

**TITLE 16. California State Board of Optometry**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing has been scheduled for this proposed action.

**Subject Matter of Proposed Regulations:** Fees

**Section(s) Affected:** California Code of Regulations (CCR), Title 16, CCR Sections 1399.260, 1399.261, 1399.263, 1524.

**Background and Statement of the Problem:**

The California State Board of Optometry (Board) currently licenses and regulates approximately 9,200 optometrists and 4,200 dispensing opticians. Business and Professions Code (BPC) section 3010.1 provides protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. BPC sections 3021 and 3025 authorize the Board to adopt regulations as may be necessary to enable the Board to effectuate the practice of optometry and opticianry.

BPC 3145 establishes the Optometry Fund (Fund) and requires all fees deposited in the Fund and made available to the Board upon appropriation by the Legislature. BPC section 2567 requires all fees collected from the opticianry program to be deposited in the Fund and available to the Board upon appropriation.

BPC sections 2565, 2566, 2566.1 authorize the Board to set fees by regulation and sets forth the minimum and maximum fee ranges for application, initial registration, renewal, and delinquency for registered dispensing ophthalmic businesses, registered contact lens dispensers, and registered spectacle lens dispensers (collectively, opticianry). BPC section 3152 authorizes the Board to set fees by regulation and sets forth the minimum and maximum fee ranges for renewal for optometrists, and other miscellaneous fees such as application for continuing education course approval, and certain certifications.

The Board is seeking to increase the fees charged for application, initial registration, and renewal, and set the delinquency fee for opticianry applicants and seeking to increase the fees charged for renewal for optometry applicants, and miscellaneous fees associated with certifications and continuing education course approval. The fee increases are necessary to help alleviate the structural imbalance the Board currently faces and thus ensure the Board can meet its consumer protection goals.

Optometrist fees have been raised twice in the past 30 years with the last increase occurring 14 years ago in 2009. Optician fees were last raised in 2017, six years ago.

The other fees in this proposal, the continuing education course approval fee and the certification fees, have not been adjusted since their implementation more than a decade ago.

The Board is a special fund entity, funded entirely by license fees and disciplinary action assessments, and has historically maintained a health fund balance reserve. However, operational costs, including licensing and enforcement-related costs, have increased in recent years, and actual revenues have simultaneously been lower than projected, which has caused the Board's fund to become structurally imbalanced with projected revenues less than expenditures.

The structural imbalance is primarily due to an increase in costs related to the operations of the Board and an increase in licensing and enforcement-related costs including, Attorney General and Office of Administrative Law costs related to disciplinary actions. Additionally, over projecting annual revenues in the prior and current fiscal years has contributed to the shortfall.

The Board is currently projected to become insolvent in fiscal year (FY) 2024-25, if no action is taken and the Board fully expends its appropriation. The Board has been carrying a high vacancy rate of approximately 33% to manage expenditures and mitigate the structural imbalance. Even with this action, the Board's expenditures continue to outpace revenues by more than \$500,000 in FY 2022-23. Unless additional revenue is raised, the Fund will continue to spend more than it brings in and will become insolvent. Additionally, future unknown events, such as a large enforcement case, could further deplete the Fund, adding additional pressure to the Board's ability to meet its mandate.

This proposal is necessary to help ensure the Board has additional resources to maintain the highest priority of consumer safety and protection and to help to recover costs for administration and enforcement of the practice of optometry and opticianry in California. The structural imbalance was identified at the August 26, 2022 meeting and discussed at every meeting since then (December 9, 2022 and March 17, 2023), with the Board beginning the process to increase fees at its May 12, 2023 meeting.

**Anticipated benefits from this regulatory action:**

The proposed amendments to the Board's fee schedule will help to reduce the Board's structural budget imbalance, recover costs, and allow the Board additional time before insolvency, which allows the Board enough time to seek authority to increase statutory fee levels to eliminate the structural imbalance.

The Board has historically been able to operate within its existing budget. However, due primarily to recent licensing and enforcement-related workload and costs, the Board Members began considering options to stabilize the Board budget at the August 26, 2022 meeting and voted unanimously to approve the proposed regulations at its May 12, 2023, board meeting.

The proposed fee increases will help to reduce the structural imbalance and help the Board to recover its administrative costs to ensure the Board has funds to carry out its consumer protection mandate.

Immediate action to increase the regulatory fees collected by the Board is required. The fee increases will bolster the Board's revenues and funding available to continue the Board's daily functions, enforcement, and licensing operations without interruption.

If this regulatory proposal is not adopted, the Board may need to restrict its core operations, including slowing its ability to process applications, restricting investigations, and limiting the Board's ability to adjudicate violations of the laws of optometry and opticianry in an expedient manner. These restrictions to the operations functions of the Board could result in licensing backlogs and compromise the Board's ability to achieve its mission and statutory mandate of consumer protection.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

The Board has not raised fees in 14 years for optometrists and 6 years for opticians. The Board's fund has a structural imbalance, which will lead to insolvency in FY 2024-25.

The proposed regulations would increase all of the Board's license and application fees to the statutory maximums, which will help to alleviate the Board's structural imbalance and help recover costs for services provided to applicants. The Board has completed a workload cost analysis to support this proposal (see Underlying Data).

Specifically, the Board is proposing the following changes to increase fees to their statutory limits:

**Section 1399.260 – Registered Dispensing Ophthalmic Business Fees**

Purpose: This proposal amends section 1399.260 to change the title of the regulation from "Registered Dispensing Optician Fees" to "Registered Dispensing Ophthalmic Business Fees."

Rationale: Updating the regulation with this term will make it consistent with the language in the controlling statute. See: BPC 2565 that says the "fees prescribed in connection with the registration of dispensing ophthalmic businesses . . ."

**Subdivision (a)**

Purpose: This proposal amends section 1399.260 (a) to replace "registration" with "application" and replace "\$75.00" with "\$200."

Rationale: Updating the regulation with this term will make it consistent with the language in the controlling statute. Also, as referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board's structural economic imbalance. See: BPC 2565 (a) that says "The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200)."

### **Subdivision (b)**

Purpose: The proposal replaces and creates a new subdivision (b) to set the initial registration fee at \$300, which is the current statutory maximum.

Rationale: As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board's structural economic imbalance. See: BPC 2565 (b) says "The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300)."

### **Subdivision (c)**

Purpose: The proposal adds the word "biennial" and replaces "\$75.00" with "\$300."

Rationale: Updating the regulation with this term will make it consistent with the language in the authorizing statute. See: BPC 2553.7 (a) which states: "Registrations shall expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed."

Also, as referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board's structural economic imbalance. See also: BPC 2565 (c) that says "The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300)." The current regulation has not been updated since the statute was amended in 2016 through legislation (SB 1039 (Chapter 799, Statutes of 2016)), which increased the statutory minimum from \$75 to \$200.

### **Subdivision (d)**

Purpose: The proposal adds a new subdivision (d) and establishes the delinquency fee at \$50.

Rationale: AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 2565 to say "The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75)." Updating the regulation will make it consistent with the language in the controlling statute.

## **Section 1399.261 – Contact Lens Dispenser Fees**

### **Subdivision (a)**

Purpose: This proposal amends subdivision (a) to replace "registration" with "application" and replace "\$75.00" with "\$200."

Rationale: The term "registration" is replaced with the term "application" in the regulation so it is consistent with the statute. See: BPC 2566 (a) says "The application fee for a

registered contact lens dispenser shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).” Also, as referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

### **Subdivision (b)**

Purpose: The proposal replaces and creates a new subdivision (b) to set the initial registration fee at \$300.

Rationale: AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 2566 (b) to say “The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).” Updating the regulation will make it consistent with the language in the controlling statute.

### **Subdivision (c)**

Purpose: The proposal adds the word “biennial” and replaces “\$75.00” with “\$300.”

Rationale: Updating the regulation with this term will make it consistent with the language in the authorizing statute. See: BPC 2566 (c) The biennial fee for the renewal of certificates shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300). Although the regulation says \$75, it had not been updated since the statute was amended in 2016 through SB 1039 (Chapter 799, Statutes of 2016).

Also, as referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

### **Subdivision (d)**

Purpose: The proposal adds a new subdivision (d) and establishes the delinquency fee at \$50.

Rationale: AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 2566 (d) to say “The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).” Updating the regulation will make it consistent with the language in the controlling statute.

## **Section 1399.263 – Spectacle Lens Dispenser Fees**

### **Subdivision (a)**

Purpose: This proposal amends subdivision (a) to replace “registration” with “application” and replace “\$75.00” with “\$200.”

**Rationale:** The term “registration” is replaced with the term “application” in the regulation so it is consistent with the statute. See: BPC 2566.1 (a) says “The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).” Also, as referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

### **Subdivision (b)**

**Purpose:** The proposal replaces and creates a new subdivision (b) to set the initial registration fee at \$300.

**Rationale:** AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 2566.1 (b) to say “The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).” Updating the regulation will make it consistent with the language in the controlling statute. As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

### **Subdivision (c)**

**Purpose:** The proposal adds the word “biennial” and replaces “\$75.00” with “\$300.”

**Rationale:** Updating the regulation with this term will make it consistent with the language in the authorizing statute. See: BPC 2566.2 which states: “Every registration issued to a dispensing ophthalmic business, contact lens dispenser, and spectacle lens dispenser shall expire 24 months after the initial date of issuance or renewal. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.”

See also: BPC 2566.1 (c) says “The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).” Although the regulation says \$75, it had not been updated since the statute was amended in 2016 through SB 1039 (Chapter 799, Statutes of 2016). As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

### **Subdivision (d)**

**Purpose:** The proposal adds a new subdivision (d) and establishes the delinquency fee at \$50.

**Rationale:** AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 2566.1 to say “The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).” Updating the regulation will make it consistent with the language in the controlling statute.

## **Section 1524 (b) – Biennial renewal of a certificate of registration as an optometrist**

Purpose: This proposal amends section 1524(b) to increase the biennial renewal fee from \$425 to statutory maximum of \$500.

Rationale: BPC 3152 (b) states “The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500). As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

See also for reference: BPC 3149 which states “An optometric license issued under this chapter expires at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed. To renew an unexpired license, the optometrist shall apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.”

## **Section 1524 (l) – Application fee for approval of a continuing education course**

Purpose: This proposal amends section 1524(l) to increase the application fee from \$50 to \$100.

Rationale: BPC 3152 (j) states “The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100). As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

## **Section 1524 (m) – Application fee for a certificate to treat primary open angle glaucoma**

Purpose: This proposal amends section 1524(m) to increase the application fee from \$35 to \$50.

Rationale: BPC 3152 (i) states “The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50). As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

## **Section 1524 (n) – Application fee for a certificate to perform lacrimal irrigation and dilation**

Purpose: This proposal amends section 1524(n) to increase the application fee from \$25 to \$50.

**Rationale:** BPC 3152 (h) states “The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50). As referenced above the Board has completed a workload cost analysis to support increasing the fees to the statutory maximums, which is necessary to alleviate the Board’s structural economic imbalance.

**Table 1: Fee Schedule CCR section 1524**

<b>CCR Section 1524 Optometrist</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Incremental Increase</b>
Biennial Renewal	\$425	\$500	\$75
Continuing Education Course App	\$50	\$100	\$50
Glaucoma Certification	\$35	\$50	\$15
Lacrimal Certification	\$25	\$50	\$25

**Table 2: Fee Schedule CCR section 1399.260**

<b>CCR Section 1399.260 Registered Dispensing Ophthalmic</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Incremental Increase</b>
RDO Business – Application	\$150	\$200	\$50
RDO Business – Registration	\$200	\$300	\$100
RDO Business – Biennial Renewal	\$200	\$300	\$100
RDO Business – Delinquency	\$50	\$50	\$0

\*RDO – Registered Dispensing Ophthalmic

**Table 3: Fee Schedule CCR section 1399.261**

<b>CCR Section 1399.261 Contact Lens Dispenser</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Incremental Increase</b>
CLD Application	\$150	\$200	\$50
CLD Registration	\$200	\$300	\$100
CLD Biennial Renewal	\$200	\$300	\$100
CLD Delinquency	\$50	\$50	\$0

\*CLD – Contact Lens Dispenser

**Table 4: Fee Schedule CCR section 1399.263**

<b>CCR Section 1399.263 Spectacle Lens Dispenser</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Incremental Increase</b>
Application	\$150	\$200	\$50
Registration	\$200	\$300	\$100
Biennial Renewal	\$200	\$300	\$100
Delinquency	\$50	\$50	\$0

\*Spectacle Lens Dispenser

## Underlying Data

- August 26, 2022 Board meeting minutes
- August 26, 2022 Legal Affairs and Budget Office Memo
- December 9, 2022 Board meeting minutes
- March 17, 2023 Board meeting minutes
- March 17, 2023 Board meeting Agenda Item 3Bii
- May 12, 2023 Board meeting minutes (in DRAFT form)
- May 12, 2023 Board meeting agenda item 8

## Business Impact:

This regulation may have an economic impact on businesses, specifically, the Board's licensees and applicants. The regulation would increase fees for biennial renewal for optometrists, applications for continuing education course approval, and certifications for glaucoma and lacrimal irrigation. The proposal would also increase application, registration and renewal fees for registered dispensing ophthalmic businesses, contact lens dispensers, and spectacle lens dispensers.

To the extent these applicants apply for licensure or licensees opt to renew their licenses and registrations, the proposed regulations will impact them as described below:

**Table 5: Cost Impact – Applicant and Licensee Population**

<b>Application/Registration Type</b>	<b>Estimated Population</b>	<b>Increase Amount</b>	<b>Projected Costs Increase</b>
Optometrist – Biennial Renewal	3,564	\$75	\$267,300
Continuing Education Course App	144	\$50	\$7,200
Optometrist – Glaucoma certification	296	\$15	\$4,440
Optometrist – Lacrimal Certification	273	\$25	\$6,825
RDO* Business – Application	59	\$50	\$2,950
RDO* Business – Registration	53	\$100	\$5,300
RDO* Business – Biennial Renewal	517	\$100	\$51,700
CLD** – Application	172	\$50	\$8,600
CLD** – Registration	162	\$100	\$16,200
CLD** – Biennial Renewal	523	\$100	\$52,300
SLD*** – Application	387	\$50	\$19,350
SLD*** – Registration	359	\$100	\$35,900
SLD*** – Biennial Renewal	1,187	\$100	\$118,700
<b>Total:</b>			<b>\$596,765</b>

\*RDO – Registered Dispensing Ophthalmic

\*\*CLD – Contact Lens Dispenser

\*\*\*Spectacle Lens Dispenser

Although the regulation has an economic impact, the impact is not anticipated to be a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with other businesses in California, because the fee increases are

considered to be very minor compared to the income of most applicants, licensees and registrants.

### **Economic Impact Assessment:**

This regulatory proposal is needed to increase the fees it collects per BPC sections 2565, 2566, 2566.1 and 3152.

- It will not result in the creation of new jobs or elimination of jobs within the State of California because the proposed fees are anticipated to have minimal impact on businesses because the incremental fee increase is negligible compared to the average salary of licensees.
- It will not result in the creation of new businesses or elimination of businesses within the state of California because the proposed fees are anticipated to have minimal impact on businesses because the incremental fee increase is negligible compared to the average salary of licensees.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed fees are anticipated to have minimal impact on businesses because the incremental fee increase is negligible compared to the average salary of licensees.
- It will benefit the health and welfare of California residents because the proposal will increase the Board's revenue and funding available to continue uninterrupted the Board's enforcement, investigative, licensing, examination, and public outreach operations.
- This regulatory proposal does not affect worker safety or the environment because the proposed regulations are not relative to workers' safety or the environment. This regulatory proposal focuses on an increase in fee schedules to help reduce the Board's current structural imbalance and does not affect worker safety or the state's environment.

### **Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives:**

The Board has initially determined that no reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

No alternatives were considered because the Board's Fund will become insolvent in the near future without a fee increase. If the Board reduces its annual expenditures to mitigate the structural fund imbalance, the Board would be forced to cut mission critical functions, which will jeopardize the public health, safety, and welfare of California consumers.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.