

**Board of Optometry**

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**BOARD MEETING FULL MINUTES
TELECONFERENCE
September 23, 2016**

MAIN LOCATION: 2420 Del Paso Road, Sequoia Room, Sacramento, CA 95834

TELECONFERENCE LOCATIONS

**Cameron Park Community
Service District
Outside Pavilion
2502 Country Club Dr.
Cameron Park, CA 95682**

**Oakland Marriott City Center
1001 Broadway, 2nd fl.
Oakland, CA 94607**

**Sam's Club
Optometrist Office
2401 N. Rose Avenue
Oxnard, CA 93036**

**Moraga Country Club
1600 St Andrews Drive
Moraga, CA 94556**

**Van Nuys State Building
Fourth Floor, Room 410
6150 Van Nuys Blvd.
Van Nuys, CA 91411**

**350 North Broadway
Escondido, CA 92025**

Members Present	Staff Present
Donna Burke, Public Member, Vice President	Jessica Sieferman, Executive Officer
Rachel Michelin, Public Member, Secretary	Joanne Stacy, Policy Analyst
Cyd Brandvein, Public Member	Charles McGirt, Licensing Lead
Martha Garcia, CLD, SLD, Professional Member	Kelly Flores, RDO Coordinator
Glenn Kawaguchi, O.D., Professional Member	Kurt Heppler, Legal Counsel
Debra McIntyre, O.D., Professional Member	
Mark Morodomi, Public Member	
Maria Salazar Sperber, Public Member	
David Turetsky, O.D., Professional Member	Guest List
Lillian Wang, O.D., Professional Member	On File
Excused Members	
Madhu Chawla, Professional Member, President	

Friday, September 23, 2016

3:00 p.m.

FULL BOARD OPEN SESSION

1. Call to Order/Roll Call and Establishment of a Quorum

Vice President, Donna Burke called roll and a quorum was established.

2. Public Comment for Items Not on the Agenda

There were no public comments.

3. Discussion, Consideration, and Possible Action on Board's 2016 Sunset Report

Ms. Burke opened the floor to comments on the first section.

Section 1 - History and function of the Board

Executive Officer, Jessica Sieferman requested the Board's feedback on the draft report. Minor changes can be forwarded after the meeting. December 1, 2016 is the deadline for submitting the report to the Legislature. The goal is for the Board to adopt the final draft at the November 4, 2016 Board Meeting.

Board Committees

Ms. Burke opened the floor to discussion of workgroups and identifying the Members.

Board Member, Rachel Michelin noted a number of mistakes in the attendance portion which causes her some concern. She is concerned about the appearance of inconsistency causing a red flag. Ms. Sieferman assured Ms. Michelin that staff will review all of the attendance records and correct all mistakes. She explained that in the past, those who were in attendance at various workgroups were not readily identified; therefore staff is researching to identify and confirm who was in attendance at the workgroups. Ms. Burke as well as Ms. Sieferman provided assurance that the records will be corrected and made consistent. Professional Member, Glenn Kawaguchi, O.D. pointed out additional corrections needed with regards to titles and names.

Major Changes since the Last Sunset Review

- **Reorganization**

Dr. Kawaguchi addressed the recent increase in the RDO program and the demand placed upon staff. He feels strongly that a comment needs to be made. The comment should be obvious and placed in a few different sections with *Reorganization* being one of the sections.

- **Change in Leadership**

No comments were made.

- **Strategic Planning**

No comments were made.

Legislative Activity

No comments were made.

Regulation Activity

Dr. Kawaguchi commented that in this section the word *initiated* is repeatedly used giving the impression that nothing has been completed. He questioned whether *initiated* is the appropriate word.

Ms. Sieferman explained the reason for the usage of *initiated*, which is that the Board has accomplished many regulation changes over the last year. The concern is that with usage of the word *effective* the efforts of Board Members and staff over the last year may not be observed by the Legislature. Ms. Michelin agreed with Dr. Kawaguchi. Ms. Sieferman suggested eliminating the words and replacing them with the year. Ms. Michelin agreed.

Major Studies

No comments were made.

National Association Activity

Dr. Kawaguchi noticed an error at the bottom of page 26. Ms. Sieferman confirmed the error, and stated that the incorrect sentence “*and applicants must take the first two parts while still in optometry school*” will be removed from the section.

Dr. Kawaguchi had an additional inquiry. Still under the topic of the National Board of Examiners in Optometry (NBEO), he noticed it states: “the Board may take the following steps:” He questioned whether details of actions taken, or what the Board intends to take action on should be added here. He added that in the last year California optometry schools informed the Board of concerns they have regarding the NBEO. Ms. Sieferman suggested stating that there were some concerns, and the Board is working with NBEO to address the concerns. Ms. Michelin requested adding the Board is working to establish a good working relationship with the NBEO. Dr. Kawaguchi agreed.

Section 2 – Performance Measures and Customer Satisfaction Surveys

Quarterly and Annual Performance

No comments were made.

Customer Satisfaction Survey

Professional Member, David Turetsky, O.D. inquired whether staff is looking into methods for obtaining consumer comments on the performance of staff and the Board as a whole. Ms. Sieferman assured that this information is in this section. The section explains that in this fiscal year consumer comments of the Board’s performance accounts for 39% of the general surveys received in the last six years. She added this demonstrates a significant improvement in responses. 46% of licensing survey results has been captured in the last fiscal year which is still ongoing. This reflects improvement in the Board’s outreach.

Dr. Turetsky inquired about the possibility of consumers being asked if they would like to participate in survey after their call. Members and staff briefly discussed this. The idea would be a new step, and the for the purpose of this Sunset Review the Board needs to address what it has accomplished in this report period. Ms. Sieferman announced that staff is already looking into this idea for both email and telephone inquiries.

Dr. Kawaguchi asked if it is necessary and effective to list all of the individual comments as this can take up an enormous amount of pages. Ms. Michelin and Mr. Heppler agreed; Members agreed. Public Member, Mark Morodomi inquired and Ms. Burke responded that she feels there might be some negative public perception if some comments are included and some are left out. Ms. Burke believes it

should be all or none; include or exclude. Ms. Burke confirmed that all Members are comfortable with excluding.

Section 3 – Fiscal and Staff

Fiscal Issues

Dr. Kawaguchi questioned some of the numbers. Ms. Siefertman stated she will work with Budgets for clarification.

Public Member, Mark Morodomi, questioned the Department's internal review process. Ms. Siefertman assured that she will inquire and obtain this information which will be available at the next teleconference meeting. Additionally Ms. Siefertman explained the Board has its own assigned Budget Analyst from whom the numbers are provided, and that Policy Analyst, Joanne Stacy reviews the Board's Counselor reports, which also contain the Board's numbers. Therefore, staff can compare numbers from Ms. Stacy's reports with numbers received from the Budget Office. Mr. Morodomi asserted the importance of multiple levels of review for the purpose of accuracy. Ms. Michelin expressed her similar concern. Ms. Siefertman agreed and restated that she will reach out to the Board's Budget Analyst, stress the importance of accuracy, and obtain the internal review process information. Ms. Burke confirmed this activity for the Members.

Staffing Issues

Mr. Morodomi questioned why there are only five tables rather than ten as the question asked for. Ms. Siefertman explained that the tables are the tables that were asked for and they came directly from the Committee. Mr. Morodomi requested the committee provide confirmation in writing that ten years are not required. Ms. Burke assured that clarification and confirmation will be obtained.

Ms. Burke opened the floor to a member of the public, Vince, with the Assembly Business and Professions Committee. Mr. Vince stated that more information is always better for the public. Reflecting back to the survey comments, he reported that many boards do include the specific comments, however if the Board's concerned about appearing objective or about certain names, the comments can be redacted and/or categorized. He provided some examples. He stated the public is concerned about consumer service for both complainants' and licensees.

Professional Member, Lillian Wang, O.D. suggested mentioning that the Registered Dispensing Optician (RDO) program was placed under the jurisdiction of the Optometry Board. Ms. Michelin agreed that absorbing the RDO program has had the greatest impact on staff.

Ms. Burke opened the floor to discussion on staff development efforts.

Mr. Morodomi asked and Ms. Siefertman confirmed that she and her assistant, Robert Stephanopoulos revisit the Individual Development Plans (IDPs) of staff. He would like this information added to the report. Ms. Michelin inquired and Ms. Siefertman confirmed the Board can elaborate on the Mentorship Program which staff is participating in.

Mr. Morodomi suggesting adding activities the Board would like to accomplish, but cannot due to a lack of funds. He suggested adding participation in the Association of Regulatory Boards of Optometry (ARBO) events. Ms. Michelin agreed that the Executive Officer and a Member of the Board attending ARBO events definitely needs to be mentioned. Dr. Kawaguchi asked and Ms. Siefertman confirmed that her attendance only is authorized for the next ARBO meeting.

Professional Member, Ruby Garcia, RDO inquired into how many ARBO attendees optometry boards from other states typical have. Ms. Sieferman explained that this varies widely between the states according to the boards', structure, state process, and funding. Some have one attendee while others may have three. Mr. Heppler added that under section: *National Association Activity* the report describes the difficulty the Board has had in obtaining approval for travel. This would be the natural place to include the importance of the Executive Officer's attendance, and how significantly beneficial it would be if the Board President or designee could attend as well.

Dr. Turetsky asked if there exists an equivalent to ARBO for opticians. Ms. Sieferman responded that there is; she can include this information under the *National Association Activity*, and submit travel requests to attend.

Section 4 – Licensing Program

Ms. Burke opened the floor to discussion of the Board's performance Targets/expectations for its licensing program.

Ms. Sieferman provided a quick history of licensing. The Board has never created set targets or any kind of performance goals. Nevertheless, in the last Sunset Report, the Board reported that we were not only meeting but exceeding them. Ms. Sieferman is not quite certain what that comment was referencing to. For this report Ms. Sieferman is acknowledging that the Board has some targets set in statute; these targets need to be revisited. She stated that with the new licensing structure staff is looking at setting appropriate and realistic targets. Staff hopes to have the targets available for the Board's votes at the November meeting.

Mr. Morodomi reminded Ms. Sieferman that sometimes a delay is caused by staff waiting for applicants to get all of their documents submitted. Ms. Sieferman responded explaining that the regulation that sets a timeframe for notifying an applicant of a deficiency is not currently fitting with the processes since they are allowed to apply before they have graduated. Often times, although the timeframe would start at the time the applicant applies, the applicant does not fulfill the requirements for licensure. Ms. Sieferman stated this should be added to the report. Ms. Sieferman would like a comment added stating: "Although a statute in place, it is not a good target in terms of measuring the Board's performance." Public Member, Cyd Brandvein would like the specific targets that were set in statute listed for informational purposes.

Application and Licensure Processing Times

Dr. Kawaguchi questioned and Ms. Sieferman confirmed that this section is still in need of revision. Mr. Morodomi requested staff look at the language regarding average processing time and make certain the language is clear. Staff agreed the paragraph does not read correctly and will be clarified.

Applicant Information Verification and Requirements

Ms. Michelin asked what will be added to question 25 regarding the national databank relating to disciplinary history and why this is a consumer protection issue. Ms. Sieferman explained that she added more information about this under Board Recommendations from the Committee as this is an issue the Committee identified. More detail from that latter section will be added to this section. The consumer protection issue comes into play when optometrists licensed and disciplined in another state fail to inform the Board that they are licensed in that state. The Board does not check applicants who

indicate they are not licensed in other states. This is problematic, since the Board must rely on the applicant's disclosure.

Dr. Turetsky inquired as to how the Board can find out about California licensees who are arrested in another state. Ms. Sieferman explained that although applicants/licensees are background checked through the FBI, the FBI does not perform a continuous query. If a licensee is convicted in this state, the Board would receive a subsequent arrest notification from the DOJ, but the FBI does not function the same way. However, if a licensing/regulatory agency of another state disciplines an O.D., that agency is required by law to notify the Licensing/regulatory agencies in every state for which that O.D. was issued a license. A problem is that oftentimes the other agency does not know the individual is licensed in California, and therefore it fails to inform our Board. Additionally, since a specific timeframe for notifying does not exist, the information our Board does receive, are usually several years after the conviction. But with the Data Bank, the Board would receive immediate notification.

Dr. Turetsky clarified that he is concerned about the double standard of the fact a licensee caught in California will be placed on probation, but if caught in another state the Board will probably never know about the conviction. Ms. Sieferman explained that the FBI has recently begun a system more similar to what the DOJ is using. There is a cost for the service, but staff is researching the details and how the Board may utilize this new system.

Ms. Garcia asked if this applies to the RDO opticians as well. Ms. Sieferman clarified that it only applies to optometrists; she does not believe dispensers are not notified to the Data Bank.

Mr. Morodomi suggested a Legislator may ask why the Board cannot check all applicants with the National Data Bank instead of only checking those who indicate they are licensed in another state. Ms. Sieferman explained this question had been brought up before, and the Board's response has been that we do not have the funds, and the Committee encourages us to work towards securing the resources. Part of staff's efforts to secure those funds is mentioned in Section 10. This will require some statutory changes. Ms. Michelin argued that our effort needs to be made a stronger statement that is repeated multiple times throughout the report.

Dr. Kawaguchi stated that for the purposes of the Sunset Report, it is critical to speak facts. The final draft of the Sunset Report needs to reflect where the Board is at currently in the process. The Board may need to be working on the answer to this question to the end. Ms. Michelin and Ms. Burke agreed.

Ms. Burke opened the floor to question 26. Does the board require primary source documentation?

No comments were made.

Out-of-State Applicant Requirements

No comments were made.

Military Education

Ms. Michelin asked if the Board has answered question of 28 (a)? Does the board identify or track applicants who are veterans? Ms. Sieferman responded this is tracked retroactively. Ms. Michelin asked why this question is not on the application. Ms. Sieferman explained that in February, the Board approved revising the application to include this question. Staff intends to push the rulemaking forward and make certain it is compliant.

No Longer Interested Notifications

No comments were made.

Examinations

Dr. Turetsky inquired about the American Board of Opticianry (ABO) examination, state mandates, and cost of test. Staff will contact the Office of Professional Examination Services (OPES) to obtain information.

Ms. Burke opened the floor to discussion on the pass rates.

Dr. Kawaguchi commented on question 31. It is difficult to understand why the NBEO would not track the pass rate of first time test takers. He also believes the language assumes a high success rate of test takers without any data/figures to substantiate this statement. Dr. Wang assured that the Optometry schools have this information. Ms. Sieferman clarified that the answer to question 31. (d) refers to the state and not the NBEO. The NBEO does have the pass/fail/retake numbers. Dr. Kawaguchi requested that this section be revised to provide better clarity. Ms. Sieferman agreed to provide a response for both the state and national exams and to clarify which one is being addressed.

Dr. Turetsky and Ms. Michelin pointed out some grammatical errors in the answer to question 32.

Dr. Turetsky questioned the statement that the California Laws and Regulations Exam (CLRE) are administered twice a year. Ms. Sieferman explained that the response is misleading. The test is administered at all times, however if an applicant fails the exam, he/she must wait 180 days before taking the exam again. Ms. Sieferman offered to reword the answer to question 32 for better accuracy and clarification. Dr. Turetsky asked whether it is legislation or regulation which states the applicant must wait 180 days to retake the exam. Ms. Sieferman responded that it is neither. As part of the strategic plan, one of the Board's objectives is to increase the frequency of administering the CLRE. Staff has researched this issue and plans to bring their recommendation to the Board at the November meeting. The recommendation will be to not to increase the frequency based upon the information received and the impact. This will all be discussed at the November meeting.

School Approvals

Ms. Garcia asked if the response to question 34 pertains to optometry schools, to which Ms. Sieferman suggested adding the RDO program. Ms. Garcia announced that in 2017 Moorpark Community College will be opening up a degree programs in opticianry and private colleges will be offering a means of certification. Ms. Burke explained that the Board does not approve the schools and therefore this will have to be researched.

Ms. Michelin noted that the accreditation information for Western University needs to be updated. Ms. Sieferman observed that the entire section needs to be updated. Additional schools were added and the section will be updated to properly reflect the name and number of accredited schools.

Ms. Garcia inquired and Ms. Sieferman explained that currently there are no continuing education requirements for the RDO program. Ms. Sieferman understands Ms. Garcia's concern to have discussion(s) about issue at a future Board meeting(s), but does not recommend including it in this response.

Dr. Kawaguchi made a couple recommendations to the response for question 39. The recommendations were to delete the phrase “more urgent projects,” from the second line, and to expand upon the policy and procedures for conducting CE audits. Ms. Sieferman agreed that additional information needs to be included explaining what the CE audit is and how the Board is working to improve the process.

Section 5 – Enforcement Program

Ms. Sieferman explained that this section relies heavily upon data for which staff has had great difficulty obtaining. She stated there will be data and more applicable narratives at the next teleconference meeting.

Mr. Morodomi commented on the enforcement section. He believes the Board should mention instances where the Board brought enforcement actions because the numbers reflected may not do justice to the Board’s enforcement efforts. Ms. Burke agreed.

Dr. Kawaguchi asked and Ms. Sieferman confirmed that the response to question 49 is not yet complete.

Cost Recovery and Restitution

Mr. Heppler expressed some confusion about the answer to question 58 “As previously reported, the Board has not used FTB for cost recovery to date, but will be using it where appropriate in the future depending on order language.” Members and staff agreed this response needs to be reworded.

Ms. Burke inquired about using an example of a time where the Board pursued insurance fraud. Ms. Sieferman explained that by the time the Board is notified, the optometrist has already worked to pay off the debt. Ms. Burke suggested this explanation may suffice.

Section 6 – Public Information Policies

Ms. Michelin noted the statement in question 60 “Since the last sunset report, the Board has created a strong social media presence” is misleading. She checked the number of followers the Board currently has. She suggested changing the wording to: “the Board is utilizing social media.”

Ms. Sieferman agreed, and noted that the Board does have public comment for section 5.

Mr. Morodomi requested and Ms. Sieferman agreed to elaborate on the Board’s restitution process.

Ms. Michelin asked about the 6,000 subscribers; whether the Board knows how many are licensees and how many are consumers or members of the public. Ms. Sieferman offered to research that information.

Ms. Michelin wants to see 2017 meeting dates on the website meeting calendar. Ms. Sieferman will ensure the dates are posted.

Ms. Michelin requested including an explanation that the Board is exploring opportunities to make the online BreZE system more user friendly for Consumers.

Dr. Turetsky asked if any other board list where their providers went to school. Ms. Sieferman responded that most boards provide the minimum like this Board. The exception is the Medical Board which is required to provide more detailed information.

Ms. Garcia inquired and Ms. Sieferman assured that the RDO program is included in the online BreEZe system. She explained that on the Board's website, there exists a link which takes consumers exactly where they need to be to verify registrations. Staff wants to create something similar for the optometrists.

Ms. Michelin wants to make certain there is accuracy with publications stated to be on our website; that those publications are currently on the Board's website. Additionally, she noted that the Board needs to improve on its consumer outreach and education. A newsletter has not been posted since 2013. Ms. Sieferman and Ms. Burke agreed. Ms. Sieferman announced that staff has already expressed an interest in working on a newsletter.

Section 9 – Current Issues

Ms. Sieferman announced that in response to the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations, the Board recently adopted amendments to §1502, Delegate Authority to the Executive Officer to Accept a Stipulated Surrender or Default Decision. This was part of SB1111 and CPEI.

In response to question 74, Ms. Sieferman noted that staff was extremely devoted to participation in the development of BreEZe, and it is important to let the Committee know about all the work the staff did for the program, answer their questions, and show the impact the development of BreEZe had on enforcement in terms of a backlog. It was extremely important to staff that the program be created in a way that would work well for the Board. Unfortunately, the time spent on the project created a backlog, in other duties. Ms. Michelin agreed that it is very important to make the Committee aware of all the work from staff. This response needs to include a lot of detail.

Section 10 – Board Action and Response to Prior Sunset Issues

Occupational Analysis

The Committee's concerns stemmed from the lack of implementing SB 929 (Polanco, Ch. 676 Stats, 2000) which expanded the scope of practice for optometrists and optometric assistants through regulations. During the 2002 Sunset Review hearing, the Committee recommended that the Board take immediate action to conduct the occupational analysis. The Board to date has been unsuccessful in securing funds for the analysis through budget change proposals. Ms. Sieferman announced that she and Policy Analyst, Joanne Stacy met with Sara Huckle from the Committee to express their concerns about the delay and staffs' belief that the main concern can still be accomplished through different means. Staff intends to continue reaching out to the Committee to determine if this is something the Board needs to continue working on. Ms. Sieferman believes the Board can still accomplish addressing the concerns without an occupational analysis specific to optometric assistants.

Enforcement

Ms. Sieferman provided a brief overview. This section delves deeper into the National Practitioner's Databank. It addresses Committee concerns and recommendations, the Board's response, how the process has changed since 2012. Staff believes this should be applied to all optometrists, and not only applicants who indicate they are licensed out of state.

Ms. Michelin wishes to add the consumer protection aspect of the occupational analysis.

Dr. Kawaguchi advised that the wording be considered very carefully to make certain that everything is stated objectively, without assumptions. Ms. Burke assured the Board has taken note of his concern, and will be mindful of this issue when determining language.

Mr. Heppler clarified for Dr. Kawaguchi what is and is not considered a disciplinary action.

Ms. Burke opened the floor to discussion regarding what has led to the time lag in cases referred to the Attorney General. Ms. Sieferman addressed this issue. She explained that the Board would do its investigation then send it to the Attorney General's (AGs) Office; the AGs Office would decide whether or not to take the case, then decide when to set the matter for hearing; they were also setting hearings out a year out creating a lag time . There have been a lot of improvements in communication between the Board, the Office of Administrative Hearings, and the AGs Office. Additionally there has been an increase in the requirements for the AGs Office to report on specific timeframes.

Ms. Burke opened the floor to discussion regarding whether the Board should be granted the authority to inspect an optometrist's practice location.

No comments were made.

Staffing

Ms. Burke moved on to issue #5 regarding the Boards budget change proposal (BCP); why it was denied.

Ms. Sieferman explained that the BCP process is considered confidential. It should only be discussed upon making it into the Governor's budget, which only happens when the BCP is approved. Staff is working with the Department of Consumer Affairs (DCA) budget and legal offices to determine what the appropriate response should be in order to be as responsive as possible without breaking any confidentiality laws.

License Portability

Ms. Michelin requested that staff make this information regarding license portability of military personnel and their spouses easier to locate on the Board's website.

4. Adjournment