



Board of Examiners in Optometry
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AGENDA

Monday, August 22, 2022
In-Person Meeting
AmericInn- Conference Room
312 Island Drive, Fort Pierre, SD 57532
8:00 a.m. (CST)

1. Approval of Agenda
2. Board Member Request for Conflict Waiver
3. Public Comment
4. Approve minutes from the regular meeting on March 28, 2022, and virtual meetings on June 2, 2022, and June 22, 2022.
5. Treasurer's Report
 - a. Financial Reports
 - b. Database/Renewal Software Update
6. Board Review and Approve CE Courses
 - a. Non-COPE CE Approval
 - b. Office of Inspector General Advisory Opinion
7. Old Business
 - a. National and State Issues Monitored
8. New Business
 - a. Licensing
 - 23-1, 23-2, & 23-3
 - b. Administrative Rule Update
 - c. Board Member Training: Executive Session
 - d. Request for Advisory Opinion/Declaratory Rulings
9. Time and place of next meeting
10. Adjournment

Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Board of Examiners in Optometry (605-279-2244) or sdoptboard@goldenwest.net at least 24 hours advance of the meeting to make any necessary arrangements.

The public may listen to and participate in the meeting by calling 1-253-215-8782 (Meeting ID: 673 963 1412).



South Dakota Board of Examiners in Optometry
Meeting Minutes
March 28, 2022
8:00 AM (CST)
AmericInn- Conference Room
312 Island Drive, Fort Pierre, SD 57532

Board Members		Board Staff Present
Ashley Crouch, OD	Present	Deni Amundson, Executive Secretary Megan Borchert, Board General Counsel
Jamie Farmen, Consumer Member	Present	
Brian Gill, OD	Present	Guests
Angela Hase, OD, President	Present	
Scott Schirber, OD	Present	
		Deb Mortenson, South Dakota Optometric Society

Attendance: President Hase called the meeting to order at 8:00 AM on March 28, 2022.

1. Approval of Agenda:

Board Action: B Gill moved to approve the agenda, seconded by J Farmen. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

2. Conflict of Interest: All board members reported no conflict with agenda items.

3. Public Comment: No public comment

4. Approval Minutes:

Board Action: S Schirber moved to approve the minutes from the regular meeting on August 25, 2021, and the Zoom/telephonic meetings on September 15, 2021, and January 5, 2022, seconded by A Crouch. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

5. Financial Reports:

Board Action: Deni Amundson presented the treasurer's report found on pages 9-11 of the agenda packet. J Farmen moved to accept treasurer's report, seconded by B Gill. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Deni Amundson reported on two options for a database upgrade. A summary can be found on pages 12-21 of the agenda packet. A final vote will be made later this meeting when reviewing contracts.

6. Board Review and Approve CE Courses:

Board Action: The Board reviewed one request for pre-approval of continuing education. This request was declined; however, the board is open to reviewing the certificates if any licensees attend courses.

The board also discussed the previous approval authority granted to executive secretary, D Amundson, to allow her to automatically approve any COPE approved continuing education without full board review. 36-7-20.2 has recently been amended to automatically approve all COPE approved continuing education; however, this change does not take effect until July 1, 2022. A Crouch moved to extend the authority granted to D Amundson to approve COPE courses through June 30, 2022, when the amended statute takes effect, seconded by S Schirber. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

7. Old Business

A. National and State Issues Monitored: Deb Mortenson, Executive Director for the South Dakota Optometric Society, provided updates on drug-eluting contact lenses and continuing education being offered by the American Optometric Association. No other new information or action taken, but both issues will continue to be monitored.

8. New Business:

A. Licensing:

Board reviewed application 22-4.

Board Action: B Gill moved to approve application for licensure, seconded by S Schirber. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

New Licensee:

- Gregory Evans

*The board took a break at 10:50am CST. This ends part 1 of the recorded minutes. Part two begins after break at 11:00am CST.

B. Legal Counsel Update: Megan Borchert reported that, despite her move to the Attorney General's office, she will remain general counsel for this board. No action taken.

C. Statute Update:

D Amundson reported that pages 22-29 of the agenda packet contain the final amended optometry statutes SDCL Chapter 36-7 that have been approved by the state legislature and Governor Noem. No action taken.

D. Administrative Rule Review:

D Amundson reported that pages 30-58 of the agenda packet contain amendments to ARSD Chapter 20:50. An update was also provided on page 59 from the Association of Regulatory Boards of Optometry regarding potential revisions to their COPE categories. Discussion was had regarding section 20:50:08- Continuing Education Requirements- and the need to allow for more self-directed learning credits and how to classify and track those credits. The board also discussed feedback received from the South Dakota State Medical Association and South Dakota Academy of Ophthalmology. M Borchert and D Amundson will review suggestions and continue to work with interested parties in drafting a revised administrative rule packet to be reviewed at the next meeting in April. Tabled until next meeting.

E. Contracts:

Board Action: J Farmen moved to approve the FY23 contract for the South Dakota Optometric Society using the same terms as FY22, seconded by A Crouch. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Board Action: S Schirber moved to approve the FY23 contract for Codewise with the intention of increasing the amount of contract to include the expense of upgrading the SD Board of Examiners database, with a not to exceed amount of \$25,000, seconded by B Gill. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Board Action: S Schirber moved to approve the FY23 contract for Scott Kennedy using the same terms as FY22, seconded by J Farmen. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Board Action: A Crouch moved to approve the FY23 contract for Lisa Kollis-Young using the same terms as FY22, seconded by B Gill. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Board Action: At 11:18am CST, J Farmen moved to enter into executive session pursuant to SDCL 1-25-2 to prepare for contract negotiations.

*This ends part 2 of the recorded minutes. The board moved out of executive session at 11:51am CST. This begins part 3 of recorded minutes.

Board Action: S Schirber moved to approve the contract for Deni Amundson for FY23 with a 6% increase in salary, a 10% increase in office rent, a 15% one-time bonus from current salary. Other terms to remain the same as FY22, with a not to exceed amount of \$44,751.24, seconded by J Farmen. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

9. Time and Place of Next Meetings:

Monday, April 25, 2022- Zoom Meeting

4:00pm MST/ 5:00pm CST

<https://us02web.zoom.us/j/6739631412>

Call in: 253-215-8782

Meeting ID: 673096301412

Monday, August 22, 2022- In-Person Meeting

AmericInn- Conference Room

312 Island Drive, Fort Pierre, SD 57532

8:00am (CST)

10. Adjournment:

Board Action: J Farmen moved to adjourn meeting at 12:10pm CST, seconded by S Schirber. Vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	



South Dakota Board of Examiners in Optometry

Virtual Meeting Minutes

June 2, 2022
12:30 PM (CST)

DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY THE
BOARD

Board Members		Board Staff Present
Angela Hase, OD, President	Present	Deni Amundson, Executive Secretary Megan Borchert, Board Attorney
Scott Schirber, OD	Absent	
Ashley Crouch, OD	Present	Public Attendance
Brian Gill, OD	Present	
Jamie Farmen, Consumer Member	Absent	
		None

* A call-in number and physical location were noticed as available for public access to listen to and participate in the meeting.

1. Attendance: President Hase called the meeting to order at 12:30 PM on June 2, 2022.

2. Approval of Agenda:

Board Action: A Crouch moved to approve the agenda, seconded by B Gill. Roll call vote:

Crouch	YES	Hase	YES
Farmen	Absent	Schirber	Absent
Gill	YES	3 YES, MOTION CARRIED	

3. Conflict of Interest: All board members reported no conflict with agenda items.

4. License Application:

Board reviewed application 22-5.

Board Action: A Crouch moved to approve license application 22-5, seconded by B Gill. Roll call vote:

Crouch	YES	Hase	YES
Farmen	Absent	Schirber	Absent
Gill	YES	3 YES, MOTION CARRIED	

New Licensee:

- Taylor Haley

5. Procedure for Application Approval: Tabled until next meeting

6. Public Comment: None

7. Time and Place of Next Meeting:

ZOOM MEETING & ADMINISTRATIVE RULE PUBLIC HEARING:

Date: Wednesday, June 22, 2022

Time: 12:00PM (CST)

Location: Virtual/Zoom Meeting

IN-PERSON MEETING:

Date: Monday, August 22, 2022

Time: 8:00AM (CST)

Location: AmericInn- Conference Room, 312 Island Drive, Fort Pierre, SD 57532

8. Adjournment:

Board Action: At 12:53PM, B Gill moved to adjourn meeting, seconded by A Crouch. Roll call vote:

Crouch	YES	Hase	YES
Farmen	Absent	Schirber	Absent
Gill	YES	3 YES, MOTION CARRIED	



South Dakota Board of Examiners in Optometry

Virtual Meeting & Public Hearing Minutes

June 22, 2022
12:00PM (CST)

DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY THE
BOARD

Board Members		Board Staff Present
Angela Hase, OD, President	Present	Deni Amundson, Executive Secretary
Scott Schirber, OD, Vice President	Present	
Ashley Crouch, OD	Present	
Brian Gill, OD	Present	
Jamie Farmen, Consumer Member	Present	
		Public Attendance
		Timothy Engle, Legal Counsel, South Dakota State Medical Association
		Ryan Geraets, South Dakota Academy of Ophthalmology
		Unidentified Individual #1
		Unidentified Individual #2

* A call-in number and physical location were noticed as available for public access to listen to and participate in the meeting. Both unidentified individuals were removed from the Zoom meeting due to inappropriate behavior.

1. Attendance: President Hase called the meeting to order at 12:00 PM on June 22, 2022.

2. Approval of Agenda

Board Action: A Crouch moved to approve the agenda, seconded by J Farmen. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

3. Conflict of Interest: J Farmen indicated she is familiar with one of the applicants and she will be abstaining from voting to approve that license.

4. Public Hearing to Adopt Proposed Rules in ARSD 20:50

At 12:05pm President Hase called the public hearing to order. Opponent and proponent testimony as heard. For public hearing minutes, see Form 10 MINUTES OF PUBLIC HEARING.

Board Action: S Schirber moved to adopt the proposed rules in ARSD 20:50 with no further amendments. Seconded by B Gill. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

The public hearing was concluded at 12:32pm.

5. New Business:

License Applications:

Board reviewed application 22-6.

Board Action: A Crouch moved to approve application 22-6. Seconded by B Gill. Roll call vote:

Crouch	YES	Hase	YES
Farmen	Abstain	Schirber	YES
Gill	YES	4 YES, MOTION CARRIED	

New Licensee:

- Matthew Blaseg

Board reviewed application 22-7

Board Action: S Schirber moved to approve application 22-7. Seconded by J Farmen. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

New Licensee:

- Steven Schaefer

Board reviewed application 22-8

Board Action: A Crouch moved to approve application 22-8. Seconded by S Schirber. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

New Licensee:

- Christian DeJongh

Board reviewed application 22-9

Board Action: J Farmen moved to approve application 22-9. Seconded by A Crouch. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

New Licensee:

- Kristin Mohr

Application Review Procedure:

Discussion was had regarding the need to expedite licensing for applicants and create a more efficient internal process. S Schirber moved to delegate the board president and executive secretary to authorize approval of applications with no known issues. These approvals will be presented to the full board to be ratified at the next meeting. Seconded by A Crouch. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

New Application:

An updated application was presented to the board that contained the updated statutes and procedures that will take effect on July 1, 2022. A Crouch moved to approve this application and authorize D Amundson to edit the administrative rules once that revision process was complete without further Board review. Seconded by S Schirber. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

6. Public Comment: None

7. Time and Place of Next Meeting:

Next Meeting: Monday, August 22, 2022, 8:00AM (CST): AmericInn- Conference Room, 312 Island drive, Fort Pierre, SD 57532.

8. Adjournment:

Board Action: At 12:45pm, B Gill moved to adjourn meeting, seconded by S Schirber. Roll call vote:

Crouch	YES	Hase	YES
Farmen	YES	Schirber	YES
Gill	YES	5 YES, MOTION CARRIED	

Remaining Authority by Object/Subobject

Expenditures current through 07/02/2022 09:20:27 PM

HEALTH -- Summary

FY 2022 Version -- AS -- Budgeted and Informational

FY Remaining: 0%

09208 Board of Optometry - Info							PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL	
EMPLOYEE SALARIES							
5101030 Board & Comm Mbrs Fees	1,444	1,800	0	0	-356	0.0	
Subtotal	1,444	1,800	0	0	-356	0.0	
EMPLOYEE BENEFITS							
5102010 Oasi-employer's Share	164	138	0	0	26	15.9	
Subtotal	164	138	0	0	26	15.9	
51 Personal Services							
Subtotal	1,608	1,938	0	0	-330	0.0	
TRAVEL							
5203020 Auto Priv (in-st.) L/rte	200	0	0	0	200	100.0	
5203030 Auto-priv (in-st.) H/rte	1,000	643	0	0	357	35.7	
5203100 Lodging/in-state	380	335	0	0	45	11.8	
5203140 Meals/taxable/in-state	258	0	0	0	258	100.0	
5203150 Non-taxable Meals/in-st	200	136	0	0	64	32.0	
Subtotal	2,038	1,114	0	0	924	45.3	
CONTRACTUAL SERVICES							
5204020 Dues & Membership Fees	850	850	0	0	0	0.0	
5204050 Computer Consultant	1,000	128	0	0	872	87.2	
5204060 Ed & Training Consultant	4,000	4,000	0	0	0	0.0	
5204080 Legal Consultant	22,000	7,196	0	0	14,804	67.3	
5204090 Management Consultant	38,700	37,051	0	0	1,649	4.3	
5204100 Medical Consultant	2,000	0	0	0	2,000	100.0	
5204180 Computer Services-state	278	0	0	0	278	100.0	
5204181 Computer Services-state	0	90	0	0	-90	0.0	
5204200 Central Services	1,380	1,062	0	0	318	23.0	
5204204 Central Services	305	246	0	0	59	19.3	
5204207 Central Services	306	524	0	0	-218	0.0	
5204590 Ins Premiums & Surety Bds	600	825	0	0	-225	0.0	
Subtotal	71,419	51,972	0	0	19,447	27.2	
SUPPLIES & MATERIALS							
5205310 Printing-state	800	0	0	0	800	100.0	
Subtotal	800	0	0	0	800	100.0	

Remaining Authority by Object/Subobject

Expenditures current through 07/02/2022 09:20:27 PM

HEALTH -- Summary

FY 2022 Version -- AS -- Budgeted and Informational

FY Remaining: 0%

52 Operating						
Subtotal	74,257	53,086	0	0	21,171	28.5
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Total	75,865	55,024	0	0	20,841	27.5
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Remaining Authority by Object/Subobject

Expenditures current through 07/30/2022 12:20:04 PM

HEALTH -- Summary

FY 2023 Version -- AS -- Budgeted and Informational

FY Remaining: 92.1%

09208 Board of Optometry - Info							PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining		AVL
EMPLOYEE SALARIES							
5101030 Board & Comm Mbrs Fees	1,530	300	0	0	1,230		80.4
Subtotal	1,530	300	0	0	1,230		80.4
EMPLOYEE BENEFITS							
5102010 Oasi-employer's Share	174	23	0	0	151		86.8
Subtotal	174	23	0	0	151		86.8
51 Personal Services							
Subtotal	1,704	323	0	0	1,381		81.0
TRAVEL							
5203020 Auto Priv (in-st.) L/rte	200	0	0	0	200		100.0
5203030 Auto-priv (in-st.) H/rte	1,000	0	0	0	1,000		100.0
5203100 Lodging/in-state	380	0	0	0	380		100.0
5203140 Meals/taxable/in-state	258	0	0	0	258		100.0
5203150 Non-taxable Meals/in-st	200	0	0	0	200		100.0
Subtotal	2,038	0	0	0	2,038		100.0
CONTRACTUAL SERVICES							
5204020 Dues & Membership Fees	850	0	0	0	850		100.0
5204050 Computer Consultant	1,000	43	24,958	0	-24,001		0.0
5204060 Ed & Training Consultant	4,000	0	4,000	0	0		0.0
5204080 Legal Consultant	20,000	0	0	0	20,000		100.0
5204090 Management Consultant	40,700	12,358	32,398	0	-4,056		0.0
5204100 Medical Consultant	2,000	0	5,000	0	-3,000		0.0
5204180 Computer Services-state	288	0	0	0	288		100.0
5204200 Central Services	1,429	1,646	0	0	-217		0.0
5204204 Central Services	305	60	0	0	245		80.3
5204207 Central Services	306	0	0	0	306		100.0
5204590 Ins Premiums & Surety Bds	600	0	0	0	600		100.0
Subtotal	71,478	14,107	66,356	0	-8,985		0.0
SUPPLIES & MATERIALS							
5205310 Printing-state	800	0	0	0	800		100.0
Subtotal	800	0	0	0	800		100.0
52 Operating							
Subtotal	74,316	14,107	66,356	0	-6,147		0.0

Total	76,020	14,430	66,356	0	-4,766	0.0
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Subobject	Description	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19 Actual	FY20 Actual	FY21 Actual	FY22 Actual	FY23 7/30/2022
	Salaries										
5101030	Board & Comm Members	720	660	780	900	660	600	1,020	180	1,800	300
5102010	OASI-Employer's	55	51	61	69	50	46	81	14	138	23
5203010	Auto-State										
	Board Member Travel	996	855	1,229	1,002	1,467	1,482	2,131	-	1,114	
	*Includes: Auto, Meals, Lodging										
5204020	Dues & Memberships	750	750	750	750	750	750	850	850	850	
5204060	Ed & Training	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	
5204050	Computer Consultant (database)	2,813	406	1,595	175	350	315	128	765	128	43
5204100	Medical Consultant (investigator)	-	-	360	2,140	-	753	-	248	-	-
5204080	Legal Consultant	25,482	16,949	12,623	30,665	26,376	15,388	21,202	7,150	7,196	
5204090	Management Consultant	25,960	28,588	31,703	33,924	34,541	35,214	35,251	34,366	37,051	12,358
5204180	Computer Services- State				213	158	62	76	84	90	
5204200	Central Services	778	802	828	1,125	1,115	1,195	1,262	1,069	1,062	1,646
5204204	Central Services	261	233	192	192	199	245	286	274	246	60
5204207	Central Services	319	208	242	293	230	205	360	44	524	
5204960	Other Contractual						75				
5205310	Printing-State	483		1048			385	626	482		
5204590	Ins Premiums & Surety Bds	750	740	380	335	815	900	880	245	825	
5205350	Postage			36			9		13		
5207905	Computer		1868								
5207451	Office Furniture and Fixtures										
5207491	Telephone Equipment								25		
5207901	Computer Hardware								157		
52053901	Food Stuffs							24			
	TOTAL EXPENSES	63,367.00	56,110.00	55,827.00	75,783.00	70,711.00	61,624.00	68,177.00	49,966.00	55,024.00	14,430.00
	TOTAL REVENUE	54,109.40	54,491.16	71,403.85	72,734.74	73,801.78	75,524.55	75,454.24	76,015.09	74,391.35	24,525.91
	REVENUE - EXPENSES	-9,258.00	-1,618.84	15,576.85	-3,048.26	3,090.78	13,900.55	7,277.24	26,049.09	19,367.35	
	CASH CENTER BALANCE	38,025.23	36,406.28	51,986.12	48,935.18	52,025.36	65,925.77	73,202.49	94,237.52	113,607.19	

6/30/2021 94,237.52
 6/30/2020 73,202.49
 6/30/2019 65,925.77
 6/30/2018 52,025.36

Summary of Department of Health and Human Services Office of Inspector General Advisory Opinion 22-14

Summary and Takeaway

Doctors of optometry should be cautious about receiving free continuing education (CE) from an ophthalmology surgical practice to which they may refer patients. In June 2022, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) published an advisory opinion that characterizes such arrangements as a potential violation of federal anti-kickback legislation, designed to induce referrals to the surgical practice, which will be paid for by a federal health care program (i.e., Medicare or Medicaid).

Background

An ophthalmology practice specializing in cataract and refractive surgery petitioned the HHS OIG for an opinion on the practice's recent proposal to establish two annual CE programs for doctors of optometry in its area that would cover new technology and pharmacological practice treatment protocols relevant to treating patients who require ophthalmic surgeries, including the practice's patients. The courses would be open to all doctors of optometry in the local area, and participation in the practice's referral network would not be a requirement. Attendees also would not be required to be customers of the industry sponsors of the CE programs. CE would be approved by relevant educational accrediting agencies. Course offerings would include the following:

- Full-day CE program providing 6 hours of CE credit (practice physicians would serve as faculty in conjunction with some paid external faculty)
- An evening CE program providing 2 hours of CE credit (practice physicians would serve as faculty in conjunction with some paid external faculty)

The opinion notes that the ophthalmology practice has extensive relationships with its referral network of doctors of optometry in their area. The practice is seeking the OIG's opinion as to whether the proposal runs afoul of federal anti-kickback statutes (Sec. 1128 of the Social Security Act). The practice's proposal included four alternative means for funding the program and asked the OIG to provide guidance on each:

Option A: Practice would charge attendees a registration fee consistent with Fair Market Value (FMV).

Option B: Practice would cover program costs without a registration fee.

Option C: An industry sponsor would cover program costs and the practice would not charge a registration fee.

Option D: An industry sponsor would cover program costs and the practice would charge a below FMV registration fee. Practice would inform industry sponsors that all guidelines set forth in the ACCME Standards for Integrity and Independence in Accredited Continuing Education would apply to their sponsorship of the CE programs.

In all cases, the practice would cover any revenue shortfalls (e.g., if attendance is less than estimated). Any excess revenue would be donated to a local, unrelated charity. For Options C and D (industry sponsored CE), the practice would inform industry sponsors that all guidelines set forth in the Accreditation Council for Continuing Medical Education Standards for Integrity and Independence in Accredited Continuing Education would apply to their sponsorship of the CE programs.

OIG Opinion of Each Proposal

Option A: OIG believes there is sufficiently low risk for fraud and abuse under the federal anti-kickback statute that it would not impose administrative sanctions.

Options A & B: Due to the fact that the programs would be funded entirely by the practice in both proposals, the OIG believes there is a risk for fraud and abuse (i.e., patient steering) under each. The doctors of optometry attending the program would be receiving free CE credits, presumably with the expectation that it would generate referrals. HHS OIG states that it may seek sanctions on such programs.

Option D: In this scenario, in which some of the costs of the CE are underwritten by an industry sponsor, HHS OIG states that it would potentially impose sanctions. In this instance, the main focus is on the relationship between the industry sponsor and the practice, and less on the possibility of referrals between doctors of optometry and the ophthalmology practice. However, because the sponsorship will presumably allow the practice to charge less than FMV for the CE courses, there is still a risk of an anti-kickback issue involving the doctor of optometry.

Conclusion

Although the focus of any enforcement action would likely fall upon the surgical practice that sponsors the program, there are technically two parties to a kickback scheme. A doctor of optometry who receives free CE and then makes a referral to the practice that provided the CE is—likely without their knowledge—participating in the scheme and is thereby theoretically subject to possible sanction. Doctors of optometry are advised to avoid such situations. If a doctor of optometry is himself or herself an owner of a surgical practice, then the prospect of sanctions for violating the anti-kickback statute in connection with the provision of free CE is more serious, and competent legal counsel should be obtained before deploying any such program. A poorly designed program could cause the practice to violate anti-kickback laws either in its relationship with the recipients of the CE or in its relationship with industry sponsors of CE.