

DISPENSING OPTICIAN PROGRAM

Professional and 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: Wednesday, March 13, 2013

Time: 10:00 a.m.

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

Present: Doss K. Tannehill, DIO, Chairperson
Peter E. Ackman, DIO
Amy Endo, DIO
Sheree Kon-Herrera, Public Member
Elmira K. Tsang, Deputy Attorney General ("DAG")
Candace Ito, Executive Officer
Faith Nishimura, Secretary

Call to Order: There being a quorum present, the meeting was called to order by Mr. Tannehill at 10:05 a.m.

Additions to Agenda: None.

Approval of the February 17, 2010 Meeting Minutes: It was moved by Ms. Endo, seconded by Ms. Kon-Herrera, and unanimously carried to approve the minutes of the February 17, 2010 meeting as circulated.

Election of Officers: The floor was opened for nominations for the office of Chairperson. Mr. Tannehill nominated Ms. Endo as Chairperson. The nomination was seconded by Mr. Ackman. Ms. Endo declined the nomination. The nomination was withdrawn. Ms. Endo nominated Mr. Ackman as Chairperson. Mr. Ackman declined the nomination. The nomination was withdrawn. Mr. Ackman nominated Mr. Tannehill as Chairperson. The nomination was seconded by Ms. Endo. Mr. Tannehill was elected Chairperson by acclamation.

The floor was opened for nominations for the office of Vice Chairperson. Mr. Tannehill nominated Ms. Endo as Vice Chairperson. The nomination was seconded by Ms. Kon-Herrera. There were no other nominations for Vice Chairperson. Ms. Endo was elected Vice Chairperson by acclamation.

National Optician's Practical Examination: The following material regarding the National Optician's Practical Examination ("Practical Exam") was distributed to the Committee members:

- A letter dated December 18, 2012 from Susan Larson, National Commission of State Opticianry Regulatory Boards ("NCSORB") Manager, regarding the development of the computer-based National Optician's Practical Examination;
- Pearson VUE's Candidate Manual for the National Optician's Practical Examination covering both the spectacle examination and the contact lens examination; and
- "National Optician's Examination Development Overview" provided by Ms. Larson, NCSORB Manager.

The examination was designed by NCSORB with the psychometric consulting services of Professional Credentialing Services, Inc. The test administrator is Pearson VUE. The Practical Exam assesses the candidate's knowledge and skills in accurately performing the tasks required in a professional and standardized environment.

The Committee members related that the practical examination is necessary. Successful passage of the Practical Exam shows that the applicant has the minimum knowledge and skills to practice as a dispensing optician and this provides consumer protection.

Ms. Endo related that from the material provided, the Practical Exam appears to be very thorough. She requested to view more examination questions, if possible.

The Executive Officer related that DCCA is required to be a member of NCSORB to use the practical examination. The Executive Officer will follow-up with the Licensing Administrator regarding membership and will also follow-up with NCSORB to view more of the examination questions.

Hawaii
Administrative
Rules:

The Executive Officer asked the Committee to review and discuss a draft of the following proposed amendments:

"§16-91-4(b) *Each licensed dispensing optician may wear an identification tag for the purpose of identifying to the customer that the person is a licensed dispensing optician* and that the licensed dispensing optician who provides direct personal supervision to an unlicensed person shall ensure that the unlicensed person wears a conspicuously placed identification tag stating the title "optician apprentice". The tag may state the unlicensed person's name."

The requirements for dispensing optician identification tags are stated in HRS section 458-6.9. The Committee discussed whether it is necessary to restate these requirements in this section of the rules. The Committee agreed that restating the language in HRS section 458-6.9 in this section of the rules is helpful to understand the identification tag requirements for the dispensing optician and the optician apprentice.

Executive
Session:

It was moved by Mr. Tannehill, seconded by Ms. Endo, and unanimously carried to enter into executive session at 10:42 a.m. pursuant to section 92-4 and section 92-5(a)(4), HRS, to consult with the Committee's attorney on questions and issues pertaining to the its powers, duties, privileges, immunities and liabilities.

EXECUTIVE SESSION

At 11:28 a.m., it was moved by Mr. Tannehill, seconded by Mr. Ackman, and unanimously carried to return to open session. The room was reopened to the public.

The Committee continued its review and discussion on the draft of proposed amendments:

§16-91-2 Definitions.

" "Personal supervision of an ophthalmologist or optometrist" means the dispensing optician shall fit or duplicate contact lenses or artificial eyes upon the written order of the prescribing ophthalmologist or optometrist and, refer the intended wearer back to the prescribing ophthalmologist or optometrist to ensure that the client has received contact lenses of the proper fit and prescription."

The Committee discussed whether it could require a dispensing optician to refer the client back to the prescribing ophthalmologist or optometrist since Act 301, SLH 1997 repealed HRS §458-12.5, "Dispensing contact lenses, notice", which required the dispensing optician to give the client a written notice that the client should return to the prescribing ophthalmologist or optometrist to ensure the contact lenses are of proper fit and prescription.

Mr. Tannehill related that referring the client back to the prescribing ophthalmologist or optometrist provides consumer protection. Mr. Ackman related that referring the client back to the prescribing ophthalmologist or optometrist burdens the consumer with the additional cost of a follow-up office visit. He also believes that the requirement is not enforceable.

After further discussion, the Committee determined that it did not have the statutory authority to require the dispensing optician to refer the client back to the prescribing ophthalmologist or optometrist.

It was moved by Mr. Tannehill, seconded by Ms. Endo, and unanimously carried to remove the requirement for the dispensing optician to refer the client back to the prescribing ophthalmologist or optometrist from the definition of "Personal supervision of an ophthalmologist or optometrist".

§16-91-11~~(c)~~(b)(1): "The equivalent of a high school education and ~~three~~ two years of full-time practical and mechanical optical work experience ~~as a~~ in opticianry ~~[apprentice]~~ tasks;" .

The Committee discussed the terminology that describes the experience required for a dispensing optician license. The Committee considered replacing "opticianry tasks" with "opticianry skills". After further discussion, the Committee agreed that work experience as an opticianry apprentice best describes the type of experience required.

It was moved by Mr. Tannehill, seconded by Ms. Endo, and unanimously carried to retain "work experience as an opticianry apprentice".

§16-91-11~~(d)~~(c): "To prove an applicant's work experience as required by subsection ~~(c)(1)~~(b)(1), an applicant shall submit with the application for ~~[examination and certificate of]~~ licensure, notarized statements signed by a dispensing optician,

ophthalmologist, or optometrist attesting that the applicant has had at least ~~[three]~~ two years of full-time practical and mechanical optical work experience ~~[as an]~~ in opticianry ~~[apprentice]~~, including experience with eyeglasses and contact lenses or *its equivalent* under the direct personal supervision of a dispensing optician, ophthalmologist, or optometrist."

The Executive Officer asked the Committee if the phrase "or its equivalent" pertained to the two years of full-time experience; or to the experience with eyeglasses and contact lenses. Mr. Tannehill related that there is no equivalent for the two years of full-time experience or the experience with eyeglasses and contact lenses. He suggested that "or its equivalent" be deleted from the proposed rule amendment.

After discussion, the Committee agreed that using language consistent with HRS section 458-1 would clarify the optical work experience required. It also agreed to retain "work experience as an opticianry apprentice" for consistency throughout the chapter.

It was moved by Mr. Tannehill, seconded by Ms. Endo, and unanimously carried to propose the following amendment:

§16-91-11~~[(d)]~~(c) To prove an applicant's work experience as required by subsection ~~[(c)(1)]~~(b)(1), an applicant shall submit with the application for ~~[examination and certificate of]~~ licensure, notarized statements signed by a dispensing optician, ophthalmologist, or optometrist attesting that the applicant has had at least ~~[three]~~ two years of full-time practical and mechanical optical work experience as an opticianry apprentice, including experience ~~[with eyeglasses and contact lenses or its equivalent]~~ with lenses, spectacles, eyeglasses, contact lenses, or appurtenances thereto, under the direct personal supervision of a dispensing optician, ophthalmologist, or optometrist.

With regard to the proposed new sections 16-91-50 and 16-91-51 pertaining to the Dispensing Optician Advisory Committee, the Committee wishes to consider adding an additional licensee member, increasing the number of Committee members to five.

The Committee would also like to consider requiring at least one meeting per year.

The Executive Officer related that there are other amendments to be made for clarity and to add the requirement for the practical examination.

Legislation: Senate Bill No. 1259, S.D. 1/House Bill No. 143, H.D. 1 Relating to Freedom of Information

These measures clarify that a licensee does not have a significant privacy interest in records that show relevant experience for licensure, trade examination results, or possession of adequate bonding and makes this licensing information public information subject to disclosure.

Senate Bill No. 1259, S.D. 1: The Senate Committee on Commerce and Consumer Protection referred this measure to the Senate Committee on Judiciary and Labor ("JDL") on February 12, 2013. The JDL did not hold a hearing for this bill and the measure did not crossover to the House. Thus this bill will no longer be considered for adoption during this legislative session.

House Bill No. 143, H.D. 1 crossed over to the Senate and is scheduled for a joint hearing by the Senate Committee on Commerce and Consumer Protection, and Committee on Technology and the Arts on March 20, 2013.

The Executive Officer distributed a Guide to Hawaii's Uniform Information Practices Act to the Committee for its review. This handbook is a publication of the Office of Information Practices. The Executive Officer noted that the handbook states:

"An agency may withhold access to a record if disclosure of the record would constitute a "clearly unwarranted invasion of personal privacy. To withhold a record under this exception, an agency must be able to show that:

- (1) An individual has a **significant privacy interest** in the information contained in the record; and
- (2) The significant privacy interest is not outweighed by the **public interest in disclosure**.

An agency must balance the significant privacy interest against the public interest in disclosure of the information. If the public interest is found to outweigh the individual privacy interest, the agency must disclose the information."

Mr. Tannehill agreed that an agency must balance an individual's significant privacy interest against the public interest in disclosure of information to provide consumers with information that is beneficial and helpful. However, disclosure of experience records and examination results in its entirety does not outweigh the significant privacy interest of a licensee. The issuance of a license is evidence that the licensee has met all requirements. Information such as license number, effective date and expiration date of licensure, license status and complaint history is beneficial and helpful to consumers and is available to the public.

The Committee also expressed concerns that the National Opticianry Competency Examination and the Contact Lens Registry Examination could be considered as trade examinations. The Committee believes that the practice of dispensing optician is not a trade. The Executive Officer related that in general, a trade is a profession that does not require a college degree. Since a college degree is not required to obtain a Hawaii dispensing optician license and the bill does not define "trade examination," the National Opticianry Competency Examination and the Contact Lens Registry Examination could be considered to be trade examinations. Mr. Tannehill stated that dispensing opticians are healthcare providers and are not a trade.

The Committee had concerns that dispensing optician examination scores could be made a public record. The Committee came to a consensus to oppose this measure for the reasons stated above and to request that the term "trade examination" be clarified.

Senate Bill No. 506, S.D. 2/House Bill No. 323 Relating to Professional and Vocational Licensing

These measures: (1) clarify that licensing authorities that consider relevant education, training, or service of a military veteran applicant and determines that the applicant meets or exceeds the requirements for licensure in Hawaii, the licensing authority shall accept the results of the passage of a national or regional exam accepted by statute or rule in the specific licensing area or the equivalent as determined by the licensing authority; and (2) require a certificate or evidence satisfactory to the licensing authority of having passed a national or regional exam or the equivalent to be provided to the licensing authority.

The DCCA submitted testimony in support of the intent of these measures.

House Bill No. 323: This measure was deferred by the House Committee on Veterans, Military and International Affairs and will not be moving forward this session.

Senate Bill No. 965, S.D. 1/House Bill No. 718 Relating to Professional and Vocational Licensing

These measures: (1) establish qualifications for “nonresident military spouses” eligible for expedited procedures for professional and vocational licensing by endorsement or reciprocity, and temporary licensing; and (2) establish requirements for nonresident military spouses to maintain licenses and requires reporting of changes in status or circumstances that may affect licensure.

The Executive Officer related that these bills provide for temporary licensure that would be in effect during the time the service member spouse is stationed in Hawaii. The DCCA submitted testimony in support of the measure.

House Bill No. 718: This measure was referred to the House Committee on Veterans, Military and International Affairs and was not scheduled for a hearing. Thus this bill will not be moving forward this session.

House Bill No. 1381, H.D. 2 Relating to Professional and Vocational Licensing

This measure: (1) Limits licensure by endorsement or reciprocity for nonresident military spouses to those spouses who are present in the State for at least one year pursuant to DOD orders; and (2) Limits consideration of military service or training for licensure by endorsement or reciprocity to veterans honorably discharged within two years of application and excludes medical doctors, dentists, CPAs, and other licensees for which specific endorsement or reciprocity regulations exist.

It is unclear whether this bill would require the Program to license military service members via endorsement or reciprocity. The Committee believes that all applicants should meet the requirement for licensure as set forth in the Dispensing Opticians laws and rules because these licensing standards were established to protect the public. The Program currently considers experience

earned under the supervision of a licensed dispensing optician, optometrist or ophthalmologist regardless if this experience was obtained while the applicant was a military service member and does not support licensure by endorsement or reciprocity for dispensing opticians as proposed in this bill.

The Committee came to a consensus to submit testimony on this bill to express its concerns that military service members may be able to qualify for a license without meeting the license requirements.

A hearing is scheduled by the Senate Committee on Public Safety, Intergovernmental and Military Affairs on March 14, 2013.

Correspondence: None.

Next Meeting To be determined.
Date:

Adjournment: There being no further business to discuss, the meeting was adjourned at 12:10 p.m.

Taken and recorded by:

/s/ Faith Nishimura
Faith Nishimura
Secretary

Reviewed and approved by:

/s/ Candace Ito
Candace Ito
Executive Officer

Cl:fn

4/12/13

[X] Minutes approved as is.

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