



ISSUE MEMORANDIUM

DATE	May 5, 2023
TO	Board Members, California State Board of Optometry
FROM	Gregory Pruden, Executive Officer
SUBJECT	Agenda Item #8 – Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16 California Code of Regulations Sections 1524, 1399.260, 1399.261 and 1399.263, relating to fees.

Background:

At the August 26, 2022 Board meeting detailed information was presented by the DCA Budget Office regarding the Board's fund condition. Information presented at that time demonstrated that the Board had likely over projected expected revenues and with future expenditures expected to increase, the Board was facing a projected structural imbalance of approximately \$964,000 in the current fiscal year 2022-23 assuming the Board fully expended its appropriation, plus direct draws to the fund. The Board was informed that this structural imbalance could grow and accelerate over time if corrective actions were not pursued.

At the December, 9, 2022 Board meeting updated expenditure and fund condition documents were presented which showed that the projected current year total outlays structural imbalance had been reduced to \$850,000, which included a combination of reduced spending, but also lower than previously projected revenues.

At the March 17, 2023 Board meeting updated expenditure and fund condition documents were presented which showed that the projected current year structural imbalance had been further reduced to \$544,000. This reduction had occurred primarily because the Board realized salary savings by not filling vacant positions. Revenues projections remained consistent with December's reporting.

Analysis:

Today, updated expenditure and fund condition documents show a projected structural deficit of approximately \$515,000 in the current fiscal year ending June 30, and a fund reserve balance of 7.5 months. Current projections show expenditures continuing to outstrip revenues, and the structural deficit is expected to deplete the Board's fund by FY 2024-25, if the Board fully expends its appropriation.

Factors leading to the Board's structural deficit in recent years include:

- Budget change proposals (two in 2020-21 & three in 2022-23) increased costs by approximately \$1.4 million.

- Failing to implement regulations and programming which would have brought in additional revenue.
- Overprojecting annual revenue.

The budget change proposals have helped grow the Board's personnel expenditures by more than \$600,000 over the past three fiscal years. Failing to implement regulations and overprojecting revenue appear to have contributed up to \$300,000 (or more) in unrealized revenues in 2021-22 (actuals) and 2022-23 (projected). The Board will be revising its revenue estimates during the next budget cycle, but notably the current fee structure is not adequate to fully recover the Board's actual expenditures and to begin building a prudent fund reserve balance. Board staff is also now pursuing those regulations that have not been implemented to date.

At existing fee levels and assuming future revenues continue to be collected at the current pace, revenues of \$2.5 million per year is likely a more accurate representation of actual revenues. Expenditures will be approximately \$3.1 million this year and will grow higher as salaries and benefits increase, and as costs outside the Board's control increase, such as costs to the Attorney General. If the Board fully expended its appropriation, the structural imbalance would increase and the Board will go insolvent in approximately two (2) years.

At the March 17, 2023 meeting the Board directed staff to bring to the May 2023 Board meeting proposed regulatory language to increase those fees currently not at their statutory cap to their statutory cap. This action, in addition to cost saving measures, is a necessary step to reduce the Board's structural deficit and to delay insolvency, which is currently projected to occur in fiscal year 2024-25. The main tool that Board can employ to manage its present resources is to hold the remaining vacant positions open. Taking this action must also be balanced against meeting our consumer protection mandate. Given the length of time the regulatory process can take, it's prudent to take action today to begin placing the Board's fund on a more sustainable path.

When were fees last adjusted?

Optometrist license fees have been raised twice in the past 30 years with the last increase occurring in 2009. The application fee of \$275 and the biennial renewal fee of \$425 have remained in place for 14 years. These two fees represent a significant portion of the Board's license, application, and registration revenues, representing approximately 65 percent of the total.

Optician fees have been raised somewhat more recently, with the last increase occurring in 2017. The current application fee of \$150, initial license fees of \$200, and biennial renewal of \$200 have remained in place for six years.

The continuing education course approval fee has remained at \$50 since instituted in 2008. The other fees not at cap have also not been adjusted since their implementation.

Revenue Impact of Adjusting These Fees

Together, these fees, if raised to their statutory cap, would bring in approximately \$597,000 in additional revenue per year. This amount by itself is not enough to put the Board's fund condition on fiscally sound path for the long term but it is necessary as the Board works toward pursuing a fee study and a more sustainable statutory fiscal structure.

Underlying Data

Board staff recently completed desk audits. The outcome of the desk audit confirmed that the actual cost to process the Board's optometrist renewal, glaucoma, lacrimal, continuing education course fees, and all optician applications, registrations, and renewal fee exceeds the current fee as well as the statutory maximum.

The attached document "List of Proposed Fee Changes" outlines the Board's current fees charged for the processing of each of its fee categories, the maximum fee in statute and the proposed fee increase to the statutory maximum, and the actual cost to process each application or other item listed in the Board's fee schedules.

If this item is approved, staff will begin working with DCA Regulatory Counsel on rulemaking package materials for submission to the Office of Administrative Law, which will take 12-18 months to complete – Current target effective date of July 1, 2024.

Action Requested:

Option 1 [If the Board considers the proposed text acceptable as presented in the meeting materials, the Board may take the following action]:

Approve the proposed regulatory text and changes to Sections 1524, 1399.260, 1399.261 and 1399.263 as provided in the materials and direct staff to submit all approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any nonsubstantive changes to the package, and set the matter for a hearing. If no adverse comments are received during the 45-day comment period or at the hearing, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at Section(s) 1524, 1399.260, 1399.261 and 1399.263 as noticed.

Option 2 [If the Board would like to make changes to the proposed text, the Board may take the following action]:

Approve the proposed regulatory text and changes to Sections 1524, 1399.260, 1399.261 and 1399.263 as provided in the materials but with the changes approved at this meeting, and direct staff to submit all approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any nonsubstantive changes to the Agenda Item #8 package, and set the matter for a hearing. If no adverse comments are received during the 45-day comment period or at

the hearing, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at Section(s) 1524, 1399.260, 1399.261 and 1399.263 as noticed.

Attachments:

1. Title 16 Division 15 California Code of Regulations Section 1524
2. Title 16 Division 13.5 California Code of Regulations Sections 1399.260, 1399.261, 1399.263 proposed text
3. List of proposed fee changes
4. Board of Optometry Analysis of Fund Condition – 2023-24 baseline
5. Board of Optometry Analysis of Fund Condition – 2023-24 baseline with regulatory fee increase

Attachment 1

California Code of Regulations
Title 16 Professional and Vocational Regulations
Division 15. State Board of Optometry
Article 5. Application for Licensure Examination

Legend: New language is underlined.
Deleted language is shown in ~~strikeout~~.

§ 1524. Fees

The following fees are established:

- (a) Application fee for certificate of registration as an optometrist by examination \$275
- (b) Biennial renewal of a certificate of registration as an optometrist ~~\$425~~ \$500
- (c) Delinquency fee for failing to renew a certificate of registration timely \$50
- (d) Application fee for a branch office license \$75
- (e) Annual renewal of a branch office license \$75
- (f) Penalty fee for failure to renew a branch office license timely \$25
- (g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration \$25
- (h) Application fee for a fictitious name permit \$50
- (i) Annual renewal of a fictitious name permit \$50
- (1) Delinquency fee for failure to renew a fictitious name permit timely \$25
- (j) Application fee for a statement of licensure \$40
- (1) Biennial renewal of a statement of licensure \$40
- (2) Penalty fee for failure to renew a statement of licensure timely \$20
- (k) Application fee for a certificate to use therapeutic pharmaceutical agents \$25
- (l) Application fee for approval of a continuing education course ~~\$50~~ \$100
- (m) Application fee for a certificate to treat primary open angle glaucoma ~~\$35~~ \$50
- (n) Application fee for a certificate to perform lacrimal irrigation and dilation ~~\$25~~ \$50
- (o) Application fee for a retired license \$25
- (p) Application fee for a retired license with a volunteer designation \$50
- (q) Biennial renewal for a retired license with a volunteer designation \$50

Attachment 2

California Code of Regulations
Title 16 Professional and Vocational Regulations
Division 13.5. Registered Dispensing Opticians of the California State
Board of Optometry
Article 6. Fees

Legend: New language is underlined.
 Deleted language is shown in ~~strikeout~~.

§ 1399.260. ~~Registered Dispensing Optician Fees~~ Registered Dispensing Ophthalmic Business Fees

- (a) The initial ~~registration~~ application fee shall be ~~\$75.00.~~ \$200.
- (b) The initial registration fee shall be \$300
- ~~(b)~~(c) The biennial renewal fee shall be \$75.00. ~~\$300.~~
- (d) The delinquency fee shall be fifty dollars (\$50).

§ 1399.261. Contact Lens Dispenser Fees.

- (a) The initial ~~registration~~ application fee shall be ~~\$75.00.~~ \$200.
- (b) The initial registration fee shall be \$300.
- ~~(b)~~(c) The biennial renewal fee shall be \$75.00. ~~\$300.~~
- (d) The delinquency fee shall be fifty dollars (\$50).

§ 1399.263. Spectacle Lens Dispenser Fees.

- (a) The initial ~~registration~~ application fee shall be ~~\$75.00.~~ \$200.
- (b) The initial registration fee shall be \$300.
- ~~(b)~~(c) The biennial renewal fee shall be \$75.00. ~~\$300.~~
- (d) The delinquency fee shall be fifty dollars (\$50).

Attachment 3

LIST OF PROPOSED FEES

Fee Name	Current Fee Charge	Maximum Fee in Statute and Proposed Increase	Actual Cost to Process
Biennial renewal of a certificate of registration as an optometrist – BPC 3152 (b)	\$425	\$500	\$655
Application fee for approval of a continuing education course – BPC 3152 (j)	\$50	\$100	\$235
Application fee for a certificate to treat primary open angle glaucoma – BPC 3152 (i)	\$35	\$50	\$385
Application fee for a certificate to perform lacrimal irrigation and dilation – BPC 3152 (h)	\$35	\$50	\$385
Registered Dispensing Ophthalmic Business Initial application – BPC 2565	\$150	\$200	\$237
Registered Dispensing Ophthalmic Business Initial registration - BPC 2565	\$200	\$300	\$348
Registered Dispensing Ophthalmic Business Biennial Renewal – BPC 2565	\$200	\$300	\$348
Registered Dispensing Ophthalmic Business Delinquency – BPC 2565	\$50	\$50	\$50
Contact Lens Dispenser Initial application – BPC 2566	\$150	\$200	\$237
Contact Lens Dispenser Initial registration – BPC 2566	\$200	\$300	\$348
Contact Lens Dispenser Biennial Renewal – BPC 2566	\$200	\$300	\$348
Contact Lens Dispenser Delinquency – BPC 2566	\$50	\$50	\$50
Spectacle Lens Dispenser Initial application – BPC 2566.1	\$150	\$200	\$237
Spectacle Lens Dispenser Initial registration – BPC 2566.1	\$200	\$300	\$348
Spectacle Lens Dispenser Biennial Renewal – BPC 2566.1	\$200	\$300	\$348
Spectacle Lens Dispenser Delinquency – BPC 2566.1	\$50	\$50	\$50

Attachment 4

**0763 - State Optometry Fund Analysis of Fund Condition
(Dollars in Thousands)**

Prepared 5.1.2023

2023-24 Governor's Budget with FM 9 Projections (Baseline Reset)

	ACTUAL 2021-22	CY 2022-23	BY 2023-24	BY +1 2024-25	BY +2 2025-26
BEGINNING BALANCE	\$ 2,051	\$ 2,015	\$ 2,645	\$ 895	\$ -989
Prior Year Adjustment	\$ 26	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 2,077	\$ 2,015	\$ 2,645	\$ 895	\$ -989
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS					
Revenues					
4121200 - Delinquent fees	\$ 31	\$ 31	\$ 31	\$ 31	\$ 31
4127400 - Renewal fees	\$ 2,007	\$ 2,059	\$ 2,059	\$ 2,059	\$ 2,059
4129200 - Other regulatory fees	\$ 114	\$ 61	\$ 61	\$ 61	\$ 61
4129400 - Other regulatory licenses and permits	\$ 343	\$ 346	\$ 346	\$ 346	\$ 346
4163000 - Income from surplus money investments	\$ 9	\$ 42	\$ 13	\$ -	\$ -
4171400 - Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ -	\$ -	\$ -
4172500 - Miscellaneous revenues	\$ 2	\$ 5	\$ -	\$ -	\$ -
Totals, Revenues	\$ 2,507	\$ 2,545	\$ 2,510	\$ 2,497	\$ 2,497
Transfers to/from other funds					
Transfer from Fund 0175 - RDO Merge	\$ -	\$ 1,145	\$ -	\$ -	\$ -
Transfer to General Fund 0001 per EO E 21/22-276 Revised (AB 84)	\$ (142)	\$ -	\$ -	\$ -	\$ -
Totals, Transfers and Other Adjustments	\$ -142	\$ 1,145	\$ -	\$ -	\$ -
TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$ 2,365	\$ 3,690	\$ 2,510	\$ 2,497	\$ 2,497
TOTAL RESOURCES	\$ 4,442	\$ 5,705	\$ 5,155	\$ 3,392	\$ 1,508
Expenditures:					
1111 DCA Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,250	\$ 2,863	\$ 4,029	\$ 4,150	\$ 4,274
9892 Supplemental Pension Payments (State Operations)	\$ 36	\$ 38	\$ 37	\$ 37	\$ -
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 141	\$ 159	\$ 194	\$ 194	\$ 194
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$ 2,427	\$ 3,060	\$ 4,260	\$ 4,381	\$ 4,468
FUND BALANCE					
Reserve for economic uncertainties	\$ 2,015	\$ 2,645	\$ 895	\$ -989	\$ -2,960
Months in Reserve	7.9	7.5	2.5	-2.7	-7.9

NOTES:

1. BY and ongoing baseline revenues reset based on CY projections.
2. Expenditure growth projected at 3% beginning BY +1.

Attachment 5

**0763 - State Optometry Fund Analysis of Fund Condition
(Dollars in Thousands)**

Prepared 5.1.2023

2023-24 Governor's Budget with FM 9 Projections (Baseline Reset)

With Fees at Statutory Maximum (effective 7/1/24)

	ACTUAL 2021-22	CY 2022-23	BY 2023-24	BY +1 2024-25	BY +2 2025-26
BEGINNING BALANCE	\$ 2,051	\$ 2,015	\$ 2,645	\$ 895	\$ -417
Prior Year Adjustment	\$ 26	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 2,077	\$ 2,015	\$ 2,645	\$ 895	\$ -417
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS					
Revenues					
4121200 - Delinquent fees	\$ 31	\$ 31	\$ 31	\$ 31	\$ 31
4127400 - Renewal fees	\$ 2,007	\$ 2,059	\$ 2,059	\$ 2,059	\$ 2,059
4127400 - Renewal fees increase (effective 7/1/24)	\$ -	\$ -	\$ -	\$ 490	\$ 490
4129200 - Other regulatory fees	\$ 114	\$ 61	\$ 61	\$ 61	\$ 61
4129400 - Other regulatory licenses and permits	\$ 343	\$ 346	\$ 346	\$ 346	\$ 346
4129400 - Other regulatory licenses & permits increase (effective 7/1/24)	\$ -	\$ -	\$ -	\$ 107	\$ 107
4163000 - Income from surplus money investments	\$ 9	\$ 42	\$ 13	\$ -	\$ -
4171400 - Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ -	\$ -	\$ -
4172500 - Miscellaneous revenues	\$ 2	\$ 5	\$ -	\$ -	\$ -
Totals, Revenues	\$ 2,507	\$ 2,545	\$ 2,510	\$ 3,094	\$ 3,094
Transfers to/from other funds					
Transfer from Fund 0175 - RDO Merge	\$ -	\$ 1,145	\$ -	\$ -	\$ -
Transfer to General Fund 0001 per EO E 21/22-276 Revised (AB 84)	\$ (142)	\$ -	\$ -	\$ -	\$ -
Totals, Transfers and Other Adjustments	\$ -142	\$ 1,145	\$ -	\$ -	\$ -
TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$ 2,365	\$ 3,690	\$ 2,510	\$ 3,094	\$ 3,094
TOTAL RESOURCES	\$ 4,442	\$ 5,705	\$ 5,155	\$ 3,989	\$ 2,677
Expenditures:					
1111 DCA Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,250	\$ 2,863	\$ 4,029	\$ 4,150	\$ 4,274
9892 Supplemental Pension Payments (State Operations)	\$ 36	\$ 38	\$ 37	\$ 37	\$ -
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 141	\$ 159	\$ 194	\$ 219	\$ 219
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$ 2,427	\$ 3,060	\$ 4,260	\$ 4,406	\$ 4,493
FUND BALANCE					
Reserve for economic uncertainties	\$ 2,015	\$ 2,645	\$ 895	\$ -417	\$ -1,816
Months in Reserve	7.9	7.5	2.4	-1.1	-4.8

NOTES:

1. BY and ongoing baseline revenues reset based on CY projections.
2. Expenditure growth projected at 3% beginning BY +1.