

STATE BOARD OF OPTOMETRY

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Meeting Minutes

Friday October 22, 2010

Via Telephone at the Following Locations:

Southern California College of Optometry
2575 Yorba Linda Blvd., TVCI Room
Fullerton, CA 92831

And

The Department of Consumer Affairs
1625 North Market Blvd.
Sacramento Room S306, 3rd Floor
Sacramento, CA 95834

Members Present in Fullerton

Lee Goldstein, O.D., M.P.A., Board President
Alejandro Arredondo, O.D., Vice President
Monica Johnson, Secretary
Susy Yu, O.D., M.B.A., F.A.A.O.
Kenneth Lawenda, O.D.
Edward Rendon, M.P.A.

Members Absent (Excused)

Fred Naranjo, M.B.A.

Staff Present

Mona Maggio, Executive Officer
Andrea Leiva, Policy Analyst
Michael Santiago, Legal Counsel

Guest List

On File

Members Present in Sacramento

Donna Burk
Katrina Semmes

Staff Present

Margie McGavin, Enforcement Manager

Guest List

On File

Friday, October 22, 2010

9:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order – Establishment of a Quorum

Board President, Lee Goldstein, O.D. called the meeting to order at 9:08 a.m.
Dr. Goldstein called roll and a quorum was established.

Dr. Goldstein welcomed Board member, Donna Burke (the Board's newest appointed member) to her first public meeting.

2. Review and Possible Approval of the Responses Considering the Comments Submitted During the 15-Day Comment Period (October 5, 2010 to October 19, 2010) Pertaining to the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification

Policy Analyst, Andrea Leiva provided an overview of this agenda item.

This proposal establishes the requirements for glaucoma certification for licensees that graduated prior to May 1, 2008. Senate Bill (SB) 1406 (Chapter 352, Statutes of 2008, Correa) became effective on January 1, 2009 and expanded the scope of practice of optometrists to include, among other things, the treatment of glaucoma. Business and Professions Code (BPC) section 3041.10 establishes procedures to be followed by the Board in order to make sure that the public is adequately protected during the transition to full certification for all licensed optometrists interested in treating and managing glaucoma patients.

A timeline of the Board's progress is as follows:

August 24, 2009 – The Board approved the language and initiated a rulemaking,
November 6, 2009 – The Notice was published and the 45-day comment period began,
December 21, 2009 – The 45-day comment period ended,
December 22, 2010 – The Regulatory hearing was held and no comments were received,
March 16, 2010 – The Board made the final approval of the modified language after acknowledging all the comments received,
March 24 – April 8, 2010 – The 15-day comment period on modified text began,
May 11, 2010 – The Board made the final approval of the language after acknowledging all comments received and directed staff to complete the rulemaking file,
May 17 – August 23, 2010 – The Package was approved by the Department of Consumer Affairs, Consumer Services Agency, and the Department of Finance,
August 25, 2010 – Staff submitted the package for final review to the Office of Administrative Law (OAL),
September 24, 2010 – The Board voted to withdraw the regulation from the OAL after reviewing the Office's concerns with the regulation,
September 27, 2010 – The Board withdrew the regulation,
October 4, 2010 – The Board met to approve the modified text,
October 5, 2010 – October 19, 2010 – The 15-day comment period for the modified text began,
October 22, 2010 – A board meeting was held to discuss comments and move forward with the rulemaking file.

Dr. Goldstein invited members of the public (in the Fullerton and Sacramento locations) to introduce themselves and welcomed everyone in attendance.

Ms. Leiva provided an overview of the comments received during the November 6, 2009 – December 21, 2009 15-day comment period, which is as follows:

The following is a recommended response to a portion of a comment that was not addressed during this regulation's 45-day comment period.

The California Academy of Eye Physicians and Surgeons (CAEPS) in their comment dated December 21, 2009 opposed the text of the regulation for the following reason:

- *Simply choosing Option (A) and Option (B) together would allow the candidate for glaucoma certification to complete the Case Management Requirement in just 32 hours, the equivalent of less than a single week of work.*

The Board's proposed response is to reject his comment because it is an incorrect assumption. It is true that the total of Option (A) Case Management Course and Option (B) Grand Rounds Program equal a total of 32 hours, but those 32 hours would not be completed in a week's time. Option (A) and Option (B) in the regulation are only a description of the minimum requirements for the development of these two courses and are not the final curriculum. Once this regulation is approved by the Secretary of State, the schools and colleges of optometry in California will present their proposed curriculums to the Board of Optometry (Board) for final approval. It is the Board's position that as educators, who are considered to be some of the best in the nation, the California schools and colleges of optometry should have the opportunity and flexibility to create a curriculum

that they know will be rigorous and time well spent for certification candidates taking the course. The Board would not approve courses that compromise the patient safety of California consumers. The Board is confident that the schools and colleges of optometry will develop courses that will produce students who are highly trained and skilled providers of medical eye care.

To be more specific, while it is possible that Option (A) Case Management Course may be completed in a weekend, Option (B) Grand Rounds would take longer, based on the fact that in the Grand Rounds Program, glaucoma certification candidates must participate in group discussions of cases with instructor feedback, attend follow-up meetings to properly evaluate the same or different patients, and perform all necessary tests to diagnose and create a treatment plan for the live patients all of which would take longer than a week to complete.

Also, CAEPS is not taking into account that the optometrists taking these courses already have prior training and experience that far exceeds the additional training Option (A) Case Management Course and Option (B) Grand Rounds Program will provide. Already licensed, practicing optometrists have the educational and clinical experiences, have already passed the national examination which requires that they be knowledgeable in glaucoma in order to pass it, and have spent years in practice in order to independently and effectively treat glaucoma.

Dr. Goldstein opened the floor to questions or comments from the Board regarding this response.

Public member, Monica Johnson inquired as to why this was not addressed during the November 6, 2009 – December 21, 2009 comment period. Ms. Leiva explained that when the Office of Administrative Law (OAL) provided their feedback, they referenced this comment and said that the Board did not respond to it.

Public member, Donna Burke referenced the last sentence of the third paragraph and requested confirmation that the program is not referring to just students but licensed practitioners as well. Ms. Leiva confirmed this is correct.

Dr. Goldstein noted that the words “is confident” should be replaced with “will assure”.

Ms. Leiva provided an overview of the comments received during the October 5, 2010 – October 19, 2010 15-day comment period. The comments are as follows:

The California Optometric Association, Southern California College of Optometry, Western University of Health Sciences, College of Optometry and the University of California Berkeley, School of Optometry support the proposed regulation as modified for the following reasons:

Comment (1): *The proposed regulations are appropriate in establishing rigorous standards, while also allowing greater access to care to California patients.*

Comment (2): *The aging of California’s population, and increasing diversity, will put a great strain on all available health care resources. Supplementing the existing numbers of providers who can treat glaucoma will result in better and more efficient delivery of care.*

Comment (3): *Optometrists in 48 other states across the nation have been safely managing and treating glaucoma patients for decades. Some of these states do not require that their licensees be certified to treat glaucoma. California optometrists should be allowed the same privilege as it will allow California patients the right to choose their eye doctor of choice.*

Comment (4): *The schools and colleges of optometry across the nation and in California are fully accredited and pass stringent criteria to ensure that all graduates receive the education and training to provide safe and effective care to their patients, including those with glaucoma.*

Comment (5): *The certification established by this regulation is the most rigorous in the country and optometrists in California who are certified under this process will be the best educated and*

best trained in the world.

Comment (6): *Currently, there are nearly three times more licensed optometrists than ophthalmologists, practicing in over 100 cities and towns in 54 of California's 58 counties. More than 2,600 optometrists accept and treat Medi-Cal Patients, as opposed to about 1,200 ophthalmologists. Thus, because of their dispersion throughout the state, optometrists are more readily available to working families and potential patients.*

Comment (7): *The regulations have been well thought out and have been vetted publicly in a way that has given all stakeholders ample opportunity to participate.*

Response: The Board acknowledges all of these comments of support.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no comments.

The California Academy of Eye Physicians and Surgeons (CAEPS) oppose the proposed regulation as modified for the following reasons:

Comment (1) by CAEPS: *The Board's latest modified text continues to threaten patient safety because the proposed regulation's definition of treatment would not require actual medical management of glaucoma patients.*

Response: The Board's proposed response is to reject this comment. The definition of "treat" in the proposed regulation does require actual medical management of glaucoma patients.

According to BPC section 3041, before a Therapeutic Pharmaceutical Agents (TPA) certified optometrist can treat glaucoma with TPAs (which includes prescribing anti-glaucoma medication), the TPA-certified optometrist must first receive certification from the Board to treat glaucoma.

Business and Professions Code (BPC) section 3041(c) states that a TPA-certified optometrist may use topical and oral anti-glaucoma agents to treat primary open angle glaucoma, and exfoliation and pigmentary glaucoma only if the TPA-certified optometrist is certified by the Board to treat glaucoma. One of the ways to obtain glaucoma certification is to complete a didactic course of no less than 24 hours and complete the case management requirements for glaucoma certification established by the Board through this proposed regulation. Thus, until a TPA-certified optometrist receives glaucoma certification, the TPA-certified optometrist cannot use anti-glaucoma agents to treat glaucoma.

For the purposes of this regulation, treat had to be defined in a manner to comport with the aforementioned restriction in BPC section 3041. The definition of treat encompasses all the necessary steps that an optometrist must take in order to medically manage a glaucoma patient. Despite the fact that candidates for glaucoma certification are not allowed to use anti-glaucoma agents, they are working closely with individuals who are experienced with prescribing or applying anti-glaucoma agents and are participating in the proper evaluation of the patient, the performing of all necessary tests, the diagnosis of the patient, recognizing the types of glaucoma within their scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient's condition, and making timely referrals to an ophthalmologist when appropriate. The candidate is in effect "treating" the patient without violating the requirement set forth in BPC section 3041 that only glaucoma certified optometrists may use anti-glaucoma medications to treat glaucoma. Thus, the definition of "treat" in the proposed regulation is consistent with the definition of "treat" in BPC section 3041 and does not compromise patient safety.

Dr. Goldstein opened the floor to questions and comments by the Board.

Professional member, Kenneth Lawenda commended the regulatory committee and expressed his belief that section 3041 could not possibly be any more clear or straightforward.

A comment from Sacramento was inaudible in both author and content.

Dr. Goldstein noted that this proposed regulation is consistent with the way the Board's been effectively certifying optometrists since Senate Bill (SB) 929 was put into effect.

Comment (2) by CAEPS: *By using the Board's definition of "treat" for the purposes of this regulation, someone without any experience whatsoever using the class of drugs necessary for glaucoma management would be allowed to obtain certification to treat a serious, blinding disease.*

Response: The Board's proposed response is to reject this comment because it is an incorrect statement. Although the candidate for glaucoma certification may not treat a patient by prescribing or applying anti-glaucoma medications to the patient, the candidate can and will work with those supervisors and instructors who are glaucoma certified and who are experienced with prescribing or applying anti-glaucoma medications to patients. Because the candidate would be closely monitoring the patient and working with the person who was glaucoma certified the candidate is engaging in more than just a mere diagnosis of the patient. The candidate is in effect "treating" the patient without violating the requirement set forth in BPC section 3041 that only glaucoma certified optometrists may use anti-glaucoma medications to treat glaucoma.

By going through the proposed certification process in this regulation, glaucoma certification candidates will be able to recognize glaucoma at all stages of the disease, as well as all TPA treatment options available to a glaucoma certified optometrist.

Further, the drugs necessary for glaucoma management, which are TPAs, consist of topical and oral anti-glaucoma medications, such as eye drops and pills. As of May 2008, according to the Board's public licensure database, 94% of California licensed optometrists have attained TPA certification. Thus, it is incorrect to assume that California optometrists who seek glaucoma certification have "no experience whatsoever" with the required class of drugs necessary for glaucoma management. It is important to keep in mind that optometrists who are glaucoma certified do not administer any medication to the patient during the treatment of glaucoma. The patient must obtain their medication through a prescription written by the glaucoma certified optometrist. Then, the patient would have to administer the drug to themselves using the dosage and intake frequency authorized by their optometrist.

Dr. Goldstein opened the floor for questions and comments by the Board.

Dr. Goldstein advised (and members agreed) that the text should be modified to read "authorized by the prescribing optometrist or ophthalmologist".

Professional member, Alejandro Arredondo noted that optometrists have been safely treating glaucoma, in other states, for years.

Comment (3) by CAEPS: *The proposed regulation's definition of "treat" is inconsistent with the statutory definition in Business and Professions Code (BPC) section 3041(b)(2) because at a minimum, it does not involve actual use of pharmaceutical agents and it fails the Office of Administrative Law's (OAL) clarity and authority standards.*

Response: The Board's proposed response is to reject this comment because the definition of "treat" in the proposed regulation is consistent with BPC section 3041.

According to BPC section 3041, before a Therapeutic Pharmaceutical Agents (TPA) certified optometrist can treat glaucoma with TPAs (which includes prescribing anti-glaucoma medication), the TPA-certified optometrist must first receive certification from the Board to treat glaucoma.

BPC section 3041(c) states that a TPA-certified optometrist may use topical and oral anti-glaucoma agents to treat primary open angle glaucoma, and exfoliation and pigmentary glaucoma only if the TPA-certified optometrist is certified by the Board to treat glaucoma. One of the ways to obtain glaucoma certification is to complete a didactic course of no less than 24 hours and complete the case management requirements for glaucoma certification established by the Board through this proposed regulation. Thus, until a TPA-certified optometrist receives glaucoma certification, the TPA-certified optometrist cannot use anti-glaucoma agents to treat glaucoma.

For the purposes of this regulation, treat had to be defined in a manner to comport with the aforementioned restriction in BPC section 3041. The definition of treat encompasses all the necessary steps that an optometrist must take in order to medically manage a glaucoma patient. Despite the fact that candidates for glaucoma certification are not allowed to use anti-glaucoma agents, they are working closely with individuals who are experienced with prescribing or applying anti-glaucoma agents and are participating in the proper evaluation of the patient, the performing of all necessary tests, the diagnosis of the patient, recognizing the type of glaucoma within their scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient's condition, and making timely referrals to an ophthalmologist when appropriate. The candidate is in effect "treating" the patient without violating the requirement set forth in BPC section 3041 that only glaucoma certified optometrists may use anti-glaucoma medications to treat glaucoma. Thus, the definition of "treat" in the proposed regulation is consistent with the definition of "treat" in BPC section 3041.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (4) by CAEPS: *SB 1406 did not authorize the Board to create a new definition of "treat" via regulation.*

Response: The Board's proposed response is to reject this comment because the Board has statutory authority to define "treat" for the purposes of the proposed regulation. Senate Bill (SB) 1406 did not have to expressly grant the Board authority to redefine the term "treat" since the definition of "treat" in the proposed regulation is consistent with existing law. Thus, it is inappropriate to apply the same definition of "treat" to candidates who are seeking glaucoma certification as is applied to optometrists who are already certified and can practice at the full range of their scope of practice.

BPC section 3041.10 mandated the process that needed to be followed to create the guidelines for glaucoma certification. That portion of the process has been completed and BPC section 3041.10 was repealed on January 1, 2010, thus it no longer applies to this proposed regulation.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (5) by CAEPS: *The proposed regulation's definition of "treat" is inconsistent with the definition provided in the Office of Professional Examination Services' (OPES) report, thus it violates OAL's authority standard. The Board draws from OPES' report for the proposed definition of "treat" in the regulation, but is altering OPES' findings by failing to include the report's full definition of treatment (i.e. the portions referring to the actual use of pharmaceuticals).*

Given that the Board formally adopted the OPES report in its July 2009 meeting, the contents of the report in its entirety is official Board policy. Therefore, the Board is not free to pick and choose the

portions of a “complete” definition provided in OPES’ report and to propose another, contrary definition.

Response: The Board’s proposed response is to reject this comment because it is an incorrect statement. OPES’ report did not define “treat,” it merely described how optometrists who had been co-managing patients under Senate Bill (SB) 929 were treating glaucoma patients. Although BPC section 3041.10 mandated that the Board adopt the findings of OPES and implement them into regulation, that section was repealed on January 1, 2010, thus it no longer applies to this proposed regulation. For the same reason, this report is not official Board policy. At this time, the report is being used as a reference for further development of this regulation.

The Board was not attempting to alter OPES’ findings. The report was used as a reference to create a definition that encompassed all procedures necessary for the treatment of glaucoma up to the point of prescribing the medication to the patient, while comporting with current law that only glaucoma certified licensees may use anti-glaucoma agents to treat glaucoma. Sections of OPES’ description of treatment were omitted because they are not applicable to candidates for glaucoma certification.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (6) by CAEPS: *The proposed regulation’s creation of an “equivalency” mechanism whereby an optometrist may satisfy their “treatment” obligation by not treating actual patients is inconsistent with SB 1406 and violates OAL’s consistency and authority standards. A classroom oriented experience clearly cannot replace the experience one gains from participating in the treatment of live patients in the Grand Rounds Program.*

Response: The Board’s proposed response is to reject this comment. The language stating that completion of the Case Management Course or the Ground Rounds Program is equivalent to prospectively treating 15 individual patients for 12 consecutive months and does not violate the consistency and authority standards of the Government Code. For clarity purposes, it was necessary to add explanatory language in the proposed regulation indicating that the Case Management Course and the Grand Rounds Program are to be counted as if the candidate for glaucoma certification had treated 15 individual patients for 12 consecutive months. Although it is not explicitly stated in the OPES report, the intent was to incorporate two extremely effective teaching methods in the glaucoma certification process that would count as “15-patient credits.” By allowing these courses to count as 15-patient credits, it logically follows that these courses are equivalent to prospectively treating 15 individual patients for 12 consecutive months as the proposed regulation states.

Furthermore, the Case Management Course is the only option that does not require that live patients be present, and this is clearly stated in the proposed regulation modifications. The Grand Rounds Program requires that live patients be evaluated for the purposes of the creation of a management plan and for follow-up meetings. Likewise, the Preceptorship Program requires that patients be co-managed with a preceptor and this will most likely take place at the candidate’s practice location. In all of these settings, the regulation’s definition of “treat” will be utilized, which means candidates will be fully involved in all aspects of managing an actual patient. Also, candidates for glaucoma certification would be under the supervision of those experienced with using anti-glaucoma agents, which would allow for the proper medication to be prescribed. Patient safety is never compromised as candidates are not allowed to use anti-glaucoma medications until glaucoma certified.

Dr. Goldstein opened the floor to questions and comments by the Board.

Dr. Lawenda reported a typo in the text.

Comment (7) by CAEPS: *SB 1406 and OPES' report do not give the Board authority to declare that the Case Management Course and Grand Rounds are equivalent to prospectively treating 15 individual patients for 12 consecutive months.*

Response: The Board's proposed response is to reject this comment for the same reasons as stated in response (6).

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (8) by CAEPS: *The proposed regulation's definitions of "Diagnosis" and "Monitoring" as "Treatment" creates inconsistencies with other portions of the optometric practice act, including the statutory definition of "treatment," and violates OAL's authority standard.*

Response: The Board's proposed response is to reject this comment. The proposed regulation's definition of treat, which includes diagnosing the patient and monitoring the patient's condition, does not create any inconsistency with the optometric practice act since it does not authorize the licensee to exceed his or her scope of practice. Although it is clear in BPC section 3041(h) that optometrists are not authorized to use therapeutic lasers and since the proposed regulation does not attempt to override or conflict with BPC section 3041(h), a candidate for glaucoma certification would not be able to utilize therapeutic lasers to "monitor" a glaucoma patient while completing the glaucoma certification requirements. Furthermore, BPC section 3041(h) authorizes optometrists to use diagnostic lasers whether they are glaucoma certified or not. Although treatment options are constantly changing as new technologies are introduced into the practice of optometry, this does not necessarily mean that the standard of care has changed to require the implementation of such new technology in the treatment of glaucoma patients. The standard of care remains focused on patient care and not on the technologies used to provide such care.

For the sake of clarity, Dr. Goldstein asked Legal Counsel, Michael Santiago if this comment is regarding the use of diagnostic versus treatment lasers. Mr. Santiago clarified that although that's a portion of it, the comment refers to the broad umbrella which the use of therapeutic lasers, as well as the standard of care argument, come under.

Dr. Goldstein asked the question: "If the diagnostic laser was a part of the standard of care, may it currently be used by an optometrist"? Mr. Santiago confirmed this statement correct.

Dr. Goldstein noted that lasers which are used for diagnosis are called diagnostic lasers rather than treatment lasers.

Dr. Goldstein opened the floor to questions and comments from board members.

Ms. Burke inquired and Dr. Goldstein clarified the difference between diagnostic and treatment lasers.

Ms. Johnson asked if it would be possible to increase clarity in the Board's response.

Dr. Goldstein advised that language be added which explains that optometrists are allowed to use diagnostic lasers which is becoming an increasing part of optometric and ophthalmologic practice.

Ms. Leiva suggested adding "Furthermore, BPC section 3041(h) authorizes optometrists to use diagnostic lasers whether they are glaucoma certified or not", to the Board's response.

Comment (9) by CAEPS: *It is not clear in the proposed regulation's Case Management Requirement as to how many contacts with each patient will occur during the 12 month period of treatment.*

Response: The Board's proposed response is to reject this comment. It would be impossible to determine how many contacts are necessary with each patient. Each patient's condition determines the frequency of such contact that the candidate for glaucoma certification needs to have with the patient for effective treatment of glaucoma.

Dr. Goldstein opened the floor to questions and comments from Board members.

Dr. Goldstein suggesting editing the second sentence of the response to read: "Each patient's condition, and appropriate glaucoma case management, determines the frequency of such contact that the candidate for glaucoma certification needs to have with the patient for effective treatment of glaucoma".

Ms. Johnson inquired about the relevancy of the comment since the laws and regulations speak to how many patients shall be seen during this training period.

Dr. Goldstein explained his belief that this has to do with the nature of the disease. Glaucoma patients are not seen once but require follow up visits over a long period of time.

A comment from Sacramento was inaudible in both author and content.

Comment (10) by CAEPS: *Newly proposed regulation 1571 fails OAL's clarity standard because the regulation uses terms which do not have meanings generally familiar to those directly affected by the regulation, and those terms are defined neither in the regulation nor in the governing statute. The view of "general familiarity" is supported by the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC) optometry report.*

Response: The Board's proposed response is to reject this comment. The Board believes the term it has used is specific enough that those who are affected by it will clearly understand what it encompasses. In the proposed regulation the terms diagnosis and referral have meanings generally familiar to those "directly affected" by the regulation - candidates for glaucoma certification. Such candidates have become familiar with these terms through their optometric education as well as through experience in the practice of optometry.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (11) by CAEPS: *The proposed regulation's "Case Management Requirement" is internally inconsistent and therefore fails the clarity standard because the terms "individual" and "patient's condition" conflict with permitting "different" patients for follow-up in the Grand Rounds Program. For example, how can an applicant for certification monitor and reevaluate a patient's condition over a 12 month period if the same or different patients may be reviewed?*

Response: The Board's proposed response is to reject this comment. There is no inconsistency or lack of clarity. Whether the same patient or different patients are seen or treated in the Grand Rounds Program, the regulation states that completion of the course will result in the candidate for glaucoma certification receiving 15-patient credits.

Dr. Goldstein opened the floor to questions and comments by the Board.

Ms. Burke requested an explanation of the Grand Rounds Program.

Dr. Goldstein explained that in the Grand Rounds Program an initial examination of the patients is conducted, followed by discussions of how the patients are followed and treated. The intention is that the candidate for glaucoma certification follows the same patients as much as possible.

Professional member, Dr. Susy Yu added that she believes the Board made this clear in one of its former responses. In that response, the board indicated that a cross-sectional analysis of a number of different patients, at different stages of glaucoma are just as effective (if not more effective) in educating an optometrist on the disease.

Comment (12) by CAEPS: *The statement “prospectively treated for a minimum of 12 consecutive months” in section (a)(4) conflicts with the explicit acknowledgement that the Case Management Course “does not involve treatment of patients.”*

Response: The Board’s proposed response is to reject this comment because there is no conflict. Regardless of the amount of patients seen or treated in the case management course (which is zero), the regulation states that completion of the course will result in the candidate for glaucoma certification receiving 15-patient credits.

Board members, staff, and legal counsel discussed suggested language additions and strikes and agreed upon the following modified text:

Response: The Board’s proposed response is to reject this comment because there is no conflict. The types of patients actually seen during a case management course would span the spectrum of moderate to advanced cases of glaucoma. Whether the minimum number of cases (15) presented and discussed in the Case Management Course, the regulation states that completion of the course will result in the candidate for glaucoma certification receiving 15-patient credits.

The case management course requires that at least 15 cases of moderate to advanced complexity be presented. The definition of treat encompasses all the necessary steps that an optometrist must take in order to medically manage a glaucoma patient. Despite the fact that candidates for glaucoma certification are not allowed to use anti-glaucoma agents, they are working closely with individuals who are experienced with prescribing or applying anti-glaucoma agents and are participating in the proper evaluation of the patient, the performing of all necessary tests, the diagnosis of the patient, recognizing the types of glaucoma within their scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient’s condition, and making timely referrals to an ophthalmologist when appropriate.

Board members returned to this response after comment 18 by CAEPS.

Dr. Lawenda noted that case management is a learning experience even when it’s not hands on. Observing case management is a learning experience as well.

Dr. Goldstein suggested the following text:

The Board’s proposed response is to reject this comment because there is no conflict. The case management course requires that at least 15 cases of moderate to advanced complexity of glaucoma be presented. The glaucoma education provided by the proposed regulation will result in a robust and thorough examination, decision making, evaluation and treatment, and possible referral requirement. Altogether this will provide a complete longitudinal learning experience that will meet or exceed the care and treatment of any single patient.

Dr. Yu recommended ending with a reiteration of the board’s definition of “treat” from the board’s response to comment (1) by CAEPS: The definition of “treat” in the proposed regulation does require actual medical management of glaucoma patients.

Dr. Goldstein invited further comments and questions from Board members.

A comment by Dr. Lawenda was inaudible.

A comment by Ms. Burke was inaudible.

Comment (13) by CAEPS: *The fundamental basis for the proposed regulation violates OAL's "authority" standard since, contrary to statute, it rests upon two sets of curricula issued by two groups of persons instead of a single curriculum issued by a single committee.*

Response: The Board's proposed response is to reject this comment. It does not address the modified text. The Office of Professional Examination Services (OPES) report accurately summarized the optometry and ophthalmology reports provided by the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC) members. Also, the Board took all of the OPES report's recommendations, as it was the final report and the report that needed to be followed as mandated by SB 1406, not the ophthalmology or the optometry GDTAC reports.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (14) by CAEPS: *The Addendum to the Final Statement of Reasons contains factually-inaccurate language that suggests "support" of the Grand Rounds Program by the ophthalmologist members of the GDTAC.*

Response: The Board's proposed response is to reject this comment. The language being referred to that suggests support for the proposed regulation's Grand Round Program from the ophthalmological members of GDTAC was language contained in the OPES report (pg. 37), not just from the optometry member's report. The OPES report was adopted by the Board in July 2009 and made available to the public for review. The Board has relied on and referred to the report's findings during this entire regulatory process and (until this comment) has not received any other concerns from any person, group or organization regarding the veracity of the material contained in the report. Thus, the Board does not consider it necessary to remove it from the Addendum to the Final Statement of Reasons.

Dr. Yu requested clarification regarding the final report. Ms. Leiva and Dr. Goldstein clarified that originally there were two reports (an ophthalmology version and an optometry version). The Board now has a final report derived from the findings of the OPES.

Dr. Yu advised striking "until this comment" from the response.

Comment (15) by CAEPS: *How can a candidate for glaucoma certification make a timely referral to an ophthalmologist when appropriate if the candidate does not see the same patients over the 12 month period in the Grand Rounds Program?*

Response: The Board's proposed response is to reject this comment. In the treatment of any patient an optometrist is obligated to refer the patient to an ophthalmologist or physician as required. The glaucoma education provided by the proposed regulation will result in a robust and thorough examination, decision making, evaluation, treatment and possible referral requirement that will provide a complete longitudinal learning experience which will meet or exceed the care and treatment of any single patient.

A timely referral can be made to an ophthalmologist or physician as required even though the same patients are not seen over a 12 month period since the candidate will need to make the decision when to refer the patient, regardless of the time frame a patient may be seen by the candidate.

Board members and staff discussed at which point optometrists became required to diagnose glaucoma by the Optometry Practice Act.

Ms. Leiva suggested adding: “Furthermore, optometrists have had the obligation to hold to the same standards as ophthalmology to detect glaucoma since the 1970’s”.

A comment by Ms. Burke was inaudible.

Dr. Goldstein noted that it’s been in the Optometry Practice Act since the 1970’s, but has been a standard of care for much longer.

A comment by Dr. Lawenda was inaudible.

Ms. Johnson suggested adding: “This long history of making timely referrals provides optometrists with the ability to make timely referrals for all patients seen”.

Dr. Goldstein offered the following language for comment:

“The glaucoma education provided by the proposed regulation will result in a robust and thorough examination, decision making, evaluation and treatment, and possible referral requirement. Altogether this will provide a complete longitudinal learning experience that will meet or exceed the care and treatment of any single patient”.

Dr. Goldstein opened the floor to more questions and comments by the Board.

Mr. Santiago explained why he doesn’t think the response responds directly to the comment.

Ms. Maggio suggested that preceding the current text of the response, there should be an actual explanation of the Grand Rounds credit that one will receive by completing the program. This will provide a clear explanation of how the Board interprets the program.

Dr. Yu noted that the Grand Rounds student needs to be able to make the referral decision regardless of when the patient is seen or the point of progression of the disease. This fact makes the 12 month period somewhat irrelevant.

Dr. Goldstein suggested the following language:

“In the treatment of any patient, an optometrist is obligated to refer that patient to an ophthalmologist or physician as required”.

A comment by Dr. Lawenda was inaudible.

Board members agreed that the additions and amendments result in a complete and to-the-point response.

Comment (16) by CAEPS: *How has this candidate developed the decision-making capacity to meet the definition of treat proposed by the Board if the patient is not required to be the subject of evaluation at subsequent meetings?*

Response: The Board’s proposed response is to reject this comment. The Board has no authority to require a patient to return for any subsequent evaluation by the candidate for glaucoma certification.

Dr. Goldstein stated his belief that the Board’s response to comment 15 may be reiterated.

A comment by Dr. Lawenda was inaudible.

Comment (17) by CAEPS: *The existence of two reports makes the findings and recommendations upon which the proposed regulations were based null and void.*

Response: The Board's proposed response is to reject this comment. Neither report is binding on the Board since BPC section 3041.10 was repealed January 1, 2010.

Dr. Goldstein asked Mr. Santiago if the language meets the response requirements.

A comment by Mr. Santiago was inaudible.

A comment by Dr. Lawenda was inaudible.

Ms. Leiva suggested amending the response to read:

This comment is rejected because it does not address the modified text. Neither report is binding on the Board since BPC section 3041.10 was repealed January 1, 2010.

Comment (18) by CAEPS: The Board is attempting to promulgate a regulatory structure based upon two sets of recommendations issued by two groups.

Response: The Board's proposed response is to reject this comment because it does not address the modified text.

Dr. Goldstein requested members go back to Comment 12 to finalize the response.

California Medical Association (CMA) opposes the proposed regulation as modified for the following reasons:

Comment (1): *The Board's modifications to the proposed regulation fail to meet the statutory requirements of BPC section 3041.10(a) because the modifications threaten patient safety.*

Response: The Board's proposed response is to reject this comment for the reasons stated in the board's responses to the CAEPS' comments (1) and (4).

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (2): *The Board's modifications to the proposed regulation violate the consistency and authority standards in the California Administrative Procedure Act by defining treat in a way that conflicts with the definition of treat in the BPC section 3041.*

Response: The Board's proposed response is to reject this comment. The definition of "treat" in the proposed regulation is not in conflict nor inconsistent with the definition of "treat" in BPC section 3041 because only a TPA-certified optometrists who is also glaucoma certified by the Board may use topical or oral anti-glaucoma agents to treat glaucoma. Different definitions of "treat" are appropriate and necessary in order to distinguish between applicants who cannot yet actually use anti-glaucoma medications and optometrists who are glaucoma certified.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (3): *The proposed regulation would allow an optometrist to become glaucoma certified without ever physically treating a glaucoma patient.*

Response: The Board's proposed response is to reject this comment because it is not commenting on the modified text. Also, the Board has already addressed these concerns, which were presented during the 45- day comment period (November 6, 2009 – December 21, 2009) and the first 15-day modified text. Although these concerns are now targeted at the second 15-day comment period, they are not new.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (4): *A classroom oriented experience clearly cannot replace the experience one gains from participating in the treatment of live patients.*

Response: The Board's proposed response is to reject this comment for the reasons stated in the Board's response to CAEPS' comment (6).

Dr. Goldstein recommended adding "for the reasons stated in the Board's responses to CAEPS' comments (15) and (16) as well.

Dr. Goldstein opened the floor to questions and comments by the Board. There were no questions or comments.

Comment (5): *The Board's modifications to the proposed regulation violate the consistency and authority standards in the California Administrative Procedure Act because the Board was not granted the authority to state that the Case Management Course or the Grand Rounds Program is "equivalent" to prospectively treating 15 individual patients for 12 consecutive months.*

Response: The Board's proposed response is to reject this comment for the reasons stated in the board's response to CAEPS' comment (6).

Dr. Goldstein advised adding (15) and (16) as well.

Dr. Goldstein opened the floor to questions and comments by the board. There were no questions or comments.

California Council of the Blind (CCB) opposes the proposed regulation as modified for the following reasons:

Comment (1): *The modifications to the proposed regulation are extremely dangerous and would result in reduced quality of care that will cause more glaucoma patients to lose their sight.*

Response: The Board's proposed response is to reject this comment for the reasons stated in the board's response to the CAEPS' comments (1) and (4).

Dr. Goldstein suggested adding (6), (15) and (16).

A comment by Dr. Lawenda was inaudible.

A comment by professional member, Dr. Alejandro Arredondo was inaudible.

Board members discussed and agreed that the purpose of SB 1406 is to provide more patients access to appropriate glaucoma diagnosis and treatment. The result will be greater quality of care, not a reduced quality.

Ms. Johnson suggested, and members agreed, adding the following text: “The legislative and regulatory process that has been followed to date pursuant to the mandate of SB 1406 safeguards California’s consumers and has allowed for full review by all impacted persons to disprove any assumptions of a reduction in quality of care”.

Comment (2): *The proposed regulation’s modifications define the word “treatment” in a way that would not be understood by a patient to be actual “treatment.” Optometrists need adequate training to treat glaucoma, and this training must include actual treatment of patients with glaucoma.*

Response: The Board’s proposed response is to reject this comment. The Board is defining the word “treat,” not “treatment.” For the purposes of this regulation, treat had to be defined in a manner to comport with the aforementioned restriction in BPC section 3041. The definition of treat encompasses all the necessary steps that an optometrist must take in order to medically manage a glaucoma patient. Despite the fact that candidates for glaucoma certification are not allowed to use anti-glaucoma agents, they are working closely with individuals who are experienced with prescribing or applying anti-glaucoma agents and are participating in the proper evaluation of the patient, the performing of all necessary tests, the diagnosis of the patient, recognizing the type of glaucoma within their scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient’s condition, and making timely referrals to an ophthalmologist when appropriate. The candidate is in effect “treating” the patient without violating the requirement set forth in BPC section 3041 that only glaucoma certified optometrists may use anti-glaucoma medications to treat glaucoma. Thus, the definition of “treat” in the proposed regulation is consistent with the definition of “treat” in BPC section 3041 and does not compromise patient safety.

Dr. Goldstein opened the floor to questions and comments by the board.

Dr. Lawenda stated his dislike with using the word individuals and suggested professionals, doctors, or optometrists.

Mr. Santiago cautioned against using the word “certified” because not all optometrists are certified.

Dr. Goldstein opened the floor again to further comments or questions. There were no comments or questions.

Comment (3): *The proposed regulation should be modified to require candidates for glaucoma certification to treat glaucoma patients under the supervision of a practitioner who is certified to treat glaucoma.*

Response: The Board’s proposed response is to reject this comment. Adding to the regulation a requirement that a candidate must be supervised by a practitioner who is certified to treat glaucoma would exclude other practitioners, such as ophthalmologists (who by profession do not have a glaucoma certification requirement to treat glaucoma), from the possible participation in the training of glaucoma candidates to become glaucoma certified.

Dr. Goldstein, Dr. Lawenda, Ms. Maggio, and Mr. Santiago discussed the need for clarity in the response.

Dr. Goldstein opened the floor to questions and comments by the Board.

Public member, Katrina Semmes suggested amending the text to read: “Who by licensure are not required to have glaucoma certification to treat glaucoma”.

Dr. Goldstein open the floor to questions and comments by the Board. There were no comment or questions.

Dr. Goldstein then opened the floor to the public.

Mr. Joe Lang (spokesman for CAEPS) commented that the whole purpose of the Administrative Procedures Act is to allow public participation in the creation of a regulation. He only had a chance to review the Board's responses to his organization's comments that morning. Also, the fact that in this discussion, the public was not able to be involved and the individual who drafted the regulation was allowed to make changes and re-write responses to the comments, makes the process lack credibility.

He also expressed that the Board's interpretations of CAEPS' comments were inaccurate and the responses were non-responsive. The Board's responses to the comments do not follow the format of CAEPS' comments, so it makes it difficult for them to determine if the Board answered their comments appropriately.

Mr. Lang then brought up a point, which in his opinion was "new", relating to the last comment the Board responded to from the CCB regarding ophthalmologists who are not certified by the Board of Optometry to treat glaucoma. He pointed out that as the regulation is currently written, individuals who would be instructing licensees in the glaucoma certification courses would not be required to be glaucoma certified. For the record, he clarified that this new issue was brought up at this Board meeting during the discussion of the comments by the Board members, not by him. Thus, he formally requested more time to review the responses.

Dr. Goldstein announced that Mr. Lang requested a delay based on Government Code section 11346.8(e) which states:

If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes final action, it is the intent of the legislature that rulemaking agencies consider granting the request for additional time if under the circumstances granting the request is practical and does not unduly delay action on the regulation.

Dr. Goldstein opened the floor to questions and comments by the Board.

Ms. Johnson added that the Board has had ample time to thoroughly address all of the issues that have ever been made. The granting of Mr. Lang's request is not only impractical and would unduly delay action, but it would also delay protection for California consumers and deny them access to the care they need.

Thus, the request for additional time was denied (see motion below).

A question by Ms. Burke was inaudible.

Dr. Goldstein opened the floor to comments by the public.

Mr. Berg commented that there was no new issues as Mr. Lang indicated.

Mr. Lang continued to comment. He countered the Board's response to CAEPS' comment #3 by pointing out that there is a conundrum with the regulation because the Board decided to define "treat" in such a way that it would not allow licensees to use medications during the glaucoma certification training process. There would be no conundrum if the Board would have just kept the definition of the word "treat" as it is currently defined in law. That is why the Board spent so much time discussing their response to comment #15, because there is an inherent conflict.

Mr. Lang then addressed CAEPS' comment #4. He pointed out that the Board uses the process mandated by 3041.10 to refute comment #4 but then in a later comment contradicts this response by stating that 3041.10 was repealed in January 1, 2010 and thus no longer applies to the proposed regulation. He feels that the Board cannot have it both ways.

Mr. Lang then addressed CAEPS' comment #5. He pointed out that the Board only used a partial portion of the OPES report to develop the new definition of "treat." The entire definition was not used, and it should have been. The Board "cherry-picked" and left out the points which were made in CAEPS' comments. How is it possible, if the Board adopted the OPES report in its entirety, that they thought they could pick and choose what to include in the definition of treat? The Board specifically left out the fact that an optometrist going through a certification process should learn about changing medications over a 12-month period.

Mr. Lang then addressed CAEPS' comments #6 and #7. He questioned the Board's authority regarding the allowance in the regulation to count the Case Management Course as a 15-patient credit. He does not feel that the Board has the authority to decide what is equivalent. He also feels that the Board did not adequately answer comments #6 and #7 because the Board did not understand what CAEPS was asking. Mr. Lang also questions the Board's authority to create a new definition of treat. He does not believe they do.

Mr. Lang then addressed CAEPS' comment #8. The new definition of "treat" brings into question the use of diagnostic lasers. The new definition makes it seem like optometrists can use lasers for the treatment of glaucoma. The word "treat" should not have been re-defined since it appears to raise more questions instead of offer solutions.

Mr. Lang then addressed CAEPS' comment # 9. For the Grand Rounds Program, it is not clear how many contacts will occur with each patient during the 12-month period. Also, the language of the regulation states that follow-up with the patients during the Grand Round Program does not need to be with the same patient. He asked how can a licensee know when to refer if they are not seeing the same patient? Mr. Lang disagrees with this reasoning and feels that it creates an inconsistency. Mr. Lang assures that comment #9 was not answered by the Board because they missed the whole point of the question. If he would have been allowed to comment in between responses, he could have assisted in the Board's understanding so that they could give an appropriate answer.

Mr. Lang asserted that if the Board would have worked cooperatively with CAEPS and their team, then their responses to CAEPS' comments wouldn't have missed the point.

Mr. Lang then pointed out that the Board's responses to comments #15 and #16 also missed the point, so they didn't respond to the comments.

Mr. Lang then addressed CAEPS' comment #17 regarding BPC section 3041.10. Again he reiterates that the Board's responses are contradictory regarding this section of law. It either applies to the regulation or it doesn't.

Mr. Lang then addressed sections 3 (a), (b), (c), (d), and (e) of one of CAEPS' comments regarding the definition of the word "Authority" as OAL would use it in approving the regulation. He claims there was no response to this comment from the Board.

Mr. Lang then addressed comment #14. He states that there have been multiple criticisms of the OPES report and that the Board's response that there weren't any criticisms is untrue. He also refutes the Board's reference in the Final Statement of Reasons pertaining to ophthalmology's agreement to the Grand Rounds Program as described in the regulation. The ophthalmologists never agreed to the Grand Rounds Program.

Dr. Goldstein interceded Mr. Lang's comments and requested that he please finish.

Mr. Lang responded to this request by expressing his frustration and sharing that he couldn't believe how the Board was able to respond in just 48 hours to 18 pages worth of carefully crafted comments that took two weeks to develop by CAEPS' lawyers, lobbyists and doctors.

Ms. Johnson clarified that Dr. Goldstein's request for Mr. Lang to wrap up his arguments was only so she could make a 1:00 p.m. conference call at her place of employment and had nothing to do with frustration concerning Mr. Lang's comments.

Mr. Lang explained he understood and commented that due to the Board's compacted time frame to complete responses to their comments, their comments were not addressed satisfactorily. He feels the Board should have taken more time to do this.

Mr. Berg expressed his support of the regulation and stated that the amendments are clear. He believes this regulation will increase access to treatment, which was the legislature's goal. CAEPS is using the definition of treat in the regulation as a "black hole" to bring up issues that do not exist.

Ms. Veronica Ramirez (California Medical Association) supported Mr. Lang's comments and stated that they continue to oppose the regulation as written.

Dr. David Turetsky, O.D. commented on his personal standpoint as a practitioner who deals mainly with nursing home facilities. Dr. Turetsky explained that there are certain counties in this state; in which, there are no ophthalmologists available to treat patients. If these patients are on Medi-Cal and in a skilled nursing facility, they are required to take medical transport 2 and ½ hours from Chico. By not having the ability to treat these patients in a comfortable and convenient manner, we are putting their ocular health at risk.

Dr. Turetsky also recommended adding "certification" to the last sentence of the response to CCB's comment (3) to read: "glaucoma certification candidates".

Alex Arredondo moved to deny the request for additional time based on the circumstance that granting the request is not practical and would unduly delay action on the regulation. Monica Johnson seconded. The Board voted (7 – Ayes; 0 – No; 1 abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke			X

Kenneth Lawenda moved to approve the language of the modified text and to move the regulation package. Monica Johnson seconded. The Board voted (7 – Ayes; 0 – No; 1 abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		

Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke			X

3. Discussion and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Section 1536, Continuing Optometric Education

Ms. Leiva provided an overview of this agenda item.

Staff is requesting that the Board review and fully consider the comments received pertaining to California Code of Regulations (CCR), Section 1536, Continuing Optometric Education. The comments were received during the regulation’s 45-day comment period. A proper response shows adequate consideration of the comment and thoroughly describes why the comment is being accepted or rejected.

Mary Schombert, Regulatory Specialist, Health & Safety Institute (HSI) opposed the text of the regulation for the following reason:

As currently worded, the regulation would allow that four CE credits be awarded only for CPR courses taught by the American Heart Association (AHA) or the American Red Cross (ARC). This restrictive wording would prevent the use of training programs produced by HSI under the brand names of American Safety & Health Institute (ASHI) and MEDIC First Aid. These two organizations have more than 30 years of experience producing emergency medical training programs.

Also, AHA and ARC collect training revenues from the sale of their proprietary training materials. Thus the Board’s endorsement of AHA and ARC grants those organizations control of the Optometry training market. This will hurt ASHI and MEDIC First Aid training centers by shutting them out of the training market, and deprive California optometrists of equivalent training options that would benefit from a market economy.

HIS asks the Board to consider either adding ASHI and MEDIC First Aid by name to the approved CPR courses in the regulation or to consider adding equivalency wording to the regulation, extending acceptance of CPR programs to those produced by training providers that follow the guidelines of the AHA and require a hands-on training component for certification.

Staff recommends that the Board accept HSI’s recommendation and agrees with its reasoning. Staff suggests amending the proposed language as requested by HSI.

Ms. Leiva provided the Board with three possible language suggestions.

Dr. Goldstein offered (and members agreed) that the option to accept is the one that states: “from the American Red Cross, the American Heart Association, or other association approved by the Board. This will allow the Board to look at guidelines in training and in establishing equivalency.

Kenneth Lawenda moved to accept the recommended language. Susy Yu seconded. The Board voted (7 – Ayes; 0 – No; 1 abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		

Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke			X

Kenneth Lawenda moved to give authority to the Executive Officer to move forward with the rulemaking package at the end of the 15-day comment period if no negative comments are received. Alejandro Arredondo seconded. The Board voted unanimous (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke	X		

4. Discussion and Possible Approval of the Response Considering the Comment Submitted during the 45-Day Comment Period Pertaining to the Proposed Rulemaking, CCR, Title 16, Sections 1518, 1523, 1531, 1532, 1533 and 1561, Fictitious Name Permits, Licensing and Examinations

Ms. Leiva provided an overview of this agenda item.

Ms. Leiva reported that during the 45-day comment period, only one comment was received. Dr. Jim Kane opposes the regulation for the following reasons:

1. *A five time increase of the fee from ten to fifty dollars is onerous.*
2. *Requiring that this fee be paid every year should certainly not be necessary and appears to be another revenue-based imposition.*
3. *A Fictitious Business Name should belong to the person who devised it, registered it with the state, paid for it, filed paperwork with the Board for it and paid to publish it. It should not be the dictate of the Board to direct sellers of the practice to freely or automatically include it in the transition of practice ownership unless that is the wish of the selling doctor. Some names have significant and separate values from the practice itself and the owner of that name may choose to re-register that name and continue the use of it in another part of the state as part of the new office. A business name has stand-alone proprietary value and should not be de-valued by government agency mandate.*

The Board's proposed response to comment 1 is to reject Dr. Kane's comments for the following reasons:

1. This regulatory package does not increase Fictitious Name Permit fees. The fee increase that this regulation is reflecting became effective on April 28, 2009 upon the Secretary of State's approval of another rulemaking package pertaining to CCR section 1524, Fees. This proposed regulation is being updated to match subsection (h) of CCR section 1524, which increased the Fictitious Name Permit renewal fee from \$10 to \$50. CCR section 1518 should have been amended at the same time that CCR section 1524 was amended for consistency, but there was an oversight by previous Board staff.
2. Also, prior to 2009, the Board's last fee increase was implemented in 1993 (17 years ago) and was insufficient to support Board operations beyond Fiscal Year 2007/08. An analysis was conducted in order to determine the fee increases required for Board operations to continue. Changing the fee from \$10 to \$50 was the most reasonable solution so the Board could continue its operations, thus this fee is not onerous, but necessary.

The Board's proposed response to comment 2 is to reject the comment because payment of the Fictitious Name Permit Fee must be paid yearly and is not a revenue-based imposition. The annual requirement is not new and was only added to the regulation for clarity purposes and to match prior regulations.

Since 1997, the Board has been requiring that the Fictitious Name Permit renewal fee be paid every year pursuant to CCR section 1524. Adding this language to CCR 1518 will improve Board operations by properly informing licensees, who are not familiar with other regulations, what they need to do when it comes to maintaining their Fictitious Name.

The Board's proposed response to comment 3 is to reject the comment because it is irrelevant for the purposes of this rulemaking. The concern does not address any of the proposed changes.

Dr. Goldstein opened the floor to comments by the Board and public. There were no comments.

Donna Burke moved to accept the responses and move the rulemaking package. Edward Rendon seconded. The Board voted unanimously (8-0) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke	X		

5. Approval of Board Meeting Minutes

- A. March 16, 2010
- B. March 25-26, 2010
- C. May 11, 2010
- D. September 24, 2010
- E. October 4, 2010

Alejandro Arredondo moved to approve the minutes. Kenneth Lawenda seconded. The Board voted (7 – Ayes; 0 – No; 1 – Abstention) to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke			X

6. Public Comment for Items Not on the Agenda

Ms. Maggio announced that a representative with the Citizens Advocacy Center is scheduled to come out and speak on Board competency. The individual who heads up the center (which is housed in Washington DC) will be in Sacramento January 5, 6, 7, 2011. He is willing to meet with the Board.

Ms. Maggio and Dr. Goldstein discussed holding a teleconference meeting in late November/early December. This would provide an opportunity to discuss enforcement cases.

Dr. Lawenda reported that the National Board of Examiners in Optometry (NBEO) had a conference call with a number of state's representatives as well as various schools of optometry. The NBEO will be changing the part 3 to a single testing site. Additionally, injection will be added to the testing.

Dr. Goldstein announced that the Board will be holding another Halloween press conference on October 26, 2010 to reach out to high school students.

Dr. Goldstein opened the floor to comments by the Board. There were no comments.

7. Adjournment

Kenneth Lawenda moved to adjourn the meeting. Katrina Semmes seconded. The Board voted unanimously 8-0 to pass the motion.

Member	Aye	No	Abstention
Dr. Goldstein	X		
Dr. Arredondo	X		
Ms. Johnson	X		
Dr. Yu	X		
Dr. Lawenda	X		
Mr. Rendon	X		
Ms. Semmes	X		
Ms. Burke	X		

The meeting adjourned at 1:26 p.m.

Monica Johnson, Board Secretary

Date