and osteopathic physicians and surgeons. SB 492 would expand the requirement to include diagnosing other diseases and would require an optometrist to consult with, and if necessary, refer to a physician and surgeon, or to another appropriate healthcare provider if a situation or condition was beyond the optometrists' scope of practice.

This bill would also delete obsolete provisions and make conforming changes. And, because this bill would change the definition of a crime, it would create a state mandated local program.

Dr. Arredondo opened the floor to public comment.

Legislative Chair of the California Optometric Association (COA), Dr. David Redman, O.D., stated that doctors of optometry are trained to a rigorous national standard, receive four years of undergraduate training followed by four years of post-graduate training, have the option of a one year residency, must pass the National Board of Examiners in Optometry (NBEO) exam, and are required to complete 50 hours of continuing education every four years.

SB 492 contains the following provisions:

- Cleans up the optometric act by removing outdated language.
- Consolidates referral requirements.
- Eliminates the list of permissible drugs in statute and instead authorizes optometrists to prescribe all medication approved by the FDA, and indicated for the diagnosis and treatment of eye conditions, within the scope of practice.
- Allows optometrists to order imaging and lab tests for the diagnosis of conditions of the eye.
- Authorizes optometrists to undergo additional training to become certified to perform advanced procedures. This includes the removal of skin tabs, cysts, stys and warts.
- Allows two laser therapy procedures with very low complication rates. Not Lasik.
- Authorizes optometrists to undergo additional training to become certified to administer immunizations (flu, shingles, and pertussis) for individuals eight years of age and older.
- Authorizes the Board of Optometry to approve any non-invasive technology to treat conditions within the scope of practice.

Dr. Redman explained the training included in this bill includes specific didactic course work provided by an accredited college/school of optometry. Each student would be required to perform a minimum of 20 procedures. It includes a formal clinical and/or laboratory practical examination and a written test. Students graduating from an optometry school after 2016 will have the training incorporated into the curricula. Those graduating before 2016, or from a state that does not authorize advanced procedures, will be required to take additional course work that includes the training as described.

Dr. Redman requested the Board's support on SB 492.

COA's Director of Government and External Affairs, Kristine Schultz, thanked the Board for the opportunity to testify, and added that SB 492 is a limited expansion of scope for optometrists that is consistent with their education and training. It is a logical advancement of the profession which has been proven safe in other states.

Public Member Bruce Givner asked, and Ms. Schultz responded, whether other states have expanded scope (three; Kentucky, Oklahoma, and Louisiana have the "lumps and bumps" legislation into law). Additionally, there are six states in which optometrists are capable, by education and training, to remove lumps and bumps.

Dr. Arredondo inquired training hours and Ms. Schultz replied that every state that has the lumps and bumps and laser training requires 32 hours of course training, 16 hours for laser and 16 for lumps and bumps. Oklahoma optometrists have been practicing this for more than 25 years.

Dr. Chawla asked about courses and Ms. Shultz clarified which courses . in .optometrists must take. The amended version of the bill contains standards for the courses. The list of courses from Kentucky's regulations were put into statute via this bill. These courses are required in all of the other states with the "lumps and bumps" legislation.

Dr. Lawenda asked where the optometry schools stood regarding the legislation and Dr. Redman explained that both Western University and the Southern California College of Optometry support SB 492. The University of Berkeley, however, does not . take political positions.

Dr. Frank Giardina, O.D. joined the meeting at 8.35 a.m.

Dr. Lawenda stated that, so far, the Board has only heard one side of this issue. It's been the Board's standard to hear all sides of an issue, those in support as well as those who are opposed. Ms. Shultz apologized for the delay in providing that information and stated she would send the documents when she returns to the COA's office.

Ms. Shultz explained that ophthalmology requested a minimum of 130 procedures, which is based on an average number of procedures that ophthalmology residents must complete during their 3 year post-doctoral residency. COA has taken the same number of procedures and added them into the bill so optometrists will have to complete the same number of procedures that are required of ophthalmologists. She added that there has never been any incidence of problems and optometrists have been performing these procedures for 25 years.

Dr. Redman clarified for Mr. Givner that the terms capsulotomy and iridotomy are not consistent with "lumps and bumps" as these terms pertain to the laser procedures. The incision made is by laser, not with a scalpel.

Public member, Alexander Kim asked if any consumer entities have voiced either opposition or support for SB 492 and what type of media outreach for support has the COA utilized.

Ms. Shultz explained that she is not aware of any public interest groups that have voiced opposition to the bill and that the Business and Professions Committee consultant will have an updated list of support and amendments. This information will be in the Bill Analysis . some time this day. Regarding media outreach, Ms. Shultz stated that COA has a statewide campaign going on to educate the public about the importance of this bill going forward. She added, there have been web, cable, and radio ads..

Dr. Kawaguchi voiced concern. regarding the number of courses required for optometrist to obtain particular certification. He said .schools tend to offer required courses less and less over time because it does not make financial profit/loss sense to them. Therefore, Dr. Kawaguchi asked how we will ensure over the years that these courses will still be available. Ms. Shultz responded that each of the colleges has expressed excitement and a strong desire to provide the courses for the advancement of the profession, although we cannot mandate the colleges provide courses.

Dr. Turetsky brought to the public members' attention .regarding every advance in the scope of practice for optometrists. He said the opposition has always stated that optometrists would be blinding and potentially killing people. This occurred with the diagnostic pharmaceutical agents' certification, therapeutic pharmaceutical agents' certification, and the glaucoma certification. In every instance such claims, were proven to be unfounded. Optometrists have risen to the challenge of performing these procedures in an effective and safe manner and the schools have always provided the education that meets the challenge.

Ms. Shultz clarified for Dr. Turetsky that the vaccination part of the bill will allow optometrists to perform flu and shingles (herpes zoster) vaccines anytime and the pertussis (whooping cough) vaccine in the event of an emergency situation.

Dr. Giardina commented that shingles is a miserable and painful condition. He has routinely maintained the practice of asking all of his patients over fifty if they have been inoculated against herpes zoster. If not, he sends them to the medical department next door to receive the inoculation. Dr. Giardina believes it would be a great public health benefit for optometrists to be able to vaccinate and prevent people from vision loss and pain.

Mr. Kim asked Ms. Maggio to communicate any/all consumer responses to the Members after the analysis.

Mr. Givner directed questions to Mr. Santiago on behalf of Public Member, Cyd Brandvein who was not present. Mr. Givner read a statement by Ms. Brandvein which stated "the public would like to know what the level of education, training, credentials, and residency are for ophthalmologists as compared to optometrists and measured against what is in the current draft legislation."

Ms. Maggio requested Dr. Arredondo proceed with the bill amendments. Ms. Maggio informed the Members that she, Ms. Sieferman, Drs. Turetsky and Lawenda, and Board Subject Matter Expert, Dr. Cory Vu had a meeting last week with COA representatives Kristine Shultz and Terry McHale, Aaron Reed and Associates. Ms. Maggio and Ms. Sieferman shared the issues discussed that needed clarification. Ms. Maggio presented to the Members some technical amendments staff requested COA make to its language.

On June 16, 2014 amendments were made to the bill that required the Board's review and possible action.

Requested Amendments:

Section 1.

BPC §3041(i)(1)

For licensees who graduate from an accredited school of optometry <u>on or after May 1, 2016</u> that includes satisfactory curriculum on immunizations, as determined by the board, on or after May 1, 2016, submission of proof of graduation from that institution.

BPC §3041(i)(2)(B)

Be certified in basic life support for health care providers.

BPC §3041(o)

For the purposes of this chapter, "immunization" means 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 (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) for persons eight years of age or older <u>with proper parental, guardian, or</u> <u>authorized representative consent.</u>

Section 3.

BPC §3110(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 a 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.

(Dr. Madhu Chawla left the meeting at 9:15 a.m.)

Bruce Givner moved to accept the requested amendments. Frank Giardina seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.	X		
Donna Burke			×
Alexander Kim	X		
Cyd Brandvein			×
Madhu Chawla			×
Frank Giardina, O.D.	X		
Bruce Givner	X X		
Glenn Kawaguchi, O.D.	X X		
William Kysella			×
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.	X		

Frank Giardina moved to support Senate Bill 492 if amended, and directed staff to send the Board's amendments to the author, sponsor and Assembly Business, Professions and Consumer Protection Committee. Bruce Givner seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.	X		
Donna Burke			X
Alexander Kim	X		
Cyd Brandvein			X
Madhu Chawla			X
Frank Giardina, O.D.	X		
Bruce Givner	X		

Glenn Kawaguchi, O.D.	X	
William Kysella		X
Kenneth Lawenda, O.D.	X	
David Turetsky, O.D.	× ×	

Ms. Maggio requested the Board approve for her and the Board President to make any minor technical changes to the bill should issues come up at the pending hearing or shortly after but before the next Board Meeting. Dr. Lawenda reiterated Ms. Brandvein's concern that a public member should be included in the discussions for clarity and transparency. Dr. Lawenda has concerns of his own. Ms. Maggio explained that any changes to the Legislation prior to the meeting tomorrow with the Assembly Committee would only be technical changes and not having to do with policy.

Mr. Givner stated, and Dr. Lawenda agreed, that the Board has a strong minority that wants a public Member involved in those discussions. Mr. Givner suggested appointing Ms. Brandvein to be a part of thediscussions.

Dr. Lawenda brought a motion to the table to delegate authority to the President, and one Public Member, to make any decisions (technical and/or policy) should the Board be contacted regarding any amendments to SB 492.

There ensued a long discussion/debate amongst the Members and Mr. Santiago as to how this motion should be worded and whether it should allow technical changes only.

Mr. Givner reminded Dr. Arredondo that there are very strong feelings about this from the two Public Members absent from the meeting.

Ms. Shultz announced that she is very concerned about the motion on the table. She stated that giving authority to two Members is inappropriate. Ms. Shultz added that if clarity and transparency are the goals then this is the time and place to develop one's position, and let staff reflect your will on technical issues at the Assembly Committee meeting. Ms. Maggio explained that if issues come up she would have to make contact with both Members and hold a conference call with them to get their agreement on minor changes, again not policy matters.

Kenneth Lawenda moved to delegate authority to the President and one Public Member, to make any decisions should the Board be contacted regarding any amendments to Senate Bill 492. Bruce Givner seconded. The Board voted (5-2) against the motion. Motion not carried.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.		X	
Donna Burke			X
Alexander Kim		X	
Cyd Brandvein			X
Madhu Chawla			X
Frank Giardina, O.D.		X	
Bruce Givner	X		
Glenn Kawaguchi, O.D.		X	
William Kysella			X
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.		X	

Alejandro Arredondo moved to delegate the Board's authority to make any technical decisions or technical changes to Senate Bill 492 as presented to the President as well as one other Public Member . David Turetsky seconded. The Board voted (5-2) to pass the motion.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.	X		
Donna Burke			X
Alexander Kim	X		
Cyd Brandvein			X
Madhu Chawla			X
Frank Giardina, O.D.		X	
Bruce Givner	X		
Glenn Kawaguchi, O.D.		X	
William Kysella			X
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.	X		

4. Public Comment on Matters Not on the Agenda (No action may be taken except to determine if the item should be put on a future agenda.)

No public comments were received.

5. Adjournment

David Turetsky moved to adjourn the meeting. Frank Giardina seconded. The Board voted unanimously (7-0) to pass the motion.

Member	Aye	No	Absent
Alejandro Arredondo, O.D.	X		
Donna Burke			X
Alexander Kim	X		
Cyd Brandvein			X
Madhu Chawla			X
Frank Giardina, O.D.	X		
Bruce Givner	X		
Glenn Kawaguchi, O.D.	X		
William Kysella			X
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.	X		

The meeting adjourned at 10:05 a.m.



STATE BOARD OF OPTOMETRY

2450 Del Paso Road, Suite 105, Sacramento, CA 95834 P (916) 575-7170 F (916) 575-7292 <u>www.optometry.ca.gov</u>



DRAFT

Meeting Minutes Friday, August 8, 2014

Department of Consumer Affairs Hearing Room 1625 North Market Blvd. Sacramento, CA 95834

And by telephone at the following location:

140 C Tower Street Beaconsfield, Quebec H9W6B2 Canada

Members Present	Staff Present
Alejandro Arredondo, O.D., Board President	Mona Maggio, Executive Officer
Madhu Chawla, O.D., Vice President, Professional	Jessica Sieferman, Enforcement Lead
Member	
Donna Burke, Board Secretary, Public Member	Lydia Bracco, Administrative Assistant
Cyd Brandvein, Public Member	Robert Stephanopoulos, Policy Analyst
Frank Giardina, O.D., Professional Member	
David Turetsky, O.D., Professional Member	Michael Santiago
Glenn Kawaguchi, O.D., Professional Member	
William H. Kysella, Jr., Public Member	
Kenneth Lawenda, O.D., Professional Member	
Bruce Givner, Esq., Public Member	
Alexander Kim, MBA, Public Member	
	Guest List
	On File

9:35 a.m. FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Board President, Alejandro Arredondo, O.D. called roll and a quorum was established. The meeting was called to order at 9:35 a.m.

Executive Officer, Mona Maggio introduced Board staff attending meeting.

Public Member, Bruce Givner arrived at 9:40 a.m.

2. Welcome – President's Report

Dr. Arredondo welcomed everyone in attendance. He announced he took a survey of the ACOE (Accreditation Counsel for Optometric Education) and went to meetings when they were accrediting Western University and participated in the survey.

Dr. Arredondo stated there were three optometry graduations recently. He went to Southern California College of Optometry (SCCO) on May 22, 2014 and Western University on May 15, 2014. David Turetsky, O.D., went to the University of California, Berkeley on May 24, 2014.

Next Dr. Arredondo thanked the Board for their patience regarding the BreEZe program taking place.

Due to the Board meetings not always being webcast, he asked the members to raise their hand if they want to comment and he will recognize them to speak. If someone must step out of the meeting either he or Donna Burke will announce the members departure and return.

Dr. Arredondo stated that Ken Lawenda, professional member was viewing the meeting via the webcast. He is being connected from Canada through the conference phone. Welcome Ken.

3. Public Comments for Items Not on the Agenda

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

There was no public comment.

4. Approval of Board Meeting Minutes

- A. August 16, 2013
- B. November 1, 2013
- C. April 11, 2014
- D. June 23, 2014

Madhu Chawla moved to approve the August 16, 2013 minutes as amended. Frank Giardina seconded. The Board voted: 9-Aye; 0-No; 2-Abstention to pass the motion.

Member	Ауе	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Ms. Brandvein			X
Ms. Burke	X		
Dr. Chawla	X		
Dr. Giardina	X		
Mr. Givner	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		
Dr. Lawenda	X		
Dr. Turetsky			X

Madhu Chawla moved to approve the November 1, 2013 Meeting Minutes as amended. Alexander Kim seconded. The Board voted: 10-Aye; 0-No; 1-Abstention to pass the motion.

Member	Ауе	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Ms. Brandvein	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Giardina	X		
Mr. Givner	X		
Dr. Kawaguchi	X		
Mr. Kysella	Х		
Dr. Lawenda	X		
Dr. Turetsky			X

Madhu Chawla moved to approve the April 11, 2014 Meeting Minutes as amended. Frank Giardina seconded. The Board voted: 11-Aye; 0-No; 0-Abstention to pass the motion.

Member	Ауе	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Ms. Brandvein	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Giardina	X		
Mr. Givner	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		
Dr. Lawenda	X		
Dr. Turetsky	X		

The June 23, 2014 minutes to approve amendments was postponed to add a discussion regarding giving two Board members authority to make policy changes and the vote results from that discussion. That portion of the meeting was left out of the minutes. No motion was made.

5. Department of Consumer Affairs Report

Presented by Christine Lally, Deputy Director of Board/Bureau Relations And Jason Piccione, Chief Technology Officer

Mr. Piccione is the Chief Technology Officer for the Department of Consumer Affairs and the BreEZe Technical Project Manager. He gave a brief update of the BreEZe project and answered questions from the Board.

He stated that the department and BreEZe Project have "learned lessons" from the first release of BreEZe and are improving the product. The design methodology of Phase II focuses on the thoroughness and accuracy of design documents to ensure the Board's business is captured and the resulting BreEZe system is effective and right.

Two examples of this new methodology are the use of "Use Cases" which allows Boards to map out business processes prior to doing any design work.

Another example of this is "storyboards" which help Boards understand there is a standard flow for all online transactions, what that flow is and how the Board can configure flow for its use. The new methodology is

proving effective. The extreme depth of the design documents are taking form and are making the scheduled review time insufficient.

Dr. Arredondo opened the floor to comment/questions.

Ms. Burke, public member asked Mr. Piccione to elaborate on the usability experience.

Mr. Piccione defined usability as the ability for BreEZe to meet the requirements and demands of the user community that uses it. They want to make sure that the people using it can use it easily and with as few obstacles as possible. License renewals will take 20 - 30 minutes [instead of 6 - 8 weeks].

Ms. Burke asked Mr. Piccione how they are testing the component.

Mr. Piccione said BreEZe is being placed up against the web standards that come out of Usability.gov and the HFI (Human Factors International) standards. As an example, they are also streamlining the ability to do searches easier.

Ms. Burke asked Mr. Piccione if they are using people who will be using BreEZe as licensees or students. Are they getting any hands-on and are you getting any feedback from that?

Mr. Piccione responded by stating there is no public user forum, but they are taking the suggestion into high advisement.

Ms. Maggio, Executive Officer, stated that once BreEZe is implemented we will be reaching out to a couple of schools and have students begin the application process.

Ms. Burke asked what the timetable looks like.

Mr. Piccione replied that the current scheduled implementation for this Board, Release II, is April/May 2015. With review times potentially being insufficient in some cases, there may be relief for staff working the design phase. This may cause an extension of the schedule.

A discussion ensued regarding personnel limitations and needs, work constraints, timeframes for BreEZe and personnel involvement, overtime, BreEZe costs and budget over runs.

6. Petition for Reduction of Penalty or Early Termination of Probation

Administrative Law Judge (ALJ) Karl Engeman presided over the hearing. Anahita Crawford was the Deputy Attorney General (DAG). Board members heard the following Petition. The hearing was called to order at 10:30 am.

A. Larrance Larson, O.D., OPT 6725

FULL BOARD CLOSED SESSION

- 7. 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(e), the Board will Meet in Closed Session to discuss pending litigation – Anthony Rudick, O.D.; Ridge Eye Care, Inc. v. State Board of Optometry, Superior Court of the State of California for the County of Sacramento, CA., Case Number KG13708526

FULL BOARD OPEN SESSION

9. Presentation on Running Effective Meetings

Rick Sydor, Registered Parliamentarian; Past International Director, Toastmasters International

Mr. Sydor has served in several different positions on the Board of Directors for the California State Association of Parliamentarians.

Mr. Sydor's presentation was to assist the Board in making their meetings more effective, using some of the "common sense" tips from Robert's Rules of Order Newly Revised.

A handout was distributed and Mr. Sydor explained the meaning of the document. On the handout are squiggly lines which refer to Sections in Roberts Rules of Order. He focused mostly on the numbers 23, 24, and 25.

Mr. Sydor had comments on what he observed during the morning part of the meeting. His suggestions will help Dr. Arredondo, Board President, to conduct the meetings with more efficiency.

Mr. Sydor complimented Dr. Arredondo by saying the directions Dr. Arredondo gave the Board, i.e., if you want to speak, please raise your hand and the directions to the secretary, you want them to introduce themselves before they say or do, etc. He also said there is a magic phrase that the Board chair and any other Board member can use while presiding a meeting and it is, "If there are no objections". It will help in getting someone's attention. Members may not use it to vote because the Board must record the votes.

Mr. Sydor also complimented the Board on how the minutes were read. The members followed the minutes while working through them. He questioned when Dr. Arredondo said, "All those in favor, say Aye". What you have left yourselves open to is if someone had called for a division, meaning, let's have a vote a different way, you have already voted two different ways by saying Aye and raising your hand. You either need to say Aye or No or raise your hand, one or the other.

In his research for the meeting, Mr. Sydor found that abstentions are allowed. If the Board votes vocally, then the person recording the votes won't know who voted Aye or No.

Ms. Maggio asked if members wish to not vote at all, should we just record the ones that did vote?

Mr. Sydor responded that as long as the majority of those present are voting then you have passed the motion.

It was suggested by staff and members to have the President or Vice President say the name of the member that is not voting and to be clear, raise hands for voting and roll call.

Mr. Sydor stated that President Arredondo allowed side discussion by Board members. All discussion must go through the Chair to maintain control.

Mr. Sydor noticed something that is not on the handout sheet. President Arredondo did not state the motion members were voting on. Chair should restate motion.

Mr. Sydor asked if the Board members submitted new business in written format. President Arredondo replied, No.

Ms. Maggio told Mr. Sydor that if a subject is not on the agenda, the Board cannot discuss it. There is a point in the agenda where members and the public can ask staff to add certain items to the agenda.

Mr. Sydor stated, if there is a motion on the floor and a member wishes to amend it or change it in any format, is that allowed?

Mr. Sydor responded by saying, as soon as the recommendation is made, the member should ask the Secretary to read it or the President to restate it so everyone will know what is being discussed.

Mr. Sydor said that as a small Board, members are allowed to talk as long as they want. It is the President's job to try and keep them on track. Members can (#23 point of order) interrupt, with no second and no debate. The member making the point of order can say, I believe the member is not speaking to the motion or amendment that is on the floor. President should ask the member to get back on track and keep comments to what is on the floor.

Mr. Sydor continued by stating, number 24 is an appeal. Offer an opinion, it's your opinion and either the Board agrees with it or not. If a ruling is made, the members can appeal from your ruling. Not everything the President says is under the category of appeal.

President Arredondo asked, if a Board member is speaking on a subject and another member doesn't understand, they should say to President Arredondo, request for information. Mr. Sydor said yes and President Arredondo continued by saying he would ask the member speaking to elaborate on his point. Mr. Sydor said yes, but they should ask very specifically what information is needed.

Mr. Sydor stated, from his observation, the Board is on track and doing well. Just maintain a little more control as Chair so the comments go through the President.

Mr. Sydor asked if there were any questions.

President Arredondo said he was curious about Parliamentary Procedure. Mr. Sydor responded by giving a short history of it going back to Old England.

Dr. Turetsky, professional member, asked, regarding number 24, if the Chair makes a decision to ask a staff member to research something, but I feel the staff members time could be better spent doing something else, I would say, I appeal the decision by the Chair and someone has to second it then discuss it and vote on it?

Mr. Sydor responded, yes, and the majority would either support you in your appeal or support the Chair. It's on a ruling, not an opinion.

Ms. Brandvein asked Mr. Sydor to clarify opinions and when it's appropriate or not to have opinions attached to recommendations or motions or the same individual addressing all – making a motion/adding an opinion.

Mr. Sydor responded, that is debate, you're offering an opinion on a motion you have asked the Chair a specific question. That amendment is germane to the motion on the floor.

Ms. Brandvein asked, when does the chair participate in the opinion discussion?

Mr. Sydor explained, because of a small Board, Robert's Rules of Order allows the Chair to participate. The Chair has a right to vote. The Chair makes or breaks a tie. The Chair can choose not to vote, that's their privilege.

President Arredondo asked if there were any further questions. No. Any public comments? He thanked Mr. Sydor for attending.

10. Review and Possible Approval of Amendments to the Board Member Handbook

Cyd Brandvein, Public Member

Ms. Maggio stated that on the introductory page, highlighted in gray, she changed the Mission, Vision and Values Statement from the Board's strategic plan.

Ms. Brandvein explained that most Boards have responsibilities and roles called out for their officers. That helps to build upon efficiency and effectiveness for what those roles would be. When voting at the last meeting, there was no clarity as to what each officer would do, the time commitment and some very specifics for a number of statements made were not directly relevant to the role for this particular Board. By bringing clarity it would help during elections to understand the expertise members bring from outside the Board and how those skills and capabilities may assist the Board.

Speaking in conceptual terms, Ms. Brandvein walked the members through the handbook. She stated that the President handles the meetings and other Board business and affairs. It also brings clarity to governance and the election process. It's more of a deliberate process of soliciting interest and gathering your capabilities from your prior experience that you bring.

For the Vice-President there was discussion with Michael Santiago, Staff Counsel, about what those roles would be. Let's consider a meaningful role for the Vice President.

Ms. Brandvein pointed out a typo, "on boarding", in the document. On-boarding for new Board members who are waiting for the Board Member Orientation Training (BMOT) and all the documents that go with it. It would be very helpful to hear from a member of the Board to give them a "Welcome to the Board" pitch, to tell them there will be training and introduce them to the staff. Give them a roster and list of what staff does because they will be invited to the Board to go through, in more detail, the occupations of the Board of Optometry.

Lastly, moving to Secretary, an opportunity here is to focus on the administrative side of what we do as Board members interacting with the Board. The Secretary could change the typos, etc. in the minutes before the Board packet comes out. The members would have that comfort level that we look, not for grammar, but substantive edits that we're recommending or changes in the Board minutes themselves. It's not replacing where the Board minutes are written, it's more of a collaborative oversight and fresh eyes. The same thing with monitoring the text of the motions if whoever is responsible for those motions, sitting up here (motioned with hand to indicate where Board members sit) to collaborate with our team on the Board side to make sure it's represented with clarity and accuracy.

Lastly, from the Administrative side, there tends to be a fair amount of references to Board materials, laws, etc. While our staff, including Mona, are the experts in this, it does help to have our team, at least members of our team, who can reference and have available to the Board if one of us didn't bring a copy instead of taking from the Board team who refers to it consistently. Have an individual that could quickly reference and pull-out the laws, regulations and practices that the Board refers to.

President Arredondo thanked Ms. Brandvein and asked the other members if there were any comments.

Ms. Maggio stated that in addition to the officer's roles and responsibilities and the mission, vision and value statements being updated, to reflect the new information the Board voted on at our strategic plan. She added, on page 7 under Use of Electronic Devices during Meetings, Bagley-Keene Act, Michael pointed out Keene was misspelled. She also added, use of laptops during the meetings are solely to access the Board meeting materials that are in electronic format because we're starting to use laptops more often in our meetings.

Ms. Maggio also had a question on motions. On page 4 of the handbook under Making a Motion, number 7 was listed as, if it is a rising vote, those in favor of the motion will rise from their seats. She is asking instead of doing that, would the Board do a role call? She wanted to put it for a clarification because we have it right now - if it is a rising vote, those in favor of the motion will rise from their seats. Mr. Kysella agreed.

Ms. Maggio continued by referencing page 10 and 11 and asked, are there any other suggestions members want to be drafted in the handbook? She suggested the minutes should be sent to the secretary within 30 days after each Board meeting. She will add, under Board Documents, the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines because members probably refer to those during closed session discussions.

Ms. Maggio stated because changes were being made to the handbook, members should take a vote on it.

Dr. Turetsky, professional member, asked regarding page 7, Bagley-Keene should laptop be changed to something else, tablet, Smart phones, electronic devices?

It was decided that Ms. Maggio would make the suggested edits to the handbook and bring it back to the Board to review and then a vote would be taken.

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

Please review and discuss the following bills which are specifically related to the Board and direct staff to take any action if warranted.

A. Senate Bill 492 (Hernandez) Optometrist Scope of Practice

Last Amended: July 1, 2014

Location: Assembly Appropriations Committee

Summary: This bill would revise various scope of practice provisions in the optometry practice act, including the creation of an advanced practice certificate authorizing optometrists to perform certain laser and lesion removal procedures.

Staff Comments: With the Board's approval, a letter with a position of "support if amended" was sent to the author on June 23, 2014. It appears the amendments requested of the Board have been made.

In addition, the following amendments to the bill have been made:

3041(g)(1): The requirement of the passage of test for competency and performance of the procedures in subparagraph (F) of paragraph (2).

3041(g)(2): A TPA certified optometrist may perform the training procedures in their own practice under the supervision of a physician and surgeon or an optometrist with an advanced procedure certification. 3041(g)(2)(A): The advanced procedure course must be provided by a school of optometry and developed in consultation with an ophthalmologist who has experience teaching optometric students.

3041(g)(2)(D): The inclusion of passage of a test for competency.

3041(g)(2)(F)(ii): Clinical or laboratory experience consisting of between 20 and 35 clinical eyelid or adnexa surgery training procedures, between 18 and 25 laser training procedures, and between 6 and 12 injection training procedures. The Board shall convene an advisory committee to establish the exact number of training procedures required consisting of the Director of Consumer Affairs or his or her appointee, who shall also serve as chair, two practicing optometrists, two practicing opthhalmologists, one faculty member a school of optometry, and one ophthalmologist that teaches at a school of optometry. The members of the committee shall be appointed by the respective licensing boards. Recommendations from the committee shall be reported to the board within six months of being convened.

3041(h)(3): Removal, destruction, or drainage of lesions of the eyelid and adnexa clinically evaluated by the optometrist to be noncancerous.

3041(o): Pertussis has been added to the listed immunizations, for persons 18 years of age or older.

Dr. Arredondo welcomed Kristine Schultz representing the California Optometric Association (COA) who reported on Senate Bill (SB) 492.

Ms. Schultz reported on additional amendments that occurred on August 4, 2014 that were raised in the Business and Professions Committee. One of the amendments was to make sure that the experience given to optometrists would be on live, human patients. Another amendment was to eliminate the reference to "lab" which is along the lines of live, human patients and have the word "clinical" only. In addition, an amendment was to revert to existing law when it comes to the types of laboratory tests that optometrists can use, also in response to concerns expressed at that committee hearing. Lastly, to expressly prohibit cosmetic surgery, it was never the intent to have optometrist's doing Blepharoplasty.

Additionally, there are new amendments that are being considered now. She didn't have them in print and they have been sent to the Legislative Counsel. The biggest one is to change the number of procedures required for certification. Right now in the language there's a range established by an advisory committee. More new amendments being discussed are: 20 eyelid procedures, 25 laser procedures, nine injection procedures, and eliminate the advisory committee. That's one of the concerns expressed by the opposition so COA has taken that as an amendment and are trying to remove some of the opposition to the bill.

The new amendments COA is considering would clearly specify that all of the training procedures must be performed entirely by the optometrist or student seeking this certification to perform advanced procedures. They couldn't do a partial procedure and have that count as a full procedure, they have to do it from start to finish. COA is going to add language that allows optometrists to get the procedures done at a school of optometry or in a physician's office in addition to their own practice under the supervision of a physician to get the numbers because they are so high. The numbers are higher than what ophthalmologists have to do for the specific procedures during their residency.

Ms. Schultz spoke about new amendments COA is considering and will adopt language limiting the removal, destruction or drainage of lesions of the eye to only those that do not involve the eyelid margin or the lacrimal supplier drainage systems and are no deeper than the orbicularis muscle. The limiting language would absolutely, clearly prohibit any plastic surgery. COA is going to strike Pertussis (whooping cough) from the list of vaccines authorized and adopt language to authorize the Board of Optometry to charge a fee to pay for the regulation for the new certifications created by the bill. The language says, something like, it has to be a reasonable amount, no more than \$300 for license and renewal.

Dr. Kawaguchi, professional member, asked for clarification regarding the surgical procedures around the eyelids. Does that mean it's not including Hordeolums?

Ms. Schulz responded by saying they just couldn't be on the eyelid margin because those can be more complicated. So Hordeolum and Chalazion would still be authorized under the bill.

Dr. Lawenda, professional member, asked Ms. Schulz to explain what a suspense file is because the bill was heard on the 6th and went to a suspense file.

Ms. Schultz explained the bill was a candidate for suspense file which means it costs so much money. The bill was heard on August 6th by the Assembly Appropriations Committee and as expected it was put on suspense file. The Legislature was expected to take up that suspense file on August 14th. On that day they will know if the bill moves forward. There will not be a bill hearing, it will either come off suspense or just stay there. If it stays it won't make the deadline of August 15th and will probably die.

Dr. Lawenda asked another question. Is legislation going to be required to actually be working with live patients in the schools?

Ms. Schultz answered, there were some concerns from lawmakers that it didn't specify live patients, we've always talked about experience always happening on live patients. The amendments that were taken on August 4th specifically say it has to be on live, human patients. The schools are aware of all of the amendments and COA is working with them to make sure this will be implemented.

Dr. Lawenda asked if the three schools of optometry have agreed to the bill.

Ms. Schultz responded that she has not seen a letter from UC Berkeley, she saw an updated letter from Western in support, and couldn't remember if there was a letter from SCCO. She will check and send an email.

Dr. Chawla asked if David Sendrowski, a professor at SCCO, testified.

Ms. Schultz responded that he has been their expert along with the new Dean, Dr. Stanley Woo.

Ms. Burke asked if Ms. Schultz said Pertussis was deleted.

Ms. Schultz explained that Pertussis comes with two other immunizations and those two immunizations are not authorized. By removing Pertussis, COA hoped to alleviate opposition to the bill. It wouldn't go through anyway as the two other immunizations were not authorized.

Dr. Turetsky asked if Ms. Schultz thought the optometry schools would still be graduating May 1, 2016 and would be able to complete this. If they couldn't put the curriculum together and do the required number of procedures, would that mean they would graduate and not have the advanced practice licensure? Would they have to obtain it on their own at a later time?

Ms. Schultz said that is the intent.

Dr. Arredondo, President, thanked Ms. Schultz.

B. Senate Bill 870 (Committee on Budget and Fiscal Review) Health Trailer Bill

Robert Stephanopoulos, Policy Analyst, stated that the Board sent an "oppose unless amended" letter to the author. The Board requested a comprehensive eye exam to be a part of that, with color screening for all students and evaluations every second year. No changes have been made to the bill. Mr. Stephanopoulos contacted Steinberg's office and the person he spoke to said she didn't receive the letter and it sounded like, to him, that the changes wouldn't be made and there was too much opposition and it would kill the bill. She also said there was a study done with the US Vision Task Force where they did a literary review and determined that no other medical professionals recommended implementing a comprehensive eye exam for children. They determined that the visual acuity was sufficient and not a comprehensive eye exam unless a child failed a vision screening.

Dr. Turetsky asked, what oversight does the Board have on this? Is there anything we can do to ensure these children are receiving a proper exam and there isn't a financial motivation to complete the exams as fast as possible? So if there isn't a complaint brought by a consumer we can't do anything.

Ms. Maggio replied, there has to be a complaint filed.

Ms. Burke suggested the Public Relations Committee put together informational brochures or literature to make sure those participating in the program know what their rights are as consumers.

Last Amended: June 13, 2014

Status: Chaptered June 20, 2014 - Chap. 40, Statutes of 2014

Summary: This bill, among other things, included provisions sought by the Department of Health Care Services creating a mobile vision services pilot program in Los Angeles County, to be covered by Medi-Cal. This pilot program enables school districts to allow students enrolled in Medi-Cal managed care plans to receive vision care services at the school site through the use of a mobile vision service provider. The vision care services available under this pilot program are limited to vision examinations and providing eyeglasses. The program shall last three years, starting no sooner than January 1, 2015, and concluding December 31, 2017, or three years from the start date of the pilot if later.

C. Senate Bill 1172 (Steinberg) Pupil Health: Vision Examinations

Last Amended: April 23, 2014

Location: Assembly Appropriations Committee

Summary: This bill would revise the vision appraisal procedures for elementary school (through 8th grade) students in California school districts. Existing law requires, upon first enrollment in a California school district of a child at an elementary school, and at least every 3rd year thereafter until the child has completed the 8th grade, the child's vision to be appraised by the school nurse or other authorized person, as specified. This bill would instead require a pupil's vision to be appraised by the school nurse or other authorized person during kindergarten or upon first enrollment or entry in a California school district of a pupil at an elementary school, and in grades 2, 5, and 8, except as provided. The bill would revise the functions to be performed by the school nurse and the classroom teacher in observing a pupil's eyes, appearance, and other factors that may indicate vision difficulties.

Staff Comments: With the Board's approval, on June 20, 2013, a letter with a position of "oppose unless amended" was sent to the author.

Attachments

SB 492 Proposed Language
 SB 870 Text
 SB 1172 Proposed Language

12. Legislation and Regulations Update

Action Requested: Even though the Legislature has been on recess during July and returned on August 4th, there was still significant work being done during its absence with regards to legislation in order to deal with outstanding issues. With the exception of urgency measures, bills that have not passed through the appropriate policy committees in the second house (Assembly bills in the Senate and vice versa) will not be moving forward. The next major legislative deadline is August 15th when all legislation must have passed through fiscal committees. The Department suggests the Board review the following bills and determine if there would be any significant implementation issues or costs.

A. Assembly Bill 186 (Maienschein) Professions and Vocations for Military Spouses

Last Amended: June 25, 2014

Location: Senate Floor

<u>Summary:</u> This legislation requires the majority of programs under the Department to issue a temporary license (valid for 12 months) to the spouse or domestic partner of a military member on active duty if the applicant is also licensed in a similar profession in another state and meets other specified conditions while the license application is being processed.

<u>Staff Comments</u>: With the Board's approval, on June 19, 2014, a letter with a position of "oppose unless amended" was sent to the author. The Board's request to be exempted from the requirements of this bill has not been met.

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

Last Amended: April 18, 2013

Location: Assembly Appropriations. This bill is dead.

<u>Summary:</u> This bill proposed 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.

C. Assembly Bill 2165 (Patterson) Department of Consumer Affairs, Licensing

Last Amended: April 10, 2014

Location: Hearing canceled at request of the author. This bill is dead.

<u>Summary:</u> This bill would require each board to complete within 45 days the application review process with respect to each person who has filed with the board an application for issuance of a license, and to issue, within those 45 days, a license to an applicant who successfully satisfied all licensure requirements. The bill also requires each board to offer each examination the board provides for the applicant's passage of which is required for licensure, a minimum of 6 times per year.

D. Assembly Bill 2598 (Hagman) Department of Consumer Affairs, Pro-Rata

First Introduced: February 21, 2014

<u>Location:</u> Assembly Business, Professions and Consumer Protection. Hearing cancelled at request of author. This bill is dead.

<u>Summary:</u> This bill would require the department to make a claim to the Controller each month against any of the funds of a board for that board's pro rata share of the department's estimated monthly administrative expenses, and would further require the department to base the claim on the amount of filled positions working for a board. This bill would prohibit the Controller from paying the department for a board's pro rata share of total administrative expenses for any fiscal year in an aggregate amount over 20% of a board's budget for any fiscal year.

Legislation Specifically Related to Optometry:

E. Assembly Bill 1877 (Cooley) California Vision Care Access Council

Last Amended: July 1, 2014

Location: Senate Appropriations Committee, suspense file

<u>Summary:</u> This bill would establish the California Vision Care Access Council within state government and would require that the Council be governed by the executive board that governs the California Health Benefit Exchange.

Committee Hearing Date: August 4, 2014

Legislation Potentially Impacting All Healing Arts Programs:

F. Assembly Bill 809 (Logue) Telehealth Patient Consent

Last Amended: May 19, 2014

Location: Senate Health Committee

<u>Summary:</u> This legislation would require a health care provider who uses telehealth for the delivery of health care services to obtain verbal or written consent from the patient, and to document the patient's consent.

Committee Hearing Date: August 14, 2014

Dr. Giardina, professional member asked, what if you wanted to do telemedicine with someone who is out of state and they don't have a license to practice in California, would that be considered legal?

Mr. Stephanopoulos replied that he would research it and let him know.

G. Assembly Bill 2102 (Ting) Licensees: Demographic Data Collection

Last Amended: June 2, 2014

Location: Senate Appropriations Committee

<u>Summary:</u> This legislation would require the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board, and the Board of Vocational Nursing and Psychiatric Technicians to annually collect and report licensee demographic data to the Office of Statewide Health Planning and Development.

Committee Hearing Date: August 4, 2014

H. Senate Bill 1256 (Mitchell) Medical Services: Credit

Last Amended: June 25, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation would prohibit medical providers from arranging for a line of credit on behalf of a patient unless the patient signs a release acknowledging they are aware of their rights concerning these loans that are offered by third party providers. In addition, the bill would require the healthcare practitioner to provide the patient with a treatment plan prior to arranging for the line of credit, prohibit charges to the credit account before the procedure has been rendered, and prohibit a licensee from arranging for credit for a patient who is under the influence of anesthesia.

I. Senate Bill 1466 (B, P & ED Committee) Health Omnibus

Last Amended: July 1, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation, the omnibus bill for health-related professions, would make a number of technical or noncontroversial changes for health care professions.

Committee Hearing Date: August 6, 2014

The following bills have been identified as potentially impacting the department as a whole or most, if not all, boards and bureaus:

J. Assembly Bill 1702 (Patterson) Delay or Denial of Licensure Due to Incarceration

Last Amended: April 23, 2014

Location: Senate Appropriations Committee

<u>Summary:</u> This legislation would provide that an applicant shall not be subject to a delay in processing his or her application or a denial of the license due to the applicant completing some or all of the licensure requirements while incarcerated.

K. Assembly Bill 1711 (Cooley) Economic Impact Assessment

Last Amended: April 3, 2014

Location: Senate Appropriations Committee

<u>Summary:</u> This legislation would require the inclusion of an economic impact assessment in a rulemaking's initial statement of reasons and would direct the Department of Finance to prepare instructions for agencies to use in preparing the assessment.

Committee Hearing Date: August 11, 2014

L. Assembly Bill 1758 (Patterson) Prorating of Initial License Fees

Last Amended: June 30, 2014

Location: Senate Appropriations Committee, suspense file

<u>Summary:</u> This legislation requires prorating of a licensee's initial license fee for the following programs: Architects Board, Dental Board, Dental Hygiene Committee, Acupuncture Board, Medical Board, Physical Therapy Board, Board of Psychology, Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Board of Occupational Therapy and Veterinary Medical Board.

Committee Hearing Date: August 4, 2014

M. Assembly Bill 1921 (Holden) Access to Records for State Contracts

Last Amended: April 28, 2014

Location: Senate Appropriations Committee

<u>Summary:</u> This legislation would require contractors providing state contract service to allow state access to their records and files related to the contract if the contract is in excess of \$25,000, and additionally would require the contractor to keep and maintain records as provided in the California Public Records Act.

N. Assembly Bill 2058 (Wilk) Open Meetings

Last Amended: June 19, 2014

Location: Senate Appropriations Committee

<u>Summary:</u> This legislation would modify the definition of "state body" within the Bagley-Keene Open Meeting Act, to include advisory committees with less than three individuals, when those committees have standing subject matter jurisdiction.

O. Assembly Bill 2396 (Bonta) Denial of Licensure for Prior Convictions

Last Amended: May 15, 2014

Location: Senate Appropriations Committee, suspense file

<u>Summary:</u> This legislation would provide that a person may not be denied licensure solely based upon a conviction that has been dismissed through specified penal code procedures.

Committee Hearing Date: August 4, 2014

P. Assembly Bill 2720 (Ting) Requires State Agencies to Record Votes in Meeting Minutes

Last Amended: April 2, 2014

Location: Senate Floor

<u>Summary:</u> This legislation would require a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

Q. Senate Bill 1159 (Lara) Professions and Vocations: License Applicants: Federal Tax Identification Number

Last Amended: June 30, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation would allow licensees to use a federal taxpayer identification in lieu of a social security number when applying for licensure. In addition, this bill would prohibit any program within the Department of Consumer Affairs from processing an application that omits these numbers.

Committee Hearing Date: August 6, 2014

Dr. Giardina asked what is the rational to allow licensees to use their Federal Taxpayer ID in lieu of their social security number.

Board members replied by saying it could be an immigration related thing or identity theft protection.

Mr. Stephanopoulos replied he didn't know and he would look it up.

R. Senate Bill 1240 (Anderson) Changes to State Employment Applications

Introduced Date: February 20, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation would require state employment forms to ask applicants to disclose any previous employment with the state, and whether that person has been prohibited from seeking or accepting any future employment with the state.

S. Senate Bill 1243 (Lieu) Professions and Vocations

Last Amended: June 30, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation would, among other things, require the Department to provide the Enforcement Academy training annually for any employees in enforcement who wished to take it. The bill would also require the Department as well as the Attorney General's Office and the Office of Administrative Hearings to report annually on enforcement-related statistics.

Committee Hearing Date: August 6, 2014

T. Senate Bill 1337 (DeSaulnier) Reports

Last Amended: May 27, 2014

Location: Assembly Appropriations Committee

<u>Summary:</u> This legislation would require the heads of all state departments and agencies to sign a statement attesting to the accuracy of information provided to the legislature or a member of the legislature, with individual civil liability for an agency head that knows of false information in the report. This bill would likely apply to board executive officers.

Regulations:

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

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 ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. The unchanged rulemaking package was resubmitted to the Office of Administrative Law, which will be printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period will begin August 8, 2014 and conclude September 22, 2014.

13. Executive Officer's Report

Ms. Maggio provided the Executive Officer's Report on the following topics:

BreEZe

Awet Kidane, Director, Department of Consumer Affairs will be present during the meeting to answer any questions members may have about the Breeze project. Staff will provide an oral update and a handout of staff concerns that was given to the Director and the vendor.

2013/2014 Budget

The 2013/2014 budget for the Board was \$1,901,030. Planned receipts \$1,731,000; as of June 30, 2014 Receipts received \$1,914,795.31. As of June 30, 2014 the Board has encumbered \$1,724,906 reflecting 90.74% of the total budget. The Board is projecting an unencumbered balance of \$174,124. The unencumbered balance is reverted to the Board's Fund.

The Month 13 Final Fiscal Report that provides the final expenditures, revenue and adjustments for fiscal year FY 2013/2014 is expected soon.

2014/2015 Budget

The 2014/2015 budget released for the Board is \$1,804,000

Out of State Travel

On April 22, 2014 a request to attend the Association of Regulatory Boards of Optometry's (ARBO) Annual Meeting June 22-24, 2014, at The Westin, Philadelphia, Pennsylvania was submitted for review and approval to the Agency Secretary. Though California State Board is a voting member of ARBO and the Executive Officer sits on the OE Tracker National Committee as the only board administrator, representing all other state administrators, the request was denied.

Budget Change Proposals

Staff submitted two budget change proposal (BCP) requesting position authority (additional staff) and funding for two enforcement analysts, a licensing technician and funding to conduct an occupational analysis of optometric assistants as directed by the California legislature. After submission to the Department of Consumer Affairs, another Budget Letter was released by the Department of Finance detailing the specifics of what requests would be considered.

A. Personnel

Rob Stephanopoulos was hired as the policy analyst for the Board effective June 30, 2014. Rob is currently juggling his assigned enforcement cases and learning the rulemaking process. The request to fill the vacant enforcement analyst position is under review at The Department of Consumer Affairs, Office of Human Resources (OHR) and a job announcement will be posted soon.

The request to upgrade the receptionist position from an Office Assistant (entry level clerical) to an Office Technician (journey level clerical) classification was approved by OHR. Interviews were held and Pricilla Torres-Fuentes was hired as the Board's receptionist. Pricilla in addition to her receptionist responsibilities, Pricilla is training to assist with initial license application review.

Teri Hunley, was hired June 20, 2014 as a retired annuitant to handle the evaluation and issuance of initial optometry licenses and continuing education providers when the licensing staff is away for BreEZe. Teri retired from the Medical Board of California as the manager of the licensing program.

In addition, staff is working to recruit one temporary employee to assist when current staff is out of the office working on BreEZe. The Board was planning to recruit two temporary employees but blanket funding can be used to bring Nancy on full time which will alleviate the need to train a new person on licensing procedures.

B. Examination and Licensing Programs

Licensing statistics will be presented at the Board meeting.

Presentations to third year students were held:

April 14th University of California, Berkeley School of Optometry Jeff Robinson, Jessica Sieferman

April 29th Western University, College of Health Sciences, College of Optometry Jeff Robinson, Jessica Sieferman April 30th Marshall B. Ketchum University, Southern California College of Optometry Jeff Robinson, Jessica Sieferman and Cyd Brandvein

Licensing Statistics

			FY 2013-14											
			Q1 Q2 Q3 Q4						EV					
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY TOTAL
	Received	27	14	12	19	17	27	56	51	56	47	51	36	413
	Issued	77	26	7	20	17	13	12	12	9	9	18	134	354
Ls	Closed*	6	0	3	5	6	6	12	8	20				66
OPTs	Pending	182	170	175	169	163	171	203	234	261	299	332	234	234
	Avg. Cycle Time	97	113	137	183	170	187	247	236	198				145

			FY 2013-14											
			Q1			Q2			Q3	Q4				FY
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
	Received	16	8	14	15	13	15	27	16	17	4	15	7	167
	Issued	9	6	3	32	7	10	13	4	10	16	5	18	133
Ps	Closed*	0	1	2	5	7	6	0	0	0				21
FNPs	Pending	57	58	67	45	44	43	57	69	76	64	74	63	63
	Avg. Cycle Time	144	183	124	114	108	93	112	98	151				122

			FY 2013-14											
			Q1			Q2		Q3			Q4			FY
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
	Received	19	22	29	27	21	23	31	18	25	22	27	20	284
	Issued	32	13	34	3	22	33	24	3	34	26	12	17	253
LS	Closed*	0	6	5	8	2	0	0	0	0				21
SOI	Pending	28	31	21	37	34	24	31	46	37	33	48	51	51
	Avg. Cycle Time	52	25	28	34	37	37							37

			FY 2013-14											
			Q1 Q2 Q3 Q4						Q4		FY			
		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
	Received	4	4	4	5	4	3	1	4	6	4	5	5	49
	Issued	5	0	0	10	1	3	4	1	2	3	0	3	32
BOLS	Closed*	0	0	40	0	5	6	0	0	0				51
BO	Pending	60	64	28	23	21	15	12	15	19	20	25	27	27
	Avg. Cycle Time	132	0	0	96	20	97	91	106	89				99

C. Enforcement Program

Prepared by Jessica Sieferman, Lead Enforcement Analyst/Probation Monitor

The entire Enforcement Unit has and will continue to devote large portions of time to BreEZe development. This will negatively impact our Enforcement Performance Measures and other Enforcement tasks, particularly during Data Conversion/Validation and User Acceptance Testing. Given the limited time staff has to devote to casework, the Board's Enforcement Unit was still able to meet its performance measure target for intake and investigation for May and June (attached). With that said, the average time for Q3 was still over our target. In addition, staff has concerns that the intake and investigation target may not be realistic. Since this target includes the time it takes for staff investigation, Expert Witnesses to review and the Division of Investigation to conduct their investigation, 90 days is not sufficient in many of our cases. Staff needs to meet with the Department of Consumer Affairs to discuss more realistic performance measure measure targets.

During DCA's Sunset Hearing in March, the legislature asked DCA about CPEI's Performance Measures. Specifically, our Board was identified as one of the Boards not meeting Performance Measure 3: Intake and Investigation (90 day target cycle time) in the last two fiscal years. Citing various reasons for the missed target (e.g., staffing, technology issues, potentially unrealistic target, etc.), the Board worked with DCA's Budget Office to respond to concerns raised.

As previously reported, however, the Board's Enforcement Program is diligently working to meet its performance measures. In October 2013, the Enforcement Program made a goal to meet its performance measures by the end of the fiscal year. Armed with a fully staffed program, increased DAG and DOI communication, and streamlined processes, the Board's Enforcement Program closed March (end of Quarter 3) with an average cycle time of 88 days. In addition, the Board's Enforcement Program has the lowest pending caseload it has had in years, with only 68 complaints pending.

Con	nplaints			
	2010/11	2011/12	2012/13	2013/14*
Total Received	295	318	254	190
Total Closed	227	282	289	257
Total Pending	134	170	135	68
Cit	ations			
	2010/11	2011/12	2012/13	2013/14*
Issued	2	1	3	11
Dis	cipline			
	2010/11	2011/12	2012/13	2013/14*
Referred to AG	9	14	15	11
Accusations Filed	9	1	18	7
Statement of Issues Filed	0	0	1	0
Pending at AG	13	17	22	17
Disciplinary D	ecision Outo	comes		
Revoked	4	1	2	1
Revoked, Stayed, Probation	4	2	4	7
Surrender	1	1	2	1
Other	0	0	0	1

Enforcement Statistics

Attachments

- 1. Expenditure Report
- 2. Fund Condition
- 3. Enforcement Annual Performance Report FY 2013/2014
- 4. Enforcement Performance Measures 4th Quarter

Dr. Turetsky asked if there was an update on CURES as to whether or not all TPA certified optometrists will have to have a DEA number.

Ms. Maggio replied that she and Mr. Santiago will need to work on that by reviewing the Board's law. She stated a CURES update will be added to the next agenda and she will send an update to Dr. Turetsky.

Ms. Maggio said the next meeting is scheduled for November 1, but there was a request to change it to November 14 by Dr. Turetsky. Ms. Maggio asked the Board members to consider a two day meeting because at the June meeting there was discussion with Dr. Redman from COA and he asked if we could have a tour of one of the schools so all of the members could see what they are currently teaching regarding the new procedures for SB492.

After much discussion, November 21, 2014 was confirmed as the next Board meeting date.

Ms. Maggio stated that the Board was having issues with members receiving emails from her, Jessica Sieferman and Lydia Bracco. She instructed the members to contact her if they are not receiving emails from us.

14. Suggestions for Future Agenda Items

Dr. Kawaguchi requested continuance of discussion on student pupil vision health and have consideration for the Board to seek a senator or assembly member to support the Board's suggestions on legislation.

Mr. Kysella asked for a status update from counsel regarding co-location. He reminded the Board that an Attorney General attended a Board meeting and the Board's letter, which was factually based, went too far. Wasn't something going to happen?

Ms. Brandvein would like to re-visit mental health – the regulatory trends and compliance trends. Are we getting anymore closed door sessions that involve mental health? How the environment is changing and how other Boards are dealing with it.

Dr. Lawenda stated that he would like to discuss the Board utilizing or possibly looking at Optometric Physician. Seven states use that signification for optometrists. He would like someone to research what other states have done.

Ms. Burke questioned old business regarding the last set of minutes. The Board had a target date of April for legacy database updates. What is the status? Ms. Maggio explained that the "Legacy System" is referring to the two old database systems (CAS and ATS) DCA is currently using. BreEZe is the system DCA is moving to.

15. Adjournment

Dr. Chawla moved to adjourn the meeting. Mr. Kysella seconded. The Board voted unanimously (11-0) to pass the motion.

Member	Ауе	No	Abstention
Dr. Arredondo	X		
Mr. Kim	X		
Ms. Brandvein	X		
Ms. Burke	X		
Dr. Chawla	X		
Dr. Giardina	X		
Mr. Givner	X		
Dr. Kawaguchi	X		
Mr. Kysella	X		
Dr. Lawenda	X		
Dr. Turetsky	X		

The meeting was adjourned at 4:30 pm.



STATE BOARD OF OPTOMETRY

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GOVERNOR EDMUND G. BROWN JR.

Friday, November 21, 2014

Western University of Health Sciences, College of Optometry 701 E Second Street Health Education center (HEC) Building 2nd Floor, Vision Science Lab 2205 Pomona, CA 91766

Members Present	Staff Present
Alejandro Arredondo, O.D, Board President	Ms. Maggio, EO, Executive Officer
Donna Burke, Board Secretary, Public Member	Lydia Bracco, Administrative Assistant
Cyd Brandvein, Public Member	Jessica Sieferman, Enforcement Lead
Frank Giardina, O.D., Professional Member	
Glenn Kawaguchi, O.D, Professional Member	Michael Santiago, Senior Legal Counsel
William Kysella, Jr., Public Member	
Kenneth Lawenda, O.D., Professional Member	
Rachel Michelin, Public Member	
David Turetsky, O.D., Professional Member	
Excused Absence	
Madhu Chawla, O.D, Vice President, Professional Member	Guest List
Alexander Kim, MBA, Public Member	On File

9:20 A.M.

FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Donna Burke, Board Secretary, called the meeting to order at 9:20 A.M., and conducted a roll call of members to establish a quorum. Ms. Burke noted that Board President Alejandro Arredondo, O.D., would join the meeting later.

Ms. Burke introduced Dr. Paul Dobies, O.D., Assistant Professor at Western University of Health Sciences - College of Optometry. Dr. Dobies expressed the University's pleasure with hosting the Board of Optometry for this Board Meeting, and welcomed all in attendance.

Ms. Burke announced that the administrative hearings would begin at 1:30 P.M.

2. Welcome – President's Report

Dr. Arredondo arrived at 9:55 A.M. He welcomed everyone. He thanked former Public Member-Bruce Givner for his participation with the Board, and welcomed newly appointed Public Member-Rachel Michelin.

Dr. Arredondo noted that on October 7, 2014, he and Ms. Maggio, Board of Optometry Executive Officer (EO), participated in the Department of Consumer Affairs (DCA) Director's Meeting. The purpose of this meeting was to update Executive Officers and Board Presidents on the Department's activities and priorities. Reports were provided from the Office of Administrative Services (OAS); Office of Information Services (OIS); Division of Investigation & Enforcement Programs (DOI); Legislative & Regulatory Review Division; Legal Affairs Division; Communications Division and Board & Bureau Relations.

Dr. Arredondo acknowledged his participation on a November 24, 2014 telephone conversation pertaining to the BreEZe project, including the impact to the Board, lessons learned from Release 1 Boards and next steps. He thanked Director Kidane for the update and keeping the Board informed.

3. Public Comment for Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code § 11125, 1125.7(a)]

Ms. Burke opened the floor to public comment.

Cyd Brandvein, Public Member, requested that a review and possible amendment of the Board Member Handbook/Board's Administrative Manual (Manual) be placed on the agenda of an upcoming meeting. Ms. Brandvein brought forth the item of Board Meeting agenda development, with the recommendation that the Manual, which addresses the issue, be reviewed and updated to afford Board Members the ability to request items to be placed on the agenda. She added that it should clarify that if the majority of the Board wishes an item addressed, that it can be voted on for placement on a future agenda.

Ms. Brandvein explained that as representatives of the consumer, with whom the Board is empowered through appointments to represent, that an issue or item should be added to an agenda in a timely manner. She cited a few examples of concerns not yet addressed. Consistent with her concern, Ms. Brandvein requested that an agenda item regarding the Manual be added so that a discussion may be held regarding the need for amending the Manual to modify the text that places the agenda at the sole discretion of the EO to one that includes DCA Legal Unit, the Board President and the Board Secretary.

Ms. Brandvein clarified that a timeline should be agreed upon. She said it should be understood that the timeline may be influenced by regulatory environment and legislative priorities, as delays may be appropriate in some instances. Irrespective, items should be addressed. In addition, the Secretary would be tasked with reading meeting minutes, including requests for future agenda items, as well as current requests for agenda topics prior to any public agenda noticing. This will ensure all agenda items, requested by any Board Member, are accounted for. Ms. Brandvein stated that anything short of this is non-transparent and contradictory to the core values adopted by the Board last December.

Dr. Kenneth Lawenda, Professional Member, contended this is extremely necessary and in order, as when it comes to agenda items, "even the Supreme Court needs to keep it open and transparent". Additionally, he stated it is necessary for clarification and understanding of issues/concerns affecting consumers. Dr. Lawenda further stated the Board should not look to outside sources to decide upon issues up for discussion.

Ms. Maggio, EO, reported that the Manual topic is scheduled for discussion at the January 2015 Board meeting. She will work with Ms. Brandvein on this agenda item.

Cyd Brandvein moved that a possible amendment of the Board Member Handbook/Board's Administrative Manual be included as an item to be placed on the next Board agenda. Kenneth Lawenda seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Ауе	No	Abstain	Absent	Recusal
Dr. Arredondo				Х	
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardini	X				
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	X				

Note: Dr. Arredondo had not arrived at the time of this vote.

Dr. Pam Miller, O.D., introduced herself to the Board. She stated that she has a private practice in Southern California and had the pleasure of serving on the Board for nine years. Dr. Miller is a COPE-approved provider of continuing education (CE). She requested the "expansion of CE to include continuing medical education (CME) level one under the Medical Association and under the Osteopathic Association 1A" be placed on a future agenda. She brought this before the Board two years ago. She commented that under the Affordable Care Act (ACA) the scope of practice for optometrists has been expanded, and believes "it is imperative that our doctors have understanding and knowledge of how to treat patients, and that includes education outside of the profession of optometry."

Ms. Maggio explained that this matter was previously discussed and was referred to the Education Committee. Due to lack of staffing, the Committee has not yet met. Ms. Maggio assured the Board that once appropriate staffing is in place, this issue will be discussed. Also, she said that "the Board, at that time, thought it best to wait and see if the scope bill passed." Ms. Maggio explained the issue will require legislative and regulation changes. When the scope bill comes forward again, then the legislative changes will take at least a year. Afterward, the Board will need to make changes in its rulemaking which is an approximate twenty-four (24) month process.

Frank Giardina, Professional Member, stated his agreement with Dr. Miller regarding CE course expansion.

Dr. Reem Edlbi introduced herself, stating she is a foreign graduate who was granted sponsorship by the Board to take the National Board of Examiners in Optometry (NBEO) exam and the California Laws and Regulations Exam (CLRE). Though she passed both exams, she cannot obtain an optometry license in California, as she does not meet the criteria in law because she did not graduate from an accredited school or college of optometry as specified in Business and Professions Code (BPC) § 3057.5. Dr. Edlbi stated that staff has made her aware that the Board is seeking a legislative remedy by creating a means for licensure, but it will take a minimum of one year through the legislative process. Dr. Edlbi requested the Board make an exception and allow her to be licensed now as she is the only one with means to support her family.

4. Approval of Board Meeting Minutes

- A. November 1, 2013
- B. June 23, 2014
- C. August 8, 2014

Ms. Maggio reported that the posting on the agenda is incorrect. Due to a change in staff duties, staff responsible for drafting the minutes is becoming familiar with this process and reviewing notes, recordings and webcasts. The minutes will be current and available at the next meeting.

Ms. Maggio noted the minutes for the meetings held August 16, 2013 and November 1, 2013 were approved at the August 8, 2014 Meeting.

The minutes listed as January 24, 2014 should have been June 23, 2014, Special Meeting. The Board requested additional documentation pertaining to the discussion of agenda item 3.

5. Department of Consumer Affairs Report

Awet Kidane, Director of the Department of Consumer Affairs and Christine Lally, Deputy of Board/Bureau Relations

Awet Kidane, DCA Director, provided the DCA report and update on the BreEZE database. He reminded Members that BreEZe came about in 2009 and its' design occurred in 2011. The first roll-out (Phase I) took place October 2013.

Director Kidane acknowledged that he addressed the Board a year ago in the midst of the BreEZe pre-roll out regarding the progress and spoke about "lessons learned". For the benefit of the new Members, Director Kidane explained that BreEZe is an enterprise-wide information technology system slated to replace a 30 year old legacy system. Some boards have their own legacy systems. The objective is to bring all DCA entities under one database, as it is very costly to maintain multiple systems. Additionally, integrity of information is lost when using multiple systems.

One of the most significant lessons learned occurred during the design phase for Release 1. Director Kidane stated that the contract did not allow him to hold the vendor accountable for specific changes needed to meet specific needs for each board and bureau. Additionally the contract did not allow him the mechanism to contain costs. The Executive Office terminated DCA's design relationship with the vendor after Release 2. The focus will be on making Release 2 right for all users, with complete review and new plans for Release 3, focusing on quality and applying "lessons learned". This elongates the schedule to a projected Release 2 toward the end of 2015.

Director Kidane opened the floor to questions.

Dr. Lawenda inquired about security and was assured that the BreEZe system has multiple firewalls in place to protect against hackers.

Dr. Lawenda asked about the impact on daily operations during the BreEZe testing and the Board learned that the elongated schedules influence on day to day operations is going to be a "sprint to the finish." Ms. Maggio and staff member Jessica Sieferman, will be responsible to design the scripts needed to test the system. If/when needed, DCA will provide staff to augment the Board during times of heavy workload.

Dr. David Turetsky asked what Ms. Maggio can do, or needs to do, to hire staff. Director Kidane replied that focusing on workload and continuing to make a strong case as well as leveraging DCA's resources for staff training will go a long way with the Department of Finance.

William Kysella acknowledged that Director Kidane has witnessed the Board's need for additional staffing (i.e. Ms. Sieferman and Ms. Maggio with the BreEZe project). Additionally, he believes Director Kidane is knowledgeable of the Agendas topic delays due to insufficient staffing.

6. Overview of the Bagley-Keene Open Meeting Act Training

Ms. Brandvein reported that on November 5, 2014, Ms. Maggio, Ms. Sieferman and she attended the DCA SOLID Solutions training regarding the Bagley-Keene Open Meeting Act (Act). Senior Legal Counsel Michael Santiago also attended. Ms. Brandvein stated the Act is designed to promote and open a consensus building model of decision-making, and to ensure that the public always has a seat at the table. There are 13 sections to the Act. Ms. Brandvein found the following especially enlightening:

What is a State Body?

There are five types of bodies. Those created by statute; bodies created by Governors' executive order; delegated bodies created by a board/commission consisting of two or more members; advisory bodies consisting of three or more members; and, public or private bodies funded by a state body represented by a state member. Each of these types must be noticed correctly.

<u>Serial Meetings</u>

Whenever two or more members engage in communication regarding state board matters, deliberation or taking action, it is considered a meeting, regardless of the form of communication (i.e. face to face, by email, by texting, etc.). This is considered a serial meeting. Ms. Brandvein noted when one member is delegated to speak to another outside of a board meeting it is a violation of the Act.

Closed session

Every closed session must be noticed. Confidentiality must be strictly observed. What occurs in closed session must not be discussed outside. There are many other details regarding closed sessions. Ms. Brandvein stressed to every member to read the Act.

Dr. Arredondo opened the floor to questions or comments.

Mr. Santiago, DCA Senior Legal Counsel, clarified that a general question about optometry from a public member would probably not be considered a meeting, rather it is when a conversation occurs about something the Board is discussing or has discussed in the past (i.e. bills).

It was discussed and confirmed with Mr. Santiago that three persons is the actual "law" regarding serial meetings; nevertheless, two is recommended for safety purposes.

Ms. Doreathea Johnson, Deputy Director, DCA Legal Affairs Division explained that "the rule of two" is statutory insofar as it being a state body. The question is "when is a state body in existence?" It's the delegation of power/authority that brings "the rule of two" in place.

Mr. Santiago pointed out that when it comes to violating the law, perception is more important than reality.

Dr. Lawenda noted it would be beneficial for new members to receive historical reference of past issues before the Board. Ms. Maggio explained new members are invited to the Board's office following their appointment. At that meeting staff provides an overview of the daily processes (i.e. licensing, enforcement etc.), issues the Board is currently working on and topics discussed in the past.

7. Discussion and Possible Action on Requiring Posting of a Consumer Notice Defining the Designations on an Optometrist License

Ms. Maggio reported that the Board currently has a *Consumer Notice* that provides information to consumers about how they can contact the Board if they have any complaints or concerns. Every optometrist is required to have this noticed posted, and clearly visible, in their place of practice. Ms. Maggio explained adding certification designations to the *Consumer Notice* would help educate consumers about procedures their optometrist can perform based on the optometrist's education and training. Potential options proposed were:

- A. To amend the California Code of Regulations (CCR) §1566.1 to require that the Consumer Notice include the definition of the five certification designations. This amendment would allow the patient visibility at the time of the visit.
- B. Include a separate regulation to mandate the designation definitions are posted in the same place as the *Consumer Notice*. This allows for the regulation to be enforced separately and would hold the optometrist accountable for posting this information.

Dr. Turetsky reported that aside from the five certification designations, there exists between 75 - 150 optometrists who are without any certifications whatsoever. These doctors cannot dilate or use any type of anesthetic. Dr. Turetsky provided an example of a diabetic patient visiting one of these optometrists with no certifications. The optometrist would be unable to dilate the patients' eyes and check for diabetic retinopathy. He considers it to be extremely important for consumers to know what their optometrist can and cannot do, so that they can make an informed choice.

Dr. Giardina commented that he supports Dr. Turetsky's opinion but he believes the designations and terms such as dilation, lacrimal irrigation, and glaucoma may be asking a lot for a layperson to understand. Dr. Giardina prefers that optometrists with the highest level of certification be allowed to call themselves "optometric physicians" while those without should be "optometrists." He stated this would make a distinction that the public will understand and may also motivate optometrists to obtain the highest level of certification.

Dr. Lawenda commented that consumers using the Yellow Pages might select one not certified to perform everything he or she needs and will not discover that fact until arriving at the office. He asked "...how else can the Board inform the public?"

Ms. Burke stated the more information the Board can provide the better. She supported this proposal and moved to adopt amendment recommendation option one so that the Board is not dependent upon the physician posting the additional information as it will be already noticed.

Ms. Michelin believes the information should be stated in lay person terms that a mom or elderly person can easily digest and understand.

Mr. Kysella acknowledged that there is no harm in initiating "baby steps."

Dr. Arredondo asked for a current percentage of optometrists with each of the certification designations. Ms. Sieferman will have that information at the next meeting.

Dr. Kawaguchi announced his support for either of the two options.

Donna Burke moved to allow staff to clarify the designation language and bring it back to the Board for possible action. Cyd Brandvein seconded. The Board voted 8-Aye; 1-No to pass the motion.

Member	Ауе	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				X	
Dr. Giardina		X			
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				X	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	X				

8. Discussion and Possible Action to Amend Business and Professions Code §3057, Requirements for Licenses; Exceptions, Expiration; "In Good Standing."

As part of the application process, §3057 (a)(4) requires the applicant to submit 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.

This law was added to the Optometry Practice Act in 2006. At that time, the Board wanted to ensure that out-of-state practicing optometrists were proficient in treating patients with therapeutic pharmaceutical agents (TPAs) and that the 5,000 practice hours of experience would be sufficient. However, this requirement is now obsolete, inconsistent with the licensing requirements for new graduates, impacts access to care, and has an economic impact for the State.

Ms. Maggio explained that a recent graduate from any US school/college can apply for and obtain licensure in California; however, if the graduate decides to become licensed in another state after graduation and later applies for licensure in California, the application would be denied because the applicant has not met the 5,000 practice hours requirement.

Today, out-of-state licensees indicate on the application whether or not he/she has met the practice hours requirement set forth in BPC §3057, and submit a completed "Certification of 5,000 Practice Hours" form with the application. The Certification asks for information pertaining to each worksite where hours were earned (e.g. worksite addresses, dates and number of hours worked at each location). The applicant signs under penalty of perjury that the information is true and correct. No supporting information is.

Additionally, California requires that all applicants for licensure pass the Treatment and Management of Ocular Disease (TMOD) portion of the NBEO, which ensures they are qualified to obtain TPA certification.

Staff proposes that the 5,000 hours portion of the requirements be removed, and that out-of-state optometrists applying for a California license meet all of the other requirements as set forth in law.

Dr. Lawenda expressed support for this proposal. He stated that the 5,000 hours is now an unnecessary impediment to optometrists who want to obtain a California license, when all of the other requirements are sufficient. All of the states require that as part of the licensure process, the applicant pass the NBEO exam.

Dr. Kawaguchi concurred. Additionally, Dr. Kawaguchi questioned a subdivision of BPC §3057 that authorizes the Board to reduce or waive the fees of a displaced applicant due to a federally declared emergency.

Mr. Santiago clarified that this subdivision does not require the Board to reduce or waive the fees, but rather allows the Board to do so in circumstances where the Board deems it appropriate. This provision simply allows the Board flexibility.

Mr. Kysella referred to proposed language that suggests changing "has not been found mentally incompetent by a physician" to "have not been found mentally incompetent by a qualified healthcare professional." Ms. Maggio explained the idea was to broaden the term because not every mental health care provider is a medical doctor (i.e. psychologist etc.).

Ms. Michelin agreed and stated her opposition.

Dr. Lawenda supports "qualified healthcare provider" language as he believes moves away from "grey areas."

Dr. Turetsky has witnessed licensees on probation who were represented by non-doctors/physicians. For example, persons with a Master of Social Work degree have represented some licensees and testified that they are stable, competent and have completed the necessary steps to recovery. The Board has accepted this testimony in the past. Dr. Turetsky made a point that "if the state considers these people competent, he does not believe the Board has the jurisdiction to not accept it."

Mr. Kysella's hope is that somewhere in BPC §3057, "qualified healthcare professional" is defined. Ms. Sieferman does not believe it is defined.

Ms. Maggio confirmed that changes have to go to the Legislature and be heard in a committee.

Anahita Crawford, Deputy Attorney General, California Department of Justice, discussed not having clear and concise designation of a mental health doctor and/or physician. She reported that people who have had drug and alcohol issues have typically been treated by people who are Certified Drug and Alcohol Counselors. She commented whether or not the addict is mentally incompetent may not be the priority, yet, there are the individuals who have contact with the drug and alcohol population. She cautioned that things may be missed without having a physician who is focused on the mental health of a person making the determination.

The Board concluded additional research should be done to evaluate how other Boards have worded this in their law. Additionally, the Board agreed that staff should conduct research to find out exactly who is qualified to make the determination of mentally incompetent.

William Kysella moved to adopt staff recommendations of change in the draft and move forward with the legislative process without the amendment to section e(2); and to direct staff to conduct research to determine what the appropriate term should be in section e(2). Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	Х				
Dr. Turetsky	X				

9. Discussion and Possible Action to Amend Business and Professions Code §3057.5 Eligibility of Graduates from Foreign Universities

§3057.5 allows the Board to provide a Letter of Sponsorship (LOS) to a graduate of a foreign university, provided the applicant meets certain criteria. Current criteria require the applicant:

- A. Is over the age of 18 years;
- B. Is not subject to denial under Section 480;
- C. Has obtained a degree as a doctor of optometry issued by a university located outside the United States (US).

Ms. Maggio explained that staff has found the current requirements to be insufficient for determining a foreign graduate's eligibility for sponsorship because:

- A. Many countries do not issue a degree as a doctor of optometry, but do issue a baccalaureate degree in optometry.
- B. The Board receives requests for LOS from individuals who are licensed ophthalmologists in foreign countries. Not all foreign licensed ophthalmologists can qualify for licensure through the Medical Board of California to become a licensed physician.
- C. Not all countries have the profession of optometry.

Before staff issues a LOS to an applicant, staff must determine if the applicant's education obtained through the foreign university is equivalent to the education earned in a US school/college of optometry. This is done by requesting the applicant have his/her transcripts evaluated by an evaluation service. If the education is deemed equivalent, staff will issue the LOS. If the education does not meet the equivalency, staff provides the applicant with a list of the US schools/colleges of optometry that provide accelerated program courses to obtain the education needed to qualify for the examination. When the applicant completes the education through a US school/college of optometry, the applicant is issued a degree as a doctor of optometry and is considered a US graduate, not a foreign graduate.

The proposed amendments are needed to provide foreign licensed optometrists and ophthalmologists who do not meet the current criteria in law a means to apply for and be considered for issuance of a LOS. In addition, this will authorize the Board to request pertinent information in order to evaluate the applicant's educational history, etc. to determine if a LOS will be granted.

With the proposed changes, BPC §3057.5 would read:

- (a) Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who is over the age of 18 years, is not subject to denial of a license under Section 480, and meets one of the following criteria to take the examination for licensure as an optometrist:
 - 1) Has obtained a degree as a doctor of optometry issued by a university located outside of the United States.
 - 2) Has obtained a degree from a school of optometry program located outside of the United States having a minimum of a four years, or equivalent, curriculum leading to optometry licensure.
 - 3) Has obtained a degree from a school of medicine outside of the United States and completed the necessary requirements to practice in the field of ophthalmology in that country.
- (b) All foreign graduates must provide to the Board, as applicable, the following:
 - 1) Current curriculum vitae
 - 2) Official examination scores
 - 3) Certificate of optometric/medical education
 - *4)* Official school transcripts
 - 5) Certified copy of optometric/medical diploma(s)
 - 6) Official English translation
 - 7) Certificate of completion of post graduate training
 - 8) Certificate of clinical training

The Board may, at its discretion, request additional supporting documentation.

(c) The Board shall require the applicant to obtain an evaluation of the official transcripts from the college or university that issued the degree from an education evaluation service approved by the Board. The evaluation must be sent from the evaluation service directly to the Board.

- (d) Documents that are not in English must be translated by a certified US translation service approved by the Board.
- (e) Foreign graduates not meeting the educational equivalency, as determined by the evaluation service, will be required to obtain the necessary education to meet the equivalency requirement.
- (f) The applicant must file an application for foreign graduate on a form prescribed by the Board, signed under penalty of perjury, that the information provided is true and correct.
- (g) The applicant must submit an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.
- (h) The Board will issue a Letter of Sponsorship, or its equivalent, in order to satisfy any requirement of the National Board of Examiners in Optometry (NBEO) needed to allow the candidate to take all required examinations for licensure. The Letter for Sponsorship expires two years from the date of approval.

Dr. Arredondo opened the floor to comments.

Ms. Maggio assured Dr. Lawenda that the NBEO covers the clinical aspect of an applicant's ability to perform procedure such as refraction.

Ms. Maggio clarified with Mr. Kysella that the language of agenda item 10 will provide a pathway for licensure for foreign graduates such as Dr. Edlbi who presented her case earlier this morning.

Ms. Maggio assured Dr. Kawaguchi that one year of LOS is enough time to allow an applicant who qualifies to take the Parts I, II, and III of the NBEO.

Ms. Maggio explained that if the foreign graduate applicant does not pass or complete the exam, the applicant would have to recertify with the Board and pay the fees again. A US graduate's application for licensure is valid for one year. If the applicant does not fulfill his/her requirements within the one year, the applicant would have to resubmit the applicant and pay the application fee. This is consistent with other DCA Boards and Bureaus.

Responding to a query from Dr. Kawaguchi, Dr. Edlbi replied that it should be at least two years because it takes a long time to complete each part of the NBEO, the applicant has to wait longer than six weeks for the results of each part, and then wait again to take the next part.

Ms. Maggio stated that California and New York provide sponsorship to foreign graduates.

Discussion regarding the wording "a minimum of a four year, or equivalent, curriculum" was held. Should the word minimum be removed? Is it necessary to define in this text what the US curriculum is?

Ms. Michelin requested that the text be changed to two years to allow the applicant to get everything completed.

Dr. Arredondo opened the floor to public comment. There was no public comment.

Cyd Brandvein moved to accept the edits of §3057.5 as presented with the friendly amendment of two years sponsorship. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	Х				
Ms. Burke	Х				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	Х				
Dr. Kawaguchi	Х				
Mr. Kim				Х	
Mr. Kysella	Х				
Dr. Lawenda	X				
Dr. Turetsky	X				

*Note: The draft language was amended to change the expiration period of the LOS from one to two years and the change is reflected in the minutes.

10. Discussion and Possible Action to Add Business and Professions Code §3058 Requirements for Licensure: Qualifications of Foreign Graduates

Ms. Maggio, EO §3057.5 was added in 1987 to allow the Board to provide an LOS for a graduate of a foreign university to take the NBEO. However, there is no pathway for licensure once the foreign graduate passes the NBEO.

The draft language clearly defines the requirements for licensure and is similar to the licensure requirements for new US graduates and out-of-state graduates.

The proposed language of BPC § 3058 Requirements for Licensure; Qualifications of Foreign Graduates:

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

- (1) Has met the provisions of Section 3057.5
- (2) Has successfully passed all the required examinations
- (3) Is not subject to denial of an application for licensure based on any of the ground listed in Section 480.
- (4) Has met the certification requirements of Section 3041.3.
- (5) Has submitted any other information as specified by the Board to the extent it is required for licensure under this chapter.
- (6) Has filed an application on a form prescribed by the Board under penalty of perjury that the information provided is true and correct.

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

(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.

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

William Kysella moved to accept staff's recommendation to pursue § 3058 as spelled out with the exception of brackets around "qualified professional," and to direct staff to research what constitutes "qualified professional" which will be brought back before the Board for discussion. Frank Giardina seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	X				

11. Discussion and Possible Action to Amend Business and Professions Code §3151.1 Issuance of License with Retired Volunteer Service Designation; Duties of Applicant, Holder of Retired License

Dr. Arredondo noted that Drs. Lawenda and Giardina were not present.

§3151.1 defines how the Board can issue a license with "Retired Volunteer" status. Staff requested the Board review and discuss the proposed language to amend BPC §3151.1. The edits are necessary to define the timeframe that the holder of a retired license can convert a retired license to a license with retired volunteer service designation. Additional proposed amendments are necessary to set the expiration date of the license. If the proposed amendments are approved, the Board needed to direct staff to move forward with the legislative process.

Ms. Maggio explained that when this law was created, the Board did not create a pathway for an optometrist who is retired but later decides he/she would like to provide volunteer services and remain retired. Edits to this section will allow an optometrist who is retired for less than three years to convert his/her license to "retired with volunteer service designation." If an optometrist is retired for longer than three years he/she will have to meet the provisions of an optometrist who is in delinquent status.

Dr. Arredondo announced that Drs. Lawenda and Giardina returned.

William Kysella moved to direct staff to pursue the recommended amendments to Section 3151.1. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	X				

12. Discussion and Possible Action to Amend Business and Professions Code §3041.3 Certificate Requirements – Therapeutic Pharmaceutical Agents

BPC §3041.3 was added in 1996 to define the criteria for California licensed optometrists and out-of-state licensees seeking licensure in California on the requirements to obtain certification to administer and prescribe TPAs.

Staff discovered the classroom didactic course is no longer offered by the schools/colleges of optometry. This statute is inadvertently prohibiting licensees from becoming TPA certified. In addition, staff believes a preceptor should be an ophthalmologist or a TPA certified optometrist, much like a preceptor for glaucoma can be either glaucoma certified optometrist or ophthalmologist.

Ms. Maggio explained that one way to motivate all non-TPA optometrists to become TPA certified, is to set a future date and announce that all California optometrists must be TPA certified by that date, allowing enough time for optometrists to achieve certification. Once that date is reached, any non-TPA certified optometrist would either have to retire or they would be unable to renew their California license without becoming TPA certified.

Discussion regarding optometrists without TPA certification ensued. Many in this population are getting ready to retire and may not want to take the additional steps to become certified. However, should a future scope expansion bill pass, some optometrists may change their minds.

Donna Burke moved to approve the language with the addition of January 1, 2020 as the deadline for TPA certification. David Turetsky seconded. The Board voted 8-Aye; 1-No; 0-Abstension to pass the motion. Who voted NO as these are all aye.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	Х				
Dr. Kawaguchi	Х				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	Х				

13. Discussion and Possible Action to Amend Business and Professions Code §3152, Fee Schedule

Proposed amendments to BPC §3152 (a), (b), (c), (h), (u) and (v) were for clarification only. Amendment (c) adds an initial license fee; and (g) increases the renewal fee for retired licenses with volunteer designation. These fees are to cover the \$16.00 that is sent to UC Berkeley and the Controlled Substances Utilization Review (CURES) fee. Staff is working with the DCA to determine the actual amount that will be charged at renewal. Staff will report the outcome to the Board. In addition, the Board currently charges a \$25.00 fee for written license verification, and the fee is appropriated to a miscellaneous fee account; amendment (x) allows the funds to be appropriately identified.

Ms. Maggio outlined BPC §3152 fee schedule. CCR §1524 establishes the current fees. Discussion regarding the \$16.00 research fee that is sent to UC Berkeley, which is regulated by BPC §3048 (i.e. who, what, when, why, and whether it should be removed, etc.) was held.

Dr. Lawenda requested a representative from UC Berkeley attend the next Board Meeting to explain and discuss the research fee and whether the fee could be extended to the other schools. Ms. Michelin concurred. Also, she stated she would like to know where the money is going.

The amount of the retired status fees and the cap amounts were discussed.

Director Kidane applauded the Board for the dialogue and encouraged to learn how the UC Berkeley \$16.00 research fee is applied.

Ms. Maggio will request this information from UC Berkeley.

14. New Legislation Affecting the Practice of Optometry

Ms. Maggio provided an update on new legislation affecting optometry:

- A. Assembly Bill 809 (Logue) Telehealth Patient Consent Status: Chaptered by Secretary of State, Chapter 404, Statues of 2014 <u>Summary</u>: Deletes a requirement that informed consent for telehealth must be made by provider at the originating site where the patient is located, allows written consent to be provided, rather than requiring consent to be verbal, and clarifies that current telehealth law does not preclude a patient from receiving in-person health care delivery services after agreeing to receive services via telehealth.
- B. Assembly Bill 2102 (Ting) Licensees: Demographic Data Collection Status: Chaptered by Secretary of State, Chapter 420, Statutes of 2014 <u>Summary:</u> Requires the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board, and the Board of Vocational Nursing and Psychiatric Technicians to annually collect and report licensee demographic data to the Office of Statewide Health Planning and Development.
- C. Senate Bill 1256 (Mitchell) Medical Services: Credit Status: Chaptered by Secretary of State, Chapter 256 Statutes of 2014 <u>Summary</u>: Prohibits medical providers from arranging for a line of credit on behalf of a patient unless the patient signs a release acknowledging they are aware of their rights concerning loans that are offered by third party providers. In addition, the bill would require the healthcare practitioner to provide the patient with a treatment plan prior to arranging for the line of credit, prohibit charges to the credit account before the procedure has been rendered, and prohibit a licensee from arranging for credit for a patient who is under the influence of anesthesia.
- D. Senate Bill 1466 (B, P & ED Committee) Health Omnibus Status: Chaptered by Secretary of State, Chapter 316, Statutes of 2014 <u>Summary:</u> Makes several non-controversial, minor, nonsubstantive or technical changes to various provisions relating to the DCA regulatory boards.
- E. Assembly Bill 1702 (Patterson) Delay or Denial of Licensure Due to Incarceration Status: Chaptered by Secretary of State, Chapter 410, Statutes of 2014 <u>Summary</u>: Specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his/her application delayed or denied solely on the basis that some or all of the requirements were completed while the individual was incarcerated; and exempts the Board of Chiropractic Examiners (BCE) from these requirements.

- F. Assembly Bill 1711 (Cooley) Economic Impact Assessment Status: Chaptered by Secretary of State, Chapter 779, Statues of 2014 <u>Summary:</u> Requires an economic impact assessment to be included in the initial statement of reasons that a state agency submits to the Office of Administrative Law when adopting, amending, or repealing a non-major regulation.
- G. Assembly Bill 2396 (Bonta) Denial of Licensure for Prior Convictions Status: Chaptered by Secretary of State, Chapter 737, Statues of 2014 <u>Summary:</u> Prohibits boards within DCA from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

Ms. Maggio clarified that applicants will still have to disclose the conviction history on their application for licensure. If the Board deems the conviction was substantially related to the profession of optometry, the Board will have to take action based upon the act rather than simply because a conviction exists. The Board of Optometry already proceeds in this manner.

H. Assembly Bill 2720 (Ting) Requires State Agencies to Record Votes in Meeting Minutes Status: Chaptered by Secretary of State, Chapter 510, Statues of 2014. <u>Summary:</u> Requires a state body to publicly report any action taken and the vote or abstention of that action of each member present for the action.

The Board will be required to conduct roll call votes which are being implemented currently.

I. Senate Bill 1159 (Lara) Professions & Vocations: License Applicants: Federal Tax Identification # Status: Chaptered by Secretary of State, Chapter 752, Statues of 2014 <u>Summary:</u> Prohibits licensing boards under the DCA from denying licensure to an applicant based on his or her citizenship or immigration status, and requires a licensing board and the State Bar to require, by January 1, 2016, that an applicant for licensure provide his or her individual taxpayer identification number (TIN) or a social security number (SSN) for an initial or renewal license.

The Optometry Board currently asks for the SSN; however the forms will be amended to provide the option of presenting a TIN.

- J. Senate Bill 1240 (Anderson) Changes to State Employment Applications Status: Chaptered by Secretary of State, Chapter 240, Statues of 2014 <u>Summary:</u> Requires state employment application forms to require an applicant to disclose whether the applicant has ever entered into an agreement with a state department prohibiting the applicant from seeking or accepting subsequent employment with the state.
- K. Senate Bill 1243 (Lieu) Professions and Vocations

Status: Chaptered by Secretary of State, Chapter 395, Statues of 2014 <u>Summary:</u> Increases the transparency of information distributed by the DCA; requires the Office of Administrative Hearings (OAH) to submit specified reports to the Legislature annually; enhances unlicensed advertising enforcement; extends until January 1, 2017, the provisions establishing the Veterinary Medical Board (VMB) and the term of the EO; sets the operative date of the veterinary assistant controlled substances SB 1243 program for July 1, 2015; and extends the Certified Common Interest Development (CID) Manager program and the Tax Preparer program until January 1, 2019.

L. Assembly Bill 1840 (Campos) Pupil health: vision appraisal

Status: Chaptered by Secretary of State, Chapter 803, Statues of 2014 <u>Summary:</u> Authorizes a child's vision to be appraised by using and eye chart or any scientifically validated photo screening test and requires photo screening tests to be performed, under an agreement with, or the supervision of an optometrist or ophthalmologist, by the school nurse or by a trained individual who meets specified requirements as determined by the California Department of Education (CDE).

Dr. Kawaguchi reported that these vision screenings can miss critical visual function issues. He believes this legislation should be more specific and require comprehensive exams or at least add extra testing to the vision screening. The Board had stated it would support the bill if amended. The proposal was rejected due to fiscal insufficiency.

Board members discussed this issue and agreed to draft language as a policy statement to demonstrate that the Board of Optometry supports vision screenings on school children. Also, it could be a launching point for further legislation.

15. Executive Officer's Report

Ms. Maggio provided the Executive Officer's Report

A. BreEZe

Board staff continues to devote large portions of time to the BreEZe project and has met the second phase of design. Ms. Sieferman was commended for taking charge of the project.

Board staff has discussed numerous benefits Release 1 boards are currently experiencing with BreEZe. Some of the benefits R1 boards have mentioned include the following:

- Easier to navigate: data in one system helps streamline current business processes.
- Electronic application tracking: BreEZe will be able to electronically track and report application statistics.
- **Improved efficiency:** The online transaction additions to business processes will reduce the workload (including miscellaneous applications), renewals, complaint intake, etc. Pending transaction information will be easily obtained when needed (e.g. renewal deficiencies and associated correspondence).
- Improved data integrity: BreEZe has a myriad of embedded governing rules, business rules, action steps, restricted lists of values, etc.; all of which will dramatically improve the accuracy of licensing and enforcement data. Consumer Affairs Systems (CAS) and Applicant Tracking System (ATS) are extremely susceptible to improper data entry due to its lack of rules.
- Improved data reporting: In addition to the extensive list of standard reports that will be available via BreEZe Business Objects, the data export feature allows staff to extract raw data as specified and manipulate via external programs (e.g. Excel).
- Workflows and transaction assignment: Staff has the option of dictating the workflow "cycle" of various processes. This is made possible by the simple fact that transactions can be assigned (either manually or automatically). These features also allow for evaluation of staff workload.
- **Queues:** Queues provide quick access to specific outstanding activities such as incomplete applications or renewals, pending action steps, etc. They show all activities that meet specific criteria as defined within the board's configuration. Once an activity no longer meets those criteria, it either disappears from the queue or moves to a different queue.
- Letters and certificates: All standard letters and certs are housed within the system and can be generated at any time with a few clicks, or, will be automatically generated via transaction approval (e.g. replacement certs as a result of an address change).
- **Online updates:** Changes made in back office (VR) are immediately reflected in the online system (if configured to show online).

Ms. Sieferman expressed her excitement about the launching. She stated that having to put every process under a microscope has enlightened the team about many ways to improve processes.

B. Budget

The Board received an Expenditures and Fund Condition Report. The Board's million dollar loan is still outstanding. This loan must be repaid before the Board can raise any of its fees. The Department's Budget Office periodically seeks repayment for all of the boards who gave loans.

C. Personnel

The vacant Policy Analyst position was successfully reclassified to a Staff Services Manager (SSM) I classification. This position will serve as the Assistant Executive Officer. Interviews are scheduled with anticipation to have the SSM I in place by the end of November.

Robert Stephanopoulos has returned to the Enforcement Program.

Nancy Day, Management Services Technician in the Licensing Program began working full time September 1, 2014. Ms. Day issues the Fictitious Name Permits (FNPs) and Branch Office Licenses (BOLs).

Carolyn Wilson, Retired Annuitant joined the Board at the beginning of November. Ms. Wilson is currently training on the evaluation processes for issuing licenses and certification in order to provide continued service to applicants and licensees while staff participates in BreEZe testing and script writing. Ms. Wilson is also working on a newsletter draft for early 2015.

Director Kidane express to Ms. Maggio that she has his full support for assistance with the Human Resource process. Ms. Brandvein conveyed the Board's support as well.

D. Examination and Licensing Programs

The Board is ramping up recruitment efforts to secure more licensees to serve as subject matter experts in the development of the CLRE. The focus on recruitment will be optometrists who are licensed between two (2) to ten (10) years.

E. Enforcement Program

The Board's Enforcement Program vacancy was filled. Staff should be closer to meeting its enforcement targets. In addition, enforcement and licensing staff have been working closely together to educate licensees who are operating without a valid fictitious name permit. This collaboration and outreach has led to an increase in FNP applications and enforcement workload. In the near future, Enforcement staff will also be reaching out to licensees who fail to update their address of record in order to educate and obtain compliance with the Optometry Practice Act.

F. Board Meeting Dates 2015

The next Meeting is scheduled for January 23, 2015 but a location has not been set.

Ms. Maggio explained that from January through March, the office will be a skeleton crew, due to the testing for BreEZe and the data verification for BreEZe.

The Board agreed on the Southern California College of Optometry (SCCO) as the site for the January meeting and the Junipero Serra building as a backup.

The Board Meeting dates are as follows:

- January 23, 2015 (SCCO or Junipero Serra)
- April 24, 2015
- August 28, 2015
- November 20, 2015

Ms. Maggio opened the floor to comment regarding future meetings.

Dr. Lawenda suggested the Board look at and possibly discuss a case the Supreme Court is hearing regarding the Dental Board in North Carolina. He believed that this case could possibly affect the way regulatory boards are constructed in the US.

Dr. Giardina requested a discussion about the term optometric physician. Seven states are now using this term instead of optometrist.

16. Petitions for Reduction of Penalty or Early Termination of Probation

Administrative Law Judge (ALJ), Glenda B. Gomez presided over the hearings. Petitioners were:

A. Jolyn Wei, O.D., OPT 13614

- B. Salimah Pirmohamed, O.D., OPT 13918
- C. Brittany Pham, O.D., OPT 10398

FULL BOARD CLOSSED SESSION

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

The Board convened to close session to deliberate on disciplinary matters.

The Board reconvened into open session at 3:15 P.M.

FULL BOARD OPEN SESSION

18. Adjournment 4:30 P.M.

Rachel Michelin moved to adjourn the meeting. Frank Giardina seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Yes	No	Abstain	Absent	Recusal
Dr. Arredondo	Х				
Ms. Brandvein	X				
Ms. Burke	X				
Dr. Chawla				Х	
Dr. Giardina	Х				
Ms. Michelin	X				
Dr. Kawaguchi	X				
Mr. Kim				Х	
Mr. Kysella	X				
Dr. Lawenda	X				
Dr. Turetsky	X				



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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170

Subject: Agenda Item 7 – Discussion and Possible Action Regarding Potential Legislation Impacting Business and Professions Code Sections 655 and 2556

Background

Business and Professions Code (BPC) §655 prohibits business and financial relationships between optometrists and registered dispensing opticians, or optical companies that engage in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

The constitutionality of BPC §655 was the subject of a lengthy litigation (Nat'l Ass'n of Optometrists & Opticians v. Harris), which recently concluded. The case was heard first in the trial court and a judgment was rendered with a finding that the challenged laws were unconstitutional. An injunction was issued to prohibit enforcement of the laws by the state. The state appealed to the Ninth Circuit Court of Appeals and on May 28, 2009, the appeals court overturned the trial court judgment and the injunction was dissolved. The appeals court remanded the case to the trial court for further proceedings, whereupon the trial court found the laws constitutional. On June 13, 2012, (BPC) §655 was upheld as constitutional by the Ninth Circuit Court of Appeals. The plaintiffs then sought review by the Supreme Court of the United States, but the Court declined review on February 19, 2013.

For over a year since the conclusion of the litigation, optical stakeholders have met with the Office of the Attorney General in in an effort to negotiate a business model that would work in California; however, no agreement has been reached. In response to interest expressed by optical retailers about the future of optical business models in California, Assemblywoman Bonilla has asked the Assembly Business and Professions Committee to convene a series of stakeholder meetings. The goal of these meetings is to bring interested parties together to talk about the way forward. The optical retailers have said there will be related legislation introduced this year. The Board was invited to participate in these stakeholder meetings to provide its perspective on the issue.

The first of these meetings occurred on January 7, 2015, Ms. Maggio and Dr. David Turetsky attended. The next one scheduled for January 20, 2015, Ms. Maggio, Dr. Turetsky and Donna Burke will be attending. At this time no proposed language has been provided; however, once proposed language is received, it will be brought to the Board for review and feedback. The business models up for discussion included:

Optometrist Owned Practice

- Optometrist is the sole practitioner or in partnership with another optometrist
- Optometrist may employ other optometrists
- Optometrist contracts with health plans, Medi-Cal to provide services
- Optometrist sells eyewear and contacts In California:
- Optometrists are limited in the number of branch offices that can be owned (Sec. 3077 B&P Code)

Occupancy Arrangement

- Optometrist directly leases or subleases space from an optical company/third party to provide optometric care within the space occupied by the optical company
- Optometrist can sublease one or multiple locations and employ optometrists to provide care
- Leasing doctors set their own fees and may employ their staff
- Clinical judgment protected in state law &/or contract In California:
- Direct leases are not permitted between an RDO and optometrist
- Department store contracts separately with optometrist and optical dispenser or with independent 3rd party leasing agent who subleases to optometrist

Franchise Model

- Optometrist directly franchises a branded optical business (that will also offer optometric services) from an optical company
- Optometrist can employ other optometrist to provide services
- Case law prohibits franchising between optical company and OD in California

Direct Employment of OD's by an Optical Company

- Optometrist is directly employed by an optical company or optician to provide optometry services
- Protections exist to ensure the optometrist retains clinical judgment In California:
- Direct employment of an optometrist by an RDO is not currently authorized in California
- Provider employment is allowed by a Knox-Keene plan or a medical group

Knox-Keane Plan

California Model:

- Knox-Keene plan employs/contracts with optometrist to provide optometry services to patients pursuant to Plan QA protocol
- Knox-Keene plan subleases space from optical company
- Knox-Keene plan regulated by DMHC regarding plan services



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То:	Board Members	Date:	January 23, 2015
From:	Cheree Kimball Enforcement Analyst	Telephone:	(916) 575-7170
Subject:	Agenda Item 8 – Discussion and Possible Professions Code §3003, "Optometrist" ar Use of the Title Optometric Physician		

At the November 21, 2014 Board Meeting, Dr. Frank Giardina, O.D., requested a discussion of allowing California licensed optometrists to use of the title "optometric physician".

Use of "Physician"

Business and Professions Code (BPC) §4039 defines "Physicians" as "any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California.

Further, BPC §2054, restricts the use of the title "physician" to individuals who have a valid, unrevoked, and unsuspended certificate as a physician and surgeon:

2054. (a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

In California, no other health care professionals are permitted to use the title "physician."

Staff Research

States that Allow the Use Optometric Physician

On December 23, 2014, Ms. Maggio spoke with Brian Reuwer, Associate Director, State Government Relations with the American Optometric Association (AOA). Mr. Reuwer stated that the designation, in those states where it is used, allows an optometrist to advertise as an

optometric physician, but has no effect on insurance reimbursement or access to health plans. It does not give any extra clout to have services covered that were not before. The title change simply allows an optometrist to advertise themselves as an optometric physician, nothing more. He further explained that title changes are typically sought as part of a scope expansion or name tag legislation, and AOA would defer any decision to support or oppose legislation to the California Optometric Association (COA). Mr. Reuwer provided a list of the current states that have the optometric physician designation and how it is addressed through their laws and regulations (Attachment 2). In addition, Mr. Reuwer provided an AOA House of Delegates resolution that echoes support for states that seek this designation (Attachment 3).

Kristine Schultz, COA, Government and External Affairs Director said COA initially did include the title change in the early draft of the bill (SB 492) but there was so much opposition, the title change language was pulled.

Healing Arts Boards That Sought Title Change

Ms. Maggio inquired and received the following responses from healing arts boards under the Department of Consumer Affairs regarding title change:

<u>Acupuncture Board</u>: Recently codified the regulations regarding the use of the word doctor. Title 16 CCR section 1399.456 Use of the Title "Doctor:" "It is unprofessional conduct for an acupuncturist to use the title "Doctor" or the abbreviation "Dr." in connection with the practice of acupuncture unless he or she possesses a license or certificate which authorizes such use or possesses an earned doctorate degree from an accredited, approved or authorized educational institution as set forth under Article 4 (commencing with section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturists as set forth in Sections 4927 and 4937 of the Code."

Note: The Board has not made the regulatory update change to remove this section from regulations due to the fact that it is now codified. It was codified as a Sen. Leland Yee bill SB 628 Yee effective date January 1, 2012. This bill started out as a bill to legislate that acupuncturists could be referred to as doctors, but the opposition was so strong that the final chaptered version ended up doing the exact opposition—restricting the use of the title "doctor" by codifying the existing regulation.

• <u>Board of Chiropractic Examiners Chiropractor</u> may use the titles: "Doctor of Chiropractic" or "Chiropractor." They cannot use the word "Doctor" or "Dr." without the word "Chiropractor" or "D.C." immediately following. Chiropractors are prohibited from using Medical Doctor, M.D., Physician, Surgeon, Osteopath, or D.O., etc. These provisions are contained in Section 15 of the Chiropractic Initiative Act.

§ 15. Noncompliance with and violations of act. Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D.C." or any word or title to induce, or tending to induce belief that he or she is engaged in the practice or chiropractic, without first complying with the provisions of this act; "(or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor," or "D.C." immediately following his or her name) or the use of the letters "M.D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or

the word "osteopath," or the letters "D.O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he or she held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) and not more than seven hundred fifty dollars (\$750), or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment.

- <u>Dental Board of California</u>: The DBC hasn't sought changes to the titles for dentists. Currently dentists may be considered "doctor of dental surgery," "doctor of dental science," or "doctor of dental medicine" or appends the letters "D.D.S.," or "D.D.Sc." or "D.M.D
- <u>Naturopathic Medicine Committee</u>: Licensees are allowed to use the titles; Naturopathic Doctor (ND), Doctor of Naturopathy, and Naturopathic Medical Doctor (NMD). Currently, every other state that licenses naturopaths, are allowed to use the physician title. California has been restricted, because of strong opposition from the California Medical Association (CMA) and Osteopathic Physicians and Surgeons (OPSC) during the creation of the Naturopathic Bureau.

Advertising Concerns

One of the issues regarding the use of the title "optometric physician" is the possibility that this could potentially confuse or mislead the public regarding the scope of an Optometrist's license to practice, or lead the public to believe that an Optometrist is licensed as a physician by the Medical Practice Act. Staff has found there is already confusion regarding the differences between an optician, an optometrist, and an ophthalmologist, and it is probable that the title "optometric physician" will obscure the issue further. To an unfamiliar consumer, optometric physician sounds like another level of licensure and may be interpreted to have a higher level of education and training or a wider scope of practice. Allowing the use of "optometric physician" for advertising purposes has the potential to cause even more confusion regarding the professionals involved in eye care.

Attachments

- 1. BPC §4039; §3003; and §3098
- 2. List of States Allow to Use the Title Optometric Physician Designation
- 3. Resolution from the American Optometric Association

Business and Professions Code

2054.

(a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases "doctor of podiatric medicine," "doctor of podiatry," and "podiatric doctor," or the initials "D.P.M.," and shall not be in violation of subdivision (a).

(c) Notwithstanding subdivision (a), any of the following persons may use the words "doctor" or "physician," the letters or prefix "Dr.," or the initials "M.D.":

(1) A graduate of a medical school approved or recognized by the board while enrolled in a postgraduate training program approved by the board.

(2) A graduate of a medical school who does not have a certificate as a physician and surgeon under this chapter if he or she meets all of the following requirements:

(A) If issued a license to practice medicine in another jurisdiction, has not had that license revoked or suspended by any jurisdiction.

(B) Does not otherwise hold himself or herself out as a physician and surgeon entitled to practice medicine in this state except to the extent authorized by this chapter.

(C) Does not engage in any of the acts prohibited by Section 2060.

(3) A person authorized to practice medicine under Section 2111 or 2113 subject to the limitations set forth in those sections.

4039.

"Physicians," "dentists," "optometrists," "pharmacists," "podiatrists," "veterinarians," "veterinary surgeons," "registered nurses," "naturopathic doctors," and "physician's assistants" are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. "Physician" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California, and includes an unlicensed person lawfully practicing medicine pursuant to Section 2065, when acting within the scope of that section.

2065.

Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the board and who is enrolled in a

postgraduate training program approved by the board, may engage in the practice of medicine whenever and wherever required as a part of the program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as a part of the training program, and may receive compensation for that practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If the resident or fellow fails to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship or if the board denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

3003.

As used in this chapter, "optometrist" means a person who is licensed to practice optometry in this state under the authority of this chapter.

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.

Last Revised February 6, 2013 AUTHORIZATION TO USE THE "OPTOMETRIC PHYSICIAN" DESIGNATION

<u>ARKANSAS</u>

WEST'S ARKANSAS CODE ANNOTATED TITLE 17. PROFESSIONS, OCCUPATIONS, AND BUSINESSES SUBTITLE 3. MEDICAL PROFESSIONS (CHAPTERS 80 TO 107) CHAPTER 90. OPTOMETRISTS SUBCHAPTER 1. GENERAL PROVISIONS

§17-90-101. Definition; applicability

(c) **Those licensed optometrists who meet the qualifications** and standards established by the board **shall be designated "optometric physicians**".

FLORIDA

Permitted by Florida Board of Optometry Final Order DS-90-BO-01, in re: Declaratory statement regarding the use of the title **optometric physician**.

IDAHO

WEST'S IDAHO CODE ANNOTATED TITLE 54. PROFESSIONS, VOCATIONS, AND BUSINESSES CHAPTER 15. OPTOMETRISTS

§ 54-1501. Practice of optometry defined

Optometry is defined as the science which relates to the examination, diagnosis and treatment of conditions of or relating to the eyes and/or eyelids, the analysis of their function and the employment of preventive or corrective measures to ensure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. The "practice of optometry" means:

(2) To display any sign, circular, advertisement or device offering to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set oneself forth as an optometrist, doctor of optometry, **optometric physician**, optical doctor, doctor of optical science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other designation of like import;

NEW JERSEY

NEW JERSEY ADMINISTRATIVE CODE TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 38. NEW JERSEY STATE BOARD OF OPTOMETRISTS SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

13:38-1.2 General advertising practices

(h) An optometrist may only be listed in the classified section of any directory under the classification entitled "Optometrist," "Doctor of Optometry," or "**Optometric Physician**."

Such listing shall show the address or addresses for which an active license or certification has been issued to practice optometry in this State.

13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

(d) In all advertisements for optometric materials and services at a particular location or group of locations, the name and license number of at least one licensee responsible for optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be immediately followed by one of the following designations: O.D., Optometrist, Doctor of Optometry, or **Optometric Physician**.

NEW MEXICO

CODE OF NEW MEXICO RULES TITLE 16. OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 16. OPTOMETRIC PRACTITIONER PART 7. PHARMACEUTICAL CERTIFICATION

16.16.7.13 "OPTOMETRIC PHYSICIAN" TITLE USE: Only those optometrists who have been certified as provided in 16.16.7.11 NMAC may use the title of "optometric physician".

PART 17. ADVERTISING

16.16.17.9 ADVERTISEMENTS

A. An optometrist may place advertisements in the yellow pages of the telephone directory. The advertisement must state the following information as provided in Section 57-21-3 of the Advertisement of Health Care Services Act:

(1) The optometrist's name;

of this rule.

(2) Address and telephone number of the optometrist's practice location; and

(3) The designation of the profession in which the optometrist is licensed to practice: O.D., Optometrist, Doctor of Optometry, or **Optometric Physician**, as provided in Subsection C

B. The advertisement may also describe the nature of the optometrist's practice such as, but not limited to, visual analysis, refraction, and eye examination.

C. New Mexico licensed optometrists who have been qualified and certified by the Board to administer and prescribe oral or topical pharmaceutical agents as provided in 16.16.7.11 NMAC, the Board's Rules and Regulations, shall be allowed to use the designation of **'Optometric Physician'** in their advertisements. The advertisement may be placed under the 'Physicians' title in the yellow pages under the following conditions:

(1) The optometrist identifies his professional designation in his advertisement, and

(2) The title heading does not limit the advertisement specifically. For instance: 'Physicians M.D.' limits the section only to M.D.s; 'Physicians - M.D., Ophthalmologists' limits the section only to M.D.s and/or ophthalmologists.

PART 18. IN-OFFICE MINOR SURGICAL PROCEDURES

16.16.18.7 DEFINITIONS:

B. 'Optometric physician' means an optometrist who has been certified by the board to

administer and prescribe oral or topical pharmaceutical medications in the treatment and management of ocular diseases as provided in 16.16.7.11 NMAC.

<u>OKLAHOMA</u>

OKLAHOMA STATUTES ANNOTATED TITLE 59. PROFESSIONS AND OCCUPATIONS CHAPTER 16. HEALING ARTS DESIGNATION OF BRANCH OF HEALING ART

§725.2. Designations to be used and by whom

A. The following nine classes of persons may use the word "Doctor", or an abbreviation thereof, and shall have the right to use, whether or not in conjunction with the word "Doctor", or any abbreviation thereof, the following designations:

1. The letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine by a person licensed to practice podiatry under the Podiatric Medicine Practice Act ;

2. The letters "D.C." or the words chiropractor or doctor of chiropractic by a person licensed to practice chiropractic under the Oklahoma Chiropractic Practice Act ;

3. The letters "D.D.S." or "D.M.D.", as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate, by a person licensed to practice dentistry under the State Dental Act ;

4. The letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ;

5. The letters "O.D." or the words optometrist or doctor of optometry by a person licensed to practice optometry under Sections 581 through 606 of this title;

6. The letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine by a person licensed to practice osteopathy the Oklahoma Osteopathic Medicine Act ;

7. The letters "Ph.D.", "Ed.D.", or "Psy.D." or the words psychologist, therapist, or counselor by a person licensed as a health service psychologist pursuant to the Psychologists Licensing Act;

8. The letters "Ph.D.", "Ed.D.", or other letters representing a doctoral degree or the words language pathologist, speech pathologist, or speech and language pathologist by a person licensed as a speech and language pathologist pursuant to the Speech-Language Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of speech and language pathology; and

9. The letters "Ph.D.", "Ed.D.", or other letters representing a doctoral degree or the word audiologist by a person licensed as an audiologist pursuant to the Speech-Language Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of audiology.

B. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "doctor" or "doctors" shall mean and include each of the nine classes of persons listed in subsection A and the word "physician" or "physicians", as provided in subsection C of this section. Any other person using the term doctor, or any abbreviation thereof, shall designate the authority under which the title is used or the college or honorary degree that gives rise to use of the title.

C. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "physician" or "physicians" shall mean and include each of the classes of persons listed in paragraphs 1 through 6 of subsection A and the word

"doctor" or "doctors" as provided in subsection B of this section. The term "physician" shall not include any person specified in paragraphs 7 through 9 of subsection A of this section unless such person is otherwise authorized to use such designation pursuant to this section. a

<u>OREGON</u>

OREGON REVISED STATUTES TITLE 52. OCCUPATIONS AND PROFESSIONS CHAPTER 676. HEALTH PROFESSIONS GENERALLY USE OF TITLES IMPORTING HEALTH CARE PROFESSION

§676.110. Practitioner to designate particular business or profession.

(1) An individual practicing a health care profession may not use the title 'doctor' in connection with the profession, unless the individual:

(a) Has earned a doctoral degree in the individual's field of practice; and

(b)(A) Is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned; or

(B) Is working under a board-approved residency contract and is practicing under the license of a supervisor who is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned.

(2) When an individual uses the title 'doctor' on written or printed matter or in connection with advertising, billboards, signs or professional notices, the individual shall designate the health care profession in which the individual's doctoral degree was earned. The designation must be in letters or print at least one-fourth the size of the largest letters used in the title 'doctor,' and in material, color, type or illumination to give display and legibility of at least one-fourth that of the title ' doctor.'

(3) Subsection (1) of this section does not prohibit:

(a) A chiropractic physician licensed under ORS chapter 684 from using the title 'chiropractic physician';

(b) A naturopathic physician licensed under ORS chapter 685 from using the title 'naturopathic physician';

(c) A person licensed to practice optometry under ORS chapter 683 from using the title 'doctor of optometry' or 'optometric physician'; or

(d) A podiatric physician licensed under ORS 677.805 to 677.840 from using the title 'podiatric physician.'

OREGON ADMINISTRATIVE RULES COMPILATION CHAPTER 852. BOARD OF OPTOMETRY DIVISION 60. PROCEDURES FOR HANDLING COMPLAINTS

852-060-0027 Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:

(13) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor", or any contraction thereof, "clinic", "institute", "specialist" or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must

add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

TENNESSEE

WEST'S TENNESSEE CODE ANNOTATED TITLE 63. PROFESSIONS OF THE HEALING ARTS CHAPTER 1. DIVISION OF HEALTH RELATED BOARDS PART 1. GENERAL PROVISIONS

§ 63-1-109. Certificate of registration; display

(a) Every person licensed or registered to practice one of the healing arts, or any branch thereof, as delineated in this section shall keep an original or copy of the person's license or certificate of registration displayed in the office or place in which the person practices, in a conspicuous place, and shall place and keep placed in a conspicuous place at the entrance of the person's office, a sign in intelligible lettering and not less than one inch (1") in height, containing the name of such person immediately followed by the recognized abbreviation indicating the professional degree, if any, held by such person, and containing immediately below the person's name, in equal size lettering, the word or words:

(1) "Chiropractor", "chiropractic physician" or "doctor of chiropractic" for practitioners of chiropractic;

(2) "Dentist", "doctor of dental surgery" or "doctor of dental medicine" for practitioners of dentistry;

(3) "Medical doctor", "physician", "medical doctor and surgeon", "medicine" or "surgeon", as applicable, for practitioners of medicine and surgery;

(4) "Optometrist", "doctor of optometry", "optometric physician" for practitioners of optometry;

(5) "Osteopathic physician", "osteopathic physician and surgeon", "doctor of osteopathic medicine", or "doctor of osteopathy" for practitioners of osteopathy;

(6) "Podiatrist", "podiatric physician", "doctor of podiatry", "doctor of podiatric medicine" or "doctor of podiatric medicine and surgery" for practitioners of podiatry;

(7) "Advanced practice nurse", "nurse practitioner", "nurse anesthetist", "nurse midwife" or "clinical nurse specialist", as applicable, for those practicing advanced practice nursing;

(8) "Physician assistant" or "orthopedic physician assistant", as applicable, for those licensed as a physician assistant;

(9) "Psychologist" or "doctor of psychology" for practitioners of psychology;

(10) "Acupuncturist" for practitioners of acupuncture; and

(11) "Certified professional midwife" for those practitioners of midwifery.

(b) Any recognized specialist in any branch of the healing arts, which special field is recognized or approved by the appropriate board licensing that profession, may substitute the specialist designation for the words indicated in subsection (a).

CHAPTER 8. OPTOMETRISTS

§ 63-8-113. Unauthorized practices; advertising

(d)(1) An optometrist may advertise ophthalmic materials, including prices. All advertising by persons licensed to practice optometry in this state, regardless of the media employed or such advertising, shall be subject to the requirements and limitations of this section, as follows:

(D) All advertising shall contain the optometrist's name and the designation "O.D." or "Doctor of Optometry," or a professional corporation name so long as such corporate name does not permit or imply action, advertising, services or practices forbidden by this chapter

or rules and regulations of the board, and such corporate name has been approved in advance by the board as being in compliance with the foregoing; and

TENNESSEE RULES AND REGULATIONS 1045. TENNESSEE BOARD OF OPTOMETRY DIVISION OF HEALTH RELATED BOARDS CHAPTER 1045-02. GENERAL RULES GOVERNING THE PRACTICE OF OPTOMETRY

1045-02-.11. SCOPE OF PRACTICE.

The scope of the practice of optometry in Tennessee is specifically defined but includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This rule is to designate specific areas in the practice of optometry for regulation, the violation of which may result in disciplinary action pursuant to T.C.A. §§63-8-120(a)(2), 63-8- 120(9) and 63-8-120(10).

(6) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles "Optometrist," "Doctor of Optometry," **"Optometric Physician,"** or "O.D." and to practice optometry, as defined in T.C.A. §§ 63-8-102. Violation of this rule or T.C.A. §§ 63-8-113 and 63-8-120 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

<u>UTAH</u>

UTAH CODE TITLE 58. OCCUPATIONS AND PROFESSIONS CHAPTER 16a. UTAH OPTOMETRY PRACTICE ACT

§58-16a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(9) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

§58-16a-501. Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(4) representing oneself as or using the title of "optometrist," "**optometric physician**," "doctor of optometry," or "O.D.," unless currently licensed or exempted from licensure under this chapter.

UTAH ADMINISTRATIVE CODE COMMERCE R156. OCCUPATIONAL AND PROFESSIONAL LICENSING.

R156-16a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 16a, as used in Title 58, Chapters 1 and 16a or these rules:

(1) "**Practitioner**" means any person or individual licensed in this state as a physician and surgeon, osteopathic physician and surgeon, physician assistant, nurse practitioner or an **optometric physician**.

WASHINGTON

Permitted by the following Washington State Board of Optometry policy adopted on July 19, 1991.

"It shall be the Board's policy that licensed optometrists may use the terms **"optometric physician" or "physician, optometric"** to describe themselves or in connection with their practice."

	Department of Health and Human Services to send officers of the Uniformed Services, including representatives of the U.S. Public Health Service Commissioned Corps, to the optometric colleges to acquaint and apprise students of the advantages of a military and public health service career and the procedure and regulations pertaining to applications for commissions.	
1342	PREFERRED TITLES FOR USE BY OPTOMETRISTS	
(8 of 1959) (Mod. 1980) (Mod. 2000)	WHEREAS, it is the declared policy of the American Optometric Association that the titles OPTOMETRIST, DOCTOR OF OPTOMETRY, and OPTOMETRIC PHYSICIAN are sufficient all- embracing to cover the complete practice of optometry; and	
	WHEREAS, it is the declared policy of the American Optometric Association that the use of the titles DOCTOR OF OPTOMETRY and OPTOMETRIC PHYSICIAN in assisting public recognition of the practitioners of the profession of optometry are preferred titles; now therefore be it	
	RESOLVED, that all optometrists be encouraged to identify themselves as DOCTORS OF OPTOMETRY, or as OPTOMETRIC PHYSICIANS where permitted by state law or regulation, in all forms of communication where practicable.	
1390	SAVE YOUR VISION MONTH	
(10 of 1960) (Mod. 1985) (Mod. 2005)	WHEREAS, the observance of an annual "Save Your Vision Month" has made the public aware of the need for vision care; now therefore be it	
	RESOLVED, that the month of March shall be "Save Your Vision Month."	
1391 (11 of 1960)	COOPERATION WITH STATE AGENCIES RE MOTORISTS VISION AND HIGHWAY SAFETY	
	WHEREAS, the American Optometric Association and the state associations have acquired and accumulated so much data, material and knowledge on the subject of motorists vision and its relation to highway safety; now therefore be it	
	RESOLVED, that the American Optometric Association and the various state associations continue to offer their cooperation to the appropriate state agencies and make available to them their	



Memo

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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject: Agenda Item 9 – Board Member Handbook and Administrative Handbook Proposed Edits			

Action Requested

Board members are asked to review the proposed edits and make additional edits as needed. Staff asks the board to approve the proposed edits. Mona Maggio, EO and Cyd Brandvein, Public Member reviewed the Board Member Handbook and Administrative Handbook and have provided the edits before you.

Attachment

- 1. Board Member Handbook
- 2. Administrative Handbook

Board Member Handbook

Introduction:

The purpose of this handbook is to provide guidance to future and incumbent Board Members regarding the general processes involved with their position on the Board of Optometry (Board). As a Board Member, you are typically asked to create and review policy and administrative changes, make disciplinary decisions, and preside over regular and special meetings.

In addition to the Bagley-Keene Open Meeting Act and the attached Administrative Procedures Manual, which provide public meeting laws, this handbook serves as a referential guide to help you understand further meeting requirements and Board procedures.

Mission Statement

To protect the health and safety of California consumers through licensing, education and regulation of the practice of Optometry.

Vision Statement

To ensure excellent optometric dare for every Californian.

Values Statement

<u>Consumer protection – We make effective and informed decisions in the best interest</u> and for the safety of Californians.

Integrity - We are committed to honesty, ethical conduct, and responsibility.

<u>Transparency – We hold ourselves accountable to the people of California. We operate openly so that stakeholders can trust that we are fair and honest.</u>

Professionalism – We ensure qualified, proficient, and skilled staff provides excellent service to the State of California.

Excellence – We have a passion for quality and strive for continuous improvement of our programs, services, and processes through employee empowerment and professional development.

Mission Statement:

The Board of Optometry's mission is to serve the public and optometrists by promoting and enforcing laws and regulations which protect the health and safety of California's consumers and to ensure high quality care.

Vision Statement

The Board of Optometry's vision is to be the leading health care profession board that continuously provides consumers and optometrists with effective, collaborative, and proactive services.

Values Statement:

The Board of Optometry values:

Integrity

Competence Accountability Responsiveness Efficiency

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_Getting Started as a Board Member

The following information serves to inform Board Members of mandatory training requirements as well as the Board of Optometry's (Board) essential functions. Newly appointed members are also advised in this section on how to engage with Board staff and of their relationship with the Executive Officer.

Training Requirements

Within one year of assuming office, newly appointed members shall complete the following training:

- 1. Board Member Orientation <u>Training</u>, which is provided by the Department of Consumer Affairs
- 2. Ethics Orientation Training, Ethics Training Course which shall be completed within the first 6 months of office
- 3. Conflict of Interest, Form 700
- 4. Sexual Harassment Prevention <u>Training</u>, within the first six months of office

Additional training:

1. Members shall attend an ethics training course every two years

Upon assuming office, members will also receive a copy of the Bagley-Keene Open Meeting Act, which lists public meeting laws that provide the guidelines for Board Meetings. The 2011 the current version of this Act can also be found at the following:

http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Board Member Reference Documents

Board of Optometry's Essential Functions

The Board's essential functions are comprised of licensing, examinations, <u>legal_legislative</u> and regulatory, and enforcement. As such, the following provide a brief understanding of staff procedures to uphold each function.

- Licensing: Staff is responsible for such tasks as evaluating applications for initial licensure, license renewals, providing certifications <u>(a list of licenses and certifications</u> <u>issued by the Board is found on page ____see page 16 this list)</u> issuing Fictitious Name Permits, monitoring continuing education, and providing license verifications to consumers and customer service to licensees accordingly.
- 2. <u>Examinations</u>: Staff regulates the law and licensing exams, which are necessary to ensure proficiency to practice. Staff also develops examination procedures.
- 3. <u>Legal -Legislative and Regulatory</u>: Administrative staff is responsible for implementing administrative changes, primarily by revising or introducing regulations and statutes.
- 4. <u>Enforcement</u>: Staff is responsible for ensuring consumer protection predominantly by processing consumer complaints, monitoring probationers, and providing customer service to licensees and consumers by providing information related to Board law.

Interactions with Board Staff

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of

employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-to-day personnel transactions.

The Executive Officer

The Executive Officer serves at the pleasure of the Board Members as a whole. As such, your role as a Board Member is to direct the Executive Officer to implement program administration, budget, strategic planning, and coordination of meetings.

Meetings

All Healing Arts Boards under the Department of Consumer Affairs, including the Board of Optometry, must meet in accordance with the provisions set forth by the Bagley-Keene Open Meeting Act and the Brown Act. A copy of the Bagley-Keene Open Meeting Act should is be provided to each newly appointed Board Member. (see web address on page 1).

For more information on Administrative Procedures, you may reference the attached Administrative Procedure Manual.

Attendance at Board Meetings

The Board's policy is such that Members attend each meeting of the Board. If a Member is unable to attend, he or she must contact the Executive Officer and <u>Board President and</u> ask to be excused from the meeting for a specific reason.

Quorum

In order to conduct a full Board Meeting, there needs to be a quorum of six board members. Either having members in attendance or by teleconference, with proper notice, can accomplish this.

General Rules of Conduct

The following rules of conduct are taken from the attached Administrative Procedures Manual to detail expectations of your conduct as a Member. Be mindful that the Board is comprised of both public and professional members with the intention that, together, you can protect the public and regulate the profession of Optometry.

• Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.

- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall adequately prepare for Board responsibilities.
- Board members shall not speak or act for the Board without proper authorization.
- Board members shall maintain the confidentiality of non-public documents and information.
- Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
- Board members shall treat all applicants and licensees in a fair and impartial manner.
- Board members shall not use their positions on the Board for personal, familial or financial gain.
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- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- Board members shall not use their positions on the Board for personal, familial or financial gain.

Meeting Requirements

Pursuant to Government Code Section, 11121.9, the following are requirements for the various meetings that you, as a Board Member, may attend.

Open Meeting Requirements:

Regularly scheduled meetings generally occur throughout the year and address the usual business of the Board. There are no restrictions on the purposes for which a regularly scheduled meeting may be held.

The Board is required to give at least 10 calendar days for written notice of each Board Meeting to be held.

The meeting notice must include the agenda, which may have a brief description of the item. Note that no changes can be made to the agenda unless the notice is amended accordingly. If this occurs, it must be posted for 10 calendar days prior to the meeting. More information about notice requirements can be found in the Administrative Procedures Manual.

Committee Meeting Requirements:

Notice requirements are mandatory for committee meetings if the committee consists of three or more persons. Those committees with fewer members do not need to submit meeting notices.

Should the committee post notice for a meeting, it must match the requirements for open meetings wherein the notice must be posted on the Internet at least 10 calendar days prior to the meeting and be provided to interested parties upon request.

Special Meeting Requirements:

Though the purposes and instructions for special meetings are found in Government Code Section 11125.4, one such reason is in the instance that a 10-day notice period to the public would impose a hardship to the Board. However, should this occur, the Board must provide notice of the meeting to each member and those persons who have requested notice of board meetings. This notice needs to specify the time, place and purpose of this special meeting.

At the commencement of this meeting, the Board must make a finding (in the open session) that providing a 10-day notice of the meeting poses a substantial hardship or that immediate action is required to protect public interest. This finding must then be adopted by two-thirds vote of members present or by a unanimous vote if less than the two-thirds of members are present. Failure to do so terminates the meeting.

Closed Session Requirements:

Closed Sessions may take place in the following instances:

- 1. Personnel matters (i.e. appointments, employment, performance evaluations, etc.)
- 2. To conduct administrative disciplinary proceedings
- 3. Examination matters, such as when the Board administers or approves an exam
- 4. Pending litigation
- 5. In response to confidential audit reports
- 6. When matters discussed would be an invasion of privacy if conducted in open session
- 7. As a response to a threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment.

Should a closed session take place, the Board must disclose in the open meeting a general statement about the closed session items (i.e. by mentioning it on the agenda). Additionally, all closed sessions must take place in a regularly scheduled or special meeting.

All material discussed in closed sessions must remain confidential. When such a session takes place, a staff person will be present to record and make available to members the discussion topics and decisions made.

Making a Motion

A Board Member should make a motion to introduce a new piece of business or to propose a decision or action. All motions must reflect the content of the meeting's agenda – the Board cannot act on business that is not listed on the agenda.

Upon making a motion, it is important to remember to speak slowly and clearly; bear in mind that the motion is being recorded. Members who opt to second the motion must remember to repeat the motion in question. Additionally, it is important to remember that once a motion has been made, it is inappropriate to make a second motion until the initial one has been resolved.

The basic process of a motion is as follows:

- 1. An agenda item has been thoroughly discussed and reviewed. If it is a new piece of business, see step 2.
- 2. The Board President opens a forum for a Member to make a motion to adopt or reject the discussed item.
- 3. A Member makes a motion before the Board.
- 4. Another Member seconds this motion.
- 5. The Board President puts forth the motion to a vote.
- 6. If it is a voice vote, those in favor of the motions say "aye" and those opposed say "no". <u>Members may also vote to "abstain", meaning a non-vote or "recuse" meaning to</u> <u>disqualify from participation in a decision on grounds such as prejudice or personal</u> <u>involvement. Recusal is the proper response to a conflict of interest.</u>

7.If it is a voice vote, those in favor of the motion say "aye" and those opposed say "no".

8. If it is a rising vote, those in favor of the motion will rise from their seats.

6.7. Upon completion of the voting, the President will announce the result of the vote (e.g. "the ayes have it and the motion is adopted" or "the no's have it and the motion fails").

The adjournment of each meeting is done via motion, seconded motion, and majority vote.

Background Information of Various Board Processes

As a member, you may be asked to review material which you are not closely acquainted with. Therefore, you may wish to reference the following guides to attain a comprehensive understanding of items brought forth in Board Meetings.

This section provides a guide to the Legislative Process, Regulatory Process, Complaint and Disciplinary Process, and the various licenses and certifications provided by the Board.

Licenses and Certification Issued by the Board

The following chart provides an overview of the various licenses and certifications issued by the board. The following chart provides an overview of the various licenses and certifications that the Board issues to its licensees.

	TYPE	DESCRIPTION	Authority
<u>Optome</u>	tric License (OPT)	License to practice optometry in California at designated "principal place of practice." May be owner or an employee/independent contractor at the location.	<u>B&P 3040</u>
Stateme	nt of Licensure (SOL)	Required for every location where a licensee is employed or works as an independent contractor in addition to principal place of practice as designated by OPT license.	<u>CCR 1506(d).</u>
Branch	Office License (BOL)	Required for each optometric practice owned by a licensed optometrist that is in addition to principal place of practice as designated by OPT license.	<u>B&P 3077</u>
Fictitiou	s Name Permit (FNP)	Required if a fictitious name is used in conjunction with the practice of optometry.	B&P 3078 and CCR 1518
	utic Pharmaceutical TPA) Certification	Required for optometrists who wish to treat patients with pharmaceutical agents as authorized by this category. To become TPA certified, an optometrist must meet one of seven category requirements.	B&P 3041.3 and CCR 1568
Glaucon	na Certification	Effective January 8, 2011. In order to be certified to diagnose and treat Glaucoma, an optometrist must already be TPA certified.	B&P 3041(f)(5) and CCR 1571
Lacrima Certifica	Irrigation and Dilation tion	Effective January 1, 2011. To be certified to perform these tasks, an optometrist must already be TPA certified.	B&P 3041(e)(6) and B&P 3041.3

Under the Department of Consumer Affairs, the California State Board of Optometry (Board) conducts disciplinary proceedings in accordance with the Administrative Procedure Act, Government Code Section 11370, and those sections that follow. The Board conducts investigations and hearings pursuant to Government Code Sections 11180 through 11191.

Typically, the disciplinary process begins with a complaint case. Complaints can come to the Board via consumers, optometrists, and other agencies. Under Business and Professions Code 800 et seq., civil judgments or settlement against a licensee that exceeds three thousand dollars (\$3,000) must be reported to the Board by an insurer or licensee. These will result in an enforcement investigation.

To begin an investigation, the Board's enforcement staff determines jurisdiction over a complaint case. If jurisdiction has been established, enforcement staff begins its investigation by requesting permission to review the patient's medical file (if this is pertinent to the complaint) and notifies the optometrist that a complaint has been made.

Enforcement staff determines if a violation of the Optometry Practice Act has occurred by verifying facts to validate a complaint allegation. This is generally done by gathering statements, patient records, billings, insurance claims, etc. The Board may also submit the case to the Division of Investigation (DOI) for further investigation as DOI investigators are given authority of peace officers by the Business and Professions Code while engaged in their duties. Therefore, these investigators are authorized more investigative privileges than Board staff.

The Board may also seek the aid of an expert witness when the enforcement team needs an expert opinion to determine if the licensee in question breached the standard of care.

If it is determined by enforcement staff, expert opinion, DOI, etc. that the subject's acts constitute a violation of law, the completed investigative report is submitted to the California Office of the Attorney General. The assigned Deputy Attorney General will review the case to determine if the evidence supports filing of an accusation against the subject for a violation of the law. If it is determined appropriate, an accusation is prepared and served upon the subject and he or she is given the opportunity to request a hearing to contest the charges.

Acts subject to disciplinary action – such as revocation, suspension, or probationary status of a license – include but are not limited to:

- Unprofessional conduct;
- Gross negligence;
- Sexual misconduct;
- Conviction of a substantially related crime;
- Substance abuse; and
- Insurance fraud.

After the Board files an accusation, the case may be resolved by a stipulated settlement: a written agreement between parties to which the person is charged admits to certain violations and agrees that a particular disciplinary order may be imposed.

Stipulations are subject to adoption by the Board. If a stipulated settlement cannot be negotiated, the Board holds a hearing before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last anywhere from one day to several months, depending on the complexity of the case and the defense. During the hearing, both sides may call expert witnesses to support their views. After both sides have argued their case, the judge issues a proposed decision. This written proposal is submitted to the Board for adoption as its decision in the matter.

If the Board does not adopt the proposed decision, Board members obtain a transcript of the hearing, review the decision and decide the matter based upon the administrative record. If dissatisfied with the Board's decision, the respondent may petition for reconsideration or he or she may contest it by filing a writ of mandate in the appropriate superior court.

Reviewing Disciplinary Decisions

As previously mentioned under the purposes for a closed-session meeting, <u>You You</u> will be asked to make a disciplinary decision based on a hearing that has taken place with an Administrative Law Judge. To learn more about the complaint and disciplinary process, you may consult with the overview provided on page 14 of this handbook.

Deciding to Adopt or Non-adopt a Proposed Decision

Upon being presented with a proposed disciplinary decision from an Administrative Law Judge (ALJ), you, as a Board Member, are asked to either adopt or non-adopt the action. Accordingly, consider the following when making your decision:

- A. Factors for adopting an ALJ's proposed decision:
 - 1. The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
 - 2. The law and standards of practice are interpreted correctly.
 - 3. In those cases in which witness credibility is crucial to the decision, the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
 - 4. The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
 - 5. If probation is granted, the terms and conditions of probation provide the necessary public protection.
 - 6. The costs of proceeding with non-adoption far exceed the severity of the offense and the probability is high that respondent will be successful.
- B. Factors for non-adopting an ALJ's proposed decision:
 - 1. The proposed decision reflects the ALJ clearly abused his/her discretion.
 - 2. The ALJ made an error in applying the relevant standard of practice for the issues in controversy at the hearing.

- 3. The witness's credibility is crucial to the decision and the findings of fact include a determination based substantially on a witness' credibility; but, the determination <u>does not</u> identify specific evidence of the observed demeanor, manner, or attitude, of the witness that supports the credibility determination.
- 4. The ALJ made an error in interpreting the licensing law and/or regulations.
- 5. The ALJ made correct conclusions of law and properly applied the standards of practice but the penalty is substantially less than is appropriate to protect the public.

Reviewing the Record and Preparing to Discuss and Render a Decision after Nonadoption

Should you, as a Member, choose to non-adopt a proposed decision by the administrative law judge (ALJ), he or she must review the factual and legal findings to render a determination. The following suggestions are intended to assist in reviewing the case record:

- A. Reviewing the Administrative Record
 - 1. The Accusation:
 - Make note of the code sections charged and brief description of the sections (e.g. B&P 3110(b) – gross negligence; B&P 3110 (d) – incompetence).
 - Read the facts that are alleged as they stand to prove or disprove the code violations. The burden to prove the violations by "clear and convincing evidence to a reasonable certainty" rests on the Board.
 - 2. The Proposed Decision:
 - <u>Factual Findings</u>. Review the factual findings and determine if they and/or testimony prove violations. Note that expert testimony may be necessary to prove the violations.
 - <u>Legal conclusions</u> (determination of issues). Determine if any proven facts constitute a violation of the code section.
 - <u>Order</u>. Review the order and determine if the penalty is appropriate per the violations found and if it is consistent with the Disciplinary Guidelines. If not, determine if there is a basis for which the record deviated from the guidelines.
 - 3. The Transcript
 - <u>Sufficiency of the Evidence</u>. You must determine if the evidence introduced is clear and convincing to a reasonable certainty to prove *each* factual allegation.
 - <u>Lay Witnesses.</u> You must determine if the testimony provided by witnesses prove factual allegations. In doing so, bear in mind the ALJ's credibility findings.

- <u>Expert Witnesses</u>. Which expert's testimony was given the most weight by the ALJ? If you do not agree with the ALJ's findings, you must determine which evidence in the record supports your own conclusion.
- B. Preparing for an Oral Argument Hearing
 - 1. Review written arguments and determine if the burden of proof has been met.
 - The Deputy Attorney General's (DAG) argument will contend the facts are clearly proven and constitute a violation of the law.
 - The Respondent's argument will likely focus on the weaknesses of the Board's case and strength of the Respondent's case. It will force you to answer if (a) facts are proven, (b) the law was violated, and (c) the penalty is appropriate.
 - 2. Review the proposed decision
 - Note in the proposed decision where you agree and disagree with the ALJ in regards to factual findings, the legal conclusion, and proposed penalty. Also note the specific evidential findings which support your own conclusions.
 - 3. Summary and Conclusion
 - Remember, that if you maintain your focus on the code sections alleged to have been violated and the facts that were alleged to have occurred, your decision should be made more easily and this will help your decision withstand judicial scrutiny.

Overview of California's Legislative Process

For a graphic overview of California's legislative process, see the attached diagram on page 10.

The California State Legislature consists of two houses: the Senate and the Assembly. The Senate has 40 members and the Assembly has 80 members.

All legislation begins as an idea or concept. Should the Board take an idea to legislation, it will act as its sponsor.

Next, in order to move the idea toward legislation the Board must attain a Senator or Assembly Member to author it as a bill. Once a legislator has established himself or herself as an author, he or she will proceed to the Legislative Council where a bill is drafted; it is then returned to the legislator for introduction in a house (if a Senator authors a bill, it will be introduced to the Senate; if an Assembly Member authors a bill, it will be introduced to the Assembly). This house is called the House of Origin.

Once a bill is introduced on the floor of its house, it is sent to the office of State Printing. At this time, it may not be acted upon until 30 days after the date which it was introduced. After the allotted time has lapsed, the bill moves to the Rules Committee of its house to be assigned to a corresponding Policy Committee for hearing.

During committee hearing, the author presents his or her bill to the committee and witnesses provide testimony in support or opposition of the bill. At this time, amendments may be proposed and/or taken. Bills can be amended multiple times. Additionally, during these hearings, a Board representative (Board Chair, Executive Officer, and/or staffer) may be called upon to testify in favor of the bill.

Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. A bill is passed in committee by a majority vote.

If the bill is passed by committee, it returns to the floor of its House of Origin and is read a second time. Next, the bill is placed on Third Reading and is eligible for consideration by the full house in a floor vote. Bill analyses are prepared prior to this reading. During the third reading, the author explains the bill and members discuss and cast their vote. Bills that require appropriation or, that take effect immediately, generally require 27 votes in the Senate and 41 votes in the Assembly to be passed. Other bills require majority vote. If a bill is defeated, its author may seek reconsiderations and another vote.

Once a bill has been approved by the House of Origin, it is submitted to the second house where the aforementioned process is repeated. Here, if an agreement is not reached, the bill dies or is sent to a two-house committee where members can come to a compromise. However, if an agreement is made, the bill is returned to both houses as a conference report to be voted upon.

Should both houses approve a bill, it proceeds to the governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is in session, the governor must act within 12 days; otherwise, he has 30 days to do so. A two-thirds vote from both houses can override the governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the governor are assigned a chapter number by the Secretary of State. Chaptered bills typically become part of the California Codes and the Board may enforce it as statute once it becomes effective. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

Positions on Legislation

As a regulatory body, the Board can issue its own legislative proposals or take a position on a current piece of legislation.

At Board Meetings, staff may present current legislation that is of potential interest to the Board, and/or which may directly impact the Board and the practice of optometry. When the Board attains research on legislation, it can take a position on the matter.

Possible positions include:

<u>Neutral</u>: If a bill poses no problems or concerns to the Board, or its provisions fall outside of the Board's jurisdiction, the Board may opt to remain neutral. Should the Board take this stance, it cannot testify against the bill.

<u>Neutral if Amended</u>: The Board may take this position if there are minor problems with the bill but, providing they are amended, the intent of the legislation does not impede with Board processes.

<u>Support</u>: This position may be taken if the Board supports the legislation and has no recommended changes.

Support if Amended: This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.

<u>Oppose</u>: The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.

<u>Oppose Unless Amended</u>: The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Insert diagram_The Life Cycle of Legislation

Overview of Regulations

Regulations are administratively enforceable. They, along with statutes, govern the Board and comprise the Board's Practice Act. Succinctly, regulations interpret or make specific laws that are enforced or administered by the Board.

Should the Board wish to implement an administrative change, it may do so via statute or regulation. There are pros and cons to each of these routes. However, should the Board decide to implement a regulatory (also referred to as rulemaking) change or introduce a new regulation, it must follow direct procedures.

In order to prepare a rulemaking action, the Board is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

The issuance of a notice of proposed regulation initiates a rule making action. To do this, the Board creates a notice to be published in the California Regulatory Notice Register and mailed to interested parties. It must also post the notice, proposed text, and statement of reasons for the rulemaking action on its website.

Once the notice has been posted, the Administrative Procedures Act (APA) requires a 45-day comment period from interested parties before the Board may proceed further with the proposed regulation. During this time the Board can also decide if it wants to hold a public hearing to discuss the proposed rulemaking action. However, if it opts against this, but an interested person requests a hearing at least 15 days prior to the end of the written comment period, the Board must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, the Board will often decide to revise its proposal. If it chooses to do so, APA procedures require that the agency assess each change and categorize them as (a) non_substantial, (b) substantial and sufficiently related, or (c) substantial and not sufficiently related. Any change that has been categorized as substantial and sufficiently related must be available for public comment for at least 15 days before the change is adopted in the proposal. All comments must then be considered by the Board.

Additionally, if the Board cites new material that has not been available to the public while revising the proposal, these new references must be presented to the public for 15 days.

The Board is also responsible for summarizing and responding on record to public comments submitted during each allotted period. These are to be included as part of the final statement of reasons. By doing so, the agency demonstrates that it has understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation.

After the Board has fulfilled this process, it must adopt a final version of the proposed rulemaking decision. Once this has been accomplished, the rulemaking action must be submitted to the Office of Administrative Law (OAL) for review within a year from the date which the notice was published. OAL has 30 days to review the action.

During its review, OAL must determine if the rulemaking action satisfies the standards set forth by APA. These standards are: necessity, authority, consistency, clarity, non_duplication, and reference. It must also have satisfied all procedural requirements governed by the APA.

If OAL deems that the rulemaking action satisfies the aforementioned standards, it files the regulation with the Secretary of State and it is generally effective within 30 days. The regulation is also printed in the California Code of Regulations.

If OAL, however, determines that the action does not satisfy these standards, it returns the regulation to the Board, which can revise the text, post notice of change for another comment period, and, finally, resubmit the proposed regulation to OAL for review; or, the Board may appeal to the governor.

Diagrams on pages 13 and 14 provide graphical overview of the rulemaking process.

Insert Diagram The Rulemaking Process

Insert Diagram OAL Review

State of California State and Consumer Services Agency



Administrative Procedure Manual



California State Board of Optometry 2450 Del Paso Road, Suite 105 Sacramento, CA 95834 www.optometry.ca.gov

2011 2015 Edition

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Chapter 1. Introduction

Overview

The California State Board of Optometry (hereafter Board) was created by the California Legislature in 1913 under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. In 1923, the Board promulgated the first rules for the practice of optometry and the State Legislature first required all applicants for licensure to be graduates of an accredited school or colleges of optometry. The Board is responsible for accrediting these schools. To assure competent and ethical practitioners and protect the public from harm, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board.

Today, the Board is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the State and Consumer Services Agency under the aegis of the Governor. DCA is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While the DCA provides administrative oversight and support services, the Board has policy autonomy and sets its own policies, procedures, and initiates its own regulations.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code (BPC) Section 3010.1).

The Board consists of eleven members, five of whom shall be public members and six are professional members (licensed optometrists of the State of California actually engaged in the practice of optometry at the time of appointment or faculty members of a school or college of optometry). No more than two faculty members may be on the Board at any one time and they may not serve as public members. No member of the Board shall have a financial interest in any purchase or contract under Board purview nor shall he/she have financial interest in the sale of any property or optical supplies to any prospective candidate for examination before the Board. The public members shall not be licensees of the Board or of any other Healing Arts Board. The Governor appoints three public members and the six professional members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. Board members may serve up to two, four-year terms. Board members are paid \$100 for each day actually spent in the discharge of official duties and are reimbursed travel expenses.

Board Responsibilities

With approximately 7,500 practicing optometrists and 500 optometric corporations, the largest population of optometrists in the United States, the Board is charged with the following duties and responsibilities:

- Accrediting the schools and colleges providing optometric education.
- Establishing educational requirements for admission to the examination for certificates
 of registration as California licensed optometrists.

- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.
- Setting and enforcing standards for continued competency of existing licensees.
- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe authorized pharmaceutical agents.
- Issuing certification to diagnose and treat glaucoma for patients over the age of 18.
- Licensing branch offices and issuing fictitious name permits.
 - Effective January 1, 2007, the Board of Optometry no longer registers Optometric Corporations. However, the Board has maintained the authority to regulate those in existence.
- Promulgating regulations governing:
 - Procedures of the Board
 - o Admission of applicants for examination for licensure as optometrists
 - Minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions
- Providing for redress of grievances against licensees by investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, or unlawful activity.
- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted.

This procedures manual is provided to Board members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency.

Definitions

ALJ	Administrative Law Judge.
AOA	American Optometric Association
APA	Administrative Procedure Act
BPC	Business and Professions Code
CLEAR	Council on Licensure Enforcement and Regulations
COA	California Optometric Association
DCA	Department of Consumer Affairs

EO	Executive Officer		
OAH	Office of Administrative Hearings. This state agency provides neutral judges to preside over administrative cases.		
OAL	Office of Administrative Law. This state agency reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.		
Regulation	A standard that implements, interprets, or makes specific a statute enacted by a state agency. It is enforceable the same way as a statute.		
SAM	State Administrative Manual		
Statute	A law passed by the legislature.		
Stipulation	A form of plea bargaining in which a disciplinary case is settled by negotiated agreement prior to hearing.		
President	Where the term "President" is used in this manual, it will be assumed to include "his or her designee"		
General Ru	les of Conduct		Comment [D1]: Match to page 2 – 3 Board Handbook
• <u>Board</u> Memb	members shall recognize the equal role and responsibilities of all Board ers		
• Board	members shall adequately prepare for Board responsibilities.		
• Board	members shall not speak or act for the Board without proper authorization.		Formatted: List Paragraph, No bullets or numbering, Tab stops: Not at 0.5" + 0.56"
• <u>Board</u> inform	members shall maintain the confidentiality of non-public documents and ation.		Formatted: List Paragraph, No bullets or numbering, Tab stops: Not at 0.5" + 0.56"
Board member	ers shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting	•	Formatted: Highlight
Board	members shall treat all applicants and licensees in a fair and impartial manner.		
	members shall not use their positions on the Board for personal, familial or ial gain.	4	Formatted: List Paragraph, No bullets or numbering, Tab stops: Not at 0.5" + 0.56"
Board	members shall not use their positions on the Board for personal, familial or ial gain.	↓	Formatted: List Paragraph, No bullets or numbering, Tab stops: Not at 0.5" + 0.56"
Board	members shall not speak or act for the Board without proper authorization.		
Board inform	members shall maintain the confidentiality of non-public documents and ation.		

- Board members shall adequately prepare for Board responsibilities.
- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
- Board members shall treat all applicants and licensees in a fair an impartial manner.
- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- Board members shall not use their positions on the Board for personal, familial or financial gain.

Chapter 2. Board Meeting Procedures

Frequency of Meetings

(BPC Section 3017)

The Board shall hold regular meetings every calendar quarter.

Special meetings of the Board may be held upon request of a majority of the members of the Board or upon the call of the President.

Six members constitute a quorum at a Board meeting.

Notice of each meeting and the time and place thereof shall be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

Board Meeting Attendance at Board Meetings

(Board Policy)

Board members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Executive Officer and ask to be excused from the meeting for a specific reason.

Public Attendance at Board Meetings

(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This act governs meetings of the state regulatory boards and meeting of committees of those boards where the

committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included in the agenda.

The Bagley-Keene act stipulates that the Board is to provide adequate notice of meetings to be held to the public as well as provide an opportunity for public comment. The meeting is to be conducted in an open session, except where closed session is specifically noted.

If the agenda contains matters that are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Closed Sessions at Board Meetings

(Government Code Section 11126 et seq.)

A Board may meet in a closed session to discuss: personnel matters (appointments, employment, evaluation of performances, etc.); examination matters wherein the Board prepares, approves, grades, or administers examinations; matters which would constitute an invasion of privacy if discussed in an open session; administrative disciplinary matters; pending litigation; as a response to confidential final draft audit report; and, as a response to threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment.

Closed Session Procedural Requirements

(Government Code Section 11126 et seq.)

The Board shall disclose in the open meeting a generalization of the items to be discussed in a closed session. This can be accomplished by those items on the agenda as a closed session item.

All closed sessions must be held during a regular or special meeting (section 11128). A staff person shall be designated to attend the closed session and record the discussion topics and decisions made, which will be available only to members.

All information discussed in the closed session is confidential and must not be disclosed to outside parties.

Quorum

(BPC Section 3010.1)

Six of the members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

Comment [D2]: Talk to Michael

(Board Policy and Government Code Section 11125 et seq.)

Any Board member may submit items for a Board meeting agenda to the Executive Officer 15 Board President 30 days prior to the meeting. Members may also recommend agenda items during the meeting under Suggestions for Future Agenda Items. A motion and vote may be taken but is not necessary. The Board President will confer with the Executive Officer and Legal Counsel regarding the issues.

Staff maintains a list of items to research and bring back to a future Board meeting. Staff may recommend the issue be referred to a Committee first to be vetted. Prior to items being placed on the agenda, staff conducts research to determine if an item is appropriate for Board discussion. This research starts with identifying how the item meets our mandate to protect the health and safety of California consumers. In addition, staff researches potential benefits to the State, identifies the current professional trends and what other states are doing. For items requiring legislative and/or regulatory changes, staff identifies potential political concerns by anticipating who would be in support of or in opposition to the bill/rulemaking and whether or not the opposition (if any) would be open to negotiation.

No item shall be added to the agenda subsequent to the provision of the meeting notice. However, an agenda item may be amended and then posted on the Internet at least 10 calendar days prior to the meeting.

Items not included on the agenda may not be discussed.

Notice of Meetings

(Government Code Section 11120 et seq.)

According to the Opening Meeting Act, meeting notices (including agenda for Board meetings) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The notice shall include a staff person's name, work address, and work telephone number so that he or she can provide information prior to the meeting.

Notice of Meetings to be Posted on the Internet

(Government Code Section 11125 et seq.)

Notice shall be given and also made available on the Internet at least 10 calendar days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide information prior to the meeting. However, it need not include a list of witnesses expected to appear at the meeting.

Written notices shall include the address of the Internet site where notices required by this article are available.

Special Meetings

(Government Code Section 11125 et seq.)

A special meeting may be held where compliance with a 10-day meeting notice would impose a hardship or when an immediate action would be required to protect the public interest.

Notice for a special meeting must be posted on the Internet at least 48 hours prior to the meeting. Upon commencement, the Board must state the specific facts which necessitate special meeting as a finding. This finding must be adopted by a two-thirds vote; failure to adopt the finding terminates the meeting.

Record of Meetings

(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting. Board minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meetings may be tape-recorded if determined necessary for staff purposes. Tape recordings may be disposed of upon Board approval of the minutes.

Meeting by Teleconferencing

(Government Code Section 11123 et seq.)

Board Meetings held by a teleconference must comply with requirements applicable to all meetings.

The portion of the meeting that is open session must be made audible to the public present at the location specified in the meeting notice. Each teleconference meeting location must be identified in the meeting notice and agenda.

All votes taken during this meeting shall be by roll-call.

Use of Electronic Devices During Meetings

Bagley-Keene Act

Members should not text or email each other during an open meeting on any matter within the Board's jurisdiction.

Use of electronic devices including laptops during the meetings are solely to access the Board meeting materials that are in electronic format.

Meeting Rules

(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Chapter 3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board members shall have Board President approval for travel except for regularly scheduled Board and committee meetings to which the Board member is assigned.

Travel Arrangements

(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Executive Officer's Assistant on lodging accommodations.

Out-of-State Travel

(State Administrative Manual Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims

(State Administrative Manual Section 700 et seq. and DCA Travel Guidelines)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense

claim forms. The Executive Officer's Assistant maintains these forms and completes them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the Director and are provided to Board members.

Salary Per Diem

(BPC Section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by BPC Section 103.

In relevant part, this section provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

- No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board member's attendance.
- 2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board meeting or committee meeting to the conclusion of that meeting. Where it is necessary for a Board member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and AOA or CLEAR committee work. That work does not include preparation time for Board or committee meetings. Board members cannot claim salary per diem for time spent traveling to and from a Board or committee meeting.

Chapter 4. Selection of Officers & Committees

Officers of the Board

(BPC Section 3014)

The Board shall elect from its members a President, Vice-President, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Election of Officers

(Board Policy)

The Board elects the officers at the last meeting of the fiscal year. Officers serve a term of oneyear beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President until the election for President is held. Elected officers shall then serve the remainder of the term.

Roles and Responsibilities of Board Officers

(Board Policy)

President

- **Board Business:** Conducts the board's business in a professional manner and with appropriate transparency, adhering to the highest ethical standards. Applies Roberts Rules of Order and Bagley Keene Act during all Board Meetings.
- Board Vote: Conducts roll call vote
- **Board Affairs:** Ensures that board matters are handled properly, including preparation of pre-meeting materials, committee functioning and orientation of new board members.
- **Governance:** Ensures the prevalence of Board governance policies and practices, acting as a representative of the Board as a whole.
- **Board Meeting Agendas:** Develops agendas for meetings with the Executive Officer and Legal Counsel. Presides at Board meetings.

- **Executive Officer:** Working with the State of California Department of Consumer Affairs, may establish search and selection committee (usually acts as chair) for hiring an Executive Officer. Convenes board discussions on evaluating the Executive Officer each fiscal year.
- **Board Committees:** Seeks volunteers for committees and coordinates individual Board Member assignments. Makes sure each committee has a chairperson, and stays in touch with chairpersons to be sure that their work is carried out.
- Yearly Elections: Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

Vice President

- Board Business: In the Absence of the Board President, the Vice President will performs the duties and responsibilities of the President. erforms Board President responsibilities when the President cannot be available.
- **Board Member On-Boarding:** Welcomes new members to the Board. Is available to answer questions, and understand role and responsibilities. May participate in on-boarding meeting with staff and new members.

Secretary

- Calls Roll to Establish Quorum
- Board Motions: Restates the motion prior to discussion.
- Board Business: Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Staff drafts minutes using recording, webcast and staff notes, will submit draft minutes to Secretary for his/her review. Submits various reports to the Board as required.
- Yearly Elections: Prepares template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents**: References documents e.g. Board Member Handbook, Law Book, Bagley Keene.

Committee Appointments

(Board Policy)

The President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in consultation with the Vice President, Secretary and the Executive Officer. Appointment of non-Board members to a committee is subject to the approval of the Board.

Attendance of Committee Meetings

(Government Code Section 11122.5 (c)(6))

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

Chapter 5. Board Administration and Staff

Appointment of Executive Officer

(BPC Section 3027)

The Board shall employ an Executive Officer and other necessary assistance in the carrying out of the provisions of the BPC, Chapter 7.

The executive officer shall perform the duties delegated by the Board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the Board. With the approval of the Director of Finance, the Board shall fix the salary of the Executive Officer. The Executive Officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

Board Administration

(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs, operations and staff shall be the responsibility of the Executive Officer. Board members should not interfere with day-to-day operations, which are under the authority of the Executive Officer.

Legal Counsel

The Board's legal counsel acts represents the Board for litigation and accordingly for services rendered by the Office of the Attorney General. The Board's legal counsel provides "in-house" counsel.

Board Budget

(Board Policy)

The Secretary shall serve as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Secretary.

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate al budget issues to the Administration and Legislation.

Press Releases

(Board Policy)

The Executive Officer may issue press releases with the approval of the Board President.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board's strategic planning process. The Vice President shall serve as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will conduct an annual strategic planning session and may utilize a facilitator to conduct the strategic planning process.

Legislation

(Board Policy)

In the event time constraints preclude Board action, the Board delegates to the Executive Officer and the Board President the authority to take action on legislation that would affect the practice of optometry or responsibilities of the Board. The Board shall be notified of such action as soon as possible.

Communication with Other Organizations & Individuals

(Board Policy)

Any and all representations of the Board or Board policy must be made by the Executive Officer or Board President, unless approved otherwise. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Executive Officer's Office.

Executive Officer Evaluation

(Board Policy)

Board members shall evaluate the performance of the Executive Officer on an annual basis.

Board Staff

(DCA Reference Manual)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by

collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board members shall not intervene or become involved in specific day-today personnel transactions.

Business Cards

(Board Policy)

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address. A Board member's business address, telephone and fax number, and email address may be listed on the card at the member's request.

Chapter 6. Other Policies & Procedures

Board Member Orientation

(BPC section 453)

Newly appointed members shall complete a training and orientation program provided by DCA within one year of assuming office. This one-day class will discuss board member obligations and responsibilities.

Materials Provided to Incoming Board Members

(Government Code section 11121.9)

A copy of the Bagley-Keene Act must be provided to each new member upon his or her appointment.

Board Member Ethics Training

(Government Code section 12950.1)

Newly appointed board members shall attend an ethics training course within six months of assuming office and every two years thereafter.

Pursuant to Government Code section 12950.1, each member shall attend at least two hours of interactive training covering sexual harassment prevention within six months of his or her appointment.

Board Member Disciplinary Actions

(Board Policy)

The Board may censure a member if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner. The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as chair. In accordance with the Public Meetings Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(BPC Sections 106 and 106.5)

The Governor has the power to remove from office at any time any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

(Government Code Section 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. State law requires written notification. A copy of this letter shall also be sent to the director of DCA, the Board President, and the Executive Officer.

Conflict of Interest

(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Candidates, Applicants and Licensees

(Board Policy)

Board members shall not intervene on behalf of a candidate or an applicant for licensure for any reason. Nor shall they intervene on behalf of a licensee. All inquiries regarding licenses, applications and enforcement matters should be referred to the Executive Officer.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board members or the staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board member may access the file of a licensee or candidate without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the office of the Board.

Ex Parte Communications

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting *ex parte* communications. An *ex parte* communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an *ex parte* communication with Board enforcement staff while a proceeding is pending. Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call form an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board

member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Executive Officer.



Memo

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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170

Subject: Agenda Item 10 – Discussion and Possible Action Regarding a Resolution in Support of Comprehensive Eye Examinations for all School Aged Children

At the November 21, 2014 meeting during the Legislative Update, the Board discussed Assembly Bill 1840 (Campos) Pupil health: vision appraisal, Chaptered by Secretary of State, Chapter 803, Statues of 2014.

This legislation authorizes a child's vision to be appraised by using an eye chart or any scientifically validated photo screening test and requires photo screening tests to be performed, under an agreement with, or the supervision of an optometrist or ophthalmologist, by the school nurse or by a trained individual who meets specified requirements as determined by the California Department of Education (CDE).

Dr. Kawaguchi reported that these vision screenings can miss critical visual function issues. His opinion and that of other optometrists, is that this legislation should be more specific and require comprehensive exams or at least add extra testing to the vision screening. Dr. Kawaguchi noted that the Board did propose amendments to this legislation; however, the amendments were rejected due to fiscal insufficiency.

William Kysella suggested and the members agreed that this Board should draft its own language as a policy statement. Doing so would make it clear and publically known that the Board of Optometry supports vision screenings for school children. Also, it will be a launching point for further legislation.

Mr. Kysella suggested that the Board adopt a resolution declaring its support for comprehensive eye exams for school children. The resolution is a simple policy statement, informing the public and stakeholders of the Board's commitment to consumer protection and support of comprehensive eye examinations versus vision assessments for all school aged children.

Action Requested

A draft developed by Mr. Kysella is attached for the Board's discussion and possible action to approve the resolution. If approved, the resolution will be printed, signed by the Board President and posted to the Board's website, included in a future newsletter and attached in support to the Board's proposed legislation for children's comprehensive eye examinations.

Attachment

1. Proposed Resolution

SUPPORT OF COMPREHENSIVE EYE EXAMINATIONS FOR ALL SCHOOLD AGED CHILDREN

Whereas Education Code Section 49455 authorizes a child's vision to be appraised by using an eye chart or photoscreening test and requires such test to be performed, under an agreement with, or the supervision of an optometrist or ophthalmologist, by a school nurse or trained person; and

Whereas eye chart and photoscreening tests are not comprehensive and cannot be relied upon to discover and diagnose eye conditions including ______; and _____;

Whereas the Affordable Care Act and Covered California provide coverage for comprehensive pediatric eye exams performed by an optometrist or ophthalmologist.

Therefore, be it resolved that the California State Board of Optometry supports a statewide requirement providing for comprehensive eye exams performed by optometrist or ophthalmologists for all children entering school.

Be It further resolved that the Board supports amending the Education Code to authorize such exams.

Date_____

Board President



Memo

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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject:	Agenda Item 11 – Update Pertaining to North	Carolina State	Board of Dental

Subject: Agenda Item 11 – Update Pertaining to North Carolina State Board of Dental Examiners v. Federal Trade Commission Case

Michael Santiago, Senior Legal Counsel will provide an update on this case.



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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170

Subject: Agenda Item 12 – Legislation

A. Update on Legislative Proposals Approved at the November 21, 2014 Board Meeting – Prepared by Nooshin Movassaghi

Action Requested: None.

Background:

At the November 21, 2014 meeting, the Board voted to initiate rulemaking for the following sections of the Business and Professions Code:

- ✓ §3057 (Requirements for out of state licensed optometrists)
- ✓ §3057.5 (Eligibility for graduates from foreign universities examination)
- ✓ §3151.1 (Issuance of licensure with retired volunteer service designation; duties of applicant; holder of retired license)
- ✓ §3041.3 (TPA Certification Requirements)
- ✓ §3152 (Fee Schedule)
- ✓ §3058 (Requirements for licensure; qualifications of foreign graduates)

One minor addition to the language of §3057 and §3058 was that a licensed psychologist or licensed psychiatrist can determine the mental competency of the applicant.

Staff provided these proposed amendments and new legislation to the California Optometric Association (COA) and met with Senator Ed Hernandez. Neither COA nor Senator Hernandez had any concerns with this proposal. Senator Hernandez suggested these might fit in the omnibus bill introduced by the Senate Committee on Business, Professions and Economic Development (BP&D) Staff submitted the necessary paperwork for the omnibus bill.

This year two omnibus bills were introduced by the Senate BP&D: health board/bureau legislation and nonhealth board/bureau legislation. Committee staff will review all submitted proposals and consult with the Republican caucus staff and Committee member offices to determine the provisions that are suitable for inclusion in the Committee bills. All boards and bureaus who submit language for consideration will be notified of the Committee's decision regarding including the proposed language.

B. Discussion and Possible Action to Add Business and Professions Code §3070.2, Requirements

<u>to Practice in a Mobile Optometric Facility or Portable Optometric Facility</u> – Prepared by Nooshin Movassaghi

Action Requested:

Staff requests the Board review and approve the proposed language to add Business and Professions Code §3070.2 which sets forth the requirements to practice in a mobile optometric facility. Please provide edits that are necessary to clarify the requirements to practice in a mobile optometric facility. If the language is approved the Board will need to direct staff to move forward with the legislative process. The staff's goal is to secure an author by the January 30, 2015 deadline.

Background:

The purpose for the request to approve the addition of §3070.2 is to help secure the availability of quality vision care services for patients who receive care in remote or underserved areas and for patients who need specialized types of cost-effective health care. The proposed language would assure a safe, comprehensive and accessible optometric service to the public.

Business and Professions Code §3070 Notice of address for practice of optometry was amended in January 1, 2013. Prior to this amendment §3070 (b)(a)(3) defined a mobile unit as one that is operated by a governmental agency or by a nonprofit or a charitable organization. The language defining the requirements for the mobile optometric facility was erroneously struck from this section. Currently, California Code of Regulations 1507(e) states: mobile optometric facilities may only fuction as a part of a school teaching program as approved by the Board.

Staff has sent a request through Association of Regulatory Boards of Optometry (ARBO) to other state optometry boards to discover that only four states (Kentucky, South Carolina, Oregon and Washington) and Canada (Alberta and British Columbia) regulate mobile clinics. The language from these states' regulations was not clear on the requirements for a mobile optometric facility. Staff used the regulation for dental mobile clinics in California as a guide in drafting the attached language.

Staff included the non-profit status of the mobile optometric facility as stated in the statue prior to the January 2013 amendment. Through research staff found the definition of a 501(c)(3) to be the most suitable for this section. Please review attached definitions of "charitable organizations" for all the definitions including the 501(c)(3).

Staff has included the language for a successful pilot program for delivery of mobile vision care services which was established by the California Department of Health Care Services in the Los Angeles County. Staff believes this language is helpful for emphasizing the importance for the regulations of mobile clinics for all of California residents.

<u>C. Discussion and Possible Action to Amend Education Code §49455</u> – Prepared by Robert Stephanopoulos

Staff requests the Board review and approve the proposed language to amend Education Code §49455 to require students entering elementary school and every second year thereafter to get a comprehensive eye exam. This exam would include tests for visual acuity, binocular function, as well as refraction and eye health. Color vision would be evaluated by all students once at enrollment. If the language is approved, the Board will need to direct staff to move forward with the legislative process.

Background

During the 2013 – 2014 legislative session, the Board sent letters to the authors of two separate bills which related to vision screenings in schools, specifically Education Code §49455. These bills were: SB 430, authored by Senator Roderick Wright, and SB 1172, authored by Darrell Senator Steinberg.

SB 430 required the current vision appraisal of students to also include tests for binocular vision. On May 28, 2013, the Board mailed an "Oppose Unless Amended" letter to Senator Wright requesting that SB 430 be amended to include a comprehensive eye examination performed by an optometrist or ophthalmologist, instead of a screening test for binocular function conducted by a school nurse or other volunteer. On April 18, 2013, the Board's requested amendments were made to SB 430, prompting the Board to send the author a letter of support. On June 20, 2013, the Board sent a letter to Assemblywoman Buchanan requesting her aye vote on SB 430. On August 13, 2013, the bill's hearing was cancelled at the request of the author, and later died.

SB 1172 required school vision appraisals to include tests for near vision, and expands current requirements for school nurses and teachers to observe student's eyes to also include observation of the appearance and behavior of student's eyes, and requires observation to be continual and regular. On June 20, 2014, the Board sent an "Oppose Unless Amended" letter to Senator Steinberg requesting that the bill include a comprehensive eye exam, color vision evaluation for all children, and that the minimum time between evaluations be "every second year." On September 30, 2014, this bill was chaptered by the Secretary of State; however, none of the Board's requested changes to the bill were made.

Attachments

A1.	§3057
A2	§3057.5
A3.	§3151.1
A4.	§3041.3
A5.	§3152

- A6. §3058
- B1. Proposed Language
- B2. The basics of 501(c)(3)
- B3. Bill 623
- C1. Proposed Language

§3057. REQUIREMENTS FOR <u>OUT OF STATE</u> LICENSE<u>D OPTOMETRISTS</u>; EXCEPTIONS; EXPIRATION; "IN GOOD STANDING"

(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.

(54) 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.

(65) 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.

(76) Has never had his or her license to practice optometry revoked or suspended.

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

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

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

(1110) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(<u>1211</u>) 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<u>12</u>) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(1413) 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) Rreduce or waive the fees required by paragraph (1312) 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-licensed psychologist or licensed psychiatrist
 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.

§3057.5. ELIGIBILITY OF GRADUATES FROM FOREIGN UNIVERSITIES - EXAMINATIONS

(a) Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who meets all of the following requirements is over the age of 18 years, is not subject to denial of a license under Section 480, and meets one of the following criteria to take the examinations for a certificate of registration licensure as an optometrist:

-(a) Is over the age of 18 years.

-(b) Is not subject to denial of a certificate under Section 480.

- <u>(c)</u>-Has <u>obtained</u> a degree as a doctor of optometry issued by a university located outside of the United States.
- 2) Has obtained a degree from a school of optometry program located outside of the United States, having a minimum of four year, or equivalent, curriculum leading to optometry licensure.
- 3) Has obtained a degree from a school of medicine outside of the United States and completed the necessary requirements to practice in the field of ophthalmology in that country.

(b) Foreign graduate must provide to the Board as applicable the following supporting documents:

- 1) Current curriculum vitae
- 2) Official examination scores
- 3) Certificate of optometric/medical education
- 4) Official school transcripts
- 5) Certified copy of optometric/medical diploma(s)
- 6) Official English translation
- 7) Certificate of completion of post graduate training
- 8) Certificate of clinical training

The Board may, at its discretion, request additional supporting documentation.

(c) The Board shall require the applicant to obtain an evaluation of the official transcripts from the college or university that issued the degree from an education evaluation service approved by the Board. The evaluation must be sent from the evaluation service directly to the Board.

(d) Any document not in English must be translated by a certified U.S. translation service approved by the Board.

(e) A foreign graduate not meeting the educational equivalency, as determined by the evaluation service, will be required to obtain the necessary education to meet the equivalency requirement.

(f) The applicant must file an application for foreign graduate on a form prescribed by the Board, and signed under penalty of perjury that the information provided is true and correct.

(g) The applicant must submit an application fee in the amount prescribed in subdivision (a) of Section 3152.

(h) The Board will issue a Letter of Sponsorship, or its equivalent, in order to satisfy any requirement of the National Board of Examiners in Optometry (NBEO) needed to allow the candidate to take all required examinations for licensure. The Letter of Sponsorship expires two years from the date of issuance.

§3151.1. ISSUANCE OF LICENSE WITH RETIRED VOLUNTEER SERVICE DESIGNATION; DUTIES OF APPLICANT; HOLDER OF RETIRED LICENSE

(a) The board shall issue, upon application and payment of the fee described <u>prescribed</u> in Section 3152, a license with retired volunteer service designation to an optometrist who holds a retired license for less than three years or a license that is current and active.

(b) The holder of a retired license issued for more than three years may convert the license to retired volunteer service designation if he or she satisfies the requirements in Section 3147.6.

(bc) The applicant shall certify on the application that he or she has completed the required number of continuing education hours pursuant to Section 3059.

(ed) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(de) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision (c). Pursuant to Section 3146, the license expires at midnight on the last day of the license holder's birth month every two years if not renewed.

Added Stats 2012 ch 359 § 6 (SB 1215), effective January 1, 2013.

§3041.3. TPA CERTIFICATE CERTIFICATION REQUIREMENTS

(a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a <u>certificate to use</u> therapeutic pharmaceutical agents <u>certification</u> to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

-(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(21) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in-with either an TPA-certified optometrist in good standing, or a physician and surgeon board-certified in ophthalmology in good standing. ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, and systemic disease. The preceptor shall certify completion of the preceptorship using a form provided by the Board. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants;-

(32) Successfully completes a minimum of 20-80 hours of documented and accredited self-directed education-in ocular and systemic diseases within two years prior to meeting the requirements of paragraph (1); and,

(43) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

<u>- (5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.</u>

-(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

-(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

(c) The board shall grant a certificate to use therapeutic pharmaceutical agents certification to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Ppasses <u>all sections of the National Board of Examiners in Optometry's national board</u> examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

- (3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

-(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents certification to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

Agenda Item 12 Legislation, Attachment A5, Fees

§3152. FEE SCHEDULE

The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

_-(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

- (a) The fee for the application and determining the candidate's eligibility to take the Board's jurisprudence examination shall not exceed two hundred and seventy-five dollars (\$275).
- (b) The fee for the application and determining a foreign graduate's eligibility for sponsorship to take any section of the licensing examinations shall not exceed two hundred dollars (\$275).
- (c) Initial license with a fee. This fee will be prorated and established according to the month of issuance (month fee is received by the Board) and expiration date (applicant's birth month) of the license. The fee for an original license shall be charged at an amount equal to the renewal fee in effect at the time the license is issued, except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect at the time the license is issued. The board may, by appropriate regulation, provide for the waiver or refund of the fee for an original license if the license is issued less than 45 days before the date on which it will expire.

(d-b)The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).

- (e-g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).
- (f-d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).
- (g-e) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).
- (<u>h-e</u>) The <u>penalty for failure to pay the annual delinquency</u> fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).
- $(\underline{i+})$ The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (i-1) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (i-m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (k-n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (1-0) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (m-p)The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (<u>o-q</u>) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (p-+) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (<u>q-s</u>) The biennial renewal fee for a retired license with volunteer designation shall not exceed <u>fifty-one</u> <u>hundred</u> dollars (\$<u>50100</u>).
- (r) The delinquency fee for biennial renewal of a retired license with volunteer service designation shall not exceed twenty-five dollars (\$25).
- (s-h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).
- (<u>t-i</u>) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).
- _(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).
- (u) The fee for issuance of a license or a change of name authorized by law of a person holding a license, or change of information under this chapter shall not exceed twenty-five dollars (\$25)
- (v) The fee for the replacement of any license, or renewal thereof that must be reissued because the license is lost or destroyed shall not exceed fifty dollars (\$25).
- (w-j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (x) The fee for a letter of good standing or verification of licensure shall not exceed twenty-five dollars (\$25).

Section 3058 Requirements for Licensure; Qualifications of Foreign Graduates

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

(1) Has met the provisions of Section 3057.5.

(2) Has successfully passed all the required examinations.

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

(4) Has met the certification requirements of Section 3041.3.

(5) Has submitted any other information as specified by the board to the extent it is required for licensure under this chapter.

(6) Has filed an application on a form prescribed by the board under penalty of perjury that the information provided is true and correct.

(A) Pays an application fee in <u>the</u> amount prescribed <u>in</u> subdivision (a) of Section 3152.

(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.

(7) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist 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.

<u>§3070.2. REQUIREMENTS MOBILE OPTOMETRIC FACIITIES</u>

(a) For purposes of this section, the following terms have the following meanings:

(1) "Mobile optometric facility" means a self-contained unit housing equipment, which may include a trailer or van, that may be moved, towed, or transported from one location to another in which the practice of optometry is performed as defined in Section 3041. Mobile optometric facilities are limited to non-profit, charitable organizations with federal tax exempt status as described in Section 501(c)(3) of the Internal Revenue Code or mobile unit that is operated by a a governmental agency.

(b) The purpose of this chapter is to provide requirements for mobile optometric facilities o to provide optometric services as authorized in Section 3041, in order to help secure the availability of quality vision care services for patients who receive care in remote or underserved areas and for patients who need specialized types of cost-effective health care.

(c) An optometrist may engage in the practice of mobile optometry provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office, separate from mobile optometric facility that meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in or connected with a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in or connected with a residential dwelling.

(1) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:

(i) Name.

(ii) Optometrist license number.

(iii) The place of practice and the primary business office.

(iv) Description of the goods and services for which the patient is charged and the amount charged.

(E) For services provided at a school site, a copy of consent by the parent, guardian, or legal representative and referral or order requesting optometric services from personnel in a school district or county office of education as defined in Education Code Section 49452 and the California Code of Regulations, Title 5, Education, Section 591 shall be kept in the patient's medical record.

(3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the mobile optometric facility

(4) For mobile optometric facilities, the optometrist informs patients in writing of any condition that requires follow-up care and/or treatment.

(5) Mobile optometric facilities shall comply with all consumer notice requirements of the board.

(6) There is a written procedure for follow-up care of patients treated in a mobile optometric facility and that such procedure includes arrangements for treatment by a local health care professional.

(7) The mobile optometric facility shall arrange for emergency medical care when indicated.

(8) The mobile optometric facility shall have the following:

(A) An access ramp or lift if services are provided to disabled persons

(B) Adequate equipment and supplies for cleaning, disinfection, and sterilization.

(C) Access to an adequate supply of clean running water, including hot water

(D) Ready access to toilet facilities

(E). A covered galvanized, stainless steel, or other non-corrosive metal container for deposit of refuse and waste materials.

(F) Comply with the applicable requirements of the Vehicle Code, and shall have a vehicle identification number

(G) Maintained in good repair and in a clean and sanitary manner

(H) A written policy and procedures to include, but are not limited to, all of the following:

(i) Scope of services.

(ii) Procedures for the performance of the services provided.

(iii) Quality assurance.

(iv) Infection control.

(v) Medical record documentation of services provided, as appropriate

(vi) Transport for patients, including, but not limited to, method, special equipment, necessary personnel, and protection from inclement weather.

(vii) Emergency response and evacuation plan for the mobile unit.

(I) Maintain a mobile unit services log that shall include, but shall not be limited to all of the following:

(i) Patient chart or identification number.

(ii) Name, age, and sex of patient.

(iii) Site, date, time, and as appropriate, duration of exam.

(d) An optometrist who satisfies all of the requirements in this section for the practice of optometry in a mobile optometric facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each location at which he or she practices.

(e) An optometrist who satisfies all of the requirements in this section for the practice of optometry in a mobile optometric facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each location at which he or she practices.

(f) Mobile optometric facilities that are part of an "extended optometric clinical facility" as defined in Section 1507, Title 16, CCR are exempt from the requirements of this section.

(g) The licensed parent facility or office shall be responsible for obtaining approval for parking of the mobile optometric facility as required by the local planning, zoning, and fire authorities. The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply with all local parking laws. Any parking restrictions developed by a parent facility or clinic for mobile units shall be strictly enforced by the parent facility or clinic. The parent facility or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.

The Basics of 501(c)(3), 501(c)(4), and 501(c)(6) Tax-Exempt Status

Section 501 of the IRS Code exempts certain types of organizations from taxation. Section 501(c) describes the different types of organizations that are eligible to tax exempt status and the requirements they must meet to gain that status.

<u>501(c)(3)</u>

501(c)(3) is the most commonly used section of 501, generally referred to as a "charitable organizations."

<u>Who</u>

Organizations that are organized exclusively for charitable, religious, scientific, literary, or educational purposes may be eligible for tax exemption under 510(c)(3).

- Educational purposes include instruction of the public on topics for which there are sufficient facts to permit an individual or the public to form an independent opinion or conclusion. An unsupported opinion is not considered educational.
- Childcare organizations: The term educational purposes includes providing care of children away from their homes if substantially all the care is provided to enable the parents to be gainfully employed and the services are available to the general public.

Purpose and Requirements

To qualify for 501(c)(3) status, an organization must meet several exemption requirements:

- It must be organized and operated exclusively for one or more of the purposes set forth in section 501(c)(3).
 - An organization will be regarded as operated exclusively for one or more of the purposes if it engages primarily in activities that accomplish one or more of the specified exempt purposes. (ie: if not more than an insubstantial part of its activities is not in furtherance of an exempt purpose.)
- It must be organized as a corporation, community chest, fund, foundation, or charitable trust. An individual or partnership will not qualify.
- None of the net earnings of the organization may inure to the benefit of any private shareholder or individual.
- Lobbying cannot be a substantial part of its activities.
- It may not participate at all in campaign activity for or against political candidates.
- Assets of the organization must be permanently dedicated to an exempt purpose.
- Upon dissolution the assets must be distributed for a charitable purpose.

Articles of Organization:

- Must limit the organization's purpose to one or more of the exempt purposes set forth in IRC section 501(c)(3).
- Must not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of these purposes.
- The organization may not participate at all in campaign activity for or against a political candidate
 - This requirement is met if the purposes stated in the Articles of Organization are limited in some way by reference to section 501(c)(3).

- Should include a provision that the assets will be distributed for an exempt purpose in the event of dissolution of the organization.
 - Including this provision in the Articles of Organization will help the IRS process the application more speedily.

Contributions to a 501(c)(3)

Organizations with 501(c)(3) status are eligible to receive tax-deductible contributions (in accordance with IRC §170).

Benefits

Contributions to 501(c)(3) organizations are tax-deductible.

Drawbacks

The organization may not participate at all in campaign activity for or against a political candidate.

No substantial part of the organization's activities may consist of lobbying.

<u>501(c)(4)</u>

<u>Who</u>

Organizations that are formed and operated only to promote social welfare are eligible for tax exemption. Examples are civic associations and volunteer fire companies. Social welfare is defined as general welfare and the common good.

Purpose and Requirements

To qualify for 501(c)(4) status, an organization must meet several exemption requirements:

- The earnings of the organization may not benefit any private shareholder or individual.
- They must show that the organization will be operated on a nonprofit basis.
- It must be organized exclusively to promote social welfare by submitting evidence that your organization will operate primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements).
- The organization may not restrict the use of its facilities to certain groups.
- The organization may not participate at all in campaign activity for or against a political candidate.
- If the organization submits proof that it is exclusively organized to promote social welfare, some political activity related to the social welfare purpose is permitted.

Contributions to a 501(c)(4).

- Contributions to civic leagues or other section 501(c)(4) organizations generally are not deductible as charitable contributions for federal income tax purposes. However, they may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer's business.
- Donations to volunteer fire companies are deductible on the donor's federal income tax return, but only if made for exclusively public purposes.

Benefits

A substantial part of their activities may consist of lobbying or political activities, as long as the political activities are germane to the social welfare purpose of the organization.

Drawbacks

Contributions to the organization are not tax deductible.

<u>501(c)(6)</u>

<u>Who</u>

Nonprofit business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues are eligible for exemption.

- Business league is an association of persons having some common business interest with a purpose to promote that common interest (trade and professional associations)
- Chambers of Commerce are usually composed of the merchants and traders of a city.
- Boards of trade are usually composed of persons in similar lines of business.
- Real Estate Boards are composed of members interested in improving business conditions in the real estate field.

Purpose and Requirements:

To qualify for 501(c)(6) status, an organization must meet several exemption requirements:

• In its application form, the organization must indicate that none of its net earnings will benefit any private shareholder or individual.

- It must be clear that the organization is not organized for profit or to engage in the type of activity normally carried on for profit.
- The organization must be primarily engaged in activities or functions that are the basis for its exemption, and be primarily supported by membership dues and other income from activities substantially related to its exempt purpose.
- The organization must show it is devoted to improvement of business conditions, and show that the conditions of a particular trade or community interest will be advanced.
- The organization may only engage in working for the enactment of laws if it is to advance the common business interest of the organizations members.

Contributions to a 501(c)(6)

Contributions to 501(c)(6) organizations are not deductible as charitable contributions on the donor's federal income tax return. They may be deductible as trade or business expenses if ordinary and necessary in the conduct of the taxpayer's business.

Benefits

Dues and investment income are tax exempt.

There is no express limitation on the lobbying or other political activities of 501(c)(6) organizations. However, actions to influence legislation will affect the ability of members to deduct their dues.

<u>Drawbacks</u>

Contributions to the organization are *not* tax deductible.

(623) California Department of Health Care Services Proposed May Revision Trailer Bill Legislation

Pilot Program for Delivery of Mobile Vision Care Services

Add the section 14087.9730 to Article 2.81, Chapter 7, Part 3, Division 9, of the Welfare and Institutions Code:

14087.9730. Pilot Program for Delivery of Mobile Vision Care Services (a) In an effort to determine whether children's access to and utilization of vision care services can be increased by providing vision care services at schools, the department, shall establish a pilot program in Los Angeles County that enables school districts to allow students enrolled in Medi-Cal managed care plans the ability to receive vision care services at the school site through the use of a mobile vision service provider. The vision care services available under this pilot program are limited to vision examinations and the provision of eyeglasses.

(b) The Medi-Cal managed care plans in Los Angeles County shall jointly identify and develop standards and participation criteria that the participating mobile vision service provider shall meet in order to be deemed qualified to participate in this pilot program, in consultation with the department. In the event the Medi-Cal managed care plans have not developed standards and participating criteria by January 1, 2015, or by the scheduled start date of the pilot program if later, the Department shall determine the standards and participating criteria for purposes of this pilot program.

(c) Nothing in this section shall be construed to preclude Los Angeles County school district students not enrolled in Medi-Cal managed care from accessing vision care services from the mobile vision service provider participating in this pilot program.

(d) Under this pilot program, if a school district in Los Angeles County enters into a written memorandum of understanding with a mobile vision care service provider allowing a mobile vision care service provider to offer the above-described vision care services to students, then:

(1) The two Medi-Cal managed care plans in Los Angeles County shall contract with the mobile vision care service provider that meets the standards and participation criteria developed pursuant to subdivision (b) for the delivery of those vision care services to any student enrolled in the Medi-Cal managed care plan who chooses to receive his or her vision care services from the mobile vision care service provider at that school site. This contracting requirement is contingent upon agreement between each of the two Medi-Cal managed care plans in Los Angeles County and the mobile vision care service provider with respect to reimbursement rates applicable to the services under this pilot.

(2) Neither this pilot program nor the Medi-Cal managed care plan shall require that a Medi-Cal beneficiary receive the described vision care services through the mobile vision care provider on site at the school.

(3) Prior to a Medi-Cal beneficiary receiving the mobile vision care services at the school site, the parents, guardians, or legal representative of the student must consent in writing to the Medi-Cal beneficiary receiving those services through the mobile vision care provider on site at the school.

(e) (1) Any licensed health professional prescribing glasses to a Medi-Cal managed care beneficiary as part of services provided at a school site by a mobile vision care service provider pursuant to this pilot program must be enrolled in the Medi-Cal program as an Ordering/Referring/Prescribing provider.

(2) For any other purpose, the licensed health professional must satisfy all requirements for enrollment as a provider in the Medi-Cal program.

(f) Any optic lenses prescribed for a Medi-Cal managed care plan enrollee as part of the services provided at a school site by a mobile vision services provider shall be fabricated through the California Prison Industry Authority (PIA) optical laboratories, consistent with current Medi-Cal managed care policy and contract. The Medi-Cal managed care plan shall compensate the mobile vision services provider for the cost of the vision examination, dispensing of the lenses, and eyeglass frames. Pursuant to the authority under subdivision (b) of Section 14105.3, the department will reimburse the PIA for the fabrication of the optical lenses in accordance with the contract between the department and the PIA.

(g)(1) The department shall annually adjust capitation rates for the Medi-Cal managed care plans operating in Los Angeles County as necessary to account for projected changes in the costs and utilization of the services provided pursuant to this section by mobile vision service providers with established relationships with school districts.

(2) Capitation rate adjustments pursuant to this section shall be actuarially based and developed using projections of contingent events including targeted populations who will receive these services, and otherwise in accordance with those requirements necessary to secure federal financial participation

(3) Capitation rate adjustments pursuant to this section shall be limited to those related to vision examinations, dispensing of lenses and eyeglass frames. The fabrication of optical lenses pursuant to this section shall be paid on a fee-for-service (FFS) basis in accordance with the contract between the department and the PIA.

(h) The pilot program shall last three years, starting no sooner than January 1, 2015, and concluding December 31, 2017, or three years from the start date of the pilot if later. The impact of the pilot program on access and utilization of vision care services by children shall be done by monitoring the managed care plan utilization data for vision services, as well as the lens fabrication data from PIA.

(i) The department may terminate the pilot program at any time with ninety days advance notice to the Medi-Cal managed care plans, for any reason, including but not limited to:

(1) If the department determines that the pilot program is resulting in a lower level of access to or use of vision care services for children under the participating health plans; or

(2) If the department determines that the pilot program is resulting in fraud, waste or abuse of Medi-Cal funds; or

(3) Lack of funding for the vision care services provided for in the pilot program.

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section and any applicable federal waivers and state plan amendments by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

(k) The department shall obtain any federal approvals necessary to implement this section and to obtain federal matching funds to the maximum extent permitted by federal law.

(I) This section shall be implemented only if and to the extent all federal approvals are obtained and federal financial participation is available.

(m) This section shall be implemented only to the extent an annual appropriation is made available to the department each fiscal year for the specific purpose of implementing this section.

(n) The Director shall have discretion to extend the pilot program described in this section to Medi-Cal managed care plans in other counties and applicable local jurisdictions. Any such extension shall be implemented only to the extent consistent with the requirements of this section including, but not limited to, any additional and necessary federal approvals being obtained, and an annual appropriation being made available in an amount sufficient to fund an extension of the pilot in each applicable fiscal year.

49455.

(a) (1) During the kindergarten year or upon first enrollment or entry in a California school district of a pupil at an elementary school, and in grades 2, 5, and 8, the pupil's vision shall be appraised by the school nurse or otherat least every second year thereafter until the pupil has completed eight grade, the pupil's vision shall be examined by -authorized person under Section 49452a physician, optometrist, or ophthalmologist. This examination shall be consistent with the most current standard, policy, or guideline adopted by the American Academy of Pediatrics, the American Academy of Ophthalmology, or the American Optometric Association. This examination shall include tests for visual acuity, binocular function, as well as refraction and eye health evaluations. The parent or guardian of the pupil shall provide results of the examination to the school.

<u>(2) A pupil whose first enrollment or entry occurs in grade 4 or 7 shall not be</u> required to be appraised in the year immediately following the pupil's first enrollment or entry.

(b) The <u>appraisal examination</u> shall include tests for visual acuity, including near vision, and color vision; however, color vision shall be <u>appraised examined</u> once <u>at enrollment</u> and only on male pupils, and the results of the <u>appraisal</u> <u>examination</u> shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade.

(c) The appraisal may be waived, if the pupil's parents so desire, by their presenting of a certificate from a physician and surgeon, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or an optometrist setting out the results of a determination of the pupil's vision, including visual acuity and color vision.

(d) A pupil's vision may be appraised by using an eye chart or any other scientifically validated photoscreening test. Photoscreening tests shall be performed, under an agreement with, or the supervision of, an optometrist or ophthalmologist, by the school nurse or a trained individual who meets requirements established by the department.

(e) Continual and regular observation of the pupil's eyes, appearance, behavior, visual performance, and perception that may indicate vision difficulties shall be done by the school nurse and the classroom teacher.

(f) This section shall not apply to a pupil whose parents or guardian file with the principal of the school in which the pupil is enrolling, a statement in writing that

they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

(g) The department shall adopt guidelines to implement this section, including training requirements and a method of testing for near vision.

(Amended by Stats. 2014, Ch. 925, Sec. 2.5. Effective January 1, 2015.)



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То:	Board Members	Date:	January 23, 2015
From:	Robert Stephanopoulos Enforcement Analyst	Telephone:	(916) 575-7185
Subject:	Agenda Item 13 – Update on Rulemaking Pert	•	fornia Code of

Subject: Agenda Item 13 – Update on Rulemaking Pertaining to California Code of Regulations §1516, Applicant Medical Evaluations and §1582, Unprofessional Conduct Defined

Update on CCR §1516 and §1582

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 ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. The unchanged rulemaking package was resubmitted to the Office of Administrative Law, which was printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period began August 8, 2014 and concluded September 22, 2014. However, due to some administrative oversight, some people may not have received the notice, so another hearing will be held on January 26, 2015. Any comments received at the hearing will be before the Board for consideration.



Memo

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То:	Board Members	Date:	January 23, 2015
From:	Donna Burke, Secretary, Public Member Glenn Kawaguchi,	Telephone:	(916) 575-7170

Subject: Agenda Item 14 – Discussion and Possible Action to Approve the Revised Executive Officer's Duty Statement

With the creation of the Staff Services Manager I position within the Board, the Department of Consumer Affairs, Office of Human Resources, requested the Executive Officer's Duty Statement be revisited and revised, as needed.

Dr. Arredondo, Board President asked Members, Donna Burke and Glenn Kawaguchi, O.D. to take on this task.

Action Requested

Review the Executive Officer's revised duty statement, provide any edits for discussion and if approved, Ms. Maggio and Dr. Arredondo will sign a new duty statement.

Attachments:

- 1. Revised Duty Statement (2015)
- 2. Current Duty Statement (2008)

EXECUTIVE OFFICER BOARD OF OPTOMETRY PAGE 1 OF 4

Classification Title	Board/Bureau/Division
Executive Officer	Board of Optometry
Working Title	Office/Unit/Section / Geographic Location
(Same)	Board of Optometry / Sacramento
Position Number	Effective Date of appointment
631-110-8905-001	

General Statement:

Under the general direction of the 11-member Board, the Executive Officer (EO) is responsible for overseeing all aspects of the optometric services program in the State of California which includes licensure and certifications; development, supervision and administration of examinations; and enforcement of the Optometry Act. The EO works collaboratively with the Director of the Department of Consumer Affairs (DCA) to interpret and execute the intent of the board policies in a way that ensures the public is protected and Board mandates and Strategic Plan are met and accomplished. Specific responsibilities include, but are not limited, to the following:

A. <u>Specific Assignments</u> [Essential (E) / Marginal (M) Functions]:

30% Managerial and Administrative (E)

Act as principal operations officer for the Board; establish short and long term personnel goals that underscore succession planning and training; manage all personnel including recruitment, orientation, staff development through Individual Development Plans (IDPs) and evaluation; develop long term fiscal and budgetary goals and strategies and; identify resource needs.

20% Board Liaison (E)

Function as administrative agent for the Board. Coordinate and manage all Board and Committee meetings. Prepare agendas and minutes for all Board meetings and committee meetings; act as Board spokesperson at all meetings and hearings as delegated by the Board; serve as liaison between Board, Board Committees and staff; conduct orientation for new Board members and facilitate annual transition of Board Committee assignments and election of new officers; follow proper administrative procedure for noticing meetings and hearings. Inform, advise, and consult Board on programs and activities administered by staff. Implement all Board-approved policies and actions. Ensure full compliance with the Open Meetings Act

20% Program Management – Licensing, Enforcement and Examinations (E) Develop industry-specific disciplinary guidelines. Oversee the processing of applications for licensure or registration, ensuring that only qualified applicants are issued licensure or registration. Manage and direct the Board's continuing education program.

EXECUTIVE OFFICER BOARD OF OPTOMETRY PAGE 2 OF 4

Oversee the handling of enforcement cases and the processing of complaints, investigations, prosecutions and disciplinary actions performed by the Office of Attorney General, Division of Investigation and Office of Administrative Hearings. Provide for investigation of complaints, including preparation of accusations or statements of issue

and initiating, directing and evaluating administrative and/or criminal investigations; approve and sign final accusation; monitor case flow and costs; advise Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensure adherence to Administrative Procedures Act timelines; and ensure appropriate implementation of all Board disciplinary decisions. Meet and confer with outside legal agencies on cases; serve as Board's spokesperson on all cases. Maintain confidentiality in accordance with the Public Records Act.

Oversee the administration of Optometry examinations to ensure compliance with applicable statutes, regulations and policies. Coordinate periodic occupational analysis and examination validation functions.

15% Legislation and Regulations (E)

Identify the need for new legislation; recommend modification of existing statutes or regulations. Prepare and analyze legislative proposals to effect statutory or regulatory change; facilitate legislative author's research in preparation of statements and fact sheets. Obtain independent author for legislation, as needed. Provide testimony before legislative committees and public hearings regarding Board policies, programs and activities. Oversee and ensure compliance with all aspects of the legislative and rule-making processes and the Administrative Act. Prepare the sunset review report. Interpret and execute the Business and Professions Code and all Board policies and guidelines related to the Board; seek legal counsel from the Department of Consumer Affairs in executing the above duties.

15% Public Contact (E)

Serve as Board liaison to a wide array of government and professional and volunteer organizations; participate and serve as Board representative to professional organizations. Disseminate accurate and timely information via available communication tools and resources, including the department website and Internet social media venues regarding the Board's licensure act (B&P Code Section 3040 *et seq.*), regulations and policies and general consumer awareness information. Serve as liaison to professional associations, other government agencies, optometry school administrators, students, consumer groups and the general public.

B. <u>Supervision Received</u>

The EO reports directly to the Board President and receives majority of assignments from the Board.

C. <u>Supervision Exercised</u>

EXECUTIVE OFFICER BOARD OF OPTOMETRY

PAGE 3 OF 4

The EO directly supervises one Staff Services Manger I (SSM I) and contracted consultants, and inspectors, and the EO may also indirectly supervise subordinate staff through a subordinate supervisor.

D. Administrative Responsibility

The EO manages Board resources, programs and personnel through a subordinate manager.

E. <u>Personal Contacts</u>

The EO will have regular direct contact with licensees, optometrist, members of the Board of Optometry, and various DCA employees and other agencies. The information exchanged will include sensitive/confidential information. On a daily basis, the Executive Officer will respond to inquiries from the general public by telephone, e-mail or in writing. In addition, the EO works directly with the Board's President and other Board Members, program staff, DCA staff and other state agencies.

F. Actions and Consequences

Failure to complete assigned duties in a timely manner may delay licensing and enforcement actions which could result in a fiscal loss to the Board. Failure to properly ensure completion of Board responsibilities could result in the Board's inability to fulfill its mission-critical activities related to the regulation of this profession for the protection of the consumer public, and may result in direct patient harm and discredit to the Board.

G. <u>Functional Requirements</u>

The incumbent works 40 hours per week in an office setting, with artificial light and temperature control. The incumbent may spend 75%-85% of the working day using a personal computer. The position requires bending and stooping to retrieve files, walking, and occasional light lifting, up to 20-25 pounds. The ability to use a personal computer and telephone is essential. Regular attendance and punctuality are an essential part of this job. The incumbent is required to professionally and tactfully interact with the public and licensees, and use good judgment at all times.

H. Other Information

The incumbent must possess good communication skills, use good judgment in decision-making, exercise creativity and flexibility in problem identification and resolution, manage time and resources effectively, be responsive to Board needs, and represent the Board in a professional manner. The incumbent must also use strong interpersonal skills to support the achievement of the goals and objectives of the Board and maintain good working relationships with staff, governmental agencies and public entities. This position has access to confidential or sensitive information related to consumers of Board services and/or employees of the Board. The individual occupying this position is expected to maintain the privacy and confidentiality of such information at all times. Travel is required to attend various meetings. The incumbent will travel by whichever method, commercial carrier or automobile, is in the best interest of the State. Travel may occur for one or several consecutive days.

EXECUTIVE OFFICER BOARD OF OPTOMETRY PAGE 4 OF 4

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Printed Name, Classification

Revision Date: January 2015

Date

Date

BOARD OF OPTOMETRY DUTY STATEMENT EXECUTIVE OFFICER Position No. 631-110-8905-001 April 2008

The Executive Officer (EO) is responsible for the administration and overall management of all Board activities and functions. The EO promotes the primary mission of protecting the public's health, safety and welfare through ensuring the competency and qualifications of providers of optometric services. The EO is further responsible for interpreting and executing the intent of all Board policies to the public and to other governmental agencies. Under the direction of the 11-member Board, the Executive Officer's specific responsibilities include:

DUTIES AND RESPONSIBILITIES

- **25%** Administrative and Managerial: Acts as principal operations officer for the Board; manages all personnel including recruitment, orientation, staff development and evaluation all staff; oversees the procurement and management of space, equipment, and supplies; identifies need for augmentation of operating budget and ensures that all budget change proposals, finance letters, and other fiscal documents are accurate and that they support the Board's goals and mission.
- **25% Board Liaison:** Functions as administrative agent for the Board. Coordinates and manages all Board and Committee meetings and all Board communications. Prepares agendas and minutes for all Board meetings and committee meetings; acts as Board spokesperson at all meetings and hearings as delegated by the Board; serves as liaison between Board, Board Committees, and staff; conducts orientation for new Board members; sees that all meetings and hearings are noticed to the public and follows proper administrative procedure. Informs, advises and consults the Board on programs and activities administered by staff. Implements all Board-approved policies and actions. Ensures full compliance with the Open Meetings Act.
- **25% Program Management Licensing**, **Enforcement and Examinations**: Oversees the processing of applications for licensure or registration, ensuring that only qualified applicants are issued licensure or registration. Manages and directs the Board's continuing education program.

Oversees the handling of enforcement cases and the processing of complaints, investigations, prosecutions and disciplinary actions performed by the Office of the Attorney General, Division of Investigation and Office of Administrative Hearings. Provides for investigation of complaints; preparation of accusations or statements of issue; signs final accusation; consults with legal counsel on problem cases, monitors flow of cases in system and monitors costs; advises Attorney General's Office and hearing officer of Board's disciplinary guidelines; ensures that Administrative Procedure Act timelines are followed and that all Board disciplinary decisions are appropriately implemented. Meets and confers with outside legal agencies on cases; serves as Board's liaison to media and public on all publicized cases. Maintains confidentiality of information and records in accordance with Public Records Act.

BOARD OF OPTOMETRY DUTY STATEMENT EXECUTIVE OFFICER Position No. 631-110-8905-001 April 2008

Oversees the administration of examinations for providers of Board of Optometry services to ensure compliance with applicable statutes, regulations and policies. Coordinates periodic occupational analyses and examination validation functions.

- **20%** Legislation and Regulations: Identifies the need for new legislation; recommends modification of existing statutes or regulations. Reviews drafts of specific language to effect statutory or regulatory change; oversees the preparation of author's statements and fact sheets. Obtains authors for legislation, as needed. Testifies before legislative committees and at public hearings regarding Board policies, programs and activities. Oversees and ensures compliance with all aspects of the legislative and rulemaking processes and the administrative Procedures Act. Prepares the sunset review report to the Legislature as required by law. Responsible for interpretation and execution of the Business and Professions Code and all Board policies and guidelines related to the Board; seeks legal counsel from the Department of Consumer Affairs in carrying out the above activities.
- **5% Public Contact:** Serves as the Board's liaison to a wide array of governmental and voluntary organizations; serves as liaison to professional organizations; participates and serves as Board's staff representative to various associations. Disseminates information concerning the Board's licensure act (B&P Code Section 3040 *et. seq.)*, regulations and policies before professional associations, other governmental agencies, optometry school administrators and students, and consumer groups. Acts as the Board's designated spokesperson when responding to inquiries from the media, state agencies and other interested groups.



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

То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject:	Agenda Item 15 – Suggestions for Future Agenda Items		





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

То:	Board Members	Date:	January 23, 2015
From:	Jessica Sieferman Assistant Executive Officer	Telephone:	(916) 575-7184

Subject: Agenda Item 16A. In the Matter of the Petition for Reduction of Penalty or Termination of Probation

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

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

On or about August 18, 2011, the Board filed a Petition to Revoke Probation against the Petitioner. By Decision and Order effective August 29, 2012, the Board adopted a Proposed Decision granting the Board's Petition. Petitioner's license was revoked effective August 29, 2012.

On or about May 1, 2013, Petitioner filed a Petition for Reinstatement, which the Board granted effective December 11, 2013. Petitioner's license was reinstated, immediately revoked, the revocation was stayed, and the license was placed on probation for five years.

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 or Termination of Probation
- 2. Copies of Order Denying Petition for Reconsideration, Decision, Order Denying Petition for Reconsideration, Decision and Order, Order Denying Petition for Reconsideration, Petition to Revoke Probation, Decision, Decision, Decision and Order, and Accusation
- 3. Certification of Licensure

Petition for Early Termination of Probation

Gregory Tom, O.D.

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- 7. Exhibit(s)

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

GOVERNOR EDMUND G. BROWN JR.



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



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

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LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE	
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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?	
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) 	
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) 	
12	. Have you ever had disciplinary action taken against your optometric license in this state or any other state?	

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

Signature

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.

Introduction and Summary

Introduction

I am Gregory Tom and I am an optometrist. I graduated from the UC Berkele School of Optometry in 1994. As an optometrist, I took an oath that will uphold and honorably promote by example and action the highest standards, ethics and ideals of my chosen profession. As a UC Berkeley optometric student, I excelled in the program and was one of the first students to participate in the externship progra at UCBSCO. I traveled to Atlanta, Georgia and spent time with patients with severe diseases in one of the top ophthalmology practices in the state. I stayed late and donated as much time as I could on functions and programs that were in need of extra help. I knew immediately I would be in private practice to utilize my clinical skills to help serve my community.

During my career, I always placed the treatment of those who seek my care as a priority and I never refused anyone treatment even if they could not afford it. I often volunteered at Lion Sight Savers Foundation events, the Red Cross, local health fairs, the UC Berkeley mobile clinic, and returned to volunteer at the School of Optometry post graduation. I continued all of these activities and also performed eye exams on prisoners in the California penal system. I visited local nursing homes to help bed-ridden patients. The basis of my professional career was to give back to the community in a multitude of ways. It gave me a great deal of persona satisfaction to help others. My dream as a child was to become a doctor.

Along my career, I made some unwise decisions and did not honor my Optometri Oath. My clinical skills have never been questioned and all of my patients have always received the best in care. My mistake occurred when I attempted to take financial advantage of an insurance company for the benefit of my practice and patients. The patients received additional benefits that their vision plan no longer reimbursed after some plan changes, and my practice would receive additional reimbursement. Patient care was never compromised. My lack of judgment was trying to justify providing for patients at the expense of the insurance company.

I realize now that if I wanted to help a patient financially, I should have gone a different route. My office should have just paid for the extra pair of glasses for patients and donated the professional fees to them. The insurance company should have not been involved. I justified this earlier as I did not understand the ethical boundaries. I have learned that ethical standards exist in our profession to protect patients, providers, and our community. Ethical standards are what help our profession continue to grow. Without ethics standards, our patients would not trust our professional opinions and our peers would not trust one another.

I am petitioning the Board of Optometry for the reduction of my probation and would like to request full reinstatement. Since my probation began in July 2009, I have been reminded of the lack of ability to practice optometry and the failure to honor the Optometric Oath. I am very remorseful. I made a mistake for which I am reminded daily. I am very embarrassed and realize that there is no one to blame no one but myself.

When my license was initially reinstated in January 2010, I had promised to work diligently to fulfill all of my probationary terms. I proceeded to meet with m probationary manager and eagerly met terms early and regularly. I exceeded the required continuing educational hours. I exceeded by twice the amount of required community service hours and continued to volunteer beyond the required 24-month term. In fact, I actually started volunteering six months earlier in July 2009. I will continue to provide community service into 2015, which will amount to a total of six years of service. In addition, I communicated regularly via email and phon with board monitors.

Another critical, but this time unintentional, error occurred when I did not think to report my place of practice at local community colleges. What I had categorized in my mind as community service because I was trying to help local community colleg students by offering eye exams and eye wear at nominal fees and far below what would be charged in any other optometric office, I was still practicing optometry in every sense. These efforts were not meant go against my probationary terms, I had described this future activity in my initial reinstatement 2008 petition's introductory paragraph (see attached documentation *(Exhibit A).

Upon reinstatement, I visited the colleges ten times over a year. I did not inform the Board of these activities and did not think to request prior approval. I had inadvertently violated my probationary terms. I wanted the Board to know that I accept full responsibility for my actions and that I should have consulted the board monitor for approval.

My exuberance to give back to the community and prove myself to the Board led to this critical mistake. I attempted to make amends once I was made aware of this violation by driving to Sacramento to discuss this issue immediately with my Board probation monitor. I acknowledged what I had done and that I even immediatel returned stipends I had received. I also made an additional non-taxable donation to each college's health department, which they accepted. For the record, I did not report the donations as a tax deduction. This was my way of showing m commitment to positively impacting the lives of these students. The Board accepted my apology and allowed me to regain its trust by granting m reinstatement in December 2013.

Since December 2013, I have worked diligently to meet all my required terms. I satisfied and passed the California optometry law exam early. I satisfied the yearly ethics class early. I exceeded the required work hours per month including require volunteer hours per month. I even exceeded the terms of probation by continuin to provide non-optometric community service and additional continuing educational requirements that were outlined in my initial 2009 probationary terms. I did this to show the Board that I was committed to exceeding the required terms and that I was serious about changing my character and ethical values. I have continued to do community service at the First Tee of Contra Costa. This is a nonprofit organization that uses golf to teach life skills to children ages 5 to 17 years of age. Prior to my initial probation beginning in January 2010, I started volunteering in July 2009 with Board approval. I originally made a commitment to the First Tee director and organization to provide community service for greater than the origina probationary term of 24 months. I am currently still volunteering there and this coming July will be 6 years of service. I volunteered almost 200% of the require monthly hours and verified my service with quarterly reports. I even continued theses services after my license revocation in August 2012. I have refused an monetary compensation. I am a First Tee Certified Coach. The First Tee is a nationally recognized program in every state. The complete program is about 12 years and many students are able to receive scholarships toward college. I teach life skills and values in all classes such as Honesty, Respect, Perseverance, Responsibility, Integrity, Courtesy, Judgment, Confidence, and Sportsmanship. I teach the appropriate cognitive life skills and how to use them in life, school, and in our community. Examples of lessons are as follows: Planning for the Future, Challenges, Developing a Goal Ladder, Respect for Oneself, others, and our community. I am responsible for students' progression through the program. If they require more help, coaches are there to help them outside of the First Tee also.

I truly enjoy the First Tee experience. Not only have I helped hundreds of students, they have helped me grow as a person also. One of the life skills we teach is to develop a "Go To Person." Several students actually chose me to be their Go To person. Working with students has been an invaluable experience and pleasantly therapeutic for me. It makes me realize that I am a role model and that my actions have an effect on everyone around me. The First Tee has been a great tool in m continued rehabilitation. I truly feel I can be a trusted professional contributing to a community again.

Finding a volunteer optometric community service (as opposed to a non-optometric community service) was a very challenging term. There are very few clinics and options to meet this requirement. I was refused at several places because of m probationary status. Directors of the board and chief medical officers did not want probationary optometrist in their clinics. One organization claimed liability issues. Another said that their board vetoed the idea of having on staff an optometrist on

probation. This was another strong reminder of the stigma of my probationar status.

I satisfied my optometric community service by volunteering for Rotacare at the Davis Street Health Clinic in San Leandro. Rotacare is a free clinic where doctors provide free medical treatment for non-insured patients. I started the eye clinic at Rotacare. Prior to my start, there was no eye service available. In that community, there is a segment of un-insured patients. I provided all the equipment in the ey clinic from the phoropters, trial lens, pupilometer, portable Goldman tomometer retinoscope, opthalmoscope, and BIO. I also helped find the Slit Lamp microscope. I treat patients from 3 months old to 80 years old. I see many patients who are new to the United States and never received adequate optometric care. I am proud to tell them I am an optometrist. I also interact with many MDs and residents. I am able to teach residents and MDs about the role modern optometry plays in health care.

As a doctor, I must hold myself to a higher standard of ethics and professionalism Furthermore, I am the only one responsible for monitoring myself. No one is goin to ask me every time if I am doing the right thing. The past five years has painfully educated me on how I must make wise choices even when no one is looking. This was not taught in school. This is an internal trait that one take care to develop. M moral compass has changed and I realize that my actions affect not only me, but those surrounding me, including my patients, my community, my peers, and m family.

Each day I am reminded of my past decisions. I surrendered my optometry license, my practices, and hundreds of patients and friends. The years of building a practice have been lost. My reputation in the community has been damaged. Long time friends and patients have stopped communicating. I have lost touch with man good staff members and their families. The loss of my license even prevented me from treating my own parents. My mother suffered vision loss from anterior uveitis that led to severe optic nerve damage and glaucoma. My grandmother has macular degeneration. My father is blind in one eye. The disgrace of not being able to treat my own family is a scar that I will never forget. Unfortunately, I cannot alter m past decision and I must live with these scars as reminders for the rest of my life and career.

I am very remorseful for my actions. I blame no one but myself. I am fully aware of my actions and what it has cost my family and me. I have learned tremendously and I am now a better person. I truly believe that dealing with consequences of my past actions has taught me something that I will never forget for the rest of my life. The life lessons I have learned will influence how I respond to future situations where I have a choice to make sound decisions that are of benefit to future patients, the community of where I practice and to the larger society. I am forever a change person.

Activity Summary Since December 11, 2013

1. <u>Community Service (Non-Optometry)</u>

Since my license was reinstated on December 11, 2013 I continued to devote a great deal of time to my volunteer community services with The First Tee. My initial probationary terms of 2010 stated I had to perform 24 months of service at 10 hours per month. With Board approval, I began early in July 2009 even prior to m full reinstatement on January 2010. I volunteered almost double the require hours. I continued to volunteer for The First Tee between August 2012 and December 2013 when I was not able to practice optometry and the terms of probation did not apply. I even continued to send my Board probation monitor monthly reports and emails.

I have continued to volunteer with The First Tee throughout 2014 and have committed to 2015. I perform the same amount of volunteer service hours. I work on a complete volunteer basis and have declined monetary compensation. I have traveled within the US to further my training. I have taken classes from psychologists, Ph.Ds, and other professionals to better understand how to deliver life skills and Core Values to young students. The life skill and core values are invaluable to not only the students but they remind me that I must be a role model. I made this commitment because I want to impact the lives of others outside of optometry and while I was away from optometry. Teaching its values and lessons has helped me become a better person. I wanted to prove to the Board that I m actions, and not just words, reflect my outlook on life and my community.

2. <u>Community Service (Optometry)</u>

Beginning December 11, 2014, I was required to provide free optometric services on a regular basis to a charitable facility for a minimum of 16 hours per month. After lots of research, I located Rotacare of Davis Street in San Leandro, CA. Rotacare is a free clinic that provides health care to individuals and families who do not have an medical insurance. The Medical Director was open to the idea of me providin services while on probation. The only problem was they did not have an eye clinic. To meet this requirement, I proposed that I be allowed to start the eye clinic and I would provide the necessary equipment. I brought in my own phoropters, stand chairs, portable tonometer, trial lenses, retinoscope, ophthalmoscope, BIO, and all lenses. I even helped locate and assemble a slit lamp. Initially, I had to move the equipment each week from storage to a designated room each week. I have been able to help hundreds of patients. Most are below poverty level and have no insurance. Many are young families who have lost their jobs and struggling to find a job. Many have poor vision and no access to an optometrist. They are very grateful. I have exceeded the required monthly hours and often stay late to help with patients.

This condition was very challenging. First, there are not many free optometri services available in the Bay Area where you can provide this many hours pe month on a regular on going basis. Many programs are only available a few times a year. Next was the challenge of being approved by the charitable organizations board of directors (BOD). I found two organizations that both denied my ability to volunteer because of my probationary status. They needed help but were adamant about requiring Optometrists with no restrictions.

3. <u>Continuing Education</u>

I have continued to educate myself and increase my knowledge of optometry in various manners: (1) attending continuing educational (CE) seminars, (2) studyin numerous articles in optometry and ophthalmology reviews, and taking (3) online courses for continuing education credits. Prior and during my probation, I continually attended more than the 50 hours per two years that California law requires. Prior to my reinstatement in 2010, I attended over 40 hours of CE. During the reinstatement period, I was required to take 40 additional CE hours per year in addition to the normal 50 hours every two years. In summary, continuin education hours completed from 2009 to 2010 was 89 hours, 2011 to 2012 was 133 hours, and 2013-2014 was 173 hours. I am devoted to my profession and respec the need to stay educated and remain at the forefront of my profession. (se Petition question 19)

4. Ethics Course

The initial surrendering of my license was related to unprofessional conduct and this type of behavior was due to unethical decisions. My initial probation required I complete one ethics course. I completed the Board approved course at SCCO by Dr. Berman ahead of schedule and wrote multiple ethical essays that were evaluated b Dr. Carnevalli. I have continued to take additional ethics courses each year (3 hours of CE for each year 2010, 2011, 2012, 2013). My reinstatement of December 2013 required I take an ethics course by December 11, 2014 and annually thereafter. I completed and met the ethics course requirement in January 2014, almost a yea before required deadline.

5. <u>CA Optometry Laws and Regulation Exam</u>

The probationary term was required complete by February 19, 2014. I successfull passed the CA Law and Regulations Exam on 12.05.2013. Similar to all m probation terms, I accomplished this requirement ahead of schedule and prior to m probation term beginning (12.11.13). This further supports my eagerness to practice and further emphasizes how devoted I am to Optometry as my profession. (see Exhibit(s)).

6. Volunteer Coaching

In addition to volunteering for the First Tee for the past 5.5 years, I have also volunteered at other youth activities. For the past four years, I have also volunteered to help Alameda and Contra Costa counties with their recreation programs. I have coached several teams in baseball, basketball, soccer, and golf. I also volunteered to serve as a referee. I truly love teaching and helping local youths. I bring a great deal of my life skills and core values to these sports. I work very hard to make sure the students are not just playing but also learning about how to respect themselves, the game, show integrity, and good sportsmanship. Most recently and for the past 18 months, I have volunteered to help instruct athletes and promote life skills at a non-profit 501c AAU basketball clinic in Contra Costa County.

7. <u>Letters of Recommendation</u>

The personal discipline I have shown in my efforts to reinstate my license and remain on probation is only one component. The completion of my rehabilitation is also witnessed in those who see me on a regular basis. Those individuals are able to state that I have changed for the better. Not being able to practice optometry from 2006 to 2010 and during 2013 has been a tremendous struggle emotionally and professionally. These challenges have not frustrated me but made me stronger. I have been able to return to optometry and serve the community. Those around me will attest that I am not the same person who made those earlier poor decisions.

Closing

In my 2012 petition for reinstatement, I had promised the Board that I would continue with my previous probationary requirements and whatever new probationary terms were added. The presented documents and attestation prove that I have kept my promises and that I am a devoted professional with good ethics decision-making abilities. I am true to my word and that I am more than safe to return to serve my community as an full reinstated optometrist. Optometry was one of way of helping others. My probation and time off from practicing has shown me other ways I am able to positively affect others and even serve as a role model. I believe that I am a better person from my probation and that I am returning as a much-improved professional. My actions over the past year should greatly reduce the Board's concerns about my character. I have the discipline and moral compas to serve my community.

I am aware of my mistakes and accept the blame that it was my actions that led to my violation of my past probationary terms. I am strong and confident enough to know that I will make the correct choice when faced with future challenges. I will not disappointment the Board. I have a much higher set of standards and better morals.

It is most important for the Board to understand that I have worked diligently this past year. I have had to endure ridicule and doubt by potential employers and even been denied the ability to volunteer as an optometrist. More importantly, I have accepted myself and realize my actions affect others around me. My journey from surrendering my license (2007) to the initial reinstatement (01.2010) to the revocation (08.2012) to my reinstatement (12,2013) to the hopeful ending of m probation term (2015) has been a long process. The dedication and rehabilitative processes have placed me a in a position to return safely to optometry. Like the students I teach about "goal ladders," I have conquered each challenge towards the top of the ladder and my dream of being a fully reinstated optometrist.

At this time, I am requesting the Board of Optometry decide to end the term of m probation and fully reinstate my license. My past decisions will forever be a stern reminder and a life lesson never forgotten. I would cherish the ability to start m career anew and rebuild a new foundation for my family.

Thank you for your consideration and time.

Gregory Tom, O.D.

Questions 13-20

Question 12: Have you ever had disciplinary action taken against your optometric license in this state or any other state? Please attach a statement of explanation

Question 13: List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

These questions are very similar both Questions 12 and 13 are addressed below.

Yes, I have had disciplinary action taken against my optometric license in the state of California. I voluntarily surrendered my license in October 2007 and the Board of Optometry accepted this as of April 2008.

Vision Service Plan, VSP, performed its annual audit at my office locations. My San Mateo office was audited and found to have zero (0) violations. Subsequent audits of the San Ramon and San Jose offices produced several discrepancies with regards to billing o medically necessary contact lenses and glasses over contacts and prescription sunglasses for children. The audit was for 2001-2002.

At these offices, VSP specifically audited only patients that involved the above categories, necessary contacts and sunglasses on children. There were total of 3 files audited in San Jose and 37 files audited in San Ramon.

hired an outside consultant, Dr. Daniel Lau, to review all the charts. He agreed with some of the VSP findings and indicated there was evidence of overbilling on contact lens supplies and children's sunglasses. VSP claimed that I owed them approximately \$85,000 in fees of which \$50,000 was paid immediately at the VSP hearing. Many of the charges were contested with supporting documentation and shown to be correct. VSP, however, never responded to the claims. Several patients were in the middle of their fittings and had yet to return for follow up and they wore contact lenses, yet VSP did not respond to our evidence. The financial difference was withheld from our offices and VSP never provided any means of accounting or explanation of benefits.

Many of the claims were for medically necessary contact lenses. These patients had prescriptions that were -10.00 or worse and met the need for medically necessary under VSP guidelines. VSP had always allowed back up pair of lenses for patients that meet these requirements. However, VSP had changed its rules to eliminate this and only allowed glasses over contacts. I had several patients negatively react to this change. I then would request the lab to remove the lenses and replace them with their full prescription so the patient now had a back u pair. At the time, I felt that the insurance company was not taking care of the patient. The patient still paid for all their costs and got their contacts covered also. We used a prefilled out form from VSP and always got paid the same amount. The fees received were in slightly higher than fees for private paying previous patients. The patient care and diagnosis was never compromised; however, the patient did receive benefits they would not normally have

received under the new guidelines. Thus, the practice and patient benefited financially. In addition, some children were given prescription sunglasses and in some cases just non-prescription sunglasses. I understood that VSP did not allow nonprescription lenses. My actions were foolish, irresponsible, and unethical in trying to take something from an insurance company even though it benefited the patient.

When I first obtained my optometry license I worked for a few private VSP doctors and they showed me how sunglasses were approved with just the smallest of prescriptions. I did not feel comfortable in giving prescription lenses to those who did not require it, so I contacted the lab and asked them if there was a way to remove the lenses and provide them with a better lens. They said yes and provided plano polycarbonate grey lenses. These actions were obviously not appropriate and very unprofessional and unethical. At the time, I thought it was a great way to promote sunglasses and get them covered under their insurance and help the parents out who were financially challenged. This method of billing was only done o these select patients. VSP subsequently removed me from its panel in 2002. Other major insurance companies were made aware of VSP findings and performed audits but no billing discrepancies were found and I remained in good status until I sold the businesses in February 2006.

The overbilling accounted for less than 0.5% of the total number of yearly exams. However, this in no way justifies what was done, even if it was just one patient.

14. Explain why you feel your license should be restored, or the disciplinary penalty reduced.

feel my current probation should be reduced and my license fully reinstated because of my atonement and actions within the last 2 months.

The voluntary surrender of my license in October 2007 showed that I was willing to account for my actions. Regardless of differing interpretation, the fact is that I showed poor judgment and did not comply with VSP's rules. As a result, had to sell my practices and lost the respect and trust of my patients, and even my family. The inability to care for my family during this time is a reminder that will never forget. My mother suffers from glaucoma secondary to a herpetic infection. My father lost his vision in the right eye secondary to toxoplasmosis. My nephew suffers from a visual processing and learning disability.

August 29, 2012 was the first time my license was revoked. It was a harsh reminder of what had happened to me in October 2007. The loss of the ability to practice optometry is an unforgettable experience. I became an optometrist because of the positive impact could make in someone's life. have had the distinct experience of losing a life while tending to a patient as well as several sight saving experiences.

During my initial probation, I worked diligently to meet all terms of my probation early. I finished my Ethics class immediately and all the required essays. I traveled to meet with the director to discuss it personally. I paid my restitution to the Board. I <u>exceeded the continuing</u> <u>education requirements</u>. My community service hours were at least double what was required. also started my community service months service early. Even after my community service term (24 months) was completed continued to volunteer. even sent monthly and quarterly reports to my probation monitor after my license was revoked on August 29, 2012.

Today, I am still voluntarily performing <u>non-optometric community service</u> in excess of the initial probation terms. have made commitments to The First Tee and its directors. have and will continue to impact the lives of The First Tee students in a positive manner. As of July 2015, I will have volunteered for The First Tee for 6 years.

From 200 to August 2012, have <u>volunteered at local schools</u> to contribute back to the community. I have developed an optometric education program to teach elementary school children in economically challenged areas. I have taught in various classes each month during the year in Alameda and Contra Costa County. I educated students o the anatomy and functions of the human eye. I have received hundreds of letters from the students who are so appreciative of the time. This is critical in our schools given the lack of funds to do such activities.

In addition, <u>volunteered at schools</u> to help enhance their science programs by conducting a "cow eye dissection" at various schools in Alameda, Contra Costa, and San Mateo County. All of the schools are lacking the necessary funding for such science projects. I purchase fresh cow

eyes from slaughterhouses and bring them to the students to learn about the anatomy of the eye. The students are able to touch the parts and learn and have fund at the same time. It is a priceless experience. It has been so impacting that word is spreading and more teachers want the dissection in their classrooms.

<u>Continuing education</u> is another reason for my full license reinstatement. Although my clinical skills and diagnostic abilities were never in question, I have continued to keep my knowledge sharp by adhering to all my probationary terms during my probation and even post of my revocation in August 2012. have taken 163 hours of continuing education from 2013 to 2014. From 201 to 2012, completed 133 hours. In 2010, completed 89 hours of continuing education hours. In 2009, while I was not licensed to practice, I completed over 4 hours of continuing education.

<u>Providing free optometric community service</u> was a requirement of my probation. I have been volunteering at RotaCare in San Leandro, CA. Rotacare clinic is a non-profit corporation where doctors and nurses provide free medical care to the non-insured surrounding communities. I started the eye care clinic at Rotacare. Prior to my start, there was no eye service available. In that community, there is a segment of un-insured patients. provided all the equipment in the eye clinic from the phoropters, lensometer, trial lens, pupilometer, portable Goldman tomometer, retinoscope, opthalmoscope, and BIO. I also helped locate and repair the Slit Lamp microscope currently in use.

treat patients from 3 months old to 80 years of age. see many patients who are new to the USA and have never received adequate optometric care. am proud to tell them am an optometrist. I also interact with many MDs and residents. I am able to teach residents and MDs about the role modern optometry plays in health care and how optometrists d much more than just glasses.

In summary, have effectively been honoring my probationary terms since January 201 and it was been over 5 years. have accepted full responsibility for my poor judgment. The extended volunteer non-optometric community service, volunteering a greater number of hours than required for the optometric community service, volunteer lecturing, ethic classes, continued education hours, and volunteer science class dissections are way for me to show that I am committed and ready to return to optometry and that I am very serious about proving myself to the Board that I can safely practice in and contribute positively to the community.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers, and locations.

Since my license was reinstated December 11, 2013, I have been adhering to my probationary terms.

have been volunteering at The First Tee since July 2009 with Board approval. began my volunteer work 6.0 month prior to my initial reinstatement (01/2010). made the decision to continue this community volunteer service despite not having it be a requirement during my revocation period nor be a requirement for the latest probationary terms. I chose to do this because its enables me to positively affect youths and provides me yet another way to give back to the community. have committed to do this in 2015 also. It will be 6 years this coming July.

For the past five years, I have taught two to three classes each week. One class is called the Target class and it is an introductory class exposing students to early life skills. teach lesson about respect, how to ask for help, how to aim, how to get along with others, safety, and how golf as a sport relates to school and home.

Another class is called Birdie and it is composed of more advanced students. In this class, we are implementing the 9 core values (Honesty, Integrity, Respect, Confidence, Responsibility, Perseverance, Courtesy, Judgment, and Sportsmanship) and life skills (what is a goal vs. dream, goals that are positive, important to you, specific, and under your control, goal ladders, dealing with challenges).

The third class is more advanced class called Eagle. These students are continuing their mastery of the core values and healthy habits and the life skills (building a go to team, appreciating diversity, dealing with conflicts, and planning for the future). These are the future leaders and college students. My interaction with them is very important in their planning for their college choice, career choice, and various life decisions at home and at school.

have been a volunteer coach in my community for youth sports and development in the cities of San Ramon and Walnut Creek for the past years. have also spent last two years volunteering with the Catholic Youth Organization. have implemented a lot of my life skills and core values into these settings. The directors and parents of these other leagues have noticed my unique teaching style and how it relates outside of sports. I have actually been asked to coach other teams and parents are now requesting for me to be their children's coach. I truly believe this is yet another way am positively impacting youths.

My volunteer optometry work at RotaCare at Davis Street Clinic has been another rewarding experience. Finding volunteer organization to practice optometry was a very challenging task. Several clinics denied my volunteer requests stating their Board did not approve probationed ODs. approached RotaCare about starting an optometry clinic. I explained the high demand in the area and the need for this added service. Rotacare is the free clinic where doctors provide free medical treatment for non-insured patients. Prior to my start, there was no eye service

available. The clinic did not have any funds to start an optometry clinic and vendors would not donate any equipment. The solution: provided all the equipment in the eye clinic from the phoropters, trial lens, pupilometer, portable Goldman tomometer, retinoscope, opthalmoscope, and BIO. I also helped locate the slit lamp microscope.

treat patients from 3 months old to 80 years of age. see many patients who are new to the USA and have never received adequate optometric care. I am proud to tell them I am an optometrist. I also interact with many MDs and residents. I am able to teach residents and MDs about the role modern optometry plays in health care. began seeing patients on January 30, 201 but my work to initiate the clinic and locate equipment began much earlier.

Working as an employed optometrist was just as daunting a task. My previous employer who wrote a letter of recommendation for me in 2012, had to hire another optometrist when I had to stop practicing in August 2012. Many potential employers would not hire an optometrist on probation, as insurance carriers did not allow probation optometrists to see patients. Often many ridiculed me if I was granted an interview. Corporations stated that HR did not allow optometrists on probation.

found some temporary work for an independent optometrist, Tammy Nguyen, who worked at JC Penny Optical in San Bruno. I was strictly an on-call doctor. I was appreciative of the offer to work and meet my probationary terms. I practiced general optometry doing eye exams and contact lens fittings. I was offered far less compensation than other optometrists, though, due to my probation. I began working for Dr. Nguyen on 12.27.2014 and continued until 04.2014 when she gave up her lease.

was employed by Dr. William Ellis, M.D., from 03.01.2014 until 08.23.2014. I worked at his locations in El Cerrito, Walnut Creek, Corte Madera, and San Francisco. I screened for LASIK, pterygium, and cataract patients. I was again offered less compensation and often placed under strict instructions of not to consult and just examine patients and let the counselors decide if they want surgery.

worked on call and for fill in for Dr. James Young, O.D., at Sears Optical few days month from 01.27.14 until 09.26.14. I performed general eye exams and contact lens fittings.

Recently, I have been working for Dr. Tara Starr, M.D., in her Berkeley office and occasionally in her Lafayette office. I perform general eye exams and work u all her surgical patients pre and post op, glaucoma patients, diabetics and general ophthalmological patients. I began working for Dr. Starr on 10.21.14 and I am still working with her part time.

have not been able to locate additional work as many owner-doctors will not hire an optometrist o probation. Many corporations like my resume but I am often overlooked based o my current license status.

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

Part of my rehabilitation measures started in July 200 while I was looking for job for the first time in over 15 years. Because of the economy, many optometrists who were going to retire did not retire and returned to work or continued to work longer hours. As a result, obtaining a position as an optometrist is very limited. Corporations were not hiring and private practice jobs were limited at best. could not find a job. When did receive an interview, was often told that I would not be hired even with all of my experience and professionalism because of my past unprofessional conduct. Many employers did not want the Board of Optometry involved in their practice nor did they want to expose their records for potential investigation. From that point on, I was constantly reminded of the magnitude of my lack of judgment.

Since my license was revoked on August 29, 2012, I have continued to perform as if I was still on probation. I continued to attend continuing education seminars. From 2013 to 2014, I have completed over 173 hour of continuing education. I am very committed to my profession and want to be at the forefront of it. am committed to the Berkeley Symposium in January 2015 (20 hours) and the Seeing is Believing Seminars in January 2015 (24 hours). I also plan on becoming a glaucoma certified OD.

Another form of rehabilitation has been non-optometric community service by working with The First Tee. stated work with the First Tee in July 2009 and this July 2015 will be 6 years of community service. This is non-profit that helps introduce inner city and economically challenged children to the game of golf and its unique values. I am responsible for teaching the children life skills and how those skills relate to everyday life and how it will impact them and affect them in positive manner. There are core values: Honesty, Perseverance, Respect, Sportsmanship, Integrity, Responsibility, Confidence, Judgment, and Courtesy. We teach each of these values and how students can apply these everyday at home and in life.

My initial probation term (2010) was to perform 10 hours per month for 24 months. I have consistently performed greater than this and doubled the required hours. Furthermore, this condition ended on July 2011. I have continued this rehabilitation activity and increased the hours since my revocation o August 29, 2012. I have even traveled outside the state to Arizona and Nevada to further my education and commitment to The First Tee. I have actually passed all my teaching credentials which is about year process. I have also committed an additional 2 months of service in which declined to be compensated monetarily. This is just another way for me to contribute to the community without my optometry license. Each day I am able to impact some student's life and nurture their ethics and values moving in to the future. am also able to help them plan for the future. This is also rehabilitative towards my future plans as a reinvigorated optometrist willing to positively affect my community with a new set of values and morals. As much as The First Tee needs a mentor instructor, I need The First

Tee to guide me through my past and future challenges. The core values and life skills has made me a better person and assisted me in making better decisions moving forward.

have also taken an ethic course on 01.27.2014 by Dr. Roberto Pineda M.D., and Nancy Holekamp, M.D. The title was Ethical Issues. The article addresses how doctors face ethical challenges how they apply to private practice and decisions we face daily in practice.

Another form of rehabilitation has been my volunteer optometry services with RotaCare at Davis Street in San Leandro, CA. This requirement was 16 hours per month. I have devoted in excess of these hours almost every single month. I started the eye clinic here at RotaCare. They never had an eye clinic. I provide great and needed service for this diverse economically challenged community. am truly fortunate when see the expression on patients see. Many are from foreign countries and have never had optometric eye care. Others have lost their jobs and have not received eye care in several years. Their expressions of happiness and words of gratitude are worth every minute. I truly feel that I am helping the community. RotaCare needed an optometrist but the Dr. Tom, the optometrist needed RotaCare just as much. As much as I have given, I have received and I am reminded of what an impact I have on those around me.

17. No courses were taken except fo continuing education

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

- 1. Review of Optometry
- 2. Optometric Physician
- 3. Optometric Management
- 4. Eye and Contact Lens Science and Clinical Practice
- 5. Optometry Today
- 6. Vision Monday
- 7. American Journal of Ophthalmology

Here is a sample list of the various articles that I have read and studied in the last 12 months:

Updates in Ocular Surface Wellness 1 Increase Your Allergy Know How Eve On Glaucoma The Lowdown o Blue Light Good vs. Bad When The Retina Reveals a Blood Disorder Glaucoma Case Chronicles part 1 The Contact Lens Infiltrate Think Diabetic Retinopathy: Optometrist Role Fluoroguinolone with Broad Spectrum Antibiotic Potency Glaucoma Case part II Post Operative Inflammation and Pain Blepharitis Management: Current Thinking and Clinical Insights Blue Light and its Connection to AMD Dry ARMD vs. Wet ARMD Clinical Findings Inflammation and Dry Eye Diabetic Macular Edema **Diabetic Retinapathy Comprehensive Retinal Vein Occlusion Bacterial Conjunctivitis** Sebaceous Carcinoma Pars Planitis **Giant Cell Arteritis** Hyphema Cystoid Macular Edema Hypertensive Retinopathy Posterior Vitreous Detachment and Its Signs **Retinal Arterial Occlusion** Low Tension Glaucoma Glaucoma Chronicles Part III Herpes Simplex Keratitis **Preseptal Cellulitis** Viral Conjunctivitis

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

1.	Berkeley Practicum Berkeley, CA	January 18-20, 2014	(20 hours)
2.	Morgan Sarver Symposium Berkeley, CA	May 2-4, 2014	(21 hours)
3.	Ethical Concerns	January 27, 2014	(1.0 hours)
4.	Optometry Medical Model Initiative	September 4, 2014	(2.0 hours)
5.	CEing is Believing	July 16-18, 2014	(24 hours)
6.	Berkeley Practicum 2015	January 17-19,2015	(20 hours)*
7.	Seeing is Believing 2015	January 28-29, 2015	(24 hours)*

*These are CE courses that are already registered and scheduled to be in attendance

20. List names, addresses, and telephone numbers of persons submitting letters of recommendations accompanying this petition.

James Young, O.D. Probation Monitor 170 Stoneridge Mall Rd, 3rd Floor Pleasanton, CA 94588 510-333-1275

Honorary Braden C. Woods Superior Court of CA County of San Francisco 57 Polk St. – Dept. 8 San Francisco, CA 94102 415-551-3837

Michelle Tom, M.D. Assistant Medical Director, Saddleback Emergency Department 2445 Health Center Dr. Laguna Hills, CA 92653 310-251-0896

Monica Sanders Director of First Tee of Contra Costa 405 Port Chicago Hwy Concord, C 94529 925-295-1910

Craig Steinberg, J.D Law office of Craig Steinberg, O.D, J.D. 573 Kanan Rd #540 Agoura Hills, C 91301

Mika Hiramatsu, M.D. Medical Director RotaCare Bay Area 308 Teagarden St. San Leandro, CA 94577

Dr.Tammy Nguyen, O.D. 32 Kearny St. San Francisco, C 94108 281-989-6950

Continuing Education Certificates

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY · DAVIS · IRVINE · LOS ANGELES · RIVERSIDE · SAN DIEGO · SAN FRANCISCO

DENNIS M. LEVI, O.D., PH.D. DEAN

SANTA BARBARA · SANTA CRUZ

SCHOOL OF OPTOMETRY BERKELEY, CALIFORNIA 94720-2020

January 21, 2014

To Whom It May Concern:

This is to certify that *Gregory Tom, OD*, attended the following lectures on January 18 - 20, 2014, at the 25th Annual Berkeley Practicum. The continuing education program was presented by the School of Optometry, University of California, Berkeley.

State CA License No. 10427T State License No.

January 18, 2014

8 TPA Hours (including 2 GLAUC-CE Hours)

(including 2 GLAUC-CE Hours)

Chirag Patel, MD	Monday Morning Quarterback: Anterior Segment Triage and Treatments
Todd Margolis, MD, PhD	Ocular Surface Diseases and Corneal Discomfort/Pain
Denise Goodwin, OD, FAAO	Optic Nerve: Itis, Opathy, and Edema
Robert Prouty, OD, FAAO	Glaucoma Treatments: From Medications to 'Reefer Madness'

January 19, 2014

Robert Prouty, OD, FAAO Leo Semes, OD, FAAO

Harry Quigley, MD

Edward Chu, OD, FAAO

January 20, 2014

Mika Moy, OD, FAAO and Christina Wilmer, OD, FAAO Lumps, Bumps and Lid Lesions: Know When to Hold and to Fold Adventures in Posterior Segment Grand Rounds New Views of Glaucoma Therapy - 2014 Strokes and Ocular Manifestations in Your Patiente.

Strokes and Ocular Manifestations in Your Patients: Prevention & Management

4 TPA Hours

8 TPA Hours

How to Treat Anterior Ocular Infections: Updates and Practical Pearls

"Name that Disease": Cases and Treatments for Anterior Ocular Infections

Patsy L. Harvey, O.D., M.P.H Continuing Education Director

Website: http://optometry.berkeley.edu

Attendance Certification University of California School of Optometry

Email: optoCE@berkeley.edu

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Designation: The Audio-Digest Foundation designates most of its Enduring Materials for a maximum of 2 AMA PRA Category 1 CreditsTM. Physicians should claim only the credit commensurate with the extent of their participation in the activity. *Note: Each ACCEL program is designated for a maximum of 4 AMA PRA Category 1 CreditsTM.

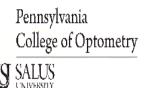
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GREGORY L TOM OD	DATE	01/27/2014
202 ASPENWOOD CT	CUSTOMER ID #	22175911
SAN RAMON CA 94582	LICENSE #	
	STATE OF LICENSURE:	

THIS PARTICIPANT HAS SUCCESSFULLY COMPLETED THE FOLLOWING CE ACTIVITIES (APPLIES TO TESTS GRADED Jan 27 2011 THRU Jan 27 2014)

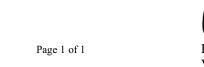
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01/27/14	4 49-04 ETHICAL Roberto Pin	CONCERNS eda, MD, Nancy M. Holekamp, MD	,	60% 100%	1.0
		rs: 1=D, 2=C, 3=A, 4=D, 5= 0235-EJ, Event ID # 1016	=A, 6=D, 7=D, 8=B, 9=A, 10=D 52		
TOTAL	CE CREDITS EAR	NED : 1.0			

CREDITS EARNED : 1.0



The Pennsylvania College of Optometry (PCO) at Salus University is designated by the Council on Optometric Practitioner Education (COPE) as the COPE-Qualified Administrator of Continuing Education for Optometrists for Audio-Digest Ophthalmology. Upon COPE approval, PCO at Salus University designates each issue of Audio-Digest Ophthalmology for 1.0 CE credit for ODs for a maximum of 3 years from the publication date. ODs should contact their state boards for the number of recorded media credits accepted: http://www.arbo.org/statecerequirements.php





LON OSMOND

VICE PRESIDENT AND EXECUTIVE EDITOR

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SANTA BARBARA . SANTA CRUZ

SCHOOL OF OPTOMETRY BERKELEY, CALIFORNIA 94720-2020

May 5, 2014

To Whom It May Concern:

This is to certify that *Gregory Tom, OD*, attended the following lectures on May 2-4, 2014, at the 29th Annual Morgan/Sarver Symposium. The continuing education program was presented by the School of Optometry, University of California, Berkeley.

State _____ License No. 10427T State _____ License No. _____

May 2, 2014

Carl Jacobsen, OD and Todd Severin, MD

5 TPA Hours (including 5 GLAUC-CE Hours)

2014 Updates on Detection, Diagnosis, Treatment and Management of Glaucoma Glaucoma Cases - Parts 1 and 2

May 3, 2014

Etty Bitton, OD

Ed Hernandez, OD

William Townsend,

Nancy Wong, OD

6 TPA, 2 MISC Hours

8 TPA Hours

	Red, Green and Yellow: Understanding Ocular Surface Staining
	Vision Care in California: New Directions, New Treatments
OD	My Retinal Detachment: Now I See, Now I Don't
	Optical Coherence Tomography (OCT): Posterior Segment Applications

May 4, 2014

Leonard Messner, OD Etty Bitton, OD William Townsend, OD Michael Samuel, MD Concussions: Neuro-Ophthalmology, Complications & Management Not a Dry Eye in the House Diabetes and the Eye: What We Must Know For Our Patients Ocular Nutrition: Treating Macular Degeneration with Nutritional Supplements



Attendance Certification University of California School of Optometry

Patsy L. Harvey, O.D., M.P.H Continuing Education Director

Website: http://optometry.berkeley.edu

Email: optoCE@berkeley.edu

Tel: 510 642-6547



CEIB 2014 CERTIFICATE OF ATTENDANCE



Dr. Gregory Tom 202 Aspenwood Ct San Ramon CA 94582 United States OE Tracker: 534000

Administrator: Daniel Rostenne, EyeCarePro 55 Douglas Crescent Toronto ON, M4W 2E6 (412) 532-6542 - danielr@eyecarepro.net Event: COPE Event #107654 Event Title: CEiB2014 Location: Online Dates: July 16th - 22nd, 2014

Date	Course	Instructor(s)	Credit Type	Hours	Test
8/26/2014	A day in the Retina Clinic (41386-PS)	Leo Semes	COPE Approved - Online	1	Passed
7/16/2014	Effective Perimetry (41339-GO)	Joe Pizzimenti	COPE Approved - Online Interactive	1	Passed
8/26/2014	Eye Nutrition 101: What You Need to Know and How to Exp (41913-GO)	Steven Newman	COPE Approved - Online	1	Passed
8/26/2014	Myopia Control: Peer Reviewed Research Update (42019-GO)	Alan Glazier	COPE Approved - Online	1	Passed
7/16/2014	OhhAhhhAhhh - The Magic of Orthokeratology Continues (38243-CL)	Cary Herzberg	COPE Approved - Online Interactive	1	Passed
7/16/2014	Pain Management in the Optometric Practice (41272-PH)	Steven Ferruci	COPE Approved - Online Interactive	1	Passed
7/16/2014	Ultra-widefield Auto-Fluorescence Advantages and Limita (34529-PS)	Jerome Sherman	COPE Approved - Online Interactive	1	Passed
8/26/2014	Become The Consultant Of Your Business (42125-PM)	Jay Binkowitz	COPE Approved - Online	1	Passed
7/16/2014	Diabesity: A Public Health Crisis (41338-SD)	Joe Pizzimenti	COPE Approved - Online Interactive	1	Passed
8/26/2014	Diagnosing the Surface: Current Technologies for Ocular (41838-AS)	Richard Maharaj	COPE Approved - Online	1	Passed
7/16/2014	High Energy Blue Light (41391-GO)	Thomas Gosling	COPE Approved - Online Interactive	1	Passed

eyecarepro

CEIB 2014 CERTIFICATE OF ATTENDANCE



Gregory Tom 202 Aspenwood Ct San Ramon CA 94582 United States OE Tracker: 534000

Administrator: Daniel Rostenne, EyeCarePro 55 Douglas Crescent Toronto ON, M4W 2E6 (412) 532-6542 - danielr@eyecarepro.net Event: COPE Event #107654 Event Title: CEiB2014 Location: Online Dates: July 16th - 22nd, 2014

Date	Course	Instructor(s)	Credit Type	Hours	Test
8/26/2014	Lipiflow Treatment for Evaporative Dry Eye (38023-SD)	Alan Glazier	COPE Approved - Online	1	Passed
8/26/2014	The Management of Eye Diseases using Epigenetics, Nutri (37395-PD)	George Rozakis	COPE Approved - Online Interactive	1	Passed
8/26/2014	The Most Current Course on Corneal Collagen Cross Linki (41987-AS)	Andrew Morgenstern	COPE Approved - Online	1	Passed
8/26/2014	Clinical Decisions in Glaucoma (41840-GL)	Mark Dunbar	COPE Approved - Online	1	Passed
8/26/2014	High Tech in Low Vision (41088-LV)	Alexis Malkin	COPE Approved - Online	1	Passed
8/26/2014	Infiltrates: From Tissue to Treatment (41387-CL)	Loretta Szczotka-Flynn	COPE Approved - Online	1	Passed
8/26/2014	When Equal is not Equal (41809-GO)	Agustin Gonzalez & Mel Friedman	COPE Approved - Online	1	Passed
8/26/2014	Paleo, Gluten-Free, Vegan: What's important for eye he (41089-GO)	Laurie Capogna	COPE Approved - Online	1	Passed
8/26/2014	A Lifetime of Contact Lens Wear: The Keys to Making it (32965-CL)	Mile Brujic	COPE Approved - Online	1	Passed
8/26/2014	Modern Cataract Surgery with the Femtosecond Laser (41911-PO)	Rob Stutman and Scott Laborwit	COPE Approved - Online	1	Passed
8/26/2014	Beyond Dry Eye: Improving the Success of Treating the O (41960-AS)	Scott Hauswirth	COPE Approved - Online	1	Passed



CEIB 2014 CERTIFICATE OF ATTENDANCE



Gregory Tom	Administrator:	Event:
202 Aspenwood Ct	Daniel Rostenne, EyeCarePro	COPE Event #107654
San Ramon CA 94582	55 Douglas Crescent	Event Title: CEiB2014
United States	Toronto ON, M4W 2E6	Location: Online
OE Tracker: 534000	(412) 532-6542 - danielr@eyecarepro.net	Dates: July 16th - 22nd, 2014

Date	Course	Instructor (s)	Credit Type	Hours	Test
8/26/2014	The Power Of The Pupil (41087-NO)	Kelly Malloy	COPE Approved - Online	1	Passed
8/26/2014	Holes: Hold or Fold (41273-PS)	Diana Shechtman	COPE Approved - Online	1	Passed



The Optometric Medical Model Initiative

Palm Event Center in the Vineyard - Pleasanton, California September 4, 2014 COPE Event # Pending

Certificate of Attendance

Attendee Name:	Gregory I	от, ОД		
Address:	3191 Crow Canyon	PL San Ramon, CA 945	83	
Liconso #.	State	License #·	State	

On completion of the event, please present this form to a course monitor to validate your attendance.

Course ID#	Credit Hours	Course Title & Instructor	Validation
41665-GL	2 hours	Decisions in Glaucoma: When to pull the trigger Robert Prouty, OD	Primary Eyecare Network

Thank you for attending. You will receive a total of 2 Credit Hours for this event. cope

COPE Administrator: Mary Eastwood, OD, Manager of Education Services

Please Note:

Keep this certificate as your validated record of attendance. COPE Administrator will not notify any licensing board, or any other agency, of your attendance unless specifically required by your licensing board. COPE Administrator does not guarantee that the course you have attended has been approved for continuing education credit by your licensing board. COPE Administrator will retain a copy of this certificate for 5 years.

Ethics Class Certification

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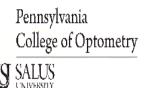
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GREGORY L TOM OD	DATE	01/27/2014
202 ASPENWOOD CT	CUSTOMER ID #	22175911
SAN RAMON CA 94582	LICENSE #	
	STATE OF LICENSURE:	

THIS PARTICIPANT HAS SUCCESSFULLY COMPLETED THE FOLLOWING CE ACTIVITIES (APPLIES TO TESTS GRADED Jan 27 2011 THRU Jan 27 2014)

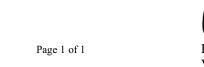
DATE	VOLUME ISSUE	TITLE		PRE/POST-TEST	CE CREDITS			
OPHTHALMOLOGY								
01/27/14 49-04 ETHICAL CONCERNS Roberto Pineda, MD, Nancy M. Holekamp, MD			60% 100%	1.0				
		rs: 1=D, 2=C, 3=A, 4=D, 5= 0235-EJ, Event ID # 1016	=A, 6=D, 7=D, 8=B, 9=A, 10=D 52					
TOTAL CE CREDITS EARNED : 1.0								

CREDITS EARNED : 1.0



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LON OSMOND

VICE PRESIDENT AND EXECUTIVE EDITOR

C Laws and Regulations Exam

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DEPARTMEN	TOF CONSUMER AFFAIRS	ł

PSI SERVICES LLC

State of California **EXAMINATION RESULT - PASS**

NAME:	GREGORY TOM	in design and
BIRTHDATE:	07/16/1967	
EXAM DATE:	12/05/2013	mather and
FILE ID:	4173	
TEST CENTER:	Walnut Creek	



EXAM:

California Optometry Laws and Regulations Examination

Congratulations! You have passed the California Optometry Laws and Regulations Examination.

YOU ARE NOT YET LICENSED TO PRACTICE AS AN OPTOMETRIST.

Your results will be sent to the California State Board of Optometry (SBO), which will advise you by letter of the other steps you may need to take to receive an Optometrist license.

A license will only be issued by SBO once you have passed the National Board of Examiner's in Optometry Examination Parts 1-3, the California Laws and Regulations Examination, and SBO has received and reviewed criminal history information from the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

If you have already received notice from SBO that you have passed the California Laws and Regulations Examination and you have submitted all requirements for licensure, you should receive your license within 30 days from the date of passing this examination. If you have not received your Optometrist license by then, you may contact SBO after the 30-day period is over. Please do not call SBO before that time, as phone calls during this process will only further delay the mailing of notices and licenses.

> CALIFORNIA STATE BOARD OF OPTOMETRY 2450 DEL PASO ROAD, SUITE 105 SACRAMENTO, CA 95834 TELEPHONE: 916-575-7170 WWW.OPTOMETRY.CA.GOV

Letters of Recommendation

James M. Young, O.D. 1700 Stoneridge Mall Rd Pleasanton, CA 94588-3271 T: 925.737.0126 F: 925.737.0127

December 1, 2014

To: Board members, Administrative Hearings officials

Re: Petition for Reduction of Penalty or Early Termination of Probation by #10427T, Tom, Gregory OD

As Dr. Tom's practice monitor for patient recordkeeping and billing integrity, I am happy to report he has made great progress toward rehabilitation this year and hereby endorse his current Petition. I am further pleased to report the relevant factors in support of his Petition covered in my prior letter of May 2, 2013 remain true to this day and so deserve your reasonable and careful review today. Following is an updated review of these supporting factors:

First, Dr. Tom continues to demonstrate good chart audit results with no discrepancies between exam chartings and billings found in reviewing 135 charts over the first 3 quarters of 2014. Most of these charts are from Dr. Tom's very busy ophthalmology and volunteer clinic patient workloads, but some are from patients Dr. Tom examined in my office, which allowed me to witness and verify both Dr. Tom's excellent patient care and that he did indeed provide the services charted. I must reiterate these clean audit results, in addition to his 149 satisfactory charts reviewed prior to August 2012, are a most persuasive factor in support of Dr. Tom's increased conscientiousness and acceptance of the serious importance of ethical business practice at all times.

Second, Dr. Tom is highly aware that regardless of probation status, he will likely face more frequent and/or more closely scrutinized quality assurance reviews from eyecare insurers and employers than would a practitioner with a clean history. Dr. Tom has been frustrated and humbled by these payers' natural reluctance to even consider a probationer for insurance panel admission or employment interviews. Again, this awareness of close monitoring and limited professional opportunities provides a strong deterrent for Dr. Tom against ever repeating past offenses or doing anything that would jeopardize his professional future anywhere.

Third, Dr. Tom continues to show that great combination of excellent clinical skills and ability to make that immediate valued human connection and rapport with patients. Dr. Tom's natural gift for effective patient education, communication, and satisfaction has endured over time regardless of practice setting. Clinical competence and care have never been an issue.

Fourth, Dr. Tom remains committed to maximum professional competence and reputation by voluntarily taking more CE than required and remaining active in professionally relevant volunteer work and community service even while maintaining his busy workload and family obligations.

Based on Dr. Tom's clean audit record and performance, I sincerely believe he has accepted and learned from the gravity of his offenses and has sufficiently rehabilitated to deserve granting this Petition.

Sincerely, *James M. Young* James M. Young, OD

Superior Court of California



County of San Francisco

BRADEN C. WOODS

December 9, 2014

RE: Dr. Gregory Tom, O.D. - Petition for Full Reinstatement

Dear Members of the CA Board of Optometry:

My name is Braden Woods and I am a Superior Court Judge based in San Francisco, CA. I have known Dr. Gregory Tom since 1985, and we have remained close friends over the past two decades. My family members and I have been his patients, and we have confidently recommended him to acquaintances seeking excellent care.

You will see in your files that I have written to you on Greg's behalf previously. I am aware of how and why Greg lost his license and how he violated his initial grant of probation. I read the findings by the administrative law judge, and I personally observed the 2012 probation violation hearing. I have followed his progress throughout his probationary period, and I believe the time has come to grant his petition for reinstatement.

Greg has continued to honor his initial probation terms from January 2010, including, but not limited to, the completion of ethics and continuing education courses in excess of what was required of him. Greg has performed volunteer-community service over and above what was required, including five and a half years of non-optometry community service with the First Tee Program; he continues to perform this work today. Furthermore, Greg started a free clinic in San Leandro, CA, at RotaCare at Davis Street. He provides all the necessary equipment and performs free eye exams for non-insured families.

Greg's commitment to his redemption, his ongoing service to the community, and his dedication to not only completing but excelling during his probationary period has impressed me. In my job, as a judge, I have dealt with repeat offenders as well as those who have taken responsibility for their actions, learned from their mistakes, and proven themselves worth of another chance. I truly believe Dr. Tom has redeemed himself and can be trusted to follow the ethical boundaries of his profession and make a positive contribution to society.

Thank you for considering his petition. I can be contacted by phone or e-mail if I can provide any additional information.

Regards, Bachon C- Ward

Hon. Braden C. Woods Superior Court of California County of San Francisco 575 Polk Street – Dept. 8 San Francisco, CA 94102 (415) 551-3837 – bwoods@sftc.org December 6, 2014

To : Board of Optometry

I am writing this letter on behalf of Gregory Tom's reinstatement for his optometry license. I am aware of his past offenses and believe the board should reconsider its decision to reinstate his license.

As his sister, I can tell you that Gregory has been committed to helping others since adolescence. As a teenager, he volunteered teaching children in underserved areas. His care and compassion for helping children has persevered to this day as he currently serves as a coach and mentor for the local youth basketball teams.

As an optometrist, he has excellent clinical skills and possesses a wonderful bedside manner. His patient's respect his clinical decisions and his easy going personality have made him very popular. When the Board of Optometry revoked his license, Gregory informed his office and his patient's that he was no longer practicing optometry. There were many tears shed that day. The community not only lost one of its best clinicians but a well respected leader as well.

Gregory is extremely remorseful about what transpired and has learned much from this experience. He has not take the matter lightly. I know that his past actions weigh heavily on his shoulders. Not a day goes by that he does not regret his previous transgressions. I think it is important for you to know that Gregory's past actions are out of character for him. He has never previously been associated with any wrong-doing or misrepresentation.

Since this matter, Gregory has attempted to continue to stay involved in his local community and worked tremendously hard to regain their trust and respect. I would ask that when you review Gregory's past actions, that you also consider his dedication to the profession and devotion to his community. Please keep in mind that, "Good people make mistakes. Even the best of us." What is even more important is what you do after the mistake is made.

It is my belief that Gregory Tom would be an invaluable addition to the practice of optometry. I strongly recommend that the Board reconsider reinstating his license.

Sincerely,

Mulile

Michelle Tom, M.D. Chair, Emergency Medical Care Committee, Orange County



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An IRS 501 (c) (3) Charitable Organization Tax ID, 01-0803067 **East Bay Golf Foundation**

Character development and life-enhancing values for youth

November 26, 2014

To whom it may concern,

It is with great honor that I write this letter of recommendation for the character of Gregory Tom. I have worked side by side with Greg, both of us in a coaching role. I have also had the privilege of working with Greg in my current role as Program Director. At all times, Greg has shown enthusiasm, passion and a broad knowledge of youth development. He is a joy to be around and serves as a role model to the young people in our program.

Greg has been a dedicated and dependable member of our coaching team for over 5 years. In those years I have had the pleasure of witnessing how engaging Greg is with his students, staying late to work with individuals and going above and beyond. I have always been impressed with his ability to motivate people, including the youth in our program, but also parents, families and program volunteers. I often encourage newer coaches to visit Greg's classes as an example of how to deliver clear learning objectives in a fun and playful environment. He is an innovative thinker, and is continually bringing new ideas to the program.

Being a coach with The First Tee is about more than just being a golf coach. The First Tee curriculum has a strong emphasis on life skills and core values that are inherent to the game of golf. Greg has been a model of those core values for his students. He is able to seamlessly integrate the life skill education component into the golf skill he is teaching. That is an art performed only be an experienced coach.

Greg is a valuable asset to our program.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

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Monica Sanders, LPGA member Program Director Monica@tftccs.org

law offices of Craig S Steinberg, O.D. A Professional Corporation

5737 Kanan Road, #540 Agoura Hills, California 91301 craig@odlawyer.com

Telephone (818) 879-7919 Facsimile (818) 879-7950

November 26, 2014

California Board of Optometry 2450 Del Paso Road, Suite 105 Sacramento, CA 95834

> Re: Gregory Tom, O.D. Petition for Reinstatement

Dear Members of the Board:

I have had the opportunity to get to know Dr. Tom over the past couple of years. I urge the Board to exercise its discretion and end Dr. Tom's probation. As you know, I have, over the years, represented a number of optometrists in State Board discipline proceedings. I believe this gives me a fair perspective from which to judge rehabilitation.

Though Dr. Tom clearly made some serious mistakes in judgment in the past, I have no doubt that he has fully accepted responsibility for those mistakes, deeply regrets his actions, is "rehabilitated," and is ready to return to unrestricted practice. I remain particularly impressed by his commitment to community service, which, as we know, is not always the easiest probation term to comply with. I reiterate what I said before. Dr. Tom does not offer his services to the First Tee and the schools because he has to or needs to, but because he wants to. That is not a characteristic you find in all of your probationers! I believe he is, quite frankly, a changed person as a result of his volunteer activities, and that this demonstrates significant rehabilitation. He understands that he has become a role model to others, and he takes that responsibility very seriously.

Notwithstanding his mistakes in the past, I believe Dr. Tom has demonstrated, and will continue to demonstrate, can be trusted to practice optometry competently as a doctor, ethically and honestly, and also that he has the character to represent the profession as an ambassador and educator. I believe if anyone has demonstrated that he has truly learned from his mistakes, will not make them again, and has earned his unrestricted license back it is Greg Tom. I urge you to give him that opportunity.

Very truly yours,

Craig S Steinberg, O.D., J.D.



RotaCare Bay Area, Inc. San Leandro Davis Street Family Resource Center

21 November 2014

Jessica Sieferman California Board of Optometry Department of Consumer Affairs 2450 Del Paso Road, Suite 105 Sacramento, CA 95834

RE: GREGORY TOM, OD License 10427

Dear Ms. Sieferman

The above-named practitioner has been an ongoing volunteer at the RotaCare Free Medical Clinic, San Leandro, since January 30, 2014. I am a pediatrician and the medical director of the clinic.

Dr. Tom has consistently volunteered beyond his required 16 hours per month at the clinic. The staff and other physicians have all enjoyed working with him and have greatly appreciated his enthusiasm and expertise. He has brought a much-needed resource to a low income community, and the patients have been very appreciative.

Please contact me if you need further information. It has been a pleasure to work with Dr. Tom over this past year.

Sincerely,

mfont

Mika Hiramatsu, MD

100 (J18 236) ELET

December 7, 2014

Dear California Optometry Board,

The purpose of this letter is to support Dr. Gregory Tom in his petition for reinstatement. As a fellow optometrist, I met Dr. Tom earlier this year while searching for a doctor to cover patients at my office. Dr. Tom was candid in explaining his situation regarding his probation, and although I had reservations about becoming involved, I decided to give him a chance. During his time working with me, Dr. Tom was reliable and devoted. What I found most remarkable about Dr. Tom was his dedication to optometry. Regardless of having his license revoked, he continued to show compassion for his community by providing service and education. Unfortunately his effort complicated his initial license reinstatement, but it still did not deter his drive.

Despite Dr. Tom's obstacles, he is still passionate about being an optometrist, and he expresses motivation to get his license reinstated enabling him to provide care at the fullest scope. In my opinion, Dr. Gregory Tom is a valuable contributor to the optometric community. His devotion and determination is something we must support to keep the profession strong, and therefore I urge the committee to reinstate Dr. Gregory Tom's optometric license.

Thank you, Tammy Nguyen, OD 320 Kearny Street San Francisco, CA 94108

Exhibit(s)

Rehabilitation is defined as the restoring of one's self to a satisfactory state or vindication of character to a previous acceptable level. Rehabilitation is the key to my applying for reinstatement. The process of rehabilitation began much earlier than the forfeiture of my license in 11-2007. While I still owned my optometry practices, I realized that changes were required. I made several changes and implemented processes to prevent future problems.

First, I installed a management software program to monitor all members of the staff including myself. It required passwords and fees could not be altered. It allowed the doctor and staff to double check prescriptions and fees charged. And the daily deposit which have to match the staff's daily ledger. This was a large upgrade but a necessary one. In addition, some of the medical requests to insurance companies required multiple signatures on the forms and had to be filled by the doctor only and staff could not just fill out and have the doctor just sign.

Selling of my offices was another step of rehabilitation. The stages of shock, sadness, anger, and acceptance were all required. I matured a great deal during this process. I appreciated and viewed things a lot differently as a result. To lose one's life work and place of business is a life changing event and will be a permanent reminder of what can be lost.

voluntarily participated at school health fairs to raise awareness of the need for proper eye care. I worked with student nurses and other professionals until my license was surrendered. I will return to do this once I am reinstated. In addition, I plan on visiting high schools for career day and elementary schools to share not only my path to optometry but how optometry has changed my life in a positive manner. If I could impact a future doctor or educate the nurses and students on eye care then again I would be contributing back to the community. This would further allow me to be back in touch with the people who supported me in my growth and return as an optometrist. I want to earn the respect of the community.

Recently, in the SF Chronicle on February 12, 2009, the city of San Francisco was having an event to help those in need, especially with complementary eye exams. The demand was well over into the hundreds and yet they only had room for 50 patients. There was a dominance of military and service personal who recently served in the Iraq war. Many did not receive care and many had lost their glasses and could not afford new ones let alone an eye exam. I would love to return to optometry and start by contributing to the community and back to optometry by donating my time and equipment to events like this. I have been helping the mobile clinic optometry service since 1992. I would easily be able to double the amount of patients that could receive eye care. I would love nothing more than to donate services to my community. It will also further help me to appreciate what I have learned from the profession of optometry and how I can impact others and improve their lives. I truly believe they need my help to reach more of those in need as much as I need to feel in touch with the community.

6

In the Matter of the Petition for Reinstatement of License of:

Gregory Lawrence Tom

Case No. CC 2013-47___

Optometrist License No. 10427

OAH No. 2013080607

Respondent.

ORDER DENYING PETITION FOR RECONSIDERATION

The Board of Optometry, having considered Respondent's November 28, 2013 letter as a Petition for Reconsideration in the above-entitled matter and determining that good cause for the granting of reconsideration has not been established, hereby denies the granting of the Petition.

IT IS SO ORDERED this <u>10th</u> day of <u>December</u>, 2013.

Alejandro Arredondo, O.D. President California State Board of Optometry

In the Matter of the Petition for Reinstatement of:

OAH No. 2013080607

GREGORY TOM,

Agency Case No. CC 2013-47

Optometrist License No. 10427,

Petitioner.

DECISION

A quorum of the Board of Optometry (Board) heard this matter on September 13, 2013, in Pomona, California. Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom (Petitioner) represented himself.

Sydney Mehringer, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 13, 2013.

FACTUAL FINDINGS

1. On May 1, 2013, Petitioner filed a Petition for Reinstatement.

2. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.

3. In March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted

bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

4. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.

5. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation with various terms and conditions.

6. Petitioner's probationary terms and conditions included, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change of place of practice within 15 days (term and condition 3).

7. In November 2010, Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation. Petitioner sought the early termination of his five-year probation. He contended it was appropriate to end his probation early because he was sufficiently rehabilitated from the earlier transgressions he committed. By Decision and Order, that Petition was denied effective August 16, 2011. Petitioner's Petition for Reconsideration filed thereafter was denied on September 20, 2011.

8. At a probation meeting in May 2011, Petitioner admitted that he had worked at three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Eyecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his probation. Petitioner explained that once he understood this was a violation of his probation, he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing, Petitioner asserted he would not do so.

9. On August 18, 2011, the Board filed a Petition to Revoke Probation. By Decision and Order, effective August 29, 2012, Petitioner's license was revoked. On August 27, 2012, Petitioner filed a Petition for Reconsideration which was denied.

10. In his current Petition, Petitioner asserted that he has changed his mentality and learned from his mistakes since his license has been revoked. He described himself as a changed person and that the year since his license has been revoked has been a "long time." He explained how his revocation has caused his family financial and emotional hardship. Petitioner feels ashamed when he has to inform family members that he is unable to handle their optometric needs.

11. Petitioner offered the testimony of Radbert Chin, O.D., his prior employer, and James Young, O.D., Petitioner's monitor when Petitioner was on probation. Both support Petitioner once again becoming licensed. Additionally, Petitioner offered a letter from Superior Court Judge Braden C. Woods (Judge Woods), County of San Francisco. Judge Woods opinion is that reinstatement of Petitioner's license would not pose a threat to the public. Judge Woods believes that Petitioner's license should be reinstated and that if Petitioner were licensed it would be a benefit to the community.

12. After considering the Petition, all of its exhibits, the testimony of Petitioner and the other witness, the Board concluded that Petitioner has established that the Petition should be granted, with terms and conditions.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to grant Petitioner's Petition for Reinstatement pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-12.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement... after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement."

California Code of Regulations, title 16, section 1516, states in pertinent part:

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4.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/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.

(c) When considering a petition for reinstatement of a certificate of registration 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).

5. Petitioner established, by clear and convincing evidence to a reasonable certainty, that his license should be reinstated. The public will be protected by issuing Petitioner a probationary license. The probationary license will include terms and conditions to protect the public.

ORDER

Petitioner Gregory L. Tom's Petition for Reinstatement of licensure is hereby granted. A license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed and Petitioner's license placed on probation for a period of 5 years with the below stated terms and conditions. Petitioner will be hereinafter referred to as "Respondent" in the terms and conditions stated below.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. OUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her probation period. Respondent shall only work as a supervised employee in his capacity as an optometrist.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

<u>8. COST RECOVERY</u>

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 0 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting

documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of (to be determined by Board) (Ex: 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of

California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. LICENSE SURRENDER

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

17. WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent; or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

- 1. the Respondent's name;
- 2. license number;
- 3. worksite monitor's name and signature;
- 4. worksite monitor's license number;
- 5. worksite location(s);
- 6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
- 7. staff interviewed, if applicable;
- 8. attendance report;
- 9. any change in behavior and/or personal habits;
- 10. assessment of the Respondent's ability to practice safely;
- 11. recommendation defendant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
- 12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his/her worksite monitor submits complete and timely reports. Failure to ensure his/her worksite monitor submits complete and timely reports shall constitute a violation of probation.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

18. ETHICS CLASS

Respondent is required to take an ethics class, as approved by the Board, during each year of his probation, for a total of five classes.

Ordered: November 12, 2013

Effective: December 11, 2013

Londo, W

Alejandro Arredondo, O.D. President California Board of Optometry Department of Consumer Affairs

08/29/2012 04:10

In the Matter of the Petition to Revoke . Probation Againts:

GREGORY LAWRENCE TOM

Optometrist License No. 10427

Case No. CC 2008-225

OAH No. 2011080850

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the aboveentitled matter, having been read and considered, and good cause for the granting of the patition not having been shown, the patition is hereby denied. Accordingly, the Decision shall remain effective on August 29, 2012.

IT IS SO ORDERED this 29th day of August, 2012.

ALETANDRO M. ARMEDINA,

In the Matter of the Petition to Revoke Probation Against:

Case No. 2003-125

OAH No. 2011080850

GREGORY LAWRENCE TOM 63 W. Angela St. Pleasanton, CA 94566

Optometry License No. 10427

Respondent

DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 29, 2012

It is so ORDERED JULY 30, 2012.

FOR THE STATE BOARD OF OPTOMETRY DEPARTMENT OF CONSUMER AFFAIRS

2012 JUL 26 PH 1:58

SPTCHETRY

In the Matter of the Petition to Revoke Probation Against:

GREGORY LAWRENCE TOM, O.D., Optometry License No. 10427, Case No. 2003-125

OAH No. 2011110025

Respondent.

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on May 10 and 31, 2012, in Oakland, California.

Deputy Attorney General Char Sachson represented Mona Maggio, Executive Officer of the State Board of Optometry.

Craig S. Steinberg, O.D., Attorney at Law, represented respondent Gregory Lawrence Tom, O.D., who was present throughout the proceeding.

The record was left open until June 4, 2012, for complainant to submit a response to respondent's Hearing Brief (Ex. K.). Complainant did not file a response. The record was closed and the matter was submitted for decision on June 4, 2012.

SUMMARY -

Following the filing of an accusation against him, and pursuant to a Stipulated Surrender and Order, respondent surrendered his optometry license effective April 3, 2008. Thereafter respondent petitioned the board to reinstate his license, which was granted effective July 15, 2009. The license was reinstated on probation to the board for five years on stated terms and conditions. In this proceeding, complainant seeks to revoke respondent's probation for his failure to comply with six conditions of his probation.

FACTUAL FINDINGS

1. On September 22, 1994, the State Board of Optometry issued Optometrist License No. 10427 to respondent Gregory L. Tom. The license was surrendered effective April 3, 2008, in connection with disciplinary proceedings in Case No. 2003-125. The license was reinstated on probation effective July 15, 2009. The license was in full force and effect during all times relevant to this proceeding. It will expire, unless renewed, on July 31, 2012.

2. On January 13, 1995, the board issued to respondent Fictitious Name Permit No. 2081 ("20/20 Optometry," San Ramon). The permit expired April 14, 2003, and has not been renewed.

3. On May 11, 1995, the board issued to respondent Branch Office License No. 4052. The license was cancelled on April 14, 2003.

4. On May 31, 1995, the board issued to respondent Fictitious Name Permit No. 2155. The permit expired April 14, 2003, and has not been renewed.

5. On June 15, 2001, the board issued to respondent Branch Office License No. 6275. The license expired on February 1, 2004, and has not been renewed.

6. On October 18, 2001, the board issued to respondent Fictitious Name Permit No. 2858 ("20/20 Optometry of Silicon Valley," San Jose). The permit expired on January 31, 2004, and has not been renewed.

Prior Discipline/License Surrender

7. In the prior disciplinary action respondent surrendered his license effective April 3, 2010. The discipline was based on a stipulated Surrender of License and Order in which respondent agreed that there was a factual basis for imposition of discipline based on the allegations in the accusation that he had committed insurance fraud, altered patient records, and made false representation of facts in his optometry practice. In particular, it was alleged, based on an audit of his billings conducted by Vision Service Plan (VSP), that respondent had fraudulently billed VSP, and received payment, in the amount of \$84,929.53 over a multiple-year period. Respondent agreed that in the event he were to petition the board to reinstate the license, all the allegations and charges set forth in the accusation would be deemed to be true, correct, and admitted by him. Respondent was ordered to pay the board its costs of investigation and enforcement of \$11,284.57 prior to reinstatement of the license. And, under the terms of the agreement, respondent agreed to wait one year after the effective date of the decision before applying for reinstatement.

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License Reinstatement on Probation

8. Respondent filed a petition to reinstate his license on February 23, 2009. Although the petition was filed one month early, the board agreed to consider the petition. Among the evidence he presented to the board was evidence of payment of \$75,460 in restitution to VSP. The board found that respondent had demonstrated sufficient rehabilitation to warrant his reinstatement on probation. The board commented:

> Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patient's medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short time since the conduct and the surrender of the license, petitioner must wait an additional period of time before the license is actually reinstated.

Although the effective date of the decision granting respondent's petition for reinstatement was July 15, 2009, the actual reinstatement of his license did not take place until January 1, 2010. The board ordered the reinstated license immediately revoked, stayed the revocation, and placed the license on probation for five years. Among the terms and conditions of probation imposed by the board were Restricted Practice, Reporting, Cooperate with Probation Surveillance, Monitoring, Maintain Records, Community Service, Payment of Costs, and Restitution. In addition, Probation Condition 12 provided that if respondent violated the conditions of his probation, the board may, after giving respondent notice and an opportunity to be heard, set aside the stay order and impose the revocation of respondent's license.

9. Respondent has had two probation monitors. His initial monitor was Margie McGavin. Jessica Sieferman assumed McGavin's caseload in February 2010. Respondent cooperated with both probation monitors, and he communicated with them regularly.

10. With the approval of Probation Monitor McGowan, respondent resumed working as an optometrist in January 2010 under the supervision of Radbirt Jonas Chin, O.D., at VisionOne Optometry in Pleasanton. Respondent worked for Dr. Chin on a parttime basis. Dr. Chin has been satisfied with respondent's performance.

11. Probation Monitor McGowan apparently approved Professor Robert B. DiMartino, O.D., M.S., as respondent's practice monitor. Dr. DiMartino did not submit any probation monitoring reports. The only document Dr. DiMartino provided of his monitoring of respondent, which he called "mentoring," is contained in a letter he wrote directly to board president Lee Goldstein, O.D., dated May 15, 2011. Respondent has a new practice monitor as of August 2011.

12. Respondent complied with all probation requirements associated with payment of cost recovery. Respondent exceeded the requirements for community service and for continuing education. Respondent has been active in a program called First Tee. He also volunteers at schools and at senior homes. At his most recent compliance meeting, no new violations were identified.

Petition to Revoke Probation

13. On August 18, 2011, complainant issued the petition to revoke probation, alleging six violations of probation.

14. At hearing, Paragraph 20 of the petition to revoke probation was amended to allege as the factual basis for the Fourth Cause to revoke probation:

Respondent failed to submit to the Board and obtain approval of a monitoring plan for his work at the colleges.

THE FIRST, SECOND AND FOURTH CAUSES TO REVOKE PROBATION

15. Probation Condition 2 restricted respondent's employment on probation to a practice under the supervision of an optometrist or ophthalmologist as follows:

Petitioner is restricted from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment.

16. Probation Condition 3 required respondent to report to the board any change in employment as follows:

Petitioner shall inform the board in writing of any change of *place of practice* and place of residence within fifteen (15) days. (Emphasis added.)

Business and Professions Code section 3005 defines "place of practice," as used in the Optometry Practice Act, to mean "any location where optometry is practiced."

17. Probation Condition 5 required respondent to have a practice monitor. It provided:

Within 30 days of the effective date of this decision, petitioner shall submit to the board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the Board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.

18. Respondent did not report to either of his probation monitors that he provided optometry services at community colleges while on probation. Respondent admits that he provided optometry services at Foothill College on January 25 and April 12, 2010; at College of San Mateo on February 8, 2010, March 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011; and at Canada College on March 1, 2010, November 22, 2010, and March 7, 2011.

Respondent was hired by the schools as an independent contractor, and he received compensation for his services in the form of a stipend. For example at Foothill College, respondent signed an independent contractor agreement, completed invoices for his services, was paid \$350 per day for his services, and provided a taxpayer identification number for "Advanced Optometric Eyecare" on a IRS form W-9. Respondent examined 10 to 18 students per day, and prescribed lens where appropriate. Respondent permitted students to obtain single correction lens for \$15 and some of the frames for \$40. (These were for frames that were either donated or purchased at reduced rates.) Respondent would charge more for lenses with more complicated corrections, and he would charge more for frames other than the ones which were donated or purchased by him at a reduced rate. Respondent handled all the money except a \$20 deposit, which the school collected for the examination. If the student purchased glasses, the \$20 was applied toward the cost of the glasses. If no glasses were purchased, the deposit was refunded. Respondent would make up the glasses, the students would come into the VisionOne offices and he would fix the problem there.

19. There is no question that respondent was practicing optometry while at the community colleges. As defined by the Optometry Practice Act, that work was included within respondent's "place of practice." (Bus. & Prof. Code, § 3005.) Probation Condition 3 required respondent to report any change of his place of practice to the board. Respondent's failure to advise the board of his employment at the community colleges constituted a violation of Probation Condition 3.

20. Respondent was not supervised by an optometrist or an ophthalmologist in the performance of these services. Respondent's unsupervised employment at the community colleges constituted a violation of Probation Condition 2.

21. Respondent's services were not monitored by his practice monitor. Respondent's unmonitored employment at the community colleges constituted a violation of Probation Condition 6. Respondent's testimony that he told Dr. DiMartino of these services was self-serving, and is not competent evidence that his employment at the community colleges was monitored. It is noted that Dr. DiMartino did not mention these services in his May 2011 letter to the board president.

22. Probation Monitor Sieferman first learned of respondent's work at the community colleges through a complaint filed with the board by one of the community colleges. She opened an investigation with the Division of Investigation in May 2011. The investigation was conducted by Investigator Andrew Omahen.

23. Probation Monitor Sieferman and respondent met on May 27, 2011. Respondent admitted working at the community colleges at that time, but stated that he believed it was community service. Respondent believed that his work at the community colleges was community service because he had performed this type of service since a student at the School of Optometry at the University of California, Berkeley, in the early 1990's under the supervision of a professor. Respondent continued working with the professor after he graduated for some time. After the professor died in 2002, the professor's wife requested that respondent continue the work, which he did, until he surrendered his license.

24. It never occurred to respondent that his work at the community colleges was employment. He believed it was community service because he could have earned more money working for an optometrist, and because the glasses were provided to the students at such discounted rates. Respondent first learned there was a problem with his service at the schools in an interview with Investigator Omahen on May 14, 2011. Respondent scheduled a meeting to discuss this with his probation monitor in May, as he wanted her to hear from him about his conduct. Respondent returned the stipends he had earned from the schools.

THIRD AND FIFTH CAUSES FOR PROBATION REVOCATION

25. Probation Condition 5 required respondent to cooperate with the board's probation program as follows:

Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent.

26. Probation Condition 7 required respondent to maintain record of lens prescriptions he dispensed or administered as follows:

Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient; 2) the date; 3) the price of the services and goods involved in the prescription; 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records

in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

27. Investigator Omahen made an unannounced visit at Dr. Chin's offices on May 14, 2011. The investigator requested to review patient records. The patient records maintained by Dr. Chin were kept electronically, and made available for inspection. Respondent did not provide the patient records of the community college students. Respondent did not provide the investigator with a list of patients required to be maintained by Probation Condition 7.

28. A second meeting took place on May 25, 2011. At this meeting respondent provided a list of patients but the list did not include the community college students. Respondent subsequently provided an updated list which included most of the community college students, but it did not include students he examined on two days at Foothill College.

29. Respondent has provided varying accounts to Investigator Omahen and Monitor Sieferman and at hearing about whether he maintained records of the community college students. He testified that he did not maintain the records of the student patients at the community colleges, but rather he gave the records to the colleges at the end of each day for their keeping in the student health record. If the student needed glasses, he kept the record and returned it with the glasses to the school. He also stated that he kept some of the records, but they were kept in a box at Dr. Chin's office and he believes they were destroyed following a fire at the office.

30. Probation Condition 7 required respondent to maintain a record of lens prescriptions he dispensed or administered in a ledger form. Respondent did not maintain such a record while on probation, and did not create one until it was requested by Investigator Omahen. Respondent's conduct constituted a violation of Probation Condition 7.

31. Probation Condition 5 required respondent to cooperate with the board's probation program by providing patient records upon request. Respondent provided the records of patients he saw in Dr. Chin's office, but not those of all the community college students, stating that he had returned them to the community college for their safe keeping. Business and Professions Code section 3007, however, requires an optometrist to retain patient records for a minimum of seven years from the date he or she completes treatment of the patient. It is therefore found that respondent violated Probation Condition 5 by his inability to provide the patient records of the community college students upon the request of . the board.

SIXTH CAUSE FOR PROBATION REVOCATION

32. Probation Condition 11 required respondent to provide proof to the board that he had made full restitution to Vision Service Plan. This condition provided:

Within 90 days of the effective date of this order, Petitioner

shall submit to the board proof that he has made full restitution to VSP Vision Care.

33. As alleged in the accusation, a VSP audit of respondent's billings determined that respondent had inappropriately billed and received payment from VSP in the amount of \$84,829.53. As of the date of the petition for reinstatement, respondent had paid VSP \$75,460 in restitution. Under the terms of Probation Condition 11, respondent was to submit proof of payment of "full restitution" within 90 days of the effective date of the order granting his petition for reinstatement. The order became effective July 15, 2009. Respondent was thus required to submit proof of payment of \$84,829.53 within three months of that date.

34. Respondent did not provide verification of payment of "full restitution" to VSP within 90 days July 15, 2009. In failing to do so, he violated Probation Condition 11.

35. Respondent eventually paid VSP a reduced amount of \$8,785.64 by check dated July 26, 2010, which was more than one year after the effective date of the board's decision. VSP accepted that amount as payment in full of the outstanding restitution amount by letter dated August 9, 2010.

36. Respondent explained his delay as a product of his request for information from VSP which would specify to him the amount he owed. Respondent believed that VSP had withheld money due him during his last six months of panel membership, and without knowing the amount that was withheld he felt he was unable to calculate what he owed VSP. Respondent made numerous requests to VSP for various documents, including "reconciliation statements" for the six-month period and copies of an audio recording and transcript of a December 2003 VSP hearing. According to Respondent, VSP did not respond to any of his inquiries.

On July 26, 2010, respondent requested Probation Monitor Sieferman to send him the amount due VSP. She contacted VSP and was advised by Thomas Jones that the amount owing was \$8,758.84. Respondent wrote a check for that amount that day.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

3. By reason of the matters set forth in Factual Findings 15 through 21, it was established that respondent violated Conditions 2, 3 and 5, of his probation to the board in connection with his employment at the community colleges. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

4. By reason of the matters set forth in Factual Findings 25 through 31, it was established that respondent violated Conditions 5 and 7 of his probation to the board by failing to maintain a ledger of all lens prescriptions associated with his community college employment, and failing to make available all patient records. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

5. By reason of the matters set forth in Factual Findings 32 through 34, it was established that respondent violated Condition 11 of his probation to the board by reason of his failure to timely provide proof of payment of full restitution to VSP. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

Disciplinary Considerations

6. The question presented is whether respondent's probation should be extended as he requests, or whether his probation should be revoked as complainant requests.

The probationary terms were developed by the board in order to ensure that respondent could practice optometry with safety to the public after having committing serious acts of unprofessional conduct as an optometrist. While all evidence in mitigation has been considered, it is concluded that respondent's lack of compliance with probation is for the most part unmitigated. While respondent believed that his work at the community colleges was community service, he failed to pose the question to his probation monitor with whom he had regular contact. The work was unmonitored and unsupervised, which is exactly what this board forbade under its order reinstating the license. Respondent's failure to maintain a ledger of his work at the community colleges made it impossible for it to be reviewed as well. Respondent was also ordered by this board to make full restitution to VSP in the amount of \$84,829.53 within three months of reinstating his license. Instead of complying with that order, respondent choose to quibble with VSP over the remaining amount of restitution he owed, saying that was his right. That was not his right, as the board's order regarding the amount of restitution he owed was a final order, and he had admitted the amount of restitution he owed VSP by virtue of petitioning for reinstatement. Lastly, respondent's inconsistent statements regarding the records of the community college patients raise questions about his candor.

The ultimate goal of licensing generally, and the highest priority of the board in exercising its disciplinary functions, is the protection of the public. (Bus. & Prof. Code, § 3010.1.) Probation is a serious matter, and the conditions of the board are meant to be strictly followed, not interpreted by probationers as it suits them. Respondent's overall performance on probation does little to install confidence that his performance on probation in the future would be different. For this reason, it is concluded that continuing respondent on probation would not be consistent with the public protection.

ORDER

The petition to revoke probation is granted, and probation is revoked. The stay of the revocation imposed in Case No. 2003-125 (Decision effective July 15, 2008) is lifted and the order of revocation of Optometrist License No. 10427 issued to respondent Gregory Lawrence Tom is imposed.

DATED: June 21, 2012

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MELISSA G. CROWELL Administrative Law Judge Office of Administrative Hearings

In the Matter of the Petition for Early Termination of Probation for:

GREGORY TOM

Optometrist License No. 10427

Case No. CC-2008-225

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective.

IT IS SO ORDERED this <u>30th</u> day of <u>September</u>, 2011.

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· · · ·	Attorney General of California
	FRANK H. PACOE
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	Attorneys for Complainant
· : 7	
8	BEFORE THE STATE BOARD OF OPTOMETRY
	DEPARTMENT OF CONSUMER AFFAIRS
. 9.	STATE OF CALIFORNIA
10	
11	In the Matter of the Petition to Revoke Case No. 2003-125
(Probation Against,
. 12	PETITION TO REVOKE PROBATION
13	GREGORY LAWRENCE TOM DBA 20/20 OPTOMETRY
	3191 Crow Canyon Place, Suite C
14	San Ramon, CA 94583
15	Optometry License No. 10427
16	Fictitious Name Permit No. 2081 Fictitious Name Permit No. 2155
· · · ·	Branch Office License No. 6275
17	Respondent.
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. 20	Complainant alleges:
. 21	<u>PARTIES</u>
22	1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her
23	official capacity as the Executive Officer of the State Board of Optometry, Department of
24	· Consumer Affairs.
·. · ·))	
. 25	2. On or about September 22, 1994, the State Board of Optometry issued Optometrist
26	License Number 10427 to Gregory L. Tom (Respondent). The Optometrist License was in effect
. 27	at all times relevant to the charges brought herein and will expire on July 31, 2012, unless
.28 .	renewed.
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PETITION TO REVOKE PROBATION

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3. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name Permit Number 2081 to Gregory L. Tom (Respondent): The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.

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4. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name Permit Number 2155 to Respondent. The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.

5. On or about June 15, 2001, the State Board of Optometry issued Branch Office License Number 6275 to Respondent. The Branch Office License expired on February 1, 2004, and has not been renewed.

6. In a disciplinary action entitled "In the Matter of the Accusation Against D.B.A. 20/20 Optometry, Gregory Lawrence Tom, Case No. 2003-125, Respondent surrendered his Optometrist License. The surrender was effective April 3, 2008. On or about February 23, 2009, Respondent petitioned to have his Optometrist License reinstated.

7. In a disciplinary action entitled "In the Matter of Petition for Reinstatement Against Gregory L. Tom," Case No. 2003-125, the State Board of Optometry issued a decision, effective July 15, 2009, in which Respondent's Optometrist License was reinstated, and immediately revoked. However, the revocation was stayed and Respondent's Optometrist License was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

8. This Petition to Revoke Probation is brought before the State Board of Optometry (Board), Department of Consumer Affairs.

FIRST CAUSE TO REVOKE PROBATION

JURISDICTION.

(Restricted Practice)

At all times after the effective date of Respondent's probation, Condition 2 stated:
 "<u>Restricted Practice</u>: Petitioner is prohibited from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist

PETITION TO REVOKE PROBATION

whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment."

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2, referenced above. The facts and circumstances regarding this violation are as follows:

11. On or about January 25, 2010 and April 12, 2010, Respondent provided optometry services at Foothill College in Los Altos Hills, California. On or about February 8, 2010, March 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011, Respondent provided optometry services at College of San Mateo in San Mateo, California. On or about March 1, 2010, November 22, 2010 and March 7, 2011, Respondent provided optometry services at Canada College in Redwood City, California. On unknown dates, Respondent also provided optometry services at City College of San Francisco in San Francisco, California. Respondent was not supervised by a Board-approved optometrist or ophthalmologist as required by Condition 2, and he received compensation for his services. Respondent saw between 10 and 18 students per day while working at the schools.

SECOND CAUSE TO REVOKE PROBATION .

(Reporting)

At all times after the effective date of Respondent's probation, Condition 3 stated:
 "<u>Reporting</u>: Petitioner shall inform the Board in writing of any change of place of practice and place of residence within fifteen (15) days:"

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are as follows:

14. Respondent failed to inform the Board in writing that he practiced at Foothill College, College of San Mateo, Canada College and San Francisco City College, as stated above in paragraph 11.

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PETITION TO REVOKE PROBATION

HIRD CAUSE TO REVOKE PROBATION

(Cooperate with Probation Surveillance)

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15. At all times after the effective date of Respondent's probation, Condition 5 stated: "<u>Cooperation with Probation Surveillance</u>: Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent."

16. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

17. Respondent failed to comply with Probation Conditions 2, 3, 6, 7 and 11. Additionally, an investigator from the Division of Investigation, acting as the Board's agent, requested access to patient records. Respondent failed to provide access to the requested records. FOURTH CAUSE TO REVOKE PROBATION

(Monitoring)

18. At all times after the effective date of Respondent's probation, Condition 6 stated: <u>Monitoring</u>: Within 30 days of the effective date of this decision, petitioner shall submit to the Board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board."

19. Respondent's probation is subject to revocation because he failed to comply withProbation Condition 6, referenced above. The facts and circumstances regarding this violation are as follows:

20. Respondent failed to submit to the Board and obtain approval for a monitoring plan.

IFTH CAUSE TO REVOKE PROBATION

(Maintain Records)

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21. At all times after the effective date of Respondent's probation, Condition 7 stated: "<u>Maintain Records</u>: Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation; showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request." 22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows:

23. Respondent failed to maintain records of all lens prescriptions that he dispensed or administered during his probation.

SIXTH CAUSE TO REVOKE PROBATION

(Restitution)

24. At all times after the effective date of Respondent's probation, Condition 11 stated:
"<u>Restitution</u>: Within 90 days of the effective date of this order, Petitioner shall
submit to the Board proof that he has made full restitution to VSP Vision Care."
25. Respondent's probation is subject to revocation because he failed to comply with
Probation Condition 11, referenced above. The facts and circumstances regarding this violation
are as follows:

26. Respondent failed to provide the Board with verification of payment of restitution to VSP Vision Care within 90 days of the effective date of the order.

PRAYER

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

PETITION TO REVOKE PROBATION

1. Revoking the probation that was granted by the State Board of Optometry in Case No. 2003-125 and imposing the disciplinary order that was stayed thereby revoking Optometrist License No. 10427 issued to Gregory L. Tom;

Revoking or suspending Optometrist License No. 10427, issued to Gregory L. Tom;
 Revoking or suspending Fictitious Name Permit No. 2081, issued to Gregory L. Tom:
 Revoking or suspending Fictitious Name Permit No. 2155, issued to Gregory L. Tom:
 Revoking or suspending Branch Office License No. 6275, issued to Gregory L. Tom.
 Taking such other and further action as deemed necessary and proper.

MONA MAGGIO Executive Officer State Board of Optometry Department of Consumer Affairs State of California Complainant

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PETITION TO REVOKE PROBATION

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OAH No. 2011060861

Agency Case No. CC 2008-225

In the Matter of the Petition for Reduction of Penalty or Early Termination of Probation of

GREGORY TOM, O.D.,

Optometrist License No. 10427,

Petitioner.

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DECISION

A quorum of the Board of Optometry (Board) heard this matter on June 21, 2011, in Los Angeles, California. The members of the Board present were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D., Vice President; Monica Johnson; Alexander Kim; Kenneth Lawenda, O.D.; and Fred Naranjo.

Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom, O.D., (Petitioner) represented himself.

Michelle McCarron, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on June 21, 2011.

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FACTUAL FINDINGS

1. On or about November 19, 2010, Petitioner filed the Petition for Reduction of Penalty or Early Termination of Probation: Petitioner seeks the early termination of his fiveyear probation. He contends it is appropriate to end his probation early because he is sufficiently rehabilitated from the earlier transgressions he committed.

2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.

3. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.

4. In approximately March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

5. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.

6. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation upon various terms and conditions;

7. Petitioner's probationary terms and conditions include, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change 'of place of practice within 15 days (term and condition 3).

Petitioner's probation continues until January 1, 2015.

9. Petitioner asserted that he has changed his mentality and learned about his mistakes during his time on probation. He described himself as a changed person who has been diligent, cooperative, and proactive with all of the Board's probationary requirements. He explained that, while he agrees he lost sight of the ethical line between what was best for his patients and what was best for the doctor; he never placed any patient at risk by his misconduct. He explained how his revocation and probation has caused him and his family financial and emotional hardship. He described his community service, including designing an educational course on the human eye for preschool and elementary school children and

working with the First Tee of Contra Costa County (a golf program for minors). Petitioner has continued his continuing education studies. He reads optometry articles on a regular basis. Petitioner was single when he engaged in misconduct. He is now married and is a father. He asserted that his family life has allowed him to mature.

10. Petitioner submitted letters of support, including letters from Russell Wöng Learning Disability Specialist, Foothill Collage, dated November 23, 2010; Braden C. Woods, dated November 26, 2010; Richard A. Tramor, Esq., dated November 29, 2010; Radbert Chin, O.D., dated November 18, 2010; and Claire Tom, Petitioner's wife, dated December 1, 2010. Each author generally described Petitioner as a good person who has learned from his mistakes, a hard worker, and someone who is deserving of practicing optometry without restrictions.

At a probation meeting in May 2011, Petitioner admitted that he has worked at 11, three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Evecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his current. probation. Petitioner explained that once he understood this was a violation of his probation. he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing. Petitioner asserted he would not do so.

12. The Board approved Petitioner's probation monitor, Robert B. DiMartino, O.D., as of August 2010. DiMartino, however, has issued only one probation monitor report, in the form of a brief letter, dated May 15, 2011. In that report, DiMartino describes his monitor responsibility as "mentor[ing]." There is no evidence that DiMartino has reviewed any of Petitioner's patient files during his probation monitoring.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reduction of Penalty or Early Termination of Probation, pursuant to Business' and Professions Code section 11522, as set forth in Factual Findings 1-12, and Legal Conclusions 2-6.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (Flanzer v. Board of Dental Examiners (1990) 220 Cal.App.3d 1392, 1398; Housman v. Board of Medical Examiners (1948) 84 Cal.App.2d 308, 315-316.)

Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement,

California Code of Regulations, title 16, section 1516, states in pertinent part:

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/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.

(c) When considering a petition for reinstatement of a certificate of registration 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).

5. Petitioner did not prove, by clear and convincing evidence to a reasonable oertainty, that the early termination of probation is warranted. Petitioner violated two conditions of probation (terms and conditions 2 and 3) by accepting stipends in exchange for 2011-08-16 09:59

his optometry services and failing to inform the Board of these actions. While he returned those stipends to each college, he did so only after being confronted by an investigator from the Division of Investigations about the services Petitioner provided to those colleges. Further, and despite his assertion to the contrary, his notation of "donation" on each of his checks gives the Board suspicion that Petitioner intended (at least initially) to use these payments as personal tax benefits. Separate from these actions, Petitioner failed to provide persuasive evidence of rehabilitation.

6. Petitioner's original misconduct was serious and warrants the current probation period to protect the public. With insufficient evidence of rehabilitation to merit an early end to his probation, the Petition should be denied,

ORDÉR

Gregory Tom's Petition for Early Termination of Probation is denied.

Dated: August 16,201

Lee A. Goldstein, O.D., President

California Board of Optometry



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

In the Matter of the Petition for Reinstatement of:

GREGORY LAWRENCE TOM, O.D.

Case No. 2003-125

OAH No. 2009040794

Optometry License No. 10427

Respondent.

DECISION

The attached Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the aboveentitled matter.

This Decision shall become effective July 15, 2009.

It is so ORDERED June 15, 2009

LEE A. GOLDSTEIN, O.D. MPA PRESIDENT BOARD OF OPTOMETRY

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

In the Matter of the Petition for Reinstatement of:

GREGORY LAWRENCE TOM, O.D., Optometry License No. 10427 Case No. 2003-125

OAH No. 2009040794

Petitioner.

DECISION

This matter was heard by a quorum of the Board of Optometry (Board) on May 15, 2009, in Fullerton, California. Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. Board members present and participating were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D.; Martha Burnett-Collins, O.D.; Monica Johnson; Kenneth Lawenda, O.D.; Fred Naranjo; Edward J. Rendon, M.P.A.; and Susy Yu, O.D.

The record was closed and the matter was submitted for decision. Thereafter, the Board met in an executive session and decided the matter on the day of the hearing.

Gregory Lawrence Tom (petitioner) represented himself.

Erin Sunseri, Deputy Attorney General, California Department of Justice, appeared pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. On or about September 22, 1994, the Board issued Optometry License Number 10427 to petitioner.

2. a. The Board, by Decision and Order effective April 3, 2008, in Case No. 2003-125, adopted a Stipulated Settlement and Disciplinary Order resolving an accusation that had been brought against petitioner.

b. In the Stipulated Surrender of License and Order, petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and alteration of medical records. The facts underlying the accusation are that from 2001 through 2006, petitioner fraudulently submitted bills to insurance provider Vision Services Plan (VSP), totaling approximately \$80,000. Petitioner also committed unprofessional conduct by altering his patients' medical records.

c. Pursuant to the Stipulated Surrender of License and Order, paragraph 22, Petitioner agreed to pay the Board its costs of investigation and enforcement in the amount of \$11,284.57, prior to the issuance of a new or reinstated license.

3. a. Pursuant to the Order, petitioner surrendered his license. Petitioner agreed not to petition the Board for reinstatement until one year from the effective date of the Decision and Order; i.e., until April 3, 2009.

b. Petitioner filed the instant petition for reinstatement on February 23, 2009. Although he filed the petition more than one month prior to the earliest agreed upon application date, the Board decided to consider it.

4. Petitioner contends his license should be reinstated because he admitted and accepted responsibility for his wrongful conduct. Petitioner acknowledged that he should not have substituted his own judgment for the insurance company rules. He grasped the gravity of his actions, and recognized how he harmed others. Petitioner believes that he has learned a painful lesson, and he is willing to comply with whatever guidelines the Board deems necessary.

5. Since petitioner surrendered his license, he has worked in the bank industry and has volunteered at a local preschool. Petitioner has completed 63 continuing education hours, and has studied various optometric literature. He also took an ethics class through the Department of Real Estate. In addition, petitioner paid \$75,460 restitution to VSP.

6. Petitioner submitted multiple references supporting his petition, including a letter from Robert DiMartino, O.D., Professor of Clinical Optometry at University of California, Berkeley. Dr. DiMartino highlighted petitioner's intellect and talent. He noted that although petitioner's actions demonstrated a lack of judgment, he has the capacity to learn from his error. Dr. DiMartino stated that petitioner's expertise was a great loss to the public, and that ongoing audits would best protect the public.

7. Petitioner's wife, Claire Syn Tom, testified in support of his reinstatement. She reiterated how difficult it has been for petitioner, and their family, to lose his license. Subsequent to the surrender, Mrs. Tom has noticed that petitioner's behavior has changed in numerous ways; for example, before his license was revoked, he focused primarily on his practice, and now he devotes himself to their family. In addition, Mrs. Tom has observed that petitioner has accepted responsibility for his actions, and he possesses more integrity than before this occurred.

LEGAL CONCLUSIONS

1. Cause exists to grant petitioner's petition for reinstatement, pursuant to Business and Professions Code section 11522, as set forth in factual findings 1-7 and legal conclusions 2-4.

2. Petitioner bears the burden to prove, by clear and convincing evidence, that he is sufficiently rehabilitated and entitled to reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.)

3. California Code of Regulations, title 16, section 1516 provides that the following rehabilitation criteria may be evaluated when considering a petition for reinstatement: (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); (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; and (5) rehabilitation evidence.

4. Petitioner has demonstrated sufficient rehabilitation to warrant his reinstatement on probationary terms. Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his experience and family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, Petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patients' medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short period of time since the conduct and the surrender of his license, petitioner must wait an additional period of time before the license is actually reinstated. Given the forgoing, the following order adequately protects the public interest while acknowledging petitioner's rehabilitation efforts.

ORDER

Gregory Tom's petition for reinstatement is granted and his certificate of registration to practice optometry shall be reinstated, effective January 1, 2010. The certificate shall be immediately revoked, provided that the revocation shall be stayed, and the certificate shall be placed on probation for five (5) years, upon the following terms and conditions:

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<u>Obey All Laws</u>: Petitioner shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

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3. <u>Reporting</u>: Petitioner shall inform the Board in writing of any change of place of practice and place of residence within fifteen (15) days.

<u>Residency of Practice</u>: The period of probation shall not run during the time petitioner is residing or practicing outside the jurisdiction of California. If, during probation, petitioner moves out of the jurisdiction of California to reside or practice elsewhere, petitioner is required to immediately notify the Board in writing of the date of departure, and the date of return, if any.

5. <u>Cooperate with Probation Surveillance</u>: Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent.

- 6. <u>Monitoring</u>: Within 30 days of the effective date of this decision, petitioner shall submit to the Board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.
- 7. <u>Maintain Records</u>: Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

<u>Education Coursework</u>: Within 90 days of the effective date of this decision, and on an annual basis thereafter, petitioner shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program must include at least eight hours of ethics course(s); and the program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Petitioner shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an 9.

examination to test petitioner's knowledge of the course. Petitioner shall provide written proof of attendance in such course or courses as are approved by the board.

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<u>Community Service</u>: Within 60 days of the effective date of this decision Petitioner shall submit to the Board, for its approval, a plan for community service, according to which he shall provide free services on a regular basis to an underserved community or charitable facility or agency for at least 10 hours a month, for the first 24 months of probation. Once a year Petitioner shall provide the Board with proof that he has complied with the plan.

10. <u>Payment of Costs</u>: Petitioner must pay to the Board the full amount of the unpaid costs assessed against him, as he agreed in the Stipulated Surrender and Order, totaling \$11,284.57. This amount is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Petitioner shall commence making payments upon notification by the Board or its designee of the amount of unpaid costs, the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although petitioner is free to pay the costs earlier than prescribed in the schedule. If petitioner has not paid the full amount of costs at the end of the five-year period of probation, his probation shall be extended until full payment has been made.

11. <u>Restitution</u>: Within 90 days of the effective date of this order, Petitioner shall submit to the Board proof that he has made full restitution to VSP Vision Care.

12. <u>Violation of Probation</u>: If petitioner violates probation in any respect, the Board, after giving him notice and an opportunity to be heard, may terminate probation and impose the stayed discipline, or such discipline as it deems appropriate. If an accusation or petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

13. <u>Completion of Probation</u>: Upon successful completion of probation, petitioner's certificate will be fully restored.

IT IS SO ORDERED.

Dated: Ware 15,2009

LEE A. GOLDSTEIN, O.D., President Board of Optometry Department of Consumer Affairs State of California

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

In the Matter of the Accusation Against:

Case No. 2003-125

D.B.A. 20/20 OPTOMETRY GREGORY LAWRENCE TOM 3191 Crow Canyon Place, Suite C San Ramon, CA 94583

Optometry License No. 10427 Fictitious Name Permit No. 2081 Fictitious Name Permit No. 2155 Branch Office License No. 6275 Statement of Licensure Cert. No. 5181

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the

State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 3, 2008

It is so ORDERED March 3, 2008

FOR THE STATE BOARD OF OPTOMETRY DEPARTMENT OF CONSUMER AFFAIRS

 \bigcirc

Case No. 2003-125

STIPULATED SURRENDER OF

LICENSE AND ORDER

EDMUND G. BROWN JR., Attorney General of the State of California WILBERT E. BENNETT Supervising Deputy Attorney General DIANN SOKOLOFF, State Bar No. 161082 Deputy Attorney General California Department of Justice 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2212 Facsimile: (510) 622-2270

Attorneys for Complainant

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

In the Matter of the Accusation Against:

GREGORY LAWRENCE TOM D.B.A. 20/20 OPTOMETRY 3191 Crow Canyon Place, Suite C San Ramon, CA 94583

Optometry License No. 10427 Fictitious Name Permit No. 2081 Fictitious Name Permit No. 2155 Branch Office License No. 6275 Statement of Licensure Cert. No. 5181

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in

this proceeding that the following matters are true:

1.

PARTIES

Taryn Smith (Complainant) is the Executive Officer of the State Board of

Optometry. She brought this action solely in her official capacity and is represented in this

2. Gregory Lawrence Tom (Respondent) is represented in this proceeding by attorney Richard Tamor, whose address is 1901 Harrison Street, 9th Floor, Oakland, CA 94612.

3. On or about September 22, 1994, the State Board of Optometry issued Optometry License No. 10427 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

4. On or about December 12, 2006, the State Board of Optometry issued a Statement of Licensure Certificate No. 5181 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The license was in full force and effect and at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

5. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2081 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

6. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2155 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

7. On or about June 15, 2001, the State Board of Optometry issued Branch Office License No. 6275 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on February 1, 2004, and has not been renewed.

JURISDICTION

8. Accusation No. 2003-125 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The

Accusation and all other statutorily required documents were properly served on Respondent on March 26, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2003-125 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

9. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2003-125. Respondent also has carefully read, discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Order.

10. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

12. Respondent, without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the allegations in Accusation No. 2003-125, and hereby surrenders his Optometry License No. 10427 for the Board's formal acceptance.

13. Respondent without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the

Certificate No. 5181 for the Board's formal acceptance.

14. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Optometry License and Statement of Licensure Certificate without further process.

CONTINGENCY

15. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

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

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

<u>ORDER</u>

IT IS HEREBY ORDERED that the surrender of Optometry License No. 10427, and Statement of Licensure Certificate No. 5181 issued to Respondent Gregory Lawrence Tom, doing business as 20/20 Optometry, is accepted by the State Board of Optometry.

18. The surrender of Respondent's Optometry License and Statement of Licensure Certificate, and the acceptance of the surrendered license, permits, and certificate by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

19. Respondent shall lose all rights and privileges as an optometrist in California as of the effective date of the Board's Decision and Order.

20. Respondent shall cause to be delivered to the Board his Optometry License No. 10427, his Statement of Licensure Certificate No. 5181, and his wall and pocket license certificates on or before the effective date of the Decision and Order.

21. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2003-125 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

22. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$11,284.57 prior to issuance of a new or reinstated license.

23. Respondent shall not apply for licensure or petition for reinstatement for one year from the effective date of the Board's Decision and Order.

ACCEPTANCE

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I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Richard Tamor. I understand the stipulation and the effect it will have on my Optometry License, Fletitious Name Pennits, and Branch Office License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry. DATED: $\frac{12}{1/\sqrt{2}}$

GREGORY LAWRENCE TOM Respondent

I have read and fully discussed with Respondent Gregory Lawrence Tom the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and context.

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RICHARD TAMOR Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully

submitted for consideration by the State Board of Optometry of the Department of Consumer

Affairs.

DATED: 12 20 07

EDMUND G BROWN JR., Attorney General of the State of California

WILBERT E. BENNETT Supervising Deputy Attorney General

DIANN SOKOLOFF

Deputy Attorney General

Attorneys for Complainant.

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1	EDMUND G. BROWN JR., Attorney General
2	of the State of California WILBERT E. BENNETT
2	Supervising Deputy Attorney General
3	DIANN SOKOLOFF, State Bar No. 161082 Deputy Attorney General
4	California Department of Justice 1515 Clay Street, 20 th Floor
- 5	P.O. Box 70550
б	Oakland, CA 94612-0550 Telephone: (510) 622-2212
7	Facsimile: (510) 622-2270
8	Attorneys for Complainant
9	BEFORE THE STATE BOARD OF OPTOMETRY
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
. 11	
12	In the Matter of the Accusation Against: Case No.
. 13	GREGORY LAWRENCE TOM
14	DBA 20/20 OPTOMETRYA C C U S A T I O N3191 Crow Canyon Place, Suite C
15	San Ramon, CA 94583
16	Optometry License No. 10427 Fictitious Name Permit No. 2155
	Fictitious Name Permit Number 2081
17	Branch Office License Number 6275
18	Respondent.
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20	Complainant alleges:
21	PARTIES
22	1. Taryn Smith (Complainant) brings this Accusation solely in her official
.23	capacity as the Executive Officer of the State Board of Optometry, Department of Consumer
24	Affairs.
25	2. On or about September 22, 1994, the State Board of Optometry issued
26	Optometry License Number 10427 to Gregory Lawrence Tom (Respondent). The Optometry
27	License was in full force and effect at all times relevant to the charges brought herein and will
28	expire on July 31, 2008, unless renewed.
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On or about January 13, 1995, the State Board of Optometry issued
 Fictitious Name Permit Number 2081 to Gregory Lawrence Tom, DBA 20/20 Optometry
 (Respondent). The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.
 On or about May 11, 1995, the State Board of Optometry issued Fictitious

5 Name Permit Number 2155 to Gregory Lawrence Tom, DBA 20/20 Optometry (Respondent).
6 The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.

5. On or about June 15, 2001, the State Board of Optometry issued Branch Office License Number 6275 to Gregory Lawrence Tom, DBA 20/20 Optometry (Respondent). The Branch Office License expired on February 1, 2004, and has not been renewed.

JURISDICTION

Chris Accusation is brought before the State Board of Optometry (Board),
 Department of Consumer Affairs, under the authority of the following laws. All section
 references are to the Business and Professions Code unless otherwise indicated.

7. Section 125.3 of the Code 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.

8. Section 3105 of the Code states: "Altering or modifying the medical
 record of any person, with fraudulent intent, or creating any false medical record, with fraudulent
 intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State
 Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of
 this section."

9. Section 3106 of the Code 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."
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Section 3110 of the Code states: 10.

"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.

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10 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. 11

"(d) Incompetence.

13 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty 14 or corruption, that is substantially related to the qualifications, functions, or duties of an 15 optometrist.

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

"(q) The failure to maintain adequate and accurate records relating to the 18 provision of services to his or her patients. 19

> 11. Section 810 of the Code states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, 21 including suspension or revocation of a license or certificate, for a health care professional to do 22 23 any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the 24 payment of a loss under a contract of insurance. 25

26 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the 27 same, or to allow it to be presented or used in support of any false or fraudulent claim. 28

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Insurance Fraud)

Respondent is subject to disciplinary action under sections 810(a)(1) and
810(a)(2), in conjunction with section 3110, in that between March 23, 2002 and June, 2003,
respondent fraudulently submitted bills to Vision Service Plan (VSP).

б 13. VSP conducted an audit of respondent's San Ramon and San Jose offices 7 on July 28-29, 2003. A sample of respondent's insurance claims were selected and reviewed. Fifty-five (55) claims from both his San Jose and his San Ramon offices were audited. The audit 8 9 disclosed that thirty seven (37) claims or 67% of the claims that were reviewed from his San Jose 10 office, and forty-four (44) claims or 80% of the claims reviewed from his San Ramon office were billed inappropriately or could not be substantiated because the patient record could not be 11 located. The audit further found that inappropriate billing patterns were also found to have 12 occurred with some of the same patients' services from previous years dating back to 2001 and 13 2002. As a result of the audit, VSP terminated respondent from membership status on October 14 15 24, 2003, and determined that the amount improperly paid to respondent by VSP was 16 \$84,829.53. In general, the audit revealed the following inappropriate billing patterns: (1) billing .17 for medically necessary contact lenses when none were provided; (2) providing prescription lenses for use without contact lenses when authorization was given only for spectacle lenses for 18 19 use over contact lenses; (3) providing plano gray-3 lenses when a prescription lens was ordered and billed to VSP; (4) inflating amounts billed to VSP for medically necessary contact lenses, 20 21 and (5) committing other infractions, including double billing for medically necessary contact lenses, double billing insurance plans, switching dates of service, changing patients' dates of 22 birth to support billing, billing an intermediate exam for a comprehensive exam, inflating the 23 24 wholesale frame costs, overcharging patients for options, and billing plano sunglasses as frame 25 only.

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14. Respondent's fraudulent billing submissions to VSP included the following:

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In some cases (patients 5, 14, 15, 32, 49, and 51) the VSP materials and 3 a. Interim Benefits Pre-Certification Request Forms (Pre-Cert) for medically necessary contact 4 5 lenses (MNCL) i.e., contact lenses that are required by the patient as defined by VSP and do not б include elective, cosmetic contact lenses, were filled out for patients using + cylinder formats for 7 the Spectacle Rx (prescription), when the patient record showed - cylinder format on the examination findings. The cylinder on the Pre-Cert Forms was not marked + or -; this often 8 9 made it appear that there was a significant change in the patient's Rx when that was not true. Pre-Cert Forms were filled out with a different spectacle Rx than that which was documented on 10 11 the patient's record.

b. In one case (patient 28), MNCL were pre-certified by VSP but the Patient
Survey (the survey sent by VSP to patients who have received services and materials under VSP
plans, and filled out by the patients and returned to VSP) stated that he/she did not wear or
receive contact lenses. (Respondent billed VSP for these services and he was paid the maximum
allowance under the coverage.)

c. In some cases (patients 15, 23, 25, 49 and 50), VSP was routinely billed for
spectacle lenses to be worn on top of the MNCL. Respondent provided prescription lenses for
use without contact lenses when authorization was given only for spectacle lenses with use over
contacts. The Rx of these lenses was routinely a +0.50 D for each eye. There was no apparent
therapeutic objective for these Rxs. The Rxs were given without any documentation on the
patient record of near-point testing to establish a need for this type of help; it appeared to be done
solely for the purpose of inflating the VSP billing.

d. In some cases (patients 1, 3, 10, 17, 20, 21, 28, 29, 41, 53, 55 and 58), children
as young as 18 months were given Rxs for glasses when the findings were unreliable - as would
be expected at that age. The resulting Rx given to the children, and billed to VSP, were not
therapeutically significant; the documented examination findings did not establish any need for
the correction.

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e. In some cases (patients 57 and 58), where spectacle lenses for use over contact lenses and spectacle lenses for young children were prescribed, and billed to VSP, the VSP Patient Surveys that were filled out by the patients or their parents showed that no lenses were supplied to the patient by Dr. Tom's office.

f. In some cases (patients 10, 17, 21, 21, 29, 33, 36, 41, 46, 48), where spectacle lenses for use over MNCL and spectacle lenses for young children were prescribed, the VSP Patient Surveys that were filled out by the patients or their parents showed that non-prescription sunglasses were supplied to the patient instead of the Rx lenses billed to VSP.

g. In some cases (patients 1, 3, 4, 10, 17, 20, 21, 48 and 62), the documentation
on the "Laboratory Instructions" part of the spectacle lens orders instructed the laboratory to ship
plano (non-prescription) sunlenses (Gray 3 planes) to Dr. Tom's office instead of the Rx
spectacle lenses specified on the billings to VSP for that patient.

h. In some cases (patients 4, 5, 7, 10, 17, 20, 21, 26, 29, 30, 33, 38, 41, 46, 48, 50,
60, 61 and 62), the billings to VSP routinely stated that dilation of the patient was performed on
almost every patient, but inspection of the individual patient records reviewed showed that
nineteen of those patients did not receive a dilated examination.

i. In one case (patient 24), Dr. Tom's office billed VSP for MNCL and spectacle
lenses for use over the contacts. The patient had Lasik surgery 18 months before the billing took
place; Dr. Tom was the co-managing optometrist on the surgery and filled out forms
documenting that the patient had 20/20 acuity without Rx 12 months before his office executed
the billing in question to VSP.

j: In some cases (patients 3 and 60), the Rx on VSP Doctor Service Report (IDC)
was not supported by the patient record.

15. Incorporating by reference the allegations in paragraphs 12 through 14,
respondent's conduct in knowingly presenting false and fraudulent claims to VSP for payment
constitutes unprofessional conduct within the meaning of Code sections 810 (a)(1) and 810(a)(2)
and provides grounds for disciplinary action under Code section 3110.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Alteration of Medical Records)

16. Respondent is subject to disciplinary action under section 3105, in conjunction with section 3110, in that between March 23, 2002, and June, 2003, respondent fraudulently submitted bills to Vision Service Plan (VSP).

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17. Incorporating by reference the allegations in paragraphs 12 through 14, respondent's conduct in fraudulently submitting bills to VSP necessarily involved altering and modifying the medical records of some of his patients with fraudulent intent and creating a false medical record with fraudulent intent. This conduct constitutes unprofessional conduct within the meaning of Code section 3105 and provides grounds for disciplinary action under Code section 3110.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-False Representation of Facts)

18. Respondent is subject to disciplinary action under section 3106, in
15 conjunction with section 3110, in that between March 23, 2002, and June, 2003, respondent
16 fraudulently submitted bills to Vision Service Plan (VSP).

17 19. Incorporating by reference the allegations in paragraphs 12 through 14,
18 respondent's conduct in fraudulently submitting bills to VSP necessarily involved knowingly
19 creating paperwork directly related to his practice of optometry that falsely represented facts
20 regarding several of his patients constitutes unprofessional conduct within the meaning of Code
21 section 3106 and provides grounds for disciplinary action under Code section 3110.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein
alleged, and that following the hearing, the State Board of Optometry issue a decision:
Revoking or suspending Optometry License Number 10427, issued to

27 2. Revoking or suspending Fictitious Name Permit Number 2155, issued to
 28 Gregory Lawrence Tom, DBA 20/20 Optometry.

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Gregory Lawrence Tom, DBA 20/20 Optometry;

3. Revoking or suspending Fictitious Name Permit Number 2081, issued to Gregory Lawrence Tom, DBA 20/20 Optometry.

4. Revoking or suspending Branch Office License Number 6275, issued to Gregory Lawrence Tom, DBA 20/20 Optometry.

5. Ordering Gregory Lawrence Tom to pay the State Board of Optometry a civil penalty of five hundred dollars (\$500) for a violation of Code section 3105.

6. Ordering Gregory Lawrence Tom to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

Taking such other and further action as deemed necessary and proper.

3/26/67 DATED:

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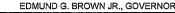
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TARYN SMITH

TARYN SMITH Executive Officer State Board of Optometry Department of Consumer Affairs State of California Complainant

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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY



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



OPTOMETRY

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 twelfth day of January 2015, the Executive Officer examined said official records of the Board and found that **GREGORY LAWRENCE TOM** graduated from the University of California in Berkeley, School of Optometry in 1994. Optometry License No. 10427 was granted to him effective September 22, 1994. Said Optometry License will expire July 31, 2016, unless renewed. The current address of record for said Optometry License is 1700 Stoneridge Mall Rd, 3rd Floor, Pleasanton, CA 94588.

Said records further reveal that on or about August 27, 1996, **GREGORY LAWRENCE TOM** became certified to utilize Therapeutic Pharmaceutical Agents pursuant to Business and Professions Code Section 3041.3.

Said records further reveal that on or about March 26, 2007, the Board filed an Accusation in Case No. CC 2003-125. The Board, by Decision and Order effective April 3, 2008, adopted a Stipulated Surrender of License and Order resolving said Accusation. Optometry License No. 10427 and Statement of Licensure No. 5181 were surrendered.

Said records further reveal that on or about February 23, 2009, **GREGORY LAWRENCE TOM** filed a Petition for Reinstatement, in Case No. CC 2003-125. The Board, by Decision and Order effective July 15, 2009, granted said Petition. Optometry License No. 10427 was reinstated effective January 1, 2010. Said license was immediately revoked, the revocation was stayed and the license was placed on probation for five (5) years, with terms and conditions.

Said records further reveal that on or about November 19, 2010, **GREGORY LAWRENCE TOM** filed a Petition for Reduction of Penalty or Early Termination of Probation, in Case No. CC 2008-225. The Board, by Decision and Order effective August 16, 2011, denied said Petition.

Said records further reveal that on or about August 19, 2011, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. CC 2008-225. The Board, by Order effective September 30, 2011, denied said Petition.

Said records further reveal that on or about August 18, 2011, the Board filed a Petition to Revoke Probation in Case No. CC 2003-125. The Board, by Decision and Order effective August 29, 2012, adopted a Proposed Decision resolving said Petition. Said Decision and Order granted the revocation of probation and lifted the stay of revocation that was effective on January 1, 2010. Optometry License No. 10427 was revoked effective August 29, 2012.

Said records further reveal that on or about August 27, 2012, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. 2003-125. The Board, by Order effective August 29, 2012, denied said Petition.

Said records further reveal that on or about May 1, 2013, **GREGORY LAWRENCE TOM** filed a Petition for Reinstatement, in Case No. CC 2013-47. The Board, by Decision and Order effective December 11, 2013 granted said Petition. Optometry License No. 10427 was reinstated effective December 11, 2013. Said Optometry License was immediately revoked, the revocation was stayed and the license was placed on probation for five (5) years, with terms and conditions.

Said records further reveal that on or about November 28, 2013, **GREGORY LAWRENCE TOM** filed a Petition for Reconsideration, in Case No. CC 2013-47. The Board, by Order effective December 10, 2013, denied said Petition.

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this twelfth day of January 2015.

Mona Maggio, Executi√e)Officer





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

Subject	Agondo Hom 16D	In the Metter of the Detition for De	duction of Denalty
From:	Jessica Sieferman Assistant Executive (Dfficer	(916) 575-7184
То:	Board Members	Date:	January 23, 2015

Subject: Agenda Item 16B - In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation

Dr. Leland Chung Hong Toy, O.D. (Petitioner) was issued Optometrist License Number 6128 by the Board on August 31, 1976. On October 11, 2011, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on Gross Negligence, Repeated Negligent Acts, Incompetence, Failure to Maintain Adequate and Accurate Records, and Failure to Refer to an Appropriate Physician. On October 12, 2012, Petitioner's license was revoked, the revocation was stayed and Petitioner's license was placed on three (3) years probation, subject to certain terms and conditions.

On November 7, 2012, Petitioner filed a Petition for Administrative Writ challenging the Board's Decision on the claims that the findings of gross negligence, unprofessional conduct, and inadequate record keeping were not supported by the evidence, and that the "penalty" imposed was too harsh. On October 15, 2013, the Superior Court, County of Sacramento denied the Petition for Administrative Writ and entered a judgment in favor of the Board.

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 the Judgment Denying Petition for Administrative Writ
- 3. Copies of the Stipulated Settlement and Disciplinary Order, and Accusation
- 4. Certification of Licensure

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

GOVERNOR EDMUND G. BROWN JR.



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



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.

1. NAME (FIRST) (MIDDLE) (LAST) CERTIFICATE OF $\angle L \angle AND$ C $To'Y$ REGISTRATION NO. 6/28 2. ADDRESS (NUMBER) (STREET) DATE OF BIRTH $\underline{76'Y}$ (STREET) (CITY) $\underline{75''S''}$ $\underline{140\#}$ $\underline{84N}$ $\underline{84N}$ $\underline{84K}$ $\underline{84K}$ 4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED NAME OF SCHOOL \underline{ML} (STREET) \underline{MINOR} \underline{MLK} (STREET) \underline{MINOR} \underline{MLK} (STREET) \underline{MINOR} \underline{MESEN} (STREET) \underline{MINOR} \underline{MLL} (CITY) (STREET) \underline{MINOR} \underline{MLK} (STREET) \underline{MINOR} \underline{ALL} (CITY) (STATE) (ZIP CODE) \underline{STATE} \underline{MESEN}	PLEASE TYP	'E OR PRINT LEGIBL				
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7. Are you or have you ever been addicted to the use of narcotics or alcohol?	
8. Are you or have you ever suffered from a contagious disease?	YES 🛛 NO
Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction?	
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)	
 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) 	
12. Have you ever had disciplinary action taken against your optometric license in this state or any other state?	

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.

11-22-14 IGud 9-2014 Date Signature

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.

The only action against my license is the one listed and no others.

The disciplinary action taken was effective Oct 2012 for failure to refer to retinal specialist for symptoms of a possible retinal detachment.

My license should be fully restored with reduction of cost and time of probation as I have complied with all conditions of probation, obeyed all optometry laws, fulfilled over 100 hours of probationary continuing education in addition to the biannual licensure fifty hours, have paid \$9354.10 recovery cost as of Nov 30,2014 out of a total of \$12354.10.

My mode of practice remained as is working at Kaiser Permanente.

I have made effort to more complete documentation of chart records, more follow up visits as required and refer out when necessary.

I have continued to read journals such as Review of Optometry, Contact Lens Forum, OSLI Retina, Eye World, RetinaCME.com, as well as attend continuing education classes from UCB School of Optometry, Ocular Symposium, West Coast Retina, attend weekly medical grand rounds at Kaiser.

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	. 8	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA
ı	9	IN AND FOR THE COU	NTY OF SACRAMENTO
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	12	LELAND CHUNG HONG TOY, O.D.,	Case No. 34-2012-80001311
		Petitioner,	HRMPOSED JUDGMENT DENYING
	; 13	V.	(RENTOTION) JUDGMENT DENYING PETITION FOR ADMINISTRATIVE WRIT
	14		YT KI I
	, 15	BOARD OF OPTOMETRY, STATE OF CALIFORNIA,	
	[.] 16	Respondent.	
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	. 19	Petitioner Leland Chung Hong Toy, O.D.	's Petition for Administrative Writ came
	* 20	regularly before this Court on August 23, 2013, 1	for hearing in Department 42, the Honorable
•••	21	Allen Sumner presiding. John L. Fleer appeared	for Petitioner Leland Chung Hong Toy, O.D.
	22	Nicholas Tsukamaki, Deputy Attorney General,	appeared for Respondent Board of Optometry.
	23	On September 17, 2013, the Court issued	a Statement of Decision denying the Petition for
	24	Administrative Writ. (See Ex. A, Statement of D	Decision.)
	25	The record of the administrative proceedi	ng having been received into evidence and
•	26		
	27	examined by the Court, no additional evidence h	aving been received by the Court, and arguments
	28	having been presented,	
		ראיעדער דעראראר דו ורוצראיד הבאיעדאור פריי	I ITION FOR ADMINISTRATIVE WRIT (CASE
		ואד סאת האמער האמאוסעסנ נעעסס דסא גן.	NO. 34-2012-80001311)

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1 ·	IT IS ORDERED that:
.2	1. The Petition for Administrative Writ filed in this action is DENIED and
3	JUDGMENT IS ENTERED in favor of Respondent and against Petitioner.
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	Dated: 0CT 1-5 2013
;	Allen Sumner
	Judge of the Superior Court
	Approved as to form:
	John L. Fleer Counsel for Petitioner Leland Chung Hong Toy, O.D.
	Judgment entered on:
	Clerk
	Ву
	Deputy Clerk
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EXHIBIT A

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3	SEP 1 7 2013
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• 10	LELAND CHUNG HONG TOY, O.D., Case No.: 34-2012-80001311
11	Petitioner,
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13	BOARD OF OPTOMETRY, STATE OF CALIFORNIA,
. 14	Respondent.
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18	On August 22, 2013, the court issued a tentative ruling denying the petition for writ of
19	mandate. Hearing was held August 23, 2013. Petitioner was represented by John Fleer.
20	Respondent was represented by Deputy Attorney General Nicholas Tsukamaki.
21	Based on the pleadings and arguments presented, the petition is denied, and the court
22	adopts the following statement of decision.
23	* * *
24	Petitioner Dr. Leland Chung Hong Toy, O.D., challenges a decision by Respondent Board
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1	BACKGROUND
2	On May 12, 2008, patient "S.M." was seen by Dr. Gary Seltzer, an ophthalmologis
}	complaining of floaters and flashes in his left eye, S.M. recently had cataract surgery. D.
ŀ	Seltzer's notes state he saw "no retinal holes." (Ex. 7, pp. 1-2.)
5	One-month-later, S.M. saw-Dr. Toy-on-June-6, 2008, for an annual diabetic_retine
5	screening. S.M. told Dr. Toy he was experiencing floaters and flashes. Dr. Toy's examination c
7	S.M.'s left eye revealed a "few pigmented cells" in the vitreous and a posterior vitreou
8	detachment (PVD). Although not documented, Dr. Toy testified his examination did not revea
,	any retinal tears, holes or detachment. (Tr., 112:16-20.) Dr. Toy advised S.M. to return
0	immediately if there were any changes in the flashes or floaters. (Ex. 7, pp 4-5.)
1	At approximately 8 p.m. on Friday, August 22, 2008, S.M. sent Dr. Toy the following
2	email:
3	I am continuing to have problem with my left eye I am constantly afraid that I will have a retinal detachment. Recently I
· F	am seeing a lot of tiny black dots and also like lightning flashes and hazy vision with some darkness in one corner of my left eye. You
5	had asked me to call if there is a veil comes on the eye, but I want to know if something can be done ahead of time so that this does
5	not happen. We are going on a trip for 2 weeks Should I see you before we leave?
7	you botore are roure.
	(Ex. 7, pp. 7-8.) Dr. Toy responded at 8:30 a.m. on Monday, August 25: "If you are seeing either
	more dots or different symptoms than before, you should go ahead and make another
	appointment. The number is 847-5065." (Id., p. 7.)
	In the meantime, S.M. was seen by Dr. Michelle Nee on August 23, and diagnosed with a
	detached retina. (Ex. 7, p. 9.) He had surgery to repair the detachment on August 25. The
	surgery was performed by a Dr. Sam Shin Yang. (Id., pp 26-27.)
	The surgery was not successful; S.M. has almost no vision in his left eye. In December
	2009, he filed a complaint with the Medical Board about Dr. Toy, Dr. Yang and Dr. Seltzer. S.M.
	complained if he had been referred to a retinal specialist earlier, the detachment could have been
	prevented. He faulted Dr. Toy and Dr. Seltzer for not referring him to a specialist earlier. He
	¹ All citations are to the administrative record lodged with the court. 2

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believes Dr. Yang was also negligent in performing the surgery. (Ex. 9.)

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Because Dr. Toy is an optometrist, the Medical Board referred the complaint regarding
him to the Board of Optometry. (Ex. 10.)

The Board issued an accusation in December 2010, charging Dr. Toy with gross negligence and incompetence for: (1) failing to perform a scleral indentation on June 6, 2008, todetermine whether S.M.'s retina was torn or detached; (2) failing to refer S.M. to a retinal specialist on June 6 after finding pigmented cells and PVD in S.M.'s left eye; and (3) failing to immediately refer S.M. to a specialist or an emergency room after receiving his August 22 email.² The Board also charged Dr. Toy with failing to main adequate medical records because he failed to document the presence or absence of retinal holes, tears, or detachment.

A three-day hearing was held in May 2012. Dr. Toy offered expert testimony from Dr.
 Lawrence Thal.³ The Board offered expert testimony from Dr. Cory Vu. Dr. Toy, Dr. Yang and
 S.M. also testified.⁴

The Administrative Law Judge's decision issued June 14, 2012, and was adopted by the Board September 12, 2012. The decision contains an extensive, thorough discussion of the testimony of the competing experts. (Findings 24-40.) Although the Board found both experts persuasive, it found Dr. Vu to be more convincing overall. (Finding 41.)

Based largely on Dr. Vu's testimony, the Board found:

Dr. Toy's failure to refer S.M. to a retinal specialist on June 6 constituted both an extreme departure from the standard of care and unprofessional conduct. (Finding 47a.)

Dr. Toy's failure to perform a scleral indentation on June 6 to determine whether S.M.'s retina was torn or detached constituted an extreme departure from the standard of care. (Finding 47b.)

3. Dr. Toy's failure to document the presence or absence of retinal holes, tears, or detachment in S.M.'s treatment record constituted inadequate record keeping. (Finding 47d.)

² The Board also accused Dr. Toy of gross negligence and incompetence for failing to perform a visual field screening during the June 6 appointment. This accusation was not upheld.

³ Dr. Thal was unavailable to testify at the hearing. His testimony was provided via videotaped examination.

⁴ S.M. and a Dr. David Fok also testified. Dr. Fok testified primarily as a character witness. Neither witness's testimony is relevant to the issues raised by this petition.

Dr. Toy's failure to instruct S.M. to proceed immediately to a retinal specialist or an emergency room following receipt of his August 22 email constituted an extreme departure from the standard of care. (Finding 47e.)

The Board imposed the minimum recommended discipline of three years probation.

----By-this petition, Dr. Toy challenges the findings and the penalty,

STANDARD OF REVIEW

Petitioner raises two issues:

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 Are the Board's findings of gross negligence, unprofessional conduct, and inadequate recordkeeping supported by the evidence; and

(2) Was the penalty imposed too harsh?

The parties largely agree on the standard of review. The right to practice one's profession is a fundamental, vested right. If a person's license to practice that profession is revoked, the court applies its independent judgment in reviewing the evidence underlying the Board's decision. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 144; *Petrucci v. Board of Medical Examiners* (1975) 45 Cal.App.3d 83, 86.)

The court weighs the evidence making its own findings and determinations.⁵ "In making that determination, the court acts as a trier of fact; it has the power and responsibility to weigh the evidence and make its own determination about the credibility of witnesses." (*Arthur v. Department of Motor Vehicles* (2010) 184 Cal. App. 4th 1199, 1205; see also *Barber v. Long*

⁵ At the administrative hearing level, the standard of proof required for the Board to revoke a professional license is clear and convincing evidence. (Sandarg v. Dental Bd. of California (2010) 184 Cal. App. 4th 1434, 1441; Medical Board v. Superior Court (2003) 111 Cal. App. 4th 163, 177-78; Ettinger v. Board of Medical Quality Assurance (1982) 135 Cal.App.3d 853, 856.) In a subsequent administrative mandamus action challenging the Board's decision, however, the court independently determines the weight of the evidence. (Ettinger, supra, 135 Cal.App.3d 853, 858.) As the Ettinger court noted, "since the superior court writ proceeding is merely a review of the administrative proceeding, the standard of proof used in the original proceeding is completely irrelevant."

In the tentative ruling, the court cited SASCO Electric v. Fair Employment & Housing Com. (2009) 176 Cal.App.4th 532 to make this same point. As counsel for Dr. Toy noted, however, SASCO Electric discusses the standard of review applied by the appellate court, not the trial court. (*Id.* at 545, fn. 7 ["our review is the same (substantial evidence) regardless of the standard of proof before the Commission."] [emphasis added],)

.1	Beach Civil Service Com. (1996) 45 Cal.App.4 th 652, 658.) ⁶
2	The court nonetheless accords a "strong presumption of correctness" to the Board's
- 3	findings. (Fukuda v. City of Angels (1999) 20 Cal.4th 805, 817; City of Pleasanton v. Board of
4	Administration (2012) 211 Cal.App.4th 522, 536.) Dr. Toy must show the Board's decision is not
5	supported by the weight of the evidence. (Sipper v. Urban (1943) 22-Cal.2nd 138, 144, Fukuda,
. 6	supra, 20 Cal.4 th at 817; Arthur, supra, 184 Cal. App. 4th at 1205.)
7	Dr. Toy argued because the right to practice one's profession is so fundamental, the
8	Board's decision should not be entitled to a presumption of correctness under the independent
9	judgment test. However, our Supreme Court explains:
10	In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative
11	findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative
12	findings are contrary to the weight of the evidence.
13	(Fukada, supra, 20 Cal.4 th at 817.)
14	ANALYSIS
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16.	1. The findings of gross negligence for failure to refer to a specialist or perform a
17	scleral indentation are supported by the weight of the evidence
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19	a. Testimony Below
. 20	The Board found Dr. Toy should have referred S.M. to a retinal specialist and performed a
21	scleral indentation. His failure to do so constituted an extreme departure from the standard of
22	care. These findings are based largely on the opinions of Dr. Vu. Having independently
23	reviewed the evidence, the court finds the Board's findings are supported by the weight of the
24	evidence,
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[.] 26	⁶ The tentative ruling's characterization of "substantial evidence" supporting the Board' decision was inartful. The court, applying its independent judgment, determines if the Board's decision is supported by the weight of the
27	evidence. (Code Civ. Proc. § 1094.5(c) ["in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines the findings are not supported by
28	the weight of the evidence."].)
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Dr. Vu testified S.M. was at high risk for a retinal detachment. He explained the retina is a layer in the back of the eye that allows us to see. (Tr., 44:15-17.) A retinal detachment occurs when the retina separates, or detaches, from the retinal pigmented epithelial layer.⁷ (Tr., 53:6-11.) A retinal detachment can lead to permanent vision loss. (Tr., 57:9-16.) Dr. Vu thus described a retinal detachment as an ocular emergency. (Tr., Tr., 57:9-11.) Dr. Thal agreed a retinal detachment is a "serious condition." (Tr., 19:15-16.)

A retinal tear, as the name implies, is a tear in the retina. (Tr., 44:24 to 45:1.) According to Dr. Vu, a retinal tear can be a very serious condition because it can lead to a retinal detachment.⁸ (Tr., 49:19 to 50:16.) Fluid can pass through the tear and build up behind the retina, eventually detaching the retina from the back of the eye.⁹ (Tr., 54:4-12.) Retinal tears can be treated with laser surgery. (Tr., 50:17 to 51:8.) An untreated retinal tear can become a retinal detachment, leading to loss of sight. (Tr., 51:20 to 52:2.) Dr. Thal agreed that a retinal tear can lead to a retinal detachment. (Tr., 20:17 to 21:3.)

Dr. Vu testified S.M.'s retinal detachment was a type known as a rhegmatogenous retinal detachment, which occurs when fluid seeps underneath a retinal tear or break, causing traction which ultimately lifts the retina completely off. (Tr., 58:13 to 59:15, 101:8-24.) Dr. Yang, who performed the surgery, confirmed S.M. had a rhegmatogenous retinal detachment. (Tr., 20:7-18.) Dr. Thal offered no testimony on this subject.

Dr. Vu testified there are many risk factors for retinal tears and detachment, including age, recent cataract surgery, nearsightedness, high blood pressure, and diabetes. (Tr., 47:13 to 48:16.) Dr. Vu explained why these are risk factors. Dr. Vu testified studies show retinal tears usually occur in people over age 40. (Tr., 47:14-16.) People who are nearsighted have eyeballs longer than normal, which can cause the layers in the back of the eye to stretch and thin, which can in turn cause a retinal tear or detachment. (Tr., 48:3-8.) Finally, he explained diabetes and high

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⁷ Dr. Thal agreed. (Tr., 18:20 to 23.)

⁸ Dr. Vu acknowledged a retinal tear is not always dangerous; sometimes a tear essentially heals itself. (Tr., 50:3-9.)
⁹ Dr. Thal agreed. (Tr., 19:5-10 [retinal detachment can be caused by "a tear or a retinal hold that allows fluid to get between the layers"].)

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blood pressure are both vascular diseases that can cause bleeding and other problems in the back of the eye, which can lead to traction on the retina, causing it to tear or detach. (Tr., 48:9-11, 54:21-25, 74:8-24.) Dr. Thal agreed nearsightedness is a risk factor for retinal detachment. (Tr., 24:3-10.) He did not mention any of the other risk factors noted by Dr. Vu.

According to Dr. Toy's examination notes, S.M. had all of the risk factors identified by Dr. Vu. He was 64 years old, diabetic, nearsighted (or myopic), hypertensive, and recently had cataract surgery in his left eye, (Tr., 108:16-25; Ex. 7, pp. 3-5.)

8 Dr. Toy's notes also show S.M. complained of flashes and floaters in his left eye, (Ex. 7, p. 4.) Dr. Vu testified flashes and floaters are symptoms of a retinal tear. (Tr., 48:24 to 49:9.) 9 Dr. Thal and Dr. Toy agreed flashes and floaters could be signs of a retinal tear or detachment.¹⁰ 10 (Thal Tr., 24:18-21, 27:13-19, 73:21-23; Toy Tr., 106:23 to 107:3.) 11

12 When Dr. Toy examined S.M.'s left eye, he noted pigmented cells in the vitreous and 13 posterior vitreous detachment (or PVD). (Ex. 7, pp. 4-5.) These findings were of particular concern to Dr. Vu. He explained posterior vitreous detachment occurs when the vitreous (a gel-14 like substance) detaches from the back of the eye. (Tr., 90:16 to 91:12.) When the posterior 16 vitreous detaches from the retina, it can tug or cause traction on the retina, which can lead to a tear. (Tr., 92:4-7, 92:25 to 93:1 ["The PVD is the force that causes the traction on the retina that 17 causes the retina to tear."], 97:7-11 ["when you have a posterior detachment or PVD, it causes 18 19 traction on the retina and it causes the retina to tear."].) Dr. Vu also testified pigmented cells in 20 the vitreous can be caused by a break or tear in the back of the eye, which allows pigments from the retinal pigmented epithelial layer (or RPE) to flow into the vitreous. (Tr., 93:13-25.) 21

22 Critically, Dr. Vu testified studies show the presence of pigmented cells in the vitreous and a recent PVD indicate a 90 percent or greater chance of a break or tear somewhere in the 23 24 retina. (Tr., 96:4 to 97:1, 98:5-7.) Dr. Vu also referenced these studies in his report. (Ex. 10, pp. 25 8-9,)

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examination. (30:24 to 31:1)

Dr. Thal testified vitreous detachments are common, and it "doesn't follow that every Dr. Thal's disagreement with Dr. Vu is that flashes and floaters are a "common" complaint (27:15-17), not necessarily indicative of a pending retinal detachment (30:15-19). He did, however, acknowledge they warrant

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patient who would have a vitreous detachment or would have pigmented cells present automatically has a torn or detached retina." (Tr., 35:23 to 36:16.) Dr. Thal, however, did not address the studies cited by Dr. Vu indicating the presence of pigmented cells and PVD are 90 percent indicative of a torn retina. Although Dr. Thal reviewed Dr. Vu's report, he offered no testimony regarding these studies, much-less-testimony-challenging-them. (Tr., 18;4-6.)-

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Dr. Toy acknowledged he thought S.M. "was at risk for a retinal tear" because "I had noticed some cells in the vitreous." (Tr., 109:24 to 110:2.) He agreed the finding of PVD with the pigmented cells was "significant," and could be a symptom or increase the risk of a retinal tear. (Tr., 110:12 to 111:5; 134:15 to 135:6.)

Given S.M.'s risk factors (age, diabetes, nearsightedness, recent cataract surgery, 10 11 hypertension), his symptoms (flashes and floaters), and Dr. Toy's findings on examination (pigmented cells in the vitreous and PVD), Dr. Vu's opinion is that, even if Dr. Toy did not see 12 any tears or breaks in the eye, a competent optometrist would have referred S.M. to a retinal specialist for a second opinion. He further opined Dr. Toy's failure to do so constituted an 14 extreme departure from the standard of care. (Tr., 125:17 to 127:10, 138:24 to 139:17, 144:25 to 146:21.)

Dr. Thal offered little testimony on this subject. In response to a question about whether 17 the standard of care required Dr. Toy to refer S.M. to an ophthalmologist, he responded, simply, 18 "No." (Tr. 39:15-19.) Later, he testified the standard of care did not require Dr. Toy to refer a 19 patient with pigmented vitreous cells and PVD to a retinal specialist for a second opinion because 20 "Not all those conditions, by far, lead to a retinal detachment, and I firmly believe that rather than making unnecessary referrals, that it's important to provide the appropriate advice to the patient. which he did, and to perform appropriate examination, which he did." (Tr., 53:21 to 54:1.)¹¹

11 At the hearing, Dr. Toy argued Dr. Thal also discussed this issue at other points in his testimony. However, Dr. Thal only testified that if S.M. had complained of dark shades in his left eye during the June 6 appointment, then Dr. Toy should have made an immediate referral to a retinal specialist because that symptom is "much more symptomatic of a retinal detachment than merely flashes and floaters." (Tr., 66;18 to 67;17.) Dr. Thal's point was he did not believe S.M.'s symptoms indicated a high likelihood of retinal detachment.

Dr. Yu did not state flashes and floaters indicate a high likelihood of retinal detachment. Rather, those symptoms, combined with S.M.'s risk factors and Dr. Toy's examination indicate a high likelihood of a retinal tear, which could, if left untreated, lead to a retinal detachment.

Dr. Vu also testified the "gold standard" for detecting a retinal tear is a scleral indentation exam. This uses an instrument to move or bend the sclera (the eye's outside protective layer) to obtain a better view of the retina. (Tr., 50:25 to 51:5; see also Thal Tr., 117;16 to 118;12.) Dr. Vu testified the American Optometric Association promulgated practice guidelines "respected by the optometric profession."¹² (Tr., 127:15 to 128:22.) According to those guidelines, an examination for retinal detachment "may include" scleral indentation "if indicated."¹³ (Tr., 129:1-16.) In Dr. Vu's opinion, scleral indentation *was* indicated in this case because of S.M.'s risk factors, flashes and floaters, and the presence of pigmented cells and PVD. (Tr., 129:18 to 130:3.)

Dr. Thal acknowledged a scleral indentation can be "helpful" in determining whether there is a retinal tear or detachment. But he testified it does not need to be performed whenever there is a *possibility* a patient might be susceptible to a retinal detachment. (Tr., 49:3-16, 53:5-6.) He saw no evidence in the records suggesting the standard of care required Dr. Toy to perform a scleral indentation. (Tr., 53:7-11.) According to Dr. Thal, given S.M.'s symptoms, the standard of care only required Dr. Toy do a thorough eye examination. Dr. Thal saw no evidence to suggest the examination Dr. Toy performed was not competent. (Tr., 38:1 to 39:2, 39:6-14.)

17 Dr. Vu testified not all optometrists are comfortable performing scleral indentations. (Tr., 122:1-20.) If Dr. Toy was not comfortable doing scleral indentations, Dr. Vu opined he needed to 18 refer S.M, to a retinal specialist. Dr. Vu opined Dr. Toy's failure to do so constituted an extreme 19 departure from the standard of care. (Tr., 122:18-20, 125:18 to 126:13.) If Dr. Toy was 20 21comfortable performing scleral indentations, then his failure to do so on June 6 constituted an 22 extreme departure from the standard of care. (Tr., 124:1-7.) Dr. Vu's opinions are based on the 23 fact S.M.'s risk factors, symptoms, and examination were all highly indicative of a retinal tear. (Tr., 123:14-24, 124:17-21, 126:25 to 127:7.) 24

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- Dr. Toy testified he is comfortable performing scleral indentations, but did not do one on
- ¹² He suggested the American Optometric Associations' guidelines set the standard of care both in California and nationally. (Tr., 128:5-12.)
- ¹³ Dr. Thal concluded the guidelines' use of the word "may" indicated no particular test is required. (Tr., 55:6-12.)

-S.M. -(Tr., 144:14 to 145:1.) He acknowledged scleral indentation allows "a better look" at the retina. (Tr., 112:4.) He testified some patients find the procedure uncomfortable, because it involves putting pressure on the eye. (Tr., 111:19-23.)

Discussion b.

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As Petitioner aptly notes, this case boils down to a battle of experts. The Board found the testimony of both experts persuasive, acknowledging Dr. Thal's "many years of impressive experience," (Findings 41, 46.) Overall, however, it found Dr. Vu's testimony more convincing. (Finding 41.)

Having independently reviewed the testimony of both experts, the court agrees. Dr. Vu's 10 testimony was thorough and persuasive. He explained the basis for his opinions in an easily 11 12 understandable way. Dr. Thal's testimony was, on the whole, much less detailed than Dr. Vu's, 13 Although Dr, Thal stated his opinions, the basis for his opinions was less clear. In several areas Dr. Thal offered no opinion testimony, leaving Dr. Vu's testimony uncontradicted. In particular, 14 Dr. Vu testified to studies showing the presence of pigmented cells in the vitreous and a recent 15 PVD indicate a substantial likelihood of a break or tear somewhere in the retina. Dr. Thal did not 16 dispute this. 17

The Board found Dr. Yu's testimony more convincing. This is supported by the weight of 18 19 the evidence. So too the Board's related findings that Dr. Toy's failure to refer to SM to a retinal 20 specialist and failure to perform scleral indentation constituted gross negligence are supported by the weight of the evidence. 21

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The finding of gross negligence in responding to SM's August 22, 2008, email is 2. supported by the weight of the evidence

The Board found Dr. Toy's failure to immediately refer S.M. to a retinal specialist or 25 emergency room upon receipt of his August 22, 2008, emails constituted an extreme departure from the standard of care. (Finding 47e.) The weight of the evidence supports this finding.

In his August 22 email, S.M. stated he recently experienced hazy vision with some

darkness in corner his left eye. (Ex. 7, pp. 7-8.) According to Dr. Vu, the symptoms S.M. described are "classic for a retinal detachment." (Tr., 148:8-9.) Because retinal detachment is an "ocular emergency," Dr. Toy needed to refer S.M. to a retinal specialist or emergency room that same day. (Tr., 148:11 to 149:14; 151:15-17 ["the standard of care would have been to get that patient in for treatment as soon as possible the same day"].)

Dr. Thal agreed a "classic sign" of retinal detachment is "a patient describing a veil or curtain coming down over a portion of their visual field." (Tr., 24:11-17.) He testified a patient with obstructed vision "*urgently* needs to be looked at." (Tr., 25:17-21 [emphasis added].) He also agreed "those are patients I would always advise to *immediately* contact our office or present to an emergency room." (Tr., 26:5-7 [emphasis added].) Finally, he agreed S.M.'s August 22 email described symptoms "serious enough" to require "*immediate* examination" or "*immediate* attention." (Tr. 43:4-6, 68:12-19 [emphasis added].)

Even Dr. Toy agreed the symptoms described in S.M.'s email were "more ominous, so he needs to be seen *immediately*." (Tr., 117:10-11 [emphasis added].)

Dr. Toy's response¹⁴ to S.M.'s August 22 email states, in total:

If you are seeing either more dots or different symptoms than before, you should go ahead and make another appointment. The number is 847-5065.

(Ex. 7, p. 7.)

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Both experts and Dr. Toy agreed S.M. needed to be seen immediately given the urgent nature of his symptoms. The Board thus appropriately found Dr. Toy's response to S.M. constituted an extreme departure from the standard of care. (Findings 43, 47.) The weight of the evidence supports this finding.

Dr. Toy argues his response was adequate because he gave S.M. "a number to call the clinic," and that number goes "directly to the eye nurse." (Tr., 117:5-14.) Dr. Toy testified a person calling that number would be able to get a same day appointment, and he "believes" the number also "gives access to emergency 24-hour response." (Tr., 117:18-20.)

¹⁴ S.M. sent his email to Dr. Toy on Friday evening, after business hours. Dr. Toy responded at 8:30 a.m. Monday morning. (Ex. 7, p. 7.) There is no suggestion Dr. Toy's response was deficient because it took three days.

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The issue, however, is not whether S.M. *could* have received an immediate appointment or referral to an emergency room if he had called the number Dr. Toy gave him. The issue is whether Dr. Toy's email response adequately *communicated to S.M.* he needed to be seen immediately. The Board's finding that it did not is supported by the weight of the evidence.

3. Dr. Vu's definition of gross negligence was adequate

Dr. Toy argues Dr. Vu's opinions on gross negligence should be disregarded because he does not understand the term.

Gross negligence is defined simply as "an extreme departure from the ordinary standard of
care." (Gore v. Board of Medical Quality Assurance (1980) 110 Cal.App.3th 184, 198.) Dr. Vu
testified he was familiar with the standard of care for optometric treatment in California. (Tr.,
42:6-20.) Dr. Toy does not suggest otherwise.

Dr. Vu's testimony runs almost 200 pages. Dr. Toy seizes upon a four-line exchange occurring at the end of his testimony. Dr. Vu testified gross negligence was an extreme departure from the standard of care. (Tr., 220:24 to 221:6.) Dr. Toy does not dispute this definition. Dr. Vu was then asked "how is that any different from the simple description of the departure of care from the standard of practice?" (Tr., 221:7-8.) This question is, to say the least, confusing. Dr. Vu responded, in total, as follows:

> Let me think about that a little bit. I'm not, you know - I'm sorry. Basically that's a good question, but I don't know. I'm sorry, Your Honor. But at this point, I cannot give you a coherent answer on that.

(Tr., 221:7-12.)

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Dr. Toy argues this response demonstrates Dr. Vu does not know what gross negligence
is. Therefore, all of Dr. Vu's opinions on gross negligence must be disregarded. The court is not
persuaded.

Ordinary negligence and gross negligence are relative terms. (Gore, supra, 110 Cal.App.3d at 198.) Dr. Toy does not suggest Dr. Vu does not understand the concept of ordinary negligence. Dr. Vu accurately stated gross negligence is simply an "extreme" departure from the

ordinary standard of care, Dr. Yu's admittedly inarticulate response to a confusing question does not vitiate the persuasiveness of his total testimony.¹⁵

The relative qualifications of the experts is not dispositive 4.

Dr. Toy argues Dr. Thal's qualifications-were-superior-to-Dr. Vu's, Therefore, his opinionshould have been given more weight. This argument fails.

Dr. Toy catalogs all the ways Dr. Vu's qualifications are less impressive than Dr. Thal's. 7 However, he does not suggest Dr. Vu was not qualified to offer expert testimony. The Board 8 found Dr. Thal and Dr. Vu both gualified to offer expert testimony. The weight of the evidence supports this undisputed finding. That Dr. Thal has published more articles, practiced longer and is the Assistant Dean of the optometry school Dr. Vu attended does not necessarily mean his opinion was entitled to more weight. (See, e.g., Mann v. Cracchiolo (1985) 38 Cal.3d 18, 38 f"Where a witness has disclosed sufficient knowledge, the question of the degree of knowledge goes more to the weight of the evidence than its admissibility.",)

Although the Board and this court were certainly permitted to consider the relative gualifications of the two experts, their respective qualifications alone are not dispositive. The opinion of any expert is only as good as the reasons on which it is based. (Howard v. Owens Corning (1999) 72 Cal.App.4th 621, 633.) While the Board acknowledged Dr. Thals' impressive experience, it found Dr. Vu's testimony more convincing overall. As discussed above, the court holds the weight of the evidence supports this finding.¹⁶

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Similarly, the court is not persuaded by the argument Dr. Thal's opinions are entitled to more weight because when asked whether he would defer to Dr. Thal on questions regarding standard of care, Dr. Vu responded, "Sure," (Tr., 188:5-7.) Again, this one word answer at the end of Dr. Vu's testimony does not vitiate the persuasiveness of all that came before.

¹⁶ At the hearing, Dr. Toy argued the weight of the evidence should not come down to a simple word count: Dr. Yu's testimony is not more convincing simply because it was longer. This is true. But Dr, Yu's opinion was more convincing, in part, because he explained in greater detail.

5. The finding Dr. Toy failed to keep adequate records is supported by the weight of the evidence

The Board found Dr. Toy's recordkeeping was inadequate because he failed to document the presence or absence of retinal holes, tears, or detachment. (Finding 47d.)

Dr. Vu-testified an optometrist-should document-in-the patient's medical record the presence or absence of retinal tears, holes, or detachment. -(Tr., 134:19-21, 135:19 to 136:2; see also, generally, 132:9 to 136:8.) He testified optometry students are taught to "document as much as you can," and "if you don't document something in the medical record, then it didn't happen." (Tr., 133:20 to 134:15.) He explained such documentation is important if the same provider sees the patient again, and if the patient is seen by another provider. Thorough documentation ensures subsequent providers have all the information they need to determine an appropriate diagnosis and treatment plan. (Tr., 133:8-13.)

Dr. Thal did not agree Dr. Toy should have documented the presence or absence of retinal holes, tears; or detachment. He testified optometrists "annotate information that's either helpful to resolve a patient's complaints or helpful in providing further treatment for a patient. Annotating every condition that is not present is not particularly helpful to either of those." (Tr., 62:24 to 63:4.) He did admit, however, that specifically noting the absence of certain things can be "helpful." (Tr., 63:7.) In his opinion, failing to document every condition a patient did not have is not an appropriate cause for discipline. (Tr., 63:5-14.)

Critically, Dr. Toy testified he normally *would* document the absence of a retinal tear. (Tr., 127:22-25.) He did not do so in S.M.'s case, however, because he was using a "diabetic retinal screening template" rather than a "flashes and floater template which includes some of the stuff that would include a negative finding."¹⁷ (Tr., 127:25 to 128:6.) He testified he would have documented negative findings on the "flashes and floater template." (Tr., 152:19-22.)

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¹⁷ Dr. Toy explained he charts electronically, and has access to different "template for recording information, depending on the kind of exam he is doing," including a template for a diabetic retinopathy exam and a template for a patient who was being seen primarily for flashes and floaters. (Tr., 151:9-21.) He explained the main reason for S.M.'s appointment was his diabetic retinal screening, suggesting this was why he used the diabetic retinopathy template. (Tr., 103:16-20, 151:23 to 152:4.)

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The Board found Dr. Vu's testimony more convincing than Dr. Thal's. (Finding 44.) This finding is supported by the weight of the evidence. This is particularly true in light of the fact Dr. Toy admitted he normally would document the absence of retinal tears, but did not do so in S.M.'s case because he was working off a template that did not prompt him to do so. As the Board observed, the template he was using "did-not abrogate [Dr. Toy's]-professional-obligationto maintain adequate and accurate treatment records." (Finding 44.) The Board's finding was also informed by the fact S.M. had numerous risk factors and symptoms of retinal tears or detachment. Given this, Dr. Toy should have documented the absence of retinal tears or detachment. (Findings 44, 47d.)

The Board's findings on this issue are supported by the weight of the evidence.

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The discipline imposed was well within the Board's discretion

The Board imposed three years of probation. Dr. Toy argues this is "unconscionable," overly punitive and too severe.

The court exercises its independent judgment when determining if the Board's decision is supported by the weight of the evidence. However, the court's review of the penalty the Board imposed is much more deferential. The Board has broad discretion in determining the appropriate punishment of its licensees. (*Cadilla v. Board of Medical Examiners* (1972) 26 Cal.App.3d 961, 966; *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal. App. 4th 29, 40.) The court is not free to substitute its discretion for that of the Board concerning the degree of punishment imposed. (*California Real Estate Loans, Inc. v. Wallacee* (1993) 18 Cal. App. 4th 1575, 1580.) The court will not disturb the penalty unless Dr. Toy demonstrates the Board's decision constitutes a manifest abuse of discretion. (*California Real Estate Loans, Inc., supra*, 18 Cal.App.4th at 1580; *Cadilla, supra*, 26 Cal.App.3d 961, 966.)

The Board's disciplinary guidelines recommend a *minimum* of three years probation for *each* violation found.¹⁸ (Conclusion 7.) The maximum discipline recommended for each violation is license revocation. (*Id.*) The Board thus imposed the *minimum* recommended

¹⁸ Dr. Toy does not dispute this.

discipline on Dr. Toy, despite the fact it found four separate instances of unprofessional conduct. Dr. Toy fails to demonstrate the Board manifestly abused its discretion in either adopting disciplinary guidelines, or imposing the minimum recommended discipline in this case.

CONCLUSION

For the foregoing reasons, the petition is denied.

Counsel for Respondent is directed to prepare a formal judgment, incorporating this statement of decision as an exhibit; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of

Dated

Court 3.1312.

Allen Sumner

Judge of the Superior Court of California, County of Sacramento

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

In the Matter of the Accusation Against:

LELAND CHUNG HONG TOY, O.D. Case No. CC 2009-113

Optometrist License No. 6128

Respondent

OAH No. 2011040766

DECISION

The attached Proposed Decision of the Administrative Law Judge dated June 14, 2012, is hereby adopted by the State Board of Optometry in the aboveentitled matter, except that, pursuant to the provisions of Government Code Section 11517(c)(2)(B), the proposed penalty is reduced as follows:

ORDER

Certificate No. 6128 issued to respondent Leland Chung Hong Toy, O.D., is revoked by reason of Legal Conclusions 2, 5 and 6, jointly and individually. However, the revocation is stayed and the certificate shall be placed on probation for three (3) years upon the following terms and conditions:

- Obey All Laws Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.
- Cooperate with Probation Surveillance Respondent shall comply with the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.
- Tolling of Probation If Respondent Moves Out-of-State The Period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.
- Payment of Costs Respondent shall pay the board its costs of investigation and enforcement in the amount of \$12,354.10. This amount

Is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Respondent shall commence making payments upon notification by the board or its designee of the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although respondent is free to pay the costs earlier than prescribed in the schedule. If respondent has not paid the full amount of costs at the end of the three-year period of probation, his probation shall be extended until full payment has been made.

Education Coursework – Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 30 hours the first year of probation, 20 hours the second year of probation, and 10 hours the third year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Respondent shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

Completion of Probation – Upon successful completion of probation, respondent's certificate will be fully restored.

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

This decision shall become effective on _____October 12, 2012

IT IS SO ORDERED September 12, 2012

Alejandro M. Arredondó, O.D., Presiden

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

In the Matter of the Accusation Against:

LELAND CHUNG HONG TOY, O.D.

Certificate of Registration No. 6128,

Respondent.

Case No. 2009-113

OAH No. 2011040766

PROPOSED DECISION

This matter was heard before Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, in Oakland, California, on May 14, 15 and 16, 2012.

Deputy Attorney General Nicholas Tsukamaki represented complainant Mona Maggio, Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

John L. Fleer, Attorney at Law, represented respondent Leland Chung Hong Toy, O.D., who was present.

The record closed and the matter was submitted for decision on May 16, 2012.

FACTUAL FINDINGS

1. Respondent Leland Chung Hong Toy holds Optometrist Certificate of Registration No. 6128, which was first issued on August 31, 1976. Respondent's Certificate of Registration was in full force and effect at all times relevant to these proceedings, and will expire on March 31, 2014, unless renewed.

2. Complainant Mona Maggio, acting in her official capacity as Executive Officer of the State Board of Optometry, Department of Consumer Affairs, issued a first amended accusation against respondent on October 11, 2011. At hearing, complainant amended the first amended accusation to delete from page four, line 24, and from page five, line five, the word "immediately."

3. Respondent is a Senior Optometrist at The Permanente Medical Group (Kaiser) in Pleasanton. Respondent has worked in Kaiser's eye care department since 1984. The first amended accusation alleges that respondent committed unprofessional conduct in connection with his treatment of one Kaiser patient, S.M.¹ Respondent's unprofessional conduct is alleged to include gross negligence, repeated acts of negligence, incompetence, the failure to maintain adequate and accurate records, and the failure to refer S.M. to a retinal specialist. Respondent does not believe that his treatment of S.M. was unprofessional in any way.

4. The pertinent facts presented at hearing are summarized below.

May 12, 2008 Examination by Gary Seltzer, M.D.

5. S.M. is a retired mechanical engineer. He is 67 years old and was diagnosed with diabetes at age 45. S.M. made an appointment to see an ophthalmologist after he noticed floaters and flashes in his eyes. On May 12, 2008, S.M. was examined by Kaiser Ophthalmologist Gary Seltzer, M.D. Dr. Seltzer diagnosed S.M. with vitreous degeneration.

June 6, 2008 Examination by Respondent

6. On June 6, 2008, respondent performed a standard diabetic retinopathy screening on S.M. This included a dilated examination of S.M.'s macula and retina. Respondent reviewed S.M.'s history and "looked for diabetes issues." Respondent also investigated S.M.'s complaint of floaters and flashes. He evaluated S.M. for retinal tears with testing that included biomicroscopy, binocular indirect ophthalmoscopy and tonometry.

7. Respondent's treatment records revealed the following: S.M. is nearsighted. On the day of the exam, S.M.'s visual acuity was "OD 20/30, and OS 20/30."² S.M.'s diagnoses included diabetes mellitus type two, and diabetic retinopathy. Under the word "macula," respondent's notes indicated "OD one dot heme, [³] OS clear and flat." Under the word "retina," respondent's notes indicated "OD dot heme in 2 quadrants; OS dot heme in one quadrant." S.M. also had a history of cataracts, and underwent cataract surgery in his left eye in 2007.

¹ Initials are used to protect S.M.'s privacy.

² OD refers to the right eye, and OS refers to the left eye.

³ Heme stands for hemorrhage.

S.M. reported to respondent that he was seeing floaters⁴ and flashes in his left eye. S.M. also maintains that during this exam he told respondent that he had experienced dark shades in his left eye. Respondent denies that S.M informed him of the presence of dark shades in his left eye. Respondent agrees that the presence of dark shades is a serious symptom, which he describes as an "ominous sign" of a retinal tear or detachment. Respondent maintains that had S.M. informed him of the presence of dark shades in his left eye, he would have "really checked him out," noted this symptom in the treatment record, and referred him to an ophthalmologist. Although S.M.'s email to respondent on August 26. 2008, and his complaint to the board in December 2009, corroborates his testimony that he told respondent about the dark shades on June 6, 2008, his email to respondent on August 22, 2008, suggests that the dark shades in his left eye were a recent development. It is possible that S.M. mentioned the presence of dark shades and that respondent did not hear him, or that S.M. is confused regarding the first time that he saw dark shades. Both respondent and S.M. were credible witnesses. For these reasons, it was not established by clear and convincing evidence to a reasonable certainty that on June 6, 2008, respondent was aware that S.M. was experiencing dark shades in his left eye.

9. Respondent's treatment records for the exam noted the presence of a "few pigmented cells" in the vitreous of S.M.'s left eye. Respondent also noted that respondent had a Posterior Vitreous Detachment (PVD) in his left eye. Although Dr. Seltzer's treatment records from S.M.'s May 2008 exam did not indicate the presence of PVD or pigmented cells in the vitreous of S.M.'s left eye, respondent asserted in a letter to the board that when he examined S.M. in June there was no change in S.M.'s condition since S.M.'s visit to Dr. Seltzer in May 2008.

10. After respondent examined S.M., he "felt that [he] got a good view of [S.M.'s] retina." He maintained that had he been dissatisfied, he would have used a different technique to obtain a better view of the retina. Respondent did not refer S.M. to a retinal specialist after finding a PVD and pigmented cells in S.M.'s left eye because, in his words, "there was nothing for a specialist to treat."

11. Respondent also did not perform a visual field screening or a scleral indentation (also known as scleral depression) on S.M. in order to determine whether S.M.'s left retina was torn or detached. Scleral indentation is a procedure used when a practitioner suspects that there might be a retinal hole or tear. Such a procedure enables the practitioner to manipulate a part of the retina in such a way to expose a hole or tear. A scleral indentation is uncomfortable to the patient. For this reason, it is not performed unless there is a question as to whether a patient's retina has a hole or is torn. Some optometrists prefer not to perform such tests, and refer the procedure to another optometrist or to an ophthalmologist.

12. Respondent is comfortable performing scleral indentations and performs them about eight times per month. He did not perform such a procedure on S.M. He did not think

⁴ Floaters may be experienced as black dots in a person's visual field.

that it was necessary because he thought that his exam provided him with an adequate view of S.M.'s retina.

13. Respondent did not document in S.M.'s treatment record the presence or absence of retinal holes, tears or detachment in S.M.'s retina. Respondent maintains that he "looked for a retinal detachment" during the June 2008 exam. In a letter to the board written after S.M. filed a complaint against him, respondent maintained that during this exam, he determined that "there was no sign of retinal detachment or tears and that the floaters and flashes [S.M.] was experiencing were a result of the aging process."

14. Respondent asserts that had he seen a retinal tear or detachment he definitely would have noted it in S.M.'s treatment record. Respondent explained that although he "normally" documents the absence of retinal tears or detachments in a patient's treatment record, he did not do so because he was working off of a "diabetic retinopathy template" and not a "flashes and floaters template, which includes a finding for the presence or absence of a retinal tear." Respondent stated that he used the "diabetic retinopathy template" because that was the "main reason" for S.M.'s appointment. He explained that there is "no place" on this template to make an entry regarding retinal tears or detachments. Had he been working off of a "floater template" he would have indicated negative findings regarding retinal tears or detachments.

15. At the close of the exam, respondent instructed S.M. to return in one year for a routine diabetic retinopathy screening. He also instructed S.M. to contact respondent or another doctor immediately if there was any change in floaters or flashes. S.M. left the exam feeling very concerned about his left eye. He was not aware that retinal specialists existed. S.M. thought respondent was an ophthalmologist, and when respondent did not find a retinal tear, S.M. believed him. Had S.M. been aware that retinal specialists existed, he would have insisted on seeing one.

16. In connection with respondent's examination of S.M. it is alleged that respondent's failure to perform scleral indentation to determine whether S.M.'s retina was torn or detached constituted gross negligence and incompetence. It is also alleged that respondent was negligent in failing to perform a visual screening test. It is further alleged that respondent's failure to refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye constituted gross negligence, incompetence, and unprofessional conduct because the exam revealed a substantial likelihood that S.M.'s left retina was torn or detached. In connection with respondent's treatment records, it is alleged that respondent failed to maintain adequate and accurate records relating to the provision of services to his patients, based upon respondent's failure to document the presence or absence of retinal holes, tears, or detachment.

August 22, 2008 Email to Respondent

17. On Friday, August 22, 2008, at 8:10 p.m., S.M. sent respondent an email. He wrote:

I am continuing to have problem with my left eye, for which I have seen you and another ophthalmologist. I am constantly afraid that I will have a retinal detachment. *Recently I am* seeing a lot of tiny black dots and also like lightening flashes and hazy vision with some darkness in one corner of my left eye. (emphasis added.) You had asked me to call if there is a veil comes [sic] on the eye, but I want to know if something can be done ahead of time so that this does not happen. Also we are going on a trip for 2 weeks on Sep-10. Should I see you before I leave?

18. Respondent did not see this email until Monday morning, August 25, when he returned to work. Respondent emailed S.M. the following response at 8:33 a.m.:

If you are seeing either more dots or different symptoms than before, you should go ahead and make another appointment. The number is 847 5065.

According to respondent, the telephone number listed in this email is the telephone number for the ophthalmology "eye nurse" who provides Kaiser patients with access to same day eye appointments or emergency care. Respondent's email did not immediately refer S.M. to proceed to a retinal specialist or an emergency room.

19. In connection with respondent's email dated August 25, 2008, it is alleged that his failure to immediately refer S.M. to proceed to a retinal specialist or to an emergency room constituted gross negligence and incompetence.

S.M.'s Retinal Surgery, Subsequent Treatment and Complaint to the Board

20. On August 23, 2008, the morning after S.M. sent the email to respondent, S.M. sought immediate care at Kaiser after the vision in his left eye continued to deteriorate. He was seen on the same day by Ophthalmologist Michelle Tze-Yuen Nee, M.D. Dr. Nee diagnosed S.M. with a retinal detachment⁵ involving the macula in his left eye.

21. On August 25, 2008, Retinal Surgeon Sam Shin Yang, M.D., examined respondent and found a rhegmatogenous retinal detachment, macula off. On the same day, Dr. Yang performed a scleral buckling surgery on respondent's left eye.

22. Following his surgery in August 2008, S.M.'s retina detached two more times. Dr. Yang performed two more surgeries to address S.M.'s retinal detachments. S.M. has also

⁵ Dr. Nee's treatment records indicate that she could not determine the duration of the retinal detachment, and she not did see a retinal tear.

received less invasive treatments with the hope of restoring the vision in his left eye, but to no avail. Currently, S.M. has almost no vision in his left eye.⁶ He experiences redness and constant pain and irritation in his left eye. He believes that had respondent done further testing or referred him to a retinal specialist in June 2008, that additional testing or treatment would have revealed a retinal tear. Had a tear been diagnosed early, S.M. believes that he could have avoided the detachment and loss of vision in his left eye.

23. In December 2009, S.M. filed a complaint against respondent with the board. S.M. did not initiate legal proceedings against Kaiser or respondent for the optometric care he received.

Expert Testimony at Hearing Regarding Gross Negligence, Incompetence, Failure to Maintain Adequate Records and Failure to Refer

24. Cory N. Vu, O.D., testified as an expert on behalf of complainant. Dr. Vu received his Doctor of Optometry from University of California, Berkeley, in 1994. Since 2011, Dr. Vu has worked at the University of California, Davis, where he oversees the quality of medical services provided to students. Prior to his work at UC Davis, Dr. Vu was a consultant for the Vision Care Program at Department of Health Care Services, State of California, an Assistant Clinical Professor at the UC Berkeley Optometry School, and in private practice. Dr. Vu's opinions were based upon his review of S.M.'s medical records, S.M.'s complaint to the board, and respondent's letter to the board.

25. According to Dr. Vu, retinal detachment is "one of only a few medical eye emergencies requiring prompt medical and/or surgical treatment to preserve vision." He explained that, normally, retinal detachments begin with a retinal tear. There are procedures available to seal retinal tears, such as cryotherapy and laser treatment. Early diagnosis and treatment of retinal tears can prevent retinal detachments. Dr. Vu stressed that timing is critical. Because retinal detachment involving the macula can cause permanent vision loss, Dr. Vu explained that the "most important reason for early detection is to prevent involvement of the posterior pole and detachment of the macula, which is what occurred in this case."

26. Dr. Vu noted the following risk factors associated with retinal detachment: severe myopia (nearsightedness), recent cataract surgery, high blood pressure, age (over 40 years old), and diabetic retinopathy, floaters, flashes, PVD, and the presence of pigmented cells. According to Dr. Vu, PVD is the "force that causes a tear and will eventually become a detachment." S.M. had all of these risk factors, thereby increasing the likelihood that he would develop a retinal tear or detachment.

27. Dr. Vu opined that the presence of pigmented cells floating in the anterior vitreous cavity immediately behind the lens combined with PVD, are very strong symptoms

 6 S.M.'s vision in his left eye is 20/200.

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of a torn retina. Dr. Vu observed that S.M.'s left eye condition had worsened since his visit to-Dr. Seltzer approximately one month earlier, evidenced by the presence of PVD and pigmented cells. This should have mounted respondent's concern that S.M.'s left retina was torn or broken. In Dr. Vu's view, S.M.'s risk factors and symptoms suggested a 90 percent chance that S.M. had experienced a retinal break in the back of his left eye. Dr. Vu noted that the type of detachment that occurred in S.M.'s left eye, a rhegmatogenous retinal detachment, is a type of detachment that develops from a retinal tear. For these reasons, Dr. Vu believes that S.M. had a retinal tear when he was examined by respondent on June 6.

28. Dr. Vu determined that based upon respondent's risk factors and symptoms he presented to respondent on June 6, 2008, and the potential loss of vision that could result from a retinal detachment, the standard of care required respondent to take further action to rule out the presence of a retinal hole, tear or detachment.

29. In Dr. Vu's opinion, respondent should have used a scleral indentation procedure, which can detect asymptomatic peripheral retinal detachments. This procedure, according to Dr. Vu, could lead to early detection and treatment of a tear. Dr. Vu opined that respondent's failure to perform a scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached was an extreme departure from the standard of care and was also incompetent.⁷

According to Dr. Vu, the standard of care also required respondent to perform a visual field screening on S.M. According to Dr. Vu, a visual field screening can assist in the detection of a retinal detachment. In Dr. Vu's opinion letter, however, he states that because measurable field loss occurs only in advanced cases, visual field screening is usually ineffective at evaluating patients. Dr. Vu testified that respondent's failure to perform a visual field screening constituted a departure from the standard of care and was also incompetent. Complainant argues that respondent's failure to perform a visual field screening test constitutes negligence.

30. While an optometrist has the background and training to diagnose a retinal tear, break or detachment, Dr. Vu explained that by virtue of their medical training, retinal specialists are better suited to determine the presence of a retinal tear, break or detachment. For this reason, Dr. Vu believes that the standard of care requires a referral to a retinal specialist for a second opinion where an eye examination indicates a substantial likelihood of a condition that requires the treatment of a physician.

⁷ Dr. Vu defined incompetence as the "failure to exercise that degree of learning, skill, care and experience ordinar[ily] possessed and exercised by a competent optometrist." This is not the correct definition of incompetence. As used in professional misconduct matters, incompetence means "a lack of knowledge or ability in the discharging of professional obligations." (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109.)

31. In Dr. Vu's opinion, the standard of care required respondent to refer S.M. to a retinal specialist for a second opinion after finding pigmented cells and PVD in S.M.'s left eye, because the presence of pigmented cells, PVD, along with S.M.'s other risk factors, presented a substantial likelihood that S.M.'s left retina was torn or detached. Respondent's failure to refer S.M. to a retinal specialist, in Dr. Vu's opinion, constituted an extreme departure from the standard of care and was also incompetent.

32. Dr. Vu also opined that optometrists have a professional obligation to document in a patient's treatment record the presence or absence of retinal holes, tears or detachment. Such documentation is necessary to maintain continuity of care with other medical professionals and to establish a record in the event that liability issues arise. In Dr. Vu's opinion, respondent's failure to note the presence or absence of retinal holes, tears or detachment in S.M.'s retina rendered respondent's treatment records inadequate and inaccurate.

33. Dr. Vu also opined that the symptoms respondent outlined in his August 22, 2008, email to respondent (hazy vision and darkness in the corner of his eye), presented "classic symptoms of retinal detachment." Because these symptoms presented an ocular emergency, the standard of care required respondent to instruct S.M. to immediately seek treatment from a retinal specialist or proceed to an emergency room. Dr. Vu emphasized that timing is critical in order to avoid involvement of the macula and irreversible damage to the eye. In Dr. Vu's view, respondent's email on August 25, 2008, suggesting that S.M. make another appointment if he experienced more symptoms, was an extreme departure from the standard of care and was also incompetent, because it failed to alert S.M. that his condition presented an emergency that required immediate medical attention.

34. Lawrence S. Thal, O.D., M.B.A., F.A.A.O., testified as an expert on behalf of respondent. Dr. Thal received his Doctor of Optometry from University of California, Berkeley, in 1975. Dr. Thal's training and experience are extensive. He was in private practice for many years until his retirement in 2008. Dr. Thal also taught for many years at the Optometry School in Berkeley. Currently, he is a Clinical Professor and Assistant Dean at the School of Optometry at Berkeley. Dr. Thal also served two terms on the State Board of Optometry and served as its president on several occasions. Dr. Thal's opinions were based upon his review of a binder of information provided to him by respondent's counsel. The binder included S.M.'s medical records and Dr. Vu's opinion letter.

35. In Dr. Thal's view, respondent's examination of S.M. on June 6, 2008, was comprehensive and did not fall below the standard of care. He stated that he "saw absolutely no evidence" that S.M.'s retina was either torn or detached when S.M. was examined by respondent on June 6, 2008. Dr. Thal believes that S.M.'s retinal detachment took place when S.M. first experienced darkness in a corner of his left eye, which was within few days of his August 23, 2008 visit to Dr. Nee. He reasoned that since S.M.'s retina was not torn or detached when he was examined by respondent, "there's nothing that I can see that [respondent] could have or should have done that would have prevented a retinal detachment." For this reason, Dr. Thal opined that the standard of care did not require

respondent to perform a scleral indentation or visual field screening, or refer S.M. to a retinal specialist on the basis of the symptoms presented.

36. Dr. Thal explained that although scleral indentation is a tool that allows a practitioner to see a retinal hole or tear, the standard of care does not require an optometrist to perform a scleral indentation procedure on a regular basis. Dr. Thal explained that such a procedure would be helpful if the practitioner sees something that looks like a hole or tear, but cannot confirm without manipulating the retina in a way to expose the tear or hole.

37. Although Dr. Thal agrees that PVD and pigmented cells could lead to a retinal detachment, not every patient who presents with PVD and pigmented cells will have a torn or detached retina. Similarly, in Dr. Thal's view, floaters and flashes can be, but are not necessarily, indicative of an impending retinal detachment. Rather than make an unnecessary referrals, Dr. Thal thinks that it is important to provide the patient with an appropriate exam and appropriate advice; and he believes that respondent did so.

38. Dr. Thal agreed with Dr.Vu that any obstruction of vision is a matter that requires urgent medical attention. S.M.'s complaint to respondent on August 22 that he was experiencing black dots, hazy vision, lightening flashes and darkness in a corner of his left eye is, in Dr. Thal's words, "highly suspicious of a retinal detachment." Dr. Thal opined that respondent's August 25, 2008 email response to S.M.'s August 22 email was within the standard of care because the phone number respondent relayed to S.M. was equipped to respond to patient inquiries 24 hours per day. For this reason, he disagreed with Dr. Vu that respondent's failure to instruct S.M. to seek immediate medical treatment from a retinal specialist, or at an emergency room, fell below the standard of care.

39. Dr. Thal concludes that respondent is not "responsible" for an "eventual retinal attachment which occurred independently of any actions by the Respondent." Dr. Thal points out that neither Dr. Yang nor Dr. Nee reported seeing a retinal tear when they examined S.M. These reports, in Dr. Thal's opinion, support his view that a referral to a retinal specialist on June 6, 2008, would not have forestalled S.M.'s retinal detachment.⁸

40. With respect to respondent's treatment records, Dr. Thal opined that respondent's treatment records were adequate and accurate. He explained that optometrists are not obligated to document every condition that is not present. Notes are sufficient if they provide information that is helpful to resolving a patient's complaint or helpful in providing further treatment to a patient. In Dr. Thal's opinion documenting "every condition that is not present is not particularly helpful to either of those." For these reasons, he concluded that respondent's failure to document the presence or absence of retinal holes, tears or

⁸ In Dr. Vu's view it would have been hard to see a tear once the macula was off. For this reason, the fact that neither Dr. Nee nor Dr. Yang observed a retinal tear does not mean that S.M.'s retina was not torn.

detachment in S.M.'s retina did not render respondent's treatment records inadequate or inaccurate.

Findings regarding Expert Opinions

41. While both experts offered persuasive testimony, the opinions of Dr. Vu were, on the whole, more convincing than those expressed by Dr. Thal for several reasons. Given S.M.'s symptoms and risk factors, outlined above, Dr. Vu's view that the standard of care required respondent to perform a scleral indentation procedure and refer S.M. to a retinal specialist on June 6, 2008, to determine if S.M.'s retina was torn, broken or detached, is most persuasive. Accordingly, where a patient presents with signs and symptoms pointing to substantial likelihood that a patient's retina may be torn, broken or detached, the standard of care requires an optometrist to perform additional testing and obtaining a second opinion from a retinal specialist. In taking these additional measures to rule out the presence of a retinal tear or detachment, an optometrist protects a patient from his condition progressing to the point where the retina detaches and vision is lost.

42. The notion, suggested by Dr. Thal, that no referral was required on June 6, 2008 because S.M.'s retina was not, in fact, torn is not persuasive. The issue is not whether S.M.'s retina was actually torn on June 6, 2008; it is that given the multiple symptoms and risk factors presented to respondent, whether there was a substantial likelihood that S.M.'s retina was torn. The symptoms and risk factors pointing to a substantial likelihood of a tear is what triggered respondent's duty to perform additional tests and refer S.M. to a retinal specialist. Dr. Thal's analysis of respondent's conduct does not persuasively account for these factors.

43. Dr. Vu's opinion that the standard of care required respondent to make an immediate referral to a retinal specialist after receiving S.M.'s email on August 25, 2008, is also more persuasive than Dr. Thal's. The symptoms S.M. outlined in his August 22, 2008 email presented an ocular emergency. Respondent's email to S.M. on August 25, suggesting that he call for an appointment if his symptoms continued, failed to communicate to S.M. that an ocular emergency situation existed and that he should seek which immediate medical attention.

44. Dr. Vu's opinion that respondent's failure to document the presence or absence of retinal holes or tears or detachment in S.M.'s treatment record constituted inadequate record-keeping was also convincing. Respondent's explanation that he lacked space to make such a notation on the "retinal screening template" provided by his office did not abrogate his professional obligation to maintain adequate and accurate treatment records. In light of S.M.'s symptoms and risk factors for retinal tears or detachment, respondent should have made a note in S.M.'s treatment record regarding the presence or absence of retinal holes, tears, or detachment. His failure to do so constituted unprofessional conduct.

45. In Dr. Thal's opinion letter dated October 10, 2011, he states:

I am quite surprised and puzzled by the rational [sic] for the Complainant's pursuit of this case against an optometrist who has been in practice for over 35 years, with apparently no blemish on his record.

Dr. Thal postulates the following reason for the filing of the charges against respondent:

First, I believe that the Complainant does not understand the nature of this case and has relied on inappropriate information and conclusions presented by a consultant. Had the State Boardincluded a licensed optometrist on its Enforcement Committee I would doubt that this case would have been filed. Historically the State Board had such a representative on its Enforcement Committee. I personally served in that capacity....

46. It is noted that although Dr. Thal possesses many years of impressive experience in the field of optometry, the comments in his opinion letter suggest that has a negative view of the board's enforcement committee that predates this case. Dr. Thal's dim view of the board's ability to properly exercise its disciplinary functions lessens the persuasiveness of his opinions.

47. In light of the foregoing analysis of the expert opinions, the following findings are made with respect to respondent's treatment of S.M:

a. Respondent's failure to refer S.M. to a retinal specialist on June 6, 2008, constituted an extreme departure from the standard of care and unprofessional conduct;

b. Respondent's failure to perform a scleral indentation on S.M. on June 6, 2008, to determine whether S.M.'s retina was torn or detached constituted an extreme departure from the standard of care.

c. The evidence, however, failed to establish that respondent's failure to perform a visual field screening constituted a departure from the standard of care.

d. Respondent's failure to document the presence or absence of retinal holes or tears or detachment in S.M.'s treatment record constituted inadequate and inaccurate record-keeping. Respondent's explanation that he did not make such notations in S.M.'s treatment record because he was working off a "diabetic retinopathy template" rather than a "flashes and floater template" does not justify his failure to document the information described above.

e. Respondent's failure to immediately refer S.M. to proceed to a retinal specialist or to an emergency room following receipt of S.M.'s August 22, 2008 email constituted an extreme departure from the standard of care.

f. Respondent's treatment of S.M. was not incompetent. Dr. Vu spent the majority of his testimony discussing issues related to the standard of care and unprofessional conduct such as a failure to refer to an appropriate physician and the maintenance of patient records. Dr. Vu spent little time discussing the reasoning for his conclusion that respondent was incompetent. Dr. Vu's conclusions in this regard are found unpersuasive because he did not apply the correct definition of incompetence; and, the evidence did not demonstrate that respondent lacked the knowledge or ability to discharge his professional obligations.

Other Evidence Presented by Respondent

49. Respondent graduated from UC Berkeley, in 1969 with a bachelor's degree in cellular biology. He obtained his doctor of optometry degree from UC Berkeley in 1976. Respondent enjoys his work and regularly attends continuing education courses. He does not belong to any professional associations, such as the American Optometry Association (AOA), because they are too expensive. He stated that he does "not pay attention" to AOA clinical practice guidelines.

50. Respondent sees about 90 patients per week. He has treated many patients who presented with retinal detachments. In such cases, he refers the patient to a retinal specialist. He has also had many patients who presented with retinal tears. If the tear is small, he refers the patient to an ophthalmologist for repair of the tear. If the retinal tear is big, he refers the patient to a retinal specialist.

51. This is the first complaint respondent has ever had against his optometric certificate. He has never been named in a civil law suit, and he has never been disciplined by Kaiser.

52. David Fok, O.D., is Chief of the Optometry Department at Kaiser. Dr. Fok has worked with respondent since 1994, first as a colleague, and later, as respondent's supervisor. Dr. Fok has a high opinion of respondent's work. He believes respondent is an "excellent clinician" and maintains "very thorough" patient charts. Dr. Fok also stated that respondent has a "very good reputation" with other eye care professionals at Kaiser.

53. Dr. Yang believes that respondent is a knowledgeable optometrist and he makes appropriate referrals.

Costs

54. Complainant has incurred costs of \$18,354.10, in its investigation and enforcement of this matter. The costs include the following items: \$3,089.10 in expert witness costs and \$15,265 in Attorney General costs. In the absence of evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The standard of proof applied to this matter is clear and convincing evidence to a reasonable certainty.

First Cause for Discipline: Gross Negligence and Repeated Negligent Acts

2. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes gross negligence. (Bus. & Prof. Code, § 3110, subd. (b).) Gross negligence is defined as an extreme departure from the standard of care. (*James-v. Board of Dental Examiners, supra*, 172 Cal.App.3d 1096, 1113.) Based upon the mattersset forth in Factual Findings 10, 11, 18, 28 through 31, 33, 41, 42, 43, and 47, cause for discipline exists pursuant to Business and Professions Code section 3110, subdivision (b), based upon respondent's commission of gross negligence.

3. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "[r]epeated negligent acts. To be repeated, there must be two or more negligent acts or omissions." (Bus. & Prof. Code, § 3110, subd. (c).) Based upon the matters set forth in Factual Findings 11, 29 and 47, cause for discipline does not exist based upon the commission of repeated negligent acts.

Second Cause for Discipline: Incompetence

4. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes incompetence. (Bus. & Prof. Code, § 3110, subd. (d).) In the context of professional licensing, incompetence means "a lack of knowledge or ability in the discharging of professional obligations." (*James v. Board of Dental Examiners*, *supra*, 172 Cal.App.3d 1096, 1109.) Based upon the matters set forth in Factual Findings 47, cause for discipline does not exist under this section.

Third Cause for Discipline: Failure to Maintain Adequate and Accurate Records

5. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "[t]he failure to maintain adequate and accurate records relating to the provision of services" to his patient. (Bus. & Prof. Code, § 3110, subd. (q).) Based upon the matters set forth in Factual Findings 13, 32, 44 and 47, cause for discipline exists under this section.

Fourth Cause for Discipline: Failure to Refer to Appropriate Physician

6. The board may take disciplinary action against a licensee who engages in unprofessional conduct, which includes "the failure to refer a patient to an appropriate physician where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician." (Bus. & Prof. Code, § 3110,

subd. (y)(1).) Based upon the matters set forth in Factual Findings 10, 30, 31, 41, 42 and 47, cause for discipline exists under this section.

Disciplinary Considerations

7. The board has adopted recommended guidelines to assess the level of discipline that should be imposed for violations of the statutes that govern optometric practice. (Cal. Code Regs., tit. 16, § 1575.) For each of the violations established in this case, the minimum recommended disciplinary action is stayed revocation with three years of probation, and the maximum discipline is revocation.

Respondent's failure to perform a scleral indentation procedure and to refer S.M. to a retinal specialist for a second opinion in June 2008 are serious transgressions in view of S.M.'s multiple risk factors for a retinal tear and the clinical symptoms pointing to the substantial likelihood of a retinal tear. Additionally, respondent's email response to S.M.'s August 22 email failed to communicate to S.M. the extremely serious and urgent nature of S.M.'s symptoms. The fact that S.M. sought treatment on his own before receiving respondent's email on August 25 did not abrogate respondent's duty to respond appropriately to S.M.'s email. It is troubling that respondent continues to maintain that his conduct adhered to professional standards when it clearly did not. Respondent's statement at hearing that he does not pay attention to AOA clinical practice guidelines is also of concern. On the other hand, respondent's conduct must be evaluated in the context of his unblemished career: he has been in practice for 36 years without a single prior complaint, and he is well-thought of by his colleagues.

In consideration of these factors, it is determined that the public will be adequately protected by the following order, which places respondent's certificate on probation for a period of three years. During this time, respondent will be required to complete coursework associated with his violations stemming from his performance of retinal examinations and record-keeping.

Costs

8. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable costs of enforcement of the case. By reason of the matters set forth in Legal Conclusions 2, 5, and 6, cause exists to require respondent to pay cost recovery.

In Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing board must consider in assessing costs. The board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in

the merits of his or her position and whether the respondent has raised a colorable challenge; and the board must consider a respondent's ability to pay.

Here, respondent used the hearing process to obtain a dismissal of some of the charges and to present evidence which provided the basis for determining that a stayed revocation with probation, rather than outright revocation, should be imposed. In consideration of these factors it is determined that cause exists to reduce the board's cost recovery to the sum of \$12,354.10. This represents a reduction of \$6,000, from the amount requested by complainant.

-ORDER

Certificate No. 6128 issued to respondent Leland Chung Hong Toy, O.D., is revoked by reason of Legal Conclusions 2, 5 and 6, jointly and individually. However, the revocation is stayed and the certificate shall be placed on probation for three (3) years upon the following terms and conditions:

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

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

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

Payment of Costs – Respondent shall pay the board its costs of investigation and enforcement in the amount of \$12,354.10. This amount is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Respondent shall commence making payments upon notification by the board or its designee of the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although respondent is free to pay the costs earlier than prescribed in the schedule. If respondent has not paid the full amount of costs at the end of the three-year period of probation, his probation shall be extended until full payment has been made.

Education Coursework – Within 90 days of the effective date of this decision,

and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Respondent shall bear all-associated costs. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

Completion of Probation – Upon successful completion of probation, respondent's certificate will be fully restored.

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

16

DIANE SCHNEIDER Administrative Law Judge Office of Administrative Hearings

	· · · ·	
	· · · · · ·	
	1	Kamala D. Harris
		Attorney General of California
		Supervising Deputy Attorney General NICHOLAS TSUKAMAKI
	 	Deputy Attorney General
	4	State Bar No. 253959 455 Golden Gate Avenue, Suite 11000
-	5	San Francisco, CA 94102-7004 Telephone: (415) 703-1188
_	6	Facsimile: (415) 703-5480 E-mail: Nicholas. Tsukamaki@doj.ca.gov
_	7	Attorneys for Complainant State Board of Optometry
	8	BEFORE THE
		STATE BOARD OF OPTOMETRY DEPARTMENT OF CONSUMER AFFAIRS
	0	STATE OF CALIFORNIA
	10	
		In the Matter of the First Amended Accusation Case No. 2009-113 Against:
	12	LELAND CHUNG HONG TOY
	13	7601 Stoneridge Drive FIRST AMENDED ACCUSATION
	14	Pleasanton, CA 94588 Optometrist Certificate of Registration No.
_	15	6128
	16	Respondent.
-	17	
	18	Complainant alleges:
	19	PARTIES
	20	1. Mona Maggio ("Complainant") brings this First Amended Accusation solely in her
		official capacity as the Executive Officer of the State Board of Optometry ("Board"), Department
	22	of Consumer Affairs.
	. 23	2. On or about August 31, 1976, the Board issued Optometrist Certificate of
	24	Registration Number 6128 to Leland Chung Hong Toy ("Respondent"). The Optometrist
	25	Certificate of Registration was in full force and effect at all times relevant to the charges brought
	26	herein and will expire on March 31, 2012, unless renewed.
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JURISDICTION

3. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

STATUTORY PROVISIONS

-4----Section-3110 of the Gode states, in-relevant part:

"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.

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

"(d) Incompetence.

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

"(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.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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6. Section 125.3 of the Code 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.

FACTUAL BACKGROUND

7. On or about May 12, 2008, patient S.M.¹ presented to an ophthalmologist for an eye examination after seeing "floaters" and "flashes".

8. On or about June 6, 2008, S.M. presented to Respondent for diabetic retinopathy screening. S.M. has been a diabetic since 1988. S.M. reported to Respondent that he was seeing "floaters", "flashes", and "dark shades" in his left eye.

9. S.M.'s treatment records from June 6, 2008, state the following with regard to S.M.'s past ocular history: "DM-min background diabetic retinopathy 3/07Cataracts os>odHigh myopPhaco LEFT eye 8/20/2007 t2 -2.00No postop eyedrops." S.M.'s treatment records from June 6, 2008, also list the following under "problem list": "background retinopathy, diabetic"; "diabetes mellitus type 2 w hypoglycemia"; and "non proliferative diabetic retinopathy, mild".

10. Respondent performed a biomicroscopy on S.M. and documented that there were "few pigmented cells" in the vitreous of S.M.'s left eye.

11, Respondent also performed a binocular indirect ophthalmoscopy on S.M. by dilating his eyes. Under "Macula", Respondent documented the following: "OD one dot heme; OS clear & flat."² Under "Retina", Respondent noted the following: "OD dot heme in 2 quadrants; OS dot heme in one quadrant."

12. Respondent did not perform a visual field screening or scleral indentation on S.M.

¹ Initials are used herein to protect the patient's privacy. The patient's identity will be provided pursuant to a proper discovery request.

² "OD" refers to the right eye, "OS" refers to the left eye, "Heme" means hemorrhage.

3.

FIRST AMENDED ACCUSATION

13. Under "Assessment", Respondent documented that S.M. suffered from Diabetes Mellitus Type 2 with mild Nonproliferative Diabetic Retinopathy, that he had a cataract in his right eye, and that he had a Posterior Vitreous Detachment ("PVD") in his left eye. 14. Respondent did not document whether there were any holes or tears in S.M.'s retinas, or whether S.M.'s retinas were detached. Nor did Respondent refer S.M. to a retinal specialist after-finding-pigmented-cells-and-a-PVD-in-S.M.2s-left-eye.-The-presence-of-pigmented-cells-anda PVD indicates that the patient's retina is either torn or detached.

At the end of the examination, Respondent ordered S.M. to return in one year for routine diabetic retinopathy screening. He also advised S.M. that if there was "[a]ny change in flashes or floaters", S.M. should contact him or another doctor "immediate[lv]."

16. On or about August 22, 2008, S.M. wrote an email to Respondent in which he stated the following: "I am continuing to have problem with my left eye Recently, I am seeing a lot of tiny black dots and also like lightning flashes and hazy vision with some darkness in one corner of my left eye." In response, on August 25, 2008, Respondent wrote S.M. an email in which he stated the following: "If you are seeing either more dots or different symptoms than before, you should go ahead and make another appointment. The number is 847-5065." 17. On or about August 23, 2008, S.M. presented to an ophthalmologist who diagnosed

him with retina detachment macular off in the left eye.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts)

Respondent is subject to disciplinary action under section 3110, subdivisions (b) and/or (c) of the Code for gross negligence and/or repeated negligent acts in that he failed to (1) perform a visual field screening and scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye; and (3) immediately refer S.M. to a retinal specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The 26 circumstances of Respondent's gross negligence are set forth above in Paragraphs 8, 9, 10, 12, 13,

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SECOND CAUSE FOR DISCIPLINE (Incompetence) ·2 Respondent is subject to disciplinary action under section 3110, subdivision (d) of the 19. 3 Code for incompetence in that he failed to (1) perform scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) immediately refer S.M. to a retinal specialist 5 after finding-pigmented cells and a PVD in S.M.'s left eye; and (3) immediately refer S.M. to aretinal specialist or the emergency room upon receiving S.M.'s email dated August 22, 2008. The circumstances of Respondent's incompetence are set forth above in Paragraphs 8; 9, 10, 12, 13, 8 14, and 16. · 9 THIRD CAUSE FOR DISCIPLINE .10 (Failure to Maintain Adequate and Accurate Records) 11 20. Respondent is subject to disciplinary action under section 3110, subdivision (g) of the 12 Code in that he failed to document whether there were any holes or tears in S.M.'s retinas, or 13 whether S.M.'s retinas were detached. The circumstances of this omission are set forth above in 14 Paragraph 14. 15 FOURTH CAUSE FOR DISCIPLINE 16 17 (Failure to Refer Patient to Appropriate Physician) Respondent is subject to disciplinary action under section 3110, subdivision (y)(1) of 18 21. the Code in that he failed to refer S.M. to a retinal specialist after finding evidence during his 19 examination indicating that there was a substantial likelihood S.M.'s left retina was torn or 20 detached. The circumstances of this conduct are set forth above in Paragraphs 8, 9, 10, 13, and 21 22 14. PRAYER 23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, . 24 and that following the hearing, the State Board of Optometry issue a decision: 25 Revoking or suspending Optometrist Certificate of Registration Number 6.128 issued 26 to Leland Chung Hong Toy; 27 28 .5 FIRST AMENDED ACCUSATION

Ordering Leland Chung Hong Toy to pay the State Board of Optometry the 2. reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3; 3:- Taking such other and further action as deemed necessary and proper. () - (-)DATED MONA MAGGIO Executive Officer State Board of Optometry Department of Consumer Affairs State of California Complainant SF2010202146 FIRST AMENDED ACCUSATION



CALIFORNIA STATE BOARD OF PTOMETRY 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 twelfth day of January 2015, the Executive Officer examined said official records of said Board and found that **LELAND CHUNG HONG TOY** graduated from the University of California Berkeley School of Optometry in 1976, and is the holder of Optometry License No. 6128, which was granted to him effective August 31, 1976. Said Optometry License expires on March 31, 2016, unless renewed. The current address of record for said Optometry License is 7601 Stoneridge Drive, Pleasanton, CA 94588.

Said records further reveal that on or about October 14, 1998, **LELAND CHUNG HONG TOY** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that on or about March 12, 2012, **LELAND CHUNG HONG TOY** became certified to diagnose and treat primary open angle glaucoma in patients over the age of 18 years pursuant to Business and Professions Code Section 3041(f).

Said records further reveal that on October 11, 2011, the Board filed a First Amended Accusation in Case No. CC 2009-113. As a result of that action, the Board revoked Optometry License No. 6128, effective October 12, 2012. However, the revocation was stayed and said Optometry License was placed on probation for a period of three (3) years, with terms and conditions.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twelfth day of January, 2015.

Mona Maggio, Executive Officer





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

From:	Jessica Sieferman	Telephone:	(916) 575-7184
Subject	Assistant Executive Officer	ition for Dod	untion of Devolution

Subject: Agenda Item 16C - In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation

Dr. David Alan Bradley, O.D. (Petitioner) was issued Optometrist License Number 7747 by the Board on September 12, 1983. On July 2, 2013, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on Gross Negligence, Incompetence, and Unprofessional Conduct in Failing to Refer a Patient. On December 11, 2013, Petitioner's license was revoked, the revocation was stayed and Petitioner's license was placed on three (3) years probation, subject to certain terms and conditions.

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 the Stipulated Settlement and Disciplinary Order, and Accusation
- 3. Certification of Licensure

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

GOVERNOR EDMUND G. BROWN JR.

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STATE OF OPTOMS	STATE BOARD OF OPT	FOMETRY	
	2450 DEL PASO ROAD, S	SUITE 105, SACRAMENTC	, CA 95834
2011-112-PM_3:3	2(916) 575-7170 F (916)	575-7292 www.optometr	y.ca.gov
OPTOMETRY	• • • • • • • •	- · · · · ·	



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
David		Alan	Bradley		REGISTRATION NO.
2. ADDRESS	6 (NUMBER)	(STREET)			DATE OF BIRTH
1160 Live C	Dak Blvd				11/18/1958
(CITY)	(STATE)	(ZIP CODE)			TELEPHONE
Yuba City		CA		95991	(⁵³⁰) 673-8440
3. PHYSICAL	DESCRIPTION	(HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
		5'11"	155	brown	brown
4. EDUCATIO	ON: NAME(S) OF S	CHOOL(S) OR COLLEG	E(S) OF OPT	OMETRY ATTENDED	
NAME OF SO	CHOOL				
Southern	California Scho	ol of Optometry			
ADDRESS	ADDRESS (NUMBER) (STREET)				
2575 Yorba	a Linda Blvd				
(CITY)	(STATE)	(ZIP CODE)			
Fullerton	CA		9283	31	
5. ARE YOU	CURRENTLY LICEN	ISED IN ANY OTHER S	TATE?	YES 🔽 NO	
STATE	LICENSE NO.	ISSUE DATE	EXPIRATIO	N DATE LICENSE	E STATUS
CA	7747	11/30/13	11/30/15	active	
	•				
6. List location	as, dates, and types o	of practice for 5 years pri	or to discipline	of your California licer	ise.
LOCATION	· · · · · · · · · · · · · · · · · · ·	DATE FROM	DATE TO	TYPE OF	PRACTICE

LOOATION			
747 Plumas Street, Yuba City	06/01/86	10/01/13	Optometry

7.	Are you or have you ever been addicted to the use of narcotics or alcohol?	
8.	Are you or have you ever suffered from a contagious disease?	TYES MO
 	Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction?	TYES 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)	TYES 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)	
12.	Have you ever had disciplinary action taken against your optometric license in this state or any other state?	

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.

Dec 12, 2014 Signature_ Date

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.

BRADLEY OPTOMETRY, INC 1160 Live Oak Blvd. Yuba City, CA 95991 (530) 673-8440 www.bradleyoptometry.com

December 11, 2014

Re: Early Termination of Probation

Dear California State Board of Optometry:

Following are the responses to the questions on Form 39M-12 Petition for Reduction of Penalty or Early Termination of Probation:

13. Date of disciplinary action was on December 11, 2013. Cause of disciplinary action was accusation of the State Board that I failed to recognize the risk of or diagnose a retinal detachment and refer appropriately. In the fall of 2009, the subject patient, came in for an eye exam with the following chief complaint: Noticing for the past 5 to 6 weeks that his vision was "blurry" and "foggy" on his right side and it comes and goes. A complete and thorough dilated retinal exam was performed. Only abnormality found was reduced acuity out of the right eye of 20/30. (A fundus photo and OCT macular scan were also performed, which were normal.) Since the patient was already under care by his primary physician, for other health issues, he was referred back to his PCP for further management. The patient was told that his eye appeared healthy but that there are other reasons why his vision is blurred and that he needed further testing by a specialist to determine the cause of his symptoms. I did not have any further contact with this patient until late July 2010, when he came in to inform me that he was just referred by his PCP to a local ophthalmologist that diagnosed a retinal detachment.

(I am not sure why it took so long for the PCP to refer the patient out for further evaluation. I normally refer the patient myself for further examination by an ophthalmologist, but in this unfortunate case I sent the patient back to his PCP.) The State Board decided I was grossly negligent in failing to recognize the risk of or diagnose the retinal detachment in the Fall of 2009 and negligent in not referring the patient to an ophthalmologist. The Board also claimed that on the patient history form, the box for "flashes and floaters" was checked. Also that I failed to perform Scleral Depression. (Unfortunately this patient did not mention any symptoms related to flashes and floaters on his visit but I do admit, that I did not see that he had marked "flashes and floaters" on the history form.)

(Upon reflection of this case. I feel it is likely that this patient had a posterior vitreous detachment that lead to his symptoms. I do not feel that he had a retinal detachment at the time, but he may or may not have had a retinal break. But apparently the break that was possibly missed or a break that occurred later, developed into a retinal detachment.)

14. I feel that my optometric license should be fully restored for the following reasons: 1. I have complied with all the requirements of the State Board and now am just doing my quarterly reporting and community service (which I already do and have done for many years). 2. I have implemented many changes in my practice that will help prevent any future incident from occurring. Both areas will be further elaborated in the following sections.

15. Since the date of the disciplinary action I have continued to be active in my private practice. With two of my four children working in my practice and also another one that is interested in being an optometrist, I stopped renting my existing location at 747 Plumas Street and purchased some land and built a new office at 1160 Live Oak Blvd in Yuba City. I incorporated my practice, which is now called BRADLEY OPTOMETRY, Inc. I also hired an associate, Dr. Elizabeth Hankins, which was a former patient of mine, who upon my encouragement became an Optometrist.

I continue to provide volunteer work for my church by leading the worship music at the 5pm Sunday evening Mass. I have also added a new projection system at the church and am in charge of all the audio/visual for the weekly liturgical celebration. I continue to be an active member of the Sutter County Lions Club and also the treasurer/secretary for the Golden Empire Optometric Society. I also continue to volunteer my time for vision screenings at our local elementary schools as well as the annual Veteran's Stand Down (health fair) and VSP mobile clinic. 16. The following are the list of rehabilitative or corrective measures I have implemented since the disciplinary action, dated December 11, 2013.

 I have implemented a new electronic medical record keeping system called
 Exam Writer.
 I researched a more user friendly scleral depressor (model S4-1236S from Stephens instruments) and now use it on a regular basis.
 I researched a course on Scleral depression and purchased it on line and completed the course at my office.
 I purchased two new binocular indirect ophthalmoscopes: Vantage Plus LED Digital.
 I have purchased a new Zeiss Cirrus HD OCT to replace my older model.
 I purchased a new OPTOS 200C ultra-high resolution 200 degree retina scan device for my office in 2014.
 I changed my patient history form from two pages to one page, so it would be

easier to review, so I will not miss anything my patient may write concerning their health or reason for their visit.

8. I developed a new referral letter whenever I need to refer a patient for further care. Whenever a patient's vision is involved I refer them to an ophthalmologist and never to their primary care physician. All patients who had a recent posterior vitreous detachments (with no retinal breaks detected) are seen again in one month for a follow up dilation by me or when needed by an ophthalmologist.

17-19. The following is a list of all course taken since the date of disciplinary action:

Passed California Laws and Regulations Examination (CLRE) 1/24/2014. Passed Oral Exam on "Retinal Detachment: Principles and Practice" by Dr. Ed Revelli from Berkeley School of Optometry on 3/28/2014. (Also purchased the book and read the pertinent chapters.)

Passed the course entitled: "Medical Record Keeping" by UC San Diego School of Medicine. Dated October 23/24, 2013.

Purchased and took course on Binocular Indirect Ophthalmoscopy with emphasis on scleral depression by Michigan College of Optometry at Ferris State University in February 2014.

CE courses since Dec 11, 2013:

Ocular Jeopardy- A potpourri of topics

Ocular Nutrition; diagnosis management and treatment AMD.

What's New in Front of the Eye Tech Advancement

Cornea Dystrophy Degeneration; What every OD should know.

Glaucoma for the regular OD ICD 10 The Future is Now Managing Care Strategies to Succeed in Healthcare Reform Pill Problems Ocular Complications from Systemic Meds From Print to Practice; Posterior Vitreous Detachment Don't Walk the Plank, Know When to Refer Therapeutic Considerations for Management of Patients Clinical Management of Progressive myopia Clinical findings and management of rhegmatogenous retinal detachment

20. List of individuals providing a letter of recommendation.

Dr. Michael Ferretti 2162 Robinson St. Oroville, CA 95965

Dr. Robert Del Pero 950 Tharp Ave., Suite 1500 Yuba City, CA 95993

Sincerely David A. Bradley, O.D.

October 17, 2014

California State Board of Optometry 2450 Del Paso Road, Suite 105 Sacramento, CA 95834

Re: David Bradley, O.D.

Dear Sirs,

This letter is written in support of Dr. David Bradley with whom I have shared in the care of patients for over 20 years. I am Board certified in Ophthalmology with additional years of fellowship training. Dr. Bradley has referred a great many patients to me for evaluation and management. His referrals have always been appropriate, timely, and accompanied by accurate written descriptions of the pertinent pathology for a large variety of conditions including retinal tears and posterior vitreous detachments. His clinical diagnostic skills and medical judgment are excellent. I recommend without reservation that his optometric license be fully restored immediately.

Del Pero Eye Center Robert A. Del Pero, M.D.

Sincerely,

Retent a. Dellen, MP.

Robert A. Del Pero, M.D.

950 Tharp Road, Suite 1500 • Yuba City, CA 95993 • (530) 671-7100 Building and entrance on Lassen Blvd.

Dr. Michael Ierretti

Pediatric & Adult Optometry

2162-Robinson-Street Oroville, CA 95965 Telephone 534-8807

11/6/14

RE: Letter of Recommendation for Dr. Dave Bradley

Dear California State Board of Optometry,

I have known Dr. Dave Bradley for over twenty years as a professional colleague, employer and personal friend. Dave is truly an amazing individual that I hold in the very highest regard as an optometrist, practice manager, community and church member; as well as a husband and father. Those who know Dave personally are blessed not only by his many talents and gifts, but his encouragement and helps to others.

Dave Bradley's character and faith are exemplary, he is the quintessential role model for anyone who strives and works hard at their calling or profession. Dr. Bradley has practiced optometry in Yuba City for over 25 years at the very highest level. In 2013 Dave relocated his office to provide even better care with the latest diagnostic equipment and outstanding staff. I can honestly say Dr. Bradley is well liked by his patients and respected in the community. I have seen this first had by working part-time (2-3 days per month) for Dave for about ten years from 2002-12. Dave went out of his way to encourage me as an optometrist and was a true mentor with new pretest equipment, BIO or OCT. Again, Dave's standard of care was tops. I believe he started taking fundus photos as a baseline for care (at no additional cost to the patient) probably ten years ago. Dave has always invested in his practice and enjoys the technological advances of the latest optometric equipment.

Dave has already shared his numerous community activities and volunteer work. Again, an amazing role model. Personally, I don't know how he can balance the various roles with his optometry practice, church, community and volunteering; as well as be the outstanding husband and father he is to his wife, kids and grandkids. Dave is also quite the outdoorsman, avid fisherman and skier. Not to mention, twice Boston Marathon runner and all around athlete. Dave's outgoing and friendly personality is very balanced with confidence and humility.

I would hope the California State Board of Optometry would offer early termination of probation for a truly outstanding optometrist, Dave Bradley.

Sincerely yours, Mishael Ferretti, OD

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

In the Matter of the Accusation Against:

Case No. CC 2011-174

DAVID ALAN BRADLEY 747 Plumas Street Yuba City, California 95991

Optometrist License No. 7747

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on <u>December 11, 2013</u>

It is so ORDERED November 12, 2013

FOR THE STATE BOARD OF OPTOMETRY DEPARTMENT OF CONSUMER AFFAIRS

	11
1	KAMALA D. HARRIS
2	Attorney General of California KENT D. HARRIS
3	Supervising Deputy Attorney General PHILLIP L. ARTHUR
4	Deputy Attorney General State Bar No. 238339
5	1300 I Street, Suite 125 P.O. Box 944255
6	Sacramento, CA 94244-2550 Telephone: (916) 322-0032
7	Telephone: (916) 322-0032 Facsimile: (916) 327-8643 E-mail: Phillip.Arthur@doj.ca.gov
8	Attorneys for Complainant
9	BEFORE THE STATE BOARD OF OPTOMETRY
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
•	
11	In the Matter of the Accusation Against: Case No. CC 2011-174
12	DAVID ALAN BRADLEY STIPULATED SETTLEMENT AND
- 13	747 Plumas Street Yuba City, California 95991 DISCIPLINARY ORDER
14	
15	Optometrist License No. 7747
16	Respondent.
17.	
18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19	entitled proceedings that the following matters are true:
20	PARTIES
21	1. Mona Maggio (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 matter
23	
24	by Kamala D. Harris, Attorney General of the State of California, by Phillip L. Arthur, Deputy
25	Attorney General.
26	2. Respondent David Alan Bradley (Respondent) is representing himself in this
27	proceeding and has chosen not to exercise his right to be represented by counsel.
28	
•	

On or about September 12, 1983, the State Board of Optometry issued Optometrist 3. License No. 7747 to David Alan Bradley (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No, CC 2011-174 and will expire on November 30, 2013, unless renewed.

JURISDICTION

4. Accusation No, CC 2011-174 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 15, 2013. Respondent timely appeared, waived his right to a hearing, and requested settlement terms. A copy of Accusation No. CC 2011-174 is attached as exhibit A and incorporated 5. herein by reference.

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ADVISEMENT AND WAIVERS

б. Respondent has carefully read, and understands the charges and allegations in 13 Accusation No. CC 2011-174. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a 16 17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to 18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel 19 the attendance of witnesses and the production of documents; the right to reconsideration and 20court review of an adverse decision; and all other rights accorded by the California 21 Administrative Procedure Act and other applicable laws. 22

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and 23 every right set forth above. 24

CULPABILITY

Respondent admits the truth of each and every charge and allegation in Accusation 9. 26 No. CC 2011-174. 27

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10. Respondent agrees that his Optometrist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

<u>CONTINGENCY</u>

11. This stipulation shall be subject to approval by the State Board of Optometry. 4 Respondent understands and agrees that counsel for Complainant and the staff of the State Board 5 of Optometry may communicate directly with the Board regarding this stipulation and settlement. 6 without notice to or participation by Respondent. By signing the stipulation, Respondent 7 8 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation 9 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or 10 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, 11 and the Board shall not be disqualified from further action by having considered this matter. 12

12. The parties understand and agree that Portable Document Format (PDF), facsimile,
and electronic copies of this Stipulated Settlement and Disciplinary Order, including Portable
Document Format (PDF), facsimile, and electronic signatures thereto, shall have the same force
and effect as the originals.

17 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
integrated writing representing the complete, final, and exclusive embodiment of their agreement.
It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
writing executed by an authorized representative of each of the parties.

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

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STIPULATED SETTLEMENT (CC 2011-174)

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 7747 issued to Respondent David Alan Bradley (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

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OBEY ALL LAWS

12 Respondent shall obey all federal, state, and local laws, governing the practice of optometry
13 in California.

14 Respondent shall notify the Board in writing within 72 hours of any incident resulting in his
15 arrest, or charges filed against, or a citation issued against Respondent.

16 CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any
 17 governmental agency, including probation or parole, and the orders are violated, this shall be
 18 deemed a violation of probation and may result in the filing of an accusation or petition to revoke
 19 probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject
 to any other disciplinary order from any other health-care related board or any professional
 licensing or certification regulatory agency in California or elsewhere, and violates any of the
 orders or conditions imposed by other agencies, this shall be deemed a violation of probation and
 may result in the filing of an accusation or petition to revoke probation or both.

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2.

QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the
probation monitor assigned by the Board. Quarterly report forms will be provided by the Board
(DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these

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reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

• For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

• For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

• For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

• For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

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COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

17 Respondent shall claim all certified mail issued by the Board, respond to all notices of
18 reasonable requests timely, and submit Reports, Identification Update reports or other reports
19 similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program
representative at any time he has a question or concern regarding his terms and conditions of
probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

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4. **PROBATION MONITORING COSTS**

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

9 If Respondent is unable to submit costs for any month, he shall be required, instead, to 10 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to 11 submit the costs, including payment amount(s). Supporting documentation and evidence of why 12 the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will
not be issued at the end of the probationary period and the optometrist license will not be
renewed, until such time as all probation monitoring costs have been paid.

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5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his probation period,

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6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is

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not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

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7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and
all changes of employment, location, and address within 14 calendar days of such change. This
includes but is not limited to applying for employment, termination or resignation from
employment, change in employment status, and change in supervisors, administrators or directors.

17 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
18 changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for
19 mailing purposes; however the Respondent must also provide his physical residence address as
20 well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$3,092.50 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs, including payment amount(s). Supporting documentation and

evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

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9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent has not taken and passed the examination within six months from the
effective date of this decision, Respondent shall be considered to be in violation of probation.

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10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of 16 hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

VALID LICENSE STATUS 11.

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall constitute a violation of probation.

TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE 12.

Periods of residency or practice outside California, whether the periods of residency or 6. practice are temporary or permanent, will toll the probation period but will not toll the cost 7 recovery requirement, nor the probation monitoring costs incurred. Travel outside of California 8 for more than 30 calendar days must be reported to the Board in writing prior to departure. 9 Respondent shall notify the Board, in writing, within 14 calendar days, upon his return to 10 California and prior to the commencement of any employment where representation as an optometrist is/was provided. 12

Respondent's license shall be automatically cancelled if Respondent's periods of temporary 13 or permanent residence or practice outside California total two years. However, Respondent's 14 license shall not be cancelled as long as Respondent is residing and practicing in another state of 15 the United States and is on active probation with the licensing authority of that state, in which 16 17 case the two year period shall begin on the date probation is completed or terminated in that state,

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13. LICENSE SURRENDER

During Respondent's term of probation, if he ceases practicing due to retirement, health 19 reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender 20 his license to the Board. The Board reserves the right to evaluate Respondent's request and 21 exercise its discretion whether to grant the request, or to take any other action deemed appropriate 22 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the 23 tendered license and wall certificate, Respondent will no longer be subject to the conditions of 24 probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon 25 reinstatement. 26

Surrender of Respondent's license shall be considered a Disciplinary Action and shall 27 become a part of Respondent's license history with the Board. 28

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

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15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his office after the imposition of administrative discipline,
Respondent shall ensure the continuity of patient care and the transfer of patient records.
Respondent shall also ensure that patients are refunded money for work/services not completed or
provided, and shall not misrepresent to anyone the reason for the sale or closure of the office
and/or practice. The provisions of this condition in no way authorize the practice of optometry by
the Respondent during any period of license suspension.

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17. REMEDIAL EDUCATION

Within 120 days of effective date of this decision, Respondent shall submit to the Board for 19 its prior approval an education program or course to be designated by the Board and shall take 20 and pass a written and oral examination in the subject area of retinal detachment given by a 21 school of optometry. All costs of the coursework and examination shall be paid by the 22 Respondent. Any units obtained for an approved course shall not be used for continuing 23 education units required for renewal of licensure. Respondent shall provide written proof of 24 attendance of the course approved by the Board. Failure to pass an examination within one year 25 of probation shall constitute a violation of probation. 26

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18. MEDICAL RECORD KEEPING COURSE

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Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a 2 course in medical record keeping equivalent to the Medical Record Keeping Course offered by 3 the Physician Assessment and Clinical Education Program, University of California, San Diego 4 School of Medicine (Program), approved in advance by the Board or its designee, Respondent 5 shall provide the program with any information and documents that the Program may deem 6 pertinent. Respondent shall participate in and successfully complete the classroom component of 7 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall 8 successfully complete any other component of the course within one (1) year of enrollment. The 9 medical record keeping course shall be at Respondent's expense and shall be in addition to the 10 continuing optometric education requirements for renewal of licensure. 11

A medical record keeping course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after the effective date of the decision, whichever is later.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

24 9-3-2013 DATED: 25 DAVID ALAN BRADLEY 26 Respondent 27 111 28 III

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STIPULATED SETTLEMENT (CC 2011-174)

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs. Dated: 9/30/13 Respectfully submitted, KAMALA D. HARRIS Attorney General of California KENT D. HARRIS Supervising Deputy Attorney General HILLIP L. ARTHUR Deputy Attorney General Attorneys for Complainant SA2013111264 · 11139904.doc <u>2</u>2 .26

Exhibit A

Accusation No. CC 2011-174

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amala D. Harris	•		۰. ۲۰۰۰ ۲۰	
orney General of California NT D. HARRIS			······	
pervising Deputy Attorney General				
eputy Attorney General tate Bar No. 238339				
1300 I Street, Suite 125 P.O. Box 944255				
Sacramento, CA 94244-2550				
Telephone: (916) 322-0032 Facsimile: (916) 327-8643	. *			
E-mail: Phillip.Arthur@doj.ca.gov Ittorneys for Complainant				
	FORE THE			
	RD OF OPTOM			
	F CALIFORN			
the Matter of the Accusation Against:	Case No. C	C 2011-174		
AVID ALAN BRADLEY 7 Plumas Street				
ba City, California 95991	ACCUS	ATION	•	
ptometrist License No. 7747				
Responde	ent.		· ·	
	·			
	· ·			
Complainant alleges:				
	PARTIES			
1. Mona Maggio (Complainant) bri	ngs this Accusat	ion solely in he	r official capa	ıcit
he Executive Officer of the State Board of C	ptometry, Depai	rtment of Consi	umer Affairs.	
2. On or about September 12, 1983	, the State Board	of Optometry	issued Optom	etri
License Number 7747 to David Alan Bradle	(Respondent).	The Optometri	st License wa	s in
force and effect at all times relevant to the ch	arges brought he	erein and will e	xpire on Nove	emł
30, 2013, unless renewed.				
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JURISDICTION

This Accusation is brought before the State Board of Optometry (Board), Department 3. of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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4. Section 3090 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty 6 of violating this chapter or any of the regulations adopted by the board. The board shall enforce 7 and administer this article as to licenseholders, and the board shall have all the powers granted in 8 this chapter for these purposes, including, but not limited to, investigating complaints from the 9 public, other licensees, health care facilities, other licensing agencies, or any other source 10 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations 11 adopted by the board." 12

REGULATIONS

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Section 475 of the Code states in pertinent part:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of: 16

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"(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(b) Notwithstanding any other provisions of this code, the provisions of this division shall 20 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) 21 of subdivision (a). . . . " 22

6. Section 652 of the Code states, in pertinent part:

"Violation of this article [Article 6, commencing with Section 650 of the Code] in the case 24 of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation 25 of his or her license by the board by whom he or she is licensed, or if a license has been issued in 26 connection with a place of business, then for the suspension or revocation of the place of business 27 in connection with which the violation occurs. The proceedings for suspension or revocation 28

shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board shall have all the powers granted therein."

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7. Section 3041 of the Code states in pertinent part:

"(a) The practice of optometry includes 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 is the doing of any or all of the following:

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

12 "(d) In any case where this chapter requires that an optometrist consult with an 13 ophthalmologist, the optometrist shall maintain a written record in the patient's file of the 14 information provided to the ophthalmologist, the ophthalmologist's response, and any other 15 relevant information. Upon the consulting ophthalmologist's request and with the patient's 16 consent, the optometrist shall furnish a copy of the record to the ophthalmologist."

8. Section 3041.1 of the Code states: "With respect to the practices set forth in
subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease
shall be held to the same standard of care to which physicians and surgeons and osteopathic
physicians and surgeons are held."

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9. Section 3110 of the Code states in pertinent part:

"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.

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

"(d) Incompetence.

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

"(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.

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"(2) As required by subdivision (c) of Section 3041."

10. California Code of Regulations, title 16, section 1517 states:

14 "For the purpose of denial, suspension, or revocation of the certificate of registration of an 15 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act 16 shall be considered to be substantially related to the qualifications, functions, and duties of an 17 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist 18 to perform the functions authorized by his/her certificate of registration in a manner consistent 19 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, 20 those involving the following:

21 "(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code
22 (Sections 525 et seq. of the Code).

"(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code
(Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

25 "(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540
26 et seq. of the Code).

27 "(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et
28 seq. of the Code)."

COST RECOVERY

11. Section 125.3 of the Code 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.

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FACTUAL BACKGROUND

On or about December 2, 2009, Respondent examined Patient A. During the 12. 7 examination. Patient A complained of a loss of vision in his right eye. Patient A also provided 8 Respondent with a form indicating that Patient A had a history of macular degeneration, 9 flashes/floaters in vision, sinus congestion, high blood pressure, and joint and/or muscle pain. 10 Respondent failed to perform a sclera depression test¹ on Patient A, and after concluding that he 11 could not find any eyeball-related reason for Patient A's loss of vision, Respondent recommended 12 that Patient A see his primary care physician for further examination. On July 29, 2010, after 13 increasing vision loss, Patient A's primary care provider immediately referred Patient A to an 14 ophthalmologist who diagnosed Patient A with a retinal detachment. On July 30, 2010, Patient A 15 received retinal reattachment surgery, however because of the delay in receiving the procedure, 16 Patient A's vision was restored to the limited function of being able to count fingers at a distance 17 of one foot. 18

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under section 3110(b) of the Code in that
Respondent was grossly negligent when he failed to refer Patient A to an Ophthalmologist when
Patient A presented to Respondent with symptoms associated with a retinal detachment.

¹ Indirect ophthalmoscopic examination of the peripheral retina is greatly enhanced through the use of a sclera depression test. This procedure enables the examiner to better diagnose and manage peripheral retinal anomalies. A sclera depression test is indicated when evaluating a patient with retinal breaks or signs and symptoms of retinal detachment. To perform this test, a retinal specialist will numb the patient's eyes and then use a scleral depressor (metal probe) to see the furthest extent of the peripheral retina to look for tears or weaknesses indicative of retinal tears.

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SECOND CAUSE FOR DISCIPLINE

(Incompetence)

Respondent is subject to disciplinary action under section 3110(d) of the Code in that
 Respondent was incompetent when he failed to refer Patient A to an Ophthalmologist when
 Patient A presented to Respondent with symptoms associated with a retinal detachment.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under section 3110 of the Code in that Respondent acted unprofessionally when he failed to refer Patient A to an Ophthalmologist when Patient A presented to Respondent with symptoms associated with a retinal detachment.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Refer)

13 16. Respondent is subject to disciplinary action under section 3110(y) of the Code in that
14 Respondent acted unprofessionally when he failed to refer Patient A to an Ophthalmologist when
15 Patient A presented to Respondent with symptoms associated with a retinal detachment.

PRAYER

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

Revoking or suspending Optometrist License Number 7747, issued to David Alan
 Bradley;

Ordering David Alan Bradley to pay the State Board of Optometry the reasonable
 costs of the investigation and enforcement of this case, pursuant to Business and Professions
 Code section 125.3;

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Accusation

Taking such other and further action as deemed necessary and proper. 3. nna DATED: ______2, 2013 MONA MAGGIO Executive Officer State Board of Optometry Department of Consumer Affairs State of California Complainant SA2013111264 11097417.doc Accusation

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

EDMUND G. BROWN JR., GOVERNOR



PTOMETRY

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 twelfth day of January 2015, the Executive Officer examined said official records of said Board and found that **DAVID ALAN BRADLEY** graduated from the Southern California School of Optometry in 1983, and is the holder of Optometry License No. 7747, which was granted to him effective September 12, 1983. Said Optometry License expires on November 30, 2015, unless renewed. The current address of record for said Optometry License is 1160 Live Oak Blvd, Yuba City, CA 95991.

Said records further reveal that on or about March 19, 1997, **DAVID ALAN BRADLEY** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that on or about April 25, 2013, **DAVID ALAN BRADLEY** became certified to diagnose and treat primary open angle glaucoma in patients over the age of 18 years pursuant to Business and Professions Code Section 3041(f).

Said records further reveal that on July 2, 2013, the Board filed an Accusation in Case No. CC 2011-174. As a result of that action, the Board revoked Optometry License No. 7747, effective December 11, 2013. However, the revocation was stayed and said Optometry License was placed on probation for a period of three (3) years, with terms and conditions.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this twelfth day of January, 2015.

na Maggio, Executi(





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

То:	Board Members	Date:	January 23, 2015
From:	Jessica Sieferman Assistant Executive Officer	Telephone:	(916) 575-7184
Subject	Aganda Itam 16D In the Matter of the Bat	ition for Pod	uction of Donalty

Subject: Agenda Item 16D - In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation

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

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

On or about July 26, 2013, Petitioner filed a Petition for Reinstatement, which the Board granted effective December 11, 2013. Petitioner's license was reinstated, immediately revoked, the revocation was stayed, and the license was placed on probation for four years. Petitioner's license was immediately suspended for six months or until fifty hours of continuing education was completed. The suspension was considered completed and concluded on February 11, 2014.

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 Reinstatement with Attachments
- Copies of Decision, Stipulated Revocation of License and Order, Accusation and Petition to Revoke Probation, Stipulation to Suspension of License and Order, Interim Order of Suspension, Petition for Interim Order of Suspension, Stipulated Settlement and Disciplinary Order, and Accusation
- 3. Certification of Licensure

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

GOVERNOR EDMUND G. BROWN JR.



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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 -



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 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 TYP	E OR PRINT LEGIBI	LY		
	(FIRST)	(MIDDLE)	(LAST)	
ST	EPHEN	Gerard S (STREET)	schroeder	REGISTRATION NO.
2. ADDRESS	(NUMBER)	(STREET)	<u> </u>	DATE OF BIRTH
2088	E. LAKe	<u>Shure</u> Dr. (ZIP CODE)	# 626	5/9/59
(CITY)	(STATE)	(ZIP CODE)		TELEPHONE
LAKE	E Elsino	<u>ле, СА 92</u> (HEIGHT)	530	(951) 219-6261
3. PHYSICAL	DESCRIPTION	(HEIGHT)	(WEIGHT) (EYE	COLOR) (HAIR COLOR)
		le'1''	230 G	EN BLS
4. EDUCATIO	ON: NAME(S) OF S	CHOOL(S) OR COLLEGE	E(S) OF OPTOMETRY A	TTENDED
NAME OF SC	CHOOL		·····	1 1
Sou	ther Car	litomia la	lege of O	p tome try
ADDRESS	(NUMBER)	(STREET)	· · · · · · · · · · · · · · · · · · ·	
2575	5 Yorba	Linda Bli	ød.	
(CITY)	(STATE)	(ZIP CODE)		·
Fulle	rton CA	92831		
5. ARE YOU	CURRENTLY LICEN	ISED IN ANY OTHER ST	ATE? YES	NO
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
CA.	832IT	1985	5/31/15	Renewed
			•	Probation
6. List location	s, dates, and types o	of practice for 5 years prio	r to discipline of your Cal	ifornia license.
LOCATION	/	DATE FROM	DATE TO	TYPE OF PRACTICE
	optometry Missim Tr.	1987	2006	Prival Practice
	si News CA			
CANYON 1	lade Visin CT	2006	2008-JUNC	Private Practice
39M-12 Per	in VAlly	FEB-2014	Present	Prival Practice
Visi	an derter	EFR-2014	Present	Private Prache
Dr. Hon	nuth : Hon	nut FEB-2014	Present	Staff optimeter
D R	vuyor Sm.	77	,	

7. 8. 9.	Are you or have you ever been addicted to the use of narcotics or alcohol? Are you or have you ever suffered from a contagious disease? 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 INO
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)	
12.	. Have you ever had disciplinary action taken against your optometric license in this state or any other state?	

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.

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- 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.

Dec. 15, 2019 Signature Atephe Date

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.

7. Are you or have you ever been addicted to the use of narcotics?

I first began drinking alcohol in high school my junior year in a small farm town in North Dakota. I drank socially then my eight years of college and continued thereafter during my practice of optometry and 10 years of marriage.

I never considered myself an abusive drinker nor did I ever create hardship to myself or anyone else with drinking. Drug use was never an option.

I divorced in 2001 and worked 6 days a week in my private practice. I continued drinking like a gentleman 2 days a week and met all my obligations as both a parent and business owner.

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It was the end of 2003 I began experimenting with methamphetamine use not realizing the claws of addiction were being implanted in my brain.

In 2004 I found myself ingesting methamphetamine on nearly a daily basis. By mid 2004 I found myself In full denial of my daily methamphetamine use. Reasoning I handled it fine and it was helping me fend through my 6 day work week. I kidded myself, I was a functioning addict not a filthy drug head who brought harm to family and friends around him.

My practice was highly successful which blinded me to the fact my life was spinning out of control. I was living a life of lies and dishonest behavior. As 2005 was rolling along with the claws deeply dug into my back, 7 days a week of methamphetamine use was my life.

My house was raided and shortly after that, I was arrested for felony possession of methamphetamine. As an addict I blamed everyone but myself and I would not accept that I had an addiction and needed to stop the drug use.

I was scared straight for a few months into a "sober" sane life, Completing my PC 1000 drug diversion program in 2006. I fooled myself I no longer had a drug use problem since I was not taking drugs. The problem with that thinking was that I hadn't yet surrounded to the fact I truly was a drug addict and needed to recover.

I relapsed at the end of 2006. I fooled myself I would only do the drug for a night, But those nights turned into days, Those days turned into weeks.

I cleaned up here and there with rehab long enough to address my optometry board affairs in 2007.

I continued to take shortcuts along with denial of my bad behavior. Never taking a true road to recovery, Until September 2010.

September 2010 is when I met an old patient of mine who had 25+ years of recovery that would change my life.

Through his early direction and with a solid founded 12 Step Program accompanied by outpatient rehabilitation I now surrendered to the fact of my addiction and accepted my new Life of Recovery.

Through this brotherhood and help of others along with listening. I began to see the changes in my behavior, thinking and acting. I was promised blessings from this new lifestyle and soon they exceeded all my expectations.

Today I live a sober life, The obsession of using is gone and my family has found new trust in me by the example I live and walk.

<u>9. Are you or have you ever been under observation or treatment for mental disorders,</u> <u>alcoholism or narcotic addiction?</u>

Yes I have been in drug and alcohol addiction programs and am still under observation by my addiction doctor. My first introduction to treatment and observation was a 16 week PC1000 program called the High Road program in Riverside, CA.

I entered this program on May 11, 2006 and successfully completed it on August 7, 2006. This was a court appointed program consisting of weekly group sessions. We discussed drug and alcohol addiction and were drug tested. Once completed I returned back to Riverside court on December 8, 2006 to show my completion and expunge my conviction. I completed this program, With my own "strings attached". Instead of getting true rehabilitation from it I remained clean but not fully in recovery.

My first induction to a structured in-house rehabilitation program was in March of 2006. I self placed myself into "A Better Tomorrow in Temecula, CA. This is an accredited in-house structured living program with a certified outpatient drug and alcohol treatment component. It was a 14 day agreed upon in-house stay consisting of one on one sessions with staff therapists, daily group therapy, stress and anger management, feeling group, family issues and process groups. Daily 12 step meetings accompanied by staff. Upon completion of this program. I was given a 6 week outpatient weekly program with a staff therapist.

October 2010 I entered the Riverside Recovery Resources. It is Alcohol & Drug Education, prevention and treatment. It is a 12 week outpatient treatment twice weekly. This consisted of 4 hour long sessions of group therapy and one on one sessions of treatment, drug testing and recovery.

When this was completed I elected to continue with weekly group for an additional 6 weeks under my own volition..

It was during this time when I met Bernie Truaxx who would give me my strong foundation to 12 step living and recovery. The true life changing event that taught me how to become the man I've always wanted to be. During my recovery at Riverside Recovery Resources I began seeing Dr. John Harsany, diplomat of the American Board of Addiction in Hemet, CA. for treatment and ongoing observation every 2-3 months. I'm currently still under his care for the physical and behavioral treatment I need to stay accountable for my addiction. Under Dr. Harsany's care I was involved with Dr.Jack Henke, A clinical psychologist specializing in drug and alcohol addictions. My sessions with Dr. Henke were one on one for a period of approximately 12 weeks.

<u>10. Have you ever been arrested, convicted or pled no contest to a violation of any law</u> 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)</u>

In mid- 2002 I was arrested for DUI in Riverside County, CA. I plead guilty and completed a diversion program and paid all fines.

Early 2006 I plead guilty to a felony possession of a controlled substance, methamphetamine. This was a result of a search of my house in October 2005. A warrant was served and I was arrested, released on bail. I was ordered to complete a PC1000 drug diversion program which I completed to have the felony expunged form my record

12. Have you ever had disciplinary action taken against your optometric <u>license in this state or any other state?</u>

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On June 18, 2007 my case of accusation # CC 2005141 was when my optometric license #8321 was revoked and stayed. My license was placed on a 3 year probation with terms and conditions to meet. This was a result of my felony possession charge in 2006, Court Case #SWF 013967, Riverside County. I admitted to all facts and circumstances and agreed to a stipulated settlement and disciplinary order.

June 2008 Accusation and petition was filed based on the conduct of methamphetamine drug abuse, fraudulently showing completion of community service hours and 12 step meeting attendance, and practicing optometry without a license from June 20-25th.

Petition to revoke probation was filed and in July, I met with Lorrette West, Deputy Attorney General, admitting my guilt to all violations with no trial.

Probation was agreed upon. I was fined \$18, 330.00 dollars and my certificate to practice optometry # 8321 was surrendered.

13. List the date of disciplinary action against your license and explain fully the cause of the disciplinary action.

June 18, 2007 Disciplinary action entitle "Matter of Accusation" case # CC 2005-141.conviction for a My license was revoked and stayed. I was placed on probation for three years. This initial disciplinary action was delivered after a 2006 conviction for a felony possession of a controlled substance, methamphetamine, in Riverside County court. This arrest revolved around circumstances surrounding search of my residence on October 19, 2005 in which 1.4grams of methamphetamine and paraphernalia to smoke methamphetamine was found. I admitted to all facts and circumstances of the accusation and a stipulated and disciplinary order was signed. I was subject to unprofessional conduct under Business and Professional code and self administering a controlled substance, methamphetamine.

July 15, 2008 Accusation and petition to revoke probation # CC 2008-13 was filed.

This was brought on by an investigation of myself in March 2008 by probation monitor Margie McGavin. The first cause for failing an undercover drug screen under the terms of my probation. April 14, 2008 Brian Slatic came to my office under the direction of consumer affairs. I willfully submitted to a drug test in which I knew I would fail.

The second cause was false and fraudulent misrepresentation to the board.

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I turned in false records showing my weekly attendance to a 12 step meeting as agreed to in my probation. I faxed false records and signed notes stating I attended NA meetings at First Presbyterian church in Wildomar, CA. I did not attend any of these meetings and was still in my use and addictive to methamphetamine. I was also dishonest in my community service I was to provide to the board as part of my probation. I took advantage of a patient who worked at the police department of Lake Elsinore. She falsified my involvement in The cops for kids program. I did not att anytime performed this community service.

The third cause of discipline was practicing without a valid license between June 20th-25th while my license was placed on suspension on June 18th. Through arrogance and defective character I ignored the board suspension and continued practicing and seeing the patient I had scheduled and "tie-up ends" before I met with deputy Attorney General, Loretta West in July.

I admitted guilt to all action of my fraudulent, selfish and unprofessional conduct. Revoking of my probation was granted an the imposing disciplinary order was stayed, thus revoking my certificate of practice # 8321. I was also ordered to pay reasonable costs of the investigation and enforcement in the amount of \$18,330.00

July 3, 2008 at the office of Administration Hearings in San Diego. I admitted the truth of all charges and allegations to revoke my probation. A stipulated revocation of license and order was explained to me if agreed so by the Board of Optometry.

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.

I feel I have regained the trust, professionalism and ethical standards back in my community, church and family the past three years of sobriety. The trust and change of my behavior in all walks of life are a result of day to day growth in my 12 step family and the rehabilitation of my honor, humility and acceptance. I have remained educated in both the current laws and legislations of optometry along with current diagnosis and treatment modalities. I face the debauchery of my past head-on now with no fear or resentments. I practice a sober life style with no conditions or strings attached to my staying clean and sober. I have taken full responsibility for my past actions and hold only myself accountable of past and future outcomes. My actions and thinking are spiritually based today and I accept God's will not mine to receive the plan he has set forth for me.

With the financial hardship I have placed upon myself I have kept myself current in the optometric field through the literature I have studied and the opportunity of mentoring with Dr. Berwyn Smith. This "eyes on" education has given me a great deal of knowledge in the medical and technology end of eye care. I have addressed and faced the defects of my character I posses. Made amends with people and family I have hurt. Through the grace of God I have regained much trust and respect.

If one tries to attack an addiction with denial, conditions, resentments and fear like I once did, you will not succeed to grow, to become the person you were meant to be in God's eyes.

Today I lead by example, giving to others and not myself is truly a huge step for me to have myself prepared to reenter the field of optometry. Feelings of anger, envy and resentments no longer suffocate the life out of me. Moral certitude is my foundation today and I will continue this behavior regardless of the result I receive of this petition.

I have done the work to achieve what I strove for, no longer only wishing for it, or only waiting for the result I want to happen. Facing this petition was once a great fear for me, to address my past. The courage I have developed made it a great rewarding awakening.

I look forward to continue building bridges in all aspects of my life and no longer putting up walls.

You will know you have learned a lesson when your actions change. Today my actions have changed me to the man I want to be in and out of optometry.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.

June 2007-

-License Revoked Stayed with probation.

-Completed 14 Day in-house rehabilitation and recovery at "A Better Tomorrow" -Continued outpatient care for eight (8) weeks.

October- November 2007-

Worked for Steve Hilz,OD at Perris Valley Vision Center
 136 W. Nuevo Rd.
 Perris, CA. 92571

November-December 2007-

- Constructed and opened Lake Vision at Canyon Hills

25321 Railroad Canyon Road

Lake Elsinore, CA. 92532

Single parenting my two sons 10 and 18 years at this time.

January 2008-

- Relapsed to methamphetamine abuse.
- Completed ethics class for probation.
- Fraudulently issued information to board on my 12 step classes and community Service in regards to my probation.
- -Practicing solo 6 days a week at my new location.

April-June 2008-

June- I failed drug test by consumer affairs department.

- Practicing 6 days a week.

- Discontinued drug abuse without recovery program. Still in denial.

June-2008 - License suspended until formal hearing in July (2008)

-Practiced without license June 20th-25th, 2008

July 2008-

- I met with assistant Attorney General Deputy Loretta West and admitted guilt to All accusations.
- Sold my practice, Lake Vision at Canyon Hills

(August 2008-Present)

- Went on private disability with New York Life with a monthly income of \$4,400.00
- Took care of my financial obligations with Orange County Child support services.
- I am currently in good standing with my child support obligations.)

January-December 2009

- Relapsed to methamphetamine addiction.
- Continued parenting my sons.
- Living on disability and living a life of sloth Golfing, bowling, gambling.

February 2010-

- Returned to a "A Better Tomorrow" for outpatient treatment program.

P.O. Box 893507 Temecula, CA 92589

- Began a recovery process there, But left the program that resulted in a complaint, which I Issued with the State Board of Drug and Alcohol Abuse.

- Still in denial I relapsed a third time.

September 2010-

- Accepted and Surrendered to my addiction. My clean date began September 1st, 2010. I remain clean to this date today.

- Began and completed outpatient program at Riverside Recovery Resources.

600 3rd Street

Lake Elsinore, CA 92530

-Continued parenting my two sons.

-Taking my recovery one day at a time, On a day to day basis.

October 2010-Present -

- Met an old patient of mine, Bernie Truax, and was introduced to a solid 12 step recovery Family and Program.
- Did 90 AA/NA meetings in 90 days. I learned acceptance and surrendering of my Addiction.

2011-Present-

-Focused on recovery and rehabilitation

-Parenting my two sons

-Completed a four month Phlebotomy class.

-Became active with my church and the Knights of Columbus.

-Study of on-line and printed journal educational materials to keep current and Learn.

July 2012-Present-

-Began mentoring and observation two days a week with ophthalmologist, Dr. Berwyn Smith 41877 Enterprise Circle North #110 Temecula, CA 92590

September 2011-Present-

- Under the care and observation of Dr. John Harsany, M.D. Diplomat of American Board of Addiction 371 North Weston Place Hemet, CA 92543

September 2010-Present-

- Parenting and maintaining a clean, sober and sane life through a well founded 12 step Family and program a daily work in progress.

(question 15, page 2 of 2)

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

May-August 2006-

-High Road Program
3579 Arlington Ave Suite 200
Riverside, CA. 92506
951-781-6762
High Road Program:
16 weeks of drug counseling program to develop awareness of use and
Misuse of mind and mood altering drugs and to eliminate the negative consequences of substance
Use and abuse.
-PC 1000 Diversion program to expunge felony methamphetamine charge.

March-May 2006-

-A Better Tomorrow P.O. Box 893507 Temecula, CA. 92589 800-517-4849 A Better Tomorrow: Structured in-house living program with continued outpatient drug and alcohol treatment facility.

April-2010-

-Returned to A Better Tomorrow for outpatient program with group and one-on-one therapy And counseling.
-Riverside Recovery Resources (RRR)
600 3rd Street
Lake Elsinore, CA. 92530
951-674-5354
Riverside Recovery Resources:
Structured living and outpatient treatment center for drug and alcohol abuse.
Completed 16 week outpatient program with group and one-on-one therapy sessions with Certification.

Present-

-Dr. John Harsany, M.D. Diplomat of American Board of Addiction, Medical Director 371 North Western Place
Hemet, CA. 92543
Dr. Harsany:
One on One care, Therapy and medical treatment, psychological therapy and drug treatment.

June 2010-Present-

-Strongly founded in 12 step meetings along with monthly book study to complete the steps of AA/NA 12 step program.

Held accountable for sobriety on a 2-3 month visit through medical treatment and counseling.

Action and work done to fulfill each step of he 12 steps.

Making peace and acceptance with God, Ourselves and others that I have affected during my drug Use.

April-2011-Present-

-Knights of Columbus

Serving church and community through St. Frances of Rome, Lake Elsinore, CA.

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

I have not taken any formal optometric refresher courses; However I would like to submit the following for your consideration.

My continuing observation and mentoring with Dr. Berwyn Smith, Ophthalmologist. Director of Temecula Valley Medical Eye Center.

I approached Dr. Smith, who has been a colleague for 25 years, to come into his practice and shadow him two days a week. He graciously agreed.

July 2012, I was given the opportunity to sit in and follow more then 50 glaucoma patients, with drug treatment, HRT,OCT and visual fields.

-Well over 100 cases of pre and post-op cataract care and treatment, lasik patients, trauma and emergency cases.

-Numerous anterior segment cases, ranging from iritis, keratitis and conjunctivitis.

-Dry eye and MGD cases with treatment and follow up.

-Posterior segment cases including diabetes, optic nerve disorders and vitreal retinal complications.

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

-Optometric Review: Monthly Issues -Optometric Review Annual Guides:

> Retinal Disease Ocular Disease Management Anterior Segment Ocular Allergy Corneal and Contact Lenses Presbyopia Report Annual Refractive Surgery Report Corneal Atlas Dry Eye Annual

-The Wills Eye Manual

Office and Emergency room diagnosis and treatment of eye diseases. 6th Edition

* Used and studied in conjunction with Dr. Berwyn Smith

-Optometric Management Monthly Issues

I approach and take on the journals in my own structured study program. Studying 2-3 hours a week with these monthly issues

19. List all continuing education courses you have completed since your license was <u>disciplined.</u>

Other then the undocumented Optometric Review literature tests and assessments I completed, I have not taken any formal continuing education courses, such as ones presented at vision expo or other live optometric conventions or meetings.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

Mr. Bernard Truax Riverside Recovery Resources (RRR) 600 3rd Street Lake Elsinore, CA 92530 951-852-1604

Mr. Kenneth Young Riverside County Superintendent of Schools 3939 13th Street Riverside, CA 92502-0868 951-852-0933

W. Berwyn Smith, M.D. Temecula Eye Medical Center 41877 Enterprise Circle North Suite 110 Temecula, CA.92590 951-296-2244 951-256-3445

Steve Hilz, O.D. Perris Valley Vision Center 136 W. Nuevo Road Perris, CA 92571 951-544-7123

Board Members,

Ćr.

December 11th, 2014 marks my one year since my license has been reinstated to continue my practice of optometry.

I practice a judicious, obedient and committed lifestyle both in my day to day life of sobriety and in our profession and stay focused to give to our cause of remaining ethical and respectful of my license. It is a privilege to have a patient's trust and the license I'm allowed to accomplish this is no longer taken for granted or taken lightly. I've become more knowledgeable, concerned and committed to keeping this trust along with committed to doing what I can to protect the optometric profession and what it allows us to do.

Enclosed is my copy of the form I've completed prior to my reinstatement submitted for licensure. The question remains the same as for petition for reductions of penalty or early termination of probation. I am submitting an addendum to the board stating what I have done to successfully follow my probationary terms and conditions set forth by the board. I'm making a plea to the board to consider my probation be lifted and license fully restored.

I will address the conditions of my probation below. This would be in response to aid additional information to questions 14, 15, 16, 17 and 18 of my petition.

- 1. I have obeyed all Federal, State and local laws and those governing the practice of optometry.
- 2. I have submitted all quarterly reports of compliance on the dates requested.
- 3. I have been in full cooperation with the requirements set forth by my probation monitor, fulfilled my 50 hours of continued education and passed the California Law Examination. I reported to personally meet with my probation monitor along with answering all email, mail and staying in contact by phone.
- 4. I diligently sent in my probation monitor fees monthly of \$100.
- 5. I have fortunately functioned as an optometrist for a minimum of 60 hours per month. I am employed at three offices of vision care.
- 6. I have provided "Notice to Employer" to all three of my employers and provided the DG-Forms 1 to them for completion.
- 7. Complied with Change of Employment of Residence notification.
- 8. I have paid off, in full, the \$10,130 of the original \$18,130 for the costs of the investigation and prosecution.
- 9. I passed the California Laws and Regulations Examination in January of 2014.
- 10. I have been completing my 16 hours of optometric community service in an honorable fashion. Angels for Sight of Compton, CA has been a big part of my community service life.
- 11. I am staying conscious of keeping my license valid and renewed in May of 2015 by doing online hours of education and of course, offline requirements.
- 12. Tolling for out of state residence as practice did not apply for me.
- 13. License surrender Acknowledged
- 14. Violation of Probation Acknowledged
- 15. Completion of Probation Acknowledged

16. Sale as Closure of office/practice – Acknowledged

17-18. Abstention from use of controlled substances and alcohol.

Biological Fluid Testing

I have been persistent and committed to the drug testing program my probation monitor has set forth. This requires a daily call-in to Pharmatech to see if I am to report for a collection. In the 345 days I have called in to date, I have proudly reported and passed 60+ collections. This is a financial obligation of approximately \$58 per collection.

19. I have been working closely with my on-site work monitor, Dr. Berwyn Smith. He has been compliant with all quarterly reports of my work attendance, professional behavior and work duties of an optometrist.

I live a sober, obedient lifestyle today which is not a temporary "fix" to be an optometrist and pacify the board, but one which I will continue with as a man. Being accepted by family, profession and community is something I live by now and will continue to honor that privilege. The trust patients give me is nothing to take for granted or with conditions attached. Along with my sobriety I am more knowledgeable, concerned and committed to the profession and continue to do my part to protect the privilege to practice the board has given me. I now understand why the board holds us to a high judicial professional standard, that being to protect the safety of the public and hold our licenses to the highest degree I will continue to remain accountable for my past actions along with remaining conscious, responsible and ethical in my behavior.

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

In the Matter of the Petition for Reinstatement of:

OAH No. 2013080609

STEPHEN SCHROEDER,

Agency Case No. CC 2013-45

Optometrist License No. 8321,

Petitioner.

DECISION

A quorum of the Board of Optometry (Board) heard this matter on September 13, 2013, in Pomona, California.

Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Stephen Schroeder (Petitioner) represented himself.

Sydney Mehringer, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 13, 2013.

FACTUAL FINDINGS

1. On July 26, 2013, Petitioner filed a Petition for Reinstatement.

2. The Board issued Optometrist license number 8321 to Petitioner on or about September 15, 1985.

3. In a Stipulated Surrender of License and Order, effective June 18, 2007, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he and the Board entered a Stipulated Settlement and Disciplinary Order wherein Petitioner's license was revoked, the revocation was stayed, and the license was placed on probation for three years. 5. On June 19, 2008, the Office of Administrative Hearings granted the Board's ex parte Petition for an Interim Order of Suspension. Petitioner's license was suspended by order of the Board effective June 30, 2008.

6. On October 3, 2008, the Board by Decision and Order adopted a Stipulated Revocation of License and Order. Petitioner's Optometry License number 8321 and Fictitious Name Permit number 3424 were revoked effective October 3, 2008.

7. In his current Petition, Petitioner asserted that he has changed his view as a drug and alcohol abuser. He has learned about his mistakes since his license was revoked in 2008. He described himself as a changed person and that he has finally learned how serious he must take his sobriety. Petitioner attends Alcoholics' Anonymous at least two times a week and he has a sponsor. He stated his date of sobriety is September 1, 2010. Petitioner was candid in acknowledging that he took his sobriety for granted on his first attempt. He acknowledged that he now realizes he is not "special" in that he has the same issues as the other people trying to get sober. Before he looked at others as "drug addicts" or "drunks," titles he was unwilling to accept for himself. Fortunately, Petitioner now realizes that remaining sober if the most important thing for him.

9. After considering the Petition, all of its exhibits, and the testimony of Petitioner, the Board concluded that Petitioner has established that the Petition should be granted, with terms and conditions, so as to confirm public safety.

LEGAL CONCLUSIONS AND DISCUSSION

1.

.2.

3.

- Cause exists to grant Petitioner's Petition for Reinstatement pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-9, and Legal Conclusions 2-5.
- Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (Flanzer v. Board of Dental Examiners (1990) 220 Cal.App.'3d 1392, 1398; Housman v. Board of Medical Examiners (1948) 84 Cal.App.2d 308, 315-316.)

Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

California Code of Regulations, title 16, section 1516, states in pertinent part:

 $\llbracket \P \rrbracket \cdots \llbracket \P \rrbracket$

4.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/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.

(c) When considering a petition for reinstatement of a certificate of registration 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).

5. Petitioner established, by clear and convincing evidence to a reasonable certainty, that his license should be reinstated. The public will be protected by issuing Petitioner a probationary license. That probationary license will include terms and conditions designed to protect the public.

ORDER

Petitioner Stephen Schroeder's Petition for Reinstatement of his license is granted. A license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed, and Petitioner's license placed on probation for a period of 4 years with the terms and conditions stated below. Petitioner will be referenced as "Respondent" in the terms and conditions stated below.

SUSPENSION

Petitioner's license is immediately suspended after being placed on probation for a period of six months. During this six month period, Petitioner is required to complete 50 hours of Board approved continuing education classes. 20 of these hours may be completed online or the through magazines. If Respondent completes the 50 hours of continuing education

courses before the expiration of the 6 month suspension period, the suspension shall be considered completed and concluded as approved by the Board.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her probation period.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 10,130 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of (to be determined by Board) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. LICENSE SURRENDER

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

17. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL

Respondent shall abstain completely from the use or possession of alcohol, any and all other mood altering drugs or substances, and their associated paraphernalia. Respondent shall identify for the Board, a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to

the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

- 1. the Respondent's name;
- 2. license number;
- 3. physician, nurse practitioner, or physician assistant's name and signature;
- 4. physician, nurse practitioner, or physician assistant's license number;
- 5. dates Respondent had face-to-face contact or correspondence (written and verbal) with physician, nurse practitioner, or physician assistant;
- 6. the Respondent's compliance with this condition;
- 7. if any substances have been prescribed, identification of a program for the timelimited use of any substances;
- 8. any change in behavior and/or personal habits;
- 9. assessment of the Respondent's ability to practice safely;
- 10. recommendation dependant on Respondent's progress and compliance with this condition on whether to continue with current prescription plan and/or treatment, modify plan and/or treatment, or require Respondent to cease practice;
- 11. other relevant information deemed necessary by the physician, nurse practitioner, physician, or the Board.

Respondent is ultimately responsible for ensuring his/her physician, nurse practitioner or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometric license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut off level shall be reported to each of Respondent's employers.

18. BIOLOGICAL FLUID TESTING

Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at the frequency outlined in Uniform Standards for Substance Abuse #4.

Respondent shall make daily contact to determine if he/she is required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reinstate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license.

19 WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

11

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

- 1. the Respondent's name;
- 2. license number;
- 3. worksite monitor's name and signature;
- 4. worksite monitor's license number;
- 5. worksite location(s);
- 6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
- 7. staff interviewed, if applicable;
- 8. attendance report;
- 9. any change in behavior and/or personal habits;
- 10. assessment of the Respondent's ability to practice safely;
 - 11. recommendation dependant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
 - 12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his/her worksite monitor submits complete and timely reports. Failure to ensure his/her worksite monitor submits complete and timely reports shall constitute a violation of probation. If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

Ordered: November 12, 2013

Effective: December 11, 2013

Alijandio Hnedondo, IP

Alejandro Arredondo, O.D., President California Board of Optometry Department of Consumer Affairs

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

Agency Case No. 2008-13

In the Matter of the Accusation and Petition to Revoke Probation Against:

"(___)

STEPHEN G. SCHROEDER, O.D. 25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532

Certificate of Registration No. OPT 8321

Respondent.

DECISION

The attached Stipulated Revocation of License and Order is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the aboveentitled matter.

This Decision shall become effective October 3, 2008.

It is so ORDERED September 3, 2008

LEE A. GOLDSTEIN, O.D. MPA PRESIDENT BOARD OF OPTOMETRY

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EDMUND G. BROWN JR., Attorney General of the State of California LINDA K. SCHNEIDER Supervising Deputy Attorney General LORETTA A. WEST, State Bar No. 149294

Deputy Attorney General 110 West "A" Street, Suite 1100 San Diego, CA 92101

P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2107 Facsimile: (619) 645-2061

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Attorneys for Complainant

BEFORE THE BOARD OF OPTOMETRY STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against:

STEPHEN G. SCHROEDER 25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532

Certificate of Registration to Practice Optometry, No. 8321

Respondent.

Case No. CC 2008-13

STIPULATED REVOCATION OF LICENSE AND ORDER

P. 06

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Loretta A. West, Deputy Attorney General.

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2. Stephen G. Schroeder (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

LICENSE HISTORY

3. On or about September 15, 1985, the Board of Optometry issued Certificate of Registration to Practice Optometry Number 8321 to Stephen G. Schroeder (Respondent). The Certificate of Registration to Practice Optometry (hereinafter referred to as "optometry license") is currently suspended, as described below, and will expire on May 31, 2009, unless renewed.

4. On or about June14, 2008, the Department of Consumer Affairs, Child Support Services Division, suspended Respondent's optometry license, pursuant to California Family Code section 17520, because Respondent had failed to provide child support payments as ordered by the Superior Court of Orange County.

5. On or about November 27, 2007, the Board of Optometry issued Fictitious Name Permit Number 3424 to Stephen G. Schroeder doing business as Lake Vision Optometric Corporation. The Fictitious Name Permit will expire on January 31, 2009, unless renewed.

PRIOR PROCEEDINGS

6. On or about June 18, 2007, in a disciplinary action entitled "In the Matter of the Accusation Against Stephen G. Schroeder a.k.a. Stephen Gerard Schroeder," Case No. CC 2005 141, Respondent's optometry license was revoked. However, the revocation was stayed and Respondent's optometry license was placed on probation for a period of three (3), years with certain terms and conditions.

7. On or about June 20, 2008, the Office of Administrative Hearings granted Complainant's ex parte Petition for Interim Order of Suspension and, effective June 23, 2008, 'suspended Respondent's optometry license, pursuant to Business and Professions Code section 494. A formal, noticed hearing on said Interim Order of Suspension was scheduled to occur on July 3, 2008, at the Office of Administrative Hearings.

8. On or about June 23, 2008, in the matter entitled "Petition for Interim Order of Suspension Against Stephen Gerard Schroeder," Case No. CC 2005 141, Respondent's

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optometry license was suspended until the effective date of the Board's final decision on this Accusation and Petition to Revoke Probation Against Stephen G. Schroeder. This suspension was pursuant to an Order, from the Office of Administrative Hearings, that incorporated a stipulation between Complainant and Respondent.

IURISDICTION

On or about July 15, 2008, Accusation and Petition to Revoke Probation 9. No. CC 2008-13 was filed before the Board of Optometry, and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on July 15, 2008. A copy of said Accusation and Petition to Revoke Probation is attached as exhibit A and incorporated herein by reference, ADVISEMENT AND WAIVERS

10. Respondent has carefully read, and understands the charges and allegations 12 in the Accusation and Petition to Revoke Probation. Respondent also has carefully read, and ·13 understands the effects of this Stipulated Revocation of License and Order. -14

Respondent is fully aware of his legal rights in this matter, including the 15 right to a hearing on the charges and allegations in the Accusation and Petition to Revoke 16 17 Probation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 18 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the 19 20. production of documents; the right to reconsideration and court review of an adverse decision; 21 and all other rights accorded by the California Administrative Procedure Act and other applicable 22 laws.

23 Respondent voluntarily, knowingly, and intelligently waives and gives up 12. each and every right set forth above. 24

ADMISSIONS

26 Respondent admits the truth of each and every charge and allegation in 13. Accusation and Petition to Revoke Probation No. CC 2008-13 including, but not limited to, the following; he illegally self-administered the illicit controlled substances methamphetamine and

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amphetamine, on or about April 15, 2008; he made misrepresentations and submitted false and fraudulently produced documents to the Board in his attempt to cover-up the fact that he had failed to comply with several terms and conditions of his probation; and, he violated several terms and conditions of his probation including, but not limited to, Condition No. 1 (Obey All-Laws), Condition No. 2 (Comply-With the Board's Probation Program), Condition No. 4 (Attend Rehabilitation Meetings), and Condition No. 14 (Provide Community Service).

14. Respondent agrees that cause exists for discipline of his optometry license and revocation of his probation thereby instituting the revocation of his optometry license that was stayed. Respondent agrees to the revocation of his optometry license by the Board.

15. Respondent understands that by signing this stipulation he enables the Board of Optometry to order the revocation of his probation, and the revocation of his optometry license, without further process.

CONTINGENCY

16. This stipulation shall be subject to approval by the Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

17. The parties understand and agree that facsimile copies of this Stipulated
Revocation of License and Order, including facsimile signatures thereto, shall have the same
force and effect as the originals.

18. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Optometry may, without further notice or formal proceeding, issue and enter the following Order:

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<u>ORDER</u>

IT IS HEREBY ORDERED that Certificate of Registration to Practice Optometry No. 8321 and Fictitious Name Permit No. 3424, issued to Respondent Stephen G. Schroeder is revoked by the Board of Optometry.

IT IS FURTHER ORDERED THAT:

1. The probation, that was granted to Respondent by the Board of Optometry in Case No. CC 2005 141, is revoked, and stay of the disciplinary order of revocation is lifted, such that the Certificate of Registration to Practice Optometry No. 8321 issued to Stephen G. Schroeder is revoked;

Respondent shall lose all rights and privileges as an optometrist in
 California as of the effective date of the Board's Decision and Order in this matter.
 Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order;

4. Respondent shall pay to the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3, in the amount of \$18,130.00 (eighteen thousand one hundred thirty dollars) prior to the reinstatement of his license;

5. Should Respondent ever file an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. CC 2008-13 shall be deemed to be true, correct and admitted by Respondent when the Board of Optometry determines whether to grant or deny the petition.

6. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, issued by any other health care or other licensing agency in the State of California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. CC 2008-13, shall be deemed to be true, correct, and admitted by

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Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

P. 11

ACCEPTANCE

I have carefully read the Stipulated Revocation of License and Order. I

understand the stipulation and the effect it will have on my Certificate of Registration to Practice Optometry and Fictitious Name Permit. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Optometry.

DATED: July 21, 08

STEPHEN G. SCHROEDER Respondent

ENDORSEMENT

The foregoing Stipulated Revocation of License and Order is hereby respectfully submitted for consideration by the Board of Optometry.

DATED: July 28, 2008

EDMUND G. BROWN JR., Attorney General of the State of California

LINDA K. SCHNEIDER Supervising Deputy Attorney General

LORETTA A. WEST Deputy Attorney General

Attorneys for Complainant

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 EDMUND G. BROWN JR., Attorney General of the State of California
 LINDA K. SCHINEIDER Supervising Deputy Attorney General
 LORETTA A. WEST, State Bar No. 149294 Deputy Attorney General
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Attorneys for Complainant

BEFORE THE BOARD OF OPTOMETRY STATE OF CALIFORNIA

Case No.

ACCUSATION

AND PETITION TO

REVOKE PROBATION

P. 14

In the Matter of the Accusation and Petition to Revoke Probation Against:

STEPHEN G. SCHROEDER 25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532

Certificate of Registration to Practice Optometry, No. 8321

Respondent.

Mona Maggio (Complainant) brings this Accusation and Petition to
 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
 Optometry and alleges the following:

LICENSE HISTORY

24 2. On or about September 15, 1985, the Board of Optometry issued
 25 Certificate of Registration to Practice Optometry Number 8321 to Stephen G. Schroeder
 26 (Respondent). The Certificate of Registration to Practice Optometry (hereinafter referred to as
 27 "optometry license") is currently suspended, as described below, and will expire on May 31,
 2009, unless renewed.

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3. On or about June 14, 2008, the Department of Consumer Affairs, Child Support Services Division, suspended Respondent's optometry license, pursuant to California Family Code section 17520, because Respondent had failed to provide child support payments as ordered by the Superior Court of Orange County.

4. On or about November 27, 2007, the Board of Optometry issued Fictitious Name Permit Number 3424 to Stephen G. Schroeder doing business as Lake Vision Optometric Corporation. The Fictitious Name Permit will expire on January 31, 2009, unless renewed.

PRIOR PROCEEDINGS

5. On or about June 23, 2008, in the matter entitled "Petition for Interim Order of Suspension Against Stephen Gerard Schroeder," Case No. CC 2005 141, Respondent's optometry license was suspended until the effective date of the Board's final decision on this Accusation and Petition to Revoke Probation Against Stephen G. Schroeder. This suspension was pursuant to an Order, from the Office of Administrative Hearings, that incorporated a stipulation between Complainant and Respondent. A copy of said Order is attached hereto as Exhibit A and incorporated herein by reference.

6. On or about June 20, 2008, the Office of Administrative Hearings granted Petitioner's ex parte Petition for Interim Order of Suspension and, effective June 23, 2008, suspended Respondent's Certificate of Registration to Practice Optometry Number 8321, pursuant to Business and Professions Code section 494. A formal, noticed hearing on said Interim Order of Suspension was scheduled to occur on July 3, 2008, at the Office of Administrative Hearings. A copy of said petition and supporting documents is attached hereto as Exhibit B and incorporated by reference.

7. On or about June 18, 2007, in a disciplinary action entitled "In the
Matter of the Accusation Against Stephen G. Schroeder a.k.a. Stephen Gerard Schroeder,"
Case No. CC 2005 141, Respondent's optometry license was revoked. However, the revocation
was stayed and Respondent's optometry license was placed on probation for a period of three (3)
years with certain terms and conditions. A copy of that decision is attached as Exhibit C and
incorporated by reference.

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A. The underlying Accusation No. CC 2005 141 was based upon Respondent's 2006 conviction for violation of Penal Code section 11377, subdivision (a), a felony (possession of a controlled substance (methamphetamine)) in Riverside County Superior Court Case No. SWF013967 entitled *People of the State of California v. Stephen G. Schroeder*.

B. The circumstances surrounding the conviction are that on or about October 19, 2005, Riverside County Sheriff's deputies searched Respondent's residence as authorized by a search warrant. In a safe located in the closet of Respondent's master bedroom, the sheriff's deputies found a plastic bag containing approximately 1.40 grams of a white crystal substance, which field-tested positive for methamphetamine, two glass pipes consistent with those used for smoking methamphetamine, and Respondent's California Driver's License. The sheriff's deputies also found nineteen (19) firearms including, rifles, revolvers, shotguns and semi-automatic pistols, in various safes located in the closet of Respondent's master bedroom. C. Respondent has previously admitted all facts and circumstances alleged in Accusation No. CC 2005 141 and described above. (See, Exhibit C, Stipulated Settlement and Disciplinary Order, at page 2, paragraph 8.)

JURISDICTION

8. This Accusation and Petition to Revoke Probation is brought before the Board of Optometry, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

Section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board of by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

10. Section 3090 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenscholders, and the board shall have all the powers granted in this chapter for these purposes,

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including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

Section 3106 of the Code 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 3110 of the Code states:

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.

(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.

(1) 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.

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

13. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has done one of the following:

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

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(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

P. 18

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(d) Any violation of the provisions of Chapter 7, Division 2 of the Code. (Sections 3000 et seq. of the Code).

15. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

16. California Code of Regulations, title 16, section 1516 states:

(a) When considering the denial of a certificate of registration 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, 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.

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(5) Evidence, if any, of rehabilitation submitted by the applicant.

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

P. 19

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.

(c) When considering a petition for reinstatement of a certificate of registration 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).

Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

COST RECOVERY

18. Section 125.3 of the Code 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.

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CONTROLLED SUBSTANCE

P. 20.

19. Methamphetamine is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022 of the Business and Professions Code.

ACCUSATION ALLEGATIONS

FIRST CAUSE FOR DISCIPLINE

(Self Administration of Controlled Substances Methamphetamine and Amphetamine)

20. Respondent is subject to disciplinary action for unprofessional conduct under Business and Professions Code section 3110, subdivisions (a), (f), and (l), and Code section 480, subdivision (a)(3), in that he self-administered the controlled substances methamphetamine and amphetamine, as described below.

21. On or about March 7, 2008, Respondent's Board appointed probation monitor requested an investigation of him by the Division of Investigation, including an undercover unannounced drug screen on Respondent, as authorized by the terms and conditions of his probation. Petitioner's request was based, in part, upon Respondent's fraudulent conduct and misrepresentations to his probation monitor during his unsuccessful attempts to satisfy the terms and conditions of his probation, as described in detail below at paragraphs 27 through 29, and incorporated herein by reference.

22. On April 14, 2008, Brian Slatic, Senior Investigator for the Division of Investigation working undercover as a patient, telephoned Respondent's practice, Lake Vision Optometric Center, and made an eye examination appointment with Respondent for the following day at 1:00 p.m.

24 23. On April 15, 2008, Investigator Slatic arrived at approximately 1:00 p.m. at
25 Respondent's practice and identified himself only as a representative of the Board of Optometry.
26 24. After waiting for awhile, at approximately 1:15 p.m., Investigator Slatic
27 informed Respondent's receptionist that he was actually, also, the "patient" who was scheduled
28 to receive an eye examination from Dr. Schroeder during a 1:00 p.m. appointment that day.

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25. At approximately 1:45 p.m., Respondent arrived at his practice. Investigator Slatic informed Respondent that he was there to collect a random urine sample from him. Respondent provided a urine sample under Investigator Slatic's supervision. Inspector Slatic packaged the sample in the materials provided by Quest Diagnostics, and took it to the

Board's Ontario Field Office for pick-up and processing by Quest.

26. On May 6, 2008, Quest Diagnostics faxed to Investigator Slatic a copy of the results of Respondent's drug screen. Respondent tested positive for methamphetamine and amphetamine.

SECOND CAUSE FOR DISCIPLINE

(False and Fraudulent Misrepresentation to the Board)

27. Respondent is subject to disciplinary action under Business and Professions Code section 3110, subdivisions (a), (e), and subdivision (f), Code section 480 subdivisions (a)(2) and (3), and Code section 3106, in that he provided to his Board of Optometry probation monitor, false and fraudulently produced documentation in order to feign compliance with terms and conditions of his probation when, in fact, he had violated several terms and conditions of his probation, as described below at paragraphs 31 through 39, and incorporated by reference.

A. Respondent Provided Fraudulent Documentation to the Board Re: Failure To Attend Weekly 12-Step Meetings

On July 7, 2007, Respondent and his Board of Optometry probation 20.monitor agreed that by or before August 1, 2007, he would provide his probation monitor with 21 .22 the name, location, and contact person of his weekly 12-step program. After additional oral and 23 written requests. Respondent faxed the required information to his probation monitor on or about 24 October 18, 2007. Page one of Respondent's fax contained a handwritten note stating he 25 attended Narcotics Anonymous meetings weekly at the First Presbyterian Church in Wildomar 26 and that the "Contact Person/Support Person Secretary" of the meetings was L. S. and a 27telephone number was provided. Page two of Respondent's fax contained an alleged attendance verification form, initialed weekly by "LS," indicating that Respondent had attended a Narcotics 28

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Anonymous meeting at the church every week since June 21, 2007, and through October 10, 2007. In fast, there were no Narcotics Anonymous meetings available at said location, L.S. was Respondent's girlfriend who had been living with him since mid-2005, and L.S. was not the contact person for the alleged Narcotic Anonymous meetings identified by Respondent.

B. Respondent Provided Fraudulent Documentation to the Board Re: Failure To Complete Community Service Hours

29. On or about October 18, 2007, Respondent provided his Board of Optometry probation monitor with a completed Verification of Community Service form stating that he had completed a total of sixty six (66) hours of community service for the Riverside County Sheriff's "Cops for Kids" program. In fact, Respondent did not and had not, at any time whatsoever, performed community service for the Cops for Kids program.

THIRD CAUSE FOR DISCIPLINE

(Practice of Optometry Without A Valid License)-

30. Respondent is subject to disciplinary action for unprofessional conduct

under Business and Professions Code section 3110, subdivisions (a), (e), (f), and (s), and

16 Code section 480 subdivisions (a)(2) and (3), in that from approximately June 14 through

17 June 20, 2008, he practiced optometry at his office while his license was under suspension and he

18 did not have a valid optometry license. Said suspension is described above at paragraph 3, which
19 is incorporated by reference.

PETITION TO REVOKE PROBATION ALLEGATIONS

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws: Violation of Probation Condition No. 1)

At all times after the effective date of Respondent's probation, Condition

No. 1 stated:

31.

Obey All Laws. Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of

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the effective date of the decision, unless previously submitted as part of the licensure application process.

32. Respondent violated Condition No. 1 of his probation in that he selfadministered methamphetamine and amphetamine, in violation of Business and Professions Code section 3110 (f), among other laws. Respondent's urine sample, collected on April 15, 2008, was analyzed and tested positive for methamphetamine and amphetamine, which are controlled substances, dangerous drugs and illicit drugs. The facts and circumstances regarding this alleged violation of Condition No. 1 of probation, are described in detail above in paragraphs 20 through 26, which are incorporated by reference.

33. Respondent also violated Condition No. 1 of his probation in that he violated Business and Professions Code section 3110, subdivision (s) and Code section 480, subdivisions (a)(2) and (a)(3), by practicing optometry at his office, from approximately June 14 through June 20, 2008, while his license was under suspension and he did not possess a valid optometry license. Said suspension is described above at paragraph 3, which is incorporated by reference.

SECOND CAUSE TO REVOKE PROBATION

17 (Failure to Comply With Probation Program: Violation of Probation Condition No. 2)
18 34. At all times after the effective date of Respondent's probation, Condition

19 No. 2 stated:

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Comply with the Board's Probation Program. Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determine that respondent may not be compliant with any of the terms or conditions of his probation. Respondent shall inform the Board in writing within no more than 15 days of any change of residence address and prior to making any change in practice location. Respondent shall at all times maintain an active, current license status with the Board, including during any period of suspension.

35. Respondent's probation is subject to revocation because he failed to comply with several conditions and terms of his probation including, but not limited to,

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1 Condition No. 1. Condition No. 2. Condition No. 12, and Condition No. 14, as described in 2 detail at paragraphs 20 through 34 above, and paragraphs 36 through 39 below, which are incorporated by reference. Respondent has failed to obey all laws, in violation of Probation 3 Condition Nos. 1 and 2, in that he illegally used methamphetamine and amphetamine, as 4 5 indicated by his urinalysis and positive drug screen on April 15, 2008. Respondent also violated 6 Condition No. 1 of his probation in that he practiced optometry while his license was suspended, as described above at paragraph 30. Respondent has failed to participate in a rehabilitation 8 program or attend weekly 12-step program meetings, in violation of Probation Conditions Nos, 2 9 and 12, as indicated by the fraudulent nature of the documentation he submitted regarding his 10 alleged attendance at weekly Narcotics Anonymous meetings. Respondent has failed to provide ŀŀ community service, in violation of Probation Conditions Nos. 2 and 14, as indicated by the 12 fraudulent nature of the documentation he submitted to feign compliance. Respondent has failed 13 to comply with the Board's Probation Program to such a degree that he is not canable of safely practicing optometry while on probation and his optometry license must be revoked to protect the 14 15 public health, safety and welfare.

THIRD CAUSE TO REVOKE PROBATION

(Failure To Attend 12-Step Meetings: Violation of Probation Condition No. 12)
36. At all times after the effective date of Respondent's probation, Condition No. 12 stated:

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) as approved and directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

37. Respondent's probation is subject to revocation because he failed

to comply with his probation Condition No. 12 in that he failed to attend any weekly

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12-Step program meetings. Nevertheless, Respondent attempted to feign compliance with this Probation Condition No. 12 by providing false and fraudulently produced documents to his probation monitor, as described above in paragraph 29, which is incorporated by reference.

FOURTH CAUSE TO REVOKE PROBATION

(Failure To Provide Community Service: Violation of Probation Condition No. 14)

38. At all times after the effective date of Respondent's probation, Condition No. 14 stated:

Community Service. Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval a community service program in which respondent shall provide free <u>non-optometric services</u> on a regular basis to a community or charitable facility or agency for at least 20 hours a month for the first 24 months of probation.

39. Respondent's probation is subject to revocation because he failed to comply with his probation Condition No. 14 in that he failed to provide any community service. However, Respondent attempted to perpetrate fraud upon the Board and thereby feign compliance with this Probation Condition No. 14, as described above in paragraph 30, which is incorporated by reference.

PRAYER

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

1. Revoking the probation that was granted by the Board of Optometry in Case No. CC 2005 141 and imposing the disciplinary order that was stayed, thereby revoking Certificate of Registration to Practice Optometry No. 8321 issued to Stephen G. Schroeder;

22 2. Revoking Certificate of Registration to Practice Optometry No. 8321,
23 issued to Stephen G. Schroeder;

243.Revoking Fictitious Name Permit No. 3424 issued to Stephen G.

25 Schroeder doing business as Lake Optometric Vision Center;

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26
4. Ordering Stephen G. Schroeder to pay the State Board of Optometry the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3; and

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Taking such other and further action as deemed necessary and proper,

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DATED: 7430

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A MAGGIO 0 Executive Officer Board of Optometry State of California Complainant

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PAGE 02

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· · · · · · · · · · · · · · · · · · ·		
	EDMUND G. BROWN JR., Attorney General of the State of California	
2	LINDA K. SCHNEIDER	an a
3	Supervising Deputy Attorney General LORETTA A. WEST, State Bar No. 149294	
4	Deputy Attorney General 110 West "A" Street, Suite 1100	
	San Diego, CA 92101	
	P.O. Box 85266	
6	San Diego, CA 92186-5266 Telephone: (619) 645-2107	
7	Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9		
10	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS	
- 11	STATE OF CALL	
12		
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1.3		
14	In the Matter of the Petition for Interim Order of Suspension	Case No. CC 2005 141 OAH No. 2008060826
15	Against:	
16	STEPHEN GERARD SCHROEDER	STIPULATION TO SUSPENSION OF LICENSE
17	25321 Railroad Canvon Rd. #503	and ORDER
	Lake Elsinore, CA 92532	
1.8	Certificate of Registration to Practice Optometry	Hearing Date: July 3, 2008 Hearing Time: 10:00 a.m.
19	No. 8321	Hearing Location: San Diego
20	Respondent.	at: Office of Administrative Hearings 1350 Front Street, Ste. 6022
21		San Diego, CA 92101
22		
1.		
23	1. This STIPULATION TO SUSPENSION OF LICENSE AND ORDER	
24	("Stipulation and Order") arises from a Petition for an Interim Order of Suspension ("Petition"),	
25	under Business and Professions Code section 494, in the above-referenced proceeding to suspend	
26	the Certificate of Registration to Practice Optometry No. 8321 ("hereinafter referred to as	
27	"optometry license") issued to Respondent STEPHEN GERARD SCHROEDER (hereafter,	
28	"Respondent Schroeder"). The Petition alleged violations of the following sections of the	
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Business and Professions Code ("Code"): Respondent Schroeder violated section 3110, hubdivision (1) of the Code in that he self-administered controlled substances e.g., methamphetamine and amphetamine; Respondent Schroeder violated section 3110, hubdivision (e), and section 3106, of the Code in that he provided to his Board of Optometry probation-monitor, a-false-and-fraudulently produced-verification of sixty six hours of community ervice for Cops for Kids, Inc., when, in fact, Respondent Schroeder also violated section 3110, ubdivision (e), and section 3106, of the Code in that he provided to his Board of Optometry formunity service for said organization; Respondent Schroeder also violated section 3110, ubdivision (e), and section 3106, of the Code in that he provided to his Board of Optometry probation monitor, a false and fraudulently produced verification of his weekly attendance at equired Narcotics Anonymous meetings, when, in fact, Respondent Schroeder had attended zero varcotics Anonymous meetings and there were no Narcotics Anonymous meetings, available at the location alleged by Respondent Schroeder.

PARTIES

2. Margie McGavin is the duly appointed and serving Interim Executive Officer of the Board of Optometry. She enters into this Stipulation and Order solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Deputy Attorney General Loretta West.

18 3. Respondent Schroeder is representing himself in this proceeding and has
19 chosen not to exercise his right to be represented by counsel.

JURISDICTION

4. The Board of Optometry ("Board") is the state agency charged with administering and enforcing the practice of optometry as set forth in Business and Professions Code section 3000 et seq. The Petitioner is authorized to enter into this Stipulation and Order on behalf of and for the Board in furtherance of the Board's statutory duties.

5. The Board issued Certificate of Registration to Practice Optometry Number 8321 to Respondent Schroeder on September 15, 1985. Said license will expire on May 31, 2009, unless renewed.

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On or about June 14, 2008, the Department of Consumer Affairs, Department of Support Services, suspended Respondent Schroeder's optometry license, pursuant to Family Code section 17520, because Respondent Schroeder failed to pay court-ordered child support.

P. . 04

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On_or_about_lune_20_2008, the Office-of-Administrative-Hearings-granted Petitioner's ex parte Petition for Interim Order of Suspension and, effective June 20, 2008. suspended Respondent Schroeder's optometry license, pursuant to Business and Professions. Code section 494. A formal, noticed hearing on said Interim Order of Suspension is scheduled to occur on July 3, 2008, at the Office of Administrative Hearings.

ADVISEMENT AND WAIVERS

Respondent Schroeder has carefully read, and understands the charges and 11 12 allegations in the Petition for Interim Order of Suspension No. CC 2005 141. Respondent Schroeder also has carefully read, and understands, the effects of this Stipulation.

Respondent Schroeder is fully aware of his legal rights in this matter. including the right to a hearing on the charges and allegations in the Petition for Interim Order of Suspension; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws,

22 Respondent Schroeder voluntarily, knowingly, and intelligently waives 9.1 and gives up each and every right set forth above. 23

24 The parties have met and conferred on the allegations described in 10. 25 paragraph 1 above, and in the Petition for Interim Order of Suspension, and in all supporting 26 declarations and papers.

27Respondent Schroeder understands that by signing this stipulation he 11, agrees that the Interim Suspension Order issued by the Office of Administrative Hearings on 28

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June 20, 2008, shall remain in effect until further order of the Board, and that there will be no further hearing on the Petition for Interim Order of Suspension. Said suspension shall remain in effect until a final order has been issued and is effective in the, yet to be filed, matter of the Accusation and Petition to Revoke Probation against Respondent Schroeder.

P. 05

13. Respondent Schroeder further understands that by signing this stipulation, the Office of Administrative Hearings will take the hearing on this matter, currently scheduled to occur on July 3, 2008, officalendar and there will be no further hearing on the matter of the Petition for Interim Order of Suspension.

ORDER

Margie McGavin, in her official capacity as Interim Executive Officer of the Board of Optometry, and Stephen Gerard Schroeder agree that the following Order will be issued by the Office of Administrative Hearings:

A. Respondent Schroeder's Certificate of Registration to Practice Optometry Number 8321 ("optometry license"), is hereby suspended, pending further order by the Board. Respondent Schroeder shall not, directly or indirectly, practice optometry while his optometry. license is suspended or while he does not have a valid optometry license.

B. The Office of Administrative Hearings will take the hearing on this matter, currently scheduled to occur on July 3, 2008, off calendar and there will be no further hearing on the matter of the Petition for Interim Order of Suspension;

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Suspension of Respondent Schroeder's optometry license shall remain in . C, 1 effect until a final order has been issued and is effective in the, yet to be filed, matter of the 2 Accusation and Petition to Revoke Probation against Respondent Schroeder. Ż 4 DATED; June 26, 2008 5 6 MARGIE MCGAVIN Interim Executive Officer Board of Optometry 7 Department of Consumer Affairs State of California 8 Petitioner : ġ 10 Jamial 6, 2008 DATED: 11 GERARD SCHROEDE 12 Respondent ۰. 13 ORDER 14 IT IS SO ORDERED. 15 16 2008. DATE: 17 18 PRESIDING ADMINISTRATIVE LAW JUDGE ALAN ALVORD Office of Administrative Heatings 19 San Diego 2021 22 23 24 25 26 27 28 5

JUN-30-2008 MON 03:16 PM DEPT OF JUSTICE/ATTY GEN FAX NO. 61,09452061 P. 06 Suspension of Respondent Schroeder's optometry license shall remain in Ĉ. 1 ÷ effect until a final order has been issued and is effective in the, yet to be filed, matter of the 2 Accusation and Petition to Revoke Probation against Respondent Schroeder. 3 4 DATED: 2008 -5 6 MARGIE McGAVIN Interim Executive Officer 7 Board of Optometry Department of Consumer Affairs State of California 8 Petitioner 9 10 DATED: , 2008 11 STEPHEN GERARD SCHROEDER 12 Respondent 13 ORDER 14 IT IS SO ORDERED. 15 .16 DATE: June 302008. 17 18 PRESEDING ADMINISTRATIVE LAW JUDGE ALAN ALVORD Office of Administrative Hearings 19 San Diego 20 21 22 23 24 25 26 27 28

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9	BEFORE	ГНЕ
10	STATE BOARD OF O DEPARTMENT OF CON	OPTOMETRY
10	STATE OF CAL	IFORNIA
11	In the Matter of the Petition to Revoke Probation	Case No. CC 2005-141
- 13	Against:	OAH No. 2008060826
14	STEPHEN GERARD SCHROEDER 25321 Railroad Canyon Road # 503	INTERIM ORDER PURSUANT TO
14	Lake Elsinore, CA 92532	BUSINESS & PROFESSIONS CODE SECTION 494
e e	Certificate of Registration to Practice Optometry No. 8321	Date: June 20, 2008
16	Respondent.	Time: 1:00 p.m. Location: OAH- San Diego
		1350 Front Street, Ste. 6022 San Diego, CA 92101
- 18		Ball Diego, CA 92101
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21	TO: Stephen Gerard Schroeder:	
22		TIVE HEARINGS, having read and
23	considered the Petition for Interim Order, supporting	
24	declarations and exhibits filed in the above-entitled matter;	
25	IT IS HEREBY ORDERED AND ADJUDGED THAT:	
26	1. This is a proper case for the issuance of an interim order of suspension in that	
27	permitting respondent Stephen Gerard Schroeder, to continue to engage in the practice of	
28	optometry will endanger the public health, safety, and welfare,	
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2. Serious injury will result to the public before this matter can be heard on notice; and

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3. Therefore, pending further order from the Office of Administrative Hearings, Certificate of Registration to Practice Optometry No. 8321, which was issued to respondent Stephen Gerard Schroeder, shall be, and hereby is immediately suspended, and respondent Stephen Gerard Schroeder is hereby immediately prohibited from practicing optometry in the State of California.

IT IS FURTHER ORDERED that the noticed hearing on the Petition for Interim Order will be heard at the Office of Administrative Hearings, 1350 Front Street, Ste. 6022, San Diego, California 92101, on the third (3rd) day of July, 2008, beginning at 10:00 a.m., or as soon thereafter as the matter can be heard.

12 This Interim Order of Suspension shall be forwarded to respondent by 24-hour
13 delivery service.

Any response to the Petition for Interim Suspension, and supporting papers, not already filed by respondent shall be filed by respondent with the Office of Administrative Hearings, and served on petitioner through its attorney of record, Loretta West, Deputy Attorney General, not less than five (5) court days before the date set for the hearing on the Interim₍Order of Suspension.

Any reply to the response filed by respondent may be submitted by petitioner in writing at the hearing on the interim order or presented orally at the hearing itself.

IT IS SO ORDERED this twenty-third (23rd) day of June, 2008.

TUDGE ALAN ALVORD PRESIDING ADMINISTRATIVE LAW JUDGE

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1	EDMUND G. BROWN JR., Attorney General of the State of California	•
2	LINDA K. SCHNEIDER	
3	Supervising Deputy Attorney General	e e a faite factures d'un factor de construction d'un service d'une de la service de la service de la service d
	LORETTA A. WEST, State Bar No. 149294 Deputy Attorney General	
. 4	110 West "A" Street, Suite 1100	
5	San Diego, CA 92101	•
	P.O. Box 85266	
6	San Diego, CA 92186-5266	
	Telephone: (619) 645-2107 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9		
. 10	BEFORE 7 OFFICE OF ADMINISTR	
. 11	STATE OF CAL	
10		
12		
13	In the Matter of the Petition For Interim Order of	Case No. CC 2005 141
14	Suspension Against:	
. 14	STEPHEN GERARD SCHROEDER	PETITION FOR
15		INTERIM ORDER OF SUSPENSION;
16	25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532	MEMORANDUM OF POINTS AND AUTHORITIES;
		DECLARATIONS WITH EXHIBITS
17	Certificate of Registration to Practice Optometry No. 8321	
18	110, 0521	[Bus. and Prof. Code, §494]
	Respondent.	
19		Date: June 20, 2008 Time: 1:00 p.m.
. 20		Location: San Diego
21	<u> </u>	
22		
23.	Margie McGavin (Petitioner) respect	illy netitions the Office of
· · · · ·		
24	Administrative Hearings for an Interim Order of Sus	pension under Business and Professions
25	Code section 494, suspending Stephen Gerard Schro	eder (Respondent Schroeder) from
26	practicing as an optometrist, and respectfully advises	the Administrative Law Judge as follows:
27	1. Petitioner is the duly appointe	d and serving Interim Executive Officer of
28	the Board of Optometry (Board), and makes this peti	tion solely in her official capacity.
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2. The Board is the state agency charged with administering and enforcing the practice of optometry as set forth in Chapter 7, Division 2 of the Business and Professions Code, commencing with section 3000. As Interim Executive Officer of the Board, Petitioner is authorized to make this petition on behalf of and for the Board in furtherance of the Board's statutory-duties.

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Under Business and Professions Code (Code) section 494, the Office of 6 3. Administrative Hearings, acting on behalf of the Board may, on petition, issue an interim order 7 suspending any licentiate or imposing licensing restrictions if both of the following conditions 8 9 exist; (1) The licentiate has engaged in acts or omissions constituting cause for discipline under 10 the Code or has been convicted of a crime substantially related to the licensed activity; and (2) 11 permitting the licentiate to continue to engage in the licensed activity or permitting the licentiate to continue in the licensed activity without restrictions would endanger the public health, safety, 12 or welfare. 13

Code section 494 allows the petitioner to seek this order without providing 14 notice to the licentiate if it appears from the petition and supporting documents that serious 15 16 injury would result to the public before the matter can be heard on notice, and provides that 17 petitioner has the burden to prove the need for the order by a preponderance of the evidence. Therefore, Petitioner is seeking an interim order of suspension without notice, except for twenty-18 19 four (24) hours notice required by Title 1, California Code of Regulations section 1012. The Petitioner has notified Respondent Schroeder of her intent to seek this interim suspension order. 20 21 (See, Declaration of Loretta West, attached hereto as Exhibit 1.)

5. The Board issued Certificate of Registration to Practice Optometry
Number 8321 to Respondent Schroeder on September 15, 1985. On or about July 24, 2007, the
Department of Consumer Affairs suspended Respondent Schroeder's optometry license and
issued him a temporary optometric license, pursuant to Family Code section 17520, because
Respondent Schroeder failed to pay court-ordered child support. Said temporary license will
expire on June 14, 2008. (See, Certification of License History, attached hereto as Exhibit 2.)
///

6. In a disciplinary action entitled "In the Matter of the Accusation Against Stephen Gerard Schroeder," Case No. CC 2005 141, the Board of Optometry issued a decision, effective June 18, 2007, in which Respondent Schroeder's Certificate of Registration to Practice Optometry was revoked. However, the revocation was stayed and Respondent Schroeder's -Certificate of Registration to Practice Optometry-(hereinafter-referred-to-as-"optometry-license"). was placed on probation for a period of three (3) years with certain terms and conditions. (See, copy of said decision attached as Exhibit 1 to the Declaration of Margie McGavin.)

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a. The underlying Accusation No. CC 2005 141 was based upon Respondent
Schroeder's 2006 conviction for violation of Penal Code section 11377, subdivision (a), a felony
(possession of a controlled substance (methamphetamine)) in Riverside County Superior Court
Case No. SWF013967 entitled *People of the State of California v. Stephen G. Schroeder*.

12 · b. The circumstance surrounding the conviction are that on or about October 19, 2005, Riverside County Sheriff's deputies searched Respondent Schroeder's .13 14 residence as authorized by a search warrant. In a safe located in the closet of Respondent Schroeder's master bedroom the sheriff's deputies found a plastic bag containing approximately 15 1.40 grams of a white crystal substance, which field-tested positive for Methamphetamine; two 16 17 glass pipes consistent with those used for smoking methamphetamine, and Respondent Schroeder's California Driver's License. The sheriff's deputies also found nineteen (19) firearms 18 19 consisting of rifles, revolvers, shotguns and semi-automatic pistols, in various safes located in the 20 closet of Respondent Schroeder's master bedroom.

c. Respondent Schroeder has previously admitted all facts and circumstances
described above in paragraphs 6(a) and 6(b). (See, Exhibit 3, at page 2, paragraph 8, of the
Stipulated Settlement and Disciplinary Order.)

Respondent Schroeder's Optometry License has been renewed through
 May, 31, 2009. However, on or about January 11, 2008, the Department of Consumer Affairs,
 Child Support Services Division, sent to Respondent Schroeder a 150-day Notice of Intent to
 Suspend his optometry license, pursuant to California Family Code section 17520, because
 Respondent Schroeder had failed to provide child support payments as ordered by the Superior

Court of Orange County. Said 150-day notice immediately interrupted Respondent's license to practice optometry, and simultaneously issued to Respondent Schroeder a temporary 150-day license to practice optometry, that is not eligible for renewal, pursuant to Family Code section 17520. Said Temporary License expired on June 14, 2008, and cannot be renewed. Respondent Schroeder's optometry license may be returned to active status as soon as he complies with his court-ordered child support payment schedule, and provides documentation of such to the Department of Consumer Affairs, Child Support Services Division. Accordingly Respondent does not hold a valid and active license to practice optometry, and since June 14, 2008, he has been prohibited from practicing optometry.

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10 I. RESPONDENT TESTED POSITIVE FOR METHAMPHETAMINE/AMPHETAMINE

8. On or about March 7, 2008, Petitioner requested an investigation of
 Respondent Schroeder by the Division of Investigations, including an undercover unannounced
 drug screen on Respondent Schroeder, as authorized by the terms and conditions of Respondent
 Schroeder's probation. Petitioner's request was based, in part, upon Respondent Schroeder's
 fraudulent conduct and misrepresentations to his Board of Optometry probation monitor during
 his unsuccessful attempts to satisfy the terms and conditions of his probation, as described in
 detail below and incorporated herein by reference.

9. On April 14, 2008, Brian Slatic, Senior Investigator for the Division of
 Investigation working undercover as a patient, telephoned Respondent Schroeder's practice, Lake
 Vision Optometric Center, and made an eye examination appointment with Respondent
 Schroeder for the following day at 1:00 p.m.

22 10. On April 15, 2008, Investigator Slatic arrived at approximately 1:00 p.m.
23 at Respondent Schroeder's practice and identified himself only as a representative of the Board
24 of Optometry.

11. At approximately 1:15 p.m., on April 15, 2008, Investigator Slatic
informed Respondent Schroeder's receptionist that he was actually, also, the "patient" who was
scheduled to receive an eye examination from Dr. Schroeder during a 1:00 p.m. appointment
that day.

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12. At approximately 1:45 p.m. on April 15, 2008, Respondent Schroeder arrived at his practice. Investigator Slatic informed Respondent Schroeder that he was there to collect a random urine sample from Respondent Schroeder. Respondent Schroeder provided a urine sample under Investigator Slatic's supervision. Inspector Slatic packaged the sample in the -materials-provided by-Quest-Diagnostics, and took it the Board's Ontario Field-Office for pick=upand processing by Quest.

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7 13. On May 6, Quest Diagnostics faxed to Investigator Slatic a copy of the
8 results of Respondent Schroeder's drug screen. Respondent Schroeder tested positive for
9 methamphetamine and amphetamine. (See, Declaration of Brian Slatic, and Exhibit 1 attached
10 thereto.)

11 || II. RESPONDENT PROVIDED FRAUDULENT DOCUMENTATION TO BOARD

12 14. Respondent Schroeder has attempted to perpetrate fraud on the Board by
making fraudulent and false misrepresentations to his probation monitor and thereby feign
compliance when, in fact, Respondent Schroeder has consistently violated several terms and
conditions of his probation throughout the entire period of his probation, as described in detail
below.

 17
 A. RESPONDENT PROVIDED FRAUDULENT DOCUMENTATION TO

 18
 BOARD RE: HIS ATTENDANCE AT 12-STEP MEETINGS

19 15. On July 7, 2007, Respondent Schroeder and his Board of Optometry probation monitor agreed that by or before August 1, 2007, Respondent Schroeder would provide 20 his probation monitor with the name, location, and contact person of his weekly 12-step program. 21 22 (See, Declaration of Margie McGavin, at paragraph No. 8, and Exhibit 2 attached thereto.) After additional oral and written requests, Respondent Schroeder faxed the required information to his 23 probation monitor on or about October 18, 2007. (See, Declaration of Margie McGavin, at 24 25 paragraph No. 9, and copy of said fax attached thereto as Exhibit 4.) Page one of Respondent 26 Schroeder's fax contained a handwritten note stating he attended Narcotics Anonymous meetings 27 weekly at the First Presbyterian Church in Wildomar and that the "Contact Person/Support Person Secretary" of the meetings was "Lesli Sly. Phone: 951-796-1183." Page two of -28

Respondent Schroeder's fax contained an alleged attendance verification form, initialed weekly by "LS," allegedly Leslie Sly, indicating that Respondent Schroeder had attended a Narcotics Anonymous meeting at the church every week since June 21, 2007, and through October 10, 2007. In fact, there were no Narcotics Anonymous meetings available at said location, Leslie Sly was Respondent Schroeder's girlfriend who had been living with Respondent Schroeder since______ mid-2005, and Leslie Sly was not the contact person for the alleged Narcotic Anonymous meetings identified by Respondent Schroeder. (See, Declaration of Margie McGavin, at paragraphs Nos. 10 through 13; and Incident Report attached thereto as Exhibit 8, at page 6, paragraph 3.)

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 B. RESPONDENT PROVIDED FRAUDULENT DOCUMENTATION TO

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 BOARD RE: COMPLETION OF COMMUNITY SERVICE HOURS

12 16. On or about October 18, 2007, Respondent Schroeder provided his Board
13 of Optometry probation monitor with a completed Verification of Community Service form
14 stating that Respondent Schroeder had completed a total of sixty six (66) hours of community
15 service for the Riverside County Sheriff's "Cops for Kids" program. In fact, Respondent
16 Schroeder "does not and has not, at any time whatsoever, performed community service for [the]
17 organization, Cops for Kids, Inc." (See, Declaration of Margie McGavin, at paragraphs Nos. 4
18 through 7, and letter from Cops for Kids, Inc., attached thereto as Exhibit 6.)

19 III. CONCLUSION

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20 17. The Declarations and Exhibits submitted with this Petition for Interim Order of Suspension demonstrate that Respondent Schroeder is continuing to use and abuse illicit 21 22 drugs and therefore is a threat to the public health, safety, and welfare. Respondent's past history of illegal drug use (methamphetamine) and his documented recent use of methamphetamine and 23 amphetamines present an intolerable risk of public harm from Respondent being under the 24 25 influence of illegal drugs while treating patients. The depth and breadth of Respondent Schroeder's fraudulent misrepresentations to the Board clearly indicates additional risks to the 26 27 public health, safety, and welfare, in that Respondent Schroeder is fundamentally dishonest and 28 willing to commit acts of moral turpitude for his own benefit. Respondent Schroeder is not

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eligible to possess the public trust embodied in his license to practice optometry on the public. Furthermore, Respondent Schroeder's unprofessional conduct while on probation illustrates he is not capable of complying with the Board's probation program and presents additional risks that he is not capable of practicing optometry without endangering the public health, safety, and welfare

6 WHEREFORE, Petitioner prays the Administrative Law Judge make an order: Temporarily suspending Respondent Schroeder from directly or indirectly 1. practicing as an optometrist in California until an administrative hearing can be held, the charges in the Accusation and Petition to Revoke Probation can be heard, and a decision issues and becomes effective from the Board, determining whether Stephen Girard Schroeder should continue to hold a license to practice to practice optometry, and, if so, under what conditions; and,

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Granting Petitioner such other and further relief as may be deemed

appropriate. June 19, 2008 DATED:

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Respectfully submitted,

Margie McGavin

Interim Executive Officer Board of Optometry

Petitioner

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

In the Matter of the Accusation Against:	Case No. CC 2005 141
STEPHEN GERARD SCHROEDER 25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532	OAH No. 2007040285
Certificate of Registration to Practice Optometry No. 8321 Respondent.	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by

the Board of Optometry, as its Decision in this matter.

This Decision shall become effective on _____June 18, 2007

It is so ORDERED May 17, 2007

FOR THE BOARD OF OPTOMETRY

	- •		
	1	EDMUND G. BROWN JR., Attorney General	
	. 2	of the State of California MARC D. GREENBAUM	
	• 3	Supervising Deputy Attorney General ANNE HUNTER, State Bar No. 136982	
	4	Deputy Attorney General California Department of Justice 300 So. Spring Street, Suite 1702	
		Los Angeles, CA 90013 Telephone: (213) 897-2114	
	6	Facsimile: (213) 897-2804	
	7	Attorneys for Complainant	
	8		
	9	BEFORE 1 STATE BOARD OF (
	10	DEPARTMENT OF CON STATE OF CAL	SUMER AFFAIRS
	11	STATE OF CAL	IFORMA
	12	In the Matter of the Accusation Against:	Case No. CC 2005 141
	13	STEPHEN GERARD SCHROEDER	OAH No. 2007040285
	14	25321 Railroad Canyon Rd. #503 Lake Elsinore, CA 92532	STIPULATED SETTLEMENT AND
	15		DISCIPLINARY ORDER
	16	Certificate of Registration to Practice Optometry No. 8321	
	17·	Respondent.	
	18	·	
•	19	IT IS HEREBY STIPULATED AND	AGREED by and between the parties to the
	20	above-entitled proceedings that the following matter:	s are true:
	21	PARTIE	S
	22	1. Complainant Taryn Smith is the Executive Officer of the Board of	
	23	Optometry. She brought this action solely in her official capacity and is represented in this	
	24	matter by Edmund G. Brown Jr., Attorney General of the State of California, by Anne Hunter,	
•	25	Deputy Attorney General.	
	26	2. Respondent Stephen Gerard Schroeder is representing himself in this	
	27	proceeding and has chosen not to exercise his right t	o be represented by counsel.
	28	3. On or about September 15, 19	85, the Board of Optometry issued
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respondent Certificate of Registration to Practice Optometry No. 8321. The Certificate of Registration was in full force and effect at all times relevant to the charges brought in Accusation No. CC 2005 141 and will expire on May 31, 2007, unless renewed.

JURISDICTION .

Accusation No. CC 2005 141 was filed before the Board of Optometry, and is currently pending against respondent. The Accusation and all other statutorily required documents were properly served on respondent on February 27, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. CC 2005 141 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations 11 in Accusation No. CC 2005 141. Respondent has also carefully read, and fully understands the 12 effects of this Stipulated Settlement and Disciplinary Order. 13

Respondent is fully aware of his legal rights in this matter, including the 6. 14 75 right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; 16 the right to present evidence and to testify on his own behalf; the right to the issuance of 17 subpoenas to compel the attendance of witnesses and the production of documents; the right to 18 19 reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws. 20

Respondent voluntarily, knowingly, and intelligently waives and gives up 21 7. each and every right set forth above. 22

CULPABILITY

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Respondent admits the truth of each and every charge and allegation in 8. Accusation No. CC 2005 141. 25

Respondent agrees that his Certificate of Registration to Practice 26 9. 27 Optometry is subject to discipline and he agrees to be bound by the Board's imposition of 28 discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent has no prior disciplinary history. He is admitting responsibility at an early stage in the proceedings.

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CONTINGENCY

<u>11. The parties understand and agree that facsimile copies of this Stipulated</u> Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This stipulation shall be subject to approval by the Board. Respondent 8 9 understands and agrees that counsel for complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or 10 participation by respondent. By signing the stipulation, respondent understands and agrees that 11 12 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order. 13 the Stipulated Settlement and Disciplinary Order shall be of no force or effect; except for this 14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not 15 16 be disqualified from further action by having considered this matter.

DISCIPLINARY ORDER

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

IT IS HEREBY ORDERED that Certificate of Registration to Practice
 Optometry No. 8321 issued to respondent Stephen Gerard Schroeder is revoked. However, the
 revocation is stayed and respondent is placed on probation for three (3) years on the following
 terms and conditions.

Severability Clause: Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other

applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law. 2

Obey All Laws. Respondent shall obey all federal, state and local laws. 1. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation 10 conditions, and may result in the filing of an accusation and/or petition to revoke probation. 11 12 Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California. 13

Comply with the Board's Probation Program. Respondent shall fully 2. 14 comply with the conditions of the Probation Program established by the Board and cooperate 15 16 with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall, at his own expense, report 17 in person to the Board's headquarters in Sacramento within three (3) months of the effective date 18 of the Board's decision, and as the Board deems necessary if it is determine that respondent may 19 20 not be compliant with any of the terms or conditions of his probation. Respondent shall inform the Board in writing within no more than 15 days of any change of residence address and prior to 21 making any change in practice location. Respondent shall at all times maintain an active, current 22 23 license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program, 24 25 including but not limited to allowing access to the respondent's optometric practice(s) and 26 patient records upon request of the Board or its agent.

27 Respondent shall pay the monitoring costs associated with the Board's probation surveillance program each and every year of probation, as designated by the Board, which may be 28

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adjusted on an annual basis. Such costs shall be payable to the Board of Optometry and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

4 Upon successful completion of probation, respondent's license shall be fully 5 restored.

6 3. Residency, Practice, or Licensure Outside of State. Periods of
7 residency or practice as an optometrist outside of California shall not apply toward a reduction of
8 this probation time period. Respondent's probation is tolled, if and when he resides outside of
9 California. The respondent must provide written notice to the Board within 15 days of any
10 change of residency or practice outside the state, and within 30 days prior to re-establishing
11 residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as an optometrist. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new optometry license during the term of probation.

Within 30 days of the effective date of the decision, respondent shall provide a
copy of the Board's decision and order to the optometry board of any other state where he is
currently licensed or becomes licensed to practice optometry.

4. Submit Written Reports. Respondent, during the period of probation,
 shall submit or cause to be submitted such written reports/declarations and verification of actions
 under penalty of perjury, as required by the Board. These reports/declarations shall contain
 statements relative to respondent's compliance with all of the conditions of the Board's
 Probation Program. Respondent shall immediately execute all release of information forms as
 may be required by the Board or its representatives.

26 Respondent shall provide a copy of this decision to the optometric regulatory 27 agency in every state and territory in which he or she has an optometry license.

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5. Function as an Optometrist. Respondent, during the period of probation, shall engage in the practice of optometry in California for a minimum of 24 hours per week for 6 consecutive months, within each year of probation, or as determined by the Board.

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For purposes of compliance with the section, "engage in the practice of
optometry" may include, when approved by the Board, volunteer work as an optometrist, or work
in any non-direct patient care position that requires licensure as an optometrist.

If respondent has not complied with this condition during the probationary term,
and the respondent has presented sufficient documentation of his good faith efforts to comply
with this condition, and if no other conditions have been violated, the Board, in its discretion,
may grant an extension of the respondent's probation period up to one year without further
hearing in order to comply with this condition. During the one year extension, all original
conditions of probation shall apply.

6. Employment Approval And Reporting Requirements. Respondent
 shall obtain prior approval from the Board before commencing or continuing the practice of
 optometry. Respondent shall cause to be submitted to the Board any available performance
 evaluations and other employment related reports as an optometrist upon request of the Board.

17If working as an employee, respondent shall provide a copy of this decision to his18or her employer and immediate supervisors prior to commencement of the practice of optometry.

In addition to the above, respondent shall notify the Board in writing within
seventy-two (72) hours after he obtains any optometric employment. Respondent shall notify the
Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of
cause, from any optometric employment with a full explanation of the circumstances surrounding
the termination or separation.

7. Employment Limitations. Respondent shall not work in any health care
setting as a supervisor of optometrists. The Board may additionally restrict respondent from
supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

27 Respondent shall not work as a faculty member in an approved school of
28 optometry or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work,

8. Complete Optometry Course(s). Respondent; at his own expense, shall 6 7 enroll and successfully complete 40 hours of continuing education course(s) per year for each year of probation that are relevant to the practice of optometry. These courses shall be in addition to the courses required for license renewal. At least one of the courses shall be on ethics. Respondent shall obtain prior approval from the Board before enrolling in the ethics 10 course. The courses are to be completed no later than six months prior to the end of his probationary term.

Respondent shall submit to the Board the original transcripts or certificates of 13 completion for the above required course(s). The Board shall return the original documents to 14 respondent after photocopying them for its records. 15

Cost Recovery. Respondent shall pay to the Board costs associated with 9. . 16 its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the 17 amount of \$3,895.50. Respondent shall be permitted to pay these costs in a payment plan 18 approved by the Board, with payments to be completed no later than six months prior to the end 19 20 of the probation term.

If respondent has not complied with this condition during the probationary term, 21 and respondent has presented sufficient documentation of his good faith efforts to comply with 22 23 this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in 24 25 order to comply with this condition. During the one year extension, all original conditions of 26 probation will apply.

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10. Violation of Probation. If a respondent violates the conditions of his probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the respondent's license.

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If, during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

9 11. License Surrender. During respondent's term of probation, if he ceases 10 practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of 11 probation, respondent may surrender his license to the Board. The Board reserves the right to 12 evaluate respondent's request and to exercise its discretion whether to grant the request, or to 13 take any other action deemed appropriate and reasonable under the circumstances, without 14 further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent 15 will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action
and shall become a part of respondent's license history with the Board. An optometrist whose
license has been surrendered may petition the Board for reinstatement no sooner than one year
from the effective date of the disciplinary decision.

20 Participate in Treatment/rehabilitation Program For Chemical 12. Dependence. Respondent, at his expense, shall successfully complete during the probationary 21 period or shall have successfully completed prior to commencement of probation a Board-22 approved treatment/rehabilitation program of at least six months duration. The Board will accept 23 24 proof of successful completion of the court-ordered drug diversion program respondent is currently enrolled in through Orange County Superior Court Case No. SWF013967 to satisfy this 25 term. As required, reports shall be submitted by the program on forms provided by the Board. If 26 respondent has not completed a Board-approved treatment/rehabilitation program prior to 27 28 commencement of probation, respondent, within 45 days from the effective date of the decision,

shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation. Respondent shall sign a Release of Information allowing the program to release to the board all information the board deems relevant.

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Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) as approved and directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

Submit to Tests and Samples. Respondent, at his expense, shall 12 13. participate in a random, biological fluid testing or a drug screening program which the Board 13 approves. The length of time and frequency will be subject to approval by the Board. The 14 respondent is responsible for keeping the Board informed of respondent's current telephone 15 number at all times. Respondent shall also ensure that messages may be left at the telephone 16 number when he is not available and ensure that reports are submitted directly by the testing 17 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to 18 the Board by the program and the respondent shall be considered in violation of probation. 19

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the Board or its representataives, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. б

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petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the board or its designee.

14. **Community Service.** Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval a community service program in which respondent shall provide free <u>non-optometric services</u> on a regular basis to a community or charitable facility or agency for at least 20 hours a month for the first 24 months of probation.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I
understand the stipulation and the effect it will have on my Certificate of Registration to Practice
Optometry. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
Optometry.

5/3/07 DATED;

STEPHEN GERARD SCHROEDER Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Optometry.

DATED;

EDMUND G. BROWN JR., Attorney General of the State of California

MARC D. GREENBAUM Supervising Deputy Attorney General

ANNE HUNTER Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006601158 60210506.wpd

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1	EDMUND G. BROWN JR., Attorney General	
: 2	of the State of California MARC D. GREENBAUM	· · ·
3	Supervising Deputy Attorney General ANNE HUNTER, State Bar No. 136982	
- 4	Deputy Attorney General California Department of Justice	
	300 So. Spring Street, Suite 1702	
÷5	-Los-Angeles, CA_90013 Telephone: (213) 897+2114	
6	Facsimile: (213) 897-2804	
. 7	Attorneys for Complainant	
8		
- 9	BEFORE 1	
10	STATE BOARD OF (DEPARTMENT OF CON	SUMER AFFAIRS
	STATE OF CAL	IFORNIA
	In the Matter of the Accusation Against;	Case No.
12		
13	STEPHEN G. SCHROEDER, a.k.a. STEPHEN GERARD SCHROEDER	
14	32245 Mission Trail D-4 Lake Elsinore, CA 92330	ACCUSATION
15	Certificate of Registration No. 8321	
16	Respondent.	• • • • • • • • • • • •
17	Kespondent.	
. 18		
- 19	Complainant alleges:	
20	PARTIE	2S
		ngs this Accusation solely in her official
21		
22	capacity as the Executive Officer of the State Board	of Optometry, Department of Consumer
23	Affairs.	
. 24	2. On or about September 15, 19	985, the State Board of Optometry issued
25	Certificate of Registration No. 8321 to Stephen G. S	chroeder, a.k.a. Stephen Gerard Schroeder
26	(respondent). On or about October 29, 1997, respon	ndent became certified to utilize Therapeutic
. 27	Pharmaceutical Agents. On or about May 23, 2002	, respondent obtained approval to perform
28	lacrimal irrigation and dilation. The Certificate of H	Registration to Practice Optometry was in full
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	11	· · · · · · · · · · · · · · · · · · ·

force and effect at all times relevant to the charges brought herein and will expire on May 31, 2007, unless renewed.

3. On or about September 10, 2004, the State Board of Optometry issued Optometric Corporation Registration No. COR 1032 for Stephen G. Schroeder, OD, Inc., located -at-32245-Mission-Trail-D-4, Lake-Elsinore, California-92530. The corporate registration will expire on May 31, 2007, unless renewed.

7 4. On or about July 11, 2005, the State Board of Optometry issued Fictitious
8 Name Permit No. 3088 to respondent authorizing the use of the Fictitious Name "Mission
9 Optometric Eye Care Center. Said Fictitious Name permit will expire on or about January 31,
10 2007, unless renewed.

5. On or about July 11, 2005, the State Board of Optometry issued Branch
 Office License No. 6461 to Respondent for a secondary practice location at 31740 Railroad
 Canyon Road #4, Canyon Lake, California 92587. Said Branch Office License expired on or
 about February 1, 2006, and has not been renewed.

On or about July 11, 2005, the State Board of Optometry issued Fictitious
 Name Permit No. 3087 was issued to Respondent, authorizing the use of the Fictitious Name
 "Canyon Lake Vision Center Optometry." Said Fictitious Name permit expired on or about
 January 31, 2006, and has not been renewed.

JURISDICTION

7. This Accusation is brought before the State Board of Optometry (Board),
 Department of Consumer Affairs, under the authority of the following laws. All section
 references are to the Business and Professions Code unless otherwise indicated.

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Section 118, subdivision (b), states:

24 "The suspension, expiration, or forfeiture by operation of law of a license issued 25 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board of 26 by order of a court of law, or its surrender without the written consent of the board, shall not, 27 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board 28 of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

9. Section 3090 of the Code states:

"Except as otherwise provided by law, the board may take action against all -persons-guilty-of-violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

10. Section 3110 of the Code states:

"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.

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"(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."

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11. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to

take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

12 California Code of Regulations, title 16, section 1517 states;

6 "For the purpose of denial, suspension, or revocation of the certificate of
7 registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the
8 Code, a crime or act shall be considered to be substantially related to the qualifications,
9 functions, and duties of an optometrist if to a substantial degree it evidences present or potential
10 unfitness of an optometrist to perform the functions authorized by his/her certificate of
11 registration in a manner consistent with the public health, safety, or welfare...."

12 13. Health and Safety Code section 11173, subdivision (a), states:
13 "No person shall obtain or attempt to obtain controlled substances, or procure or
14 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
15 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."
16 14. Section 125.3 of the Code provides, in pertinent part, that the Board may

ask 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.

15. <u>CONTROLLED SUBSTANCE</u>

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a. Methamphetamine is a Schedule II controlled substances as defined in
Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug
pursuant to Business and Professions Code section 4022 of the Business and Professions Code.

FIRST CAUSE FOR DISCIPLINE

25 (Conviction of a Substantially Related Crime)
26 16. Respondent is subject to disciplinary action under sections 3090, 3110,
27 subdivision (k), and 490 of the Code, as defined in California Code of Regulations, title 16,

1	section 1517, in that respondent was convicted of a crime substantially related to the
2	qualifications, functions and duties of an optometrist. The circumstances are as follows:
3	a. On or about May 8, 2006, respondent was convicted by his plea of guilty
4	to one count of violating Health and Safety Code section 11377, subdivision (a), a felony
5	(possession of controlled substances), in Riverside County Superior Court Case No.
6	SWF013967, entitled The People of the State of California v. Stephen Gerard Schroeder.
7	b. The circumstance surrounding the conviction are that on or about October
- 8	19, 2005, Riverside County Sheriff's deputies searched respondent's residence as authorized by a
9	scarch warrant. In a safe located in the closet of respondent's master bedroom the sheriff's
10	deputies found a plastic bag containing approximately 1.40 grams of a white crystal substance,
11	which field-tested positive for Methamphetamine; two glass pipes consistent with those used for
12	smoking methamphetamine, and respondent's California Driver's License. The sheriff's
13	deputies also found nineteen (19) firearms consisting of rifles, revolvers, shotguns and semi-
14	automatic pistols in various safes located in the closet of respondent's master bedroom.
15	SECOND CAUSE FOR DISCIPLINE
16	(Possession of a Controlled Substance)
17	17. Respondent is subject to disciplinary action under Code sections 3090 and
18	3110, subdivision (a), for unprofessional conduct for violating Health and Safety Code section
19	11173, subdivision (a), in that on or about May 8, 2006, respondent was convicted of a controlled
20	substance, to wit Methamphetamine, as more fully set forth in paragraph 16, above.
21.	
22	<u>PRAYER</u>
23	WHEREFORE, Complainant requests that a hearing be held on the matters herein
24	alleged, and that following the hearing, the State Board of Optometry issue a decision:
25	1. Revoking or suspending Certificate of Registration No. 8321, issued to
26	Stephen G. Schroeder, a.k.a. Stephen Gerard Schroeder;
27	2. Revoking or suspending Optometric Corporation Registration No. COR
28	1032, issued to Stephen G. Schroeder for Stephen G. Schroeder, OD, Inc.;
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•]	3. Revoking or suspending Fictitious Name Permit No. 3088 issued to
2	Stephen G. Schroeder;
3	4. Revoking or suspending Branch Office License No. 6461 issued to
4	Stephen G. Schroeder;
5_	5. Revoking or suspending Fictitious Name Permit No. 3087 issued to
б	Stephen G. Schroeder;
7	6. Ordering Stephen G. Schroeder to pay the State Board of Optometry the
8	reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9	Professions Code section 125.3; and
10	7. Taking such other and further action as deemed necessary and proper.
11	DATED: 2/20107
12	
13	In frith
14	TARYN SMITH Executive Officer
15	State Board of Optometry Department of Consumer Affairs
16	State of California Complainant
17	Compraman
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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

EDMUND G. BROWN JR., GOVERNOR

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0	CALIFORNIA STATE BOARD OF PTOMETRY	-

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 twelfth day of January 2015, the Executive Officer examined said official records of the Board and found that **STEPHEN G. SCHROEDER** graduated from the Southern California College of Optometry in 1985. Optometry License No. 8321 was granted to him effective September 15, 1985. Said Optometry License expires May 31, 2015, unless renewed. The current address of record for said Optometry License is 2088 E. Lakeshore Dr. #626, Lake Elsinore, CA 92530.

Said records further reveal that on or about October 29, 1997, **STEPHEN G. SCHROEDER** became certified to utilize Therapeutic Pharmaceutical Agents and authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041.

Said records further reveal that on or about May 23, 2002, **STEPHEN G. SCHROEDER** became certified to perform lacrimal irrigation and dilation pursuant to BPC Section 3041(e)(6).

Said records further reveal that on or about February 20, 2007, the Board filed an Accusation against **STEPHEN G. SCHROEDER**, in Case No. 2005-141. The Board, by Decision and Order effective June 18, 2007, adopted a Stipulated Settlement and Disciplinary Order resolving said Accusation. Optometry License No. 8321 was revoked, the revocation was stayed and the license was placed on probation for three (3) years.

Said records further reveal that on or about June 19, 2008, the Board filed an ex parte Petition for Interim Order of Suspension against **STEPHEN G. SCHROEDER**, in Case No. 2005-141. On or about June 20, 2008, the Office of Administrative Hearings granted the Board's ex parte Petition, and, by Order effective June 30, 2008, Optometry License No. 8321 was suspended.

Said records further reveal that on or about July 15, 2008, the Board filed an Accusation and Petition to Revoke Probation against **STEPHEN G. SCHROEDER**, in Case No. 2008-13. The Board, by Decision and Order effective October 3, 2008, adopted a Stipulated Revocation of License and Order resolving said Accusation and Petition. Optometry License No. 8321 and Fictitious Name Permit No. 3424 were revoked effective October 3, 2008.

Said records further reveal that on or about July 26, 2013, **STEPHEN G. SCHROEDER** filed a Petition for Reinstatement of the Revoked License, in Case No. 2013-45. The Board, by Decision and Order effective December 11, 2013, granted said Petition. Optometry License 8321 was reinstated effective December 11, 2013. Said License was issued and immediately revoked. However, said Optometry License was placed on probation for four (4) years, with terms and conditions. Said Optometry License was immediately suspended for six months or until fifty (50) hours of continuing education was completed. The suspension was considered completed and concluded on February 11, 2014.

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this twelfth day of January 2015.

Mona Maggio, Executive Officer





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

То:	Board Members	Date:	January 23, 2015
From:	Jessica Sieferman Assistant Executive Officer	Telephone:	(916) 575-7184

Subject: Agenda Item 17A. In the Matter of the Petition for Reinstatement

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

This is Petitioner's fifth Petition for Reinstatement of his revoked license. The first was filed on October 12, 2006. On February 17, 2007, the Board denied his Petition for Reinstatement after a hearing before the Board on November 16, 2006. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The second Petition for Reinstatement was filed on July 28, 2008. On October 10, 2008, the Board denied his Petition for Reinstatement after a hearing before the Board on September 3, 2008. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The third Petition for Reinstatement was filed on December 11, 2011. On July 10, 2012, the Board denied his Petition for Reinstatement after a hearing before the Board on May 18, 2012. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The fourth Petition for Reinstatement was filed on August 12, 2013. On November 12, 2013, the Board denied his Petition for Reinstatement after a hearing before the Board on September 13, 2013. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The Petitioner is requesting the Board to grant his Petition for Reinstatement.

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

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

EUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

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· EDMUND G. BROWN JR., GOVERNOR

2450 DEI	30ARD OF OPTOMET PASO ROAD, SUITE 1 75-7170 F (916) 575-72	05, SACRAMENTO, CA	95834 .gov	
	PETITION FOR	REINSTATEMEN	NT	
A person whose certificate of registration has reinstate the certificate of registration after a suspension. In determining whether the disc should be imposed if the disciplinary penalty petitioner since the disciplinary action was ta certificate of registration was in good standin character.	period of not less tha iplinary penalty shoul is set aside, the Boar ken, the offense for w	n one year has elaps d be set aside and th d may investigate an /hich discipline was in	sed from the date on the terms and condi- ad consider all activity du mposed, activity du	of the revocation or tions, if any, which vities of the uring the time the
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6. List locations, dates, and types	of practice for 5 year	s prior to discipline o	f your California lic	ense.
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7. Are you or have you ever en addicted to the use of narcotics 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? \mathcal{A}	YES	NO
FOUR THAT HAVE DEEN PRESENTE	La la ge b co chtron p e p NFORMATION	
13. List the date of disciplinary action taken against your license and explain fully the cause of th このこ しかくたいちょ れんしゃんどのちょくかく しんしん しんしょう いうしょう	e disciplinary ac	tion. I not side by side
14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced PUMSHED 12 TRS ROM A FYEAR PENALITY IS 9017 15. Describe in detail your activities and occupation since the date of the disciplinary action; inclu locations. GENERA (RELIER F throw Th STRTE PRO CLOSE OUT JESIGNEL FRAMES	ude dates, emplo	oyers and
16. Describe any rehabilitative or corrective measures you have taken since your license was dis petition. Work workering At All optomather all	sciplined to supp	nort your
17. List all post-graduate or refresher courses, with dates, location and type of course, you have was disciplined. $\begin{array}{cccc} \mathcal{R} & \mathcal$	taken since you	ir license F TWÒ
18. List all optometric literature you have studied during the last year. Thut is all continuing education courses you have completed since your license was disciplined.	Hs#17	
19. List all continuing education courses you have completed since your license was disciplined. $Th_{H} + f_{S} \circ \mathcal{N} = F_{1}/E + S = \mathcal{K} L//S + \mathcal{K} H$ 20. List names, addresses and telephone numbers of persons submitting letters of recommendar petition. $H_{K} = b E E \mathcal{N} = 0 \mathcal{N} = 200$	s ation accompany	∂ (孑 /ing this 〜
I declare under penalty of perjury under the laws of the State of California that the answers and in completing this petition, and any attachments, are true and I understand and agree that any miss will be cause for the rejection of this petition.	statements of ma	aterial facts
Date 12-4- 2014 Signature the flate on	∉63	67
All items of information requested in this petition are mandatory. Failure to provide any of the rec result in the petition being rejected as incomplete. The information will be used to determine qua	quested informa	tion will

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 2450 Del Paso Road, Suite 105, 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 as confidential information and exempted by Section 1798.3 of the Civil Code.

IT is REDUNDATE FOR ME TO produce information That has Already BEEN Produced SEVERAL TIMES 2 IS AIREND + ON File Espreinlif With NG POSSITIVE RESULTS FORME FOR IN THEMES L. FRANKlin = Thornton

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

In the Matter of the Petition for the Reinstatement of:

Case No. CC 2013-46

OAH No. 2013080610

LARRY FRANKLIN THORNTON,

Petitioner.

DECISION

On September 13, 2013, in Pomona, California, a quorum of the California Board of Optometry (Board), Department of Consumer Affairs, State of California, heard and decided the Petition for Reinstatement of the Revoked License of Larry Franklin Thornton.

Administrative Law Judge Chris Ruiz, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Sydney Mehringer appeared on behalf of the Office of the Attorney General, State of California pursuant to Government Code 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

Larry Franklin Thorton (Petitioner) appeared and represented himself at the hearing.

The Board received documentary evidence submitted with the Petition for Reinstatement and also considered Petitioner's testimony. Thereafter, the matter was submitted and decided by the Board in Executive Session.

FACTUAL FINDINGS

1. On or about October 3, 1977, the Board issued Optometry License number OPT 6369 to Petitioner.

2. On December 31, 2002, an accusation was filed by the Board against Petitioner. The accusation alleged unprofessional conduct, in connection with discipline that had been imposed by the Kentucky Board of Optometric Examiners in March 2000 against Petitioner's Kentucky optometrist license, based on the Kentucky Board's findings that

Petitioner took money from clients "and did nothing to improve or care for their vision," and that his "failure to provide paid-for services . . . handicapped the clients in the conduct of their daily activities, deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. . . . [Petitioner] simply abandoned those patients who depended upon him."

3. Petitioner did not file a notice of defense within 15 days after service on him of the accusation. Accordingly, on June 14, 2003, the Board issued a default decision and order, which became effective July 14, 2003, in which, pursuant to Government Code section 11520, the Board found Petitioner in default, deemed Petitioner's default to constitute express admissions of the accusation's allegations, and revoked Petitioner's license.

4. Petitioner has filed three prior Petitions for Reinstatement dated October 12, 2006, July 28, 2008, and December 11, 2011. All three of these prior petitions have been denied. The effective date of the Decision regarding Petitioner's most recent petition for reinstatement was July 10, 2012.

5. In its most recent July 2012 Decision, which denied Petitioner's third petition for reinstatement, the Board stated specific reasons as the basis for denial of the petition. One of the reasons given by the Board in its Decision was that Petitioner had failed to undergo psychological testing and drug testing before again applying for reinstatement. In his instant petition (Petitioner's fourth petition), Petitioner stated that obtaining a psychological evaluation "was impossible to fulfill." Petitioner did submit some evidence of drug testing, and while the results were negative, the testing was only performed on one day, namely September 9, 2013.

6. This is Petitioner's fourth petition for reinstatement. The Decision denying his third petition specifically stated what the Board required before it would be willing to consider granting any future petition brought by Petitioner. Nonetheless, knowing the Board wanted Petitioner to obtain to a psychological evaluation, he failed to do so. Further, Petitioner did not offer any testimony as to attempts he made to use public services, such as Los Angeles County mental health facilities, in an attempt to obtain an evaluation.

7. After reviewing the Petition and considering all the documentary evidence and witness testimony, it was established that Petitioner did not carry his burden to establish that his petition should be granted. Petitioner's testimony at hearing appeared disorganized and he did not directly address the Board's previously stated, and continuing, concerns.

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LEGAL CONCLUSIONS AND DISCUSSION

1. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316.)

2. Government Code section 11520 provides in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty."

California Code of Regulations, title 16, section 1516, provides in pertinent

part:

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"(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/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.

(c) When considering a petition for reinstatement of a certificate of registration 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)."

4. Based on Factual Findings 1 through 7 and Legal Conclusions 1 through 3, cause was not established under the applicable burden and standard of proof to grant the petition to reinstate Petitioner's license. In particular, Petitioner's failure to obtain a psychological evaluation when he was previously specifically instructed to do so, shows he does not understand the great responsibility and duty the Board has to confirm an applicant's qualifications before reinstating a license. Petitioner's testimony and submitted documents were insufficient to meet Petitioner's burden of proof by clear and convincing evidence that his license should be reinstated.

ORDER

Petitioner Larry Franklin Thornton's Petition for the Reinstatement of Revoked Optometry License number OPT 6369 is denied.

Ordered: November 12, 2013

Effective: December 11, 2013

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ALEJANDRO ARREDONDO, O.D., President California Board of Optometry Department of Consumer Affairs State of California

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

In the Matter of the Petition for the Reinstatement of the Revoked License of:

Case No. CC 2011-165

OAH No. 2012030109

LARRY FRANKLIN THORNTON,

Petitioner.

DECISION

This matter was heard before a quorum of the Board of Optometry (Board) on May 18, 2012, in Sacramento, California. The members of the Board present were: Lee A. Goldstein, O.D., President, presiding; Alejandro Arredondo, O.D., Vice President; Donna Burke; Fred J. Naranjo; Alexander Kim; Edward Rendon; and Kenneth Lawenda, O.D. Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, State of California, sat with the Board.

Larry Franklin Thornton (petitioner) was present and represented himself.

Anahita Crawford, Deputy Attorney General, appeared on behalf of the Department of Justice, State of California.

Evidence was received, the record was closed, and the matter was submitted for decision on May 18, 2012.

FACTUAL FINDINGS

1. On or about October 3, 1977, the Board issued a Certificate of Registration to Practice Optometry No. 6369 to petitioner. The Board revoked petitioner's Certificate of Registration, effective July 14, 2003, as a result of disciplinary action taken by the Board in Case No. CC 2001-142.

Accusation against Petitioner, December 31, 2002, Board Case No. CC 2001 142

2. An accusation was filed against petitioner on December 31, 2002. The accusation alleged unprofessional conduct in connection with discipline that had been imposed by the Kentucky Board of Optometric Examiners in March 2000 against petitioner's Kentucky optometrist's license, based on the Kentucky Board's findings that petitioner took money from clients "and did nothing to improve or care for their vision," and that his "failure to provide paid-for services . . . handicapped the clients in the conduct of their daily activities, deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. . . . [Petitioner] simply abandoned those patients who depended upon him."

3. The Board issued a Default Decision and Order effective July 14, 2003, as a result of petitioner's failure to file a Notice of Defense within 15 days after service on him of the accusation. Pursuant to Government Code section 11520, the Board found petitioner in default, deemed petitioner's default to constitute express admissions of the accusation's allegations, and revoked petitioner's license.

Petition for Reinstatement, October 12, 2006, OAH No. L2006100659

4. On October 12, 2006, petitioner filed with the Board a Petition for Reinstatement (2006 petition). On November 16, 2006, a quorum of the Board convened to hear the 2006 petition. The Deputy Attorney General appeared on behalf of the Department of Justice. Petitioner failed to appear. The Board heard the matter and denied the 2006 petition. The Board concluded that cause was not established under the applicable burden and standard of proof to grant the petition to reinstate petitioner's license. In particular, petitioner's response to Question 9 of the 2006 petition that he had not been under observation or treatment for mental disorders, alcoholism, or narcotic addiction was inconsistent with the reference in his handwritten statement to drug and alcohol rehabilitative efforts. Ultimately, the 2006 petition raised important questions as to petitioner's suitability for reinstatement. The Board concluded that letters of reference submitted on petitioner's behalf and the other documents submitted with the 2006 petition were insufficient to meet petitioner's burden of proof by clear and convincing evidence that his license should be reinstated.

Petition for Reinstatement, July 28, 2008, OAH No. 2018080180

5. On July 28, 2008, petitioner filed with the Board a second Petition for Reinstatement (2008 petition). On September 3, 2008, a quorum of the Board convened to hear the 2008 petition. Petitioner asserted that it was appropriate to reinstate his license because he had sufficiently rehabilitated from the Kentucky action. The Deputy Attorney General asserted that the public would be unsafe if petitioner's license was reinstated. The Board concluded that petitioner failed to meet the requisite burden of proof to warrant

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reinstatement of the license. Petitioner's lack of genuine remorse, his lack of forthrightness with the Board regarding drugs and rehabilitation programs, and his admission of unlicensed practice of optometry in California resulted in the Board's decision to deny reinstatement. The Board suggested steps petitioner should take in preparation for future petitions to reinstate, including psychological evaluations, drug testing, and 100 hours of continuing education.

Present Petition for Reinstatement, December 11, 2011, OAH No. 2012030109

6. On December 11, 2011, petitioner filed with the Board a third Petition for Reinstatement (petition). A quorum of the Board was convened on May 18, 2012, to hear the petition. In support of his petition, petitioner submitted a letter of explanation, a newspaper clipping announcing his 1976 graduation from optometry school, and proof of continuing education coursework in the field of optometry. In his letter of explanation, petitioner stated that, at an unspecified point in the past, he was the victim of a hit-and-run accident which resulted in medical bills amounting to \$70,000. Petitioner asserted that his financial circumstances necessitated the reinstatement of his license in order to pay back his medical bills. Petitioner further asserted that he has met the Board's demands, but failed to state what those demands were. Neither the letter nor the newspaper clipping showed any progress on the part of petitioner toward rehabilitation. As a result, little weight was given to either.

7. Petitioner requested that the Board certify his purported completion of 100 hours of continuing education credits. Petitioner submitted certificates of completion for the courses taken. Petitioner accumulated continuing education credits over a span of 17 years at various optometric colleges. The majority of certificates show completion dates in 2004 and 2005. At his 2008 petition hearing, the Board recommended that petitioner complete 100 hours two years prior to submitting a new petition for reinstatement. Petitioner applied for reinstatement in December 2011. Petitioner completed the following courses, which meet the Board's recommended timeline:

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Date	Course	Optometric Institution	Hours
08/03/2009	Seizing Profits in the Treatment and Management of Ocular Allergy	Pennsylvania College of Optometry	1
02/14/2010	Celebration of Lifetime Achievement of Dr. Michael Rouse CE Program	Southern California College of Optometry (SCCO)	7
04/18/2010	Cornea & Cataract CE Program and Optometric Boot Camp	SCCO	7
08/22/2010	Potpourri of CE with a Focus on Primary Care	SCCO	7
08/24/2010	Providing Optimal Optics	University of Alabama, School of Optometry	1
11/14/2010	Fall Optometry Update	SCCO	7
		Total Hours	30

The courses listed above amount to 30 hours of credits, far short of the 100 hours recommended by the Board. Petitioner's prior coursework was taken too far in the past to be relevant with respect to petitioner's current rehabilitative efforts. Petitioner failed to comply with the Board's recommendation that he complete 100 hours of continuing education during a two-year period prior to the present petition.

8. Question 10 of the petition asked that petitioner disclose if he had ever been arrested. Petitioner answered "NO." Petitioner's answer was false in that he admitted at hearing that he had been arrested and jailed several times when he practiced in Kentucky. Petitioner testified that the policemen were "pinpointing and picking at [him]," forcing him to "pull himself out of the financial situation to the point I had no money..." In addition, Question 12 asked if petitioner's license had ever been subject to disciplinary action. Petitioner answered "NO." Petitioner's answer was false in that the Kentucky Board suspended his optometry license in that state. Petitioner showed repeated dishonesty on his petition.

9. At hearing, the Deputy Attorney General asked petitioner what assurances he could give the Board that the action taken in Kentucky would not recur in California. Petitioner responded:

You can't compare California and Kentucky. It's A to Z different in Kentucky... It's ok for Caucasians, it's ok for Chinese, but it's not the thing to do... You can't equate

Additionally, Petitioner offered to give a "sample of [his] aptitude for psychological testing." Petitioner stated:

As optometrists we know that light goes from left to right... from physics. We also know that the world turns from left to right. We all love life and we try to live. We know that there is good and evil... But more importantly, we love life and live... But if we take that same positive phrase... and we spell it in reverse, it's just like Satan. We get evil. But it's beautiful. It's love, life, and live. In reverse, it's 'evil.' Just a sample of my psychological aptitude.

Petitioner's bizarre, rambling responses were unrelated to the Deputy Attorney General's question. Petitioner failed to provide any assurances that he will not repeat the instances of misconduct that occurred in Kentucky.

10. When asked by the Board whether he felt remorse for the Kentucky incident, petitioner was evasive and non-responsive. He stated:

When you are incarcerated for ten years, you are sorry anyways. You can say "Dr. Goldstein, do that." He knows... It's so understood as a person. It's there, but maybe you can't see that through my person.

At several points, the Deputy Attorney General and the Board asked if petitioner would ever take money from clients should financial stress occur in the future. Petitioner replied:

> Once you pass away, you can't do anything. I am dead in jail... And then all my customers were asking "When will I get my glasses?" And I started getting threats. It was nerve-wracking. What would you do? I had to love myself.

Petitioner did not take responsibility for the choices he made, nor did he apologize for his actions in Kentucky. Petitioner's unintelligible and convoluted responses indicated a lack of remorse.

11. Petitioner indicated an unwillingness to undergo psychological evaluation and drug testing. Petitioner has testified that he has not undergone psychological evaluation or drug testing, as suggested by the Board at the 2008 petition hearing. With regard to both conditions, petitioner stated:

It was no problem, but I wanted to qualify it. I don't mind once, but I want to rest. If I don't have to go there, I don't want to go there. And with regard to psychological testing, I don't want to go there... It's just all these added demands...

Petitioner's refusal to undergo psychological evaluation and drug testing indicate petitioner's unwillingness to abide by the Board's recommendations and a failure to recognize the need for such evaluation and testing.

The Board asked petitioner about his 2006 citation for practicing without a 12. license in an office on Pico Boulevard in West Los Angeles. Petitioner acknowledged that his license was not active in California at the time. Petitioner's acquaintance, an optician. asked Petitioner to "fill in" for a sick optometrist in order to make some extra money. When petitioner noted that his license was not active, the optician told him "Just get your money and get your license and figure it out..." Petitioner further testified:

> If [the optician] wasn't so ruthless to the patient, it wouldn't have come to light... 15 minutes with the patient and he would say "Thornton, he's got to go." The patient didn't like that and that's how the complaint came up.

Petitioner was aware that he should not have been practicing without his license, but chose to do so anyway, and may have gotten away with doing so if the patient had not complained to the Board. This awareness was indicative of petitioner's willingness to dishonestly circumvent the law in times of financial stress.

13. Petitioner asserted that he is now eligible to apply for reinstatement of his Kentucky license but has chosen not to do so for both financial reasons and because he does not wish to return to Kentucky.

LEGAL CONCLUSIONS

1.

Government Code section 11522 provides, in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that

* * * * * *

Condition of reinstatement. This section shall not apply if thall? JUN 21 AM 11:54 statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. In a proceeding to restore a revoked license, petitioner bears the burden to prove by clear and convincing evidence to a reasonable certainty that the Board should grant the reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Based on Findings 6 through 13, petitioner failed to meet his burden of proof. Evidence provided by petitioner showed little, if any, effort to rehabilitate himself since his last hearing. Findings 6 and 7 show that the documentary evidence submitted by petitioner added very little substance. Cause was not established by clear and convincing evidence to reinstate petitioner's license to practice.

4. Petitioner's dishonesty on his application and his conduct in practicing without a license (Findings 8 and 13) show that the safety of the public cannot be ensured if petitioner is reinstated.

5. Petitioner failed to express remorse or regret regarding the incident in Kentucky. Petitioner's responses to questions were confusing and he was unable to focus on the issue of rehabilitation. Petitioner's ability to effectively administer optometric care to patients is severely in doubt. It is recommended that petitioner undergo psychological evaluation and drug testing before he applies for reinstatement in the future.

6. When all is the evidence is weighed and balanced, in order to protect the public, reinstatement is not warranted at this time.

ORDER

Petitioner Larry Franklin Thornton's Petition for the Reinstatement of Revoked Optometry License No. OPT 6369 is DENIED.

DATED: July 10, 2012

Lee a Gold Derte

LEE GOLDSTEIN, O.D., President California Board of Optometry Department of Consumer Affairs State of California

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

In the Matter of the Petition for Reinstatement Regarding:

OAH No. L2008080180

LARRY FRANKLIN THORNTON,

Optometrist License No. OPT 6369,

Petitioner.

DECISION

A quorum of the Board of Optometry (the California Board) heard this matter on September 3, 2008, in Pomona, California. The members of the Board present were Lee A. Goldstein, O.D., President; Susy Yu, O.D., Vice President; Alex M. Arredondo, O.D.; Fred Naranjo; Richard K. Simonds, O.D.; Monica Johnson; Ken Lawenda, O.D.; Martha Burnett-Collins, O.D.; and Katrina Semmes.

Margie McGavin, the Board's Enforcement Manager, was also present during the proceedings.

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Larry Franklin Thornton (Petitioner) represented himself.

Char Sachson, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 3, 2008.

FACTUAL FINDINGS

1. On July 28, 2008, Petitioner filed the Petition for Reinstatement, his second such petition (Factual Finding 5 describes the first petition). Petitioner seeks the reinstatement of his revoked optometrist license; he contends it is appropriate to reinstate his license because he is sufficiently rehabilitated from earlier transgressions he committed in another state.

2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.

3. The California Board licensed Petitioner (optometrist license number OPT 6369) on October 3, 1977. At the time of his original licensure by the California Board, Petitioner already possessed an optometrist license, issued by the Kentucky Board of Optometric Examiners (the Kentucky Board), in February 1977.

4(a). On or about January 15, 2003, the California Board's then-Executive Officer filed an Accusation against Petitioner, alleging cause to revoke or otherwise discipline Petitioner's California optometrist license (*In the Matter of the Accusation Against Larry*. *Franklin Thornton, O.D.*, case number CC 2001 142). The Complainant in that case alleged that Petitioner was subject to disciplinary action because, in March 2000, the Kentucky Board had suspended Petitioner's Kentucky optometrist license for six years.¹ The Kentucky Board took disciplinary action against Petitioner because it concluded that Petitioner had violated Kentucky statutes and administrative regulations, committing the following acts: "grossly unprofessional or dishonorable conduct;" "obtaining fees by fraud or misrepresentation;" "conduct likely to deceive or defraud the public;" receipt of fees for services not rendered;" "knowingly making a false statement regarding a prescription;" "presenting a prescription for a controlled substance in violation of the law;" "failing to give visual care to patients who sought care, paid for that care, and had every expectation of receiving that care;" and "associated or shared an office or fees with a person engaged in the unauthorized practice of optometry."

4(b) The Kentucky Board's findings were generally described in the underlying (California) Accusation as follows:

[Petitioner's] clients came to him expecting to receive professional and fair treatment with resulting proper vision care. Instead [Petitioner] took their money and did nothing to improve or care for their vision... The failure to provide paid-for services deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from

¹ Despite the six-year suspension ending in March 2006, Petitioner still does not have his Kentucky optometrist license reinstated; he believes he will be eligible for reinstatement in that state sometime in 2009.

too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. [¶] [¶] ... [Petitioner] simply abandoned those patients who depended upon him.

4(c). Based on the Kentucky Board's conclusions and ultimate suspension, the Complainant in the California Board's underlying Accusation cited Business and Professions Code sections 3090, subdivision (b) and 141, subdivision (a) (unprofessional conduct and disciplinary action by another state) as the bases to discipline Petitioner's California optometrist license.

4(d). Petitioner failed to file a notice of defense within 15 days after service of the Accusation, and thus waived his right to a hearing on the merits. The Board issued a Default Decision and Order, effective July 14, 2003, revoking Petitioner's optometrist license.

5. On October 12, 2006, Petitioner filed an earlier Petition for Reinstatement (*In the Matter of the Petition for the Reinstatement of the Revoked License of Larry Franklin Thornton*, case number CC 2005 117). On November 16, 2006, a quorum of the Board convened to hear Petitioner's case. The Deputy Attorney General in the instant matter represented the Office of the Attorney General in the first petition for reinstatement. Neither Petitioner nor anyone representing Petitioner appeared at the hearing. Nevertheless, the Board heard the matter and denied the petition. Among other things, the Board noted a significant inconsistency in Petitioner's assertions. The Board cited Petitioner's denial of any drug or alcohol problems, on the one hand, but noted Petitioner's reference to having taken steps toward drug and alcohol rehabilitation, on the other hand. Additionally, the Board found that, in September 2006, Petitioner had been cited for practicing optometry without a license.

6. At the instant hearing, in response to a direct question from the Board, Petitioner asserted he did not have a drug or alcohol addiction or problem. However, as part of the Petition for Reinstatement, Petitioner submitted an informational document regarding the Crenshaw Christian Center Alcohol and Drug Abuse Program. He initially told the Board that he attended the program solely to attend a bible study component that is offered as a part of the rehabilitation program. However, upon further questioning by the Board, Petitioner admitted that he attends and intends on continuing to participate in the drug rehabilitation program and that he has taken drugs before.

7. In his Petition for Reinstatement, Petitioner described his optometric work as consisting of a solo practice from March 2001 to April 2002, and a group practice between June 2003 and approximately April 2004. He also admitted that since losing his license, he practiced optometry without a license for approximately one year (though the evidence did not conclusively establish the time period in which this occurred). In his Petition documents, he wrote, "[s]ince my license has been revoked, I worked at an optometry office at 8920 West Pico Boulevard, Los Angeles.

(_).

However, I was cited for practicing without a license." He acknowledged that his actions were contrary to the laws governing the practice of optometry.

8. Currently, according to Petitioner, he receives public assistance (welfare) in the form of subsistence level monthly monetary payments through the County General Relief program. He provided no evidence to support that assertion. Petitioner also claimed to be current in continuing education course requirements, but provided no evidence to support that assertion.

9. Petitioner completed 22 hours of community service time, working for the Salvation Army, between August 2007 and June 2008. He provided no evidence explaining any imposed community service requirement.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reinstatement, pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-9, and Legal Conclusions 2-6.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition for reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] · · · [¶] ·

3.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/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.

(c) When considering a petition for reinstatement of a certificate of registration 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).

5. Petitioner did not prove, by clear and convincing evidence to a reasonable certainty, that reinstatement of his license is warranted. Petitioner provided little, if any, evidence of rehabilitation. He failed to express genuine remorse for his earlier transgressions, transgressions that were serious in nature. Saliently, he was not forthright with the Board, first asserting no problems with drugs, then admitting to using drugs and participating in a rehabilitation program. Significantly, Petitioner provided similarly contradictory evidence at the last petition for reinstatement. (See Factual Finding 5.) This, together with his admitted unlicensed practice of optometry provided evidence of dishonesty and unprofessional behavior. There was no evidence establishing Petitioner's honesty or integrity, nor was there evidence of any effort by Petitioner to repair his tarnished professional reputation. Petitioner's overall fitness to practice optometry remains questionable; thus, the public's safety cannot be assured if the Board were to reinstate him.

6. In the future, if Petitioner chooses to seek reinstatement, the Board would likely require two psychological evaluations of Petitioner (by psychologists chosen by the Board), the completion of 100 hours of continuing education (completed within the last two years prior to a new petition), on-going drug testing, and the completion of an ethics course. Furthermore, to consider possible reinstatement in the future, the Board would expect to see no additional instances evidencing Petitioner's dishonesty, any violations of law, or a lack of professional judgment and discretion.

ORDER

Larry Franklin Thornton's Petition for Reinstatement of his optometrist license, number 6369, is denied.

Dated: 10/10/2008

Lee A. Goldstein, O.D., President California Board of Optometry

2007-01-20 07:24

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

In the Matter of the Petition for the Reinstatement of the Revoked License of:

LARRY FRANKLIN THORNTON, O.D. 4074 Leimert Blvd. Los Angeles, CA 90008 Case No. CC 2005 117 OAH No. L2006100659

Respondent,

16 445 8711

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry as its Decision in the above-entitled matter.

It is so ORDERED January 17, 2007.

LEE GOLDSTEIN, O.D. PRESIDENT BOARD OF OPTOMETRY .

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

In the Matter of the Petition for the Reinstatement of the Revoked License of:

LARRY FRANKLIN THORNTON,

Case No. CC 2005 117

OAH No. L2006100659

Petitioner.

DECISION

On November 16, 2006, in San Diego, California, a quorum of the California Board of Optometry, Department of Consumer Affairs, State of California heard and decided the Petition for Reinstatement of the Revoked License of Larry Franklin Thornton.

Present at the hearing were Board President Lee Goldstein, O.D., Board Vice President Susy Yu, O.D., and Board Members Monica Johnson, Daniel Pollack, O.D., Mary Rosas, Richard Simonds, O.D., and Roberto Vallenowith.

Administrative Law Judge Donald P. Cole, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Char Sachson appeared on behalf of the Office of the Attorney General, State of California.

Neither petitioner nor any individual representing petitioner appeared at the hearing.

Following the receipt into evidence of the petition for reinstatement and supporting documentation, the matter was submitted and decided by the Board in Executive Session.

FACTUAL FINDINGS

1. On or about October 3, 1977, the Board of Optometry issued Optometry License No. OPT 6369 to petitioner Larry Franklin Thornton. The license was in full force

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and effect as of December 31, 2002, and was then due to expire on June 30, 2003, unless renewed.

2. On December 31, 2002, the accusation in Board Case No. CC 2001 142 was filed against petitioner. The accusation alleged unprofessional conduct, in connection with discipline that had been imposed by the Kentucky Board of Optometric Examiners in March 2000 against petitioner's Kentucky optometrist's license, based on the Kentucky Board's findings that respondent took money from clients "and did nothing to improve or care for their vision," and that his "failure to provide paid-for services . . . handicapped the clients in the conduct of their daily activities, deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. . . [Petitioner] simply abandoned those patients who depended upon him."

3. Petitioner did not file a notice of defense within 15 days after service on him of the accusation. Accordingly, on June 14, 2003, the Board issued a default decision and order, which became effective July 14, 2003, in which, pursuant to Government Code section 11520, the Board found petitioner in default, deemed petitioner's default to constitute express admissions of the accusation's allegations, and revoked petitioner's license.

4. On October 12, 2006, petitioner filed with the Board under penalty of perjury a Petition for Reinstatement.

5. In the petition, petitioner responded to a number of questions that appeared on the petition form. Question 9 asked, "Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction?" Petitioner answered "no" to this question.

6. Petitioner submitted a one-page handwritten statement dated September 9, 2006, in support of the petition, in which he wrote that he had maintained professional skills and knowledge through continuing education, that he was "working within an optical establishment, if 'off limits' is understood," that beginning later that month, he planned to attend and complete a 40-hour Red Cross blood donor program and 20 hours of "alcohol and drug rehabilitative efforts," and that "unfortunately the petitioner did not comply with all law and regulations and was cited in September 2006 for filling in for an <u>ill</u> 80-year-old optometrist," who "returned the following week after I was cited."

7. The petition was accompanied by: an American Red Cross certificate, which stated that petitioner had completed the requirements of adult, infant and child CPR training on August 11, 2005; three reference letters (two from professional colleagues), recommending that petitioner's license be reinstated; continuing education course certificates and related documentation issued to petitioner by the Pennsylvania College of Optometry, the New England College of Optometry, the Southern California College of Optometry

reflecting course work undertaken between February 2004 and August 2005; and a criminal action report reflecting that petitioner received a citation on September 22, 2006 for the unlicensed practice of optometry.

LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

An individual seeking reinstatement must present strong proof of rehabilitation which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316.)

2. Government Code section 11520 provides in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty."

3. California Code of Regulations, title 16, section 1516 provides in pertinent

part:

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

(1) Nature and severity of the act(s) or offense(s).

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The time that has elapsed since commission of the act(s) or

(2) Total criminal record.

offense(s).

(3)

(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.

(c) When considering a petition for reinstatement of a certificate of registration 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)."

4. There are "[t]wo purposes for the Legislature mandating a statement of reasons for the decision of an agency proceeding under section 11522 First, a statement of reasons enables a reviewing court to determine why [it] did what it did and, in that light, examine the administrative record to ascertain whether there is substantial evidence to support the decision. Second, a statement of reasons advises the rejected petitioner for reinstatement what his deficiencies are and, therefore, tells him what he should do to make a subsequent petition meritorious." (Crandell v. Fox (1978) 86 Cal.App.3d 760, 765.)

Based on Factual Findings 1 through 7 and Legal Conclusions 1 through 4, 5. cause was not established under the applicable burden and standard of proof to grant the petition to reinstate petitioner's license. In particular, petitioner's response to question nine of the petition that he had not been under observation or treatment for mental disorders, alcoholism, or narcotic addiction seemed inconsistent with the reference in his handwritten statement to drug and alcohol rehabilitative efforts. Further, petitioner was cited on September 22, 2006, for practicing without a license. Petitioner in fact admitted, in an apparent reference to this citation, that he "did not comply with all law and regulations." It is noted as well that petitioner's handwritten statement appears to end with a subheading (E)(1), which raises a question as to whether there were other matters that were intended to be part of the statement, but which for some reason were not submitted to the Board. Ultimately, the petition raises important questions as to petitioner's suitability for reinstatement. Yet, since petitioner neither appeared at the hearing nor notified the Board as to the reason for his nonappearance, these questions cannot be answered. In light of these factors, the letters of reference submitted in petitioner's behalf and the other documents submitted with the petition were insufficient to meet petitioner's burden of proof by clear and convincing evidence that his license should be reinstated.

2007-01-20 07:24

ORDER

Petitioner Larry Franklin Thornton's Petition for Reinstatement of Revoked Optometry License No. OPT 6369 is denied.

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Dated: Joursy 17, 2007

LEE GOLDSTEIN, O.D., President California Board of Optometry Department of Consumer Affairs State of California

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• 1	BILL LOCKYER, Attorney General
2	of the State of California DESIREE A. PHILLIPS, State Bar No. 157464
3	Deputy Attorney General California Department of Justice
4	300 So. Spring Street, Suite 1702 Los Angelés, CA 90013
5	Telephone: (213) 897-2578 Facsimile: (213) 897-2804
6	Attorneys for Complainant
7	
8	BEFORE THE BOARD OF OPTOMETRY
. 9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. CC 2001 142
. 12	LARRY FRANKLIN THORNTON, O.D.DEFAULT DECISION2146 W. Sunset BoulevardAND ORDER
13	Los Angeles, California 90026 [Gov. Code, §11520]
14	Optometrist License Number OPT 639
15	Respondent.
16	FINDINGS OF FACT
17	1. On or about January 15, 2003, Complainant Lucinda Ehnes, in her official
18	capacity as the Interim Executive Officer of the Board of Optometry, Department of Consumer
19	Affairs, filed Accusation No. CC 2001 142 against Larry Franklin Thornton (Respondent) before
20	the Board of Optometry.
21	2. On or about October 3, 1977, the Board of Optometry (Board) issued
22	Optometrist License Number OPT 6369 to Respondent. The license was in full force and effect
23	at all times relevant to the charges herein, and will expire on June 30, 2003, unless renewed.
24	3. On or about January 15, 2003, an employee of the Department of Justice,
25	served by Certified and First Class Mail a copy of the Accusation No. CC 2001 142, Statement to
26	Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
27	11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is
28	2146 W. Sunset Boulevard, Los Angeles, California 90026. A copy of the Accusation, the
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related documents, and Declaration of Service are attached as Exhibit "A", and are incorporated
 herein by reference.

3. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

4. On or about February 2003, the aforementioned certified mailing documents were returned by the U.S. Postal Service marked "Undeliverable as Addressed. Forwarding Order Expired." A copy of the postal returned documents is attached hereto as exhibit B, and are incorporated herein by reference.

5. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent
files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."
6. Respondent failed to file a Notice of Defense within 15 days after service
upon him of the Accusation, and therefore waived his right to a hearing on the merits of
Accusation No. CC 2001 142.

7. California Government Code section 11520 states, in pertinent part: "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. Pursuant to its authority under Government Code section 11520, the Board
 finds Respondent is in default. The Board will take action without further hearing and, based on
 Respondent's express admissions by way of default and the evidence before it, contained in
 exhibits A and B finds that the allegations in Accusation No. CC 2001 142 are true.

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9. The total costs for investigation and enforcement are \$2,653.75 as of
March 26, 2003.

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DETERMINATION OF ISSUES

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1	DETERMINATION OF ISSUES
2	1. Based on the foregoing findings of fact, Respondent Larry Franklin
3	Thornton has subjected his Optometrist License Number OPT 6369 to discipline.
.4	2. A copy of the Accusation and the related documents and Declaration of
5	Service are attached.
б	3. The agency has jurisdiction to adjudicate this case by default.
7	4. The Board of Optometry is authorized to revoke Respondent's Optometrist
. 8	License Number OPT 6369 based upon the following violations alleged in the Accusation:
9	a. Business and Professions Code sections 3090(b) and 141(a):
10	Unprofessional conduct - disciplinary action by another state.
11	ORDER
12	IT IS SO ORDERED that Optometrist License Number OPT 6369, heretofore
13	issued to Respondent Larry Franklin Thornton, is revoked.
14	Pursuant to Government Code section 11520, subdivision (c), Respondent may
15	serve a written motion requesting that the Decision be vacated and stating the grounds relied on
16	within seven (7) days after service of the Decision on Respondent. The agency in its discretion
17	may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
- 18	statute.
19	This Decision shall become effective on <u>July 14, 2003</u> .
20	It is so ORDERED June 14, 2003
21	
22	FOR THE BOARD OF OPTOMETRY
23	DEPARTMENT OF CONSUMER AFFAIRS
24	Attachments:
-25	
. 26	Exhibit A:Accusation No.CC 2001 142, Related Documents, and Declaration of ServiceExhibit B:Postal Return Documents
27	
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- - 33 -		
	1	BILL LOCKYER, Attorney General
-	2	of the State of California ANNE HUNTER, State Bar No. 136982
	3	Deputy Attorney General California Department of Justice
		300 So. Spring Street, Suite 1702
	4	Los Angeles, CA 90013 Telephone: (213) 897-2114
	5	Facsimile: (213) 897-2804
	6	Attorneys for Complainant
	7	
	8	BEFORE THE
	9	BOARD OF OPTOMETRY DEPARTMENT OF CONSUMER AFFAIRS
	10	STATE OF CALIFORNIA
	. 11	In the Matter of the Accusation Against: Case No. CC 2001 142
	12	LARRY FRANKLIN THORNTON, O.D. A C C U S A T I O N 2146 W. Sunset Boulevard
	13	Los Angeles, California 90026
	14	Optometrist License No. OPT 6369
	15	Respondent.
	16	
	17	Complainant alleges:
	18	PARTIES
	19	1. Karen L. Ollinger (Complainant) brings this Accusation solely in her
	20	official capacity as the Executive Officer of the Board of Optometry, Department of Consumer
	21	Affairs.
	22	2. On or about October 3, 1977, the Board of Optometry issued Optometrist
	23	License No. OPT 6369 to Larry Franklin Thornton, O.D. (Respondent). The Optometrist
•	24	License was in full force and effect at all times relevant to the charges brought herein and will
	25	expire on June 30, 2003, unless renewed.
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JURISDICTION

This Accusation is brought before the Board of Optometry (Board), under
 the authority of the following sections of the Business and Professions Code (Code).

4. Section 3090 of the Code states:

The certificate of registration of any person registered under this chapter, 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:

"(b) Unprofessional conduct."

. . : .

5. Section 141(a) of the Code states:

11 "(a) For any licensee holding a license issued by a board under the jurisdiction of 12 the department, a disciplinary action taken by another state, by any agency of the federal 13 government, or by another country for any act substantially related to the practice regulated by 14 the California license, may be a ground for disciplinary action by the respective state licensing 15 board. A certified copy of the record of the disciplinary action taken against the licensee by 16 another state, an agency of the federal government, or another country shall be conclusive 17 evidence of the events related therein."

6. Section 118(b) of the Code provides that the suspension, expiration,
surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with
a disciplinary action during the period within which the license may be renewed, restored,
reissued or reinstated.

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

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FIRST CAUSE FOR DISCIPLINE

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. 1	FIRST_CAUSE FOR DISCIPLINE				
2	(Unprofessional Conduct - Disciplinary Action by Another State)				
3	8. Respondent is subject to disciplinary action under Code sections 3090(b)				
4	and 141(a) of the Code, on the grounds of unprofessional conduct, in that Respondent's				
5	Kentucky optometrist's license was disciplined by the Kentucky Board of Optometric Examiners				
6	(hereinafter "Kentucky Board"). On March 21, 2000, the Kentucky Board, in a case entitled,				
7	"Kentucky Board of Optometric Examiners v. Larry Thornton," Administrative Action No. 99-				
8	KBOE-0672, in its Findings of Fact, Conclusions of Law, Final Order, and Notice of Appeal				
9	Rights (hereinafter "Kentucky Findings of Fact"), suspended Respondent's Kentucky optometry				
10	license for six years (until March 21, 2006). The Kentucky Board found Respondent to be in				
11	violation of the following Kentucky Revised Statutes ("KRS") and Kentucky Administrative				
12	Regulation ("KAR"):				
13	a. KRS 320.310(1)(f) (grossly unprofessional or dishonorable conduct);				
14	b. KRS 320.310(1)(g) (obtaining fees by fraud or misrepresentation);				
15	c. KRS 320.310(1)(n) (conduct likely to deceive or defraud the public);				
16	d. KRS 320.310(1)(r) (receipt of fees for services not rendered);				
17	e. KRS 218A.140 (1)(d) (knowingly making a false statement regarding a				
18	prescription);				
19	f. KRS 218A.140(f) (presenting a prescription for a controlled substance in				
20	violation of the law);				
21	g. 201 KAR 5:040, Section 5 (failing to give visual care to patients who				
22	sought care, paid for that care, and had every expectation of receiving that care); and				
23	h. 201 KAR 5:040, Section 3(2) (associated or shared an office or fees with a				
24	person engaged in the unauthorized practice of optometry).				
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1	The Kentucky Board made the following findings in support of the discipline:				
2	"Thornton's clients came to him expecting to receive				
3	professional and fair treatment with resulting proper vision care. Instead Thornton took their money and did nothing to improve or				
4	care for their vision The failure to provide paid-for services handicapped the clients in the conduct of their daily activities,				
5	deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by				
6	smudging its reputation for honest service. Thornton took the money from too many patients without providing glasses or				
	contacts for his malfeasance to be a mistake, negligence, or				
7	oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. $[\P] [\P] \dots$				
8	Thornton simply abandoned those patients who depended upon him." (Kentucky Findings of Fact, p. 9.)				
9					
10	A copy of the Kentucky Board's Findings of Fact, Conclusions of Law, Final				
11	Order, and Notice of Appeal Rights is attached to this Accusation as exhibit A, and is				
12	incorporated herein by reference.				
13	PRAYER				
14	WHEREFORE, Complainant requests that a hearing be held on the matters herein				
15	alleged, and that following the hearing, the Board of Optometry issue a decision:				
16	1. Revoking or suspending Optometrist License No. OPT 6369, issued to				
17	Larry Franklin Thornton, O.D.;				
18	2. Ordering Larry Franklin Thornton, O.D. to pay the Board of Optometry				
19	the reasonable costs of the investigation and enforcement of this case, pursuant to Business and				
20	Professions Code section 125.3;				
21	3. Taking such other and further action as deemed necessary and proper.				
22	DATED: December 31, 2002				
23	1) $10/h$				
24	KAREN L. OLLINGER				
25	Executive Officer				
26	Department of Consumer Affairs State of California				
27	Complainant				
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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY



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

EDMUND G. BROWN JR., GOVERNOR



CERTIFICATION OF NON-LICENSURE

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 twelfth day of January 2015, the Executive Officer examined said official records of the Board and found that **LARRY FRANKLIN THORNTON** graduated from the Indiana University School of Optometry in 1976. The Optometry License No. 6369 was granted to him effective October 3, 1977, and was revoked effective July 14, 2003. The current address of record for said Optometry License is 3359-1 Wilshire Blvd, Los Angeles, CA 90010.

Said records further reveal that on or about December 31, 2002, the Board filed an Accusation against **LARRY FRANKLIN THORNTON**, in Case No. 2001-142. The Board, by Decision and Order effective July 14, 2003 adopted a Default Decision and Order resolving said Accusation. Optometry License No. 6369 was **revoked effective July 14, 2003**.

Said records further reveal that on or about October 12, 2006, **LARRY FRANKLIN THORNTON** filed a Petition for Reinstatement of the Revoked License, in Case No. 2005-117. The Board, by Decision and Order effective February 17, 2007, denied said Petition.

Said records further reveal that on or about July 28, 2008, **LARRY FRANKLIN THORNTON** filed a Petition for Reinstatement, in Case No. 2005-117. The Board, by Decision and Order effective October 10, 2008, denied said Petition.

Said records further reveal that on or about December 11, 2011, LARRY FRANKLIN THORNTON filed a Petition for Reinstatement of the Revoked License, in Case No. 2011-165. The Board, by Decision and Order effective July 10, 2012, denied said Petition.

Said records further reveal that on or about August 12, 2013, LARRY FRANKLIN THORNTON filed a Petition for Reinstatement of the Revoked License, in Case No. 2013-46. The Board, by Decision and Order effective December 11, 2013, denied said Petition.

Given under my hand and the seal of the State Board of Optometry, in Sacramento, California, on this twelfth day of January 2015.



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

То:	Board Members	Date:	,
From:	Board Staff	Telephone:	

e: January 23, 2015

Telephone: (916) 575-7170

Subject: FULL BOARD CLOSED SESSION

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



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То:	Board Members	Date:	January 23, 2015
From:	Mona Maggio Executive Officer	Telephone:	(916) 575-7170
Subject:	Agenda Item 18 – Adjournment		