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**DISPENSING OPTICIAN COMMITTEE
APPROVED MEETING MINUTES**

Thursday, June 18, 2020

This public meeting was held via WebEx Events.

Members Present	Staff Present
Adam Bentley, SLD, Chair	Shara Murphy, Executive Officer
William Kysella, Jr, Vice Chair	Cheree Kimball, Assistant Executive Officer
Anna Watts, SLD	Marc Johnson, Policy Analyst
	Natalia Leeper, Opticianry Program Coordinator
	Alex Juarez, Optician Enforcement Analyst
	William Maguire, Legal Counsel
Members Absent	
None	

Link to audio of meeting:

<https://www.youtube.com/watch?v=xwhdjCyaUic&feature=youtu.be>

1. Call to Order/Roll Call

Audio of Discussion: 1:20 / 1:47:19

Mr. Bentley called the meeting to order at 10:00 a.m. and a 3-0 quorum was established. The meeting was conducted online via the services of WebEx Events. Ms. Murphy announced that Martha “Ruby” Garcia and Kanchan Mattoo were not reappointed to the committee and thanked the two former members for their service. She also noted Mr. Bentley has been appointed as committee chair by Board President Mark Morodomi.

2. Public Comment for Items Not on the Agenda

There were no public comments.

3. Update, Discussion and Possible Action on Spectacle Lens Dispenser Occupational Analysis – Dr. Heidi Lincer, Chief, Office of Professional Examination Services

Audio of Discussion: 5:49 / 1:47:19

Dr. Lincer provided a presentation of the Spectacle Lens Dispenser (SLD) Occupational Analysis. She explained that Business and Professions Code (BPC) 139 requires that boards conduct an occupational analysis (OA) for each examination every five to seven years; and that boards submit a report annually that provides a status of their OA and their examination development work. The purpose is to ensure that board's and bureau's examination remain valid and current. OPES staff researched the profession and conducted interviews with licensed SLDs working in locations throughout California to identify the tasks performed by SLDs and to specify the knowledge required to perform those tasks in a safe and competent manner. Using the information gathered from the research and the interviews, OPES test specialists developed a preliminary list of tasks performed in SLD practice, along with statements representing the knowledge needed to perform those tasks.

Dr. Lincer noted that the standards for educational and psychological testing require evidence of validity for test content must be based on a thorough and explicit description of the content and what is being measured. The exam contents are primarily focused on what it takes to receive a license and on consumer protection. A close link between test content and job content must be established. Two workshops were held in August 2019 and November 2019 comprised of licensed SLDs, or SMEs with diverse background in the profession. These SMEs also identified changes and trends in SLD practice, determined demographic questions for the OA questionnaire, and performed a preliminary linkage of the task and knowledge statements to ensure that all tasks had a related knowledge statement and all knowledge statements had a related task. Additional task and knowledge statements were created as needed to complete the scope of the content areas of the description of practice.

Dr. Lincer explained that another part of BPC 139 requires that the national examination be developed in accordance with testing industry standards. OPES is in the process of performing this currently. The Contact Lens Registry Examination and the National Opticianry Competency Examination (NOCE) are being reviewed against testing industry standards, and against the OA to ensure that they test what California licensees do on the job. Dr. Lincer assured that the Committee will be provided reports very soon which summarize their findings.

Mr. Kysella noted the six critical areas: 1) prescription assessment, 2) eyewear selection and ordering, 3) manufacturing, 4) quality control, 5) dispensing, 6) advertising and supervising. He asked Dr. Lincer and Mr. Bentley if these are representative of the tasks they perform; Mr. Bentley replied that they are a great representation of a day in the life of an optician and expressed surprise about the weight percentage allocations.

As a consumer protection agency, he would expect quality control and prescription assessment to be the most important areas; he found it interesting that they were weighted less than some of the other areas. Dr. Lincer explained that the weights are determined 1) by the ratings of frequency and importance and 2) the number of knowledge and tasks involved in each area. Regarding eyewear selection and ordering, opticians have much more knowledge and tasks in that area, which is the reason for the higher rating and not that quality control is less important.

Ms. Murphy requested a timeline for the results of the comparisons reports. Dr. Lincer replied they are almost completed and expected to be provided by the end of the fiscal year.

There were no public comments.

4. Executive Officer's Report

Audio of Discussion: 35:37 / 1:47:19

A. Optician Licensing Program

Ms. Leeper provided an update on the opticianry program. She reported that the applications are being processed at the normal 4-6 - week processing time despite current world events, for applications with no deficiencies. Initially, there were some issues with obtaining live scans due to many of the live scan sites closing; However, the Department of Justice provided a list of open live scan sites which has been extremely helpful. If applicants are not comfortable with visiting a live scan site at this time, their application will simply be placed in a hold status.

The ABO contacted the Board to inform staff that the May exam had been restricted to a limited availability. The number of those who passed was about one third of what is usually received for May. She believes they will continue testing through June and July. There has not been any update on what the August exam will look like. Ms. Murphy added that the change to the application was derived from Ms. Leeper's experience with licensees and recognizing the need to have a license prior to gaining employment; the requirement to state an employer was a clear barrier to registration.

B. Optician Enforcement Program

Mr. Juarez provided an update on enforcement statistics. The 3rd quarter (Jan-Mar) of fiscal year 2019-2020 had a total of 22 new cases; 33 cases were closed with no action. Five cases remained pending with the Attorney General's (AGs) Office; and two disciplinary orders were processed. Mr. Juarez explained that it is too soon to obtain a clear objective on how the pandemic lock-down has affected enforcement numbers. Most of the cases received were criminal conviction cases (50%). The second-largest case complaint type was unlicensed/unregistered cases (23%). The remaining cases included unprofessional conduct (18%) and non-jurisdictional cases (9%). 60% of case closures for the Opticianry program occurred within one year of the receipt of the initial

case. Mr. Juarez reported on recent statistics he received this morning for quarter four (April – June). 19 new cases were received for the opticianry program and 14 of those were closed.

Mr. Bentley asked what type of cases typically leads to no action? Mr. Juarez replied that one example would be a case where a subsequent arrest occurred and the individual has not gone through the court procedures yet, staff would open a case for a subsequent arrest; and it would be closed initially while waiting upon the criminal disposition. Ms. Murphy added that if the crime is of such a nature, that a suspension action and interruption of practice is needed, it is important for staff to open that case, evaluate all documents and available and the remaining arrest reports, and then close if there is not a situation where the criminal action was egregious or personally pertaining to work.

C. Opticianry Program Fund Condition

Ms. Murphy reported on the optometry program fund. She provided the expenditures throughout this fiscal year and year-end projections (next two weeks). She was pleased to report that despite budget pressures prior to the stay-at-home order and the needed cuts within spending of profits, we are on schedule to revert a surplus of \$12,446 back to the Board’s savings account. She reminded members and staff that should a need arise that requires use of any of the savings fund dollars, a budget change proposal (BCP) would be utilized. Ms. Murphy explained that the Board is within the mandated solvency in the savings fund; and staff does not foresee any need for fee increases or other adjustments. The fund is healthy and running on budget.

There were no public comments.

5. Discussion and Approval of Committee Minutes from January 30, 2020

Audio of Discussion: 1:12:10 / 1:47:19

Committee members has no changes. There were no public comments.

William Kysella approved the January 30, 2020 minutes. Anna Watts seconded. The Committee voted unanimously (3-0) and the motion carried.

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

6. Discussion on Comparison of Pass Rates of the American Board of Opticianry Exam in Other States

Audio of Discussion: 1:20:08 / 1:47:19

At the request of the committee, Ms. Leeper reported on the American Board of Opticianry (ABO) pass rates comparisons. In January of 2020 the pass rate for the ABO

was 48%. On average, she found that states who had licensed opticians had better passing rates. The only exceptions are California and Hawaii. Another exception is Texas who has unlicensed opticians and a particularly good passing rate. She explained that the high passing rates were at least 60%. These came from licensed states that had education and some type of apprenticeship program. Although the time for education and apprenticeship vary among states, the typical time frame is two years of education followed by one year of apprenticeship (or the equivalent thereof in hours). Very few states had slightly lower passing rates; and it was discovered that these states, like Florida for example, have their own ABO exam; Their passing rate is probably lower due to the additional information covered in their exam.

Ms. Leeper noted that this information reinforces the Committee's concern about the need for education and apprenticeship. Mr. Bentley noted from these findings that states utilizing an apprenticeship program in addition to education do not produce much higher pass rates. Mr. Kysella commented that Texas is extremely interesting in that it is unlicensed without education and/or apprenticeship, and yet has an extremely high pass rate. He is not sure that requirements increase the score. Mr. Bentley stated that Ohio really jumps out at him in that they have no requirements and are scoring an average of 63%. He questions if applicants are taking an exam that caters to Ohio which may explain the higher results? He is also curious as to what kind of experience the test takers have. Ms. Leeper clarified that she researched Ohio and they do require a two-year optical degree or an apprenticeship; and they do not have a state specific exam.

Ms. Watts recalled previous discussions three years back about this issue of so many Californians failing their test (four out of five failing). She explained that applicants would admit to her that they did not study; they figured the test would pertain to what they do in their daily practice and consequently assumed that they would pass based on their working experience. When Ms. Watts took the test, much of the material did not pertain to what opticians were doing in their places of employment. However, she noted, from her personal experience, that if an individual chooses to study all of the various concepts and applies them to his or her everyday job it will make the individual a much better optician.

Public comment was made by Ruby Garcia. She announced the California State Society for Opticians has developed learning modules, and all of the folks taking the modules are passing the first time around; regardless of whether they have been in the industry for ten years or just a couple of months. Ms. Garcia would like to be able to report the results to staff. Ms. Murphy thanked Ms. Garcia and responded that staff would greatly appreciate and welcome her expertise.

Ms. Murphy asserted that another interesting part of the research staff is doing would be to look deeply at the content of the apprenticeship programs. There is a need to pair the foundational knowledge with day to day duties. In her opinion, this is what an apprenticeship program is supposed to do. Mr. Bentley agreed, and expressed his interest in researching the apprenticeship programs.

7. Update, Discussion and Possible Action on Title 16, §§1399.270 – 1399.285 of California Code of Regulations (Optician Program Regulations); Possible Referral to Full Board

Audio of Discussion: 1:07 / 2:28:27 (Webcast Part 2 of 2)

Mr. Johnson highlighted the proposed changes to the optician regulations. The changes would be limited in scope to placing currently used registration forms within BreZE into regulation, codifying existing fees and making other non-substantive changes. He detailed the following changes:

- Throughout Article 1 and beginning on page 153, staff proposes to change the word “division” to “board”.
- 1399.220 (a) - This proposed subsection sets out requirements for the Registered Dispensing Optician Initial Application for registration.
- 1399.220 (b) is the proposed section which sets out requirements for an initial application for contact lens dispenser (CLD) registration.
- 1399.220 (c) sets out requirements for an initial application for a Spectacle Lens Dispenser (SLD) registration.
- 1399.220 (d) proposes requirements for an initial application for a Nonresident Contact Lens Dispenser (NCLD) registration.
- 1399.222 (a) - requests the same information for a Registered Dispensing Optician renewal application as in §1399.220 (a).
- 399.220 (b) -This proposed section requests the same information for a Registered Dispensing Optician renewal application as in §1399.220 (a).
- 1399.222 (c) - This proposed section requests the same information for a CLD renewal application as in §1399.220 (b).
- 1399.222 (d) - This proposed section requests the same information for a NCLD renewal application as in § 1399.220(d).
- 1399.260 - Fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.
- 1399.261 - Fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.
- 1399.262 - This text has been deleted, as per Department of Consumer Affairs policy, the Board no longer offers refunds.

Public Comment was made by Joe Neville. Mr. Neville asked about 1399.220 (a); with respect to the RDO application, he noted that under entity type there is no space for any other type of corporation other than a professional corporation. Ms. Murphy explained that this is an issue which staff made a huge outreach effort regarding towards the end of last year; according to Government Corporations Code, health services providers are required to be a professional corporation. Ms. Murphy explained that Ms. Leeper worked with all the RDO business to assist them through the incorporation process and re-register them with new numbers within our database, so that the corporation changes

would be noted. Ms. Leeper cleared up a misunderstanding that according to the regulation it does appear that regulation C-Corps and D-Corps should have been allowed on the list, but for some reason they are not there. This oversight will be adjusted.

William Kysella moved to recommend to the full board approval of the regulation changes made to Sections 1399.200 through 1399.285 of the California Code of Regulations based on the discussion and materials presented here today, and direct staff and Legal Counsel to make any conforming changes prior to presentation to the full board. Anna Watts seconded. The Committee voted unanimously (3-0) and the motion carried.

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

8. 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**
- b. Chapter 5.45, Division 2 (Nonresident Contact Lens Sellers) of the Business and Professions Code**
- c. Chapter 5.5, Division 2 (Registered Dispensing Opticians) of the Business and Professions Code**

Audio of Discussion: 14:50 / 2:28:27

Ms. Leeper reviewed the history of the changes to the optician statute and brought members' attention to comments were made by Board Members at the May 15th Board meeting. Staff also received public comments from the National Association of Optometry and Opticians (NAOO) and other stakeholders.

2545(b)(1): Dr. Kawaguchi supports raising the limit of the fine to \$50,000, but is concerned about the possible risk of consistency in the application of the fines over the years, and asked if it would make sense to include a base fine and use multipliers based on the number of violations or number of business locations? Staff notes that fine levels can potentially be handled in regulation. Mr. Bentley asked (hypothetically) if an optical store committed a violation and it was one store out of 500 company stores in California, would the multiplier impact the corporation based on how many stores it has? Ms. Leeper clarified that if the violation was committed by one specific manager at one specific location, the fine would impact that one specific store. If the violation was a decision by regional management and multiple stores committed the violation, then the multiplier would take effect.

Mr. Kysella stated that he feels the Committee made their recommendation already. He believes the range of fines already recommended is appropriate. Ms. Murphy stressed that this has gone under extensive review by staff and Members. It is completely valid to determine that the previous discussion and determinations should stand. If this Committee is clear to the Board about what it is recommending, she does not foresee a continued red lining of what the Committee has suggested. Additionally, she stressed that she wants to ensure that the text given to the Board to adopt is in fact representative of how the Committee wishes to approach it. The committee did not change this section.

2550.1(c): The NAOO feels this definition does not make sense as written and suggests that certain acts will be listed but no such list of acts is included. The suggestion is to reword this section to match 2550(d). Committee made no changes.

2550.1(e): NAOO suggests the terms “registered optician” and “registered dispensing optician” are confusing and recommends the terms be removed from statute and replaced with definitions from subsection 1-4. Mr. Bentley asked if it can simply state “registrant”? Ms. Leeper noted that this program has been called “registered dispensing optician program since the beginning and this is what much of the licensing population knows themselves as. Committee made no changes.

2550.1(g): Text was changed to “Unregistered Optician Trainee” to remove confusion with unregistered assistants working under optometrists; Dr. Kawaguchi does not feel subsection (3) and (4) are needed as it makes the statute more confusing. Mr. Bentley does not find it confusing and appreciates how detailed it is. Committee made no changes.

2555(u): NAOO feels this proposed section would be posing an “unmeetable” standard on an optician and feels an optician would not be trained to know when/how to refer. The California Optometric Association recommends “observation” in place of “examination”. Mr. Bentley suggested removing “pathology examination” and focusing on prescription. Ms. Murphy suggested: “the failure to refer patients to optometrist or ophthalmologist to obtain current prescription” noting that the recent SLD occupational analysis set this out within the knowledge statements for and SLD. Failure to do so is a violation of the act. Committee agrees with this change.

2559.15: Several stakeholders, including Warby Parker and NAOO, have expressed concern with the removal of the words “allowing for usual and customary absences”. NAOO notes this section has existed for decades and feels no harm has been identified and the removal may harm small optician businesses. Dr. Kawaguchi feels the proposed ratio of three unregistered assistants to one registered spectacle lens dispenser is unnecessary and proposes a ratio of six to one.

Mr. Bentley commented that he recalls that regarding supervision there were two different perspectives; there is 3:1 and 6:1. Most states require either 2:3 or just only requires that there be a licensed or registered professional in the business, and

everyone in the business is under the supervision of that one individual. In Mr. Bentley's opinion there should be one registered person on-site, always. He does not believe the Committee needs to decide on a ratio; just as long as there is one registered person present on site would be his suggestion. Ms. Murphy reminded members that there were extensive discussions about this previously about what supervision should really look like and Ms. Leeper noted the 3:1 ratio was pulled from our own statutes.

Mr. Bentley asked Ms. Watts, based on her experience with other retailers, within the staffing side and how the store operates, does she typically see retailers' and all staff performing all optician duties, or only certain individuals perform optician duties? Ms. Watts responded that she has worked in environments where they had a minimum of three unregistered trainees, and she has worked in environments where there is almost 40. In the environments with 40 unregistered trainees there was only two licensed opticians. She mentioned a situation where the measurements were completely off and the trainee just wanted to send the patient off. Mr. Bentley suggested keeping it at 3:1. Committee agrees.

2559.2: This section describes ABO/NCLE requirements for continuing education every three years, and the 18 other states that require opticians to maintain ABO/NCLE certification throughout the use of a state-issued license. Dr. Kawaguchi disagrees with this change. NAOO also opposes, feeling that the change is being made without evidence of need. Ms. Murphy added that this is the period when a registrant is not practicing. If you are a registrant and you cease practicing, the Board currently allows five-years of lapse time. The optician will have passed the ABO and NCLE at some time which may have been 15 years ago, and has not been practicing for 5 years. Ms. Leeper added that if a registrant has been keeping up with their certification on their own, she accepts that as valid proof that the registrant has been keeping up with their profession and does not have to retake the test after five years. Mr. Kysella suggested adding that if an applicant is not renewed or has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses including practicing in another state, within the last three years then you must retake the examination. Committee agrees.

2559.2(e): Staff proposes changes to (e), based on NAOO's comments that the original phrasing of "a licensed ophthalmologist or optometrist" location was confusing. This is just a rephrasing of what was written. Committee agrees.

2564.5: NAOO opposes this new requirement, feeling the cost to be prohibitive. They note the CDC guidelines only require cold water as being sufficient. Ms. Murphy noted that if the CDC is comfortable with cold water, disinfectant soap and adequate drying devices, then it would be acceptable in our statute. Mr. Kysella suggested simply saying "running water". Committee agrees.

Article 2.5: NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses. They ask where the demonstrated need for expansion into eyeglasses and note only one other

state has imposed such a requirement. Staff notes, and the committee has discussed, the current unregulated sale of eyeglasses within California. Staff suggests that this committee err on the side of consumer protection rather than unregulated distribution. Ms. Watts stated that when the Board decided to do the expansion, it was mainly because online businesses have started to boom and there is a lot of shipping from outside of the country, especially with online mediums like Etsy stores, Shopify, Amazon, etc. She noted the point is that if online contact lens sellers are not regulated then you must consider the harm that may occur, especially if they ship something that is counterfeit, which occurs frequently. No changes were made to this section.

2564.74: NAOO suggests it be the company's designated signatory as opposed to these specific officers. Staff rejects this suggestion. NAOO asked what registration # does this refer to? How can the company have a registration # if they are just making application? Staff proposes adding "if applicable" for clarity. Committee agrees.

2564.74(c): NAOO suggests limiting this requirement to California. Ms. Leeper explained that staff added the requirement for all online companies to list their registration number on their website and advertisements. Ms. Murphy pointed out that advertisements that are intended for other regions may be accessed by California residents, due to the viability of electronic communications. Mr. Bentley asked with NAOO's comment about limiting this requirement to California, what it would look like? Ms. Leeper assumes that when NAOO speaks to this issue, they are talking about only adding this registration number to their advertisements in California. No changes were made to this section.

2564.76(2): Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Ms. Leeper explained that this is talking about the eight business hours as it relates to receiving prescriptions. Mr. Bentley believes that during the Committee's last discussion, Members agreed to match whatever the federal guidelines are for, which he is still fine with.

2564.76(c): Dr. McIntyre feels the text could be misinterpreted to mean that a color of a packaged lens could be altered by a dispenser. Staff recommends the removal of this text. Committee agrees.

2564.80: Same concern as set out in 2545(b) regarding the fee increase to \$50,000. No changes were made to this section.

Article 3.5: The NAOO recommends that these sections be moved back to the beginning of the optician sections in the 2550 area. They feel this provided needed basic information to applicants and registrants and provide a more logical flow. Legal Counsel had initially reviewed this change and did not feel the creation of this new article was inappropriate. Ms. Leeper reminded Members that the reason this subsection was created is because the Board had a license type within the general section of the Act that was confusing to applicants, staff, and the general-public. No changes were made to this section.

2568.2(c): NAOO suggests adding in limited liability companies back into these sections. Staff rejects this change, as the Attorney General’s office has determined that optical companies must be professional corporations, as defined by Corporations Code Section 13401. Ms. Leeper clarified that limited liability companies (LLC’s) were never in statute. This was an error; LLCs should never have been allowed to apply for a registration. Ms. Murphy added that this underground regulation was a clerical error inherited from the Medical Board. No changes were made to this section.

Public comment was made by Joe Neville, who expressed appreciation for the discussion. Mr. Neville would like to follow up (later) on the discussion regarding LLCs as Attorney General Lockyer seems to disagree with the approach the Board is taking. Mr. Neville wonders if in light of the fact that a registered dispensing optician (RDO) business is not engaged in a learned profession does and not require any particular education or other criteria to obtain the registration for the RDO, the Committee is not missing an opportunity.

William Kysella moved to recommend to the full board to approve the proposed changes to the optician statutes as discussed and amended today. Anna Watts seconded. The Committee voted unanimously (3-0) and the motion carried.

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

9. Review, Discussion and Possible Action on Optometry Strategic Plan

- **Presentation by SOLID on Strategic Planning**
- **Existing 2017-2020 Optometry Strategic Plan Items**
- **Potential 2021 Optometry Strategic Plan Items**

Audio of Discussion: 2:02:04 / 2:28:27

Ms. St. Clair presented on the Board’s Optometry Strategic Plan process. She explained that when the Department of Finance performs an audit on a board or bureau, they require the board or bureau to have a strategic plan. Therefore, the DCA requires the various boards/bureaus to have a strategic plan. The offices then reach out to SOLID planning for which she works and SOLID staff represent an objective third party; assisting boards with team building, organizing efforts of the strategic plan, and helping boards accomplish success through drafting the strategic plan; as well as, following up with action planning. In Ms. St. Clair’s presentation, she covered what strategic planning looks like, the development roadmap process, environmental analysis, and survey objectives. Ms. Murphy directed Members’ attention to a list staff compiled on DOC accomplishments from 2019 - 2020. She noted that they are a great starting place in

identifying what to look for as the Committee suggests objectives and goals for the coming years.

There were no public comments.

10. Future Agenda Items

Audio of Discussion: 2:14:13 / 2:28:27

Ms. Murphy requested the committee hold a special meeting to make a recommendation to the full Board about an appointment of a Board member to the DOC, pursuant to BPC 3020(c). Members decided to schedule the special meeting for Thursday, July 23rd at 1:00 p.m.

There were no public comments.

11. Adjournment

Meeting adjourned at 12:28 p.m.