

THE BOARD OF EXAMINERS IN OPTOMETRY
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

- Date: Monday, March 13, 2017
- Time: 9:00 a.m.
- Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813
- Present: Reid Saito, O.D., Chair
Peter Shoji, O.D., Vice Chair
Seulyn Au, O.D.
Gayle Chang, Public Member
Jere Loo, O.D.
Daniel Jacob, Deputy Attorney General ("DAG")
Sandra Matsushima, Executive Officer ("EO")
Jennifer Fong, Secretary
- Guests: None.
- Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by section 92-7(b), Hawaii Revised Statutes ("HRS").
1. Call to Order: There being a quorum present, Chair Saito called the meeting to order at 9:04 a.m.
 2. Additional Distribution: None.
 3. Approval of Board Meeting Minutes of January 30, 2017:

Chair Saito asked if there were any comments or concerns regarding board minutes of the January 30, 2017 meeting.

There were none.

Upon a motion by Vice Chair Shoji, seconded by Dr. Loo, it was voted on and unanimously carried to approve the minutes of the January 30, 2017 meeting as circulated.

4. Executive Officer's Report:

a. Resignation of Geoffrey Reynolds, O.D.

EO Matsushima reported that Dr. Reynolds had submitted a letter of resignation from the Board to the Lieutenant Governor's office, effective March 1, 2017.

She noted that currently, the Board has two vacant positions – one for an industry member and one for a public member. Interested individuals may apply through the Governor's Office of Boards and Commissions.

b. Discussion regarding May 22, 2017 meeting date – proposed rescheduling or cancellation

EO Matsushima reported that she would not be able to attend a meeting on May 22, 2017. The staff informally polled the members for two proposed dates of May 15th and June 5th and it appears there may not be quorum on those dates. She asked the Board if they wanted to try to reschedule that meeting or simply cancel it and make the Board's next meeting on July 24th.

After some discussion, it was the consensus of the Board to cancel the Board's May meeting. The next meeting is currently scheduled for July 24, 2017.

EO Matsushima noted that the Board's current meeting schedule can be found on their website.

c. Reminder: Annual Disclosure of Financial Interests with the Hawaii State Ethics Commission due by Wednesday, May 31, 2017

EO Matsushima reminded the members to file their annual Disclosure of Financial Interests with the Hawaii State Ethics Commission ("Commission") by Wednesday, May 31, 2017. The Commission is encouraging everyone to file early.

5. Old Business:

a. Discussion on Proposed Amendments

EO Matsushima noted that the proposed amendments were distributed to the Board.

i. HAR § 16-92-38, Minimum hours

Based on the discussion at the Board's September 26, 2016 meeting, EO Matsushima and DAG Jacobs proposed the following amendments to Hawaii Administrative Rules ("HAR") §16-92-38 (underlined material

added, while bracketed material is to be deleted):

(a) Licensees who are not therapeutically certified shall obtain thirty-two hours during the biennium in approved programs of continuing education for relicensure. A person who is initially licensed in the first year of the biennium shall be required to submit certification of having earned sixteen continuing education hours for the biennium, and a person who obtains licensure in the second year of the biennium need not obtain any continuing education hours for the first renewal of the license, including therapeutically certified hours.

(b) Licensees who are therapeutically certified shall obtain thirty-six hours of approved continuing education in the diagnosis, treatment, and management of ocular and systemic diseases for relicensure[, regardless of initial date of licensure]. The one hundred hour course in the treatment and management of ocular disease shall satisfy the thirty-six hour requirement provided that the course was taken within the two years prior to the date the application of license renewal was received by the board, and credits for the course were not used for [a previous license renewal].

After some discussion, it was the consensus of the Board that section (a) should be kept as is with no new language added and section (b) should be amended to remove the 100 hour course and instead, any person who obtains licensure in the second year of the biennium would not need to obtain any continuing education ("CE") hours for the first renewal of their license. The Board directed EO Matsushima and DAG Jacob to work on proposed language for HAR § 16-92-38(b).

ii. HAR § 16-92-40, Certificates of continuing education

Based on the discussion at the Board's September 26, 2016 meeting, EO Matsushima and DAG Jacobs are proposing the following amendments to Hawaii Administrative Rules ("HAR") §16-92-40 (underlined material added, while bracketed material is to be deleted):

(c) In lieu of the certificates of continuing education, the Board may accept transcripts of continuing education from Board approved sponsors.

([c]d) The board shall not accept any continuing education credit hours of courses taken by the optometrist more than two years prior to the date the application for license renewal was received by the board.

DAG Jacob expressed concern regarding listing specific names of approved sponsors in their rules as each amendment to such a list would

require them to open their rules. He suggested instead that the Board provide criteria to become a Board approved sponsor. If they do so, any sponsor who meets the criteria can be approved without being specifically listed in the rules by name.

By consensus, the Board directed EO Matsushima and DAG Jacob to work on proposed language for HAR § 16-92-40.

iii. HAR § 16-92-42, Exceptions

Based on the discussion at the Board's September 26, 2016 meeting, EO Matsushima and DAG Jacobs are proposing the following amendments to Hawaii Administrative Rules ("HAR") §16-92-40 (underlined material added, while bracketed material is to be deleted):

Any licensee seeking renewal or restoration of license without full compliance with the continuing education requirements shall submit the [restoration] application, the required fees, a notarized affidavit setting forth the facts explaining the reasons for noncompliance, and a request to extend the time for compliance if good cause is shown. The board shall consider each case on an individual basis and may extend the time for compliance of the requirements based on the following:

(1) Health, as certified by a medical doctor currently licensed in accordance with chapter 453, HRS, or licensed in the state or jurisdiction in which the applicant was treated; or

(2) Military service on extended active duty with the armed forces of the United States.

Dr. Au noted that she knows a licensee who was affected by the current language. The licensee could not renew without full compliance with the continuing education requirements due to health reasons and had to restore the license after expiration. The break in licensure is making it difficult for that licensee to obtain malpractice insurance.

After some discussion, it was the consensus of the Board to approve the proposed changes to HAR § 16-92-42.

b. Inquiry from Nicodemo Fiorentino regarding whether an Optometrist with a DPA and/or TPA certification is permitted to request, receive, and dispense non-controlled and/or controlled prescription drug samples

EO Matsushima reminded the Board that this inquiry was deferred from their September 26, 2016 and January 30, 2017 meetings. She noted that several board members as well as DAG Jacob had expressed interest in doing more

research into this inquiry.

After some discussion, upon a motion by Dr. Loo, seconded by Dr. Au, it was voted on and unanimously carried that based on the information provided in Mr. Fiorentino's email, the Board directed the EO to inform Mr. Fiorentino that the Board's laws and regulations do not address the dispensing of non-controlled substances. The Board's laws and regulations only address the use of pharmaceutical agents by Hawaii licensed optometrists with TPA certification. Although the Board's laws and regulations do not pertain to the act of dispensing prescription drugs (including drug samples), the Board noted that there may be other state law and federal law that regulates such conduct. In addition, Hawaii licensed optometrists with TPA certification cannot prescribe or dispense controlled substances. The Board advised Mr. Fiorentino to consult with private counsel to address any other potential prohibitions or regulations.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision of the Board. Accordingly, Board interpretations are not to be viewed as binding on the Board or the Department of Commerce and Consumer Affairs ("DCCA").

- c. Inquiry from Salvatore Musumeci, O.D. regarding whether Hawaii licensed optometrists can perform and bill for the following: eye allergy testing; telemedicine; placing an amniotic membrane on cornea; amniotic membrane (material); corneal culture; and/or anterior corneal puncture

EO Matsushima reminded the Board that they deferred this inquiry at their January 30, 2017 meeting with regards to eye allergy testing and telemedicine. She noted that the Board had requested that Dr. Musumeci provide additional information regarding these two areas, specifically the eye allergy test Dr. Musumeci is inquiring about and with regards to telemedicine, more information on what he means by "telemedicine" and what it involves. She reported that to date, no additional information has been received.

By consensus, this matter is deferred until Dr. Musumeci provides the additional information requested by the Board.

6. New Business:

- a. Continuing Education ("CE") Review for 2015 License Renewal of Richard Michelsen

EO Matsushima reported that Dr. Michelsen has recently submitted additional CE certificates for his 2015 license renewal.

By consensus, the Board directed the EO to inform Dr. Michelsen that he is still short 8 hours of approved CE in the diagnosis, treatment, and management of ocular and systemic diseases

- b. Inquiry from Jerry Werbner regarding whether a customer can measure their own power for their left and right eye individually, using an industry standard retinoscopy board with a licensed optician edging and inserting the lenses in the customer's self-determined powers

The Board reviewed an email from Mr. Werbner stating that he is in the exploratory stage of setting up a national brick and mortar reading glass company where the customer measures their own power for their left and right eye individually, using an industry standard retinoscopy board. The customer would then select a frame and a licensed optician edges and inserts the lenses in the customer's self-determined powers in their choice of frame. Mr. Werbner stated that there would be clear signage that magnifying reader glasses are not a substitute for regular eye exams and that the resultant glasses are not intended for distance viewing, are not prescription eyewear, not for driving or any other activities but those of magnifying words and images at near and intermediate distances. He asked if this would be allowed in Hawaii.

Chair Saito noted that it is not wrong to let the patient test their own power or with the optician cutting the lenses. The problem may be in making the glasses without a prescription.

EO Matsushima stated that Mr. Werbner may need to consult with the Dispensing Optician Program regarding their statutes and rules as the optician would be making the glasses without a prescription.

Vice Chair Shoji said he does not believe an optician can create glasses without a prescription and noted that prescribing of any ophthalmic lenses is included in the practice of optometry, pursuant to HRS §459-1(a)(3).

Upon a motion by Dr. Au, seconded by Vice Chair Shoji, it was voted on and unanimously carried to inform Mr. Werbner that pursuant to HRS §459-2, the prescribing of any ophthalmic lenses constitutes the practice of Optometry.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision of the Board. Accordingly, Board interpretations are not to be viewed as binding on the Board or the DCCA.

- c. Inquiry from Mary Koehler whether optometrists licensed in Hawaii can obtain or have a specific certification or credential for treatment of Glaucoma and if so, if there is an indicator in the license or way to identify such certification/credential

The Board reviewed an email from Ms. Koehler asking if there is an option for Hawaii licensed optometrists to obtain or have a specific certification or credential for treatment of Glaucoma. She also inquired if there is an indicator on the license or a way to identify such certification/credential.

After some discussion, upon a motion by Dr. Loo, seconded by Dr. Au, it was voted on and unanimously carried to inform Ms. Koehler that only Hawaii licensed optometrists with TPA certification are allowed to treat glaucoma in their patients.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision of the Board. Accordingly, Board interpretations are not to be viewed as binding on the Board or the DCCA.

- d. Inquiry from Tanya Afoa regarding whether Hawaii licensed optometrists can order a laboratory test and/or perform the laboratory test for percutaneous tests (scratch, puncture, prick) with allergenic extracts, immediate type reaction, including test interpretation and report

The Board reviewed an email from Ms. Afoa asking for confirmation that an optometrist is able to order a lab for a patient but cannot actually perform the lab test. Ms. Afoa stated that she is specifically referring to percutaneous tests (scratch, puncture, prick) with allergenic extracts, immediate type reaction, including test interpretation and report.

DAG Jacob noted that in her email, Ms. Afoa references HRS §459-1(a)(2) which states "The employment of trial frame or trial lenses, and any objective or subjective means or methods, other than the use of surgery, including refractive or therapeutic laser surgery, but including the use and prescription of pharmaceutical agents, as established by the board, and the performance of non-invasive diagnostic procedures or ordering of laboratory tests related to the use of pharmaceutical agents for the purpose of examining, diagnosing, treating, and managing visual, muscular, or other diseases and disorders of the human visual system, the eye, and the eyelids; or".

Chair Saito stated that the Board's laws and rules do not appear to allow optometrists to perform such tests.

Vice Chair Shoji stated that “percutaneous” would include injections which are not allowed except that a TPA certified OD may administer injectable agents for anaphylaxis only.

Upon a motion by Dr. Loo, seconded by Dr. Au, it was voted on and unanimously carried to inform Ms. Afoa that the order of laboratory tests related to the use of pharmaceutical agents for the purpose of examining, diagnosing, treating, and managing visual, muscular, or other diseases and disorders of the human visual system, the eye, and the eyelids is allowed for Hawaii licensed optometrists with TPA certification pursuant to HRS §459-1, however, percutaneous tests (scratch, puncture, prick) are not an allowable duty of a TPA certified optometrist.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision of the Board. Accordingly, Board interpretations are not to be viewed as binding on the Board or the DCCA.

7. Request for CE Program Approval:

Dr. Loo moved to approve the following continuing education courses:

<u>Index #</u>	<u>Program Title/Sponsor</u>	<u>CE</u>	<u>TPA Hours</u>
17-007	56 th Annual Heart of America Primary Care Congress <i>Heart of America Contact Lens Society</i>	41	32
17-008	International Vision Expo & Conference East 2017 <i>Reed Exhibitions/Vision Council</i>	129	101

Ms. Chang seconded the motion, it was voted on and unanimously carried.

The following continuing education courses are still under review:

<u>Index #</u>	<u>Program Title/Sponsor</u>
16-032	Academy 2016 Anaheim – Lectures & Workshop Program <i>American Academy of Optometry</i>

8. Applications: a. Ratifications

Upon a motion by Vice Chair Shoji, seconded by Dr. Au, it was voted on and unanimously carried to ratify the following:

Approved for Optometrist License

- OD 850 KHOA D NGUYEN
- OD 854 IAN T KAWAMOTO
- OD 855 JEFFREY A GONNASON
- OD 856 NINA NEMETZ

Approved for TPA Certification

- OD 850 KHOA D NGUYEN

9. Chapter 91, HRS, Adjudicatory Matters: At 10:20 a.m., Chair Saito recessed the Board's meeting to discuss the following adjudicatory matter pursuant to Chapter 91, HRS:

- a. In the Matter of the Application for a Therapeutic Pharmaceutical Agent – Certification of Martin Zebzda, O.D., OPT-LIC-2014-001 – Transmittal; Hearings Officer’s Findings of Fact, Conclusions of Law, and Recommended Order; Supplemental Finding of Fact; Respondent’s Written Exceptions to Hearings Officer’s Findings of Fact, Conclusions of Law, and Recommended Order; Petitioner’s Statement in Support; Board’s Final Order (Draft)

After discussion, it was moved by Dr. Loo, seconded by Vice Chair Shoji, and unanimously carried to issue a Remand Order for Taking of Further Evidence. The Remand Order for Taking of Further Evidence was provided to members for their signature.

At 10:44 a.m., following the Board’s review, deliberation and decision in this matter pursuant to Chapter 91, HRS, Chair Saito announced that the was returning to its regular order of business.

10. Next Meeting: July 24, 2017
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street
Honolulu, Hawaii 96813

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11. Adjournment: With no further business to discuss, Chair Saito adjourned the meeting at 10:48 a.m.

Taken by:

/s/ Jennifer Fong

Jennifer Fong
Secretary

Reviewed by:

/s/ Sandra Matsushima

Sandra Matsushima
Executive Officer

4/3/17

[] Minutes approved as is.

[✓] Minutes approved with changes; see minutes of July 24, 2017.