

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

MINUTES OF MEETING

- Date: Monday, January 7, 2019
- Time: 9:00 a.m.
- Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813
- Present: Peter J. Shoji, O.D., Chair
Robb Shibayama, O.D., Vice Chair
Seulyn L Au, O.D.
K. Paul Chin, O.D.
Jere H.E. Loo, O.D.
Scott Kubota, Public Member
Darek Sato, Public Member
Daniel Jacob, Deputy Attorney General ("DAG")
Christopher Fernandez, Executive Officer ("EO")
LaJoy Lindsey, Secretary
- Guests: Lei Fukumura, PVL Special Deputy Attorney General
- 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 Shoji called the meeting to order at 9:00 a.m.
 2. Agenda: None.
Additions
and Revisions:
 3. Approval of
Board Meeting
Minutes of
November 26,
2018: Chair Shoji asked if there were any comments or concerns regarding the Board minutes of the November 26, 2018 meeting. There being none, upon a motion by Dr. Loo, seconded by Mr. Sato, it was unanimously carried to approve the minutes of the November 26, 2018, meeting as circulated.

4. Chapter 91
Adjudicatory
Matters:

Chair Shoji called for recess from the meeting at 9:04 a.m. to discuss and deliberate on the following adjudicatory matters pursuant to Chapter 91, HRS:

In the Matter of the License to Practice Optometry of Richard J Michelsen, O.D.;
OPT 2016-1-L

At 9:14 a.m. the Board exited out of recess to return to the regular session.

After discussion, it was moved by Mr. Kubota, seconded by Dr. Au and unanimously carried to accept the settlement agreement as presented.

5. Executive
Officer's Report:

a. DCCA Disciplinary Actions (through December 2018):

EO Fernandez advised the Board that he will postpone reporting on DCCA disciplinary actions until the March 4, 2019 meeting.

b. Association of Regulatory Boards of Optometry (ARBO)

EO Fernandez had nothing to report regarding ARBO.

6. Old
Business:

a. Discussion on Telemedicine

DAG Jacob shared that he had done some research regarding telemedicine and that the medical Board actually does not have any rules regarding telemedicine. It's only in their statutes. He believes the Board's desire to address tele-health in its statutes is appropriate. The concern that the Board has is that someone locally would perform the work and all the optometrist in another locale would do is sign off to approve services. The Board has the authority to propose rules as they see fit. However, doing so could pique the legislature's interest and they could have a say on it. DAG Jacob directed them to HRS §453-1.3 (the medical statute) so the Board can see what the medical Board has done. After they review that, they may address any questions to the DAG.

Dr. Shibayama asked what the distinction is between telehealth and telemedicine.

EO Fernandez mentioned that informally it seems that telehealth is a hands-off non-medical therapeutic approach, while telemedicine refers to evaluating patients and prescribing medicine remotely.

DAG Jacob was not familiar with the definitions; however, reading from the governing rules, it states that in addition to any other powers and duties authorized by law, the Board shall prescribe rules in harmony with this

chapter as may be necessary to carry out its legal responsibilities and duties to do all things necessary or incidental to the exercising of powers and duties as established by these statutes, and to regulate the practice of optometry in the state. He went on to say that he noticed the Board doesn't have much in the rules as to the standards of care or expectations, however they do have grounds for discipline. DAG Jacob advised the Board that they have broad authority to regulate the practice. He believes that regulating telehealth or telemedicine is well within the Board's authority and responsibility.

EO Fernandez mentioned that he could speak with Executive Officers assigned to the medicine, nursing, dentistry, pharmacy, and naturopathic medicine Boards. Any Board who basically works with the health field or has prescribing powers to find out how they address Telehealth and give a report at the next meeting.

Dr. Au acknowledged that would be helpful.

DAG Jacob advised the Board that their rules include license for therapeutic certification which is something that does not exist with others. There's continuing education in the Board's rules and professional misconduct. One way the Board could address it is "No Optometrist should establish a client relationship through the use of telemedicine," or make it grounds for discipline saying that doing so would constitute professional misconduct. He recommended that the Board think of ideas as to what they would like to have (in the rules) and he will work to turn it into an appropriate rule and placement within the current rules. DAG Jacob mentioned that he would look at the medical statute and the Board could see where they may wish to deviate and move forward.

DAG Jacob also mentioned another option of a few Board members creating a permitted interaction group (PIG). There are three meetings required for a PIG. A meeting to set up, a meeting to report back the findings of the PIG and the third meeting is when you would actually discuss the findings of the PIG.

Mr. Kubota suggested that the Board not create a PIG at this time and follow EO Fernandez's suggestion to get a consistent direction from the DCCA and that if he can report back as to what the other professions have done, so there would be no need to re-invent the wheel.

DAG Jacob agreed.

EO Fernandez mentioned that Optometry has open rules changes right now and he was going to give a report at the next meeting. It refers to continuing education, but could be used for reference.

Chair Shoji asked the members to research the subject prior to the next meeting so there can be a meaningful discussion. Chair Shoji thanked DAG Jacob for his advice.

7. New Business:

a. Discussion on Continuing Education (“CE”)

EO Fernandez shared that he took some time to review subsection 7 which addresses continuing education (“CE”) courses or credits. There are many things to note administratively for the Board’s (and other Optometrists) purposes. For example, the rules divide the Optometrists into two main categories: those that are Therapeutic Pharmaceutical Agent (“TPA”) certified, and those that are not. Within those categories there are subcategories. For example, regarding those Optometrists that are TPA certified, if a licensee took a 100-hour course within two years of receiving that certification, you can use it for that biennium so that you are not required to submit any CEs. Anyone outside of that two-year period would be required to submit 36 hours of CEs pertaining to diagnosis, treatment, and management of ocular systemic diseases. And, for the non-TPA optometrists, if they are licensed in the first year of the biennium, then they must submit 16 hours of approved CEs, if you are licensed in the second year of the biennium, you needn’t submit any CEs, and finally, you’d have to submit 32 hours if you do not fit into these two situations. In all, there are five different subcategories within the two large groups. EO Fernandez Also noted the restriction regarding online courses (only 25 percent of CE can be interactive), the length of the all CE courses (50 minutes equates to one hour of CE), and also the distinction between professional education and business management courses. Although TPAs can take business management courses, none would qualify for CE credit. Those who are non-TPA can also take management courses. EO Fernandez stated that this information is mostly for the Board to prepare for the upcoming renewal, and that if it’s clear to the Board, it can process these CEs fairly well, it’s just a matter of minding these categories.

Referring to the 100% renewal audit currently in place, Dr. Au asked if there has been any attempt to try to change the audit percentage.

DAG Jacob replied that it’s statutory.

EO Fernandez affirmed that they’d have to go to the legislature. The timeframe would be some time in late Summer when the administrative bills

would be submitted. He also suggested that they take the time to prepare for introducing a bill next year.

DAG Jacob asked how many other Boards require 100 percent audit. He knows for sure naturopathy is one. Architects only require 10 percent audit as well as psychology.

Dr. Au thought that medicine is five percent.

The Board then discussed the approval of CEs not automatically approved pursuant to Subchapter 7 of Hawaii Administrative Rules, specifically §16-92-39(c). The Board discussed what is submitted to the Board and who was responsible for the submission.

EO Fernandez brought up that the statute doesn't address who submits the CEs, be it the optometrist or the sponsor of the CE course. He saw issues with both ways of looking at it. If the optometrist submits it, would they be able to provide all the content in order to give the Board the ability to determine whether or not the CE course will be approved? On the other hand, if the sponsor were to submit an application for a course, they may be doing so for just one optometrist and paying the fee for just that one optometrist.

Additionally, EO Fernandez informed the Board that the CEs that the Board approves at the meetings were essential ones that must be approved in order to be accepted. But he also noted that there may be others who use it as a way to obtain the index number, because they may provide both management courses and professional education courses and they want that number to distinguish the latter; this adds to the Board's docket the number of approved CEs to be approved each meeting, and is not necessary.

Chair Shoji asked what "automatically approved" meant.

EO Fernandez replied that meant the CE was sponsored by one of the (5) associations, schools, and foundations found in Subsection 7 of the administrative rules.

Chair Shoji posed a question: Hawaii Optometric Association will have a meeting two weeks from now, their application was turned in, is it a pre-approval?

EO Fernandez mentioned that it does not need to be approved, but there are pre-approved associations who will send in a required fee for an index

number, because they offer both professional and management courses and they want the number to identify Board accepted courses.

DAG Jacob mentioned that if it's offered by an accredited college, the index number would seem like overkill. We could change the rules to say that these are automatically approved, but they should still apply for index number. DAG Jacob was asked if that would be a legislative change, he replied that it would be a rule change. You don't need an index number to be approved. They're just covering bases. The Board must be careful as it would be an administrative change.

EO Fernandez commented that the only issue he has with listing out the courses is that we'd still have to double check them. His offering is to remain within the rules right now until the next renewal and at the same time come up with a way that really clears up this matter for the Board and prepare a draft of legislation and rules change.

DAG Jacob asked if people submit their CE courses from the American Academy of Optometrists, is the Board checking if its management or educational?

Dr. Au replied that they go by the topic. So, if they conclude that it is TPA, they approve it. She also mentioned a summary sheet they would be given, so they know what they're looking for.

EO Fernandez mentioned that the only CE that should be coming to the Board is those that requires their expertise, and furthermore, if it's past 45 days, it should be denied pursuant to Subchapter 7.

Dr. Chin presented a hypothetical case: Dr. John Schmo, takes CE course in January, he doesn't submit those courses until December, would it be rejected?

Dr. Loo asked, if he took 18 different sessions does he pay \$25.00 for each?

EO Fernandez expressed that these were good questions and commented that the concern really falls on those Optometrists who are licensed but are out-of-state, and who take their CE out of state. Those are the ones we'd have to pay closer attention to. Really, the Board should not have as many CE to be approved, while most optometrists in Hawaii go to pre-approved courses.

Dr. Shibayama mentioned that the Board just needs to ensure that what they're approving is on the list, and if CE is provided by associations, it's automatically approved.

EO Fernandez agreed and believes that between he and Ms. Lindsey supporting the Board, the process can be easier for the Board members.

To summarize, EO Fernandez will speak with the other Boards regarding their audits, review the summary sheet and rules change package to assess if the Board will be able to add to that rule change the changes that were discussed here on this agenda item, and will get an update by next meeting.

8. Request for
CE Program
Approval:

Upon a motion by Dr. Loo, seconded by Dr. Chin and unanimously carried to carried to approve the following continuing education ("CE") courses.

<u>Index #</u>	<u>Program Title (Sponsor)</u>	<u>CE</u>	<u>TPA Hours</u>
19-002	2019 Island Eyes Conference (Pacific University College of Optometry)	30	17
19-003	2019 MOA Big Sky Conference (Montana Optometric Association)	13	13
19-004	The Red Eye and Ocular Emergencies (Hawaiian Eye Center)	2	2
19-005	Glaucoma Update (Hawaiian Eye Center)	2	2
19-006	Challenging Cases We See Every Week from Cornea to Nerve (Hawaiian Eye Center)	2	2
19-007	Cataract Surgery Update and Post-Op Complaints (Hawaiian Eye Center)	2	2
19-008	Retina 2019 (Retina Institute of Hawaii)	2	2

Mr. Sato left the meeting at 10:15 a.m.

9. Applications:

a. Ratifications

Upon a motion by Dr. Loo, seconded by Dr. Au, it was unanimously carried to ratify the following:

- 1) Approved for Optometrist License

- OD 899 LITVIN, Inna M.

2) Approved for TPA Certification

- OD 889 ENG, Emily C.
- OD 875 KAWA, Samantha A.
- OD 895 YI, Sarah M.

10. Next Board Meeting: March 4, 2019
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

11. Adjournment: With no further business to discuss, upon a motion by Dr. Loo, seconded by Dr. Au, it was unanimously carried to adjourn the meeting at 10:20 a.m.

Taken by:

/s/ LaJoy Lindsey

LaJoy Lindsey
Secretary

Reviewed by:

/s/ Christopher Fernandez

Christopher Fernandez
Executive Officer

1/29/19

[X] Minutes approved as is.

[] Minutes approved with changes; see minutes of _____.