



**Dispensing Optician Committee  
 Friday, September 27, 2019  
 Approved Meeting Minutes**

**Teleconference Meeting Locations:**

Department of Consumer Affairs, HQ2 – Pearl Room 1747 North Market Blvd. Sacramento, CA 95834	Charter College Oxnard Campus 2000 Outlet Center Dr., #101 Oxnard, CA 93036	Van Nuys State Building 6150 Van Nuys Blvd., Rm 410 Van Nuys, CA 91401
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<b>Members Present</b>	<b>Staff Present</b>
Martha Garcia, CLD, SLD, Chair	Shara Murphy, Executive Officer
William Kysella, Jr, Vice Chair	Marc Johnson, Policy Analyst
Kanchan Mattoo	Jessica Swan, Board Liaison
Anna Watts, SLD	Alex Juarez, Enforcement Analyst
	Natalia Leeper, RDO Licensing Coordinator
<b>Members Absent</b>	<b>Guest List</b>
Adam Bentley, SLD	On File

**Link to audio of meeting:**

[https://www.optometry.ca.gov/meetings/20190927\\_doc\\_audio.mp3](https://www.optometry.ca.gov/meetings/20190927_doc_audio.mp3)

**1. Call to Order/Roll Call**

*Audio of Discussion: 00:02 / 02:27:41*

Martha Garcia called the meeting to order at 10:00 a.m. Martha Garcia was present at the Oxnard, CA location; Kanchan Mattoo and William Kysella were present at the Van Nuys, CA location; Anna Watts was present at the Sacramento, CA location. Adam Bentley was absent. 4-1 quorum established.

**2. Public Comment for Items Not on the Agenda**

*Audio of Discussion: 02:12 / 02:27:41*

There was no public comment.

**3. Discussion and Possible Approval of Committee Minutes from June 7, 2019**

*Audio of Discussion: 02:41 / 02:27:41*

No changes were made. There was no public comment.

**Kanchan Mattoo moved to approve the June 7, 2019 Draft Meeting Minutes. Anna Watts seconded. The Committee voted unanimously (4-0-1) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ruby Garcia	X				
Adam Bentley				X	
William Kysella	X				
Kanchan Mattoo	X				
Anna Watts	X				

**4. Executive Officer’s Report**

*Audio of Discussion: 04:12 / 02:27:41*

**A. Status Update on Occupational Analyses**

Mr. Juarez reported that the Contact Lens Dispenser (CLD) Occupational Analysis was completed in July 2019. Staff is hoping to use that analysis to review the Contact Lens Registry Exam, developed by the National Contact Lens Examiners (NCLE). Mr. Juarez then provided an update on the Spectacle Lens Dispenser Analysis. He stated that the analysis is currently ongoing in November 2019; staff hopes to have the analysis completed by Spring of 2020. He also noted the unlicensed assistant OA hopes to begin in the Fall of 2020.

Ms. Murphy explained that the staff is waiting upon the Governor’s Office to develop their budget for FY2020/2021 and hope to receive some indication in late December. When the budget is released the first week of January 2020, staff will know whether we are included in the preliminary budget. Staff will appear at budget hearings of the Legislature to obtain authority to spend reserve funds in FY2020/2021.

Mr. Mattoo asked how much the Dispensing Optician Committee (DOC) has in reserve currently; Ms. Murphy responded that according to the budget office, FY 17/18 has yet been closed. Budgets expect that once 2017 is closed, 2018 and 2019 will close soon afterward. She explained that currently she only has preliminary numbers but hopes to have more solid numbers within the next couple of days. Ms. Murphy stated she will get back to the Committee once 2017 is closed and Budgets can provide more clarity on where the Committee currently stands. Mr. Mattoo asked about the cost of the last two OAs; Ms. Murphy replied that the cost estimate for the unlicensed assistant is approximately \$60,000.

**B. Status Update on Optician Licensing Program**

*Audio of discussion: 09:20 / 02:27:41*

Ms. Leeper presented an update on the optician licensing program. She was pleased to announce that the staff was able to hire a new optician coordinator (Tien Le) to assist with processing applications. With the addition of new staff, the program can keep up with its goals of ensuring that all applicants are contacted within 30 days, and continuing to improve the BreZE system, making it more user-friendly for applicants and licensees. She reported that staff has a new format and new numbers for the fiscal year for applications that have been processed.

Mr. Mattoo asked how the numbers compare to quarter one of last year as opposed to the entire fiscal year; Ms. Murphy reported that the numbers are better than last year, due to having additional staff, which has reduced the processing time and reduced the backlog. Ms. Leeper noted that paper applications have been reduced and applicants can apply online so they may receive their licenses more quickly; licenses can also be printed from the breeze system.

### **C. Enforcement Update**

*Audio of Discussion: 15:31 / 02:27:41*

Mr. Juarez provided an update on enforcement issues. Mr. Mattoo asked what makes a case high priority versus routine priority; Mr. Juarez replied that high priority cases are issues such as unlicensed practice, patient harm, sexual misconduct, and unfit for practice. Routine priority cases would be cases such as criminal convictions, unprofessional conduct, and illegal advertising. Mr. Mattoo commented that the processing time is 250 days upon receipt for high priority cases, and 400 days for regular cases. Mr. Juarez explained that when conviction cases are going through the court process, the cases can take a year or more to settle. The staff has been successful in dramatically decreasing the time it takes to open a case and assign it to an analyst.

Mr. Kysella asked if there exists a distinction between optometrist cases and Registered Dispensing Optician (RDO) cases; Ms. Murphy explained that Mr. Juarez is the only enforcement analyst dedicated to the optician program. Once assigned these cases, Mr. Juarez processes them according to high or routine priority. Mr. Kysella noted that a low priority optician case could potentially become solved before a medium priority optometry case, simply because of staffing and volume. Ms. Murphy replied that the Board's three enforcement analysts carry approximately 150 to 200 cases per analyst.

There was no public comment.

### **5. Update on Registered Dispensing Optician Business Types Permitted by Law**

*Audio of Discussion: 22:44 / 02:27:41*

Ms. Leeper provided an update on the corporation types allowed for Opticianry businesses. She reported that staff had a discussion with the Attorney General's (AG's) Office regarding the fact that limited liability companies cannot hold registrations, licenses, or certificates in the

state of California. There were several exceptions to this rule; however, the optician program was not listed among them. Therefore, staff worked with the Department of Consumer Affairs (DCA) Legal counsel and wrote a letter to all the Board's current licensees, who listed themselves as limited liability companies (LLCs), as well as applicants. They were instructed to dissolve their LLC's and re-register as corporations. Ms. Murphy added that this issue is a holdover from when the Medical Board oversaw this license; as the program came under this Board's jurisdiction, there existed a precedent of allowing LLCs to file. As staff has had the opportunity to better enforce and investigate, staff has realized that there is not the accountability and the ability for consumers to become compensated if there is an issue or violation. Staff found these holdovers from the Medical Board, and realized this Board continued the same process; and so, communicated to the licensee population that California law does not allow that type of corporate organization for professional services. Ms. Leeper reported compliance with this change has been good so far.

Ms. Watts commented that she had to go through this process and feels she can offer some insight as to how to go about it. She stated that this was very confusing in the beginning and that the quickest method for making this change is to submit a conversion form (LLC to Corporation) through the Secretary of State and submit the payment. She recommended using a very good checklist and making sure to cross everything off. Mr. Mattoo asked if it would make sense for staff to create a checklist form to provide to these licensees; Ms. Murphy responded staff would begin work on such a checklist.

There was no public comment.

## **6. Update, Discussion and Possible Action on Occupational Analyses**

*Audio of Discussion: 34:02 / 02:27:41*

This item was previously discussed as part of the executive officer's report and was not taken up.

## **7. Review, Discussion and Possible Action on Potential Changes to Dispensing Optician Statutes: Chapter 5.4 (Prescription Lens) of Division Two of the Business and Professions Code; Chapter 5.45 (Nonresident Contact Lens Sellers) of Division Two of the Business and Profession Code; Chapter 5.5 (Registered Dispensing Opticians) of Division Two of the Business and Profession Code.**

*Audio of Discussion: 34:46 / 02:27:41*

Ms. Garcia noted this agenda item would be a lengthy discussion, so she proposed an additional meeting on December 20th.

Mr. Johnson provided an overview of the agenda item. Staff is proposing to begin the conversation by reviewing the three chapters applicable to the RDO program and begin working through them. Some of the changes involve updating laws to conform with current federal regulations; many of them are to clarify and avoid confusion; others are to improve

efficiency of enforcement processes. He noted that staff did not set out bigger changes such as imposing a new laws and regulations exam; additional registration requirements; fee changes or the possibility of continuing education. These larger issues can be discussed next year if the DOC wishes to do so. He noted that the DOC will want to consider if the proposed changes enhance or improve public protection and are consistent with its mission and values.

Ms. Leeper began with Chapter 5.4, explaining that this is the only chapter that does not specifically discuss a license type and encompasses rules specifically to prescription lenses as it applies to opticians, optometrists, and ophthalmologists. The DOC discussed the following changes to Chapter 5.4:

- § 2541.1(a): Update the section to mirror any possible changes in Federal rules regarding spectacle and contact lens prescriptions. Staff was directed to include the changes.
- § 2541.1(b): Ms. Leeper asked if the expiration date for spectacle lenses be better specified, stating that “not be less than two to four years” may be confusing as it implies the expiration date could be more than four years. Ms. Watts commented that when she worked in a retail optical location, and they had to fill the contact or spectacle lens prescription that every doctor was different depending upon where a patient is seen. Typically, it comes down to the provider. She noted that more systems now have expiration dates automatically built-in, and which print out automatically. Ms. Garcia noted that from experience, most doctors write spectacle prescriptions to expire in one to two years, and one year for contact prescriptions. She has never encountered a doctor writing an expiration for four years. Staff was directed to use “up to four years”.
- § 2541.2(A)(1): Change similar to § 2541(b).
- § 2542: Staff recommends removal of the words “fit, adjust” as dispensing optician businesses do not perform these functions, and sections referring to dispensing optical businesses throughout the statute be updated to include large-scale operations unforeseen during the drafting of the statute. Staff feels an optician business that employs SLDs and CLDs does not perform the fittings and adjustments itself; the employees perform these duties. Therefore, the CLDs and SLDs statutes include fit and adjust. Ms. Murphy clarified that the staff’s intent in the reorganization is to create a general provision that applies to all the opticianry licenses overseen by the Board and create provisions specifically for the businesses. Members agreed.
- § 2545(b)(1): Staff recommends discussion of the dollar amounts to set a new floor and ceiling for violations; since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations. Mr. Kysella asked if there are similar fines for optometrists; Ms. Leeper explained that Chapter 5.4 specifically applies to all prescription lenses; therefore if an optometrist is dispensing lenses, this would apply to him/her as well. Ms. Murphy stated that research indicates there are many optical shops that are not registered RDO’s and the current fees are not viewed as a deterrent.

Mr. Mattoo inquired about the timeframe of violations; Ms. Murphy explained that staff will need to come back to the Committee with statistics of what enforcement has done. Mr. Kysella suggested moving the cap up to \$5,000 which would give the Board more discretion and a larger hammer on more serious violations. Ms. Garcia inquired as to whether the Board would want to consider having a scale for repeat offenders; Ms. Murphy replied that this is certainly another approach to consider.

The DOC discussed Chapter 5.45. Ms. Leeper noted that Chapter 5.5 is a license type; it is under the optician program, but it has its own chapter. Staff is recommending we move the nonresident contact lens chapter to be an article under Chapter 5.5 for the optician program, for clarity. Members agreed. Further, Ms. Leeper announced that for this entire chapter, staff proposes renaming to “Nonresident Ophthalmic Device Dispenser,” or another name, to better identify its purpose and asked should this section include nonresident dispensers who also provide spectacle lenses and not just contact lenses.

Mr. Kysella asked if expanding the text to include contact and spectacle lens would fall under the category of ophthalmic device dispensing; Ms. Leeper replied that it would because ophthalmic device dispensing includes spectacle lenses, contact lenses, and any other device used for assistance with vision that is prescribed by a doctor. Mr. Kysella stated a concern that although he understands that contacts and spectacles fall within that category of ophthalmic devices, he is not entirely certain what that phrase means. He asked if the term means something else; Ms. Murphy stated that staff will research the industry terms.

- § 2546.1: Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act. Members agreed.
- § 2546.4: Staff is proposing to require licensees to list their DBA on the form so consumers can locate their registration easier, which is not currently required. Should the requirements apply to an advertisement as well? Mr. Kysella asked if § 2546.4 only applies to the application; Ms. Leeper clarified that the first part applies to the applicant and the second part applies to any advertising on registrant’s websites. Mr. Mattoo commented that as long as registrants are required to have their dba’s in the Board’s database, the second part is not needed and asked if registrants are currently required to have their registration number included in their advertising. Ms. Leeper replied that this is not currently required but the change would allow a consumer who purchasing contacts from a website to see the registration number in place of a certificate.
- § 2546.5(a): Staff recommends the addition of the word ‘jurisdiction’ so other licensing bodies beyond a state board can be required for background information. Members agreed.
- § 2546.5(c): Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act, and to synchronize the change made to other similar sections. Members agreed.

- § 2546.6(a)(2): Staff recommends the current communication deadline of 2 p.m. of the next business day be changed to mirror updated Federal law or other accepted standards. Ms. Murphy stated there may be a need to discuss a longer time-line for verification and added that there is the balance of portability of the prescription so that consumers can go to opticians (outside of their optometrist) to receive their materials; and there is also the balance of giving the medical profession an ample amount of time to verify that the materials are based on a current prescription. Mr. Kysella recommended that if there is a problem to be solved, that the staff consult with the experts, but otherwise it sounds like the Board is trying to fix a problem that doesn't exist. Mr. Mattoo agreed and believed this was time-frame put in place to keep businesses in line, but the consumers do not even know it exists. He added that if the staff makes a change, his recommendation is to make the time-frame within two business days. Ms. Garcia asserted that the time-frame should be extended to two to three business days to allow time for a response. Staff will perform additional research on the issue.
- § 2549.9: Staff recommends the addition of DCA's newly-adopted fee language template, which sets a specific fee and a fee ceiling amount within the statute. Ms. Leeper noted that this recommendation does not change the fee amounts which is a separate issue. Members agreed.
- § 2546.10: Staff recommends a discussion of the dollar amounts appropriate to set a new floor and ceiling for violations. Since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations. Members agreed.

The DOC reviewed Chapter 5.5. Staff is recommending the reorganization of this chapter to include new articles and further define current ones. Mr. Johnson added that this does not have any practical effects; it is simply a way of organizing the law in a way that is easier to follow and assists with understanding the purpose of each statute under the article type. Members agreed. Throughout the chapter, the word "business" has been added to denote sections that may be appropriate to a registered dispensing optician business itself. Ms. Leeper stated the idea is to prevent confusion and to have a separate general provisions article to apply to all license types. Ms. Leeper also reported that staff is also recommending that the name Registered Dispensing Optician (RDO) business license be changed to Ophthalmic Device Dispensing Business to mirror the nonresidents' name. Members agreed to these changes.

- § 2550: Staff proposes the relocation of part of § 2553 into this section for clarity. Members agreed.
- § 2551: Staff recommends the addition that all 'corporations and firms' be required to operate as professional corporations, as defined by Corporations Code Section 13401. All businesses must adhere to the Corporations Code, but this change will clarify the requirement within the Optician Practice Act. An additional recommendation replacing the word "contain" with "specify" to eliminate any ambiguity about what is needed and

what consumers should expect to see when visiting a business. Finally, the staff proposes a requirement to list business's headquarters address, corporate documents with a list of officers, and a letter of good standing from the California Secretary of State. Ms. Leeper explained that during the application process, the staff requires that these documents be submitted, so staff can verify that they are a business with the Secretary of State's Office. Members agreed to these changes.

- § 2552: Staff recommends a number of changes to this section. The addition of a direct contact name and phone number for Board inquiry; this allows for direct access to a responsible person who is handling the application. Additionally, staff recommends adding a notification requirement of 14 days of any changes to the Board and insertion of the word 'electronic' after the words 'certified or registered' to denote how an application deficiency may be communicated. Electronic mail is not prohibited and is already done by staff. Members agreed to these changes.
- § 2553: Staff recommended a number of changes to this section. Relocation of the first two sentences of this section into § 2550, which better clarify the intent of § 2553. Additionally, the latter part of this section should be relocated under the new Article 3.5 - businesses and specificity that only SLD/CLDs can engage in the business as defined in 2550. Finally, Ms. Leeper reported that the staff recommends adding a requirement that a license with a current expiration date is shown in a conspicuous place. Registrants can display their renewal certificate in a manner similar to what is done by licensed cosmetologists and barbers. Members agreed to these changes.
- § 2553.1: Staff recommends dispensing optician businesses be required to submit a request for cancellation in writing on a form prescribed by the Board. Staff is also recommending the relocation of this section to the new Article 3.5. for businesses. Members agreed.
- § 2553.1(a)(3): Ms. Leeper reported that the staff recommends the addition of a new subsection (3), which states the new owners of the business must apply for a new registration within 10 calendar days. This provides more specificity about requirements for new business owners of an optician business. Members agreed.
- § 2553.5(e): The staff recommends removal of this section, as its provisions appear to be obsolete. Members agreed.
- § 2553.6: Ms. Leeper added that the staff recommends the addition of a requirement that the applicant must disclose to the Board any proprietary interest. Currently, there is no mechanism for the Board to verify this information. Mr. Mattoo requested clarification of "proprietary interest." - what does this mean? Ms. Swan clarified her interpretation of this statute to mean that a licensee could not hold a proprietary interest in another business if that business was not publicly traded on the open market. Ms. Murphy replied that staff will consult Legal Counsel as to the intent of this section.



- § 2554: Staff recommends relocation of this section into § 2553 for better clarity of consumer notice requirements. Members agreed.
- § 2555: Should this section be rewritten to mirror BPC § 3110 (Optometry), listing all actions which constitute unprofessional conduct and be made specifically for each license type? Mr. Kysella stated that he would like to see a strikethrough. Ms. Murphy replied that staff will set the language for opticians and optometrists' side-by-side and put together some recommended language. When this is brought back to the Committee, members will have the opportunity to see Section 3110 next to what would be staff's revision for the optician statute. Members agreed.
- § 2555.1: Staff recommends defining better who this section applies to – only applicants, not stockholders or unaffiliated employees. Members agreed.
- § 2556.5: Ms. Leeper stated that this section will need to be updated to reflect the potential renaming of the registrant type – such as 'Ophthalmic Dispenser' etc. Ms. Murphy stated that staff will research definitions and discuss with stakeholders whether that term is too broad and tends to overreach; or if it truly does encompass the spectacle and contact lens authority of the Board.
- § 2558: Staff recommends placing this section into each registrant type (optical business, SLD, CLD), which provides better clarity for enforcement issues. Members agreed.
- § 2559.15: The staff recommends removal of the text of “allowing for usual and customary absences including illness and vacation”; Ms. Leeper noted the addition that a supervising optician shall not supervise more than three unregistered technicians at once. Mr. Kysella asked what the reasoning is behind removing “customary absences including illness and vacation”; Ms. Murphy explained that there is a need for good clarity about what direct supervision means; and that supervision is not simply an organizational structure of reporting, but a working practice whereby licensed professionals oversee the work of unlicensed professionals or apprentices. The staff has found that the “usual and customary absences including illness and vacation” is seen as a way for unlicensed employees to do the work without a licensed professional on-site. Ms. Garcia asked if by removing this text is there is no need to supervise unlicensed employees; Ms. Leeper replied that the removal is to prevent the occurrence of an unlicensed employee not being supervised.
- § 2559.2(a): Staff recommends changing five years to three years for public protection. Mr. Kysella asked if things are changing at such a rapid pace to warrant the change from five to three years; Ms. Murphy believes there is, according to the research she has done. Mr. Kysella argued that continuing education requirements need to be in place for these people, but Ms. Murphy replied that this is a conversation the DOC can have when fully informed by the Occupational Analysis.

Mr. Mattoo noted that this is something the Committee wanted previously but were told the Governor would not approve of it; therefore, this is not something this Committee has not investigated as a possibility. He asserted the DOC can investigate this again. Ms. Murphy agreed that a new Governor and three Occupational Analysis provides much more weight to make a case for what the DOC and ultimately the Board believes is the appropriate educational achievement for registrants. Ms. Murphy hopes to have the Budget Change Proposal (BCP) for unlicensed assistants approved soon. By the end of 2020 or the beginning of 2021, staff should have all three to set side-by-side and begin to formulate how they work together.

- § 2559.2(e): Staff recommends the addition of a 'licensed optometrist or ophthalmologist's office' to reflect current business practices. Additionally, a requirement that the registrant must report the current location to the board within 14 calendar days of a change. Members agreed.
- § 2559.5: Staff proposes removal because the section appears to be obsolete. Members agreed.
- § 2559.6: Staff proposes relocating this section into Article 1, so it would apply to all registrations. Members agreed.
- § 2563: Staff recommends relocation of this section into Article 1, in order to apply to all registrations. Members agreed.
- § 2564.5: Ms. Leeper asked: Should the term "accessible handwashing facilities" be updated? Does this mean a bathroom or just a sink? Members agreed there should be a handwashing station separate from a bathroom facility.
- § 2564.6: Staff recommends the removal of this section, as it may be redundant. Members agreed.
- § 2565: Staff recommends the addition of DCA's newly-adopted fee change language, similar to §2549.9. Members agreed.

Mr. Mattoo requested confirmation that there will be new discussion points on everything discussed at a future meeting. Staff confirmed there will be additional discussions.

There was no public comment.

## **8. Future Agenda Items**

*Audio of Discussion: 02:21:32 / 02:27:41*

Ms. Murphy advised looking into the possibility of holding another teleconference meeting before the end of the year. She wanted to make certain the DOC has another opportunity thoroughly consider the proposed statutory changes and give stakeholders the opportunity to

come back with comments, at least once if not twice, prior to bringing a proposal to the full Board.

Mr. Mattoo asked for the date of the next full Board meeting; Ms. Murphy replied the next Board meeting is scheduled for October 25, 2019. After that, there is a tentative date of February 17, 2020. Committee meetings will be held mid to late January. Mr. Mattoo noted that at the start of this Committee, meetings were scheduled monthly to get things rolling. He announced that he is available to meet more frequently than quarterly if needed. Mr. Kysella stated that November is a better month for him. He suggested either November 15<sup>th</sup> or November 22<sup>nd</sup>. Ms. Murphy asked if December 13<sup>th</sup> would be too late and Mr. Kysella replied that it would be for him. He noted that December 6<sup>th</sup> and 13<sup>th</sup> would be questionable for him.

There were no future agenda items proposed by members. There was no public comment.

## **9. Adjournment**

Meeting adjourned at 12:27 p.m.