MEMBERS OF THE BOARD
Madhu Chawla, OD, President
Cyd Brandvein, Vice President
Rachel Michelin, Secretary
Alejandro Arredondo, OD
Donna Burke
Glenn Kawaguchi, OD
William H. Kysella, Jr.
Mark Morodomi
David Turetsky, OD
Lillian Wang, OD

CALIFORNIA STATE BOARD OF OPTOMETRY

QUARTERLY BOARD MEETING AGENDA

Friday, February 19, 2016
9:00 A.M. – 5:00 P.M.
(or until conclusion of business)

Ronald Reagan State Building
Auditorium
300 S Spring St.
Los Angeles, CA 90013

ORDER OF ITEMS SUBJECT TO CHANGE

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations of resources.

FULL BOARD OPEN SESSION

1. Call to Order/Roll Call and Establishment of a Quorum

2. Public Comment for Items Not on the Agenda
   Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]

3. President's Report
   A. Welcome and Introductions
   B. 2016 Board Meeting Dates and Locations

4. Approval of Board Meeting Minutes
   A. November 20, 2015

5. Department of Consumer Affairs Report

6. Executive Officer's Report
   A. BreEZe
   B. Budget
   C. Personnel
   D. Examination and Licensing Programs
   E. Enforcement Program
   F. Registered Dispensing Optician (RDO) Program

7. Consideration and Approval of RDO Advisory Committee Application and Creation of RDO Appointments Committee

8. Presentation by Capital Accounting Partners, LLC Regarding the Registered Dispensing Optician Program Fee Audit Results

9. Discussion and Possible Action on Legislation Impacting the Practice of Optometry
    A. SB 402 (Mitchell) Pupil health: vision examinations
    B. SB 496 (Nguyen) Optometry: graduates of a foreign university: examinations and licensure
    C. SB 349 (Bates) Optometry: mobile optometric facilities
    D. SB 622 (Hernandez): Optometry
    E. TB 201 Registered Dispensing Opticians Program Move

10. Discussion and Possible Action on Regulations Impacting the Practice of Optometry
    A. Proposed Revisions to California Code of Regulations (CCR) § 1582 Unprofessional Conduct and Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval
    B. Proposed Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees
    C. Proposed Addition to CCR § 1514.1 Co-Location Reporting Requirement and Form
    D. Proposed Amendment to CCR § 1536 Continuing Optometric Education; Purpose and Requirements - Update Request for Continuing Optometric Exemption/Extension Form, Update CE Course Approval Form and Incorporate Forms by Reference
    E. Proposed Amendment to CCR §1502 Delegation of Certain Functions to include Continuing Education (CE) Course Approval, CE Extension/Exemption Approvals, Accepting Default Decisions and Stipulated Surrenders to Executive Officer
    F. Proposed Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1. Rev. 7-09, Form OLA-2, Rev. 11/07, and Form LBC-4, rev. 2/07
    G. Proposed Amendment to CCR § 1530.1 Qualifications of Foreign Graduates; Revision of Authorization (Sponsorship) Form
    H. Proposed Addition of CCR Section 1523.5; Abandonment of Applications

11. Review, Consideration, and Possible Action on Public Relations and Outreach Committee's Recommendations Regarding Online Refractions and the Laws Governing Optometry in the State of California

12. Discussion and Possible Action Regarding Minimum Certification Requirements For All Optometrists to Practice in California

13. Update and Possible Action on Concerns Raised Related to the National Board of Examiners in Optometry (NBEO) and National Board Examinations (Parts I, II, and III)

14. Presentation by the Association of Regulatory Boards of Optometry (ARBO) Regarding Current ARBO Activities and the Council on Optometric Practitioner Education (COPE) Accreditation Standard Changes

15. Future Agenda Items

FULL BOARD CLOSED SESSION

16. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION

17. Adjournment

The mission of the California State Board of Optometry is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the open meeting act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined

by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lydia Bracco at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Madhu Chawla, OD
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 1 – Call to Order and Roll Call/ Establishment of Quorum**

Dr. Madhu Chawla, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Madhu Chawla, O.D., President, Professional Member

Cyd Brandvein, Vice President, Public Member

Rachel Michelin, Secretary, Public Member

Alejandro Arredondo, O.D., Professional Member

Donna Burke, Public Member

Frank Giardina, O.D., Professional Member

Glenn Kawaguchi, O.D., Professional Member

William H. Kysella, Jr., Public Member

Mark Morodomi, Public Member

David Turetsky, O.D., Professional Member

Lillian Wang, O.D., Professional Member

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Madhu Chawla, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 2 – Public Comment for Items Not on the Agenda**

The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)].

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Madhu Chawla, O.D.
Board President **Telephone:** (916) 575-7170

Subject: Agenda Item 3 - President's Report

The Board's Mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.

A. Welcome and Introductions

Introductions of Board staff and members of the public (voluntary)

B. 2016 Board Meeting Dates

Please see attached calendar showing all Board meeting dates and state holidays. The quarterly board meeting dates are scheduled for the following:

- April 29, 2016 - Oakland
- August 26, 2016 – Sacramento
- November 18, 2016 – Southern California

In addition, depending on pending legislation, the Board may hold meetings on the following dates:

- May 20, 2016
- June 10, 2016

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Rachel Michelin
Board Secretary **Telephone:** (916) 575-7170

Subject: **Agenda Item 4 – Approval of Board Meeting Minutes**

A. November 20, 2015 (Attachment 1)

Board of Optometry
2450 Del Paso Road, Suite 105, Sacramento, CA 95834
P: (916) 575-7170 F: (916) 575-7292 www.optometry.ca.gov

ACTION MINUTES **DRAFT**
QUARTERLY BOARD MEETING MINUTES
Friday, November 20, 2015
Elihu Harris Building
1515 Clay Street, Room 15
Oakland, CA 94612

Members Present		**Staff Present**
Madhu Chawla, O.D., President, Professional Member		Jessica Sieferman, Executive Officer
Cyd Brandvein, Vice President, Public Member		Kurt Heppler, Supervising Legal Counsel
Rachel Michelin, Secretary, Public Member		
Alejandro Arredondo, O.D., Professional Member		
Donna Burke, Public Member		
Glenn Kawaguchi, O.D., Professional Member		
William H. Kysella, Jr., Public Member		
Mark Morodomi, Public Member		
Lillian Wang, O.D., Professional Member		
Excused Absence		**Guest List**
Frank Giardina, O.D., Professional Member		On file
David Turetsky, O.D., Professional Member		

Friday, November 20, 2015
9:00 a.m.

1. **Call to Order/Roll Call and Establishment of a Quorum**

   Board President, Madhu Chawla, O.D. called the meeting to order and took roll; a quorum was established.

2. **Public Comment for Items Not on the Agenda**
   Note: The workgroup may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §11125, §11125.7(a)].

   A comment was heard from Board's Legal Counsel, Kurt Heppler regarding pending litigation against the Department and a board within.

   The Board heard a public comment from Dr. Pam Miller, O.D. who thanked the Board for the actions taken regarding CME Level 1 continuing education courses.

   No action was taken on this agenda item.

3. **President's Report**
   A. Welcome and Introductions
   B. 2016 Board Meeting Dates and Locations
   C. Committee Appointments

No action was taken on this agenda item.

4. Approval of Board Meeting Minutes

A. August 28, 2015
B. September 9, 2015
C. October 16, 2015

Lillian Wong moved to approve all of the minutes. Glenn Kawaguchi seconded. The Board voted 7-Aye; 2-Abstain to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo			X		
Dr. Chawla	X				
Ms. Burke			X		
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

5. Department of Consumer Affairs Report

Legislative Analyst for the Department of Consumer Affairs (DCA), Natalie Martin-Rojas reported on DCA updates from the Director's Office.

6. Executive Officer's Report

Executive Officer, Jessica Sieferman reported on the following:

A. BreEZe Database
B. Strategic Plan
C. Budget
D. Personnel
E. Examination and Licensing Programs
F. Enforcement Program

Public comment was heard from Dr. Stewart Gooderman, O.D. who requested clarification concerning the requirement of obtaining a Drug Enforcement Agency (DEA) number to prescribe Hydrocodone.

No action was taken on this agenda item.

7. Consideration and Approval of the Board Member Handbook

Rachel Michelin moved to approve the Board Member Handbook with the recommended amendments, and to delegate authority to the Executive Officer to make non-substantive changes or corrections if needed. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

8. Update and Consideration of Potential Board Action Related to Online Refractions and the Laws Governing Optometry in the State of California

Ms. Sieferman provided a background on online refractions and the laws.

The Board heard public comment from Dr. Gooderman, O.D. who expressed his concerns regarding online refractions and dangers to the public.

Public comment was heard from Dr. Miller, O.D. who expressed her concerns regarding online refractions, and the duties of the Board to protect the consumer.

The Board heard public comment from Kara Corches with the California Optometric Association who believes the companies offering online refractions are in violation of the Optometric Practice Act.

Public comment was heard from Registered Dispensing Optician, Michael Nutt regarding his concerns about problems online refractions will present for opticians and consumers.

Madhu Chawla made a motion to task the committees to address the issue and bring updates back to the next Board meeting. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

9. Discussion and Possible Action Regarding Legislative Proposal Setting Enforcement Case Prioritization

No action was taken on this agenda item.

10. Update on the Supreme Court Decision Regarding the *North Carolina Board of Dental Examiners v. Federal Trade Commission*

No action was taken on this agenda item.

11. Petition for Reduction of Penalty and Early Termination of Probation (12:30 P.M.)

A. Dr. David Butchert, O.D.

FULL BOARD CLOSED SESSION

12. Pursuant to Government Code Section 11126 (c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters and the Above Petition

FULL BOARD OPEN SESSION

13. Presentation by UC Berkeley School of Optometry Regarding Its Concerns Related to the National Board of Examiners in Optometry (NBEO) and National Board Examinations (Parts I, II, and III)

Dean of UC Berkeley School of Optometry, John Flanagan provided a presentation.

Madhu Chawla moved to direct staff to look into the matter further, request reports, work with the Office of Professional Examinations, and report back at a future Board meeting with solutions/information/options. Cyd Brandvein requested a friendly amendment to include having the Practice and Education Committee review what comes back to determine whether anything exists that the Committee needs to work on. Madhu Chawla approved the friendly amendment. Glenn Kawaguchi seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

14. Consideration and Approval of Legislation and Regulation Committee Recommendations Related to AB 684 Implementation and other Legislation Impacting the Practice of Optometry

Public Member, Rachel Michelin who was elected Chair of the Legislation and Regulation Committee provided overview and updates on the following legislation and regulation:

A. Legislation

1. Proposed Amendment to Business and Professions Code (BPC) § 655 to Regulate Optical Companies; Cite and Fine for Non-Compliance; Lease Information to be Provided by Licensees

2. Proposed Amendment to BPC § 2556.1 to Require Registered Dispensing Opticians to Report Co-location

3. Proposed Amendment to BPC § 2556.2 Related to Reporting Requirements

Donna Burke moved to accept the recommendations from the Committee for A-1, A-2, and A-3; direct the Executive Officer to prepare a letter to the Administration requesting the clean-up language, and work to effectuate the changes. Madhu Chawla seconded. The Board voted (7-Aye, 2-Abstention) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi			X		
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang			X		

4. Review and Possible Amendment to BPC § 3011: Board Composition

No action was taken on this agenda item.

5. Review and Possible Amendment to BPC § 3020: RDO Advisory Committee

No action was taken on this agenda item.

6. SB 402 (Mitchell) Pupil health: vision examinations

No action was taken on this agenda item.

7. SB 496 (Nguyen) Optometry: graduates of a foreign university: examinations and licensure

Public comment was heard from Mr. Flanagan who advised the Board about the difficulty and concerns of creating pathways for foreign graduated optometrists.

The Board heard public comment from Dr. Miller, O.D. who added her insight and concerns.

Lillian Wong moved to create a workgroup with the Author's office, stakeholders, and opposition over the next year to create stronger legislation for the next session, and explore other alternatives. Madhu Chawla seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

8. SB 349 (Bates) Optometry: mobile optometric facilities

No action was taken on this agenda item.

9. SB 622 (Hernandez): Optometry

Public comment was heard from Kristine Shultz representing the California Optometric Association, who hopes the Board will change their position to support.

Rachel Michelin moved to change Board's position on SB 622 to support. Donna Burke seconded. The Board voted unanimously (9-0) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi	X				
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

Rachel Michelin moved to direct staff to include broader inspection authority to the language in place for AB 684 letter to the Administration. Lillian Wang seconded. The Board voted (8-Aye; 1-Abstention) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi			X		
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

B. Regulation

1. Proposed Addition to California Code of Regulations (CCR) for BPC § 2556.1: Co-location Reporting Requirement

2. Proposed Addition to CCRs for BPC § 655: Implement Inspection Program

3. Proposed Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees

Mark Morodomi moved to adopt the Legislation Committee's recommendations to direct staff to commence with the rulemaking process. Rachel Michelin seconded. The Board voted (8-Aye; 1-Abstention) to pass the motion.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Arredondo	X				
Dr. Chawla	X				
Ms. Burke	X				
Ms. Brandvein	X				
Dr. Giardina				X	
Dr. Kawaguchi			X		
Mr. Kysella	X				
Ms. Michelin	X				
Mr. Morodomi	X				
Dr. Turetsky				X	
Dr. Wang	X				

15. Future Agenda Items

No action was taken on this agenda item.

16. Adjournment

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: February 19, 2016

From: Madhu Chawla
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 5 – Department of Consumer Affairs Report**

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: Agenda Item 6 – Executive Officer's Report

A. BreEZe Database

The Department of Consumer Affairs (DCA) successfully launched the BreEZe database for all Release 2 Boards on January 19, 2016. For the first two weeks after the launch, DCA provided onsite support from our Business Integration Analyst (BIA) and the Organizational Change Management (OCM) team. DCA also held twice daily conference calls to closely monitor and quickly react to any potential hiccups that arose.

In addition, the Director's R2 Executive Officer meetings (which started monthly in May 2015 and converted to weekly in September 2015) continued after go-live in order to quickly address any issues and concerns. DCA's call center also reorganized their staff in order to assist any applicants or licensees needing technical assistance.

Overall, staff has adapted quickly and appreciates how "user friendly" the system is. Staff is determined to work through any glitches that occur. Identified glitches primarily stem from data integrity issues from the legacy systems. Since BreEZe was designed with business rules to help maintain data integrity, it is identifying old data areas for clean-up. Staff has worked collectively with each other, our BIA, OCM, and DCA to ensure we are providing the best service to our stakeholders.

All Board Members (professional and public) are encouraged to register in BreEZe in order to utilize the online voting option. This can be used in lieu of mail ballot voting in some disciplinary matters. Board staff will bring online voting instructions to the Board meeting and assist any member who would like assistance.

All applicants and licensees are strongly encouraged to register in BreEZe and utilize all of its online services. Registration instructions are easy to follow and demonstrate how to add all related licenses (Statement of Licensures, Fictitious Name Permits, and Branch Office Licenses) (Attachment 1).

B. Budget

Presentation by DCA Budget Officer, Taylor Schick

Additional budget materials will be provided during the Board meeting.

Optometry Fund Condition:
According to the Fund Condition Analysis (Attachment 2), the Board's expenditures are projected to exceed its revenues in the current year (CY 2015-16), in part due to unanticipated personnel expenses, which will impact the reserve fund. Budget Year (BY) 2016-17 also projects the Board's expenditures to exceed its revenue. However, the fund condition factors in repayment of the $1,000,000 general fund loan in BY 2016-17, pursuant to item 1110-001-0763 Budget Act of 2011. This could potentially increase the reserve to 14.9 months.

Registered Dispensing Optician (RDO) Fund Condition:
According to the RDO Fund Condition Analysis (Attachment 3), the RDO's expenditures will continue to significantly exceed its revenues through BY 2016-17. Immediate cost saving measures, including not filling vacant positions, purchasing equipment/supplies, or incurring travel costs must take place to sustain the fund as much as possible. This could hinder workload and delay any Dispensing Optician Committee meetings until the fund is stable.

C. Personnel

After almost 33 years of state service (20 with our Board), Jeff Robinson retired on December 30, 2015. Jeff went from the Board's receptionist as an Office Technician to the Board's Lead Licensing Analyst. He was a friend and mentor to many in the office and was well known and respected by our licensing population. He will definitely be missed. The Board's Staff Services Analyst (Retired Annuitant), Carol Wilson, has performed all licensing duties since Jeff began participating full time in BreEZe User Acceptance Testing (UAT) and will continue to perform these duties.

The Board's Administrative Assistant and Fingerprint Coordinator, Lydia Bracco, will be retiring March 31. Lydia started in January 2010 as an enforcement analyst and fingerprint coordinator and absorbed several other miscellaneous administrative duties. She will be missed by many. The vacant position will go back to the Board's Enforcement Unit and administrative duties will be distributed and absorbed by other staff.

Rob Stephanopoulos accepted the Assistant Executive Officer position in December 2015. After an extensive process, including an interview panel with another DCA Executive Officer, Rob proved to be the best candidate for the Board. He has broad program knowledge in all licensing and enforcement processes and also spent a few months as the Policy Analyst. In addition, his demonstrated leadership skills as the Board's BreEZe Single Point of Contact (SPOC) will serve the Board well. Rob's former enforcement position will be posted shortly.

Kellie Flores accepted the RDO Program's Management Services Technician position in January 2016. She previously served as an Office Technician for the Veterinary Medical Board's inspection program. She was also an active subject matter expert for VMB during BreEZe UAT. Kellie brings a wealth of knowledge that can also assist us with building our own inspection program.

After an initial and two subsequent position postings, the Board received several strong candidates for the vacant Policy Analyst position. Second interviews with the final candidates are scheduled for February 16, 2016. The position is anticipated to be filled in the beginning of March.

D. Examination and Licensing Programs

All licensing staff are back in the office after the successful BreEZe launch and have assumed all previous duties. As previously reported, they are adapting quickly to BreEZe and work together to find solutions to any setbacks that occur. Since the majority of BreEZe licensing processes are the same, staff are able to help each other regardless of which license type they are processing.

Licensing staff continue to identify new ways to streamline licensing processes. As demonstrated under Agenda Item 10, forms have been updated to reflect current law and improve processing. In addition, with each BreEZe enhancement, more services will be available online – which improve processing times.

Due to some data conversion concerns, licensing statistics are not ready for publication. Further analysis is needed to ensure accurate reporting. However, licensing staff have already been able to approve applications that were submitted online in a matter of days – rather than weeks or months like it took in legacy systems. Licensing staff are confident licensing cycle times will dramatically improve.

E. Enforcement Program

Enforcement staff is also back full time in the office. However, the enforcement unit currently consists of one staff services analyst and one office technician. Although the vacant enforcement position is anticipated to post shortly, cycle times may increase during the transition. In addition, enforcement staff is now processing any RDO complaints. Fortunately, the pending enforcement workload was relatively small – six pending complaints and two disciplinary cases. The Board's enforcement staff will continue to absorb the RDO enforcement workload until the RDO Program's fund condition can support filling the .5 Office Technician and .06 Special Investigator positions.

The Enforcement Program met DCA's Enforcement Performance Measures for the Quarter 1 (Attachment 4) and Quarter 2 (Attachment 5) – including target cycle times for disciplinary actions in Quarter 2.

F. Registered Dispensing Optician Program

Overall, the Registered Dispensing Optician (RDO) Program transitioned smoothly from the Medical Board of California (MBC) to the Board. MBC staff trained Kellie on all registration processes and continues to be available to assist with any questions that arise. MBC organized and executed the fee audit contract for the RDO program, delivered all physical files to the Board, and initiated various BreEZe service tickets to ensure as smooth of a transition as possible to RDO stakeholders. While BreEZe will not be updated until 2017 to reflect the full transition, the MBC has granted various Board staff access into BreEZe to be able to perform all necessary functions.

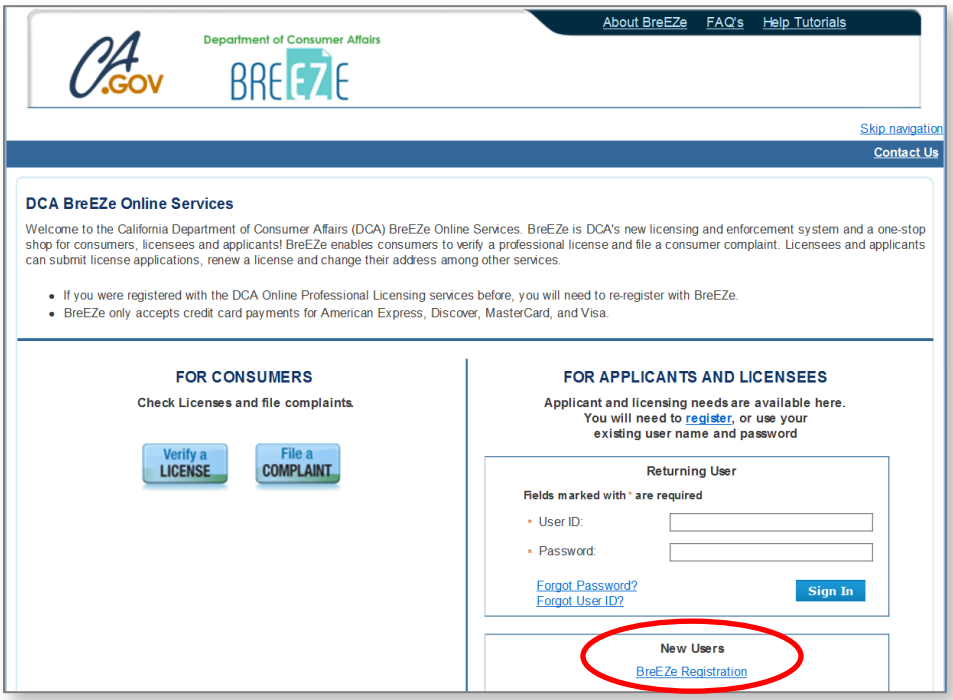
Staff has already identified several process improvements to the RDO program. Staff will continue to work on improving as many processes as possible. However, several statutes, regulations and forms need to be updated. This will need to be done by the Board and Dispensing Optician Committee.

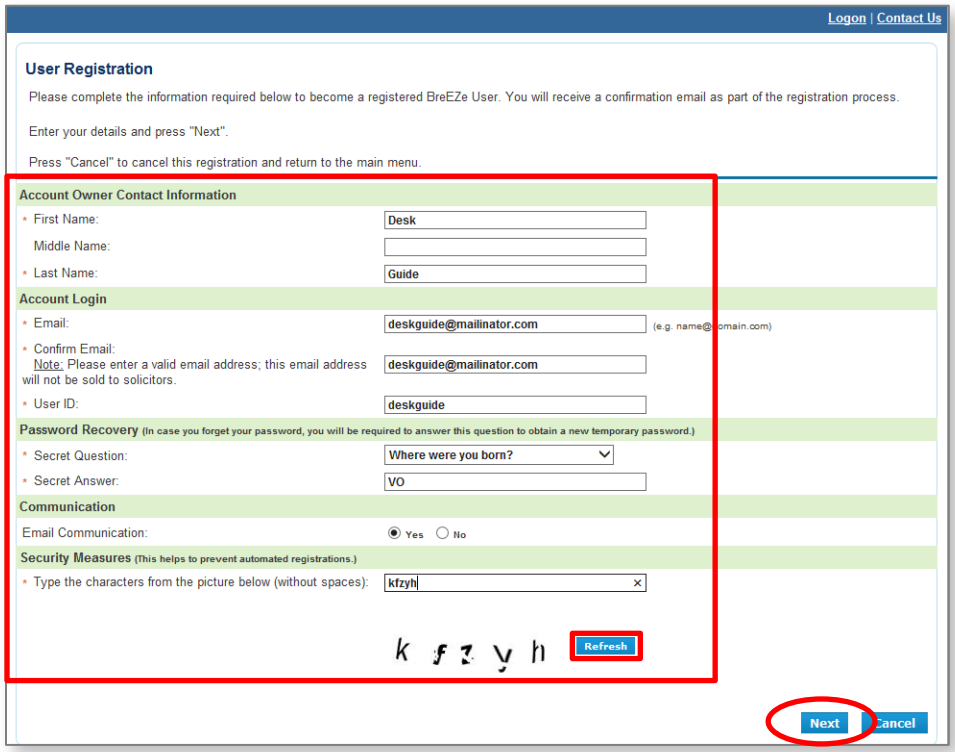
Attachments

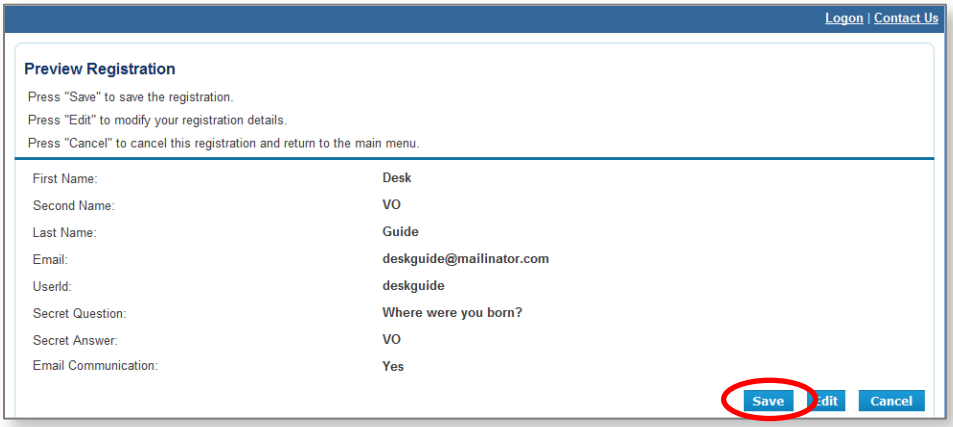
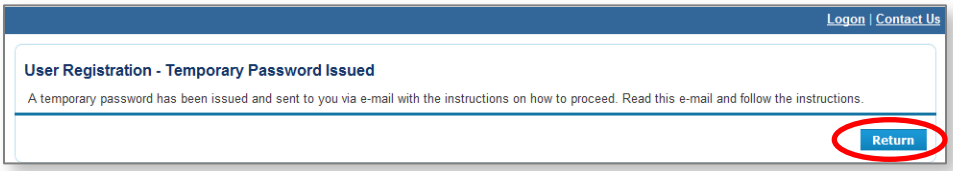
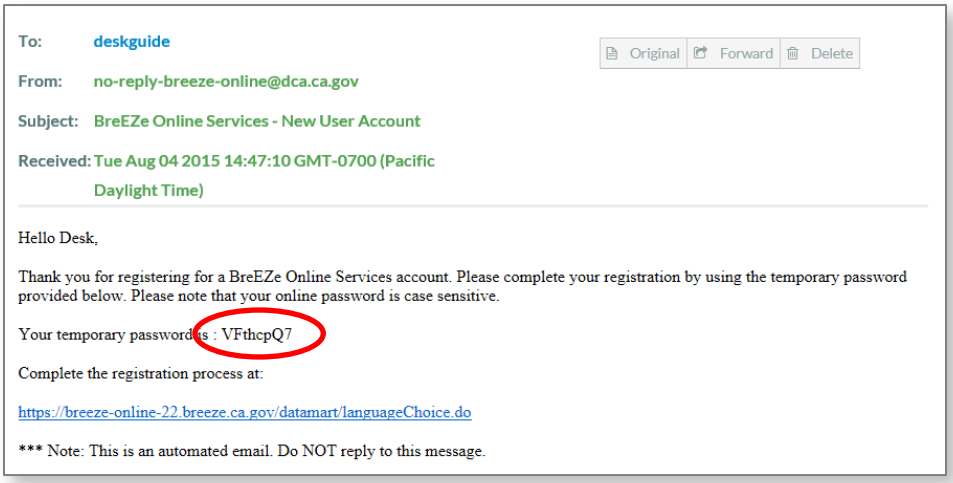
1. BreEZe Online Registration Instructions
2. Optometry Fund Condition Analysis
3. RDO Program Fund Condition Analysis
4. Q1 Enforcement Performance Measures
5. Q2 Enforcement Performance Measures

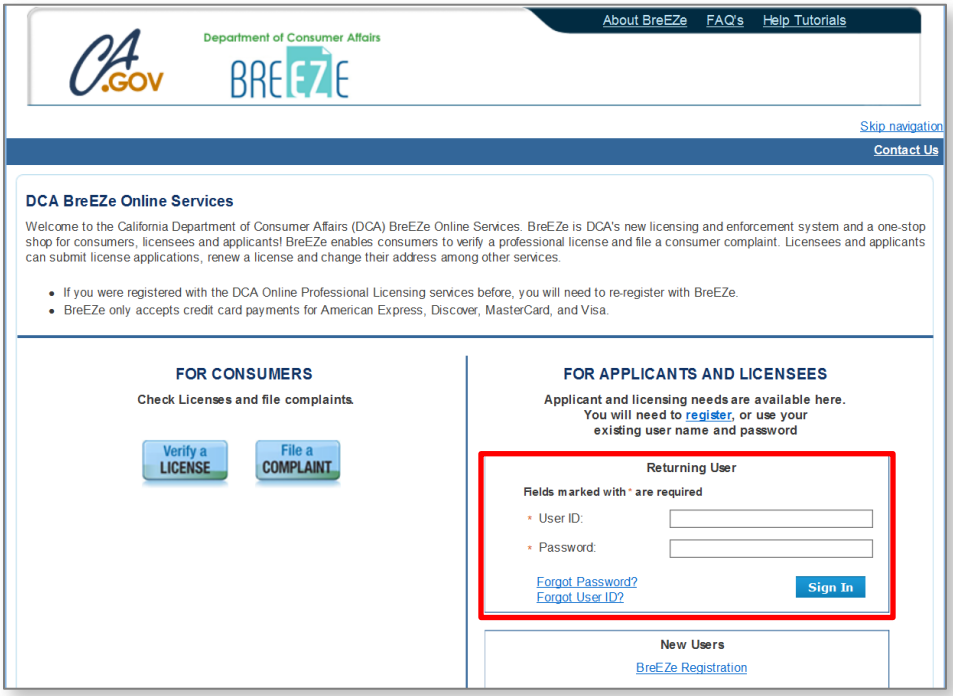
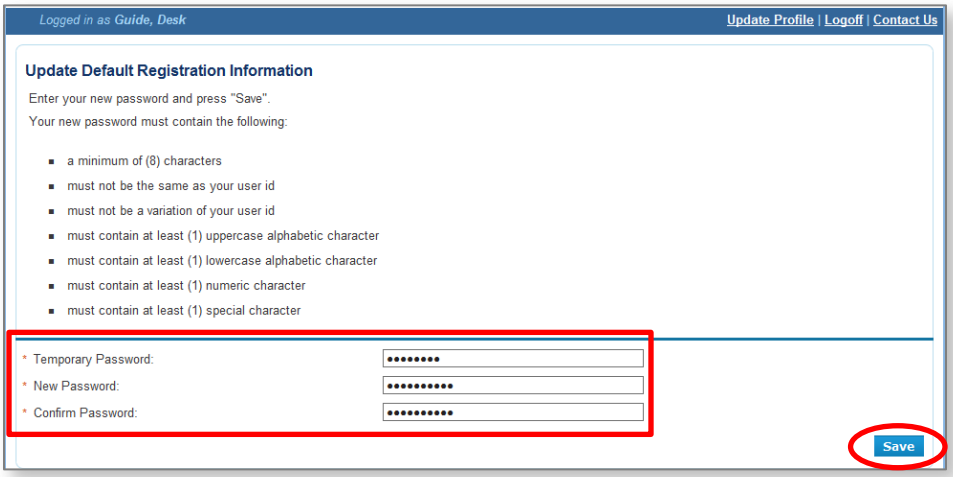
BreEZe Job Aid
Create Online Account/Link License
December 2015

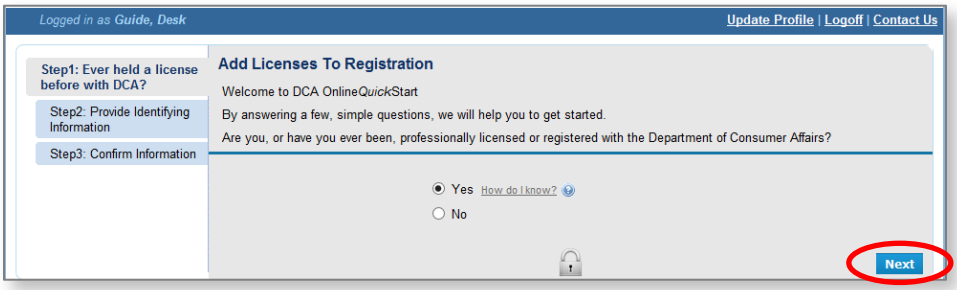
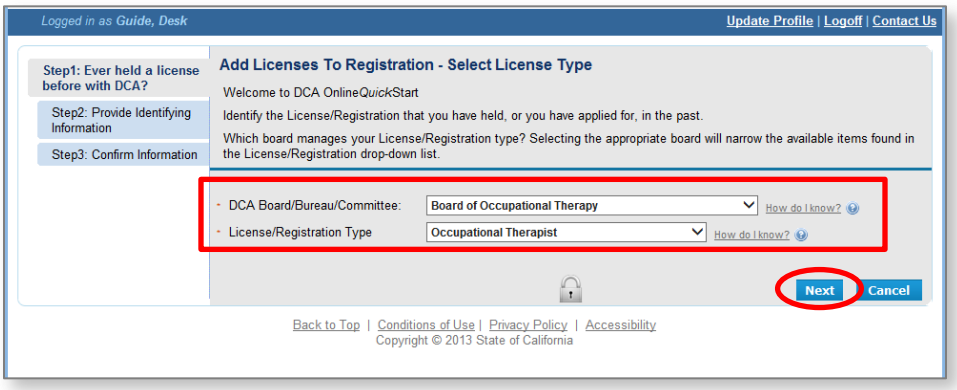
The following steps demonstrate how to create an account in BreEZe Online and link existing licenses to the account.

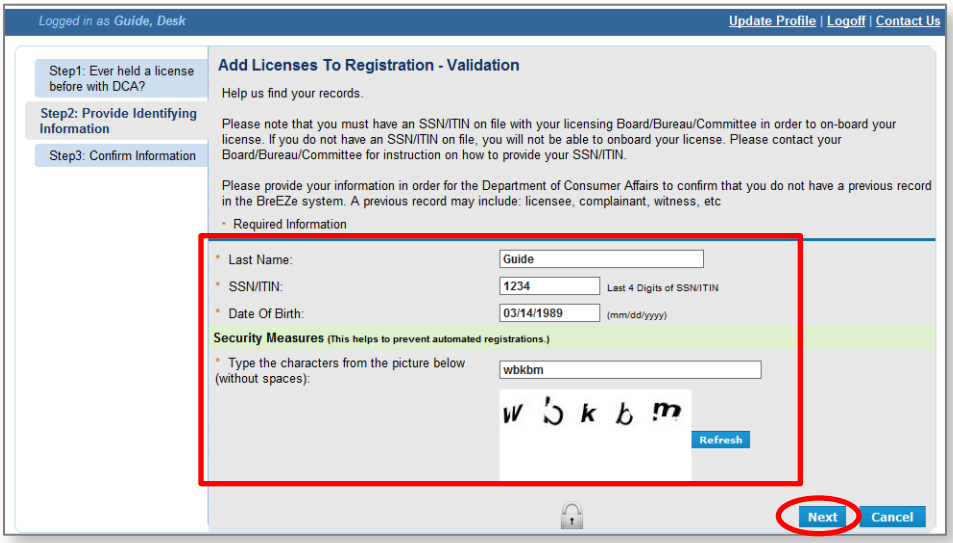
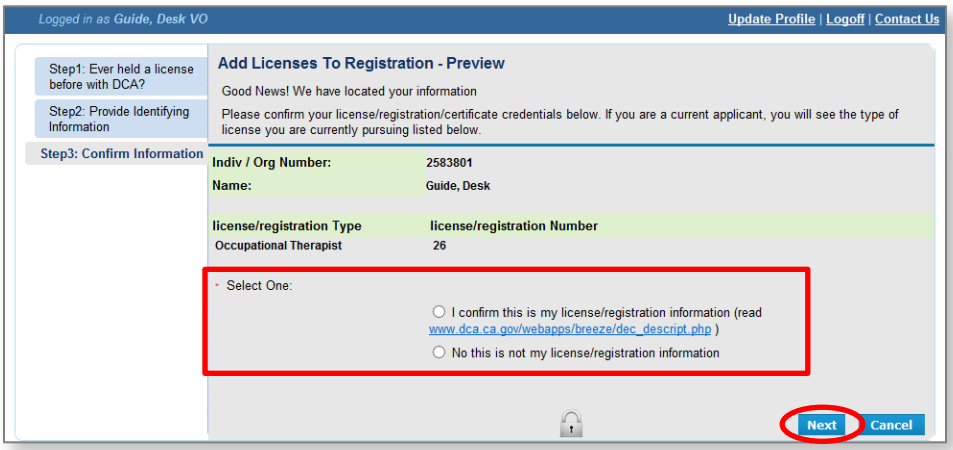
Screen	Action
DCA BreEZe Online Services Home Page screen 	1. Click the **BreEZe Registration** hyperlink.

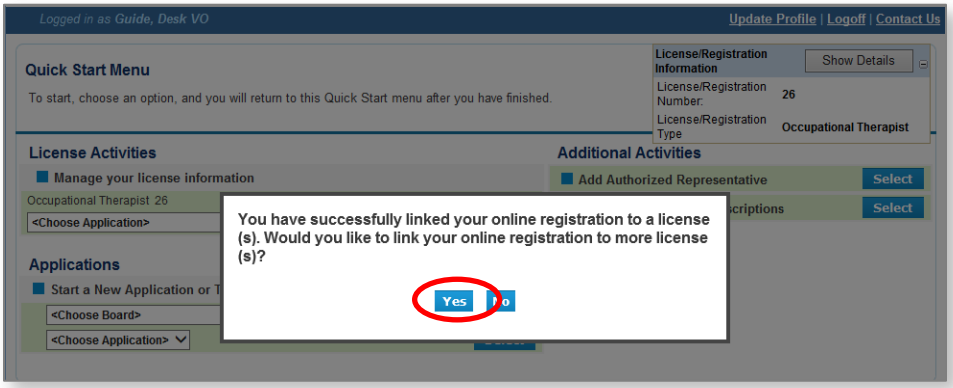
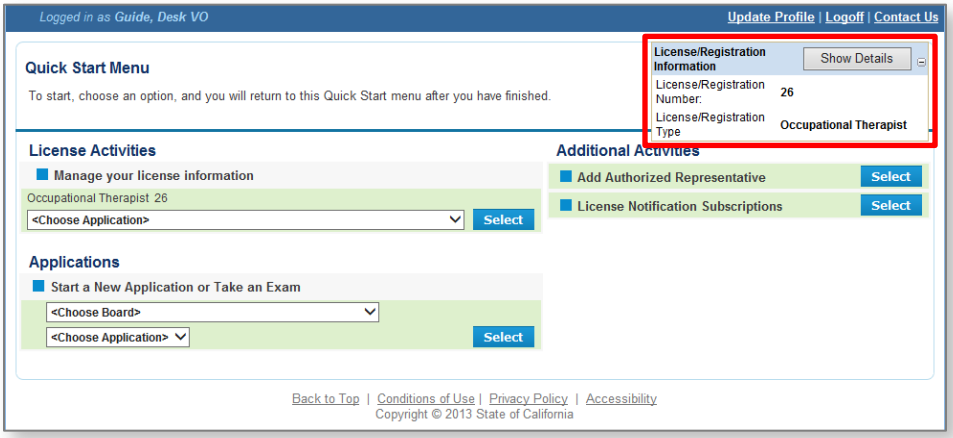
Screen	Action
User Registration Screen 	2. Enter your personal information into the **Name**, **Email**, and **User ID** textboxes. **Note**: The User ID must be at least 8 characters long. The User ID is not case sensitive and letters and numbers may be used. 3. Select a Question from the **Secret Question** dropdown list and provide an answer in the **Secret Answer** textbox. **Note**: The Secret Answer field is not case sensitive. 4. Select the **Yes** radio button for **Email Communication** if you would like to receive email notifications when you submit payments or applications. Select the **No** radio button if you do not want to receive email notifications. **Note**: If **No** is selected, the user will still be able to view payment receipts upon submitting an application and through their VO account. 5. Type the code into the **Type the characters from the picture below (without spaces)** textbox. **Note**: If the user cannot read the code, they may generate a new code by clicking the **Refresh** button. 6. After all information is entered, click the **Next** button.

Screen	Action
Preview Registration Screen  	7. Verify the information is correct and click the <Save> button. **Note**: A user may fix any information before submitting by clicking the <Edit> button.
User Registration – Temporary Password Issued Screen  	8. Click the <Return> button. **Note**: The user will be sent a temporary password to login to their account.
Email Screen  	9. Access the email address that was provided on the User Registration form. 10. Open the email. **Note**: The subject of the email received is "BreEZe Online Services – New User Account." 11. Copy the temporary password provided in the email and return to the DCA BreEZe Home Page.

Screen	Action
DCA BreEZe Online Services Home Page Screen 	12. Enter your User ID into the **User ID** textbox and the temporary password into the **Password** textbox and click the <Sign In> button.
Update Default Registration Information Screen 	13. Enter your temporary password into the **Temporary Password** textbox. 14. Enter a new password in the **New Password** textbox and re-enter that password into the **Confirm Password** textbox. **Note**: The new password must meet the following criteria: • A minimum of (8) characters • Must not be the same as your User ID • Must not be a variation of your User ID • Must contain at least (1) uppercase alphabetic character • Must contain at least (1) lowercase alphabetic character • Must contain at least (1) numeric character • Must contain at least (1) special character 15. Click the <Save> button.

Screen	Action
Add Licenses to Registration Screen  	16. Select the **Yes** radio button. **Note**: If the user has an existing license, the user should select the **Yes** radio button. If the user does not have an existing license, the user should select the **No** radio button. If the user selects **No**, the user will still be required to provide identifiable information to confirm they do not have an existing license or record with the Board/Bureau. 17. Click the <Next> button.
Add Licenses to Registration – Select License Type Screen  	18. Select your DCA/Board/Bureau/Committee from the **DCA Board/Bureau/Committee** dropdown list and your License/Registration Type from the **License/Registration Type** dropdown list. 19. Click the <Next> button.

Screen	Action
Add Licenses to Registration – Validation Screen  	20. Enter the last 4 digits of your Social Security Number or Individual Tax Identification Number (ITIN) in the **SSN/ITIN** textbox. **Note**: BreEZe will automatically populate the user's last name in the **Last Name** textbox. **Note**: If the user is trying to link an Education Provider, Establishment or Business to their account, they will need to provide the following information: License Number, Business Name and full Business Tax Number. 21. Enter your Date of Birth into the **Date of Birth** textbox. **Note**: The format of the Date of Birth is (mm/dd/yyyy). 22. Type the code into the **Type the characters from the picture below (without spaces)** textbox. **Note**: If the user cannot read the code, they may generate a new code by clicking the <Refresh> button. 23. Click the <Next> button.
Add Licenses to Registration – Preview  	24. Select the **I confirm this is my license/registration information** radio button. 25. Click the <Next> button.

Screen	Action
Quick Start Menu Screen  	26. Click the <No> button if you do not want to link additional licenses to your account. **Note**: BreEZe asks this question because the user may want to link another license to their account that is under a different name. For example, an officer manager linking multiple licenses from the same office. To add other licenses to their account, the user can do so by clicking the <Yes> button and repeating the linking a license process.
Quick Start Menu Screen  	**Note**: All licenses linked to the VO account will display in the top right corner of the screen. When on the Quick Start Menu, VO will only display transactions that are available based on the current status of the applicant or licensee.

0763 - State Board of Optometry
Analysis of Fund Condition

1/7/2016

(Dollars in Thousands)

2016-17 Governor's Budget

NOTE: $1 Million Dollar General Fund Repayment Outstanding	ACTUAL 2014-15	CY 2015-16	BY 2016-17
BEGINNING BALANCE	$ 1,438	$ 1,518	$ 1,489
Prior Year Adjustment	$ -9	$ -	$ -
Adjusted Beginning Balance	$ 1,429	$ 1,518	$ 1,489
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	$ 44	$ 50	$ 63
125700 Other regulatory licenses and permits	$ 162	$ 151	$ 152
125800 Renewal fees	$ 1,619	$ 1,591	$ 1,597
125900 Delinquent fees	$ 11	$ 10	$ 10
141200 Sales of documents	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ 2	$ 2	$ 2
150300 Income from surplus money investments	$ 4	$ 5	$ 5
160400 Sale of fixed assets	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 2	$ -	$ -
161400 Miscellaneous revenues	$ -	$ -	$ -
Totals, Revenues	$ 1,844	$ 1,809	$ 1,829
Transfers from Other Funds			
GF loan per item 1110-001-0763 BA of 2011 (repay)	$ -	$ -	$ 1,000
Totals, Revenues and Transfers	$ 1,844	$ 1,809	$ 2,829
Totals, Resources	$ 3,273	$ 3,327	$ 4,318
EXPENDITURES			
Disbursements:			
0840 State Controller (State Operations)	$ -	$ -	$ -
8880 Financial Information System for CA (State Operations)	$ 2	$ 3	$ 3
1110 Program Expenditures (State Operations)	$ 1,753	$ 1,835	$ -
1111 Program Expenditures (State Operations)	$ -	$ -	$ 1,907
Total Disbursements	$ 1,755	$ 1,838	$ 1,910
FUND BALANCE			
Reserve for economic uncertainties	$ 1,518	$ 1,489	$ 2,408
Months in Reserve	9.9	9.4	14.9

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.

C. ASSUMES INTEREST RATE AT 0.3%.

0175 - Registered Dispensing Opticians
Analysis of Fund Condition

Prepared 1/7/2016

(Dollars in Thousands)

2016-17 Governor's Budget

	Actuals 2014-15	CY 2015-16	BY 2016-17
BEGINNING BALANCE	$ 249	$ 172	$ 137
Prior Year Adjustment	$ -	$ -	$ -
Adjusted Beginning Balance	$ 249	$ 172	$ 137
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	$ 3	$ -	$ -
125700 Other regulatory licenses and permits	$ 29	$ 27	$ 27
125800 Renewal fees	$ 149	$ 147	$ 147
125900 Delinquent fees	$ 7	$ 6	$ 6
150300 Income from surplus money investments	$ 1	$ -	$ -
161400 Miscellaneous revenues	$ 8	$ -	$ -
Totals, Revenues	$ 197	$ 180	$ 180
Transfers from Other Funds			
	$ -	$ -	$ -
Transfers to Other Funds			
	$ -	$ -	$ -
Totals, Revenues and Transfers	$ 197	$ 180	$ 180
Totals, Resources	$ 446	$ 352	$ 317
EXPENDITURES			
Disbursements:			
0840 FSCU (State Operations)	$ -	$ -	$ -
1110 Program Expenditures (State Operations)	$ 275	$ 214	$ -
1111 Program Expenditures (State Operations)	$ -	$ -	$ 310
8880 Financial Information System for California (State Ops)	$ -	$ 1	$ -
9670 Equity Claims / Board of Control (State Operations)	$ -	$ -	$ -
Total Disbursements	$ 275	$ 215	$ 310
FUND BALANCE			
Reserve for economic uncertainties	$ 172	$ 137	$ 7
Months in Reserve	9.6	5.3	0.3

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.

C. ASSUMES INTEREST RATE AT 0.3%.

D. ESTIMATED SAVINGS OF -$140K ASSUMED IN FY 2015-16 (AUTHORIZED APPROPRIATION $354K)

Department of Consumer Affairs

Board of Optometry

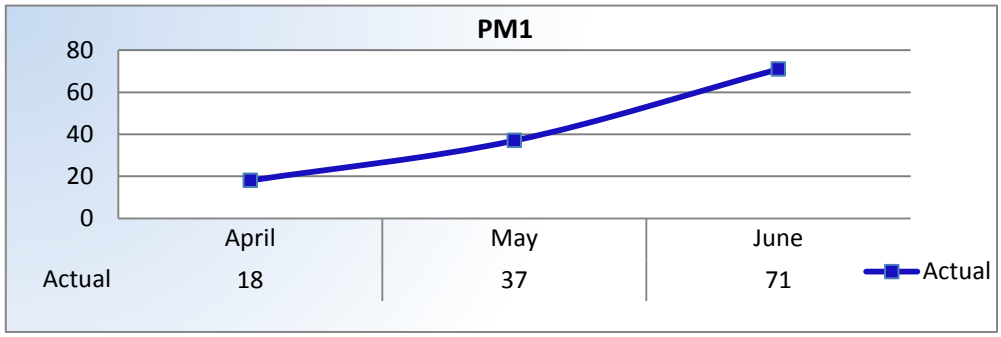
Performance Measures

Q1 Report *(July - September 2015)*

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

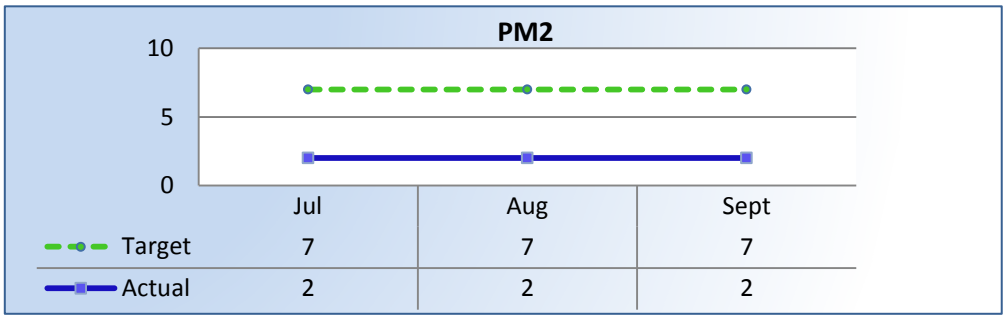


Total Received: 62 **Monthly Average**: 21

Complaints: 52 | **Convictions**: 10

PM2 | Intake

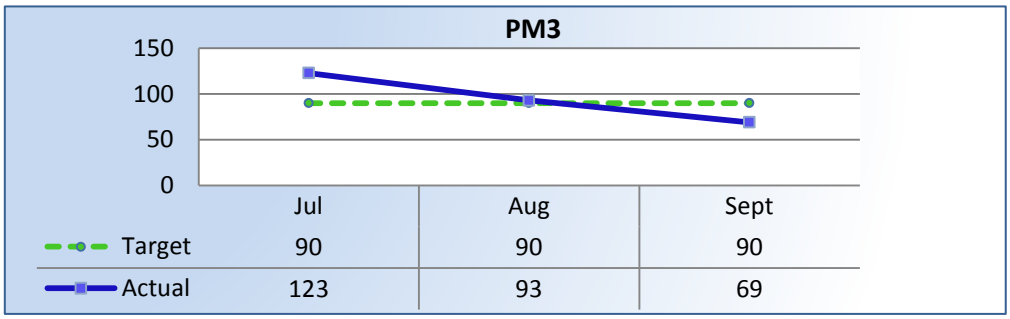
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 7 Days | **Actual Average:** 2 Days

PM3 | Intake & Investigation

Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation)



Target Average: 90 Days | **Actual Average:** 89 Days

PM4 | Formal Discipline

Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline. (Includes intake, investigation, and transmittal outcome)

The Board did not have any cases closed in formal discipline this quarter.

Target Average: 540 Days | **Actual Average:** N/A

PM7 |Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

The Board did not contact any new probationers this quarter.

Target Average: 25 Days | **Actual Average:** N/A

PM8 |Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board did not have any probation violations this quarter.

Target Average: 14 Days | **Actual Average:** N/A

Department of Consumer Affairs

Board of Optometry

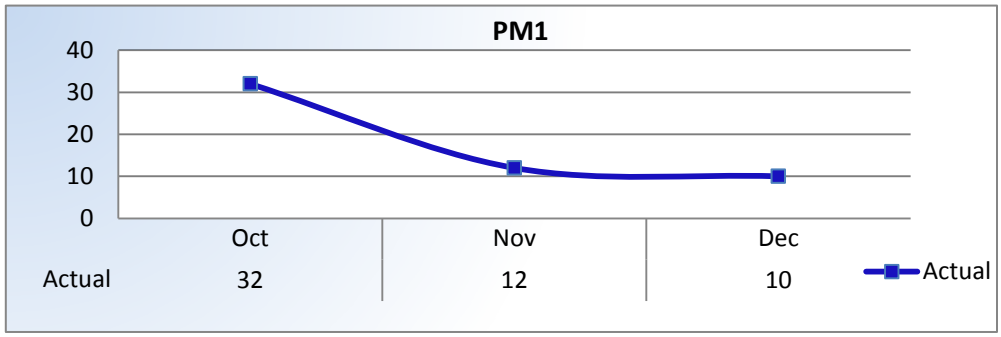
Performance Measures

Q2 Report *(October - December 2015)*

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

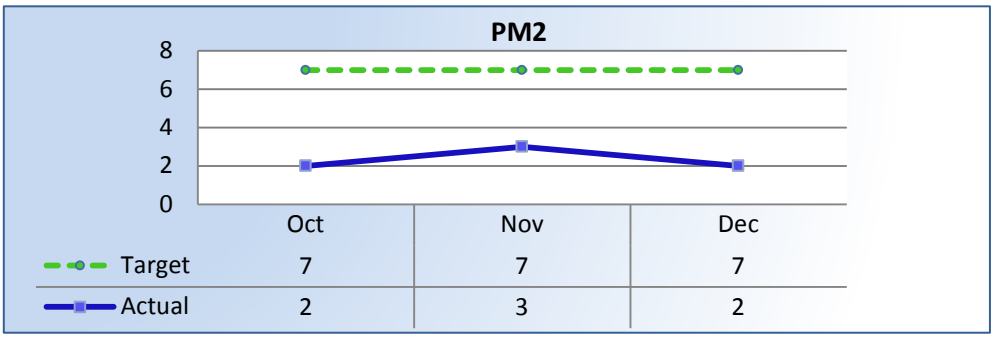


Total Received: 54 **Monthly Average**: 18

Complaints: 50 | **Convictions**: 4

PM2 | Intake

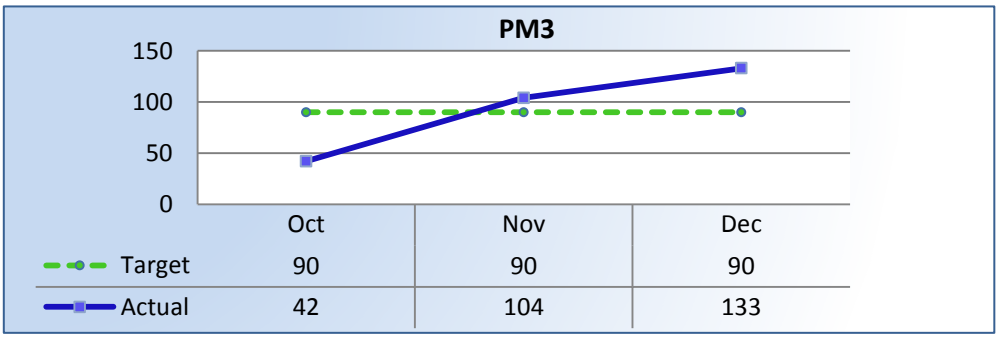
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 7 Days | **Actual Average:** 2 Days

PM3 | Intake & Investigation

Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation)

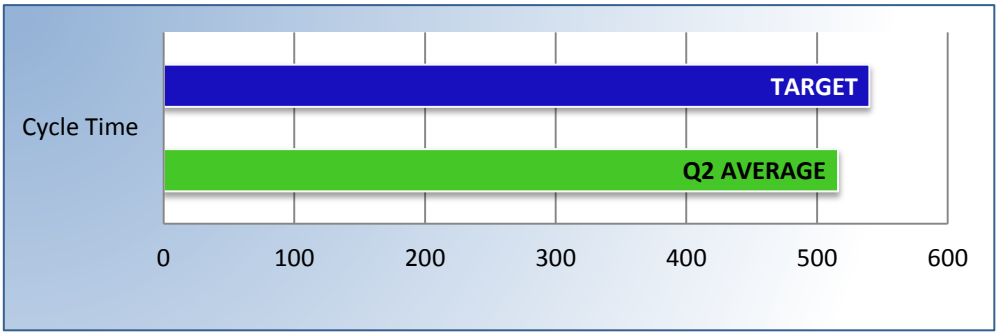


	Oct	Nov	Dec
Target	90	90	90
Actual	42	104	133

Target Average: 90 Days | **Actual Average:** 84 Days

PM4 | Formal Discipline

Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline. (Includes intake, investigation, and transmittal outcome)



Target Average: 540 Days | **Actual Average:** 516 Days

PM7 |Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

The Board did not contact any new probationers this quarter.

Target Average: 25 Days | **Actual Average:** N/A

PM8 |Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board did not have any probation violations this quarter.

Target Average: 14 Days | **Actual Average:** N/A

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 7 - Consideration and Approval of RDO Advisory Committee Application and Creation of RDO Appointments Committee**

Background:

Business and Professions Code (BPC) § 3020 (Attachment 1) established a dispensing optician committee (DOC) under the Board to advise and make recommendations to the Board. The DOC, which is comprised of two registered dispensing opticians, two public members, and one Board Member, is responsible for the following:

- Recommending registration standards and criteria for the registration of dispensing opticians.
- Reviewing the disciplinary guidelines relating to registered dispensing opticians.
- Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550) of the Business and Professions Code.
- Carrying out and implementing all responsibilities and duties imposed upon it pursuant to law or delegated to it by the Board.

The Board, responsible for making the initial DOC appointments, must stagger the terms – each term not to exceed four years.

In order to streamline the appointment process, staff recommends establishing a two-member appointment committee and follow the proposed DOC Appointment Process (Attachment 2). To solicit DOC interest, staff can post a DOC Vacancy Notice (Attachment 3) and a DOC Interest Form (Attachment 4) to the Board's website and social media accounts. These documents can also be distributed to stakeholder associations and the Board's interested parties list via email and regular mail.

Action Requested:
Approve the attached documents and establish an appointments committee to follow the appointment process and recommend final candidates during the April 29, 2016 Board meeting.

Attachments:
1. BPC § 3020
2. Proposed Appointment Process
3. DOC Vacancy Notice
4. DOC Interest Form

Business and Professions Code § 3020.

(a) There shall be established under the State Board of Optometry a dispensing optician committee to advise and make recommendations to the board regarding the regulation of a dispensing opticians pursuant to Chapter 5.5 (commencing with Section 2550). The committee shall consist of five members, two of whom shall be registered dispensing opticians, two of whom shall be public members, and one of whom shall be a member of the board. Initial appointments to the committee shall be made by the board. The board shall stagger the terms of the initial members appointed. The filling of vacancies on the committee shall be made by the board upon recommendations by the committee.

(b) The committee shall be responsible for:

(1) Recommending registration standards and criteria for the registration of dispensing opticians.

(2) Reviewing of the disciplinary guidelines relating to registered dispensing opticians.

(3) Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550).

(4) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter or as delegated to it by the board.

(c) The committee shall meet at least twice a year and as needed in order to conduct its business.

(d) Recommendations by the committee regarding scope of practice or regulatory changes or additions shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(e) After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms.

(Added by Stats. 2015, Ch. 405, Sec. 14. Effective January 1, 2016.)

Dispensing Optician Committee
Appointment Process

1. Call for applications – staff sends Notice and form requesting applications for vacant positions:
    a. Registered Dispensing Opticians – all registrants, CADO, NAOO
    b. Public Members – interested parties (mailing list, Social Media, Facebook, Twitter, public advocacy groups, etc.)
    c. Board Member
2. Applications due March 18, 2016
    a. Staff collects applications collected and conducts discipline checks for RDO applicants and forwards to Appointment Committee members for consideration
3. Appointment Committee Meeting (March 25, 2016*)
    a. Committee reviews all interest forms and selects initial candidates for interviews
    b. Staff contacts initial candidates and invites them to address Committee
4. Appointment Committee Meeting (April 8, 2016*)
    a. Initial candidates given opportunity to address Committee
    b. Committee selects final candidates for Board consideration
    c. Staff notifies final candidates and invites them to address Full Board
    d. Staff Memo included in Board packet with Committee's recommendation for appointment, including a brief synopsis of recommended members
5. Full Board Meeting April 29, 2016
    a. Full Board votes to accept or reject Committee's appointment recommendations

* Dates dependent on Committee availability

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Dispensing Optician Committee Vacancies

Application Submission Deadline: March 18, 2016

The California State Board of Optometry (Board) is seeking applications from Registered Dispensing Opticians (RDO) and interested parties for four positions on the Dispensing Optician Committee (DOC). The positions are available based upon AB 684 Implementation, Business and Professions Code Section 3020.

- One vacant RDO position is for a two*- year term that will run through June 30, 2019.
- One vacant RDO position is for a four* - year term that will run through June 30, 2019.
- One vacant position to be filled by a non-licensee of the Board is for a two*-year term that will run through June 30, 2019.
- One vacant position to be filled by a non-licensee of the Board is for a four*-year term that will run through June 30, 2019.

The Board is seeking qualified individuals who have demonstrated interest in serving on the MAC. The applicants chosen by the Board's DOC Appointments Committee are subject to approval by the Board at its April 29, 2016 quarterly meeting. Service is voluntary. Acceptance of a position on the DOC will require future time commitments, including attendance at a minimum of two meetings per year[1].

If you are interested in serving on the DOC, please complete a Member Interest Form and submit it to the Board later than **March 18, 2016**.

*BPC Section 3020 requires the Board to stagger initial appointments. The Board may decide any amount of time up to four years. The indicated terms are staff recommendations.

[1] BPC Section 3020 requires a minimum of two meetings per year. However, more frequent meetings are anticipated during the first few years of the DAC's existence.

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Dispensing Optician Committee Interest Form

Expectations of Membership: *The Dispensing Optician Committee (DOC) is an advisory committee that advises and makes recommendations to the California State Board of Optometry (Board). The DOC is responsible for:*

- *Recommending registration standards and criteria for the registration of dispensing opticians.*
- *Reviewing the disciplinary guidelines relating to registered dispensing opticians.*
- *Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550) of the Business and Professions Code.*
- *Carrying out and implementing all responsibilities and duties imposed upon it pursuant to law or delegated to it by the Board.*

Its members volunteer to serve and attend all committee meetings for up to a four-year term. This interest form has been developed to solicit volunteers who will serve on the DOC. The DOC includes a Board Member, registered dispensing opticians (RDO), and public member representatives who have an interest in the dispensing community but are not registered dispensers. To be considered for appointment, please mail or fax your DOC Interest Form by ***March 18, 2016*** *to:*

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
FAX: (916) 575-7292

If you have any questions please contact the RDO Program at (916) 575-7186

Name: _____
(Please print legibly - Last, First, Middle Initial)

Address: _____
Street City State Zip Code

Phone: (____) _____ (____)_____ (____)_____
Daytime Evening FAX

E-Mail Address: _____

Are you a California RDO: ☐ YES ☐ NO *(Check only one)* *Registration Number:* _____

Organization/Association being represented (if any)_____
(If volunteering as a "public member," please insert the word "SELF – PUBLIC Interest")

Position within the Organization/Association: _____
(Board member, executive, or member)

Do you have a prepared Resume or List of Qualifications Available? ☐ Yes ☐ No
(Please attach Resume or List of Qualifications to this form)

What is your interest in the dispensing community? _____
(Attach additional sheets if more space is needed)

_____

_____

_____ _____
(Signature) *(Date)*

DISCLOSURE: Providing this information is strictly voluntary. The personal information requested on this form is being collected for DOC appointment consideration. This information will be reviewed by Board Members and staff. This form will be retained in the RDO Program files. This position is voluntary and will require future time commitments. This form and attachments must be returned no later than March 18, 2016 for Appointment Committee consideration and final Board selection at its April 29, 2016 Board Meeting.

Memo

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To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 8 – Presentation by Capital Accounting Partners, LLC Regarding the Registered Dispensing Optician Program Fee Audit Results**

Presentation by Dan Edds from Capital Accounting Partners, LCC

Attachments

1. RDO Program Fee Audit Results

California Board of Optometry
Registered Dispensing Opticians Program – Fee Audit

To ensure excellent Optometric care for every Californian.

Capital Accounting Partners, LLC

February 2016

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INTRODUCTION AND SCOPE

The mission of the California Board of Optometry is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry. Its vision is to ensure excellent optometric care for every Californian. Its core values are:

- Consumer protection;
- Integrity;
- Transparency;
- Professionalism; and
- Excellence.

Given this mission, vision and values, the Board provides a valuable public safety function. The execution of which is to be done in a professional culture of excellence. This project aligns with the values of the Board by developing the resources to fully execute this vision. Without adequate financial resources, the Board cannot meet this important vision.

This report summarizes the processes, procedures, and findings of the Board's fee audit – specifically how it relates to the Registered Dispensing Opticians (RDO)program. It details the analysis that resulted in calculations of cost for individual licenses of the RDO.

As part of its effort to manage its financial resources wisely, the Board engaged Capital Accounting Partners to conduct a cost of service study. This study is important to the long term sustainability of the RDO program and the Board of Optometry as the RDO transitions from the Medical Board of California to the Board of Optometry. In addition, it is our understanding the recent legislation within the State of California may dramatically impact the RDO program. So the RDO is in a position of significant transition. Often this means new opportunities as well as new risks. Having the financial resources to navigate will be critical to the long term sustainability of the program.

The RDO has a mandate to be fully self-supporting so it is vital that the fees charged to dispensing opticians fully recover the costs of the program.

The scope of this study included the following objectives:

- Calculate full cost of processing applications for opticians;
- Calculate the costs for supporting services such as:
  - Enforcement;
  - Technology (Breeze);
  - Cashering;
  - Call center;
  - Other support functions that may apply; and
- Develop revenue projections for 5-10 years.

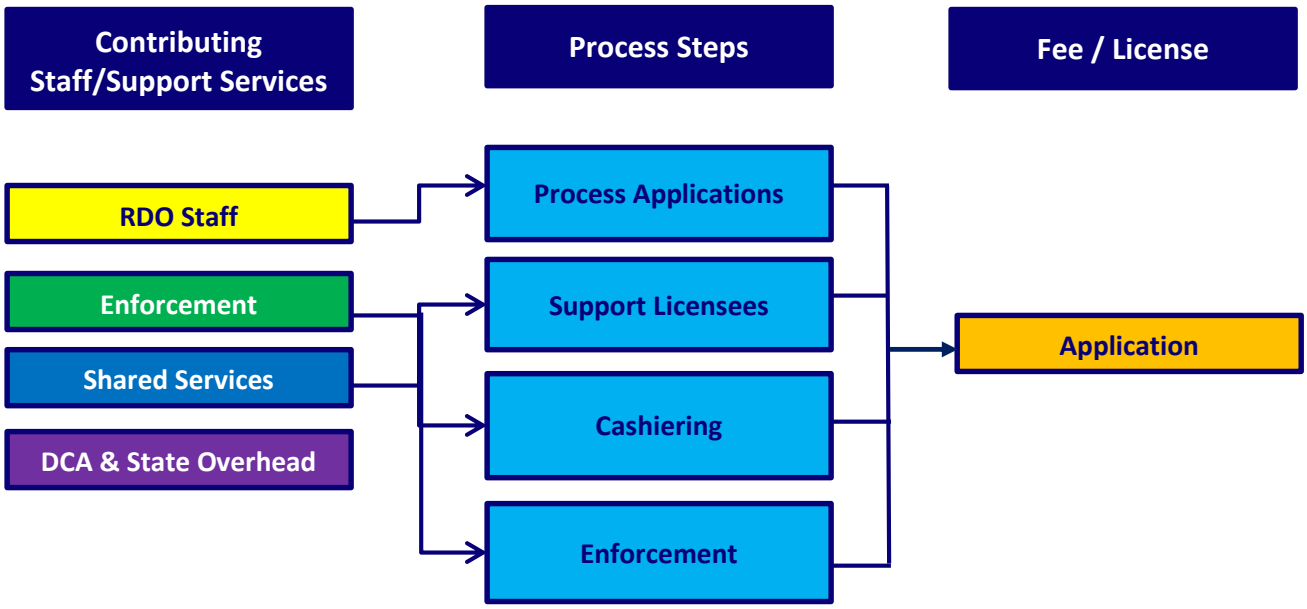
The process used for collecting and analyzing the data required active participation by the RDO's management and staff. We want to take this opportunity to recognize their participation, time, and effort to collect the data and discuss the analysis, results, and recommendations.

Summary of Costing Methodologies

Driver Based Costing Models

Developing driver based costing models are a detailed and robust method of calculating the cost of a specific service. It is based on the principles of activity based costing so it seeks to understand cost at an operational level. This means it relies on understanding the time staff invests in core business processes to process certificates and licenses as well as enforcement and administrative services. Graphically, the following figure illustrates this methodology.

Hypothetical Illustration of a Driver Based Costing Model



Step 1: Collect Data – This first step involves discussions with staff to identify those positions within each program that provide and support direct services. It also involves collecting program budget and expenditure data, identifying the salary and benefits for each position, and identifying non-personnel expenditures, as well as any program and Board overhead. Specifically, the steps involve the following:

- **Identifying staff positions** – This includes identifying both position titles and names.
- **Calculating the number of productive hours** – For each position, vacation time, sick leave, paid holidays, professional development (training), routine staff meetings, and daily work breaks are deducted from the standard 2,080 annual hours. The result is a range of hours available for each position on an annual basis. This range is typically in the area of 1,600 hours. Factors that influence this range are length of service with the organization and policies for holiday and personal leave time.
- **Identifying and allocating non-personnel costs** – Costs for materials and supplies are allocated to the salary and benefits for each position.
- **Assigning any other expenses that are budgeted in other areas** – There are often expenses that should be included with the total cost of services. Examples of such costs might include amortized capital expenses for vehicles and technology.
- **Identifying core business processes or activities** – This step also involves discussions with staff to understand, at an operational level, the work of the operating unit. Core business processes used to provide services are identified and then defined by the tasks that are involved. Processes are also organized by direct and indirect categories:
- **Direct processes and activities** – Those processes that directly contribute to the processing of an application or certificate are first identified. Examples of a direct activity are initial data entry of certificates and certifications.
- **Indirect processes and activities** – Those processes that support, but do not directly apply to the processing of a specific license or certificate. An example of an indirect activity is customer service or staff training to maintain certifications.

Step 2: Building cost structures – This second step involves significant interaction with staff and the development of time estimates for both direct and indirect processes in each program area. Specifically, this step is at the core of the analysis. There are three processes that comprise this step:

- **Gathering time estimates for direct processes** – By interviewing staff in individual and group meetings, an estimate of time was assigned to each service by the process that is indicated. The sum of all the process steps is the total time that is required to provide that specific service.
- **Assigning indirect time** – An annual time estimate is gathered from staff for those indirect or support processes in which they are involved. These include Board as well as program administration, customer service, and IT.
- **Calculating fully loaded hourly rates and the cost of service –** Once the total time for each direct and indirect service is estimated, the cost of service is calculated by using the fully loaded hourly rates for each staff member or position that is involved with the service. The fully loaded hourly rate for each employee is based on the employee's salary and benefit costs plus a share of non-personnel and Board overhead costs divided by the employee's available work hours (i.e. 2,080 hours minus all leave hours). Thus, the direct and indirect cost by activity also includes program and Board overhead as well as non-labor costs.
- **Gathering activity or volume data** – A critical element in the analysis is the number of times a given license or certificate is provided on an annual basis. This is critical data for three reasons:

- It allows a calculated projection of current revenue based on current prices. This is compared with actual revenue to see if there is a close match as the data should match.
- It allows for a calculated projection of revenue at full cost. This is compared to actual expenditures to see if there is a close match as the data should match.
- It allows for a calculation of total hours consumed. Hours consumed must closely match actual hours available.

If any of the three calculations do not approximate actual numbers, then time estimates and/or volume data need to be re-evaluated. These are critical quality checks for costing accuracy.

Step 3: Allocating Enforcement Activities – This third step allocates enforcement activities to arrive at the full cost of service for each direct license or certificate. Thus, the final cost layers are brought together to establish the full cost of service. For the RDO, this is a significant step as a high percentage of its costs are centered in enforcement activities. To do this, we calculated a cost per license for enforcement activities.

Step 4: Set cost recovery policy – Depending on Board policies and other considerations, the level of cost recovery is a decision that should be made for each type or group of licenses. For example, the Board might want to subsidize one type of licenses with revenues from others.

Step 5: Set fees

Fees should be based on any cost recovery policy and at a price that will fully recover the Board's cost and provide a sustainable future.

SUMMARY OF FINDINGS – CURRENT STATE

TRANSITIONS

In our view, the most important output of any cost of service study is the assurance of long-term sustainability. However, sustainability in and of itself is not enough. Sustainability also means providing a high degree of services to Opticians and value added assurances of quality optometric care for the residents of California. By setting fee levels that fully recover costs and setting policies in place to maintain adequate fees and reserves, the Board of Optometry is better equipped to execute on its vision.

Transitioning from the Medical Board of California to the California Board of Optometry creates both opportunities and risks.

OPPORTUNITIES:

This period of transition provides an opportunity to review the RDO's mission, determine where services can be strengthen, and create a new future. This is especially so as the recent legislation comes online that will allow for significant increases in registered opticians.

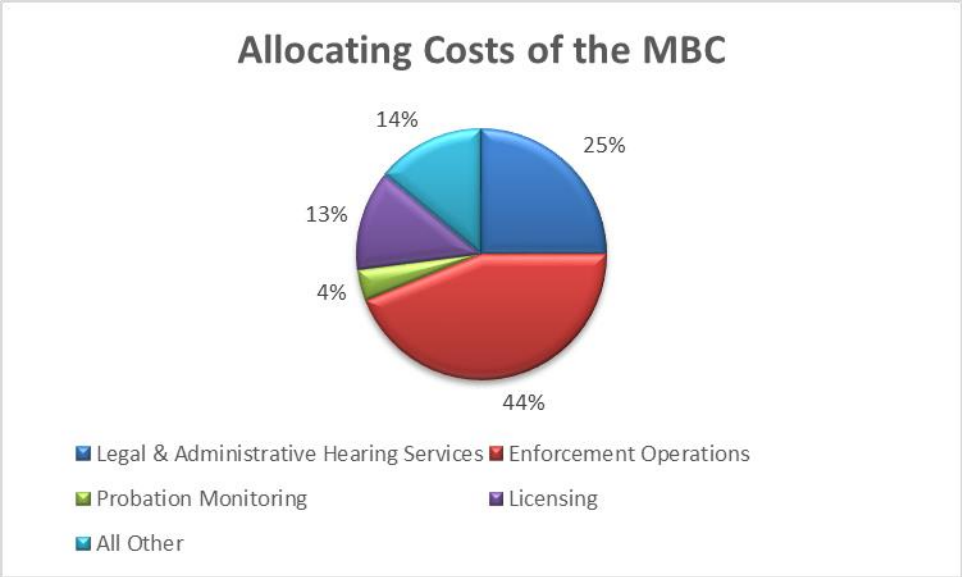
RISKS:

In our view, risks of setting fees too low during periods of transition can threaten the future by focusing on the near term. When fees are set below cost, service levels ultimately collapse. We have seen this recently with one board within the Department of Consumer Affairs. It has not raised its fees in twenty years. Consequently, it has consumed all of its reserves and now it is in a place where its customers are angry, staffing is unstable, and upgrades to systems cannot be acquired.

SUMMARY OF COSTS

One of the primary objectives of the study was to fully account for all costs as they have occurred by the Medical Board of California (MBC) – the organization managing the RDO up until December of 2015. From our perspective, the MBC did an excellent job allocating overhead and enforcement costs to the RDO. The allocation of cost by the MBC to the RDO is an important function for this reason, the largest component of costs to the RDO is not in the processing of licenses, it is in enforcement. In the 2013-2014 Executive Summary, the total cost for enforcement, including legal and hearing services was a 73% of the total MBC budget. So capturing an appropriate cost for enforcement is a critical step to understanding the full cost structure for the RDO. As part of this study, we spent considerable time working with staff from the MBC reviewing their costs and confirming that we have fully captured all costs that have been consumed by the RDO.

Graphically, the relationship between enforcement related costs to total cost can be seen in the following graphic.



TOTAL COST OF ALL ENFORCEMENT ACTIVITIES, INCLUDING LEGAL & HEARING SERVICES (25%), ENFORCEMENT OPERATIONS (44%), AND PROBATOIN MONITORING (4%) TOTAL 73% OF THE TOTAL MBC BUDGET

Based on our experience with other boards within the Department of Consumer Affairs, a high proportion of total expenses being consumed in enforcement related activities is the norm.

Changes in Budgeted Expenditures

As the RDO transitions to the California Board of Optometry several changes in expenditures are being projected by the DCA budget staff. From our perspective, these all appear to be reasonable. For example, budgeted expenditures for The State Attorney General are being increased. Also, while the RDO program was under the MBC it was charged for a share of support and administrative services. This is being replaced by staff who will be providing these services. In addition, the DCA budget staff have revised the Pro Rata allocations to reflect this new staffing model.

Revenues Generated From these Costs

Excluding delinquent and replacement licenses, the RDO is processing a little more than 2300 licenses for Registered Dispensing Opticians. Actual revenues for fiscal 2014-2015 was $196,907. However, actual expenses was $284,466. Therefore, the RDO program was under-recovering its costs by ($87,559). Thus, fees would have to increase by 30% just to bring them up to full cost based on fiscal 2014-2015 expenditures as they were calculated by the MBC.

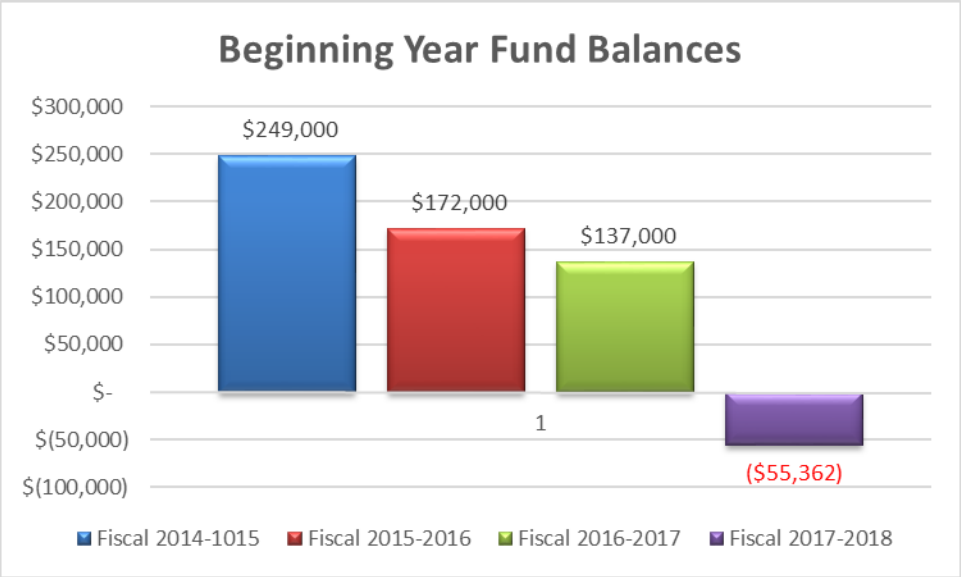
Reserves

It is our understanding that the Board is operating with reserves (or fund balances) but it is unclear if there is a reserve policy. One of our standard recommendations for each of our clients is establishing both a practice of price setting for reserves and policies on how to manage those reserves. We frequently see the impact of organizations that rely on fees as a primary source of revenues that operate without reserves. The impacts are several:

- Delays in acquiring technology to improve customer experience;

- Delays in new staffing even though activity levels are escalating;
- Call centers and basic customer service is cut back;
- Unexpected costs (such as California State Attorney General expenses as well as Hearing Officers) consume budgets for technology and staffing;
- Staffing becomes unstable; and
- Revenues are eventually used from other sources.

Based on the projected budget supplied by the DCA for fiscal 2016-1017 there will be $137,000 in reserves at the beginning of the year. However, this will rapidly disappear with the additional costs being allocated by the DCA budget office. Assuming no increases in fees, and based on the projected expenditures for fiscal 2016-12017 the RDO program will under recover its cost by a significant margin. The following graphic illustrates the projected impact on reserves for the next fiscal year.



WITH NO ADJUSTMENT TO RDO FEES, THE OPTOMETRISTS WILL BE SUBSIDIZING LICENSING AND ENFORCMENT OF OPTICIANS.

Based on the data we have, the projected net revenue to the RDO program will be ($192,363). This loss will need to come out of the current fund balance. Therefore, by the end of fiscal 2016-2017 Optometrists will be subsidizing the RDO program unless immediate action is taken.

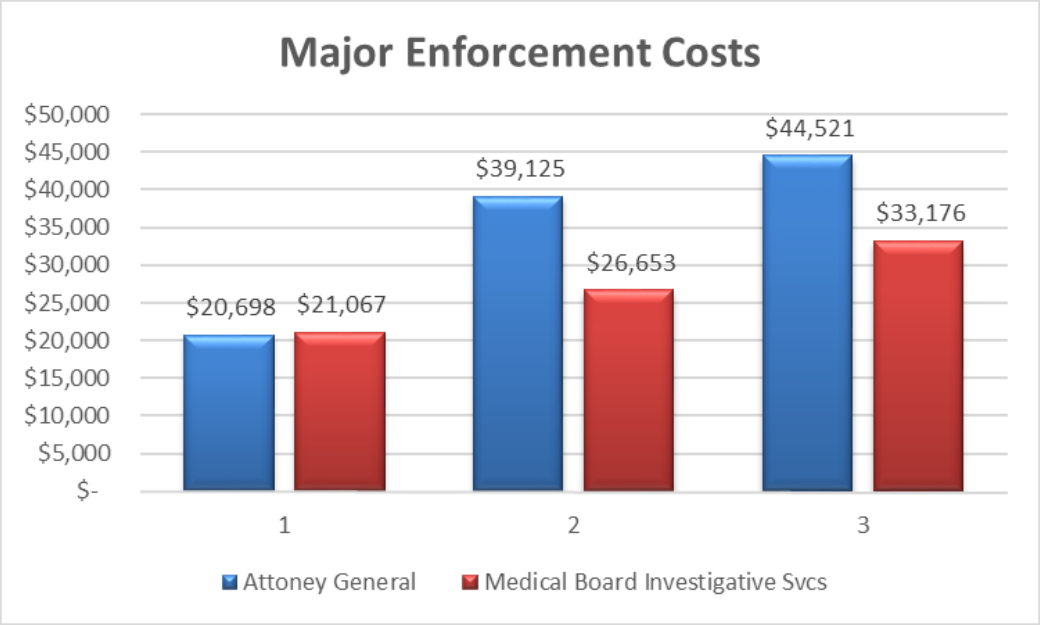
ESCALATING COSTS OF ENFORCEMENT

After completing three fee audits for Boards of the California Department of Consumer Affairs we have seen in each of them escalating costs for enforcement activities. These escalating costs have come from two sources:

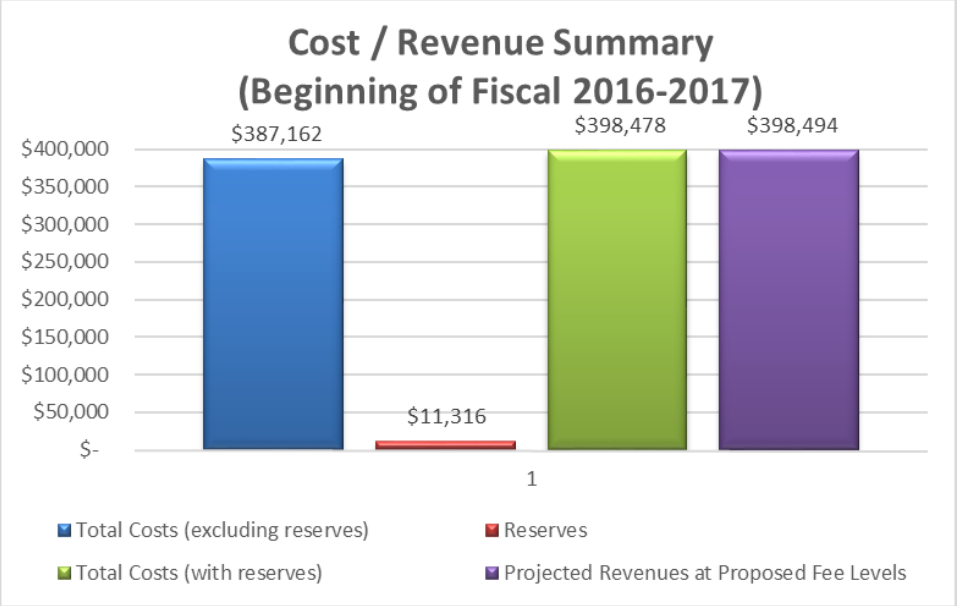
1) Increases in cost from the California State Attorney General (AG); and
2) Increases in cost for Administrative Hearings.

The challenge with these costs is that they can be difficult to budget. A single enforcement action can quickly consume a budget for the AG's office. In addition, costs assigned from the AG's office is always in the fiscal year after the action. The same holds true for Administrative Hearings. These are frequently unexpected and difficult to budget for. This is all the more reason to establish a practice of building reserves.

The following is a graphic of costs that have been assigned to the RDO program directly from the California State Attorney General's Office or Investigative Services provided by MBC. It shows that in the last three years, AG's costs have escalated by 115% and Investigative Services from the Medical Board has gone up by 57%.



In the fiscal 2016-2017 budget, the DCA budget office has increased the Attorney General's line item to $50,000. In our view, this is a reasonable increase in expense. In addition, $5,000 has been budgeted for the Office of Administrative Hearings. We also find this to be reasonable. While the RDO may go for a long period of time without an Administrative Hearing, when one does occur they can be very costly. The follow graphic illustrates the total expenses beginning in fiscal 2016-2017 and the revenues required to meet these expenses.



For a complete table of individual fee items please see Appendix #1.

SUMMARY OF FINDINGS - FUTURE STATE

Building Long Term Sustainability

It is our understanding, that AB 684 made significant changes in the State of California regarding Dispensing Opticians. These changes may require additional legislative and regulatory support and could dramatically increase the number of Opticians registering in the State of California. It is also anticipated that many existing companies in California will expand quickly – also resulting in an increased RDO population. This will have an impact on staffing for processing as well as additional enforcement cost. It is our view that the intent of the new BREEZE program will increase the capacity of processing licenses, but those processes will not be available to applicants online until late 2017. Therefore, any additional increases will result in increased manual workload for existing staff.

In addition, AB 684 created inspection authority for the Board. In the future Board leadership is proposing a formal inspection program that will result in greater public safety. However, without future direction from the legislature the scope of this inspection program cannot be determined. With out of State Optical firms moving into California as a result of recent legislation, Board leadership feels it will be imperative that a high quality inspection program be in place. At a minimum this inspection program will be designed to inspect the following:

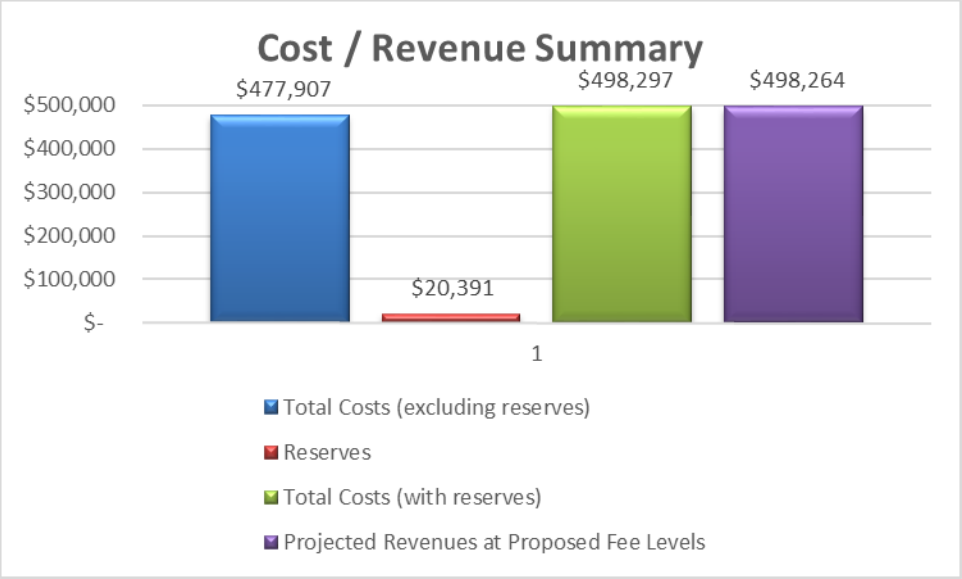
1) Lease Agreements between RDOs and Optometrists for BPC Section 655 compliance; and
2) Each co-located premises for BPC Section 655 compliance.

In addition, it is our understanding that many of the statutes and regulations pertaining to the RDO Program have not been evaluated, updated or amended in over 25 years. Significant legislative and regulatory work will need to be done in order to ensure the RDO Program sufficiently protects California

consumers by holding RDOs to current practice standards. This work will now be performed by the Optometry Board Policy Analyst. In addition, management oversight and personnel services will be performed by Optometry Board staff. Additional costs that have not be a part of the RDO program include Division of Investigation services for field investigations and inspections.

Therefore, beginning fiscal 2017-2018 additional costs will be coming into the RDO program. In terms of Full Time Equivalent (FTE) staffing, current part time staff will be need to be made full time. This will result in the equivalent of one full time position being added. As stated earlier, additional staffing may be needed to fulfill the demands of the inspection program. What this means, is that total expenditures for the RDO program are expected to increase to $477,907. This does not include any additional revenues to rebuild reserves and fund balances.

The following graphic illustrates both the total expenses and the revenues required to meet the projected fiscal 2017-2018 expenses as well as an amount to rebuild reserves.



OBSERVATIONS AND RECOMMENDATIONS

GENERAL OBSERVATIONS

As stated earlier, we observe that the Medical Board of California has done an excellent job of allocating costs to the RDO. Therefore, we are confident that the costs we have calculated are very much in line with what the Board of Optometry can expect. We also observe two other critical components that the Board of Optometry will need to quickly consider:

1) RDO fees have not been adjusted for many years and consequently the program is not recovering its cost by approximately 30%;
2) Reserves. We feel strongly in the value of reserves for long term sustainability. There are no reserves and from what we can tell, no reserve policies.

SPECIFIC RECOMMENDATIONS

IMMEDIATE ACTION IS REQUIRED

In our view, immediate action is required to maintain a strong and robust RDO program that will not be subsidized by the larger Optometrists program. This time of transition is requiring additional resources. In addition, more resources will be required as larger corporate interests open up new dispensing operations. At a minimum, immediate action is required to bring fee levels in line with expenses at the fiscal 2016-2017 level. This would require setting the fees at a minimal level as detailed in appendix 1. Without this action, the larger Optometrists program will be subsidizing the RDO by the end of the fiscal year. For the longer time, we would highly recommend setting the maximum fee levels based on a 10 year projection of cost. This will include the additional expenses projected for fiscal 2017-2018 as detailed in appendix 2.

SET FEES AT FULL COST

In our view user fees should be set at full cost unless there is a compelling reason not to. A compelling reason is often where compliance is more important than revenue. Another reason is where practical realities will prohibit charging full cost but then other fees need to be adjusted to recover lost revenues. However, it is our recommendation that the Board adopt a policy of setting fees at full cost.

ADJUST FEES REGULARLY

One of the most important outcomes of a study of fees is a policy to adjust fees regularly. Staff generally receive regular cost of living adjustments, Opticians generally receive cost of living adjustments, and fees should be adjusted regularly as well.

We understand that the Board must receive approval for setting its caps from the State Legislators. Therefore, our recommendation is to project fees for the next ten years using a simple annual adjustment. Then adjust fees annually for 3-5 years, do another formal cost analysis. We would further recommend this process be set into policy by the Board members. Given the transitions that are currently in place and the addition of a formal inspection program in the near future, we would strongly recommend a formal assessment of fees closer to the three year, rather than five-year planning horizon.

ESTABLISH A RESERVE POLICY

Another critical outcome of a study of fees is realizing the need for a reserve policy. We find that reserves are an imperative component of long-term sustainability. In discussing this with staff we set six months of operating expenses as the most ideal target. Further, we determined that building this up over the next five years is a reasonable objective. In our view, setting reserve targets should become a policy of the Board.

APPENDICES

There are two appendices that follow. In summary, each illustrates the following detail:

- Individual unit costs analysis;
- Individual unit cost analysis with reserve fund calculated:
- Individual unit cost analysis with ten year projection based on a 3.5% annual adjustment:
- A projection of annual revenues for each of the above.

#1: UNIT COST CALCULATIONS BASED ON FISCAL 2016-2017 COST STRUCTURE

#2: UNIT COST CALCULATIONS BASED ON ADDITIONAL STAFF AND ENFORCEMENT ACTIVITIES PROJECT FOR FISCAL 2017-2018 AND BEYOND

California Medical Board

RDO Fees (Fiscal 2016-2017)

			Unit Cost Summary					Annual Cost Calculations w/o Reserves			Reserve Requirements	
Service #	Fee Name	Actual Work Volume	Direct Unit Cost	Indirect Unit Allocated Costs	Total Cost Assigned	Current Fee / Revenue	Proposed Fee	Revenue at Proposed Fee Levels	Projection of Revenues at Current Fees	Annual Surplus (subsidy)	6 Months Reserve, 5 yr build up	Proposed Fee Including Reserves
	RDO PROGRAM FEES/CHARGES										$ 11,316	
	REPLACEMENT CERTIFICATION - R.D.O	11	$ -			$ 25.00	$ 35.00	$ 385	$275	($110)	$1.02	$36
	REPLACEMENT CERTIFICATION - C.L.D	3	$ -			$ 25.00	$ 35.00	$ 105	$75	($30)	$1.02	$36
	REPLACEMENT CERTIFICATION - S.L.D	6	$ -			$ 25.00	$ 35.00	$ 210	$150	($60)	$1.02	$36
	CITATION FEE - RDO - VARIES	33	$ -			$ 75.00	$ 75.00	$ 2,475	$2,475		$2.19	$77
			$ -					$ -				
			$ -					$ -				
	OTHER REGULATORY LICENSES AND PER		$ -					$ -				
	INITIAL REG FEE-NON RESID(OSC)	1	$ 276	$809	$1,085	$ 100.00	$ 400.00	$ 400	$100	($300)	$11.69	$411.69
	RDO-INITAL LICENSE	83	$ 173	$508	$680	$ 75.00	$ 275.00	$ 22,825	$6,225	($16,600)	$8.04	$283.04
	REGISTERED CLD	72	$ 138	$405	$542	$ 75.00	$ 275.00	$ 19,800	$5,400	($14,400)	$8.04	$283.04
	SLD INITIAL REG	180	$ 138	$405	$542	$ 100.00	$ 275.00	$ 49,500	$18,000	($31,500)	$8.04	$283.04
			$ -					$ -				
			$ -					$ -				
	RENEWAL FEES		$ -					$ -				
	RDO BIENNIAL REN	517	$ 10	$29	$39	$ 75.00	$ 140.75	$ 72,768	$38,775	($33,993)	$4.11	$144.86
	CLD BIENNIAL REN	473	$ 5	$15	$20	$ 75.00	$ 140.75	$ 66,575	$35,475	($31,100)	$4.11	$144.86
	SLD BIENNIAL REN	989	$ 5	$15	$20	$ 75.00	$ 140.75	$ 139,202	$74,175	($65,027)	$4.11	$144.86
	RENEWALFEE-NON RESID(OSC)	4	$ 10	$29	$39	$ 100.00	$ 140.75	$ 563	$400	($163)	$4.11	$144.86
			$ -					$ -				
			$ -					$ -				
	DELINQUENT FEES		$ -					$ -				
	DELINQUENT RENEWAL - R.D.O.	40	$ -			$ 25.00	$ 44.50	$ 1,780	$1,000	($780)	$1.30	$46
	DELINQUENT FEE - CLD	71	$ -			$ 25.00	$ 44.50	$ 3,160	$1,775	($1,385)	$1.30	$46
	DELINQUENT RENEWAL - S.L.D.	167	$ -			$ 25.00	$ 44.50	$ 7,432	$4,175	($3,257)	$1.30	$46
			$ -					$ -				
			$ -					$ -				
	OTHER FEES		$ -					$ -				
	ICR - PROBATION MONITORING (revenue)	1	$ -			$ 6,341.00		$ -	$6,341	$6,341		
			$ -					$ -				
			$ -					$ -				
			$ -					$ -				
			$ -					$ -				$ -

Annual Revenue Impacts			Annual Revenue Impact	
Revenue at Proposed Fee Levels	Projection of Revenues at Current Fees	Annual Surplus (subsidy)		Proposed Fee Including Reserves
$ 387,178	$ 194,816	($192,362)		$398,494

California Medical Board

RDO Fees (Beginning Fiscal 2017-2018)

Service #	Fee Name	Actual Work Volume	Unit Cost Summary: Direct Unit Cost	Indirect Unit Allocated Costs	Total Cost Assigned	Current Fee / Revenue	Proposed Fee	Annual Cost Calculations w/o Reserves: Revenue at Proposed Fee Levels	Projection of Revenues at Current Fees	Annual Surplus (subsidy)	Reserve Requirements (Fiscal 2017-2018): 6 Months Reserve, 5 yr build up	Proposed Fee Including Reserves
	RDO PROGRAM FEES/CHARGES										$ 20,391	
	REPLACEMENT CERTIFICATION - R.D.O	11	$ -			$ 25.00	$ 35.00	$ 385	$275	($110)	$1.49	$36.49
	REPLACEMENT CERTIFICATION - C.L.D	3	$ -			$ 25.00	$ 35.00	$ 105	$75	($30)	$1.49	$36.49
	REPLACEMENT CERTIFICATION - S.L.D	6	$ -			$ 25.00	$ 35.00	$ 210	$150	($60)	$1.49	$36.49
	CITATION FEE - RDO - VARIES	33	$ -			$ 75.00	$ 75.00	$ 2,475	$2,475		$3.20	$78.20
			$ -					$ -				
			$ -					$ -				
	OTHER REGULATORY LICENSES AND PER		$ -					$ -				
	INITIAL REG FEE-NON RESID(OSC)	1	$ 267	$1,866	$2,133	$ 100.00	$ 600.00	$ 600	$100	($500)	$25.60	$625.60
	RDO-INITAL LICENSE	83	$ 168	$1,171	$1,339	$ 75.00	$ 298.00	$ 24,734	$6,225	($18,509)	$12.72	$310.72
	REGISTERED CLD	72	$ 134	$933	$1,067	$ 75.00	$ 298.00	$ 21,456	$5,400	($16,056)	$12.72	$310.72
	SLD INITIAL REG	180	$ 134	$933	$1,067	$ 100.00	$ 298.00	$ 53,640	$18,000	($35,640)	$12.72	$310.72
			$ -					$ -				
			$ -					$ -				
	RENEWAL FEES		$ -					$ -				
	RDO BIENNIAL REN	517	$ 10	$67	$77	$ 75.00	$ 182.50	$ 94,353	$38,775	($55,578)	$7.79	$190.29
	CLD BIENNIAL REN	473	$ 5	$34	$38	$ 75.00	$ 182.50	$ 86,323	$35,475	($50,848)	$7.79	$190.29
	SLD BIENNIAL REN	989	$ 5	$34	$38	$ 75.00	$ 182.50	$ 180,493	$74,175	($106,318)	$7.79	$190.29
	RENEWALFEE-NON RESID(OSC)	4	$ 10	$67	$77	$ 100.00	$ 182.50	$ 730	$400	($330)	$7.79	$190.29
			$ -					$ -				
			$ -					$ -				
	DELINQUENT FEES		$ -					$ -				
	DELINQUENT RENEWAL - R.D.O.	40	$ -			$ 25.00	$ 44.50	$ 1,780	$1,000	($780)	$1.90	$46.40
	DELINQUENT FEE - CLD	71	$ -			$ 25.00	$ 44.50	$ 3,160	$1,775	($1,385)	$1.90	$46.40
	DELINQUENT RENEWAL - S.L.D.	167	$ -			$ 25.00	$ 44.50	$ 7,432	$4,175	($3,257)	$1.90	$46.40
			$ -					$ -				
			$ -					$ -				
	OTHER FEES		$ -					$ -				
	ICR - PROBATION MONITORING (revenue)	1	$ -			$ 6,341.00		$ -	$6,341	$6,341		
			$ -					$ -				
			$ -					$ -				
			$ -					$ -				
			$ -					$ -				$ -

Annual Revenue Impacts: Revenue at Proposed Fee Levels	Projection of Revenues at Current Fees	Annual Surplus (subsidy)
$ 477,874	$ 194,816	($283,058)

Annual Revenue Impact	Proposed Fee Including Reserves
	$498,264

California Medical Board

RDO Fees (Beginning Fiscal 2017-2018)

Service #	Fee Name	Ten Year Projection of Fee Requirements (Fiscal 2017-2018 is Year #1)								
		Fiscal 18-19	Fiscal 19-20	Fiscal 20-21	Fiscal 21-22	Fiscal 22-23	Fiscal 23-24	Fiscal 24-25	Fiscal 25-26	Fiscal 26-27
	RDO PROGRAM FEES/CHARGES	3.5% Annual Increase								
	REPLACEMENT CERTIFICATION - R.D.O	$38	$39	$40	$42	$43	$45	$46	$48	$50
	REPLACEMENT CERTIFICATION - C.L.D	$38	$39	$40	$42	$43	$45	$46	$48	$50
	REPLACEMENT CERTIFICATION - S.L.D	$38	$39	$40	$42	$43	$45	$46	$48	$50
	CITATION FEE - RDO - VARIES	$81	$84	$87	$90	$93	$96	$99	$103	$107
	OTHER REGULATORY LICENSES AND PER									
	INITIAL REG FEE-NON RESID(OSC)	$647	$670	$694	$718	$743	$769	$796	$824	$853
	RDO-INITAL LICENSE	$322	$333	$344	$357	$369	$382	$395	$409	$423
	REGISTERED CLD	$322	$333	$344	$357	$369	$382	$395	$409	$423
	SLD INITIAL REG	$322	$333	$344	$357	$369	$382	$395	$409	$423
	RENEWAL FEES									
	RDO BIENNIAL REN	$197	$204	$211	$218	$226	$234	$242	$251	$259
	CLD BIENNIAL REN	$197	$204	$211	$218	$226	$234	$242	$251	$259
	SLD BIENNIAL REN	$197	$204	$211	$218	$226	$234	$242	$251	$259
	RENEWALFEE-NON RESID(OSC)	$197	$204	$211	$218	$226	$234	$242	$251	$259
	DELINQUENT FEES									
	DELINQUENT RENEWAL - R.D.O.	$48	$50	$51	$53	$55	$57	$59	$61	$63
	DELINQUENT FEE - CLD	$48	$50	$51	$53	$55	$57	$59	$61	$63
	DELINQUENT RENEWAL - S.L.D.	$48	$50	$51	$53	$55	$57	$59	$61	$63
	OTHER FEES									
	ICR - PROBATION MONITORING (revenue)									

Annual Revenues (Projected)								
Fiscal 18-19	Fiscal 19-20	Fiscal 20-21	Fiscal 21-22	Fiscal 22-23	Fiscal 23-24	Fiscal 24-25	Fiscal 25-26	Fiscal 26-27
$ 515,703	$ 533,753	$ 552,434	$ 571,770	$ 591,782	$ 612,494	$ 633,931	$ 656,119	$ 679,083

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 9 – Discussion and Possible Action on Legislation Impacting the Practice of Optometry**

A. SB 402 (Mitchell) Pupil health: vision examinations
Status: Inactive
Board Position: Board Sponsored - Support
As reported at the November 2014 Board meeting, this bill met the criteria for referral to the Suspense File due to the fiscal impact. The Board voted to maintain its sponsorship of SB 402 and continued its delegation to the Children's Vision Workgroup (Dr. Glen Kawaguchi and Rachel Michelin) to participate in meetings with legislative staff and stakeholders to assist with this bill. However, the author was unable to carry this bill this legislative session, so the bill is now inactive.

Standing firm in the Board's Resolution to improve children's vision, the Board's Children's Vision Workgroup initiated its first Children's Vision Coalition. Invitations for the first meeting on February 18, 2016 were sent various stakeholders with the goal to form a strong, comprehensive coalition. The Workgroup will provide an update to the Board at the meeting.

B. SB 496 (Nguyen) Optometry: graduates of a foreign university: examinations and licensure
Status: Inactive
Board Position: Board Sponsored – Support
This bill creates a pathway for foreign graduates to become licensed in California. During its November Board meeting, the Board decided to create a workgroup to work with the author's office, stakeholders, and the opposition over the next year to create stronger legislation next session. This bill is now inactive.

Since the November meeting, the Executive Officer has had a few discussions with foreign graduates seeking to become licensed in California. Some foreign graduates may attend future Board meetings to express their position and urge the Board to continue seeking a pathway to licensure. The Executive Officer also met with the author's office to discuss the obstacles the bill faced.

Action Requested: Appoint two members to the workgroup to start working on this issue.

C. SB 349 (Bates) Optometry: mobile optometric facilities
Status: Inactive
Board Position: Board Sponsored - Support
This bill established requirements to allow a nonprofit or charitable organization, a governmental agency or a school to own and operate mobile optometric facilities in California. During the November meeting, the Board decided to create a workgroup to work with the author's office, stakeholders, and the opposition over the next year to create stronger legislation next session.

After further review, it appears regulations may be completed in lieu of any legislation.

Action Requested: Appoint two members to the workgroup to start working with interested stakeholders to analyze this further and craft potential regulatory language for consideration by the Legislative and Regulatory Committee and/or the Board at a future meeting.

D. SB 622 (Hernandez): Optometry
Status: Active Bill – In Committee Process (Assembly Business and Professions)
Board Position: Support
This bill expands the scope of practice for optometrists in California and adds Board certifications in specified laser procedures, minor surgical procedures, and vaccinations.

During the November Board meeting, the Board voted to amend its previous Support if Amended position to Support after COA accepted several technical amendments proposed by the Board. While the Board initially requested inspection authority be included in the bill, it decided to seek the Administration's assistance in securing this authority.

E. TB 201 Registered Dispensing Opticians Program Move
Background
During its November 2015 Board meeting, the Board approved proposed amendments to various Business and Professions Codes (BPC) in order to address several issues resulting from the passage of AB 684. Based on the Administration's assurances and its commitment to address these issues, the Board directed staff to draft and dispatch a letter to the Administration seeking its assistance in securing said amendments in the next legislative session (2016) (Attachment 1).

Update
The Administration worked to include several of the Board's amendments into Trailer Bill (Issue 201) (Attachment 2). The two outstanding issues not addressed in the Trailer Bill are 1) A revised fee structure to adequately support the RDO program and 2) language broadening the inspection authority to all optometry practice locations.

At the time of publication, the fee language was not included because the fee audit was not completed. Now that it is complete and the results presented and discussed in Agenda Item 8, the Board may want to propose additional amendments to the Trailer Bill to address the concerns identified or to adopt any recommendations or suggestions.

Regarding broadening inspection authority, further discussion on this issue may be necessary. In an effort to assist the policy discussion, legal counsel has provided draft language for broadening inspection authority (Attachment 3).

Attachments:
1. Letter to Administration
2. Trailer Bill (Issue 201) Language
3. Draft inspection authority

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
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December 11, 2015

Graciela Castillo-Krings
Deputy Legislative Secretary
Office of Governor Edmund G. Brown, Jr.
State Capitol, Suite 1173
Sacramento, CA 95814

Re: Legislative Amendments resulting from Assembly Bill 684

Dear Ms. Castillo-Krings:

The California State Board of Optometry (Board) met on November 20, 2015, to discuss and consider recommendations by the Board's Legislation and Regulation Committee (LRC) regarding potential legislative changes to address various Assembly Bill 684 concerns. These concerns, many of which were relayed to you in its formal letter of opposition (Attachment 1) and various conversations with the Executive Officer and other Board Members, included the following:

- Inadequate funds to support the Registered Dispensing Optician Program;
- Optical companies are not regulated under the auspices of the Department of Consumer Affairs (DCA);
- Lack of substantial enforcement mechanisms to promote compliance with the laws;
- Authority for parties to a lease to redact certain information prior to submitting the lease to the Board;
- Co-Location reporting requirement not applied to both optometrists and registered dispensing opticians; and,
- Milestone reporting requirements –
    - Requires health plans to report to the Board, but the Board does not regulate health plans or capture any data pertaining to health plans that employ optometrists.
    - No corrective mechanisms available if health plans fail to report or meet the milestones.
    - Lack of clarity of when reports were due to the Board.

The Board agreed with the LRC's recommended legislative amendments (Attachment 2). In addition, the Board suggests that it would be prudent for the Board's inspection authority to be broadened to include inspection authority of all optometric practice locations in order to effectively enforce all laws governing the practice of optometry and to enhance consumer protection.

The Board now seeks the Administration's assistance with securing these amendments in the next legislative session. Please contact the Board's Executive Officer at your earliest convenience to discuss how these objectives can be achieved.

Sincerely,

Madhu Chawla, OD
Board President
mchawlaod@cs.com

Jessica Sieferman
Executive Officer
Jessica.Sieferman@dca.ca.gov
(916) 575-7184

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

EDMUND G. BROWN JR., GOVERNOR

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
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September 18, 2015

The Honorable Edmund G. Brown
Governor of the State of California
State Capitol Building
Sacramento, CA 95814

Re: Assembly Bill 684 (Amended September 4, 2015)

Position: OPPOSE

Dear Governor Brown:

The California State Board of Optometry (Board) discussed Assembly Bill (AB) 684 at a special meeting[1] on September 9, 2015. As currently written, AB 684 would authorize a RDO or optical company to operate, own, or have an ownership interest in a health plan, if the health plan does not directly employ optometrists to provide optometric services directly to health plan enrollees, and would also provide for the provision of products and services to the health plan or its contracted providers or enrollees or to other optometrists. In addition, the bill would move the RDO Program from the Medical Board of California to the Board, require RDOs to post a consumer notice, authorize the Board to inspect any RDO/optometrist co-locations, change the Board composition, create a Dispensing Optician Committee, and include an enforcement moratorium for those operating in prohibited relationships until January 1, 2019.

In its September 1, 2015 letter, the Board relayed its Oppose Unless Amended position on AB 684[2], stating that a more comprehensive solution than just a moratorium on enforcement actions is needed on this issue.

We recognize that AB 684 now contains more than just an enforcement moratorium. However, the Board believes this late emerging solution both creates some problematic issues and leaves some key policy concerns unresolved, which cannot be addressed in the remainder of the legislative session.

In order to put consumer protection first, the Board opposes this bill. While we acknowledge the substantial amount of effort that interested parties put into the current version of AB 684, the Board respectfully believes additional debate, meetings, and discussions with the Board and the Legislature is warranted.

If you have any questions or would like to discuss this further, please do not hesitate to contact me at 916-575-7184.

Sincerely,

Jessica Sieferman
Executive Officer
California State Board of Optometry
Jessica.Sieferman@dca.ca.gov

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[1] Pursuant to Government Code Section 11125.4, the Board, at the commencement of the special meeting, made a finding of necessity. The Board found that compliance with a 10-day notice requirement would constitute a substantial hardship to the Board in that the legislative session would have concluded before the Board could offer input to the Legislature on a bill that directly impacts consumers, the practice of optometry, and the Board operations.

[2] Amended June 30, 2015 version – at that time, the language in print consisted solely of the moratorium language.

Proposed Amendments to Business and Professions Code Section 655 (January 1, 2016)

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Registered dispensing optician" means a person licensed pursuant to Chapter 5.5 (commencing with Section 2550).

(5) "Therapeutic ophthalmic product" means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes.

(b) No optometrist may have any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, except as otherwise permitted under this section.

(c) (1) A registered dispensing optician or an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's 91 Ch. 405 — 4 — utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

(2) The registered dispensing optician or optical company shall not interfere with the professional judgment of the optometrist.

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code.

(d) An optometrist, a registered dispensing optician, an optical company, or a health plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:

(1) (A) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

(B) Subparagraph A shall not preclude a lease from including commercially reasonable terms that: (i) require the provision of optometric services at the leased space during certain days and hours, (ii) restrict the leased space from being used for the sale or offer for sale of spectacles, frames, lenses, contact lenses, or other ophthalmic products, except that the optometrist shall be permitted to sell therapeutic ophthalmic products if the registered dispensing optician, health plan, or optical company located on or adjacent to the optometrist's leased space does not offer any substantially similar therapeutic ophthalmic products for sale, (iii) require the optometrist to contract with a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

(2) The optometrist's records shall be the sole property of the optometrist. Only the optometrist and those persons with written authorization from the optometrist shall have access to the patient records and the examination room, except as otherwise provided by law.

(3) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating 91 — 5 — Ch. 405 that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility. This paragraph shall not require a separate entrance to the optometrist's leased space.

(4) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith. This paragraph shall not prohibit the optometrist from advertising the optometrist's practice location with reference to other occupants or prohibit the optometrist or registered dispensing optician from advertising their participation in any health plan's network or the health plan's products in which the optometrist or registered dispensing optician participates.

(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.

(6) Except for a statement that an independent doctor of optometry is located in the leased space, in-store pricing signs and as otherwise permitted by this subdivision, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees. (7) Notwithstanding paragraphs (4) and (6), this subdivision shall not preclude a health plan from advertising its health plan products and associated premium costs and any copayments, coinsurance, deductibles, or other forms of cost-sharing, or the names and locations of the health plan's providers, including any optometrists or registered dispensing opticians that provide professional services, in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(8) A health plan that advertises its products and services in accordance with paragraph (7) shall not advertise the optometrist's fees for products and services that are not included in the health plan's contract with the optometrist.
(9) The optometrist shall not be precluded from collecting fees for services that are not included in a health plan's products and services, subject to any patient disclosure requirements contained in the health plan's provider agreement with the optometrist or that are not otherwise prohibited by the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).
(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

(A) The optometrist's failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist's 91 Ch. 405 — 6 — license or if the optometrist or the optometrist's employee is or becomes ineligible to participate in state or federal government-funded programs.
(B) Termination of any underlying lease where the optometrist has subleased space, or the optometrist's failure to comply with the underlying lease provisions that are made applicable to the optometrist.
(C) If the health plan is the landlord, the termination of the provider agreement between the health plan and the optometrist, in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).
(D) Other reasons pursuant to the terms of the lease or permitted under the Civil Code.

(11) The landlord shall act in good faith in terminating the lease and in no case shall the landlord terminate the lease for reasons that constitute interference with the practice of optometry.
(12) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.
(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.
(14) The landlord shall provide the optometrist with written notice of the scheduled expiration date of a lease at least 60 days prior to the scheduled expiration date. This notice obligation shall not affect the ability of either party to terminate the lease pursuant to this section. The landlord may not interfere with an outgoing optometrist's efforts to inform the optometrist's patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist's practice.
(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. ~~Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to submission of the lease or agreement.~~ This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code. Any financial information contained in the lease submitted to a

regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). 91 — 7 — Ch. 405

(16) This subdivision shall not be applicable to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.

(e) No registered dispensing optician may have any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as permitted under this section.

(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or landlord tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.

(g) Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(h) Notwithstanding any other provision of law and in addition to any action available to the Board, the board may issue a citation and order of abatement to an optical company, an optometrist or a registered dispensing optician and that entity shall be subject to a fine not to exceed fifty thousand dollars ($50,000), for a violation of each section.

Proposed Amendments to Business and Professions Code Section 2556.1 (January 1, 2016)

All licensed optometrists and registered dispensing opticians who are in a co-located setting ~~in a setting with a registered dispensing optician~~ shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

Proposed Amendments to Business and Professions Code Section 2556.2 (January 1, 2016)

(a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any registered dispensing optician or optical company who owns a health plan that employs optometrists, ~~as defined in Section 655,~~ subject to this section shall comply with the following milestones:~~report to the State Board of Optometry in writing that~~ (1) 15 percent of its locations no longer employ an optometrist by January 1, 2017, (2) 45 percent of its locations no longer employ an optometrist by August 1, 2017, and (3) 100 percent of its locations no longer employ an optometrist by January 1, 2019.

(g) Any registered dispensing optician or optical company who owns a health plan that employs optometrists, shall report the milestones in subsection (f) to the State Board of Optometry in writing within 30 days of each milestone. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) Notwithstanding any other provision of law and in addition to any action available to the Board, the board may issue a citation and order of abatement to an optical company, an optometrist or a registered dispensing optician and that entity shall be subject to a fine not to exceed fifty thousand dollars ($50,000), for a violation of each section.

An act to amend Sections 655, 2556.1, and 2556.2 of the Business and Professions Code, relating to healing arts.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 655 of the Business and Professions Code is amended to read:

655. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Registered dispensing optician" means a person licensed pursuant to Chapter 5.5 (commencing with Section 2550).

(5) "Therapeutic ophthalmic product" means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes.

(b) No optometrist may have any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, except as otherwise permitted under this section.

(c) (1) A registered dispensing optician or an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

(2) The registered dispensing optician or optical company shall not interfere with the professional judgment of the optometrist.

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the

services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety ~~Code.~~ Code).

(d) An optometrist, a registered dispensing optician, an optical company, or a health plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:

(1) (A) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

(B) Subparagraph A shall not preclude a lease from including commercially reasonable terms that: (i) require the provision of optometric services at the leased space during certain days and hours, (ii) restrict the leased space from being used for the sale or offer for sale of spectacles, frames, lenses, contact lenses, or other ophthalmic products, except that the optometrist shall be permitted to sell therapeutic ophthalmic products if the registered dispensing optician, health plan, or optical company located on or adjacent to the optometrist's leased space does not offer any substantially similar therapeutic ophthalmic products for sale, (iii) require the optometrist to contract with

a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

(2) The optometrist's records shall be the sole property of the optometrist. Only the optometrist and those persons with written authorization from the optometrist shall have access to the patient records and the examination room, except as otherwise provided by law.

(3) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility. This paragraph shall not require a separate entrance to the optometrist's leased space.

(4) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith. This paragraph shall not prohibit the optometrist from advertising the optometrist's practice location with reference to other occupants or prohibit the optometrist or registered dispensing optician from advertising their participation in any health plan's network or the health plan's products in which the optometrist or registered dispensing optician participates.

(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.

(6) Except for a statement that an independent doctor of optometry is located in the leased space, in-store pricing signs and as otherwise permitted by this subdivision, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees.

(7) Notwithstanding paragraphs (4) and (6), this subdivision shall not preclude a health plan from advertising its health plan products and associated premium costs and any copayments, coinsurance, deductibles, or other forms of cost-sharing, or the names and locations of the health plan's providers, including any optometrists or registered dispensing opticians that provide professional services, in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(8) A health plan that advertises its products and services in accordance with paragraph (7) shall not advertise the optometrist's fees for products and services that are not included in the health plan's contract with the optometrist.

(9) The optometrist shall not be precluded from collecting fees for services that are not included in a health plan's products and services, subject to any patient disclosure requirements contained in the health plan's provider agreement with the optometrist or that are not otherwise prohibited by the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate

the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

(A) The optometrist's failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist's license or if the optometrist or the optometrist's employee is or becomes ineligible to participate in state or federal government-funded programs.

(B) Termination of any underlying lease where the optometrist has subleased space, or the optometrist's failure to comply with the underlying lease provisions that are made applicable to the optometrist.

(C) If the health plan is the landlord, the termination of the provider agreement between the health plan and the optometrist, in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(D) Other reasons pursuant to the terms of the lease or permitted under the Civil Code.

(11) The landlord shall act in good faith in terminating the lease and in no case shall the landlord terminate the lease for reasons that constitute interference with the practice of optometry.

(12) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered

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dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

(14) The landlord shall provide the optometrist with written notice of the scheduled expiration date of a lease at least 60 days prior to the scheduled expiration date. This notice obligation shall not affect the ability of either party to terminate the lease pursuant to this section. The landlord may not interfere with an outgoing optometrist's efforts to inform the optometrist's patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist's practice.

(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. ~~Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to submission of the lease or agreement.~~ This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code.

Any financial information contained in the lease submitted to a regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(16) This subdivision shall not be applicable to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.

(e) No registered dispensing optician may have any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as permitted under this section.

(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or landlord tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.

(g) Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(h) Notwithstanding any other law and in addition to any action available to the State Board of Optometry, the State Board of Optometry may issue a citation containing an order of abatement and an order to pay an administrative fine to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars ($50,000).

SEC. 2. Section 2556.1 of the Business and Professions Code is amended to read:

2556.1. All licensed optometrists ~~in a setting with a registered dispensing optician~~ and registered dispensing opticians who are in a co-located setting shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

SEC. 3. Section 2556.2 of the Business and Professions Code is amended to read:

2556.2. (a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any ~~health plan, as defined in Section 655,~~ registered dispensing optician or optical company that owns a health plan that employs optometrists, subject to this ~~section~~ section, shall ~~report to the State Board of Optometry in writing that (1)~~ comply with the following milestones:

(1) By January 1, 2017, 15 percent of its locations shall no longer employ an ~~optometrist by January 1, 2017, (2)~~ optometrist.

(2) By August 1, 2017, 45 percent of its locations shall no longer employ an ~~optometrist by August 1, 2017, and (3)~~ optometrist.

(3) By January 1, 2019, 100 percent of its locations shall no longer employ an ~~optometrist by January 1, 2019. The board shall provide those reports as soon as it~~

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~~receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.~~ optometrist.

(g) Any registered dispensing optician or optical company that owns a health plan that employs optometrists shall report to the board in writing the milestones in subdivision (f) within 30 days of each milestone. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) Notwithstanding any other law and in addition to any action available to the board, the board may issue a citation containing an order of abatement and an order to pay an administrative fine to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars ($50,000).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Optometrists: registered dispensing opticians: optical companies.

Existing law requires the State Board of Optometry to be responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. Existing law authorizes a registered dispensing optician or optical company to operate, own, or have an ownership interest in a health plan, defined as a licensed health care service plan, and authorizes an optometrist, a registered dispensing optician, an optical company, or a health plan to execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist if specified conditions are contained in a written agreement. Existing law authorizes the board to inspect, upon request, an individual lease agreement and authorizes personal information, as defined, to be redacted from the lease agreement prior to submission of the lease agreement to the board. Existing law makes a violation of these provisions a crime.

This bill would, notwithstanding any other law and in addition to any action available to the board, authorize the board to issue a citation containing an order of abatement and an order to pay an administrative fine, not to exceed $50,000, for a violation of a specified section of law. The bill would also delete the authorization to redact personal information from a lease agreement, and would, therefore, expand an existing crime resulting in the imposition of a state-mandated local program.

Existing law requires any health plan, defined as a licensed health care service plan, to report to the board, among other things, that 100% of its locations no longer employ an optometrist by January 1, 2019. Existing law makes a violation of this provision a crime.

This bill would instead require a registered dispensing optician or optical company that owns a health plan to meet certain milestones, including that 100% of its locations no longer employ optometrists by January 1, 2019, and report those milestones to the board within 30 days of each milestone. The bill would also, notwithstanding any other law and in addition to any action available to the board, authorize the board to issue a citation containing an order of abatement and an order to pay an administrative fine, not to exceed $50,000, for a violation of a specified section of law. By placing new requirements on a registered dispensing optician or optical company, this bill would expand an existing crime, and would, therefore, impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

Section XXXX is added to the Business and Professions Code to read:

The board may at any time inspect the premises in which optometry being practiced or in which spectacle or contact lenses are fitted or dispensed. The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect a premises for which registration has lapsed or is delinquent.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 10 – Discussion and Possible Action on Regulations Impacting the Practice of Optometry**

A. Proposed Revisions to California Code of Regulations (CCR) § 1582 Unprofessional Conduct and Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval

Background:
At its August 16, 2013 meeting, the Board voted to initiate a rulemaking to give the Board authority to compel an applicant to submit to a psychological or physical examination, and further define unprofessional conduct. The rulemaking action was printed in the California Regulatory Notice Register on October 18, 2013, and the 45-day comment period for the public started on October 18, 2013 and ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. Staff resubmitted the unchanged rulemaking package to the Office of Administrative Law, which was printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period began on August 8, 2014 and concluded on September 22, 2014.

The rulemaking action was printed in the California Regulatory Notice Register December 12, 2014, and the 45-day comment period for the public started on December 12, 2014 and ended on January 26, 2015. The hearing was held on January 26, 2015. There were no comments or public speakers at the hearing. The rulemaking package was approved by the Department of Consumer Affairs and Agency.

Update:
On December 4, 2015, the Board received a Decision of Disapproval of Regulatory Action for the rulemaking package (Attachment 1). In order to resolve all issues, Board counsel

prepared an Addendum to the Initial Statement of Reasons and Modified Text (Attachment 2) which must be available for a 15 calendar day public comment period. Any comments made regarding the addendum must be presented to the Board for consideration and be summarized and responded to in the Final Statement of Reasons.

Action Requested:
Approve the Addendum and Modified Text and direct staff to send it out for the required 15-day comment period. In the absence of any adverse comments, direct staff to resubmit the rulemaking packet to OAL for approval, and request an extension from the appropriate agency if necessary.

B. Proposed Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees

Background:
During the November 20, 2015 Board meeting, the Board voted to adopt proposed amendments to the applicable CCR sections, raising each fee to its statutory cap, in order to temporarily address the RDO Programs current fund condition. However, if the minimum fee is set in statute, via the pending trailer bill (issue 201), there would no longer be a need to adopt the proposed language.

Action Requested:
None at this time. If the fee increase is not included in the trailer bill, staff will prepare the proper rulemaking documents and set the matter for public hearing.

C. Proposed Addition to CCR § 1514.1 Co-Location Reporting Requirement and Form

Background:
During the November 20, 2015 Board meeting, the Board voted to adopt the proposed addition to CCR § 1514.1 and related form. However, the Board also requested the Administration's assistance in amending BPC Section 2556.1 to expand the reporting requirement to registered dispensing opticians.

Update:
In response to the Board's request, the Administration included the requested amendment in the pending trailer bill. If passed, the form will have to be revised to include optometrists and registered dispensing opticians reporting.

Action Requested:
None at this time. If the trailer bill is passed with the current amendment, staff will work with legal counsel to revise the form and bring back for board approval. If the trailer bill is passed without the current amendment (not currently anticipated), staff will proceed with the rulemaking process.

D. Proposed Amendment to CCR § 1536 Continuing Optometric Education; Purpose and Requirements - Update Request for Continuing Optometric Exemption/Extension Form, Update CE Course Approval Form and Incorporate Forms by Reference

Background:
In August 2013, the Board approved the Continuing Optometric Exemption/Extension Form (Attachment 3) for licensees requesting CE exemptions/extensions, pursuant to CCR § 1536. However, the form needs to be updated to accurately reflect current law (Attachment 4) and incorporated by reference.

Similarly, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g). Currently, CE Providers seeking course approval submits

a completed CE Course Approval form (Attachment 5) and the applicable fee. However, the form should be updated to reflect current law (Attachment 6), approved by the Board, and incorporated by reference.

Based on the above, staff drafted the proposed amendments to CCR § 1536 (Attachment 7).

Action Requested:
Approve the revised forms and proposed amendments to CCR § 1536. If approved, please direct staff to prepare the proper rulemaking documents and set the matter for public hearing.

E. Proposed Amendment to CCR §1502 Delegation of Certain Functions to include Continuing Education (CE) Course Approval, CE Extension/Exemption Approvals, Accepting Default Decisions and Stipulated Surrenders to Executive Officer

Background:
As described above, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g) and approve CE extension requests. In order for staff to approve these courses and CE extension requests, the Executive Officer (EO) should be given the delegated authority from the Board. Otherwise, the way the regulation is currently written, each course and request for CE extension would have to go before the Board for approval.

The proposed regulatory revision would also authorize the EO to accept default decisions and stipulated surrenders of a license. In May 2013, the Board voted against delegating authority to accept default decisions and stipulated surrenders based on the low volume of disciplinary matters it receives and the belief that delegating such authority prevented the Board from weighing in on disciplinary decisions. However, given the addition of several new license types and imperfect information regarding the potential volume of licensing and disciplinary actions, Board legal counsel has suggested that the Board may want to revisit this decision.

As a consumer protection agency, the Board is obligated to protect California consumers and patients. Please note that in cases of defaults, the respondent, applicant or cited person has two mechanisms available to get to a hearing on the merits. In cases of stipulated surrenders, the respondents, often times represented by attorneys, have agreed to no longer practice in California. Here, the issue is timing, as any delay may allow respondents with admitted alcohol/drug addictions to continue treating patients and/or allow those who admitted to providing gross negligent, incompetent and/or substandard care to continue providing said care.

For the above reasons, staff drafted proposed amendments to CCR § 1502 (Attachment 8).

Action Requested:
Approve the proposed amendments to CCR § 1502. If approved, please direct staff to prepare the proper rulemaking documents and set the matter for public hearing.

F. Proposed Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1. Rev. 7-09, Form OLA-2, Rev. 11/07, and Form LBC-4, rev. 2/07

Background:
The Board's licensing applications need to be updated to reflect current law. However, staff and legal counsel need to conduct additional research prior to moving forward with this item. Staff anticipates bringing this item forward during the April 2016 Board meeting.

G. Proposed Amendment to CCR § 1530.1 Qualifications of Foreign Graduates; Revision of Authorization (Sponsorship) Form

Background:
In order for foreign graduates to obtain sponsorship to sit for the National Board of Examiners in Optometry (NBEO) examination, applicants were required to submit the Application for International (Foreign) Graduate Sponsorship (Attachment 9). In addition, applicants were required to submit fingerprints and have their education evaluated by a professional credential evaluation service. However, the application and additional requirements need to be updated to reflect current law (Attachment 10), approved by the Board, and incorporated by reference.

Based on the above, staff drafted proposed amendments to CCR § 1530.1 (Attachment 11).

Action Requested:
Approve the proposed form and amendments to CCR § 1530.1. If approved, please direct staff to prepare the proper rulemaking documents and set the matter for public hearing.

H. Proposed Addition of CCR Section 1523.5; Abandonment of Applications

Background:
Currently, the Board does not have the authority to abandon any license/permit applications. In order to issue licenses/registrations/permits, the Board must receive the necessary information, documentation, and/or other materials. Some applicants, however, may apply and never submit the required information even after frequent requests from staff for the missing items.

Consequently, the Board maintains application files that may never be issued and will always be reported as “pending” workload; these files are in a sort of perpetual holding pattern, which is neither efficient nor productive. Staff must store and monitor these files and keep them open even though the application may have been sitting dormant for years. The Board appears to be one of the few DCA entities who do not have this authority.

To rectify this, Board legal counsel has provided proposed language for the addition of CCR § 1523.5 (Attachment 12). Please note that the abandonment of files is not something that is taken likely - staff would warn applicants that abandonment may occur if the applicant does not supply the necessary information.

Action Requested:
Approve the proposed addition to CCR § 1523.1. If approved, please direct staff to prepare the proper rulemaking documents and set the matter for public hearing.

Attachments:

1. OAL’s Decision of Disapproval of Regulatory Action
2. Addendum to the Initial Statement of Reasons and Modified Text
3. Current Continuing Optometric Exemption/Extension Form
4. Proposed Continuing Optometric Exemption Request Form
5. Current CE Course Approval Application
6. Proposed CE Course Approval Application
7. Proposed Amendment to CCR § 1536 Continuing Optometric Education
8. Proposed Amendment to CCR § 1502 Delegation of Certain Functions
9. Current International (Foreign) Graduate Sponsorship Application
10. Proposed International (Foreign) Graduate Sponsorship Application
11. Proposed Amendment to CCR § 1530.1 Qualifications of Foreign Graduates
12. Proposed Addition of CCR § 1523.5; Abandonment of Applications

State of California
Office of Administrative Law

In re: **Board of Optometry**	**DECISION OF DISAPPROVAL OF REGULATORY ACTION**
Regulatory Action: **Title 16, California Code of Regulations**	**Government Code Section 11349.3**
Adopt section: 1582 **Amend section: 1516** **Repeal sections:**	**OAL Matter Number: 2015-1012-01S** **OAL Matter Type: Regular (S)**

SUMMARY OF REGULATORY ACTION

This regular rulemaking by the Board of Optometry (the "Board") proposes to both amend section 1516 and adopt section 1582 in title 16 of the California Code of Regulations. The Board is proposing to amend Section 1516 to give the Board the authority to require an applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board if it appears that the applicant is unable to practice optometry safely due to a mental or physical illness. The Board proposes to adopt Section 1582 to define certain actions as unprofessional conduct.

On October 12, 2015, the Board submitted the above-referenced rulemaking action to the Office of Administrative Law ("OAL") for review. On November 24, 2015, OAL notified the Board of OAL's decision to disapprove the proposed rulemaking. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced rulemaking action because the proposed regulations fail to comply with the clarity and necessity standards of Government Code section 11349.1. Additionally, there is one miscellaneous issue with the proposed regulations. All of these issues must be resolved prior to OAL's approval of any regulations.

DISCUSSION

The Board's regulatory action must satisfy requirements established by the part of the Administrative Procedure Act (the "APA") that governs rulemaking by a state agency. (See Gov. Code, sec. 11340 et seq.) Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with both the procedural requirements of the APA and the standards for administrative regulations set forth in Government Code section 11349.1. (See Gov. Code, sec. 11340.1, subd. (a).) Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. (*Ibid.*) This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. Necessity

OAL reviews proposed regulations for necessity. (Gov. Code, sec. 11349.1, subd. (a)(1).) "Necessity" is defined in Government Code section 11349, subdivision (a), as follows:

> "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

This necessity must be provided in the initial statement of reasons (the "ISR") for substantive changes proposed in the original regulation text. Specifically, the ISR must include "[a] statement of the specific purpose of each adoption, amendment, or repeal, . . . and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed." (Gov. Code, sec. 11346.2, subd. (b)(1); see also Cal. Code Regs., tit. 1, sec. 10.)

Both instances of non-compliance with the necessity standard of the APA are explained below:

1.1. Requirement that Applicants Pay the Full Cost of the Examination

One of the requirements proposed through this rulemaking is that, when the Board determines that an examination "by one or more physicians and surgeons or psychologists" is required, the applicant must "pay the full cost of the examination." (Cal. Code Regs., tit. 16, sec. 1516, subd. (a).) The Board did not provide any necessity in the ISR for the requirement that the applicant pay the full cost of an examination. The Board must resolve this issue through an addendum to the ISR and make this document available to the public for comment for at least 15 calendar days pursuant to Government Code section 11347.1 before the Board adopts the regulations and resubmits this regulatory action to OAL for review. Any comments made regarding this addendum must be presented to the Board for consideration and be summarized and responded to in the final statement of reasons (the "FSR"). (Gov. Code, sec. 11346.8, subd. (c); see also Gov. Code, sec. 11346.9, subd. (a)(3).)

1.2. Addition of "Reasonably" in the Modified Regulation Text

During the 15-day public availability and comment period, the Board made the following change (indicated in bold and double-underline) to the proposed Section 1516, subdivision (a):

> In addition to any other requirements for licensure, whenever it **reasonably** appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board.

The Board did not provide any necessity in the final statement of reasons (the "FSR") for the addition of the word "reasonably" to Section 1516, subdivision (a). The Board must resolve this issue by adding necessity for this proposed regulatory change in the FSR when they update information contained in the ISR. (See Gov. Code, sec. 11346.9, subd. (a)(1).)

2. Clarity

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3) requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c) defines "clarity" to mean that regulations are "written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them." The "clarity" standard is further defined in section 16 in title 1 of the CCR, OAL's regulation on "clarity", which provides the following:

> In examining a regulation for compliance with the "clarity" requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:
>
> (a) A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exist:
>
> . . . .
>
> (2) the language of the regulation conflicts with the agency's description of the effect of the regulation[.]

The sole instance of non-compliance with the clarity standard of the APA concerns one of the proposed changes to Section 1516, subdivision (a). The last sentence in subdivision (a) states, "If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board **may** deny the application." (Cal. Code Regs., tit. 16, subd. (a) [emphasis added].) However, the ISR states, "If the examination determined that their fitness to practice was comprised [sic], then the individual **would be denied** a license." (ISR, pg. 2 [emphasis added].) It is unclear whether denial of an application is automatic when an evaluation concludes that an applicant is unfit to practice. The proposed regulation text gives the Board discretion regarding whether or not to deny an application when the Board determines that

the applicant is unfit to practice, while the ISR states that, when this occurs, denial is automatic. Therefore, "the language of the regulation conflicts with the agency's description of the effect of the regulation[.]" (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).)

Resolution of this issue depends on whether denial of an application is automatic when the Board determines that an applicant is unfit to practice. If it is, then the Board must revise the regulation text and make the modified text available for at least 15 days for public comment. (See Gov. Code, sec. 11346.8, subd. (c); see also Cal. Code Regs., tit. 1, sec. 44.) If denial of an application is not automatic, then the Board must address the inconsistency between the originally proposed text and the ISR in an addendum to the ISR. Any addendum to the ISR must be made available to the public for comment for at least 15 calendar days pursuant to Government Code section 11347.1 before the Board adopts the regulations and resubmits this regulatory action to OAL for review. Any comments made in relation to this addendum and/or modified regulation text must be presented to the Board for consideration and be summarized and responded to in the FSR. (Gov. Code, sec. 11346.8, subd. (c); see also Gov. Code, sec. 11346.9, subd. (a)(3).)

3. Miscellaneous

OAL also notes the following miscellaneous issue that must be addressed prior to any resubmission of this rulemaking action:

3.1. Authority

Business and Professions Code section 3023.1, which is an existing source of authority cited in Section 1516, was repealed by Statutes of 2004, chapter 426 (Assembly Bill 2464), section 19, and replaced by Business and Professions Code sections 3025.1 and 3025.2. The Board should revise the final regulation text accordingly.

CONCLUSION

OAL disapproved the above-referenced rulemaking action for the foregoing reasons. Pursuant to Government Code section 11349.4, subdivision (a), the Board may resubmit revised regulations and/or rulemaking documents within 120 days of their receipt of this Decision of Disapproval. If you have any questions, please contact me at (916) 324-6948.

Date: November 30, 2015

Steven J. Escobar
Attorney

FOR: DEBRA M. CORNEZ
Director

Original: Jessica Sieferman

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov

FOREIGN GRADUATE SPONSORSHIP APPLICATION

Requirements:

Pursuant to Business and Professions Code (BPC) § 3057.5, the Board will authorize (sponsor) a graduate of a foreign university who meets all of the following requirements to take the examinations for an optometrist license:

- Over 18 years of age;
- Not subject to denial of a license under BPC § 480.
- Holds a degree as a doctor of optometry issued by a university located outside of the United States.

Applicants who meet the above requirements will be authorized to take the examination upon furnishing satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board; provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency (California Code of Regulations § 1530.1).

In order to determine equivalency, an evaluation of the applicant's professional optometric education from a professional credential evaluation service must be sent directly to the Board from the evaluation service.

Please type or print clearly.

Social Security Number or Individual Identification Number ☐☐☐/☐☐/☐☐☐☐	Date of Birth (MM/DD/YYYY) ☐☐/☐☐/☐☐☐☐
Name (First, Middle, Last)	
Address (Street) (City) (State) (Zip Code)	
Telephone Number	**Email Address**:
Education (Degree Type) (University Name)	**Date Degree Obtained** (MM/DD/YYYY) ☐☐/☐☐/☐☐☐☐
School Location (City) (State) (Country)	
HAVE YOU EVER BEEN DENIED A PROFESSIONAL LICENSE, HAD A PROFESSIONAL LICENSE PRIVILEGE SUSPENDED, REVOKED, OR OTHERWISE DISCIPLINED, OR HAVE YOU EVER VOLUNTARILY SURRENDERED ANY SUCH LICENSE IN CALIFORNIA OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES, OR BY ANY OTHER GOVERNMENTAL AGENCY?	☐ YES ☐ NO
If YES, attach your detailed explanation of the circumstance surrounding the arrest/conviction or disciplinary proceedings taken by another state or governmental agency and attach any documentation (i.e., arrest report/court documents/accusations) that you may have.	

THIS IS NOT AN APPLICATION FOR LICENSURE. ONLY APPLICANTS MEETING THE REQUIREMENTS UNDER BPC §§ 3046, 3056, OR 3057 ARE ELIGIBLE FOR A LICENSE TO PRACTICE OPTOMETRY IN CALIFORNIA.

HAVE YOU EVER BEEN CONVICTED OF, PLED GUILTY TO, OR PLED NOLO CONTENDERE TO ANY MISDEMEANOR OR FELONY?	☐ YES ☐ NO

*If YES, attach your explanation and related documents as described in the REPORTING PRIOR CONVICTION(S) section of the instructions. You must disclose all convictions even if previously reported to the Board. However, it is not necessary for you to re-submit documentation previously on file; you may simply provide a written statement indicating that you believe the information is already on file. (**Convictions dismissed under Section 1203.4 of the Penal Code must be disclosed. You need not include offenses prior to your 18th birthday. You may omit traffic infractions under $300 that did not involve alcohol, dangerous drugs, or controlled substances.)***

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct.

Signature of Applicant ***Date***

ATTACH ONE 2 X 2 COLOR PHOTOGRAPH TAKEN OF YOU WITHIN THE LAST 60 DAYS.

ATTACH COLOR PHOTO HERE

PHOTO IS TO BE HEAD AND SHOULDERS ONLY And of PASSPORT QUALITY

All terms of information requested are mandatory. Failure to provide any of the requested information will result in the application being rejected as incomplete. The information provided will be used to determine qualification to take the examinations for an optometrist license. The official responsible for the maintenance of this information is the Executive Officer. The information may be transferred to other interagency or intergovernmental agency, and/or enforcement agencies. Each individual has the right to review the files or records maintained on them by the agency, unless the records are identified as exempt from access as provided in Section 1798.40 et seq. of the Information Practices Act of the Civil Code.

THIS IS NOT AN APPLICATION FOR LICENSURE. ONLY APPLICANTS MEETING THE REQUIREMENTS UNDER BPC §§ 3046, 3056, OR 3057 ARE ELIGIBLE FOR A LICENSE TO PRACTICE OPTOMETRY IN CALIFORNIA.

Proposed Amendment to CCR § 1530.1 Qualifications of Foreign Graduates to Update Foreign Sponsorship Application and Incorporate Form by Reference

16 CCR § 1530.1

§ 1530.1. Qualifications of Foreign Graduates.

(a) An individual who meets the requirements of section 3057.5 of the Code and seeks authorization (sponsorship) from the Board to take the national optometric licensing examination shall complete the Foreign Graduate Examination Sponsorship application (Form FG-01, Rev. 2/16), hereby incorporated by reference, and filed with the Board at its Sacramento office.

(b) The applicant shall supply the Board with a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(c) Applicants who meet the requirements of Section 3057.5 of the Code shall be admitted to the examination upon furnishing satisfactory evidence that the course of instruction completed is reasonably equivalent, as determined by the Board, to the course of instruction given by a school accredited by the Board; provided, however, that an applicant who is unable to furnish satisfactory evidence of equivalency may take those courses or subjects, in an accredited school or in another program of instruction acceptable to the Board, which would remedy areas of deficiency.

(1) For the purposes of determining equivalency, an applicant shall cause to have directly submitted to the Board an evaluation of his or her resident course of professional optometric instruction, as performed by a professional credential evaluation service.

Note: Authority cited: Sections ~~3023.1~~, ~~and~~ 3025, 3025.1, and 3025.2, Business and Professions Code. Reference: Sections 3023.1, 3025, 3047, 3050 and 3057.5, Business and Professions Code.

Proposed Addition to CCR § 1523.5; Abandonment of Applications

a) An application for a license, permit or registration shall be deemed abandoned and the initial license fee forfeited when the applicant fails to complete the application within one year after it is originally received by the board.

b) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

BOARD OF OPTOMETRY

ADDENDUM to the INITIAL STATEMENT OF REASONS
Sections 1516 and 1582 of title 16 of the California Code of Regulations

On November 30, 2015, the Office of Administrative Law (OAL) disapproved the Board of Optometry (Board) proposed amendment to section 1516 of title 16 of the California Code of Regulations (CCR) and the proposed adoption of section 1582 of the CCR. OAL disapproved the proposed regulations on the basis of the clarity and necessity standards established in section 11349.1 of the Government Code. OAL required the Board to prepare an addendum to its Initial Statement of Reasons (ISOR) to resolve these issues prior to approval.

Item Number 1- The Necessity of Requiring the Applicant Pay the Full Cost of Examination

The Board proposed to amend section 1516 of the CCR to require an applicant to pay for an examination conducted by a physician and surgeon or psychologist when it reasonably appears that the applicant has a mental or physical illness that may affect the competent practice of optometry. OAL deemed that the Board did not demonstrate the necessity of having the applicant pay for said examination.

The necessity for the applicant to pay for the examination, if so ordered by the Board, is derived from the understating that the applicant has the burden to demonstrate that he or she is fit for licensure. The Board, as a state licensing agency, has the discretion to deny a license is a determination is made that the issuance of a license would be contrary to the public welfare. (See *Weiss v. State Board of Equalization* (1953) 256 P.2d 1.) For the Board to issue a license to an applicant with an mental or physical illness affecting competency would not honor its statutory consumer protection obligation. As the applicant must show fitness for licensure, it is equitable that he or she bears the cost of the examination.

Item Number 2 – The Addition of the “Reasonably” in the Modified Regulation Text

The Board, at a regularly scheduled meeting, added the word “reasonably” to proposed subdivision (a) of section 1516 such that the proposed subdivision read as follows:

“(a) In addition to any other requirements for licensure, whenever it **reasonably** appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board, may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board. The applicant shall pay the full cost of the examination. An applicant’s failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant. “

Upon review, OAL determined that the Board had not demonstrated the necessity for this change. The Board believes that the addition of the word ‘reasonably’ is necessary in that the

discretion to deny a license may not be exercised arbitrarily, capriciously or without factual basis. (*McDonough v. Goodcell* (1939) 91 P.2d 1035.) With this addition, the Board must have a basis in fact to order the examination; it cannot order the examination whimsically. In real world terms, after a Board review of the application and supporting information, if it reasonably appears that the applicant has a mental or physical illness that may affect competency, the Board can order the examination.

Item Number 3 – Clarity with Respect to Section 1516 and the Denial of a License

In its review, OAL determined that the Board had not met the clarity standard because a conflict between the ISR and the proposed text. Specifically, OAL's concern was with the exercise of the Board's discretion ("the Board may deny the license') set forth in the proposed text as compared to the ISR's comment that if an applicant's fitness to practice was compromised, the individual would be denied a license.

To be clear, as reserved in the proposed regulation, the Board would carefully exercise its discretion as to whether deny a license based upon a finding of compromised competency. There would be no automatic denial. After an overall evaluation and consideration of all pertinent information, and consistent with its statutory obligation of consumer protection set forth in section 3010.1 of the Business and Professions Code, the Board will make a decision whether or not to issue a license.

Item Number 4 – Incorrect Authority Citation

OAL found that the Board cited the incorrect authority for the proposed revision to section 1516. The Board will circulate the revised and corrected text for comment.

BOARD OF OPTOMETRY

MODIFIED TEXT

Changes to the originally proposed language are shown by bold for new text.

Amend Section 1516 and add Section 1582 in Division 15 of Title 16 of the California Code of Regulations as follows:

§ 1516. Application Review and Criteria for Rehabilitation.

(a) In addition to any other requirements for licensure, whenever it **reasonably** appears that an applicant may be unable to practice optometry safely because his or her ability to practice may be impaired due to mental or physical illness affecting competency, the Board, may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board. The applicant shall pay the full cost of the examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application. The report of the evaluation shall be made available to the applicant.

~~(a)~~(b) When considering the denial of a ~~certificate of registration~~ license under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a ~~certificate of registration~~ license, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b)~~(c) When considering the suspension or revocation of a ~~certificate of registration~~ license on the grounds that the ~~registrant~~ licensee has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his~~/~~or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

~~(c)~~(d) When considering a petition for reinstatement of a ~~certificate of registration~~ license under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (c).

Note: Authority cited: Sections 3023, ~~3023.1 and~~ 3025, 3025.1 and 3025.2, Business and Professions Code. Reference: Sections 475, 480, 481, ~~and~~ 482~~,~~ and 3056 Business and Professions Code; and Section 11522, Government Code.

STATE BOARD OF OPTOMETRY
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P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

REQUEST FOR CONTINUING OPTOMETRIC EDUCATION EXEMPTION/EXTENSION

For Office Use Only:
Date Received _____

Date Approved _____Denied_____

Date of Audit (if applicable) _____

Enforcement Approval ☐ Yes ☐ No Date: _____

Please return this form to the Board at least sixty (60) days prior to the expiration date of the license

PLEASE READ THOROUGHLY THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS FORM. Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

(Please type or print clearly)

Part 1 to be completed by applicant/licensee

*NAME: Last First Middle

BUSINESS TELEPHONE: E-MAIL ADDRESS:

ADDRESS OF RECORD: Number, Street, Suite/Room City State Zip Code

OPTOMETRIST LICENSE NUMBER: RENEWAL PERIOD REQUESTING EXEMPTION/EXTENSION FOR:

_____/_____/_____ TO _____/_____/_____

REASON FOR EXEMPTION/EXTENSION (Check √ one box ONLY):

☐ **Health-Self** (Complete Part 2) ☐ **Health-Family** (Complete Part 2) ☐ **Other Unavoidable Circumstances** (submit proof)

Part 2 to be completed by licensee to explain medical condition, disability or other unavoidable circumstances. Please attach extra sheets if necessary.

1. Provide a detailed description of the disability or medical condition and an explanation as to how the disability or medical condition limits your ability to complete 40 (50 if TPA, TPL, TPG, or TLG certified) hours of continuing optometric education over a two-year period through classroom/seminar attendance or self-study (please attach additional sheets if necessary).
2. Attach completed *"Verification of Disability or Medical Condition"* form.
3. What type of accommodation are you requesting?

   ☐ **Exemption from Continuing Optometric Education Requirements** – By checking this box you are certifying that during this licensing period you were prevented from completing your continuing optometric education requirements due to: (a) total physical and/or mental disability; (b) total physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.

   ☐ **Request to Complete All Continuing Optometric Education Hours Through Self-Study Courses** – By checking this box you are certifying that during this licensing period you were prevented from completing your continuing optometric education requirements due to: (a) a physical and/or mental disability; (b) a physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.

   ☐ **Request for Extension to Complete All Continuing Optometric Education Hours** – By checking this box you are certifying that during this licensing period you were unable to complete your continuing optometric education requirements due to: (s) a physical and/or mental disability; (b) a physical and/or mental disability of an immediate family member where you were the primary caregiver for that family member or; (c) some other unavoidable circumstances.
4. Explain how another accommodation would allow you to comply with the continuing optometric education requirements.

_____

_____

_____

I certify that all of the information submitted on this form and on any accompanying attachments is true and correct.

_____ _____
Date ***Signature of Licensee***

EXEMPTIONS FROM THE CE REQUIREMENT

Notification of Collection of Personal Information: The Board of Optometry (Board) collects the personal information requested on this form for the purpose of determining eligibility for a "good cause" exemption/reasonable accommodation of the Board's continuing optometric education (CE) requirements. The submission of personal information such as name, optometrist license number and medical history is mandatory. The Board cannot process your request for CE exemption/reasonable accommodation unless you provide all of the requested personal information on this form.

California Code of Regulations (CCR) Section 1536(i)(1-2) – Continuing Optometric Education; Purpose and Requirements: (i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.

(2) Any licensee as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

The Board will notify the licensee as to whether their request for exemption/extension was granted. If the request is deemed to be satisfactory and approved, the licensee will be informed of the exemption or the extension expiration date. If the request is denied the licensee is responsible for completing the full amount of CE required for license renewal.

Requesting an Exemption/Extension

To request a CE exemption/extension, please complete and submit a *"Request for Continuing Optometric Education/Extension"* form. Sufficient proof of a disability, medical condition, or other unavoidable circumstances must be sent along with the form. The completion and submission of a *"Verification of Disability or Medical Condition"* form or a written statement from your physician or psychologist are acceptable from those claiming a disability or medical condition. The form or written statement must include the physician or psychologist's name, title, principal place of practice address, telephone number, professional license number, and their original signature.

Renewal Application for Licensed Optometrist

Regardless of whether or not your request is approved, you must complete and submit a renewal application for licensed optometrist and a renewal fee before your request is completed.

If you have questions concerning this matter please contact the Board at (916) 575-7170 or optometry@dca.ca.gov.

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

VERIFICATION OF DISABILITY OR MEDICAL CONDITION REQUEST FOR CONTINUING OPTOMETRIC EDUCATION EXEMPTION/EXTENSION

For Office Use Only:
Date Received _____

Date Approved _____Denied_____

Date of Audit (if applicable) _____

Enforcement Approval ☐ Yes ☐ No Date: _____

This form must be received by the Board at least sixty (60) days prior to the expiration date of the license

PLEASE READ THOROUGHLY THE ENCLOSED INSTRUCTIONS FOR COMPLETING THIS FORM. Any unanswered item will cause this request to be incomplete. Incomplete requests will not be processed.

(Please type or print clearly)

Part 1 to be completed by applicant/licensee

*NAME: Last First Middle

BUSINESS TELEPHONE: E-MAIL ADDRESS:

ADDRESS OF RECORD: Number, Street, Suite/Room City State Zip Code

OPTOMETRIST LICENSE NUMBER: RENEWAL PERIOD REQUESTING EXEMPTION/EXTENSION FOR:

_____/_____/_____ TO _____/_____/_____

REASON FOR EXEMPTION/EXTENSION (Check √ one box ONLY):

☐ **Health** (Complete Part 2) ☐ **Health-Family** (Complete Part 2) ☐ **Other Unavoidable Circumstances** (submit proof)

Part 2 to be completed by licensee to explain medical condition, disability or other unavoidable circumstances. Please attach extra sheets if necessary.

1. Provide a detailed description of the disability or medical condition and an explanation as to how the disability or medical condition limits the patient's ability to complete 40 (50 if TPA, TPL, TPG, or TLG certified) hours of continuing optometric education over a two-year period through classroom/seminar attendance or self-study (please attach additional sheets if necessary).

2. Approximate date disability/medical condition began: _____Disability/medical condition is ☐ Temporary ☐ Permanent

   If temporary, approximate date licensee will be able to resume his/her continuing optometric education: _____

3. Is licensee limited in working in his/her licensed capacity? ☐ Yes ☐ No
   If "Yes," please explain limitations: _____

Attending Physician's/Psychologist's Name License Number Business Telephone

Attending Physician's/Psychologist's Address City State Zip Code

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments is true and correct.

_____ _____
Date ***Signature of Licensee***

_____ _____
Date ***Signature of Physician/Psychologist***

EXEMPTIONS FROM THE CE REQUIREMENT

Notification of Collection of Personal Information: The Board of Optometry (Board) collects the personal information requested on this form for the purpose of determining eligibility for a "good cause" exemption/reasonable accommodation of the Board's continuing optometric education (CE) requirements. The submission of personal information such as name, optometrist license number and medical history is mandatory. The Board cannot process your request for CE exemption/reasonable accommodation unless you provide all of the requested personal information on this form.

California Code of Regulations (CCR) Section 1536(i)(1-2) – Continuing Optometric Education; Purpose and Requirements: (i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.

(2) Any licensee as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

The Board will notify the licensee as to whether their request for exemption/extension was granted. If the request is deemed to be satisfactory and approved, the licensee will be informed of the exemption or the extension expiration date. If the request is denied the licensee is responsible for completing the full amount of CE required for license renewal.

Requesting an Exemption/Extension

To request a CE exemption/extension, please complete and submit a *"Request for Continuing Optometric Education/Extension"* form. Sufficient proof of a disability, medical condition, or other unavoidable circumstances must be sent along with the form. The completion and submission of a *"Verification of Disability or Medical Condition"* form or a written statement from your physician or psychologist are acceptable from those claiming a disability or medical condition. The form or written statement must include the physician or psychologist's name, title, principal place of practice address, telephone number, professional license number, and their original signature.

Renewal Application for Licensed Optometrist

Regardless of whether or not your request is approved, you must complete and submit a renewal application for licensed optometrist and a renewal fee before your request is completed.

If you have questions concerning this matter please contact the Board at (916) 575-7170 or optometry@dca.ca.gov.

CALIFORNIA STATE BOARD OF OPTOMETRY

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CONTINUING EDUCATION EXEMPTION REQUEST

Pursuant to California Code of Regulations (CCR) § 1536, the Board may grant continuing education (CE) exemptions due to illness, or other good cause such as incapacity, or other unavoidable circumstances. Requests must be submitted at least 30 days prior to your license expiration date. The Board may deny a request for exemption but, at its discretion, may grant the licensee an extension of up to one year to obtain the necessary continuing optometric education. A licensee whose request for an exemption or extension is denied shall otherwise comply with the provisions of this section.

Please type or print clearly.

Licensee Information	
Name (First, Middle, Last):	
License Number:	**License Expiration Date:** ☐☐/☐☐/☐☐☐☐
Address of Record: Number, Street, Suite/Room City State Zip	
Telephone Number:	**Email Address:**

Reason for Request
☐ **Illness or Incapacity** (Please have a physician or appropriate health care practitioner complete Part A below) ☐ **Other Unavoidable Circumstance** (Please complete Part B on page 2)

Part A: Illness or Incapacity - To be completed by a physician or appropriate health care practitioner		
Description of illness that interferes the licensee's ability to meet the continuing education requirements (Attach additional sheets if necessary):		Approximate Date Illness Began: ☐☐/☐☐/☐☐☐☐ The Illness is: ☐ Permanent ☐ Temporary - Approximate Date CE Can Resume: ☐☐/☐☐/☐☐☐☐
Health Care Practitioner's Name (Print)	License Number	Telephone Number

I declare under penalty of perjury under the laws of the State of California that all information submitted in this section is true and correct.

Health Care Practitioner's Signature Date

All items in this application are mandatory; none is voluntary. The California State Board of Optometry (Board) requests this information to determine your eligibility for CE extension or exemption pursuant to California Code of Regulations, Title 16, § 1536. The Board's Executive Officer is the custodian of records. Access to records by the individual whom they pertain may be obtained under the Information Practices Act by contacting the custodian of records at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Information in this application may be transferred to other governmental and law enforcement agencies.

Part B: Good cause or Unavoidable Circumstance – To be completed by licensee
Description of circumstances or events that interferes the licensee's ability to meet the continuing education requirements. Please explain fully and attach additional sheets if necessary:
I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct. By signing below, I also acknowledge that if my request is denied and an extension is not granted, I shall comply with the continuing education requirements pursuant to CCR § 1536. _____ _____ ***Signature of Licensee*** ***Date***

ADDITIONAL CONTINUING EDUCATION EXEMPTION INFORMATION AND INSTRUCTIONS

All licensees seeking a CE exemption shall submit a renewal application and applicable renewal fee.

The Board will notify you in writing of its decision to grant or deny your request for exemption. If the Board denies your exemption request but determines "good cause" exists to grant an extension to obtain the necessary continuing optometric education, you will be notified of the extension expiration date. Failure to provide proof of CE completion by the specified date will subject you to disciplinary action..

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Request for Approval of Continuing Education Course(s)

Cashiering and Board Use Only			
Receipt #	Payor ID #	Beneficiary ID #	Amount

Please type or print name and mailing address in the space provided to the left

Requests for approval of continuing optometric education (CE) courses should be submitted on this form. The California State Board of Optometry requires the following information in order to process a course approval request:

- **$50** processing fee (per course)
- Name of provider
- Course title(s)
- Date(s) the course is scheduled to be offered
- Topical outline of the course subject matter
- Any announcements, notices or advertisements of the course
- Curriculum vitae (CV) of all instructors and lecturers involved (NOTE: CVs should include every term of employment, academic credential, publication, contribution or significant achievement)

Requests for approval and the supplemental information should be submitted to the Board office at least 45 days prior to the first date that the course will be offered. Requests will be reviewed by staff and forwarded to the CE Committee for final review. If necessary, Board staff will contact the requestor for additional information. Course approvals are valid for 12 months or until the course is modified.

The CE Committee's decision(s) will be noted and a copy of this form will be returned to the provider to serve as official notification of approval and/or disapproval of the course(s). Please remember to include the contact person's name and mailing address in the space provided above.

_____
Practice and Education Committee Member

				FOR BOARD USE ONLY		
Course Title	**Date(s) of Course**	**Instructor(s)/Lecturer(s)**	**CE Hours Requested**	**Approved**	**Disapproved**	**ID #**
COMMITTEE COMMENTS:						

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CONTINUING EDUCATION COURSE APPROVAL APPLICATION

$50 Mandatory Fee

Pursuant to California Code of Regulations (CCR) § 1536, the Board will approve continuing education (CE) courses after receiving the applicable fee, the requested information below and it has been determined that the course meets criteria specified in CCR § 1536(g).

In addition to the information requested below, please attach a copy of the course schedule and topical outline of the subject matter. Applications must be submitted 45 days prior to the course presentation date.

Please type or print clearly.

Course Title	**Course Presentation Date**
_____	☐☐/☐☐/☐☐☐☐

Course Provider Contact Information

Provider Name		
_____ (First)	_____ (Last)	_____ (Middle)
Provider Mailing Address		
Street _____	**City** _____	**State** ____ **Zip** _____
Provider Email Address_____		

Will the proposed course be open to all California licensed optometrists?	☐ YES ☐ NO
Do you agree to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation?	☐ YES ☐ NO

Course Instructor Information

Please provide the information below and attach the curriculum vitae for each instructor or lecturer involved in the course. If there are more instructors in the course, please provide the requested information on a separate sheet of paper.

Instructor Name		
_____ (First)	_____ (Last)	_____ (Middle)

License Number _____	**License Type** _____
Phone Number (____) _____	**Email Address** _____

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct.

_____ _____

Signature of Course Provider ***Date***

Proposed Amendments to CCR § 1536

§ 1536. Continuing Optometric Education; Purpose and Requirements.

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the license expiration date. Such course work shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of continuing optometric education every two years in order to renew his or her license. Thirty-five of the required 50 hours of continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (e).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self-study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(4) A full day's attendance at a California State Board of Optometry Board meeting. Up to two credit hours shall be granted for a full day.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education courses officially sponsored or recognized by any accredited school or college of optometry.

(2) Continuing optometric education courses provided by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education courses approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

(f) Other continuing optometric education courses approved by the Board as meeting the criteria set forth in paragraph (g) below, after submission of the Continuing Education Course Approval application (Form CE-01, Rev. 2/16), hereby incorporated by reference, ~~a~~ course~~,~~ schedule, topical outline of subject matter, and curriculum vitae of all instructors or lecturers involved, to the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

(g) The criteria for judging and approving continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry.

(2) Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

(4) Number of continuing optometric education hours provided for attending the course.

(5) Date the course was provided.

(6) Location where the course was provided.

(7) Name(s) and signatures of the course instructor(s).

(8) Such other evidence of course content or attendance as the Board may deem necessary.

Use of a certificate of course completion provided by the Board is recommended for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the Board upon request.

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

(i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.

(~~2~~3) Those licensees as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

(~~3~~2) Any licensee who is renewing an active license for the first time, if he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.

(j) The Board, in its discretion, may exempt from the continuing optometric education requirements of this section licensees who for health reasons or other good cause cannot meet those requirements. Licensees requesting an exemption shall complete a Continuing Education Exemption Request (Form CE-E, Rev. 2/2016) and submit it, along with all required supporting information, to the Board for its consideration at least thirty (30) days prior to the expiration of the license.

(1) The Board may deny a request for exemption but at its discretion may grant the licensee an extension of up to one year to obtain the necessary continuing optometric education.

(2) A licensee whose request for an exemption is denied and an extension is not granted shall otherwise comply with the provisions of this section.

(~~j~~k) The Board may conduct an audit of any licensee's attendance of a continuing optometric education course as a means of verifying compliance with this section.

Note: Authority cited: Section 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.

Proposed Amendment to CCR § 1502 Delegation of Certain Functions

16 CCR § 1502
§ 1502. Delegation of Certain Functions.

(a) The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing; accept default decisions and approve settlement agreements for the surrender or interim suspension of a license, and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

(b) The authority of the Board to approve continuing education courses and course providers and grant extensions and exemptions from the continuing education requirements in section 1536 is hereby delegated to the executive officer or his or her designee.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Section 3027, Business and Professions Code.

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APPLICATION FOR INTERNATIONAL (FOREIGN) GRADUATE SPONSORSHIP

INTERNATIONAL (FOREIGN) GRADUATES OF SCHOOLS/COLLEGES LOCATED OUTSIDE OF THE UNITED STATES (U.S.) WHERE A DEGREE FOR A PROVIDER OF EYE CARE HAS BEEN OBTAINED AND IS EQUAL TO OR GREATER THAN THAT OF A DOCTOR OF OPTOMETRY DEGREE OBTAINED IN THE U.S. FROM AN ACCREDITED SCHOOL/COLLEGE OF OPTOMETRY MAY APPLY FOR BOARD SPONSORSHIP PROVIDED THAT THEY MEET THE REQUIREMENTS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 3057.5 AND CALIFORNIA CODE OF REGULATIONS SECTION 1530.1.

PLEASE READ THOROUGHLY, THE ENCLOSED ***INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR INTERNATIONAL (FOREIGN) GRADUATE SPONSORSHIP*** BEFORE YOU BEGIN TO COMPLETE THE APPLICATION FORM. MAKE YOUR CHECK PAYABLE TO THE BOARD OF OPTOMETRY. PLEASE NOTE THAT THE REQUIRED FEE IS AN EVALUATION/PROCESSING FEE THAT IS NON-REFUNDABLE. PLEASE ALLOW 6 – 8 WEEKS FOR PROCESSING.

Total Fee Required $275.00

Cashiering and Board Use Only			
Receipt #	**Payor ID #**	**Beneficiary ID #**	**Amount**

Please type or print clearly.

SOCIAL SECURITY NUMBER
☐☐☐-☐☐-☐☐☐☐

DATE OF BIRTH (MONTH/DATE/YEAR)
☐☐/☐☐/☐☐☐☐

NAME (LEGAL NAME ONLY)

_____ (LAST) _____ (FIRST) _____ (MIDDLE)

Other name(s) you are known by: _____

ADDRESS:
_____ (STREET) _____ (CITY) _____ (STATE) _____ (ZIP CODE)

PHONE NUMBER (____) _____ CELL PHONE NUMBER (____) _____

EMAIL ADDRESS:
_____

EDUCATION:
_____
NAME OF SCHOOL/COLLEGE OF OPTOMETRY

DATE DEGREE CONFERRED (MONTH/DATE/YEAR)
☐☐/☐☐/☐☐☐☐

LOCATION OF SCHOOL
_____ (CITY) _____ (STATE) _____ (COUNTRY)

HAVE YOU SUCCESSFULLY COMPLETED (PASSED) ALL SECTIONS (PARTS I, II, III) OF THE NBEO EXAMINATION? ☐ Yes ☐ No

PLEASE PROVIDE THE MONTH AND YEAR THAT YOU COMPLETED EACH OF THE EXAMINATIONS.

PART I (BASIC SCIENCE) _____ (MONTH) _____ (YEAR)

PART II (CLINICAL SCIENCE) _____ (MONTH) _____ (YEAR)

PART III (PATIENT CARE) _____ (MONTH) _____ (YEAR)

HAVE YOU SUCCESSFULLY COMPLETED (PASSED) THE CALIFORNIA LAW EXAMINATION? ☐ Yes ☐ No
PLEASE PROVIDE THE MONTH AND YEAR THAT YOU COMPLETED THE EXAMINATION. _____ _____
(MONTH) (YEAR)

HAVE YOU PREVIOUSLY APPLIED FOR LICENSURE TO PRACTICE OPTOMETRY IN CALIFORNIA? ☐ YES ☐ NO
IF YES, PLEASE PROVIDE THE MONTH AND YEAR OF THE APPLICATION: _____ _____
(MONTH) (YEAR)

DO YOU NOW OR HAVE YOU EVER HELD A LICENSE TO PRACTICE OPTOMETRY IN ANY OTHER STATE?
IF YES, PLEASE LIST EACH STATE AND LICENSE NUMBER BELOW: ☐ YES ☐ NO

_____ _____ _____
(State) (License #) (State) (License #) (State) (License #)

Important Notice: A letter of good standing must be sent directly to the California Board of Optometry from each State Licensing Board where you have held or currently hold a license.

HAVE YOU EVER BEEN DENIED A PROFESSIONAL LICENSE, HAD A PROFESSIONAL LICENSE PRIVILEGE SUSPENDED, REVOKED, OR OTHERWISE DISCIPLINED, OR HAVE YOU EVER VOLUNTARILY SURRENDERED ANY SUCH LICENSE IN CALIFORNIA OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES, OR BY ANY OTHER GOVERNMENTAL AGENCY? ☐ YES ☐ NO

If YES, attach your detailed explanation of the circumstance surrounding the arrest/conviction or disciplinary proceedings taken by another state or governmental agency and attach any documentation (i.e., arrest report/court documents/accusations) that you may have.

HAVE YOU EVER BEEN CONVICTED OF, PLED GUILTY TO, OR PLED NOLO CONTENDERE TO ANY MISDEMEANOR OR FELONY? ☐ YES ☐ NO

If YES, attach your explanation and related documents as described in the REPORTING PRIOR CONVICTION(S) section of the instructions. You must disclose all convictions even if previously reported to the Board. However, it is not necessary for you to re-submit documentation previously on file, you may simply provide a written statement indicating that you believe the information is already on file.

(Convictions dismissed under Section 1203.4 of the Penal Code must be disclosed. You need not include offenses prior to your 18th birthday. You may omit traffic infractions under $300 that did not involve alcohol, dangerous drugs, or controlled substances.

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct.

_____ _____
Signature of Applicant ***Date***

ATTACH ONE 2 X 2 COLOR PHOTOGRAPH TAKEN OF YOU WITHIN THE LAST 60 DAYS.

ATTACH COLOR PHOTO HERE

PHOTO IS TO BE HEAD AND SHOULDERS ONLY And of PASSPORT QUALITY

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Donna Burke
Public Relations & Outreach Committee Chair **Telephone:** (916) 575-7170

Subject: **Agenda Item 11 - Review, Consideration, and Possible Action on Public Relations and Outreach Committee's Recommendations Regarding Online Refractions and the Laws Governing Optometry in the State of California**

Prepared by Cheree Kimball, Enforcement Analyst

During the November 20, 2015 Board Meeting, the California State Board of Optometry (Board) directed the Public Relations and Outreach Committee to further develop the Board's public outreach campaign to educate consumers about the potential dangers surrounding online refractions.

Currently, California licensed ophthalmologists are issuing contact and spectacle lens prescriptions to California consumers after consumers receive online refractions. Unfortunately, many consumers do not know the difference between a refractive eye examination and a comprehensive eye examination and do not know the importance of receiving a comprehensive eye examination on a regular basis.

On December 16, 2015, the Public Relations and Outreach Committee met to discuss creating and/or revising existing Board publications, developing a strategy to distribute publications to consumers, and considering any additional ways of addressing the concerns surrounding online refractions. The Committee was joined by Michelle McVay, Information Officer from the Department of Consumer Affairs (DCA) Office of Public Affairs, and Laura Kujubu, Information Officer from DCA's Office of Publications, Design & Editing, as well as members of the Board's staff.

Dr. David Turetsky, O.D., proposed the idea of requiring online refraction websites to display a "Black Box Warning" to Californian consumers both during the refraction process and then printed either directly on the prescription issued to the consumer or contained within the notification that delivers the prescription. Dr. Turetsky proposed that the warning should advise consumers that the online refraction does not replace a total eye health exam, that conditions that cause potentially serious harm will not go detected or evaluated during the online refraction, that the online refraction is only for the purpose of an eyeglasses prescription and that it is strongly urged that the consumer see an optometrist or an ophthalmologist for a comprehensive eye health examination. Statutory revisions would be necessary to require this warning.

The Committee discussed ideas for partnering with DCA's Office of Public Affairs and Office of Publications, Design & Editing on an outreach campaign that might include brochures, downloads, renewal notice inserts, news releases, public service announcements, blogs, and social media. The Committee also discussed disseminating outreach materials to college and university campuses, industry participants, and the general public.

Board staff consulted with Ms. Kujubu to start the design and publication process for printed outreach materials from text drafted by Dr. Glenn Kawaguchi, O.D.. The materials being designed include a tri-fold brochure, a single panel long card, and a postcard. Cesar Altamirano, Graphic Designer III, took on the design task for the Board, starting with the tri-fold brochure, from which text and design elements can be easily transferred to a long card flyer or a postcard. A draft copy of the tri-fold brochure is included as Attachment 1. Printing costs for the tri-fold brochure are $0.64 each and for the long card flyer $0.74 each. The postcards can be printed and mailed by the Office of Publications, Design & Editing and the costs for that range depending on printing and mailing preferences. These items can all be offered on the Board's website as files to download, share, and print.

Public Relations & Outreach Committee Recommendation:

The Committee recommends that the Board direct staff to investigate the development of a pretty substantial outreach campaign that may consist of brochures, websites, downloads, renewal notices, public service announcements, news releases, and social media, as well as outreach to the Medical Board of California (MBC), schools, blogs, and National Public Radio.

Further, the Committee recommends that the Board direct staff to explore participation with MBC and that the Board's other committees consider the possibilities of statutory revisions regarding the "Black Box Warning", as well as possible changes to the spectacle lens and contact lens prescriptions to include the "Black Box Warning" so that a person who got such a refraction would know that it's not a substitute for a comprehensive eye exam.

Understand the risks to your health

Clear vision does not necessarily mean healthy eyes. If you substitute an online refractive eye test for a comprehensive eye exam, key eye issues could be missed and you could be putting your eye health—and possibly your overall health—at serious risk.

What is an online refractive test?

An online refractive test is a service provided through a website. It is a vision test used as a tool by some California licensed eye care practitioners only to determine your eyeglass or contact lens prescription.

Consumers take the test for a fee and can then receive a prescription for eyeglasses or contact lenses from a California-licensed eye care practitioner.

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STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

PDE_16-007

DRAFT

ONLINE REFRACTIONS:
NOT A COMPREHENSIVE EYE EXAM

CALIFORNIA STATE BOARD OF OPTOMETRY

What does a comprehensive eye exam cover that an online refractive test does not?

As opposed to an online refractive test, a tool used to only determine the appropriate lens power needed to improve your vision, a comprehensive eye exam entails an optometrist or ophthalmologist evaluating the overall health of your eyes by:

- Understanding your case history.
- Completing a thorough exam, which will determine the internal and external health of your eyes.
- Conducting an evaluation of your refractive status (how your eyes focus and coordinate) and determining a prescription accordingly.

Are comprehensive eye exams only for the elderly?

No. You do not have to be elderly, or even middle-aged, to have eye health issues. For example, young people can have diabetes, retinal tears, and eye infections that can be detected during a comprehensive eye exam.

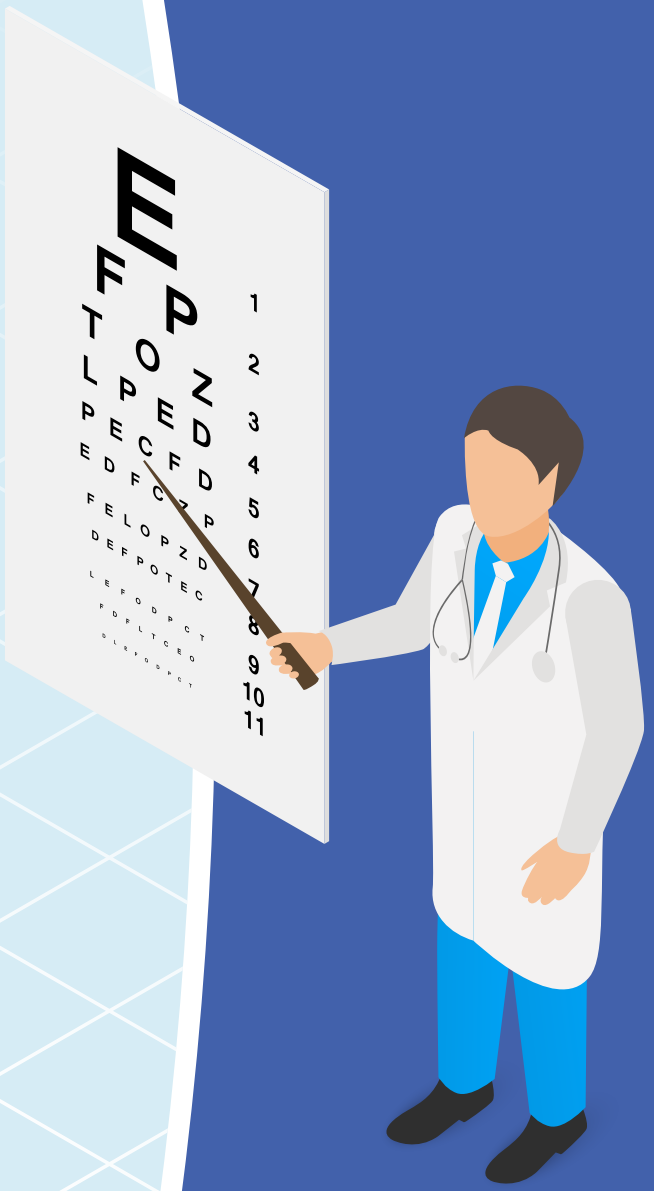
Why is a comprehensive eye exam important?

The California State Board of Optometry, a consumer protection agency that licenses and regulates optometrists and the optometry profession, believes routine, comprehensive eye exams are crucial to maintain good eye health.

Refractive tests cannot discover eye problems such as:

- Cataracts
- Glaucoma
- Diabetic retinopathy
- Retinal tears and scarring
- Eye infections
- Dry eye syndrome

Some eye health issues have few warning signs and no pain. A comprehensive eye exam performed by an eye care professional (optometrist or ophthalmologist) can help ensure that a problem is found and treated early. For example, diabetes affects more than 8 percent of the U.S. population, but about 7 million people are unaware they are diabetic, according to the Centers for Disease Control and Prevention.



DRAFT

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 12 – Discussion and Possible Action Regarding Minimum Certification Requirements For All Optometrists to Practice in California**

Background:

Board Member Dr. David Turetsky, OD requested the Board discuss minimum certification requirements for all optometrists to practice in California. Currently, in order to be issued a license to practice optometry in California, applicants must meet the requirements for a Therapeutic Pharmaceutical Agent (TPA) certification. However, as of January 18, 2016, the Board has 557 licensed optometrists who only have a diagnostic pharmaceutical agent (DPA) certification and 85 licensed optometrists with no certification. These optometrists were issued licenses after meeting the minimum licensing requirements at that time, and they continue to practice within their very limited scope of practice.

While there are pathways for these individuals to become DPA and TPA certified, they have either chosen not to pursue additional certifications and/or have found the pathway too difficult. For example, one licensee with no certification wishes to become DPA certified. However, he has not been able to complete requirements under current law due to his inability to find a pharmacology course, and he has no desire to become TPA certified. It is estimated that many of these optometrists without a TPA certification have their own private practices, because it is very difficult to be hired and several insurance companies will not allow you to be on their insurance panels.

Many optometrists would argue that a TPA certification is the current standard of care. In addition, any California patients who are examined by optometrists without a TPA certification would most likely be referred to another optometrist for treatment. The patient would have to pay another insurance co-pay and have his/her eyes examined again.

Action Requested:

Hold a policy discussion on this issue and decide whether or not to pursue legislation to require a minimum TPA certification to practice in California.

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To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 13 – Update and Possible Action on Concerns Raised Related to the National Board of Examiners in Optometry (NBEO) and National Board Examinations (Parts I, II, and III)**

Background:

At the November meeting, the Board heard and discussed concerns related to the National Board of Examiners in Optometry (NBEO) and their administration of the National Board Examinations. Those concerns centered on NBEO's method used to identify students cheating on the examinations, system malfunctions during the examinations, and the lack of communication between the NBEO and the Board. The Board directed staff to research the issue further, work with the Practice and Education Committee, and bring additional information back to a future board meeting.

In a letter from Board President, Dr. Madhu Chawla, OD, NBEO was notified about the concerns raised at our meeting and invited a NBEO representative to attend the February Board meeting (Attachment 1). The letter, addressed to the NBEO Board President, was also forwarded to all NBEO Board of Directors. The Board has yet to receive a response from NBEO.

Attachment:

1. Letter to NBEO

CALIFORNIA STATE BOARD OF OPTOMETRY

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February 3, 2016

William B. Rafferty, O.D.
President
National Board of Examiners in Optometry
200 S. College Street, #2010
Charlotte, NC 28202

RE: National Examinations for Optometric Licensure

Dear Dr. Rafferty,

The California State Board of Optometry (Board) has been contacted by administrators, professors and students from California schools of Optometry regarding various issues involving the National Board of Examiners in Optometry's (NBEO) administration and scoring of their three-part examination. In an effort to resolve these issues, the Board is requesting you or a member of NBEO's Board of Directors to participate in the discussion during this agenda item at our public board meeting on Friday, February 19, 2016 in Los Angeles, California.

Like the NBEO, the Board's mission is to protect the public. We do so through licensing, education and regulation of the practice of Optometry. In keeping with our vision – most notably our second core value of integrity through our commitment to honesty, ethical conduct and responsibility - we have an obligation to the citizens of our state in all matters to make sure that qualified applicants are licensed.

As you are aware, the Board does not administer the national licensing examination. Instead, the Board relies on the NBEO to accurately assess the competence of aspiring optometrists through high quality test development and administration, standard setting and equating, and test innovation as stated in NBEO's mission.

In keeping with our responsibility, the Board is bringing to the NBEO its concerns regarding testing administration in light of events impacting the integrity and fairness of its testing practices. We understand from practitioners and public members alike, through communications and attendance at our public session Board meetings, the NBEO has had computer and software malfunctions during examinations which have contributed to testing cadence irregularities.

Further, the Board has been apprised that NBEO, based upon statistical analyses of examinations results, has suggested that students taking the national examination may be cheating or in some manner subverting the examination. As allegations of cheating are serious, and the subversion of a licensing examination is grounds for the Board to deny a license, it is crucial that the validity and soundness of NBEO's statistical analysis be demonstrated.

These issues may negatively impact the amount of licensed optometrists in California and lead to less patient access to optometric care in California.

Given these significant issues and their potential impact to patient access and the futures of California's optometry students, we are requesting you or a member of NBEO's Board of Directors to participate in the discussion during our February 19, 2016 meeting.

Sincerely,

Madhu Chawla, O.D., President
California State Board of Optometry

cc: NBEO Board of Directors
Jill Martinson-Redekopp, O.D.
Elizabeth Hoppe, O.D., Dr. P.H
Melvin Shipp, O.D., MPH, Dr. P.H.
Alan King, O.D.
Fary Cachelin, Ph.D.
Lewis Reich, O.D., Ph.D.
Jerry Richt, O.D.

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To: Board Members **Date:** February 19, 2016

From: Madhu Chawla, OD
Board President **Telephone:** (916) 575-7184

Subject: **Agenda Item 14 –Presentation by the Association of Regulatory Boards of Optometry (ARBO) Regarding Current ARBO Activities and the Council on Optometric Practitioner Education (COPE) Accreditation Standard Changes**

Presentation by ARBO Board of Directors President, Dr. Susy Yu, OD.

Dr. Yu is the Director of Business Strategy and Operations Support for Vision Essentials by Kaiser Permanente in the Southern California region. She also serves as President on the Board of Directors for the Association of Regulatory Boards of Optometry. She previously served on the California State Board of Optometry. Dr. Yu is a graduate of the UC Berkeley School of Optometry and the UCLA Anderson School of Management. She is a Fellow of the American Academy of Optometry, and was named one of Vision Monday's 40 under 40 in 2004 and more recently as an Optometric Business Innovator by Review of Optometric Business and Vision Monday in 2012.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** February 19, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 15 –Future Agenda Items**

The Board may discuss and decide whether to place a matter on the agenda of a future meeting. Future agenda items currently include, but are not limited to, the following:

- Update on Out of State Travel Request for attendance to the Association of Regulatory Boards of Optometry 2016 Annual Meeting
- Staff Outreach for CE at schools
- Control over scope of practice – what other states are doing
- Blue ribbon panel on children's vision
- Revising Business and Profession Code Section 3077: Branch Office License

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To: Board Members **Date:** February 19, 2016

From: Board Staff **Telephone:** (916) 575-7170

Subject: **FULL BOARD CLOSED SESSION**

Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters.

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To: Board Members

Date: February 19, 2016

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 17 – Adjournment**