

**THE BOARD OF EXAMINERS IN OPTOMETRY**  
Professional & Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

**MINUTES OF MEETING**

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").

Date: Monday, July 30, 2012

Time: 8:30 a.m.

Place: King Kalakaua Conference Room  
King Kalakaua Building  
335 Merchant Street, 1st Floor  
Honolulu, Hawaii 96813

Present: Kevin K. Lui, O.D., Chair  
Reid Saito, O.D. Vice Chair  
Gayle Chang, Public Member  
Geoffrey Reynolds, O.D.  
Joy Shimabuku, Public Member  
Elmira K.L. Tsang, Deputy Attorney General ("DAG")  
Sandra Matsushima, Executive Officer ("EO")  
Jennifer Fong, Secretary

Excused: Jere H.E. Loo, O.D.

Guests: None.

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 Lui called the meeting to order at 8:35 a.m.

2. Additions/  
Revisions to  
Agenda: None.

3. Introduction of  
Keali'i S. Lopez,  
Director, DCCA: EO Matsushima stated that Director Lopez was not able to attend today's meeting, however, she is planning to attend the Board's next meeting, which is currently scheduled to be held on September 24, 2012.

4. Approval of Minutes: Upon a motion by Ms. Chang, seconded by Vice Chair Saito, it was voted on and unanimously carried to approve both the board and executive session minutes of the May 14, 2012 Board meeting.

5. Chair's Report on the Association of Regulatory Boards of Optometry ("ARBO") 2012 Annual Meeting, June 24-26, 2012, Chicago, Illinois: Chair Lui attended the meeting. A copy of his written report was distributed to the members. Highlights from Chair Lui's report include:

- ◆ *The National Center for Clinical Testing in Optometry ("NCCTO") is consolidating multiple NBEO Part III testing sites into one facility which allows unprecedented levels of consistency and fairness in administering the practical portion of the exam.*
- ◆ *Colored contact lenses, even ones with plano or no power, are classified as medical devices and cannot be sold by unlicensed individuals. Often times offending sites are beauty salons and convenience stores. State optometry boards nationwide have expressed frustration that enforcement of this is frequently not a priority amongst enforcement agencies.*

Chair Lui asked the EO if RICO could keep the Board informed about unlicensed activity such as the sales of colored contact lenses.

The EO replied that RICO generally does not inform the Board about complaints regarding unlicensed activity as that does not fall under the Board's purview. The only reason the Board may be informed is if the complaint is initiated by the board's office. In addition, RICO does not disclose details about pending complaints and/or investigations.

- ◆ *The American Optometric Association ("AOA") State Government Relations Center report discussed capping and steering, which describes the business strategy of "capturing" consumers and "steering" them to a business. "Deal-of-day" websites like Groupon and LivingSocial are contemporary examples of this. The AOA cautioned they may run afoul of optometry statutes in the fee-splitting arrangement: These internet services garner a fee for consumers steered to a business. Another capping and steering concept is the SoloHealth Station kiosks that provide free health screenings that include vision, weight, blood pressure and body weight index. Doctors pay SoloHealth for any consumers steered to them. This may also constitute illegal fee-splitting.*

*The AOA also questioned whether it is illegal for doctors to bestow rewards to patients who refer others. The concern is whether the attraction of an incentive could cloud the judgement of the person making the referral. The American Medical Association has issued a policy discouraging this practice due to the potential for undue influence. The Centers for Medicare and Medicaid Services*

*prohibit health providers from offering or receiving rewards for patient referrals from other providers.*

Executive  
Session:

At 8:52 a.m., it was moved by Ms. Chang, seconded by Vice Chair Saito, and unanimously carried to enter into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

At 8:58 a.m., it was moved by Ms. Shimabuku, seconded by Ms. Chang, and unanimously carried to move out of executive session.

After discussion, the Board requested that the EO place "capping and steering" on the next meeting's agenda. They also directed the DAG to review the statutes and rules and report if there is any language that addresses the practice of capping and steering.

- ♦ *The AOA recently charged the Accreditation Council on Optometric Education ("ACOE") with the responsibility of becoming an accrediting body for continuing education ("CE") through the accreditation of CE providers. ARBO objected because: 1) ACOE is part of AOA and receives funding from them. Since AOA is a major provider of CE, a conflict of interest exists. 2) This will duplicate the Council on Optometric Practitioner Education ("COPE") CE accreditation process already in place. 3) ARBO questioned how accreditation of CE providers will assure that individual CE courses will be properly evaluated for content, freedom from commercial bias, and relevancy.*

*ACOE acknowledged its close ties to AOA, however, ACOE executed a memorandum of understanding between itself and AOA outlining its freedom from oversight in accrediting decisions. Furthermore, to receive its federal recognition by the US Department of Education as an accrediting body ACOE must regularly demonstrate its independence.*

- ♦ *ARBO's OE TRACKER is a free service to ARBO's Member Boards which captures and stores CE attendance data that can be accessed online by optometrists and their licensing board. ARBO recommends a process where Hawaii requires licensees to submit all COPE and non-COPE CE certificates to OE Tracker. ARBO can then create a custom report detailing TPA and DPA CE credits accumulated by each licensee for any desired period.*

Vice Chair Saito asked how many states use the OE Tracker system.

Chair Lui said about 18 states use it in some fashion.

The EO asked what the procedure is to use the OE Tracker.

Chair Lui stated that the licensees will have to join ARBO to enroll in the program and submit their CE certificates to ARBO. The Board will then have the ability to view a report of the courses the licensee has taken.

The EO asked if the Board will have to look up every licensee to determine if they have met the CE requirement.

Chair Lui said yes.

The EO remarked that she did not know of any other boards that require their licensees to join a professional organization.

Executive  
Session:

At 9:09 a.m., it was moved by Dr. Reynolds, seconded by Vice Chair Saito, and unanimously carried to enter into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

At 9:15 a.m., it was moved by Ms. Shimabuku, seconded by Vice Chair Saito, and unanimously carried to move out of executive session.

Ms. Chang asked if using OE tracker would be voluntary or required.

Vice Chair Saito said if the Board decides to use the system, they should have everyone use it.

The EO noted that their current rules require proof of completion of CEs by submitting their certificates to the Board. Should the Board decide to utilize the EO Tracker system, the rules will need to be amended.

The EO added that currently, the Board conducts a 100% audit of all OD licensees, while other professional licensees are randomly audited by a small percentage.

Dr. Reynolds said he feels it is in the Board's best interest to do research and carefully consider all of the issues before changing the current procedures.

The Board requested that the EO place "ARBO OE Tracker" on the next meeting's agenda for further discussion. They also directed the DAG to review the statutes and rules and report if using the system would be allowed.

6. Legislative Update - The EO reported that the two bills had passed. HB 2257 became Act 247 and HB 2258 became Act 248.  
HB 2257, H.D. 1,  
S.D. 1, & HB 2258,  
H.D. 2, S.D. 1: Chair Lui noted that he provided written comments on the bills which were distributed to the Board for their information.

There was no discussion on Chair Lui's comments.

7. Continuing Education:

### **Continuing Education Course Report**

Chair Lui moved to approve the following continuing education courses:

<u>Index #</u>	<u>Program Title/Sponsor</u>	<u>CE</u>	<u>TPA Hours</u>
12-013	2012 Annual Education Conference Montana Optometric Association	31	7
12-019	2012 Victoria Conference Pacific University College of Optometry	20	18
12-020	Innovations in Ophthalmology Aloha Laser Vision	2	2
12-021	Maui 2012: A Meeting of Clinical Excellence Review of Optometry	14	13
12-022	5th Annual CE in Paradise Tyrie Jenkins, M.D., Inc.	6	6
12-025	Case Studies in Cornea and Anterior Segment Hawaiian Eye Center	2	2

Ms. Shimabuku seconded the motion, it was voted on and unanimously carried.

### Applications:

### **Ratification List**

Upon a motion by Dr. Reynolds, seconded by Vice Chair Saito, it was voted on and unanimously carried to ratify the following:

#### Approved for Optometrist License

- DONABAUER, Amanda
- HAY, Trevor
- IMADA, Paula

- LEE, Matthew
- PEARCE, Matthew
- PEARCE, Nicoleta
- SANTELLI, Natalie
- YANG, Haidong
- YAZDAN, Shervin

Approved for TPA Certification

- DUONG, Han
- IMADA, Paula
- PEARCE, Matthew
- SKYER, Jordan
- YANG, Haidong
- YU, Cheryl

9. Next Meeting: Monday, September 24, 2012  
8:30 a.m.  
King Kalakaua Conference Room  
King Kalakaua Building  
335 Merchant Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813

9. Adjournment: With no further business to discuss, Chair Lui adjourned the meeting at 9:31 a.m.

Taken by:

/s/ Jennifer Fong

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Jennifer Fong  
Secretary

Reviewed by:

/s/ Sandra Matsushima

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Sandra Matsushima  
Executive Officer

8/14/12

[ ] Minutes approved as is.

[ ✓ ] Minutes approved with changes; see minutes of \_\_\_\_\_.