

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

MINUTES OF MEETING

- Date: January 25, 2021
- Time: 9:00 a.m.
- Place: Via Zoom <https://dcca-hawaii-gov.zoom.us/j/97699143380>
- 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”)
LaJoy Lindsey, Secretary
Kedin Kleinhans, Executive Officer
Micah Cadalzo, Secretary
- Excused: None
- Guests: Jenkins Eye Care
- 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. Roll Call/
Call to Order: Chair Shibayama took a roll call; Drs. Shibayama, Au, Chin, Kojima and Mr. Sato were all present. There being a quorum present, Shibayama called the meeting to order at 9:06 a.m.
 2. Approval of
Board Meeting
Minutes Mr. Sato moved to approve the November 9, 2020 minutes, Dr. Au seconded; Chair Shibayama, Drs. Au, VC Chin, Kojima and Mr. Sato unanimously voted to approve minutes.
 3. Executive
Officer’s Report EO Fernandez reported no disciplinary actions through November 2020. ARBO requested information to update and will provide further information to board members.
 4. Applications: Ratifications

There were no applications.

5. 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
21-001	Live Virtual Seminar, 11/8/20, Webinar	Hawaii Optometric Association	4	4
21-002	13 th Annual CE in Paradise, 12/1/20,	Jenkins Eye Care	2	2
21-003	2021 Island Eyes Conference, Webinar 1/22-30/21	Pacific University College of Optometry	24	18
21-004	Live Virtual Seminar, 1/24/21, Webinar	Hawaii Optometric Association	4	4

6. Telemedicine: Chair Shibayama asked if there was any testimony from the public on this agenda item. There was none.

EO Fernandez referred to a previous board determination (in 2019) that maintains the view that if the person will perform telemedicine on a patient in Hawaii, the person requires a Hawaii license. The Board's previous Chair Peter Shoji noted at that time that a specific telemedicine device was recalled and that telemedicine was still in its fledgling state regarding optometry and examinations. EO Fernandez asked for clarification regarding telehealth modalities and if they are common in OD practice.

Chair Shibayama reviewed documents in the board packet. He clarified that since the statutes were silent on the subject of telehealth and that it would require statutory and possible rule change. Regarding telemedicine, he recommended a reply that the Board does not have telemedicine laws/rules; accordingly, standard practice – a Hawaii license is required. Chair Shibayama asked if Dr. Au would be interested in heading a Permitted Interaction Group ("PIG") to review a rule change to clarify what is required to perform telemedicine.

Dr. Au asked what the difference between a rule and statute change is.

DAG Jacob replied that for rules, he can write something up to provide an example, or the Board can set up a PIG. Afterwards there is a long review process. He recommended a PIG because he can discuss the subject with the PIG.

Chair Shibayama recommended the PIG to draft rule language.

DAG Jacob will need to review statute if Board has authority to promulgate rules regarding telemedicine.

Dr. Au inquired if other boards have telemedicine language.

DAG Jacob replied that the medical board does, and we can use their language as an example.

EO Fernandez stated that if the Board is concerned of the pace of the rule change process, the Board can create two separate packages. PIGs require an additional meeting to report their recommendation to the Board, and the Board can only vote on the recommendation on the following meeting. This would delay any current rule package if it is ready to be reviewed by the Board.

7. Legislative Session:

Chair Shibayama asked if there was any testimony from the public on this agenda item. There was none.

Chair Shibayama mentioned that there was no word from Hawaii Optometric Association ("HOA") on any bills they submitted. EO Fernandez confirmed and added that the Board may consider designating two members by vote to act as the Board's Legislative Committee. The members would meet with him to discuss bills outside of meetings and if needed between meetings provide testimony.

DAG Jacob stated that the designated member(s) are able to review bills and provide testimony noting they are not testifying on the Board's behalf. He added as a general point, all members have the right to provide testimony on their personal behalf. Additionally, a designated member may note they were designated to provide comments, but the testimony is not official Board testimony.

EO Fernandez mentioned that deadlines will be stricter this session and the Legislature will not accept late testimony.

Dr. Au asked if HOA tracks bills and if so, would they notify the Board.

Chair Shibayama said Charlotte Nekota from HOA goes through all bills.

EO Fernandez mentioned that HOA is a separate organization, but PVL looks through all bills related to the industry, specifically the practice of optometry as defined in HRS §459. If a bill is alive, he'll put it on the agenda for the March meeting agenda as well as any other meetings within the legislative session.

Dr. Au asked if he could check on a bill relating to kindergarteners requiring eye exams by an Optometrist or Ophthalmologist.

EO Fernandez informed the Board that it can let him know if they need an extra meeting, to discuss introduced legislation.

8. Rule Revision: Chair Shibayama asked if there was any testimony from the public on this agenda item. There was none.

EO Fernandez suggested to the Board that it go section by section reviewing the language of the rule revision draft approved by the Board in 2019 making changes if needed, and then offered to guide the Board in this process.

Chair Shibayama stated that would be fine.

EO Fernandez suggested that Hawaii Administrative Rules (“HAR”) §16-92-1 was standard language for rules and wondered if members felt the need to discuss the section. Hearing no comments, he moved on to §16-92-2 Definitions. In the definitions of the draft he reminded the Board that it had removed the term “ARBO” on the suggestion by DAG Jacob because it referred to a specific entity. The reasoning being that if the ARBO ever changed their name or ceased to be, then the rules would need to be updated. He then asked if any member had any suggestion for a new definition to be included in the draft, for example “telemedicine”.

Chair Shibayama recommended the Board adopt the definition of “telemedicine” provided by Medicare.

EO Fernandez provided ARBO definition of telemedicine, which is:

Practice of healthcare using electronic communications, information technology, or other means between a licensee in one location and a patient with or without an intervening healthcare provider. Includes: telemedicine, telepractice, and teleophthalmology.

He said that he can start with this definition but will also look into Medicare definition for the next meeting.

Chair Shibayama provided Medicaid.gov definition of telemedicine, as:

Two-way real time interactive communication between the patient and physician at a distant site. Electronic communication means the use of interactive communication and includes at a minimum audio and video equipment.

Dr. Au recommended a broad definition, e.g. “telehealth” instead of the use of “telemedicine.”

Vice-Chair Chin prefers ARBO definition and suggests using their language as a model.

Chair Shibayama agreed and added that the CMS.gov (Centers for Medicare and Medicaid Services) definition of telemedicine can also be incorporated which is as follows:

Professional services given to patient through an interactive telecommunications system by a practitioner at a distant site.

He also acknowledged that although the definition can be incorporated the Board could still change the term telemedicine to another term such as telehealth. He also recommended that members read through the documents from ARBO because there are definitions and outcomes from other states that can be used in this definition. Regarding an inquiry from Alderwood Therapy if a Washington licensee can provide telehealth to patients located in Hawaii. We don't regulate people from WA.

DAG Jacob advised that the Board does have a say regarding practice in Hawaii.

Chair Shibayama asked if EO Fernandez can bring a definition to the Board.

DAG Jacob said that he'd work with EO Fernandez to create a definition, or Board can create Permitted Interaction Group ("PIG"). There should be a ready response as this could be a recurring item.

With no discussion on sections 3 through 26, the Board moved on to Subchapter 7 regarding continuing education.

Dr. Kojima left the meeting at 10:06 a.m.

Chair Shibayama referred to page 18 of the draft rules, section §16-92-39 Educational courses; approval.

EO Fernandez advised the Board that it may want to consider creating definitions of terms used in this Subchapter, so that the subsections and sentences do not need to both define the terms and regulate that which the terms are referring to such as recorded and live webinars.

Chair Shibayama mentioned that there are two categories to address: (1) Board will automatically approve a correspondence course provided by any of the associations or optometric journal; and (2) amount/percent you can use. It should also incorporate language of "live" meaning you are in the same place and time as the seminar speaker.

After some further clarification Chair Shibayama requested that EO Fernandez include in the draft rules:

- 1) Definitions of “live courses” as courses that are taken either in person or virtually and are interactive where the facilitator and attendees are in the same time; and “non-live courses” which would be recorded webinars correspondence courses, to name a few examples.
- 2) That subsection (a) include the term “live”.
- 3) That subsection (c) be removed.
- 4) That subsection (d) include the terms “Live” and “Non-live” as course that require board approval
- 5) That non-live courses will be limited to 25 percent of the total required CE for TPA and DPA licensees.

VC Chin suggested three definitions: Live, virtual, and interactive.

Chair Shibayama suggested eliminating the acceptance of practice management courses all together, specifically eliminating subsections (e) and (f).

Dr. Au and Vice-Chair Chin agreed.

EO Fernandez inquired of subsection (g). Chair Shibayama mentioned that, for example, some COVID-19 courses may have a broad course definition. If the course was accepted but later the Board found that the course was about practice management, then it could rescind its approval, and stated that it should be kept.

Dr. Au stated that the Board may not know from the title of the courses if they are actually, for example, TPA courses.

EO Fernandez also suggested that the Board may want to review what is meant by “TPA” courses as this relates to the how the Board approves those courses and what courses can be submitted by TPA licensees.

Chair Shibayama stated that TPA type courses should be defined so that it is clear to the licensees what will be approved and allowed for submission.

EO Fernandez suggested that the Board could update the CE memo that goes on the Board’s webpage about the DPA/TPA nuances.

He asked if Board will further discuss section 16-92-40, regarding CE certificates

including acceptance of ARBO transcripts. Chair Shibayama commented that there was no need, the signature requirement on certificate concern was addressed.

Reviewing HAR §16-92-40.5 of the draft rules, the Board discussed the topic of CE submissions and whether the Board is required to by statute or rule to review 100% of the licensees. After some further discussion it was clarified that the Board would only need to review those applicants whose CE was not preapproved or automatically approved by the Board's own review of the courses or by rule. The rest could be reviewed by the EO and PVL staff. However, to be clear, it remains a requirement by statute that all licensees must submit proof of meeting the CE requirement at renewal as set for the by statute and rule.

EO Fernandez asked if the section on reciprocity should be renamed, because it seems much more restrictive than a traditional reciprocity which should be simple process. For example, if an applicant did not take the current exams from NBEO, then they could not be approved for licensure

Dr. Au noted some out-of-State applicants may not qualify because the examinations they took may not be equivalent to what was required, e.g., 100-hour course. Consider adding a 16-92-25 and/or 92-25.1 to specify.

Chair Shibayama agreed that HAR §16-92-26 be amended to address these concerns.

EO Fernandez will take the Boards suggestions and amendments to the draft and will verify with DAG Jacob if any proposed rules require a statutory change.

9. Public Forum: There were no public comments.
10. Next Board Meeting: March 29, 2021 at 9:00 a.m.
11. Adjournment: With no further business to discuss, Chair Shibayama adjourned the meeting at 11:19 a.m.

Taken by:

/s/ LaJoy Lindsey
LaJoy Lindsey
Secretary

Reviewed by:

/s/ Christopher Fernandez
Christopher Fernandez
Executive Officer

2/25/21

Minutes approved as is.

Minutes approved with changes; see minutes of _____.