

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

MINUTES OF MEETING

- Date: Monday, September 30, 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 (“CH”)
Robb Shibayama, O.D., Vice Chair (“VC”)
Seulyn L. Au, O.D.
K. Paul Chin, O.D.
Scott Kubota, Public Member
Steven Chow, Public Member
Darek Sato, Public Member
Daniel Jacob, Deputy Attorney General (“DAG”)
Christopher Fernandez, Executive Officer (“EO”)
LaJoy Lindsey, Secretary
- Excused: Wallace Kojima, 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 9:02 a.m.
 2. Approval of Board Meeting Minutes of July 29, 2019: CH Shoji asked if there were any comments or concerns regarding the Board minutes of the July 29, 2019 meeting. There being none, upon a motion by Dr. Au, seconded by Mr. Sato it was unanimously carried approve the minutes of the July 29, 2019, meeting as circulated.
 3. Review and Approval of RICO’s After a brief discussion, upon a motion by Dr. Chin, seconded by Dr. Au, it was unanimously carried to approve RICO’s Optometry Advisory Committee list.

Executive
Session:

At 9:05 a.m., it was moved by Dr. Chin, seconded by Dr. Au, 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.

At 9:27 a.m. it was moved by Dr. Au and seconded by Dr. Chin, and unanimously carried to come out of Executive Session.

4. Applications:

- a. 1) REMICK-WALTMAN, Kristy, O.D.

Upon a motion by Dr. Au, seconded by VC Shibayama it was unanimously carried to authorize EO Fernandez to send a second letter informing Dr. Remick-Waltman that, pursuant to Hawaii Revised Statutes §459-7.5 and Hawaii Administrative Rules ("HAR") 16-92-26(4), which states, "that the applicant has passed the NBEO written and practical examinations in their entirety", her application is being deferred until she can provide evidence that she has passed part III of the NBEO examination. The Board also requested that the letter inform Dr. Remick-Waltman of options to take part III of the NBEO examination as described by NBEO on their website.

- b. Ratifications

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

- 1) Approved for Optometrist License

- OD 922 AU, Walter G.

- 2) Approved for TPA Certification

- OD 902 KRUCH, Zanna Say
- OD 906 CHOI, Sara

5. Request for
Informal opinion

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?

After due consideration of the information received and discussion of the relevant statutory section and rules, including HRS §459-9(4), HAR §16-92-52(4), HAR §16-92-65, HAR §16-92-66, & HAR §16-92-67, the Board voted to have EO Fernandez send a letter to inform Dr. Reynolds of the following informal opinion*:

An answer to the question presented above is outside the purview of the Board as they do not regulate unlicensed people who are not practicing, however any person practicing without a license, or, who is employed by an unlicensed person would be in violation of HRS §459-2 and HRS §459-9(4), which state respectively that:

- “It shall be unlawful for any person to practice optometry or to append the letters "O.D." or any other optometric degree to a person's name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked and unsuspended license under and as provided in this chapter.
- “In addition to any other actions authorized by law, the board of examiners in optometry may refuse to admit persons to its examinations or to issue a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or may impose a penalty as shall be established by the board, for any cause authorized by law, including but not limited to the following:”

“Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked and unsuspended license or from any company or corporation”

Furthermore, and of importance to note, pursuant to HAR §16-92-66, only a licensed person may hold a tradename.

“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."

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

6. Requests for Board Approval of Trade Name

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

Upon a motion by Dr. Au, seconded by Mr. Sato, it was unanimously carried to approve "The Reynolds Optometric Group" trade name

b. Request for approval of "Mid Pacific Eyecare" trade name

Upon a motion by Dr. Au, seconded by Mr. Sato, it was unanimously carried to approve the "Mid Pacific Eyecare" trade name.

c. Request for approval of "Ala Moana Advanced Eye Clinic" trade name

Upon a motion by Dr. Au, seconded by Mr. Sato, it was unanimously carried to approve the "Ala Moana Advanced Eye Clinic" trade name.

7. Executive Officer's Report:

a. Disciplinary actions

EO Fernandez informed the Board that there were no optometry disciplinary actions during the time period of May through July.

8. Request for CE Program Approval:

Upon a motion by Dr. Au, seconded by Dr. Chin it was unanimously carried, with exception of Mr. Kubota to approve CE programs as indicated beginning on the following page. Please note that index numbers 19-033 and 19-034 were not approved.

At 9:50am Mr. Sato stepped out of the meeting and returned at 9:54 a.m.

Index #	Course Title	Sponsor or Requestor	TPA Hours Requested	TPA Hours Approved
19-019	Vision Expo and Conference West 2019	Reed Exhibitions/The Vision Council	159	124
19-024	Eyelid Disorders: Diagnosis and Treatment	Dr. Hugo Higa	2	2
19-025	Diagnosis and Management of Pterygia	Dr. Hugo Higa	1	1
19-026	Diagnosis and Management of Ptosis	Dr. Hugo Higa	1.5	1.5
19-027	Lumps and Bumps	Dr. Hugo Higa	1	1
19-028	Management of Ocular Trauma	Dr. Hugo Higa	1.5	1.5
19-029	Uveitis: Diagnosis and Management	Dr. Hugo Higa	1	1
19-030	Big Island Ophthalmic Education Conference	Hawaii Vision Specialists	8	8
19-031	Pacific Rim Optometric Conference	Hawaii Optometric Association	8	8
19-032	VSP CE and New Lab Tour	Vision Service Plan	3	3
19-033	Managing Myopia Risk Assessment Case Studies	Brien Holden Vision Institute	1	0
19-034	Global Specialty Lens Symposium	Pentavision	6	0
19-035	Utah Optometric Association 2018 Annual Convention	Utah Optometric Association	11	11
19-036	North Star Optometry Seminars 2019	Bryan Vincent, MD	16	16
19-037	Hoopes Vision Optometric Education Seminars	Hoopes Vision	1.5	1.5
19-038	All About MIGS	Clarus Vision Clinic	1	1
19-039	Academy 2018 San Antonio	American Academy of Optometry	19	19
19-040	Kaiser Permanente 2019 Optometry Symposium	Kaiser Permanente	8	8

Index #	Course Title	Sponsor or Requestor	TPA Hours Requested	TPA Hours Approved
19-041	Joint SCCO/USC/VA Symposium	Southern California College of Optometry	8	8
19-042	Improved Approaches to MIGS for Better Patient Outcome	State University of New York College of Optometry	1	1
19-043	Dry Eye Mastery: A Simple System for Clinical & Practice Success	Salus Univ. PA College of Optometry	2	2
19-044	New Frontiers in Frontline Ocular Surface Care	Univ of AL School of Optometry	2	2
19-045	Improving the Recognition of Viral and Bacterial Conjunctivitis	State University of New York College of Optometry	2	2
19-046	Frontline Ocular Surface Disease Care	Univ of AL School of Optometry	2	2
19-047	Academy 2019 Orlando & 3rd WCO Lectures & Workshop	American Academy of Optometry	181	181
19-048	Academy 2019 Orlando & 3rd WCO Scientific Program	American Academy of Optometry	0	0
19-049	Can You Spot Retinal Vascular Abnormalities	Dr Nick Fogt	2	2
19-050	Be an Ocular Foreign Body Fixer	Dr. Caroline B. Pate	2	2
19-051	The Real-World Cataract Evaluation	Dr. Jacqueline Theis	2	2
19-052	Glaucoma Medications: When good drugs do bad things	Dr. Bruce Onofrey	2	2

9. Old Business:

a. Rule Change Discussion and Revision

EO Fernandez referred the Board to two versions of the draft rules in their packets [all sections discussed hereafter will be cited for clarity], and opened by reminding the Board that at the last meeting they had been discussing language to accept transcripts for the continuing education (“CE”) biennial requirement, which would be incorporated into the rule packet that had been approved by the Board in 2018. He continued to remind the Board that based on the counsel of DAG Jacob, if language referring to approval of CE providers was included in the rules, then there would need to be a criterion for making said approval. With this limitation on the language in mind, he came up with two versions for HAR 16-92

Subchapter 7 that would remove the need for a criterion for any sort of approvals. One version would adjust HAR §16-92-39 and create a §16-92-41.5 and the other would only create a §16-92-41.5.

EO Fernandez began the draft rule review by referring the Board to page 5 of both versions, where he removed the definition for "ARBO".

"§16-92-2 Definitions. As used in this chapter or in chapter 459, HRS:

"Adverse effects" means any undesired side effects brought on by the use of diagnostic or therapeutic pharmaceutical agents.

["ARBO" means the Association of Regulatory Boards of Optometry.]

"Board" means the board of examiners in optometry.

"Department" means the department of commerce and consumer affairs.

"Diagnostic pharmaceutical agents" or "DPAs" means topically applied pharmaceutical agents known as anesthetics, cycloplegics, and mydriatics.

"Laboratory tests" means any diagnostic evaluation performed by a licensed medical laboratory pertaining to ocular conditions.

"NBEO" means the National Board of Examiners in Optometry.

"Non-invasive diagnostic procedures" means any procedure used for the purpose of diagnosing ocular diseases or disorders, excluding surgery or injection; provided that a therapeutically certified optometrist may administer injectable agents for anaphylaxis only.

"Spectacle prescription" means an order or formula issued by a practitioner licensed by the State or authorized by the laws of the State to prescribe prescription ophthalmic lenses, setting forth refractive powers for the manufacturing of any lens which has a spherical, cylindrical prismatic power or value or any combination thereof. A spectacle lens prescription expiration date shall be determined by the professional judgment of the licensed practitioner.

"Therapeutic pharmaceutical agents" or "TPAs" means ingested oral agents, or topical solutions, suspensions, and ointments applied to the surface of the eye or adjoining tissues.

Therapeutically certified optometrists are authorized to use and prescribe therapeutic pharmaceutical agents specifically formulated for ophthalmic use, as approved by the Food and Drug Administration, and with..."

The reason is that if ARBO changed their name or went defunct, that definition would need to be updated at a later time, which would involve

going through the rule change process again. He asked if any members had any questions about this change.

CH Shoji asked if ARBO would be referenced at all in the rules, to which EO Fernandez responded yes.

EO Fernandez moved on to page 18 of both versions. HAR §16-92-39(a)(5), which currently states,

“§16-92-39 Educational courses; approval. (a) Professional educational but not practice management courses sponsored by the following are automatically approved:

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

He decided to change (5) to say “Nationally recognized optometric associations” so that any time any association’s status changes, e.g. the American Optometric Association is replaced with something else, as long as they’re nationally recognized, we’d be able to accept them. He explained that it is not that substantial of a change and is more of a style difference.

In version 1 of the two draft rules, EO Fernandez explained that he also added a number (6) to HAR §16-92-39(a), “(6) Regional or national boards of optometry” to the current list of five Board approved sponsors of CE. Since ARBO is a regulatory board association, it would fall under this entry.

DAG Jacob wished to note for the members at this time that if you read HAR §16-92-39(a) it states that “professional education but not practice management courses sponsored by the following are automatically approved.” The new language would include national and regional regulatory boards of optometry, yet ARBO, being a regulatory board association does not appear to provide or sponsor courses.

EO Fernandez mentioned that the change was done in version 1 but was not included in version 2. The inclusion of language that would allow for regulatory board transcripts will be found later in §16-92-41.5 of version 2. One thing to note is that the board will have to discuss ARBO’s transcripts and certificates, and how they would fit in to that section.

Moving on, EO Fernandez stated that he had a question concerning two subsections approved by the Board in 2018 which are found in both of the versions he brought before the Board.

The first HAR §16-92-39(b) states that “Correspondence courses sponsored by optometric journals recognized by the board and webinar courses that are not interactive and provided by approved sponsors 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.”

The second, HAR §16-92-39(c), states that, “Interactive webinar courses provided by approved sponsors shall be approved by the board provided that the number of hours constitutes no more than twenty-five percent of the total number of continuing education hours required per biennium for license renewal.”

He stated that there appears to be an overlap and wondered if the Board could clarify whether these two subsections could be combined or if there was a reason they could not be.

Dr. Chin mentioned that it did seem repetitive.

Mr. Kubota commented that what he sees is that (b) speaks of webinar courses sponsored by optometric journals and (c) is courses that are sponsored by approved sponsors.

DAG Jacob questioned if it were necessary to specify that. He asked if they couldn't just change it to “Courses sponsored by optometric journals, recognized by the board, shall be approved by the board.”

There was a discussion as to whether the term “interactive” should be removed, and whether the use of “twenty-five percent” in both subsections may cause confusion.

DAG Jacob asked if the intent of the Board to limit anybody's 36 hours to only be twenty-five percent webinar, or does it just not want to approve a webinar that constitutes 10 hours?

The Board confirmed the former.

CH Shoji also explained that correspondence courses sponsored by optometric journals are quizzes at the end of the journal that are completed and then mailed in.

DAG Jacob asked if it was a “course”.

Members further explained that one reads an article and then does the quiz to show that they read the article, to which DAG Jacob was unsure if this counted as a “course”.

Dr. Chin stated that he is wondering how that fits in with webinar courses because only journals do it. He was referring to HAR §16-92-39(c), which states that, “Interactive webinar courses provided by approved sponsors shall be approved by the board provided that the number of hours constitutes no more than twenty-five percent of the total number of continuing education hours required per biennium for license renewal.”

After some attempts at reworking the language of the two subsections into one in order to make clear that in any combination of correspondence courses and webinar courses only 25% of the total CE required for renewal would be accepted, Dr. Au suggested that the board defer until the next meeting.

EO Fernandez responded that doing so would put them further back in the rule change process.

DAG Jacob said that he would think about this section stating that he knows what the Board wants and that he would have some language ready.

Moving forward, EO Fernandez referred to HAR §16-92-39(c) in the current rules which states:

“All courses sponsored by persons or organizations other than those outlined above shall be submitted to the board for approval on a form as provided by the board, unless the course is approved by the Council on Optometric Practitioner Education. Forms shall be submitted to the board no more than forty-five days after the course is completed.”

He stated that in researching for the rule change he noticed that the statement “unless the course is approved by the Council on Optometric Practitioner Education” appears to be redundant since regional and national councils are automatically approved sponsors pursuant to HAR §16-92-39(a)(2), “Regional and national optometric societies and councils”. The Council on Optometric Practitioner Education (“COPE”) is a council.

DAG Jacob agreed, and the conversation moved forward. He next informed the Board that he prefers the second version of the rules EO Fernandez drafted because it does not involve adding a regulatory entity to the list of automatically approved CE sponsors in HAR §16-92-39(a). Referring to page 21 of version 2 of the draft rules which states:

“§16-92-40.5 Transcripts of Continuing Education.

- (a) In lieu of certificates, the board shall accept transcripts of continuing education from:
 - (1) Regional or national regulatory board associations or associations of optometry; or
 - (2) Nationally recognized optometric associations.
- (b) The transcripts of continuing education shall contain the following information for each course listed:
 - (1) Name of the licensee;
 - (2) Title of the course;
 - (3) Number of hours of the course; and
 - (4) Date of the course”

DAG Jacob explained that the Board should be concerned with what information must be contained on the transcript citing concerns of requiring information that the transcript providing organizations would be unwilling or unable to provide.

EO Fernandez explained that he had added only that information necessary ((1)-(4) above) to identify whose CE it was, and the course basic information. He suggested that if any of these pieces of information were not on the certificate, then the Board would be unable to properly evaluate it.

The Board was asked if the way the draft section is written would suffice. Members confirmed and stated the most important thing was to remove the signature requirement (by sponsor) in HAR §16-92-40(a)(7) and keep it out of HAR §16-92-41.5(a); the draft language of version 2.

EO Fernandez lastly brought the change in version 1 and 2 to HAR §16-92-42 to the Board’s attention:

“Exceptions. 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. [Eff and comp 4/21/97; am and comp 7/23/99; comp 6/3/02; comp 11/1/10] (Auth: HRS §459-4) (Imp: HRS §459-7)

As it stands right now, someone has to forfeit their license and start restoration before a request for extension can be requested. At which point the Board can, based on “(1)” and “(2)”, provide an exemption for that person to complete their continuing education. Once completed, the licensee could restore their application (license). The new language allows for the board to grant extensions prior to the renewal deadline, so they needn't forfeit their license.

EO Fernandez said he will push through the changes and hopefully in November it will be much faster than today.

b. AllerFocus: Inquiry regarding allergy skin test and treatment options

Is there any reason that an optometrist in Hawaii could not use this testing procedure (allergy skin test and treatment option) in their practice and be in compliance with the scope of practice?

The Board noted that in HRS §459-7.4 outlines what therapeutic pharmaceuticals may be used by TPA certified ODs.

“(a) The use and prescription of therapeutic pharmaceutical agents as established by the board for the treatment and management of conditions of the anterior segment of the human eye, eyelids, and lacrimal system, and the non-invasive surface removal of superficial foreign bodies from the anterior segment of the human eye and eyelids is authorized only for an optometrist licensed under this chapter who meets the requirements of a therapeutically certified optometrist as authorized in this section. A therapeutically certified optometrist may use or prescribe steroidal agents. A therapeutically certified optometrist shall not administer injectable agents except for anaphylaxis. Performing any invasive surgery shall not be allowed. Therapeutic pharmaceutical agents shall not include any of the controlled substances enumerated in sections 329-14, 329-

16, 329-18, 329-20, and 329-22.”

After the Board weighed whether the question referred to skins tests general or to skin around the eye, the Board interpreted, that any subdermal procedure is outside the scope of a TPA certified OD’s practice as defined by HRS §459-7.4.

Upon a motion by Mr. Kubota, seconded by Dr. Au, it was unanimously carried to authorize EO Fernandez to send a letter referring the requester to the scope of practice as defined in HRS 459-7.4(a).

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

10. New Business a. Telehealth, telepractice, and online eye exams, test and related services

Discussion on the use and practice of remote practice, i.e. Telehealth and Telepractice, and will include a review of the USDA recall of Visibly (formerly known as Opternative), and the withdrawal of the test from the market.

DAG Jacob noted that if there is no prohibition in the statutes for such practices then it would be a standards of care question. For example, if someone is TPA certified and they are observing a patient place drops in their eyes remotely, then this may or may not fall outside the standards of care.

HAR §16-92-49(8) states, “Malpractice, or an act or acts below the standard of care held by practitioners in the same community.”

He noted that the Medical statutes outline that an initial in-person relationship must be formed prior a licensed physician can utilize telehealth.

DAG Jacob noted another issue would be a person on the mainland is trying to give telehealth services here in Hawaii, which would be unlicensed practice.

Dr. Au agreed citing that the practice of optometry would be located where the patient is.

