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To: Board Members **Date:** April 21, 2017

From: Jessica Sieferman **Telephone:** (916) 575-7184
Executive Officer

Subject: **Agenda Item 9 – Update, Discussion and Possible Action Regarding Merging the Dispensing Opticians Fund and the Optometry Fund and Merging Practice Acts: Chapter 5.45 Nonresident Contact Lens Sellers (BPC §§ 2546-2546.1), Chapter 5.5 Registered Dispensing Opticians (BPC §§ 2550-2569), Chapter 7 Optometry (BPC §§ 3000-3167)**

Effective January 1, 2016, as a result of AB [684](#), the Registered Dispensing Optician (RDO) Program was transferred from the Medical Board of California to the California State Board of Optometry (Board). The two programs are listed under three separate Business and Professions Code (BPC) sections:

- Chapter 5.45 Nonresident Contact Lens Sellers (BPC §§ [2546-2546.1](#))
- Chapter 5.5 Registered Dispensing Opticians (BPC §§ [2550-2569](#))
- Chapter 7 Optometry (BPC §§ [3000-3167](#))

In addition, the two programs have two separate funds identified in statute:

- Dispensing Opticians Fund (BPC §§ [2546.9, 2567](#))
- Optometry Fund (BPC § [3145](#))

RDO Fund Condition

At the time the RDO program was transferred to the Board, the RDO Fund was not sustaining itself. A third party fee audit revealed fees needed to change immediately in order to sustain the fund at status quo operations (as performed by MBC). However, the audit acknowledged several unknowns for the future of the RDO Program – such as population, inspections, enforcement, etc. Thus, the auditor recommended setting a minimum fee increase to sustain the fund immediately and a higher statutory cap. Over the next few years, the Board would monitor the program and readjust fees if needed through the regulatory process.

Based on the information from the audit report, the Board sought amendments to the existing fee structures within the RDO Program. Those amendments were included in [SB 1039](#) (Hill), effective January 1, 2017. While the fee increases are projected to adequately sustain the RDO fund, the Board is and will continue to monitor the fund's actual performance to ensure the fund performs as projected.

Sunset Issue #2:

As part of the [Joint Oversight Hearing Background Paper](#), the Legislature inquired as to whether the funds and practice acts should be merged. As part of the background, Committee Staff explained that “[b]ecause the Board administers two separate funds, there may be duplicate administrative work, such as reviewing

two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund."

The Committee Staff listed other entities that recently merged acts/funds: Cemetery and Funeral Bureau (CFB), Board of Vocational Nursing and Psychiatric Technicians (BVNPT), and Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG).

In regards to merging the funds, the Board responded, in part, that it *"believes it is prudent to continue monitoring the fund since it only has two months of fiscal data. While the remaining fund condition data project sustainability, the board would like a minimum of one full fiscal year (2017/18) of data to assess the fiscal integrity of the RDO fund. In the interim, the board proposes to create a strategic plan so that it can move forward with merging the funds no later than fiscal year 2020/21."*

In response to merging the acts, the Board acknowledged *"existing statutes within each practice act should be amended to provide clarity for licensees prior to any potential merge. The Board plans to analyze the existing statutes carefully in each act and discuss merging the funds and practice acts at future meetings and will create a strategic plan to move forward no later than fiscal year July 1, 2020. The Board will seek input from various stakeholders throughout this process."*

The full Board Response to Issue #2 is attached (Attachment 1) for reference.

RDO Budget Change Proposal

While all registration duties are performed by the RDO Program through its 0.9 Management Services Technician (MST) and enforcement and clerical duties will be performed by the remaining RDO Program vacancies,¹ the Board provides additional services to the RDO Program. These services include managerial oversight, personnel services, leg/reg services, and rent.

Due to the separate funds, the Board pursued a Budget Change Proposal (BCP) in 2016 (for FY 17/18) to allow the RDO Program to reimburse the Board for services provided. The BCP was approved by the Department of Consumer Affairs (DCA), Business, Consumer Services, and Housing Agency (Agency), Department of Finance (DOF) and included in the Governor's Budget. The BCP was also approved as budgeted by the Senate Budget and Fiscal Review Subcommittee 4 on March 9, 2017 ([Senate Outcome](#)).

However, the Assembly Budget Subcommittee No. 4 only approved funding for one year ([Assembly Outcome](#)). This coincided with Assembly Staff recommendation which stated the *"[c]onsolidation of the RDO and the Board of Optometry is under consideration at this time. If these boards are merged, the reimbursement that this proposal requests on an ongoing basis would be unnecessary."*

March 20, 2017 Teleconference Direction to Staff and Outcomes

In addition to approving the Board responses to identified issues, the Board directed staff to do perform the following outreach and report back to the Board:

- Committee Staff - inquire as to the urgency of merging the funds/acts,
- Administration - see if they have a position on the merge,
- Stakeholders – see if they have any concerns or input, and
- Other recently merged DCA entities to identify pros/cons/input.

Committee Staff

During a telephone conversation with Committee Staff, it was clarified that it is not so much of an urgency issue as it is about assisting the Board in implementing efficiencies. They also suggested that merging the acts removes perception that the programs are separate and distinct rather than the reality that they are regulated under one Board as a whole. During this preliminary discussion, the Committee Staff appeared open to potentially delaying the merge for a fiscal year or two, but they do not want to wait until

¹ In FY 16/17, the RDO Program was approved for a 0.5 Office Technician to assist in clerical duties and a 0.6 Special Investigator to assist with inspections and enforcement. However, Board management is working to convert the two positions into a 1.0 Staff Services Analyst for enforcement and clerical duties. The remaining 0.1 would be switched to the 0.9 MST position, resulting in two full time positions for the RDO Program. Management believes the duties more align with these classifications and will be easier to recruit and retain qualified individuals.

FY 2020/21. Discussions will continue with Committee Staff, the Committee Chair, the Speaker's Office, and Board staff.

Administration

Staff reached out to the Administration and will report updates, if available, at the Board Meeting.

Stakeholders

Preliminary discussions with some stakeholders identified minor concerns. A representative from the California Optometric Association (COA) stated they are, for the most part, ok with merging the funds and the acts. Their only concern thus far is ensuring merging the practice acts does not unintentionally remove enforcement authority/applicability from other code sections.

For example, BPC § [655](#) applies to those "licensed pursuant to Chapter 5.5 (commencing with Section 2550)." If the acts were merged, applicable law sections would need to be updated accordingly.

During the March 20 meeting, Katheryn Scott with Lenscrafters and EyeExam expressed appreciation to the Board for the "thoughtful discussions and thoughtful approach in moving the merger forward with 12 months of data." She also stated they are committed to not having the RDO Program be a "burden" on the Board.

Staff continues to reach out to stakeholders and will provide any available updates at the Board Meeting.

Other Entities

Staff reached out to two of the three entities who recently merged as identified in the Background Paper. Both merges were performed at the entity's' request in an effort to streamline processes. Board staff requested information regarding any problems they encountered, pros and cons of merging the acts, anything they would have done differently, anything they found particularly helpful, etc.

The CFB requested their funds and practice act merge as part of their sunset. The CFB reported that there staff were already doing work from and for both funds and both acts, which resulted in a lot of duplicative regulations, and they were already largely working as though they were merged. Staff sought the merge to streamline their work and process. Before the merger they tracked everything to different funds and acts, but now they just track by license types (they have 13). They did not identify any negatives/cons that occurred as a result of the merge.

The BPELSG informed staff that their fund merge "was a much smoother action than [they] originally anticipated and Budgets Office was extremely helpful in this specific situation and they spearheaded most of the additional communication with OHR, Accounting, CalStars/Fi\$Cal, Agency and DOF" for them. BPELSG provided tips such as being familiar with fund codes and making the merge effective July 1 to coincide with the fiscal year. In addition, they said to be prepared for others to think the Board may be increasing fees; they said to clearly convey fees are not increasing – as this was a very important message. They did not merge practice acts and believed it would "prove to be very confusing for consumers" if they did. They reported their effort was solely about the financial aspects of merging the funds.

Attachments

1. Issue #2 Board Response

ISSUE #2: Should the RDO and Optometry funds be merged? Should the RDO program be merged into the Optometry Practice Act?

Background: AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015 directed the transfer of all funds, duties, powers, purposes, responsibilities, and records from the Medical Board of California to the Board to regulate the RDO practice act and its fund. As a result, the Board now operates separate funds (the Optometry Fund and the Registered Dispensing Opticians Fund) for licensing and administrative purposes. Currently, the Board absorbs all enforcement-related costs for the RDO program. AB 684 did not provide for the combination of funds and yet, the Board is responsible for enforcement, licensing, regulations, and has regulatory authority over all of the licensees of the RDO program. Licensing fees, citations, and other administrative costs are collected and deposited into the appropriate fund based in accordance with current statute. Although the Board reports that it attempts to capture and separate the appropriate expenditures and revenues based on the fund, there may be times when the administration may overlap in auditing, licensing, and enforcement. Because the Board administers two separate funds, there may be duplicate administrative work, such as reviewing two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund.

Currently, the Board reports that no enforcement-related costs for the RDO program are charged to that program, meaning any enforcement-related costs for RDOs are attributed to the Optometry Fund. Merging the funds of DCA regulated entities would not be unique to this Board. In 2011, SB 933 (Runner), Chapter 449, Statutes of 2011, combined the acts applicable to speech-language pathologists, audiologists, and hearing aid dispensers and combined the funds from each of the previous regulatory entities. AB 180 (Bonilla), Chapter 395, Statutes of 2015, combined the acts applicable to the cemetery and funeral acts and merged the funds from each of the previous regulated entities under the Cemetery and Funeral Bureau's jurisdiction. AB 179 (Bonilla), Chapter 510, Statutes of 2015 combined the funds of the vocational nurses and the psychiatric technicians under the Board of Vocational Nursing and Psychiatric Technicians. AB 177, Chapter 428, Statutes of 2015, consolidated the separate funds of the Board of Professional Land Surveyors, Engineers, and Geologists.

Staff Recommendation: *The Committees may wish to inquire of the Board if there has been any discussion about consolidating the separate funds in an effort to streamline administrative costs and reduce administrative burdens. The Committees may wish to inquire of the Board how merging the practice acts would improve consumer protection and enhance administrative efficiencies for the Board.*

Board Response: The Board briefly discussed merging the practice acts and funds during its February 2017 meeting while reviewing the results of the RDO Fee Audit. It was also discussed briefly during its February and March 2017 teleconferences. Sustaining the RDO Program fund was the Board's first priority. With the RDO Fees now in effect, the Board plans to monitor the fund to ensure it is performing as projected. The board believes it is prudent to continue monitoring the fund since it only has two months of fiscal data. While the remaining fund condition data project sustainability, the board would like a minimum of one full fiscal year (2017/18) of data to assess the fiscal integrity of the RDO fund. In the interim, the board proposes to create a strategic plan so that it can move forward with merging the funds no later than fiscal year 2020/21.

The Board is committed to an effective RDO Program transition. Merging the practice acts may improve consumer protection and enhance administrative efficiencies by providing clarity in the statutes and

regulations and removing duplicative administrative work as mentioned in the above background section. The board will discuss the topic at future board meetings as well and conduct outreach and weigh the data. The Board is taking a cautious role to fully vet the issues surrounding merging the acts. While several practice acts have successfully merged in the past, the Board is not aware of any that absorbed a program that could not sustain itself. The Board is concerned that a merger may result in optometrists paying for the administration and discipline of a separate licensing program.

In addition, the Board acknowledges existing statutes within each practice act should be amended to provide clarity for licensees prior to any potential merge. The Board plans to analyze the existing statutes carefully in each act and discuss merging the funds and practice acts at future meetings and will create a strategic plan to move forward no later than fiscal year July 1, 2020. The Board will seek input from various stakeholders throughout this process. The Board can provide updates to the Committee and its staff on the Board's discussions related to this issue.