

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

MINUTES OF MEETING

Date: Monday, July 29, 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.
Scott Kubota, Public Member
Wallace Kojima, O.D.
Darek Sato, Public Member
Daniel Jacob, Deputy Attorney General ("DAG")
Christopher Fernandez, Executive Officer ("EO")
LaJoy Lindsey, Secretary

Excused: K. Paul Chin, O.D

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by section 92-7(b), of the Hawaii Revised Statutes ("HRS").

1. Call to Order: There being a quorum present, Chair Shoji called the meeting to order at 9:04 a.m.

2. Approval of Board Meeting Minutes of May 6, 2019: Chair Shoji asked if there were any comments or concerns regarding the Board minutes of the May 6, 2019 meeting. There being none, upon a motion by Dr. Au, seconded by Vice Chair Shibayama it was unanimously carried approve the minutes of the March 4, 2019, meeting as circulated.

Executive Session: At 9:06 a.m., it was moved by Chair Shoji, seconded by Vice Chair Shibayama, and unanimously carried to move into Executive Session in accordance with HRS, §92-5(a)(1) and (4), "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or

both,” and “To consult with the board’s attorney on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities” to discuss application.

EXECUTIVE SESSION

At 9:30 a.m. the Board came out of Executive without objection.

3. Applications:

a. 1) Robert Gibbs, O.D

2) Ray Whetstone, O.D.

3) Charles W. Stine, O.D.

Upon a motion by Dr. Shibayama, seconded by Dr. Kojima it was unanimously carried to authorize EO Fernandez to send deferral letters to Drs. Gibbs, Whetstone and Stine, stating “Board approval upon submission of complete and adequate documentation.”

b. Ratifications

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

1) Approved for Optometrist License

- OD 907 TRUONG, Daniel D.
- OD 908 LOVE, Charlotte F.
- OD 909 TAKAHASHI, Kirie J.
- OD 910 GOERING, Michael T.
- OD 911 KIM, Darran C.
- OD 912 TAN, Katy
- OD 913 TANAKA, Evan S.
- OD 914 YOKOYAMA, Nicole K.
- OD 915 TERUYA, Jennifer M.
- OD 916 YAMAMOTO, Colby H.
- OD 917 CLARK, Stephanie Lee
- OD 918 RAINEY, Philip D.
- OD 919 LUM, Michael J.
- OD 920 NGUYEN, Jennifer T.
- OD 921 KOSKEY, Jenna D.

2) Approved for TPA Certification

- OD 901 BALA, Modesto M. III
- OD 905 FEE, Nicole T.S.
- OD 906 CHOI, Sara
- OD 907 TRUONG, Daniel D.
- OD 909 TAKAHASHI, Kirie J.
- OD 911 KIM, Darran C.
- OD 912 TAN, Katy C.
- OD 913 TANAKA, Evan S.
- OD 914 YOKOYAMA, Nicole K.
- OD 915 TERUYA, Jennifer M.
- OD 921 KOSKEY, Jenna D.

4. Board Approval
of Trade Name

a. Request for informal opinion from Geoffrey Reynolds, O.D.

Can a private practice still be majority or minority owned by an optometrist who does not have an active license?

EO Fernandez shared that the way the rule is written in Hawaii Administrative Rules (“HAR”) §16-92-66:

“Trade name restricted to licensee. Whenever a trade name is used, the trade name shall be used in conjunction with the name under which the licensee is licensed to practice. The only exception to this rule shall be when the trade name is used verbally. If the name of a licensed optometrist appears in the trade name of the firm and the optometrist's association with the firm is terminated because of resignation, retirement, or otherwise, the trade name shall be deleted forthwith.”

Chair Shoji stated that Dr. Geoff Reynolds is the son of Dr. Ron Reynolds, and that Dr. Ron Reynolds is retiring and so the question is if the name Reynolds can still be used.

DAG Jacob asked for clarification stating that there is a name that has been approved by the Board and the son wants to change it to Reynolds, and the question is whether the dad leaving trumps the son's right to use the word Reynolds. He noted that even the request for a name change will need to be approved by the Board.

Dr. Kojima noted that the question was whether the father can be a majority or minority owner of the practice if they have an inactive license.

Mr. Kubota mentioned that he read in HRS §459 about misleading the

public thinking that an optometrist may be working there, when they are not. He offered that the issue was about whether the name would be misleading to the public, if the older Reynolds was no longer actively practicing.

DAG Jacob asked if the name was being changed to plural form.

Chair Shoji confirmed.

DAG Jacob expressed concern that a line in HAR 16-92-66 states that, "If the name of a licensed optometrist appears in the trade name of the firm and the optometrist's association with the firm is terminated because of resignation, retirement, or otherwise, the trade name shall be deleted forthwith." When he hears the name Reynolds he assumes that there are at least two Reynolds.

After some discussion it was clarified that "Reynolds" is the surname and is ambiguous as to which Reynolds it refers to (there are multiple Reynolds family members who practice in the group).

EO Fernandez offered that this issue seems to be about how one is still financially tied to the group. It sounds like Dr. Ron Reynolds wants to keep some stake in the group while not practicing, and being inactively licensed.

Dr. Au reminded the Board that there is currently no inactive status for optometrists.

DAG Jacob reminded the Board that HAR §16-92-66 is about registering trade names not about ownership. He stated that he would look in to this question further.

After some discussion, Mr. Kubota motioned to defer item 4a in order to have DAG Jacob research this request further before discussing at the Board's next publicly noticed meeting. It was seconded by Vice Chair Shibayama and unanimously carried to defer the discussion.

b. Request for approval of "The Reynolds Optometric Group" trade name

Upon a motion by Mr. Kubota, seconded by Dr. Shibayama, it was unanimously carried to defer item 4b until the next meeting as more research is required for item 4a which is directly associated to this request.

c. Request for approval of "Lui, Lai & Associates, Inc" trade name

It was noted in the Board's discussion that if a specific name appears in the firm name, and that person maintains an active license, it's acceptable.

However, DAG Jacob noted that if they retire it may be an issue.

Upon a motion by Mr. Kubota, seconded by Dr. Shibayama it was unanimously carried to defer trade name request of "Lui, Lai and Associates, Inc." until the next meeting in order for legal council to do research on the subject.

5. Executive Officer's Report:

a. Disciplinary actions April through June

There were no disciplinary actions during this time period.

6. Request for CE Program Approval:

Upon a motion by Dr. Au, seconded by Dr. Kojima it was unanimously carried to approve CE programs with index numbers 19-018; 19-020; 19-021; 19-022; 19-023. Vision Expo (19-019) will be deferred until the Board's next publicly notice meeting.

<u>Index #</u>	<u>Program Title (Sponsor)</u>	<u>CE</u>	<u>TPA Hours</u>
19-018	CE with Aloha (Aloha Laser Vision)	3	3
*19-019 Deferred	Vision Expo and Conference West 2019 (Reed Exhibitions/The Vision Council)		
19-020	Eyesight 2019 Maui (Eyesight Hawaii-Maui)	3	3
19-021	Eyesight 2019 (Eyesight Hawaii)	3	3
19-022	Exciting Changes to Cataract Surgery on Maui	2	2
19-023	Jenkins Eye Care – Summer 2019 CE Seminar	4	4

7. Old Business:

a. Continuing Education

1) Draft memo for 2019 License Renewal

EO Fernandez informed the Board that he has drafted an update to the 2017 letter that goes out to licensees to explain the renewal process. He noted that there were no substantial changes to the letter which still states that optometrists may renew online, and it does provide information on the difference between submitting CEs via mail or online.

2) Online Forms and Webpage

EO Fernandez referred the Board to a screen shot of the Board of Optometry's "Application Forms & Publications" webpage on the website. He stated that he would like to change it to coincide with the title changes of the application forms that are also included in the Board's packet. In order to clear up confusion, he stated that he would like to re-title the section "Continuing Education Verification" to "Continuing Education" and underneath that add a new link for a new form "Continuing Education Verification", and the form "Continuing Education-100 Hour TMOD Course Verification" to make the two distinct. The "Program Sponsor Agreement for Continuing Education" form would also be placed under this heading.

The new CE verification form would be used by those who are not facilitators of a CE course, but wish to have their CEs reviewed. There has been ongoing confusion using the current form meant to be used by program sponsors/providers. Currently optometrists use the program sponsor form and it's confusing for them and the staff, which is why EO Fernandez created another form.

Mr. Kubota asked EO Fernandez if he could specify on the forms which is meant for providers or non-licensed individuals or entities, and which is for licensees.

EO Fernandez stated he would update the draft forms to incorporate those specifications.

Vice Chair Shibayama asked if the form "Continuing Education-100 Hour TMOD Course Verification" should be under the section heading titled "Optometry TPA Certification".

EO Fernandez explained that, that form is for approval of a 100-hour course to be accepted in lieu of CE courses for the biennium, so it should be under the "Continuing Education" section.

Vice Chair Shibayama requested that the form be under the "Optometry TPA Certification" heading which was echoed by Dr. Au.

EO Fernandez will incorporate changes to the forms and how they are listed on the website according to the recommendations of the Board members and bring them back to the next meeting.

Dr. Shoji requested that current CPT codes be added to the agenda for the next meeting.

3) Draft language for random audit statute

EO Fernandez looked at the language from Psychology's random audit and he feels it would fit well with HRS §459-7. The Board was provided with the draft versions 1 and 2 to review. The basic difference between version 1 and 2 is that in version 1, he was able to adjust just HRS 459-7 without affecting how the rules are currently written and goes as follows:

§459-7 Application; examination; reexamination; appeal; renewal; continuing education; license. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence that the applicant is a graduate of an optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Department of Education, shall pass all examinations required by the board and comply with the following requirements:

- (1) Submit a completed application for licensure to the department of commerce and consumer affairs;
- (2) Submit a nonrefundable application fee together with the application; and
- (3) Submit a copy of the applicant's diploma or certificate of graduation from an optometric college, school, or university approved in accordance with this subsection.

(b) Applicants for examination shall be given due notice of the date and place of each examination by the NBEO. If an NBEO examination is no longer recognized by the board, applicants shall pass an examination designated by the board and shall be notified by the board or testing agency designated by the board of the date and place of examination.

Every candidate who passes all examinations required by the board and who has met all requirements for licensure shall receive from the board a license to practice optometry.

(c) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal

of the license for the biennium. The failure of any licensee to [pay the biennial license fee and submit proof of satisfying the continuing education program requirements] renew a license on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited may be restored upon payment of a penalty, renewal, and recordkeeping fee as provided in rules adopted by the director pursuant to chapter 91, [and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the biennium immediately preceding the application for restoration of the license.] and, in the case of an optometrist who is audited, pursuant to subsection (d), submission of documentation of continuing education compliance, for the biennium in which the failure occurred. The applicant shall pay a recordkeeping fee for each biennium the license was on forfeited status.

(d) [Each licensee, on or before the date designated in each odd-numbered year, shall submit to the board proof that the licensee has met the continuing education requirement through programs recognized and approved by the board. The board shall have the authority to extend the time for compliance of continuing education requirement if good cause is shown. The board shall adopt rules relating to the requirements and standard] The board may conduct random audits of licensees to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement established by this section.

EO Fernandez explained that Version 2 was based on including a power and duty for the Board in section §459-4. From that he modified HRS 459-7, which changed the statutes as follows:

§459-4 Powers and duties of the board. (a) The members of the board of examiners in optometry shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths. At the first meeting of the board after each annual appointment, the board shall elect a chairperson and vice chairperson. 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 exercise of the powers and duties as established by these statutes, and to regulate

the practice of optometry in the State.

(b) The board may conduct random audits of licensees to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within 60 days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement established by this section.

§459-7 Application; examination; reexamination; appeal; renewal; continuing education; license.

(a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence that the applicant is a graduate of an optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Department of Education, shall pass all examinations required by the board and comply with the following requirements:

- (1) Submit a completed application for licensure to the department of commerce and consumer affairs;
- (2) Submit a nonrefundable application fee together with the application; and
- (3) Submit a copy of the applicant's diploma or certificate of graduation from an optometric college, school, or university approved in accordance with this subsection.

(b) Applicants for examination shall be given due notice of the date and place of each examination by the NBEO. If an NBEO examination is no longer recognized by the board, applicants shall pass an examination designated by the board and shall be notified by the board or testing agency designated by the board of the date and place of examination.

Every candidate who passes all examinations required by the board and who has met all requirements for licensure shall receive from the board a license to practice optometry.

(c) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal of the license for the biennium. The failure of any licensee to [pay the biennial license fee and submit proof of satisfying the continuing education program requirements] renew a license on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited may be restored upon payment of a penalty, renewal, and recordkeeping fee as provided in rules adopted by the director pursuant to chapter 91, [and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the biennium immediately preceding the application for restoration of the license.] and, in the case of a psychologist who is audited, pursuant to section §459-4(b), submission of documentation of continuing education compliance, for the biennium in which the failure occurred. The applicant shall pay a recordkeeping fee for each biennium the license was on forfeited status.

(d) Each licensee, on or before the date designated in each odd-numbered year, shall [submit to the board proof that the licensee has met the continuing education requirement through programs recognized and approved by the board.]

(1) Pay all required fees; and

(2) Complete the minimum requirement of continuing education course hours.

(e) The board shall have the authority to:

(1) Extend the time for compliance of continuing education requirement if good cause is shown.

(2) [The board shall] adopt rules relating to the requirements and standards that continuing education courses, including the minimum number hours required, and programs shall meet to obtain recognition or approval from the board.

One of the things version 2 has that version 1 doesn't, explained EO Fernandez, is the list of what's required for submission of documentation of continuing education. That would be something that would be included in the statutes, not just the rules. He mentioned that DAG Jacob suggested simplifying the language in the statutes even further than these two versions, so it instead provides you with rule

authority and not such a substantive statutory change. However, either version will require statute change.

Drs. Au and Shibayama expressed concern regarding statutes changes. Dr. Au is concerned that the legislature could enact other changes.

DAG Jacob commented that opening up statutes always runs a risk.

EO Fernandez shared that after asking around he found that the statutory changes will be too substantive to be considered for an administrative bill.

4) Rule Change Discussion.

The Board was provided with a copy of the draft that was approved by the Board, which EO Fernandez noted was with the previous EO in May of 2018. (For a full version of the draft please see the "05.07.18 Optometry – Meeting Minutes" entry at:

<http://cca.hawaii.gov/pvl/boards/optometry/board-meeting-minutes/>

He noted several changes including:

- Specifying that those who are TPA certified would need to submit TMOD CE from approved sponsors.
- Non-interactive courses must be approved by the Board
- And that the Board may accept transcripts or certificates

DAG Jacob commented that he sees "ARBO" is being defined but does not see the acronym anywhere in the rules, but acknowledges that it was probably meant to coincide with the change to §16-92-40(b), which states that "In the alternative, the board may accept certificates or transcripts on behalf of a licensee from an organization approved by the board". The problem with subparagraph (b) is that there is no criteria with which to approve or, more importantly, to deny a sponsor. If the Board denies a CE, it could be difficult.

Dr. Au asked if the Board were to drop the language "from an organization approved by the board", would this correct the issues.

DAG Jacob responded that the issue with that is that potentially this could be abused by persons not affiliated with approved sponsors.

He will discuss with his supervisor as to when an organization will be

approved/denied.

Mr. Kubota suggested that licensed board members come together to create a criterion for sponsor approval, which DAG Jacob clarified as creating a permitted interaction group or "PIG".

The Board continued the conversation into the next agenda item.

5. ARBO and OE Tracker Discussion

EO Fernandez referred members to the letter from the Executive Director of ARBO, Lisa Fennell. It further describes the process, they take stewardship of the CEs, there's no way for an optometrist to upload without submitting a form to ARBO that is processed through an evaluator. He commented that in the end, even if it's added to the rules at this time, the major issue with OE tracker is it doesn't have a signature.

Currently, it's reflected in the statute that a signature from the provider is required. When we're talking about transcripts it is OE tracker. Everything is on certificate except the signature. Although the letter from ARBO clearly states that the course must be approved in order to be able to print the certificate.

The three questions that DAG Jacob has that he'll ask his supervisor is: Can the Board specify ARBO only? What if another entity comes forward or ARBO goes away? If someone is denied it could be a potential risk, will we accept transcripts?

EO Fernandez would like to continue to lean towards ARBO as it's highly unlikely that they're going away.

Dr. Shoji asked what is the official description of ARBO is it a third-party clearinghouse?

EO Fernandez mentioned that it is a regulatory association.

DAG Jacob described what a PIG is for new Board member Dr. Kojima. He explained that Sunshine law requires all business to be conducted at these Board meetings. Board members are free to speak with any Board member, but just one. One must be careful not speak to one Board member in hopes of securing a vote and turning around and speaking to another Board member to also secure their vote. A PIG is a body of more than two members but less than a quorum that allows

more robust discussions about a subject. After the PIG is formed at a meeting they PIG meets to discuss the subject. At a second meeting, the PIG reports its findings, but no action can be taken by the Board until the third meeting.

Dr. Shoji asked Dr. Au if that's something she may be interested in. Dr. Au said she will consider making a list of requirements/criteria.

DAG Jacob informed the Board that they could totally re-do CE requirements under rules. However, the optometry rules are very robust and the rules process is very long.

EO Fernandez will ask the Nursing and Medical Board EOs how they handle their CEs as a reference.

Dr. Au commented that the Board should try to streamline to make the Board's job easier.

- 6) In order to be considered for approval, can a certificate of continuing education with no provider signature be combined with a provider signed Certificate of Attendance for the same course?

EO Fernandez asked if a person has a copy of their certificate from their original course and also OE tracker, if they were to provide both of those would it be automatically approved.

Dr. Shoji answered "no" as ARBO accepts other than COPE approved courses. However, if they sign off on their ARBO certificate, that's good enough for him. However, the rules do not allow for self-attestation.

8. New Business:

- a. DGH Technology Inc: Inquiry regarding ultrasound for diagnostics

What current diagnostics and/or examinations are optometrist in Hawaii allowed to do and can an optometrist in Hawaii perform ultrasound diagnostics of the eye?

DAG Jacob advised the Board that this would be an informal decision which could be used by RICO in court. He suggested that they be referred to HRS 459-74 within their scope of practice.

Upon a motion by Dr. Shibayama, seconded by Mr. Sato it was unanimously carried to refer individual to the appropriate statutes.

9. Next Board Meeting: September 30, 2019
9:00 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813
10. Adjournment: With no further business to discuss, upon a motion by Dr. Au, seconded by Dr. Shibayama, it was unanimously carried to adjourn the meeting at 11:00 a.m.

Taken by:

/s/ LaJoy Lindsey

LaJoy Lindsey
Secretary

Reviewed by:

/s/ Christopher Fernandez

Christopher Fernandez
Executive Officer

8/22/19

[] Minutes approved as is.

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