

# Board of Optometry

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The nine-member Board of Optometry is a consumer protection agency within the state Department of Consumer Affairs (DCA). The Governor appoints six practicing optometrists and one public member; the Assembly Speaker appoints one public member; and the Senate Rules Committee appoints one public member. In addition to the statutorily-mandated Therapeutic Pharmaceutical Advisory Committee, the Board maintains eight standing committees to assist it in the performance of its duties. The Executive Officer and a permanent full-time staff of six support the Board from its office in Sacramento.

Established in Business and Professions Code section 3000 *et seq.*, the Board is charged with protecting consumers from unsatisfactory eye care provided by incompetent, unlicensed, or unethical practitioners; enforcing the provisions of the Optometry Practice Act; and educating licensees and the public on vision care issues. The Board's regulations are codified in Division 15, Title 16 of the California Code of Regulations (CCR).

The Board's duties include licensing individual optometrists and branch offices, and registering optometric corporations; establishing educational and examination requirements for optometrists and additional certification requirements for those optometrists who use and prescribe therapeutic pharmaceutical agents; accrediting optometric educational institutions; administering licensing examinations; and promulgating regulations related to the practice of optometry in California. Assisted by DCA's Division of Investigation and the Office of the Attorney General, the Board also investigates allegations of incompetent, unprofessional, and unlawful conduct by licensees, and takes disciplinary action, including license revocation, when warranted.

The Board of Optometry meets approximately four times per year, alternating among Sacramento, Los Angeles, San Francisco and San Diego. Working committees meet periodically as the need arises.

## Major Projects

### Board Undergoes Sunset Review

During the fall of 1997, the necessity and performance of the Board of Optometry were reviewed by the Joint Legislative Sunset Review Committee (JLSRC) and DCA under the "sunset review" process set forth in SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). Under the sunset process, the legislature inserts an expiration date into the enabling act of each DCA regulatory board; prior to that date, the JLSRC must review the need for and performance of the board, and the legislature must pass a bill extending

the life of the agency or it ceases

to exist. [15:4 CRLR 32] As required under the statute, the Board submitted a lengthy report describing its mission, functions, and activities on October 1, and answered questions from JLSRC members at a hearing on November 18, 1997.

In February 1998, DCA issued its report and recommendations on the Board. Preliminarily, the Department noted that many of the procedures performed by optometrists involve direct contact with the eye, a sensitive and critical organ of the human body. Partial or permanent vision loss due to an optometrist's negligent acts or incompetent practice has severe and dramatic consequences, including serious diminution of the patient's quality of life for which he/she can never be fully compensated. Thus, DCA recommended that the state continue to regulate optometrists through the Board of Optometry. DCA also suggested a change in the composition of the Board; rather than a 6-3 professional member majority, the Department advocated conversion to a public member majority.

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The JLSRC issued its final report and recommendations on the Board in April 1998. The Joint

Committee agreed with DCA that the state should continue to regulate optometrists through the Board of Optometry, and recommended extension of the Board's existence. The JLSRC also suggested that the legislature consider integrating the Registered Dispensing Opticians program (which is now a program under the jurisdiction of the Medical Board of California) into the Board of Optometry.

Regarding Board composition, JLSRC staff recommended that the legislature consider designating one of the six professional member positions for an ophthalmologist; the addition of an ophthalmologist is deemed important given the recent change in the law which has expanded optometrists' scope of practice to include the use of therapeutic pharmaceutical agents (TPA). Additionally, the JLSRC suggested that another of the professional member positions could be designated for a public member (or a registered dispensing optician if that program is moved from the Medical Board to the Board of Optometry).

Committee staff noted that both the Board and the California Optometric Association advocate retention of the current 6-3 professional member majority, arguing that "the general public cannot evaluate the competency of an optometrist." However, the JLSRC stated that occupational licensing boards dominated by professional members "may tend to place greater emphasis on issues of competence (e.g., examinations, continuing education, expanded scope of practice) and correspondingly less emphasis (and resources) on consumer education/information and enforcement." For example, in recent

years, the Board of Optometry has revamped its licensing examination, instituted new continuing education requirements, and implemented the TPA law which expanded the scope of optometrists' professional activities. However, a consumer survey conducted by the Board as part of the sunset review process indicated "an overall dissatisfaction with the Board's visibility to the general public," and the Board's enforcement program receives and processes very few complaints (and most of them are unrelated to competence issues). In 1996-97, the Board opened only 21 investigations (only two of which were based on incompetence or negligence), and took only 6 disciplinary actions. According to the JLSRC, "this analysis suggests that enforcement cases are rarely related to issues of licensee competence, and a profession-dominated board may tend to overemphasize competence at the expense of consumer outreach and enforcement. Accordingly, the Legislature may wish to consider altering the board composition to provide better balance among the Board of Optometry programs." The Joint Committee, however, rejected the recommendation of its staff and DCA by a vote of 3-2.

SB 1980 (Greene) (Chapter 991, Statutes of 1993) implements the JLSRC/DCA recommendation regarding extension of the existence of the Board of Optometry (see LEGISLATION).

## **Board Adopts Consumer Information Regulation**

As noted above, the JLSRC's April 1998 report noted consumer dissatisfaction with the Board's visibility to the general public, and suggested that the Board be more assertive in making its presence felt among consumers. In response to this suggestion, the Board published notice in June of its intent to add section 1566.1 to Title 16 of the CCR, which would require inclusion of the Board's address and telephone number in the "Notice to Consumers" which is currently required to be posted in all optometry practice offices. Under section 1566, all optometry offices must post, in a conspicuous place, a notice which clearly states the legal requirements and office policy regarding the release of spectacle and contact lens prescriptions. At minimum, the notice must state: "Federal law requires that a written copy of the spectacle prescription be given to the patient. However, the law does not require the release of a contact lens prescription; this is left to the discretion of the optometrist. You may want to inquire about your doctor's policy regarding contact lens prescriptions prior to the examination."

On August 14, the Board held a public hearing on the proposed addition of section 1566.1; following the hearing, the Board voted to adopt section 1566.1 as published. At this writing, Board staff is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

## **Board Adopts Regulations for Issuing Citations and Fines**

Also at its August 14 meeting, the Board adopted sections 1576-1581, Title 16 of the CCR, which establish a system for the issuance of citations and fines for violation of

laws and regulations governing the practice of optometry.

Section 1576 would authorize the Board's Executive Officer to issue a citation and/or fine against an optometrist who violates the Board's laws or regulations; the citation must be in writing, must describe with particularity the nature and facts of each violation specified in the citation, must inform the optometrist of his/her right to an informal citation conference concerning the matter and the right to an administrative hearing, and must be served upon the optometrist personally or by certified mail. Section 1577 would authorize the Executive Officer to issue a citation to an unlicensed person acting as a licensee. Section 1578 would list the factors which the Executive Officer must consider in assessing a fine or issuing an abatement order. Section 1579 would list all the

Business and Professions Code and California Code of Regulations sections the violation of which is grounds for the issuance of a citation and fine, and specify the maximum fine for each type of violation. Section 1580 would provide for exten-

sions of time to correct cited offenses under certain conditions, and specify that unpaid fines shall be added to the cited person's license or registration renewal fee. Finally, Section 1581 details the procedure which a cited person must follow in order to contest a citation or fine.

The Board has been authorized by section 3135 of the Business and Professions Code to implement a system of citations and fines for fifteen years (Chapter 870, Statutes of 1983). However, prior to 1997, section 3135 dictated a specific citation and fine system including maximum fine amounts for various violations, limits on who may issue citations, and detailed procedures for contesting the citation or fine assessment. Recent legislation authored by the Senate Business and Professions Committee (Chapter 677, Statutes of 1976) removed these restrictions and replaced them with language authorizing the Board to establish a system of citations and fines under Business and Professions Code section 125.9 (the code section applicable to most other regulatory agencies within DCA).

At this writing, the Board is preparing the rulemaking file on sections 1576-1581 for submission to OAL.

## **Board Considers Continuing Education Rules**

At its August meeting, the Board held a public hearing on proposed amendments to section 1536, Title 16 of the CCR, which would revise the Board's continuing education (CE) requirement and permit optometrists to fulfill part of their continuing education requirement via approved courses offered over the Internet.

Specifically, the proposed amendments would require 40 hours of CE during each two-year renewal period (instead of the current 20 hours required each year), and would authorize the Board to approve "interactive continuing optometric education offerings provided electronically, via the 'Internet,'...at the ratio of one hour of credit for every one hour of the listed course credit hours. Said Internet courses

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shall be approved by the Board or be offered as approved courses by any affiliate of the American Optometric Association, the American Academy of Optometry, the Optometric Extension Program, any accredited school or college of optometry, the International Association of Boards of Examiners in Optometry known as COPE (Council on Optometric Practitioner Education), or the College of Optometrists in Vision Development (COVD)."

The Governor's office supported section 1536 as published in June, but the California Optometric Association (COA) expressed concerns. Specifically, COA noted that nothing in the proposed changes limits the number of hours of Internet education for which credit may be received, or specifies the subject matter appropriate for Internet courses. COA added that the proposed changes to section 1536 are inconsistent with existing regulatory limits on "alternative methods" for fulfilling CE requirements; under existing section 1536(b), a total of one-half of the required annual coursework may be accomplished through "alternative methods" such as self-study. COA was also concerned that the amendments would add new organizations to the list of approved continuing education providers. The Board tabled consideration of section 1536 until its next meeting.

At its November 14 meeting, the Board continued its discussion of its proposed amendments to section 1536. One proposed solution would limit Internet study to 20 hours per renewal period, and require that eligible courses administer a test upon course completion which is verified or certified by the sponsor. Board member John Anthony, OD, however, noted that the proposed regulation still requires clarification as to whether Internet study would count toward the limit on "alternative methods," including self-study. If both self-study and Internet study are permitted, these two combined could fulfill the entire CE requirement. Dr. Anthony suggested adding a required minimum number of hours of live, interactive coursework. Executive Officer Karen Ollinger, however, expressed concern that such a requirement would contradict the initiative of Governor Wilson's administration to further the use of the Internet and "virtual" education as a cost-effective and efficient alternative to classroom education. Ms. Ollinger further expressed hesitation as to whether a requirement for live, classroom education could be justified on the basis of necessity under Government Code section 11349.1. Board member Sheilah Titus, OD, emphasized the importance of hands-on experience in learning procedures. Ms. Ollinger agreed that a clinical element of continuing education might indeed be justified by the procedural nature of optometry practice. The Board decided to schedule further discussion of this issue for its March meeting, pending investigation of similar requirements by other health care licensing boards.

## Future Legislation

At its November 14 meeting, the Board discussed possible legislative initiatives during the 1999-2000 session, including a bill requiring HMOs to cover low vision evaluations and legislation specifying the duties of optometric assistants. The Board plans to explore the possibility of cosponsoring legis-

lation with COA. Dr. Anthony suggested that a procedure for dilation and irrigation of the lacrimal system should be reviewed for possible approval as within the scope of practice of optometry. The Board will consider this issue, and possibly hold public hearings, at a future date.

## Optometry Board Goes Online

In 1998, the Board unveiled its Internet website. This convenient site provides useful information for both consumers and practicing optometrists. Included are statements of the Board's mission, values, and beliefs; profiles of current Board members; frequently asked questions about optometry; links to information about recent legislative and regulatory changes; a comprehensive compendium of California laws relating to optometry; and a copy of the latest Board newsletter, including recent disciplinary actions by the Board. In 1999, the site will be updated with colorful graphics and expanded consumer information. Complaint forms will be available for consumers to print out and mail in with complaints regarding practitioners. In addition, the Board has contracted with the International Association of Boards of Examiners in Optometry to develop user-friendly database access to licensing and enforcement information on California optometrists. Consumers will be able to access the database from the Internet to verify that an optometrist is licensed in California, and to obtain important information on whether the Board has taken disciplinary actions or a court has rendered a judgment against a practitioner.

## Legislation

**SB 1980 (Greene)**, as amended August 21, extends the Board's "sunset" date until July 1, 2003 (see MAJOR PROJECTS). The Governor signed SB 1980 on September 29 (Chapter 991, Statutes of 1998).

**SB 2238 (Committee on Business and Professions)**, as amended August 26, requires the Board of Optometry to commence the rulemaking process by June 30, 1999, to adopt regulations requiring its licensees to provide notice to clients and customers that they are licensed by the state of California. SB 2238 also requires the Board to report the method used for periodic evaluation of its licensing examinations to the DCA Director by December 31, 1999. This bill was signed by the Governor on September 26 (Chapter 879, Statutes of 1998).

**AB 1439 (Granlund)**, as amended August 28, adds section 680 to the Business and Professions Code, and requires a health care practitioner to display his/her name and license status on a name tag in large type. Alternatively, a health care worker may prominently display his/her license in the practice or office. This bill was signed by the Governor on September 29 (Chapter 1013, Statutes of 1998).

**AB 255 (Thomson)**, as amended March 3, adds sections 2541.1 and 2559.6 to the Business and Professions Code. Section 2541.1 requires spectacle lens prescriptions to carry an expiration date of not less than two to four years, unless specified conditions apply; specifies information that must be included on the prescription, including the dioptric power of the lens, the date of issuance and expiration of the

prescription, and information identifying both the patient and the prescribing optometrist or physician; and prohibits the filling of expired prescriptions except when the patient's spectacles are damaged, broken, or lost. Under section 2559.6, it is unprofessional conduct to dispense spectacle lenses on or after January 1, 1999 for prescriptions that fail to meet the requirements of section 2541.1. This bill was signed by the Governor on March 16 (Chapter 8, Statutes of 1998).

**AB 2721 (Miller)**, as amended August 10, establishes a four-year term of office, expiring on June 1, for members of the Board of Optometry. This bill also provides that any Board licensee who engages in, or aids and abets, prostitution-related offenses in the workplace is guilty of unprofessional conduct and subject to disciplinary action and fines up to \$5,000. This bill was approved by the Governor on September 29 (Chapter 971, Statutes of 1998).

## Recent Meetings

At its November 14 meeting, the Board reelected Steven S. Grant, OD, as President and Gerald J. Easton, OD, as Vice President. Dr. John Anthony was elected Secretary, replacing Patricia L. Gee, EdD, in this position. Reappointed Board members Dr. Sheilah Titus and Dr. Patricia Gee were also sworn in.

Also at the November meeting, Dr. Grant reported on the progress of the 1998 occupational analysis study. An occupational analysis is designed to capture information with respect to the major tasks optometrists perform in their professional work. [14:1 CRLR 71] Information on the knowledge, skills, and abilities required of licensed optometrists in order to perform these tasks competently will be collected and used to evaluate the Board's current licensing examination for appropriateness of test parameters and criteria. Of 2,000 surveys mailed to selected optometrists in September 1998, 578 have been returned and submitted to R & D Data Corporation for tabulation and interpretation. DCA's Office

## Board of Pharmacy

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Pursuant to Business and Professions Code section 4000 *et seq.*, the Board of Pharmacy grants licenses and permits to pharmacists, pharmacy interns, pharmacy technicians, pharmacies, pharmacy corporations, nonresident pharmacies, wholesale drug facilities, medical device retailers, veterinary food-animal drug retailers, out-of-state distributors, clinics, and hypodermic needle and syringe distributors. It regulates all sales of dangerous drugs, controlled substances, and poisons. The Board is authorized to adopt regulations, which are codified in Division 17, Title 16 of the California Code of Regulations (CCR).

To enforce the Pharmacy Law and its regulations, the Board employs full-time inspectors who investigate complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands. The Board conducts fact-finding and disciplinary hearings, and is authorized by law to

of Examination Resources is satisfied with both the numbers and demographic distribution of the surveys returned. The final report should be completed by early 1999. The results will not be ready by the next scheduled licensure exam (January 11, 1999 in Sacramento) but will be reflected in questions on the June 29, 1999 examination.

SB 668 (Polanco) (Chapter 13, Statutes of 1996) authorizes the Board to certify optometrists who are qualified to use specific classes of therapeutic pharmaceutical agents (TPA) for a limited number of eye conditions, upon completion of specified education, training, and examination. Section 1568 of the CCR, adopted by the Board in 1997 to implement SB 668, requires that applicants for TPA certification complete a Board-approved, 80-hour didactic course and specifies the University of California at Berkeley (UCB) and the University of Southern California (USC) as institutions where such a course will be offered. The Board has been working with UCB and USC to develop the TPA course.

In November, the Board voted to approve a proposed TPA course which will be offered by UCB. The course will combine 60–65 hours of Internet and distance learning with 15–20 hours of onsite, hands-on training at Berkeley. The course is being subsidized by Vision Service Plan (VSP), a national managed care provider of vision services, in a joint effort with UCB to reduce the financial hardships and accessibility problems that have made it difficult for optometrists to obtain TPA certification. Terry Dougherty of VSP commented that such a course will help VSP reach its goal of requiring that all VSP providers are TPA-certified.

## Future Meetings

- March 14–15, 1999 in Fullerton.
- May 16–17, 1999 in San Jose.
- August 20–21, 1999 in Sacramento.
- November 14–15, 1999 in San Diego.

suspend or revoke licenses or permits for a variety of reasons, including professional misconduct and any misconduct substantially related to the practice of pharmacy.

The Board of Pharmacy is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board, which meets five times per year, consists of eleven members, four of whom are nonlicensees. The remaining members are pharmacists, five of whom must be active practitioners. All Board members are appointed for four-year terms.

## Major Projects

### **Data Collection Portion of CURES Pilot Project Commences**

For many years, the Board of Pharmacy has been involved

