



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

140 C Tower Street
Beaconsfield, Quebec H9W6B2
Canada

12100 Wilshire Blvd., Suite 445
Los Angeles, CA 90025

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

150 Tejas Place
Nipomo, CA 93444

5601 De Soto
Woodland Hills, CA 91367

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

518 North Moorpark Road
Thousand Oaks, CA 91360

Members Present

Alejandro Arredondo, O.D, Board President
Alexander Kim, MBA, Board Secretary
Madhu Chawla, O.D.
Frank Giardina, O.D.
Bruce Givner
Glenn Kawaguchi, O.D.
Kenneth Lawenda, O.D.
David Turetsky, O.D.

Excused Absence

Cyd Brandvein
Donna Burke
William Kysella

Staff Present

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

8:00 a.m.

FULL BOARD OPEN SESSION

1. Call to Order and Establishment of a Quorum

Board President, Alejandro (Alex) Arredondo, O.D. called roll and a quorum was established. The meeting was called to order at 8:00 a.m.

2. Determination of Need for Special Meeting

Senior Legal Counsel, Michael Santiago explained Government Code Section 11125.4 (a) that provides for a special meeting to be called for specific reasons, with a 48 hour notice when compliance for the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state or

when immediate action is required to protect the public interest. Consideration of pending legislation falls under the reasons allowed for a special meeting as follows:

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

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

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.	X		
Alexander Kim	X		
Frank Giardina, O.D.			Not present to vote
Bruce Givner	X		
Madhu Chawla, O.D.	X		
Glenn Kawaguchi, O.D.	X		
Kenneth Lawenda, O.D.	X		
David Turetsky, O.D.	X		

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

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

Ms. Maggio provided a background stating the Board of Optometry is the licensing and regulatory body for the profession of optometry in California. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system. As well as the provision of rehabilitative optometric services and doing certain things included, but not limited to the examination of human eyes, the determination of powers or range of human vision, and the prescribing of contact and spectacle lenses.

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

She explained that SB 492 would include the provision of habilitative optometric services with scope of practice optometry. The bill would expand the scope of practice of optometrists who are certified to use therapeutic pharmaceutical agents by, among other things, authorizing those optometrists to use all therapeutic diagnosing agents approved by the United States Food and Drug Administration (FDA), and indicate for use in diagnosing and treating eye conditions covered by these provisions.

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

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

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

Dr. Arredondo opened the floor to public comment.

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

SB 492 contains the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dr. Turetsky brought to the public members’ attention regarding every advance in the scope of practice for optometrists. He said the opposition has always stated that optometrists would be blinding and potentially killing people. This occurred with the diagnostic pharmaceutical agents’ certification, therapeutic pharmaceutical agents’ certification, and the glaucoma certification. In every instance such claims were proven to be

unfounded. Optometrists have risen to the challenge of performing these procedures in an effective and safe manner and the schools have always provided the education that meets the challenge.

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

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

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

Mr. Givner directed questions to Mr. Santiago on behalf of Public Member, Cyd Brandvein who was not present. Mr. Givner expressed his concerns. Additionally, he read a statement by Ms. Brandvein in which she expressed her concerns about public board members becoming involved in discussions and the decision process.

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

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

Requested Amendments:

Section 1.

BPC §3041(i)(1)

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

BPC §3041(i)(2)(B)

Be certified in basic life support for health care providers.

BPC §3041(o)

For the purposes of this chapter, "immunization" means administration of immunizations for influenza, Herpes Zoster Virus, and additional immunizations that may be necessary to protect public health during a declared disaster or public health emergency in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) for persons eight years of age or older with proper parental, guardian, or authorized representative consent.

Section 3.

BPC §3110(m)

- (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.
- (2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of a conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that licensee provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.
- (3) Conviction of a crime that currently requires the person to register as a sex offender pursuant to Section 290 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

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

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.	X		
Alexander Kim	X		
Kenneth Lawenda, O.D.	X		
Frank Giardina, O.D.	X		
Bruce Givner	X		
Madhu Chawla, O.D.			Not present to vote
Glenn Kawaguchi, O.D.	X		
David Turetsky, O.D.	X		

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.	X		
Alexander Kim	X		
Kenneth Lawenda, O.D.	X		
Frank Giardina, O.D.	X		
Bruce Givner	X		
Glenn Kawaguchi, O.D.	X		
David Turetsky, O.D.	X		

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

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

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

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

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

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

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.		X	
Alexander Kim		X	
Kenneth Lawenda, O.D.	X		
Frank Giardina, O.D.		X	
Bruce Givner	X		
Glenn Kawaguchi, O.D.		X	
David Turetsky, O.D.		X	

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.	X		
Alexander Kim	X		
Kenneth Lawenda, O.D.	X		
Frank Giardina, O.D.		X	
Bruce Givner	X		
Glenn Kawaguchi, O.D.		X	
David Turetsky, O.D.	X		

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

No public comments were received.

## 5. Adjournment

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

Member	Aye	No	Abstention
Alejandro Arredondo, O.D.	X		
Alexander Kim	X		
Kenneth Lawenda, O.D.	X		
Frank Giardina, O.D.	X		
Bruce Givner	X		
Glenn Kawaguchi, O.D.	X		
David Turetsky, O.D.	X		

The meeting adjourned at 10:05 a.m.