



**STATE BOARD OF OPTOMETRY**  
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**Draft**

## **MEETING MINUTES**

Friday, August 10, 2012  
 Southern California College of Optometry  
 TVCI Conference Room  
 2575 Yorba Linda Blvd  
 Fullerton, CA 92831-1699

### Members Present

Alejandro (Alex) Arredondo, O.D.  
 Board Vice President  
 Monica Johnson  
 Secretary  
 Donna Burke, Public Member  
 Madhu Chawla, O.D.  
 Alexander (Alex) Kim, M.B.A., Public Member  
 William (Bill) Kysella, Jr., Public Member  
 Kenneth (Ken) Lawenda, O.D.  
 Fred Dubick, O.D., MBA

### Staff Present

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

### Guest List

On File

**9:00 a.m.**

### **FULL BOARD OPEN SESSION**

#### **1. Call to Order – Roll Call – Establishment of a Quorum**

Board Vice President, Alex Arredondo, O.D. called the meeting to order, called roll, and a quorum was established.

#### **2. Welcome – President's Report**

##### Welcome

Dr. Arredondo welcomed everyone in attendance and invited everyone say something about themselves.

Professional Member, Fred Dubick practices optometry in Burbank, California. He and his wife are both optometrists. Dr. Dubick is also the President Elect of the California Optometric Association (COA).

Public Member, Alex Kim works at the Southern California Gas Company which serves natural gas for the Southern California area. He serves in government affairs for the Orange County region and as an Asian affairs manager. Additionally, Mr. Kim is on the board of several different chambers in the area.

Public Member, Donna Burke is retired from public affairs for AT&T. Now Ms. Burke spends her time volunteering in the community.

Professional Member, Ken Lawenda is semi-retired but practices in Beverly Hills, CA. This is his second term with the Board. Dr. Lawenda is also a past president of the COA.

Public Member, Monica Johnson is an attorney and Assistant General Counsel for Ventura Foods. She lives in the Orange County area and has served on the Board since December 2005.

Professional Member, Madhu Chawla grew up in Southern California, and attended an optometry school in New England. She has been practicing for five years at Kaiser Permanente in Woodland Hills.

Public Member, Bill Kysella was appointed to the Board by Speaker of the Assembly, John Perez. Mr. Kysella is a Deputy City Attorney in Los Angeles where he advises the Los Angeles Department of Water and Power.

Executive Officer (EO), Mona Maggio has been with the Board for five years and with the Department of Consumer Affairs 27 years. She expressed pleasure in working for the Board.

Ms. Maggio invited staff members to introduce themselves.

Policy Analyst, Andrea Leiva has been with the Board for three years. Her areas of expertise include legislation, regulations, website, etc. Ms. Leiva has a Bachelor of Arts degree in communication studies with a concentration in public relations.

Legal Counsel, Michael Santiago is an attorney for the Board, Legal Affairs Division. He became counsel for the Board at the same time Ms. Maggio became EO. Mr. Santiago also assists the Board of Registered Nursing and the California State Athletic Commission. Additionally, he is the Department's current Ethic's Officer.

Dr. Arredondo invited the guests to introduce themselves.

Reichel Everhart is the Deputy Director of Board Relations for the Department of Consumer Affairs.

Optometrists Mary Cavanaugh and Pam Miller came to observe the meeting.

Harue Marsden, O.D., M.S. is a past president of the COA. Currently Dr. Marsden is a professor and Associate Dean of Clinical Education at the Southern California College of Optometry (SCCO).

Morris Berman, O.D. is a professor and the Vice President and Dean of Academic Affairs at SCCO.

Katheryn Scott is a Contract Lobbyist representing Lenscrafters and EYEXAM of California.

Jason Gabhart is the External Relations Manager for the COA.

#### President's Report

Dr. Arredondo explained he does not have anything to report since he is filling in until the election of the new Board President.

### **3. Election of Officers**

#### Committee Appointments

Ms. Maggio reported that Business and Professions Code (BPC) Section 3014, states "The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor".

Prior President, Lee Goldstein's term has ended, therefore it is time to hold elections. Ms. Maggio announced she will be opening up the nominations for each office and she explained how the voting process will work.

Ms. Maggio opened the office of President. Drs. Lawenda and Arredondo expressed interest. Nominations were closed, votes were taken and Dr. Arredondo was voted President of the Board.

Ms. Maggio opened the office of Vice President. Dr. Arredondo nominated Ms. Johnson who accepted the nomination. Nominations were closed, votes taken and Ms. Johnson was voted Vice President of the Board.

Ms. Maggio opened the office of Secretary. Dr. Arredondo nominated Mr. Kim who accepted the nomination. Nominations were closed, votes taken and Mr. Kim was voted Secretary of the Board.

Ms. Maggio congratulated the new slate of officers as follows:

- Alex Arredondo, President
- Monica Johnson, Vice President
- Alex Kim, Secretary

### Committee Structure

Ms. Maggio introduced the committee structure with all the committees the Board has utilized in the past. She explained that not all committees are currently being utilized and this is mainly because the Board has not been at its full composition.

Ms. Maggio reported as follows:

- The Board currently utilizes a Legislative and Regulations Committee which meets once or twice a year. This committee assists staff in developing the legislative calendar and with regulations that need prior review before presentation to the Members.
- An Education Committee is currently utilized by staff. This committee assists staff by reviewing requests for approval of continuing education (CE) courses and by offering guidance regarding CE issues.
- Public Relations – Outreach Committee is an active committee of the Board. This committee assists with the development of outreach and development of educational materials to the Board's stakeholders. Last year this committee assisted staff with the development of two new brochures and the revision of a brochure.
- It is recommended the Board utilize the same committees since these are currently most useful (from staff's perspective). Additionally, there is the matter of the state's budget condition, which does not allow funds for travel and the development of meeting materials. Furthermore, staff will be somewhat on "lockdown" while preparing for the Sunset Report. In October – February, preparation of this report for the Legislature will be the focus of all staff.

Ms. Maggio requested that two Members be appointed as a workgroup or committee to assist staff with the preparation of the Sunset Review Report for the purpose of assuring that the report is clear, concise, and addresses/answers all of the Legislature's questions/issues.

Ms. Maggio advised that a Strategic Planning Committee will not be necessary until late 2013, early 2014 because the Board is still actively working on the last plan. She suggested bringing this issue to a future meeting.

Ms. Maggio explained that according to the Board Members Handbook, the President, Vice President, and Secretary are responsible for appointing members and establishing committees. She also expressed her desire to assist with the process since there are many new Members. Ms. Johnson agreed and suggested conference-calls versus meetings may be productive in allowing the Board to continue the progress made since the last Sunset Review.

Mr. Santiago clarified that if a committee is composed of only two members it does not need to be publicly noticed. Ms. Johnson replied that the Board needs to be transparent and her concern is making certain this fact does not motivate/influence decisions regarding how the committees are staffed.

Ms. Maggio recommended the President be on the Legislative and Regulation Committee. Dr. Lawenda and Mr. Kysella offered to serve on this committee.

Ms. Maggio, Dr. Arredondo, Ms. Johnson, and Ms. Burke briefly discussed the role and structure of the Education Committee. Ms. Leiva suggested consolidating the Practice and Education Committees into one. Dr. Arredondo agreed. Drs. Arredondo and Dubick offered to serve on this committee.

Ms. Maggio reported that the Board has not utilized the Consumer Protection Committee. She explained that the Board works with the Office of Professional Examination Services (OPES) to make certain the exam is a legally defensible one. Subject Matter Experts (California state licensed optometrists) are also utilized; therefore Ms. Maggio believes this part of the consumer protection process is being handled already.

Mr. Kim inquired if it would make sense (in an effort to save money) to merge this committee with the Public Outreach Committee. Mr. Santiago replied by asking if the Consumer Protection Committee is really enforcement disguised as consumer protection. If so, he does not think it belongs with public outreach. Ms. Leiva agreed noting that public outreach is for the stakeholders as well.

Ms. Johnson and Ms. Leiva briefly discussed Board outreach and to who it is directed.

Ms. Maggio restated that the Consumer Protection Committee has never been used since she began working for the Board. Ms. Johnson responded that regardless of its use or lack of use, she believes it is important for the Board to have a committee that is focused on consumer protection. Ms. Burke, Ms. Johnson, and Dr. Lawenda offered to serve on this committee.

Ms. Maggio restated her recommendation to hold off on the Strategic Planning Committee until it is time to construct a new plan. Ms. Johnson responded she would like to see it filled so at least the appointment part of the process is completed. Ms. Johnson and Ms. Burke offered to serve on the Strategic Planning Committee.

Ms. Maggio reported that the Fiscal Committee has not met before. According to the Board Member Handbook, the Secretary and Executive Officer work together on reviewing the Board's budget. Ms. Maggio explained that the Board's budget is basically set by the Department of Finance and the Board does not have discretion other than in requesting budget change proposals (BCPs). She stated it would be helpful to have Members assist with the BCPs. Ms. Maggio stated that a budget report is provided at every meeting and a budget analyst speaks with the Members usually twice each year. Ms. Maggio asked the Members if they would prefer having a Fiscal Committee or continue with the Administrative Manual and have the Secretary work with her on this. Ms. Burke stated she would support the latter and other Members agreed.

Ms. Maggio reported that the Public Relations – Outreach Committee currently consists of two Members (Ms. Burke and Mr. Kim). Both Ms. Burke and Mr. Kim offered to continue serving on this committee.

Ms. Maggio asked for two Members who would be interested in working with staff on the Sunset Review Report. Ms. Burke and Dr. Arredondo offered to assist.

Ms. Maggio explained she may need to reach out to prior Board Members who may have knowledge of issues that occurred in 2002-2003 when the Board was reconstituted. She explained that when she looks at the 2002-2003 minutes they do not appear to be very complete and she wants to make certain she has a complete historical understanding of the issues that occurred.

Selection of Future Board Meeting Dates

Ms. Maggio announced that a teleconference meeting will need to be held in about 15 days to review and approve a regulation. She explained that the Board was asked (after the agenda) to provide clarifying language. Members and staff discussed dates and Thursday, August 23 at 4:00 p.m. was chosen for this teleconference meeting.

Members discussed possible dates for future Board meetings. The dates were selected as follows:

- September 24, 2012 (11:00 a.m.) Conference - Call  
(Review Draft Sunset Report)
- November 1, 2012 Southern California
- February 1, 2013 Southern California

**4. Approval of Board Meeting Minutes**

Members were asked to approve the minutes of the following meetings:

- May 18, 2012
- March 30, 2012
- March 2, 2012

**Monica Johnson moved to approve the May 18, 2012 Meeting Minutes. Donna Burke seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.**

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

**Donna Burke moved to approve the March 30, 2012 Meeting Minutes. Monica Johnson seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.**

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

**Monica Johnson moved to approve the May 18, 2012 Meeting Minutes. Alex Kim seconded. The Board voted: 5-Aye; 0-No; 3-Abstention to pass the motion.**

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

Ms. Maggio noted that she and Ms. Johnson discussed that in spring 2009 a policy was established requiring the minutes to be completed within 30 days of a meeting, reviewed by staff, then sent to the Secretary for review prior to the next meeting. Ms. Maggio stated she would like this policy to continue with Mr. Kim. Mr. Kim agreed to continue this policy.

**5. Executive Officer’s Report**

Ms. Maggio provided an overview of the following:

**A. Budget**

The Board’s budget for fiscal year (FY) 2011-2012 was \$1,564,598. The year end report reveals expenditures as of June 30, 2012 as 41,270,684, or 81% of the budget. The fiscal year end surplus is \$247,615 or 15.8%. The analysis of the Board’s fund condition reveals 4.3 months reserve in the current year and 3.9 months in FY 2012-13.

The Board’s budget for FY 2012-2012 is \$1,714,000. This amount is subject to change based on Governor’s directives, budget letters and adjustments to the budget.

Ms. Maggio explained that because of the state’s budget condition, adjustments are often made to the Board’s budget even though we are specially funded and do not receive money from the General Fund. Ms. Maggio announced she will have a budget analyst come to the next Board meeting.

Ms. Maggio reported she submitted two BCPs for an increase to our budget for FY 2012-14. The BCPs requested position authority and funding for an associate governmental program analyst (AGPA) position to serve as the lead in the enforcement program and requested for augmentation to the OE&E budget line to cover the increase in rent due to the office’s relocation. Both were denied by the Department of Finance. Due to the increase in rent and the costs of the implementation of BreZE, the Board will have to watch its spending very closely to ensure it does not overspend. And with this, the Board is struggling with a staffing shortage.

Dr. Arredondo noted that in 2010/2011 the state borrowed \$1 million dollars from the Board for the General Fund. Dr. Arredondo inquired about repayment status of this loan. Ms. Maggio replied that a repayment plan has not been set. Ms. Maggio also stated she had talked with the DCA Budgets Office about requesting a repayment plan and was advised not to do this.

Dr. Lawenda inquired and Ms. Maggio confirmed that only in the event that the Board may “go into the red” is a request for repayment considered acceptable.

Ms. Johnson suggested that the doubling of our rent may provide a reason for the Board to request repayment. Ms. Johnson also asked Ms. Maggio if Members can direct the EO to inquire about what would be required in order for the Board to be reimbursed. Ms. Johnson noted this is the second donation for something the Board has worked very hard for.

Ms. Maggio asked Ms. Everhart (as the Board Relations Deputy Director) to address Ms. Johnson's question. Ms. Everhart confirmed the "going in the red" is the only time a board can request reimbursement.

Dr. Arredondo noted for the sake of the new Board Members that we are basically self-sufficient with the fees and dues from the doctors.

Ms. Maggio reported that in March 2012, Budget Letter (BL) 12-13 was issued and required that the departments make necessary adjustments to expenditures and positions. Initially the Board was to give up 1.2 positions. Ms. Maggio was able to appeal this and justify the need to keep our positions. However, the Board did have to give up .6 of a position. This means when we fill the new position, the employee will be required to work 36 hours versus 40 hours per week.

On March 12, 2012, the Board received BL 12-05 which provided guidance for submitting Out of State Travel (OST) Blanket requests. Ms. Maggio reported that the Association of Regulatory Boards of Optometry (ARBO) will be having its 2013 Annual Meeting in San Diego California. With substantial justification, Ms. Maggio is hopeful Members and staff will be able to attend this meeting.

Dr. Lawenda noted that although he understands the budgetary limitations, DCA Budgets needs to understand the importance of ARBO to the Board. Dr. Marsden responded that ARBO does publish a newsletter and the minutes of their meetings. Ms. Maggio committed to contacting ARBO and having information at the next meeting. Ms. Maggio also stated she wants to go on record as clarifying that "although former Board member Dr. Susy Yu is an ARBO Board Member she did not vote on behalf of, nor represent the State Board of Optometry when she was there."

**B. Personnel**

Ms. Maggio reported that Sonia Huestis has been appointed to serve as the Deputy Director, Bureau Relations for DCA, effective June 21, 2012.

Ms. Maggio requested and Ms. Everhart provided a brief overview of the Department's travel restrictions, the new Deputy Director of Bureau Relations, Ms. Huestis and changes to the structure of the Department. The Department of Real Estate and the Department of Real Estate Appraisers will become DCA Boards/Bureaus.

**Board Staffing**

Ms. Maggio reported that the Board employed a summer youth aid, Miguel Melendrez who worked in the licensing unit. He assisted in creating license files and collating and matching documents for the licensure evaluation process, and helped in organizing the file/supply room. He has been a great help to the office. Ms. Maggio is hopeful that he may be able to return to the Board after graduating High School.

Ms. Maggio announced she just hired a Staff Services Analyst, Rob Stephanopoulos, for the Enforcement Program. Mr. Stephanopoulos begins August 20, 2012. He is new to state service.

Ms. Maggio explained she is still recruiting to fill the Office Technician position in the Enforcement Program which was formerly filled by Dillon Christensen. Mr. Christensen was in a limited term position which sadly expired on July 11, 2012. Ms. Maggio has been unable to reach Mr. Christensen on a list.

**C. Examination and Licensing**

Ms. Leiva provided an overview of the Office of Professional Examination Services (OPES) which has been working to obtain a new Computer Based Testing Vendor for the DCA Board's and

Bureau's examination programs. The Board currently utilizes Psychological Services LLC (PSI) for the California Laws and Regulations Examination. Ms Leiva reported that she participated in the selection of PSI. Although unofficial it looks like PSI will be the Board's testing vendor once again.

Ms. Burke inquired and Ms. Leiva responded that having PSI as our testing vendor again is very good news. Ms. Leiva explained that staff's experience with PSI was great. They are open and receptive to accommodating this Board's unique needs as well as the needs of our licensees.

#### Continuing Optometric Education (CE)

Ms. Maggio reported that staff recently received an inquiry from a member of the Asian American Optometric Society (AAOS), a non-COA affiliated optometric society, about the Board's continuing participation in the review of continuing optometric education (CE) courses. Additionally, staff received an inquiry from the Counsel on Optometric Practitioner Education (COPE) which is under ARBO about having all CE which the Board approves go through COPE. Ms. Maggio is working on having an ARBO – COPE member come to the next meeting to speak to the Board regarding their proposal. Dr. Arredondo shared his concern that not all of the optometrists (invited to give presentations at society meetings) are COPE approved.

Dr. Arredondo opened the floor to comment.

Mr. Kysella shared a concern that the Board would be transferring part of the Board's responsibility over to this organization, and we do not have representation with them. Ms. Maggio confirmed Mr. Kysella's understanding and added that the Board also needs to consider the fiscal impact. There is a fee for the providers that helps support the Board.

Dr. Lawenda inquired as to how the Board will deal with requests for continuing medical education (CME) credit for therapeutic optometrists with the increase in the scope of practice. Ms. Maggio responded this will need to be a future agenda item.

Mr. Kim noted (from a public relations point) that this is an opportunity to reach out to specific ethnic groups (i.e., Asian American optometric society) and he asked if we have a database of other ethnic groups (e.g. Latin American, African American, etc.).

Mr. Kysella restated his concern and urged Members to retain control over the CE and not transfer it to COPE.

Ms. Maggio addressed the Members and explained that (at this time) full discussion and action cannot be taken on this issue since it is not an agenda item. However, she has asked for a speaker from ARBO to attend a future meeting, and at that time full discussion and action can take place. Mr. Santiago confirmed this.

#### **D. Enforcement**

##### Exception Report Update

Ms. Maggio reported that at the last meeting staff had explained that data transfer complications resulted in a 651 page exception report that needed to be cleared or responded to (e.g. ordering rap sheets, etc.). A completion deadline had been set for July 1, 2012. Staff worked diligently and the exception report project was completed a week prior to the deadline. There are a few remaining exceptions (not cleared) that cannot be cleared "in-house" however these exceptions are not impeding the issuance of licenses or renewals. The exception report is now being monitored and maintained daily.

##### Statistics and Performance Measures

Reports were provided for the Member's review. Ms. Maggio explained that a very high influx is seen in the statistics. This increase was caused by the exception report issue. Although the



Board is now meeting the timeline, the complaints opened from this report must be backdated to the date it was received and not the date opened.

#### Caseload

Ms. Maggio stated the Board's Enforcement Unit is currently operating with two vacancies. As a result, the three remaining analysts have taken on additional workloads and are struggling to meet the standard performance measures set by DCA's Consumer Protection Initiative. It is predicted the Board may not meet the standards until the two vacant positions are filled and trained.

#### BreEZE

Ms. Maggio reported that the Board is in Phase II of the BreEZE project. The Licensing Unit participated in the configuring of all the licensing applications. During the testing period some glitches were discovered. Staff asked for the project to be postponed for three weeks while the glitches are being corrected.

#### Probation

Ms. Maggio explained that staff has become aware of an issue facing probationers. One of the standard conditions is community service. Depending on the violation, probationers are ordered to volunteer either free optometric or non-optometric services. Those ordered to volunteer free optometric services are struggling to find organizations willing to allow probationers to volunteer. Ms. Maggio asked if the Professional Members may have ideas to share about how probationers can fulfill this condition.

#### Board Website

Ms. Leiva provided an overview of the Board's new website which she participated in developing. The Board of Optometry is the second board to have the new website which is an award winning design.

### **FULL BOARD CLOSED SESSION**

#### **11. Full Board Closed Session**

Agenda Item 11 – Full Board Closed Session occurred at this time.

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

#### **6. Rulemaking Calendar**

Ms. Leiva reported on the rulemaking calendar.

##### **A. Update on California Code of Regulations (CCR) §1575, Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

The modified text was approved at the last meeting; a 15-day comment period began on June 27, 2012 and ended on July 12, 2012 to allow the public to comment on the changes prompted by the comments received. No further comments were received and staff submitted the package for final review to the DCA on July 31, 2012. During the DCA review, the Legal Office discovered confusing language which makes the Uniform Standards appear discretionary. The package was returned to the Board to clarify the language.

Ms. Leiva presented the modified text which was approved by the DCA. Mr. Santiago clarified that this text removes the appearance of Uniform Standards being discretionary. He added that he knows for certain the Office of Administrative Law (OAL) will approve the modified language and this will not come back to the Board again. Because this is not an action item, the Board will have to make the modification to the language and vote on initiating a 15-day comment period on the August 31, 2012 teleconference.

B. Update on CCR §1508, §1508.1, §1508.2 and 1508.3, Sponsored Free Health Care Events  
These were approved at the May 18, 2012 meeting. It has been noticed and is currently in the 45-day comment period for public review and discussion. The hearing for this package is Monday, August 13, 2012.

C. Update on CCR §1514, Renting Space and Practicing on Premises of Commercial (Merchantile) Concern and §1525.1, Fingerprint Requirements

Ms. Leiva explained that because this rulemaking package expired on May 27, 2012, staff submitted the package on April 13, 2012 and worked to obtain an extension. Typically rulemaking packages must be completed and submitted to OAL in one year from the Notice date, or else agencies must start the regulatory process over. In this case, the Board falls under an exception that if the rulemaking file has been submitted to the DCA Director for review and the one-year period expires during that review, the one-year period may be extended for a maximum of 90 days. The rulemaking package is currently in the Department of Finance and the Board has until August 21, 2012 to submit it to OAL. Ms. Leiva added she is hopeful it will be submitted on time.

Mr. Kysella asked and Ms. Leiva clarified that if the rulemaking package is approved, then the regulations will become law. Otherwise, the rulemaking process will have to start over.

Mr. Kysella expressed a concern about the Board's reporting requirements for traffic fines under \$300. He noted that traffic fines have greatly increased and many are well over \$300 now.

D. Discussion and Possible Action to Approve Draft Language and Commence a Rulemaking to Add & Amend Regulations Pertaining to the Department of Consumer Affairs' Consumer Protection Initiative

Ms. Leiva reported there is not any proposed language at this time; however, there are provisions in place, which were identified by the DCA from the Consumer Protection Enforcement Initiative (CPEI). The nine provisions identified by the CPEI were previously a priority for the DCA. On April 11, 2011 the Board voted to separate the Uniform Standards/Guidelines from the CPEI regulations in order to better focus on the Guidelines. The rulemaking package would have been too massive and difficult to develop if the two sets of regulations would have remained together. It was decided to continue to work on the CPEI regulations upon the completion of the Guidelines rulemaking package.

Ms. Leiva explained that staff was able to find authority for almost all of the nine provisions. However, staff wishes to revisit this to assure authority for all nine provisions. Ms. Leiva provided a list of the provisions for the Board Members.

Ms. Leiva clarified that all nine provisions have not been implemented. It is up to the Board which provisions become regulation.

Ms. Leiva asked the Board to review the nine provisions and chose the most appropriate for the Board of Optometry, if any. Since it has been over a year since the Board has discussed this issue, staff would like to develop updated regulations to be presented at a future Board meeting.

Mr. Kysella noted that most of the provisions do not appear to reduce workload and make processes more efficient. He expressed concern that as long as the Board is short staffed, thoughtful reasoning needs to take place. Mr. Santiago clarified that when Senate Bill (SB) 1111 died, the Department was asked to identify which sections of SB 1111 could be accomplished through regulation. This is also a question that will arise during the Sunset Report (What is the status of the SB1111 regulations?). Therefore, this issue is more of a Legislative expectation and not so much the Department.

Mr. Santiago and Mr. Kysella agreed there should be thoughtful deliberation.

Ms. Burke announced areas of interest (4. §720.14 – Confidentiality agreements regarding settlements; 5. §720.16(d) and (f) – Failure to provide documents and §718(d) – Failure to comply with Court; 8. §737 – Failure to provide information or cooperate in an investigation; and 9. §802.1 – Failure to report an arrest, conviction, etc.).

Ms. Burke, Ms. Johnson, and Dr. Dubick discussed which of the nine provisions they feel are relevant and should be pursued.

Dr. Dubick noted that they seem to be applicable across the board to all health boards and he asked if we need to “reinvent the wheel”. Mr. Santiago clarified that if it is a provision another board has pursued, this Board would take a look at their language to see if it is something we can present as well. If it is a provision no other board has initiated, then the Board would have to invent the language.

Mr. Kysella (referencing Provision 2. for example) commented that for many health care professionals, engaging in sexual activity is not just a regulation, it is the law. Ms. Johnson pointed out that an optometrist may be on probation for some past violation of this nature and without the ability to stay the revocation, he/she could be practicing while the Board is waiting for the hearing process to come along. Mr. Kysella and Ms. Johnson debated the significance.

Mr. Kysella restated his desire to have a thoughtful discussion before introducing regulations. Ms. Leiva proposed the Board undergo more research about how each of these pertain to the Board of Optometry (e.g. how this section would help or not help), and then make a decision to choose. Dr. Arredondo referred this issue to the Legislative Committee to begin the discussion there. Ms. Leiva reminded the Board that since this is a Sunset Report question, the Board will have to justify why it has not begun working on it. Ms. Leiva presented the structure that will be used in answering the question.

E. *Discussion and Possible Action to Amend §1566.1, Consumer Information to Update the Board's Address*

Ms. Leiva reported that no action is needed as this is just an update of a minor regulatory change (address change) that will be made by staff using the Section 100 procedure. Section 100 changes do not require a regulatory package, only a brief justification why the change is non-substantive. Ms. Leiva will submit this directly to OAL within the next few weeks.

## 7. **Legislation Update and Possible Board Action**

### **A. Bills that May Impact the Practice of Optometry**

#### *Assembly Bill (AB) 761 (R. Hernandez)*

AB 761 is sponsored by the COA so Ms. Leiva invited Mr. Gabhart to provide an update. Mr. Gabhart reported that staff and lobbyists met with the California Department of Public Health (CDPH). The CDPH are concerned that the language may be interpreted to mean that optometrists may perform mid – high complexity testing which doctors must generally complete additional specialized training to perform. Mr. Gabhart believes COA has worked out clarity amendments. The bill is still moving forward.

#### *Assembly Bill 778 (Atkins)*

Ms. Leiva provided an update. This bill (sponsored by Lens Crafters and Californians for Healthy Vision) would legitimize optometrists and opticians working together in the same location.

Ms. Leiva reported that the author will re-introduce this bill in the next legislative session.

The Board continues to be in opposition of this bill and sent a letter of opposition in June 2011. On June 13, 2012, the litigation between the National Association of Optometrists and Opticians, Lens Crafters, Eye Care Centers of America (Plaintiffs), and the DCA (Defendants), the Ninth Circuit

affirmed the constitutionality of California statutes that prohibit licensed opticians from offering prescription eyewear at the same location in which eye examinations are provided, and from advertising that eyewear and eye examinations are available in the same location.

Ms. Scott commented that there are about four or five models of co-location in existence. She also stated that when the company and their partner decide how they will move forward more public conversations will ensue related to how the model will progress.

Dr. Lawenda asked and Ms. Scott replied that 48 other states have models of co-location. She stated that California is one of the few states where there is prohibition on the direct relationship between an optometrist and an optician.

#### Assembly Bill 1588 (Atkins)

Ms. Leiva reported that this bill would require boards under DCA to waive professional license renewal fees and continuing education requirements for military reservists called to active duty. This bill has passed the Assembly and is in the Senate Appropriations Committee. She stated it appears this bill will make it to the Governor for signature.

#### Assembly Bill 1733 (Logue)

Ms. Leiva provided an excerpt of the bill and explained the bill changes the name of “telemedicine” to “telehealth” in the optometry practice act. This bill also prohibits health care service plans, specifically Medi-cal managed care programs and the California Program of All-Inclusive Care for the Elderly (PACE), from requiring in-person contact between a health care provider and a patient before payment is made for covered services appropriately provided through telehealth.

Dr. Lawenda inquired and Ms. Leiva responded that this bill is 80 pages in length because it affects every health profession. Every health professions will use the term “telehealth.”

#### Assembly Bill 1896 (Chesbro)

Ms. Leiva stated that the bill makes state and federal laws conform to further clarify that persons licensed in other states as health practitioners are exempt from any state licensing requirements if they are employed by a tribal health program. AB 1896 was approved by the Governor on July 13, 2012. Although this bill will become law January 1, 2013, staff learned that a couple of DCA boards opposed the bill because tribal health programs were found to be seeking to treat individuals that were not of tribal descent in order to remedy the shortage of health care providers in rural areas. Staff will continue to monitor the implementation of this bill.

#### Assembly Bill 1904 (Block)

Ms. Leiva explained that since her printed update of this bill, the language has changed. Now AB 1904 will NOT authorize DCA boards to issue temporary licenses to individuals licensed in other states, and married to an active duty member of the Armed Forces assigned to a duty station in California. It WILL require DCA boards to expedite the process for individuals in this category.

Dr. Lawenda questioned and Ms. Leiva clarified that the language includes “married” and “domestic partner”. Ms. Leiva assured that the public minutes will include this clarification.

#### Senate Bill (SB) 690 (E. Hernandez)

Ms. Leiva stated that SB 690 is a COA sponsored bill which prohibits provider discrimination in contracting with health plans. Ms. Leiva invited Mr. Gabhart to report on its status.

Mr. Gabhart reported that the Department of Managed Health Care (DMHC) came out in opposition because they believe the bill is premature since the federal government has not issued regulations or guidance. COA staff and DMHC staff met last week. COA is weighing their options and will decide if they want to make amendments and move forward.

### Senate Bill 1575

Ms. Leiva reported that SB 1575 is an Omnibus Bill by the Senate Business, Professions & Economic Development Committee. An omnibus bill contains various measures from different boards/bureaus that are typically non-controversial and for clean-up purposes only. This bill amends §3057.5. Eligibility of Graduates from Foreign Universities by switching the word “person” with “graduates of foreign universities.” SB 1575 has passed the Senate and is currently in the Assembly Appropriations Committee.

Ms. Leiva opened the floor to questions or concerns about the bills mentioned.

Ms. Johnson suggested having the Legislation and Regulations Committee meet and look at legislation before it comes to the Board. Ms. Leiva and Ms. Maggio responded that since the Board is becoming increasingly involved in legislation, they have discussed this and plan to schedule legislation meetings as they become necessary.

Dr. Lawenda asked and Ms. Maggio responded that legislative meetings have not been occurring for some time because the Board had very few Members. Now that the Board is almost full, the subcommittees will be meeting again. She added that committee meetings involve a lot of staff work. Therefore, the need/urgency of a committee meeting is taken into consideration.

Dr. Arredondo inquired and Ms. Leiva explained that the legislative session will be over soon. There is not enough time to send letters of support at this time.

### **B. Discussion and Possible Action to Amend Board Sponsored SB 1215 – Pertaining to Retired Licenses, Retired Licensees with a Volunteer Designation, and Temporary Practice**

Ms. Leiva reported that this concern was brought to the Board at the May 18, 2012. The issue came about because the Medical Board of California (MBC) recently lost a court of appeal case related to taking disciplinary action against a licensee that held a retired license. The retired licensee’s attorney alleged the MBC lacked jurisdiction to impose discipline because, as the holder of a retired license, the physician was not permitted to engage in the practice of medicine.

Staff requested the Board consider amending this bill to ensure that it is clear that the Board retains jurisdiction over all licensees, regardless of the status of his or her license. Ms. Leiva reported the Board rejected amending this bill for the following reasons:

- The language is not needed because if retired licensees practice, they will be considered unlicensed practitioners, and that is how the Board can take action against them; and,
- This is a non-issue. There is already enough support for the bill and amending it would be too difficult.

Since then, staff has learned from the DCA Division of Legislative and Policy Review (LPR) that they met with the Governor’s Office, and the Governor’s Office strongly recommended that the Board adopt the language the MBC is using to prevent any loopholes. In order to be proactive, staff submitted language to the Legislative Committee to begin drafting the clarifying language. Ms. Leiva requested the Board approve the amendment.

**William Kysella moved to authorize staff to amend the language of SB 1215. Donna Burke seconded. The Board voted unanimously (8 – 0) to pass the motion.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstention</b>
<b>Dr. Arredondo</b>	<b>X</b>		
<b>Ms. Johnson</b>	<b>X</b>		
<b>Ms. Burke</b>	<b>X</b>		
<b>Dr. Chawla</b>	<b>X</b>		
<b>Mr. Kim</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		
<b>Dr. Lawenda</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		

**8. Discussion and Possible Action Pertaining to the Board’s 2012-13 Sunset Report**

Dr. Arredondo invited Ms. Maggio to report on this agenda item. Ms. Maggio provided documents/charts for the Board’s review. She explained that the materials she provided are the first rough draft brainstorming session of staff under the different sections of the report. The charts will be completed by staff and the fiscal charts will be completed by the budget office. Ms. Maggio explained that this has been presented just to give the Board the opportunity to see what the report will entail and how staff has been addressing the issues so far. This item will be addressed by the Sunset Review Committee and brought back to the Board at the next Board Meeting.

**9. Public Comment for Items Not on the Agenda**

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

Dr. Arredondo publicly thanked Dr. Lee Goldstein and Mr. Fred Naranjo (former Members) for their many years of great service. Their service has been greatly appreciated.

Ms. Maggio provided an update regarding Board appointments. She announced the appointment of Dr. Glenn Kawaguchi with Eye Exam (Southern California). The Board now has only two vacancies.

Ms. Maggio reported that she and Dr. Dubick discussed how board materials are provided to the Members. At this time binders packets are sent out. The materials are also placed on our website as a PDF. She suggested some of the Members may have iPads and/or laptops they could use. Ms. Maggio requested that if this is the case to let staff know and a hard binder will not be prepared (unless it is preferred).

**10. Suggestions for Future Agenda Items.**

No suggestions were made.

**11. Full Board Closed Session**

This agenda item occurred after agenda item 5.

**12. Adjournment**

**Ken Lawenda moved to adjourn the meeting. Alex Kim seconded. The Board voted unanimously (8 – 0) to pass the motion.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstention</b>
<b>Dr. Arredondo</b>	<b>X</b>		
<b>Ms. Johnson</b>	<b>X</b>		
<b>Ms. Burke</b>	<b>X</b>		
<b>Dr. Chawla</b>	<b>X</b>		
<b>Mr. Kim</b>	<b>X</b>		
<b>Mr. Kysella</b>	<b>X</b>		
<b>Dr. Lawenda</b>	<b>X</b>		
<b>Dr. Dubick</b>	<b>X</b>		

The meeting was adjourned.

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Alex Kim, Secretary

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Date