

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

MINUTES OF MEETING

- Date: Monday, November 9, 2020
- Time: 9:00 a.m.
- Place: Via Zoom <https://dcca-hawaii-gov.zoom.us/j/92417743718>
- Present: Robb Shibayama, O.D., Chairperson ("Chair")
K. Paul Chin, O.D., Vice Chairperson ("VC")
Seulyn L. Au, O.D.
Darek Sato, Public Member
Wallace Kojima, O.D.
- Staff: Daniel Jacob, Deputy Attorney General ("DAG")
Christopher Fernandez, Executive Officer ("EO")
Daniel Jimenez, Executive Officer ("EO")
LaJoy Lindsey, Secretary
Karyn Takahashi, Director's Secretary
Terry Akasaka-Toyama, Deputy Director's Secretary
Ahlani Quiogue, Supervisory Executive Officer
Charlene Tamanaha, Licensing Administrator
Kelly Wei, Secretary
- Excused: None
- Guests: Lisa Fennell, ARBO Executive Director
- 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").
- Roll Call/
Call to Order: VC Shibayama took a roll call, Drs. Shibayama, Au, Chin, Kojima and Mr. Sato were all present. There being a quorum present, VC Shibayama called the meeting to order at 9:15 a.m.
 - Election of
Officers: VC Shibayama nominated himself as Chairperson, Dr. Kojima seconded, and Drs. Shibayama, Au, Chin, Kojima and Mr. Sato voted unanimously to elect Dr. Shibayama as Chairperson.

Chair Shibayama nominated Dr. Chin as Vice Chairperson, Dr. Kojima seconded

and Chair Shibayama, Drs. Au, Chin, Kojima and Mr. Sato voted unanimously to elect Dr. Chin as Vice Chairperson.

3. Approval of Board Meeting Minutes Mr. Sato moved to approve the January 6, 2020 minutes, Dr. Au seconded, Chair Shibayama, Au, VC Chin, Kojima and Mr. Sato unanimously voted to approve minutes.

4. Executive Officer's Report EO Jimenez informed the board of the Fairness of Contact Lens Consumer Act which took effect on October 16, 2020. The act requires prescribers to provide prescription regardless of where the consumer is purchasing their contact lens.

5. Applications: Ratifications

Upon a motion by Dr. Au, seconded by Dr. Kojima, Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato unanimously voted to approve the following TPA certifications.

1) Approved for TPA Certification

- OD 916 Yamamoto, Colby
- OD 920 Nguyen, Jennifer T.
- OD 926 Filiatreau, Jennifer
- OD 927 Pellejera, Christopher G.
- OD 928 Maebori, Jeffrey
- OD 929 Esver, Nicole S.
- OD 447 Takara, Joanne C.
- OD 934 Kamibayashi, Shantelle S.
- OD 935 Lynch, Katherine B.
- OD 937 Schmerbauch, Jordan L.
- OD 938 Seffinger, Aiko
- OD 940 Muraoka, Courtney

Upon a motion by VC Chin, seconded by Dr. Au, Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato unanimously voted to approve the following DPA certifications.

2) Approved DPA Certification

- OD 925 Fujimoto, Mari J.
- OD 925 Filiatreau, Jennifer

- OD 927 Pellejera, Christopher G.
- OD 928 Maebori, Jeffrey S.
- OD 929 Esver, Nicole S.
- OD 930 Rivera, Melissa A,
- OD 931 Smith, Megan E.
- OD 932 Blunder, Jeffrey H.
- OD 933 Gubler, Boyd K.
- OD 934 Kamibayashi, Shantelle S.
- OD 935 Lynch, Katherine B,
- OD 936 Wek, Jaclyn N.
- OD 937 Schmerbauch, Jordan L.
- OD 938 Seffinger, Aiko L.
- OD 939 Kowalski, Joseph T.
- OD 940 Muraoka, Courtney
- OD 941 Shaheen, Kaleel J.
- OD 942 Abjani, Lubna
- OD 943 Timmerman, Abigail
- OD 944 French, Richard
- OD 945 DiZazzo, Concetta

6. Request for CE Program Approval: Upon a motion by VC Chin, seconded by Dr. Kojima, Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato unanimously voted to approve the following CE programs:

Index #	Course Title	Sponsor or Requestor	TPA Hours Requested	TPA Hours Approved
20-001	Keatoconus and Crosslinking Review, 10/29/20	Aloha Laser Vision	1	1
20-002	Refractive Surgery Update, ,11/19/20	Aloha Laser Vision	1	1
20-003	Cataracts in the Developing World: A Global Perspective, 12/17/20	Aloha Laser Vision	1	1
20-004	Refractive Cataract Surgery and New Technology, 1/28/21	Aloha Laser Vision	1	1
20-005	New Technologies for Refractive Cataract Surgery, 6/17/20	Aloha Laser Vision	1	1

20-006	Academy 2020 at Home – Lectures, 10/7-22/20	American Academy of Optometry	226	111
20-007	Academy 2020 at Home – Scientific, 10-7-22/20	American Academy of Optometry	12.25	5.75
20-008	Opportunities in AMD Management, 6/14/20	Healthy Eyes Advantage	4	4
20-009	Online Interactive Symposium, 5/17/20	Healthy Eyes Advantage	6	6
20-010	Dry Eye and Oculoplastic Updates, 1/16/20	Aloha Eye Clinic	2	2
20-013	20/20 and Beyond, 2/28/20, Aiea and Pensacola	Distinctive Education/Visual Performance Center	4	3
20-014	MOA 2020 Winter Conference 2/27-29/20	Montana Optometric Association	10	9
20-015	HOA Winter Seminar, 1/26/20	Hawaii Optometric Association	8	8

7. Request for Trade Name Approval: Upon a motion by Dr. Kojima, and seconded by Dr. Au, Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato unanimously voted to approve the following trade name requests:

- a. Dr. Kari Moses requesting use of “Windward Vision Center.”
- b. Dr. Linda Nguyen requesting use of “Linda L. Nguyen OD LLC DBA Maui Optometry.”
- c. Dr. Timothy Kale requesting use of “All Eyes.”

8. Continuing Education and COVID-19: *The Board will discuss the effects of the COVID-19 pandemic response on the facilitation and participation in continuing education courses (“CE”) in optometry.*

Executive Session: At 9:35 a.m., upon a motion by Dr. Chin, and seconded by Dr. Au, the Board unanimously voted to enter into executive session to consult with the Board’s attorney on questions and issues pertaining to the board’s powers, duties, immunities, and liabilities in accordance with Hawaii Revised Statutes §92-5(a)(4).

EXECUTIVE SESSION

At 9:45 a.m. upon a motion by Dr. Au, seconded by VC Chin, the Board members present unanimously voted to exit executive session.

Roll call was taken and Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato were all present.

With regards to inquiries from licensed Optometrists asking if the Board whether correspondence courses used to meet the biennial CE requirement will be accepted at a higher percentage than what is allowed by Hawaii Administrative Rules §16-92-39(b):

Correspondence courses sponsored by optometric journals recognized by the board shall be approved by the board provided that the number of hours constitutes no more than twenty-five per cent of the total number of continuing education hours required per biennium for license renewal.

Chair Shibayama clarified that there are 2 main issues:

- 1) What constitutes CE that will be approved by the Board, and
- 2) What type, or how the CE was presented, will be approved by the Board.

According to HAR §16-92, courses that meet the requirements set forth in HAR §16-92-39(a), would be automatically approved; this includes courses approved by:

- 1) Regional and national optometric societies and councils;
- 2) American Academy of Optometry;
- 3) United States optometric associations and International Optometric Extension Program Foundation; and
- 4) Accredited colleges and schools of optometry

Council on Optometric Practitioner Education (“COPE”) approved courses would also be approved pursuant to HAR §16-92-39(c).

Chair Shibayama added that courses sponsored by the aforementioned organizations would be approved regardless of whether the courses were in-person or live webinars with specific dates and times of facilitation; and in the case of TPA certified licensed Optometrists upon approval of the content of the course by the Board pursuant to HAR §16-92-38(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...”.

EO Fernandez asked whether a correspondence course not sponsored by the aforementioned organizations would be considered for approval and whether that

course would be limited in the same way correspondence courses sponsored by Optometric Journals recognized by the Board would be; that is to 25% of the total number of CE required biennially.

DAG Jacob stated that it would be at the Board's discretion but cautioned the Board that in doing so, it would be making an informal interpretation of its rules. DAG Jacob states that there's some ambiguity but the board can interpret its rules. It's the board's prerogative to determine what is ambiguous and given board's discretion. HAR §16-92-39(c) can include adding limitation to CE.

Chair Shibayama stated that if the course met the requirements for approval and was a correspondence course, then it would be approved and limited to 25% of the total required CE.

VC Chin stated that in this case a correspondence course would not be the same as a live webinar, and the latter would not be limited to 25% if it was approved. VC Chin asked if COPE's designation of live webinar CE as live CE will be through June 30, 2021., referring to COPE's updated policy to temporarily designate their any approved courses as "live" until June 30, 2021.

EO Fernandez confirmed this as correct and that this change was done in response to the COVID-19 pandemic. He asked if the informal interpretation would be limited like COPE's temporary policy update.

DAG Jacobs stated that the Board's informal interpretation should not be based on whether there is a pandemic or not.

After further discussion, and upon a motion by VC Chin, seconded by Dr. Kojima, Chair Shibayama, VC Chin, Drs. Au and Kojima and Mr. Sato unanimously voted on the following informal opinion and interpretation and instructed EO Fernandez to respond to inquiries regarding the acceptability and approvability of CE using the language of the interpretation.

In response to inquiries asking whether the Board will accept more hours of acceptable correspondence courses per biennium than what is currently allowed by HAR §16-92-39(b), the Hawaii Board of Optometry informally opined that it does not have the authority to amend or modify any rule set forth in HAR Title 16 Chapter 92 without going through the rule change process set forth in HRS §91. Therefore, it cannot accept more than 25 percent of the total CE required per biennium for license renewal, as provided by HAR §16-92-39(b), specifically: (8) hours of CE for DPA licensees, and (9) hours of CE for TPA certified licensees.

The Board also informally interprets HAR Title 16 Chapter 92 Subsection 7 as allowing the approval of continuing education courses facilitated both in-

person and remote, as long as the courses facilitated remotely adhere to the rules set forth in the subsection, and:

- 1) Are facilitated live at a specific time and place;
- 2) Are interactive involving interaction between the facilitator and attendees; and
- 3) Are not recordings of live events

If remote courses are not live, then they are considered correspondence courses and will need to meet the requirements set forth in HAR §16-92-38(a) or (b), HAR §16-92-39(b) regarding correspondence courses and HAR §16-92-39(c) regarding request for Board approval of continuing education courses.

Please be advised that in accordance with Hawaii Administrative Rules §16-201-90, the above opinion and interpretation are for informational and explanatory purposes only. They are not an official opinion or decision, and therefore not to be viewed as binding on the Board or the Department of Commerce and Consumer Affairs.

9. Board & Executive Officer Delegations:

The Board will consider delegations to Board members, subcommittees, or the Executive Officer to address the impact of COVID-19 on the Board's responsibilities.

EO Fernandez asked Board members if they would consider delegating to the Executive Officer the approval of trade names already in use by licensed Optometrists. He explained that the Business Registration Division ("BREG") is requiring those needing to renew their business registration to obtain approval by the Board for the continued use of their trade name. He added that this seems to be the case when a licensee allows their registration to lapse with BREG.

The Board was generally ok with the delegation but did not vote to approve.

DAG Jacobs reminded the Board that delegations could not be given to any action requiring the discretionary knowledge of the Board. He stated that he is unaware of the registration renewal requirement and requested time to contact BREG about the process to make sure and to review the delegations to make sure that no discretionary knowledge was required.

The Board requested that EOs Fernandez and Jimenez add to next month's agenda the creation of a permitted interaction group regarding rule changes.

10. Public Forum:

There were no public comments.

