



**Dispensing Optician Committee  
 Friday, December 13, 2019  
 Approved Meeting Minutes**

**Teleconference Meeting Locations:**

Department of Consumer Affairs, Sequoia Room (1 <sup>st</sup> Fl Rm 109) 2420 Del Paso Road Sacramento, CA 95826	Charter College Oxnard Campus 2000 Outlet Center Dr., Rm 101 Oxnard, CA 93036	Van Nuys State Building 6150 Van Nuys Blvd., Rm 410 Van Nuys, CA 91401
Milton Marks Conference Center Benicia Room 455 Golden Gate Avenue San Francisco, CA 94102		

<b>Members Present</b>	<b>Staff Present</b>
Martha Garcia, CLD, SLD, Chair	Shara Murphy, Executive Officer
William Kysella, Jr, Vice Chair	Cheree Kimball, Assistant Executive Officer
Adam Bentley, SLD	Marc Johnson, Policy Analyst
Kanchan Mattoo	Natalia Leeper, RDO Program Licensing Analyst
Anna Watts, SLD	Alex Juarez, RDO Enforcement Analyst
	Sabina Knight, Legal Counsel
<b>Members Absent</b>	<b>Guest List</b>
	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: 00:09 / 02:35:40*

Ms. Garcia called the meeting to order at 10:12 a.m. and a quorum was established. Martha Garcia was present at the Oxnard, CA location; Adam Bentley was present at the San Francisco, CA location; Kanchan Mattoo and William (Bill) Kysella were both present at the Van Nuys, CA location; and Anna Watts was present at the Sacramento location. There were several members of the public at the Sacramento location and no members of the public at any teleconference locations.

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

*Audio of Discussion: 03:26 / 02:35:40*

There were no public comments.

**3. Discussion and Possible Approval of Committee Minutes from September 27, 2019**

*Audio of Discussion: 03:48 / 02:35:40*

There were no changes made to the minutes. There were no public comments.

**Kanchan Mattoo moved to approve the September 27, 2019 draft meeting minutes. William Kysella seconded. The Committee voted unanimously (5-0) and the motion passed.**

<b>Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
<b>Garcia</b>	X				
<b>Kysella</b>	X				
<b>Bentley</b>	X				
<b>Mattoo</b>	X				
<b>Watts</b>	X				

**4. Chair’s Report**

**A. Update on Developing Optician Education Programs**

*Audio of Discussion: 06:05 / 02:35:40*

Ms. Garcia provided an update on optician education programs and announced several colleges in California would be offering certificate and associate’s programs. Optometrists and experienced opticians are excited to teach; and there is a surplus of subject matter experts who are successfully teaching the curriculum. Students are being recruited for work after two semesters. Ms. Murphy assured that staff will inquire with the ABO and NCLE regarding what state pass rates are compared to national pass rates to determine if the increased education is contributing to increased pass rates. Mr. Bentley asked Ms. Garcia if she is seeing students who are already working in the industry and are trying to further their education, or are they all primarily new to the industry? Ms. Garcia replied that most individuals are returning to further their education.

There were no public comments.

**B. 2020 Meeting Schedule**

*Audio of Discussion: 12:40 / 02:35:40*

Committee Members discussed meeting locations and schedules for the 2020 year. Ms. Murphy announced that she is being very cautious with the Board’s budgeting and in seeking

meeting space that will not stretch the budget. January should provide a clearer picture about what the Board/Committee may spend. She added that the September 2020 meeting will be face-to-face. Mr. Kysella replied that if the budget cannot accommodate the meeting space then the Committee needs to look at increasing the fee for the licensees. Ms. Murphy assured she will add his point to future agenda meetings.

2020 Dispensing Optician Committee (DOC) meeting dates are as follows:

- January 30, 2020
- April 2, 2020
- June 18, 2020
- September 17, 2020 - Burbank – Beginning at 11:30 a.m.

There were no public comments.

**Adam Bentley moved to approve the 2020 meeting calendar. Kanchan Mattoo seconded. The Committee voted unanimously (5-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Garcia	X				
Kysella	X				
Bentley	X				
Mattoo	X				
Watts	X				

**5. Executive Officer’s Report**

**A. Optician Licensing Program**

*Audio of Discussion: 17:46 / 02:35:40*

Ms. Leeper provided an update on the Licensing Program. Currently, processing times are still at 6-8 weeks; the goal is to bring them down to 4-6 weeks. Ms. Leeper announced that there is a large portion of spectacle lens and Registered Dispensing Optician (RDO) licensees who are delinquent, and staff is looking into the reason(s) for this. Mr. Kysella asked if someone could transfer a license by simply changing their name. Ms. Leeper explained that the process for name changes includes providing legal documentation that has the name change and a photo copy of their drivers license or state issued ID. Therefore, the likelihood of this occurring is very low.

Mr. Bentley inquired as to whether staff can pull numbers from the ABO to determine how many individuals are certified by the ABO and compare it against the number of opticians registered with the Board? Ms. Leeper replied that she will contact the ABO and investigate obtaining that information. She noted that staff would need to look at both the pass rate and current certifications to obtain an accurate number, because registrants are not required to maintain their ABO certification once registered with the state.

## **B. Optician Enforcement Program**

*Audio of Discussion: 25:45 / 02:35:40*

Mx. Kimball provided trends on the optician enforcement program. The Opticianry (OPN) program receives almost as many new cases every month as the Optometry (OPT) program; the OPN program only has one analyst working on those cases, whereas the OPT program has three. Mr. Juarez reported on the Opticianry Enforcement Program. A total of 50 cases were received during the first quarter of the 19-20 fiscal year. Forty-eight were closed with no action; six cases are currently pending with the Attorney General's Office; staff has processed two disciplinary orders during the first quarter of the fiscal year. Mr. Juarez noted most of the cases received were criminal conviction cases and unprofessional conduct. The remaining cases were unregistered practice, non-jurisdictional cases, and applicant investigation due to prior disciplinary action. Most of the case closures occurred within the first year of receipt of the initial case.

Mr. Kysella requested that a summary of the nature of the disciplinary cases be included in future meeting materials; but noted the DOC is an advisory committee, and does not provide advice specific to the disciplinary actions of opticians. Ms. Knight confirmed this is correct and commented that it is not the role of this subcommittee to take part in this discipline; it is the role of the full Board.

## **C. Subject Matter Expert Workshops**

*Audio of Discussion: 41:52 / 02:35:40*

Mr. Johnson provided an update on the Subject Matter Expert Workshops. The Office of Professional Examination Services (OPES) has completed the Spectacle Lens Dispensing Occupational Analysis Workshop on November 19, 2019. There was great feedback and attendance. OPES should be presenting the report in the Spring of 2020. Mr. Johnson also reported that Unlicensed Assistance Occupational Analysis is pending the Department of Consumer Affairs (DCA) approval of the Board's budget change (BCP) proposal. Staff hopes to receive confirmation in a month or two. If approved, it will likely begin next Summer or Fall with a report due in 2021. Ms. Murphy added that Staff will receive their first look at the Governor's budget in early January and will know if the BCP has been included in the budget. Mr. Johnson noted that staff will be holding Spectacle Lens Dispensing and Contact Lens Dispensing workshops next year with OPES. Those dates have not yet been scheduled. The Committee will be updated as soon as the dates become available.

There were no public comments.

## **6. Update, Discussion and Possible Action on Changes to Dispensing Optician Statutes**

### **A. Chapter 5.4, Division 2 (Prescription Lens) of the Business and Professions Code**

*Audio of Discussion: 45:41 / 02:35:40*

This agenda item is to continue the discussion on updating of the Opticianry statutes. Ms. Leeper began with Chapter 5.4, Division 2 of the Business and Professions Code (BPC). Staff has received a great deal of questions about what exactly an optician in California is, and performed research in response which was inconclusive. Staff proposes a definitions section in §2550.1, which brings together in one place various terms such as “registered dispensing optician” and “fit and adjust”, which are already used throughout existing law. In §2550.1, Mr. Bentley suggested expanding (c) by separately defining “fit” and separately defining “adjust”. Mr. Johnson questioned whether the definition of “fit and adjust” should be added to the definitions section or the SLD section; and he noted that staff may need to consult with Legal Counsel for advice. Mr. Bentley responded that “fit and adjust” should be broken down by definition in §2550 as §2559 is referenced in that section. Mr. Kysella stated his opinion that the definitions may need to be added to both sections with a cross reference.

Ms. Garcia asked if the terms in §2550.1(d) “Dispensing Optician”, “Registered Dispensing Optician” and “Registrant” could be changed as well. Mr. Johnson explained that these are the three terms defined throughout the Act. He suspects it was probably the Legislature’s intention to write it this way; any change to the overall terms would need to be changed throughout the entire Act itself. Mr. Kysella suggested an edit to §2550.1(c) of placing a comma followed by the word “for” to make the text read: “Fit and adjust” and, for “fitting and adjusting” means any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in §2541.

The committee approved proposed changes to §§2541.1(a), 2541.1(b), 2541.2(a)(1), based on changes made in Federal Rules. Staff proposed a change to §2545 (b)(1), which makes adjustments to lower the floor of fines to \$250 and raise the cap to \$50,000 per violation. Mr. Johnson added that staff is further proposing to include fine levels and repeat offenses into regulation once the optician statute review is complete. Members agreed with this change. Mr. Kysella asked if this would apply in a parallel fashion to optometrists as well. Ms. Leeper clarified that this specifically applies to the prescription lens law; therefore, it would apply to anyone who violates this section of the law. Mr. Bentley asked if the first section of §2545 which states “person” should be changed to “entity” since some Registered Dispensing Opticians (RDO’s) are corporations rather than individuals?” Mr. Johnson noted that staff will need to discuss this with Legal Counsel.

#### **B. Chapter 5.45, Division 2 (Nonresident Contact Lens Sellers) of the Business and Professions Code**

Ms. Leeper reported this section was relocated into Chapter 5.5, Article 2.5. There were no comments from members regarding this section.

#### **C. Chapter 5.5, Division 2 (Registered Dispensing Opticians) of the Business and Professions Code**

Mr. Johnson stated this chapter was organized into new articles with existing text relocated into each article. Additionally, numbering was added to each section for clarity. He noted that Mr. Kysella commented at one of the former Committee meetings that one of the difficulties is article construction. Members agreed with this change.

The committee approved a change to §2553(a), which requires that registrants must display their certificate in a clear and conspicuous place, which includes their registration number, name, address of record and expiration date. This requirement is similar to what cosmetologists and barbers are required to display. For §2555, staff proposes text mirrored on BPC §3110 (Optometry), listing all actions which constitute unprofessional conduct and made specific for dispensing opticians. Sections not applicable to opticians such as drug prescriptions, therapeutic procedures and referrals to physicians were removed.

For §2555.1(d), staff proposed text which defines penalties apply only to individuals who are on the business application, and not their stockholders or unaffiliated employees who do not perform optician functions. Members agreed on these proposed text changes.

For §2559.15, Ms. Garcia noted that the word “technician” in the title is not defined. Staff and members agreed it should be changed to “unregistered assistant.” Ms. Leeper asked how many trainees can be directly supervised at one time; at what point does it become too many? Ms. Garcia responded that three is enough. Mr. Johnson reported that the proposed text would place the cap at three registered assistants. Members agreed on placing the cap on three registered assistants. A reference to an exam given at least twice each year was removed from §2559.2(a). For §2564.5, staff proposes text based on federal rules requiring a sink with hot and cold running water, soap and hand dryers separate from a bathroom. Members agree.

Ms. Leeper discussed the new Article 2.5 - Non Resident Ophthalmic Device Dispensers, which incorporates existing Chapter 5.45. Staff and Committee Members agreed that “ophthalmic device” will need to be defined; members also discussed whether the market should be opened to spectacle lens, or whether it is necessary to continue to restrict the ability for a non-resident seller to sell spectacles by virtue of a change of article name.

Mr. Bentley addressed the online companies that are already selling spectacles to California residents. He inquired about the benefit of having outside online sellers register with the Board from a regulatory perspective? Ms. Murphy responded for example, if there were to become an irregularity in materials or production of materials, it provides the Board with some enforcement authority to ensure consumer protection against practices and materials that might be harmful. Ms. Leeper clarified that online businesses that operate within California and ship to California customers, as well as Nevada businesses are required to register with the Board as Registered Dispensing Optician (RDO) businesses. Therefore, this would just encapsulate those online business who are out-of-state to also apply for this license. Members agreed to the name change to “ophthalmic lens”. Staff was directed to research expanding the article to include all ophthalmic lenses.

For §2564.74, staff proposed several changes, including a requirement that the board is notified in writing upon any changes to the application; addition of listing of fictitious or assumed name, if applicable, to the non-resident application and requirements for advertising similar to Contractors State Licensing Board's statutes, requiring display of license number along with text identifying it was issued by the board. Members agreed to the proposed changes.

Discussion commenced on proposed section §2564.76. Staff researched Federal Rules for changes to the current communication deadline of 2 p.m. of the next business day and recommends further DOC discussion. Contact Lens Rule 315 requires the patient's information, prescription including manufacturer, contact information of the seller, date of the patient request, and date of the verification request. Prescribers must communicate with the seller within "eight business hours" rather than by 2 pm the next business day. Ms. Garcia commented that some offices are closed during weekends and during their lunch hour - is eight business hours enough time? Ms. Leeper clarified that the contact lens rule states that business hours include Monday through Friday beginning at 9 am., and only includes Saturday when it is known that the location is open on that day. Members agreed to the change to eight business hours.

For §2564.80, staff proposes raising the cap of fines to \$50,000. This will act as a stronger deterrent to registrants and businesses, increasing public protection. The references to Medical Board will be updated to the Optometry Board. Members agreed to these changes.

Ms. Leeper reviewed the new article 3.5 – Registered Dispensing Optician Businesses and explained that there was previous debate about the need to change the name "Registered Dispensing Optician" and what the name should be. Ms. Murphy clarified that these businesses are not performing fitting and adjusting; rather they are dispensing ophthalmic devices. Ms. Leeper and Ms. Murphy noted that seeing the word "optician" in the title is often misleading to the public, as well as to registrants who incorrectly believe they need to apply for the registration. Staff is proposing to add the word "business" to the title for clarification, and to reference what they dispense, as opposed to the professionals they will employ to do the fitting, adjusting and dispensing of those materials. Ms. Leeper asked if the term "Registered Dispensing Ophthalmic Device Business" is an appropriate name for this title.

Ms. Watts and Mr. Kysella suggested that the term "Ophthalmic" is not a term that is known and understood by the general public whereas "Optical" is. Ms. Murphy explained that although there is value about using plain English, there is also something to be said about specificity; as regulators we should be looking at specificity that within that license type gives licensees clarity as to what each registration does. Ms. Murphy asked members if they have observed optician businesses using business names that are misleading to the public by alluding that they perform optometry services rather than supplying the materials or fitting and adjusting of materials? Names such as "Northern California Vision Center," or "Modesto Eyecare" are examples. She asked if members consider this to be an issue in the industry.

Mr. Johnson noted that the Board's advertising regulations for opticians are pretty thin and outdated. If members wish to add in "optical or optician must be included in all advertising," the

Board does have the authority to define this out in regulation. Ms. Murphy noted that for optometry, this is in statute; not regulation. Therefore, if members wish to make symmetry between the professions the Board oversees, it may be reasonable to discuss whether this should go into statutes as opposed to regulations. Ms. Garcia agreed; Mr. Bentley believes that rather than the name itself the marketing requirement regulations are what should be reviewed.

For §2568.1, this section was relocated and includes the requirement that only SLD/CLD registrants can perform optician duties as defined in statute. Staff was directed to work with Legal Counsel if this change would conflict with sections 2559.1 and 2560 which allows registrants to supervise trainees.

Public comment was taken. One commenter asked whether the cap of supervising a maximum of three assistants is coming from any damages having been shown from supervising more than three, or coming from another section of code. Ms. Leeper explained that it comes from the contact dispensing code that only allows three and she believes that it was an oversight that the spectacle lens dispenser did not have the same cap. Staff will investigate what “assistant” should be defined as (i.e. trainee, assistant, apprentice, sales consultant etc.). A second commenter asked if the intention to get this introduced into legislation by the February 2020 bill introduction deadline? Ms. Murphy responded that the intention for this to come back to the Committee at the January 31, 2020 meeting, and then go to the full Board February 28, 2020. Staff does not anticipate this becoming part of the 2020 legislative session.

There were no additional public comments.

**Recess was taken at 12:31 p.m. Meeting resumed at 12:45 p.m.**

## **7. Update, Discussion and Possible Action on California Code of Regulations §1399.273 and Optician Disciplinary Guidelines Incorporated by Reference**

*Audio of Discussion: 02:25:15 / 02:35:40*

Mr. Juarez provided an update on the Opticianry Disciplinary Guidelines. The DOC was presented with a clean version of the Guidelines at the DOC meeting on March 15, 2019. That version of the Guidelines included various changes made by the Committee at prior meetings. The Committee had no further comments or revisions at the March 15, 2019 DOC meeting. Staff continued to work on the guidelines by making the following changes:

- Pronoun Usage: The California State Assembly enacted the resolution last year, directing the Legislature and state agencies to avoid the use of gendered pronouns. Therefore, Staff eliminated the he/she and him/her pronouns from the guidelines.
- Page 10: Standard Term and Condition 8, Cost Recovery, was revised to require the respondent to pay cost recovery no later than six months prior to the end of probation (changed from three months to six months). The six-month requirement mirrors the

Optometry Disciplinary Guidelines. This will allow the Board more time to take action against the respondent if they fail to pay cost recovery fees.

- Page 7: Model Probationary Orders now includes an option that allows probationers to apply for a second registration. This option allows both registrations to follow the probationary terms imposed by the initial probation.

Mx. Kimball added that this would allow Staff to insert language so that if the registrant applies for a second registration later, it can simply be folded into the existing probationary terms versus having the applicant go through the whole ordeal again.

There were no public comments.

**Kanchan Mattoo made a motion to move the Disciplinary Guidelines, as featured in the materials, to the Board for discussion and approval. Anna Watts seconded. The Committee voted unanimously (5-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Garcia	X				
Kysella	X				
Bentley	X				
Mattoo	X				
Watts	X				

## 8. Future Agenda Items

*Audio of Discussion: 02:31:36 / 02:35:40*

Discussions requested for future agenda items include:

- Advisory Committee duties
- Enforcement staffing increase
- Fee increase discussion

There were no public comments.

## 9. Adjournment

Meeting adjourned at 1:00 p.m.