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To: Dispensing Optician Committee Members **Date:** November 2, 2017

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

Subject: **Agenda Item 9 – Update, Discussion and Possible Action to Identify Potential Changes Needed to Harmonize the Optometry and Registered Dispensing Opticians (RDO) Program Practice Acts; Potential Recommendations to Full Board**

During a previous Board meeting, the Board requested legal counsel’s assistance in identifying potential contradictory or duplicative provisions if the Optometry and Registered Dispensing Opticians (RDO) Program acts were combined.

The draft of the combined acts, including Sunset Bill AB 1708 and Scope of Practice AB 443 Provisions were brought to the Board’s Legislation and Regulation Committee in September 2017. After receiving feedback, Board counsel made additional edits for Board consideration at the November meeting (Attachment 1). The 76-page draft is redlined/highlighted with any notes on the right side. Some comments:

- Generally, Articles 1-8 as proposed pertain solely to optometrist, unless noted. Where it would not be clear that a provision related only to optometrists, counsel has suggested inserting “optometrist.”
- Counsel made minor edits to Articles 1-8 related to references to Chapters 5.45 and 5.5 that would be necessary by merging the acts.
- Counsel deleted section 3023.1 about transfer of the RDO programs to the Board as it would no longer be necessary and per the committee’s recommendation.
- “New” Articles 9, 10, 10.2, 10.5, 10.7, and 10.9 are the NCLS/RDO chapters with new article numbers.
- Counsel kept all section numbers from the current BPC the same; those would ultimately be changed, starting after the last section number of Article 8. That would be a final task after all placement considerations were considered.
- There were slightly inconsistent provisions between the programs and no wholly duplicative provisions. Counsel commented on the inconsistencies.
- The “rule-making authority” sections have been combined in a broad provision under section 3021, and the other sections removed (i.e., 3025, 3167, 2546.3, and 2558).

Please review the document and provide any feedback and/or concerns regarding the combined acts. The Board may consider any DOC feedback during the November 3 Board meeting.

Chapter 7 Optometry

Article 1 General Provisions
Article 2 Administration
Article 3 Admission to Practice
Article 4 Registration
Article 5 Revocation and Suspension
Article 6 Offenses Against the Chapter
Article 7 Revenue
Article 8 Optometric Corporations
*[Article 9 Nonresident Contact Lens Sellers](#)
[Article 10 Registered Dispensing Opticians](#)
[Article 10.2 Spectacle Lens Dispensing](#)
[Article 10.5 Contact Lens Dispensing](#)
[Article 10.7 Fiscal Provisions](#)
[Article 10.9 Review](#)

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Commented [HM1]: Chapter 5.45 (Nonresident Contact Lens Sellers) of the BPC has been combined as Article 9; Chapter 5.5 (RDO/SLD/CLD) has been combined as Article 10 with the decimal designations to break up the various sections within current Chapter 5.5.

Article 1 General Provisions

- § 3000. Optometry Practice Act
- § 3001. “Ophthalmic lens”
- § 3002. “Trial frame” or “test lens”
- § 3003. “Optometrist”
- § 3004. “Board”
- § 3005. “Place of practice”
- § 3006. “Advertise”
- § 3007. Retention of records

§ 3000. Optometry Practice Act

This chapter constitutes the chapter on optometry. It shall be known and may be cited as the Optometry Practice Act.

Added Stats 2004 ch 426 § 2 (AB 2464).

§ 3001. “Ophthalmic lens”

As used in this chapter, an ophthalmic lens is any lens which has a spherical, cylindrical or prismatic power or value.

Added Stats 1937 ch 423.

§ 3002. “Trial frame” or “test lens”

As used in this chapter, a trial frame or test lens is any frame or lens in testing the eye, which is not sold and is not for sale to clients.

Added Stats 1937 ch 423.

§ 3003. “Optometrist”

As used in this chapter, “optometrist” means a person who is licensed to practice optometry in this state under the authority of this chapter.

Added Stats 2004 ch 426 § 3 (AB 2464).

§ 3004. “Board”

As used in this chapter, “board” means the State Board of Optometry.

Added Stats 2004 ch 426 § 4 (AB 2464).

§ 3005. “Place of practice”

As used in this chapter, “place of practice” means any location where optometry is practiced.

Added Stats 2004 ch 426 § 5 (AB 2464).

AB-1708 SEC. 2. Section 3006 of the Business and Professions Code is amended to read:

§ 3006. “Advertise”

As used in this chapter, the term “advertise” and any of its variants include the use of a newspaper, magazine, *the Internet*, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

Added Stats 2004 ch 426 § 6 (AB 2464).

§ 3007. Retention of records

An optometrist shall retain a patient's records for a minimum of seven years from the date he or she completes treatment of the patient. If the patient is a minor, the patient's records shall be retained for a minimum of seven years from the date he or she completes treatment of the patient and at least until the patient reaches 19 years of age.

Added Stats 2007 ch 276 § 1 (AB 986), effective January 1, 2008.

Article 2 Administration

- § 3010.1. Priority of board; Protection of the public
- § 3010.5. State Board of Optometry; Membership and quorum; Authority (Repealed January 1, 2018)
- § 3011. Qualifications; Limit of consecutive terms
- § 3013. Terms; Vacancies; Appointments
- § 3014. Officers
- § 3014.6. Appointment of executive officer (Repealed January 1, 2018)
- § 3016. Per diem and expenses
- § 3017. Meetings
- § 3018. Record of licensees, proceedings and meetings
- § 3019. Records of prosecutions and applications
- § 3020. Dispensing optician committee; Duties; Meetings; Recommendations by committee; Appointment of members
- § 3021. Rule-making authority and regulations adopted pursuant to ~~regarding former~~ Chapters 5.45 and 5.5
- § 3023. Accreditation of schools
- ~~§ 3023.1. Transfer of programs established under Chapters 5.45 and 5.5 from Medical Board of California to State Board of Optometry~~
- § 3024. Denial, revocation or suspension of license
- ~~§ 3025. Rule-making authority~~
- § 3025.1. Rules and regulations regarding educational requirements
- § 3025.2. Rules and regulations regarding accreditation
- § 3025.5. Health and safety regulations
- § 3025.6. Adoption of regulations
- § 3025.7. Authority of board to adopt rules and regulations regarding price fixing or advertising of commodities
- § 3026. Seal; Office
- § 3027. Executive officer and other assistance
- § 3028. Attorney General as legal counsel for board
- § 3030. Inspections

§ 3010.1. Priority of board; Protection of the public

Protection of the public shall be the highest priority for the State Board of Optometry in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Added Stats 2002 ch 107 § 13 (AB 269).

SEC. 3. Section 3010.5 of the Business and Professions Code is amended to read:

§ 3010.5. State Board of Optometry; Membership and quorum; Authority (Repealed January 1, 2018)

(a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members and one of the nonpublic members shall be an individual registered as a dispensing optician, spectacle lens dispenser, or contact lens dispenser. The registered dispensing member shall be registered pursuant to ~~Chapter 5.5~~ Article 10 (commencing with Section 2550) and in good standing with the board.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to former Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, ~~2018, 2022~~, and as of that date is ~~repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~ repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

(d) The amendments to this section by the act adding this subdivision shall apply to appointments made on or after January 1, 2016.

Added Stats 2002 ch 1150 § 16 (SB 1955), as B & P C § 3010.1. Amended Stats 2003 ch 789 § 13 (SB 364). Amended and renumbered by Stats 2004 ch 909 § 6, effective September 29, 2004; Stats 2006 ch 658 § 52 (SB 1476), effective January 1, 2007, inoperative July 1, 2010, repealed January 1, 2011; Stats 2009 ch 270 § 6 (AB 1071), effective January 1, 2010, repealed January 1, 2013; Stats 2010 ch 695 § 12 (SB 294), effective January 1, 2011, repealed January 1, 2014; Stats 2013 ch 516 § 12 (SB 305), effective January 1, 2014, repealed January 1, 2018; Stats 2014 ch 71 § 6 (SB 1304), effective January 1, 2015, repealed January 1, 2018; Stats 2015 ch 405 § 11 (AB 684), effective January 1, 2016, repealed January 1, 2018; Stats 2016 ch 31 § 4 (SB 836), effective June 27, 2016, repealed January 1, 2018.

§ 3011. Qualifications; Limit of consecutive terms

(a) Members of the board, except the public members and the registered dispensing member, shall be appointed only from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment or who are members of the faculty of a school of optometry. The public members shall not be a licentiate of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600.

No person except the registered dispensing member, including the public members, shall be eligible to membership on the board who is a stockholder in or owner of or a member of the board of trustees of any school of optometry or who shall be financially interested, directly or indirectly, in any concern manufacturing or dealing in optical supplies at wholesale.

No person shall serve as a member of the board for more than two consecutive terms.

A member of the faculty of a school of optometry may be appointed to the board; however, no more than two faculty members of schools of optometry may be on the board at any one time. Faculty members of the board shall not serve as public members.

(b) The amendments to this section by the act adding this subdivision shall apply to appointments made on or after January 1, 2016.

Commented [HM2]: The BPC section references highlighted in yellow throughout this document will need to change with new section references that fit under Chapter 7 once the placement of the provisions is finalized.

Added Stats 1937 ch 423. Amended Stats 1955 ch 1602 § 1; Stats 1961 ch 1821 § 29; Stats 1976 ch 1188 § 21; Stats 1978 ch 1161 § 211; Stats 1982 ch 437 § 1; Stats 2015 ch 405 § 12 (AB 684), effective January 1, 2016; Stats 2016 ch 31 § 5 (SB 836), effective June 27, 2016.

§ 3013. Terms; Vacancies; Appointments

- (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.
- (b) Vacancies occurring shall be filled by appointment for the unexpired term.
- (c) The Governor shall appoint three of the public members, five members qualified as provided in Section 3011, and the registered dispensing member as provided in Section 3010.5. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.
- (d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.
- (e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.
- (f) The initial appointment of a registered dispensing optician, spectacle lens dispenser, or contact lens dispenser member shall replace the optometrist member whose term expired on June 1, 2015.
- (g) The amendments to this section by the act adding this subdivision shall apply to appointments made on or after January 1, 2016.

Added Stats 1937 ch 423. Amended Stats 1945 ch 289 § 2; Stats 1955 ch 1602 § 2; Stats 1961 ch 1821 § 30; Stats 1976 ch 1189 § 12; Stats 1978 ch 1161 § 212; Stats 1982 ch 676 § 15; Stats 2002 ch 1150 § 17 (SB 1955); Stats 2004 ch 426 § 8 (AB 2464); Stats 2015 ch 405 § 13 (AB 684), effective January 1, 2016; Stats 2016 ch 31 § 6 (SB 836), effective June 27, 2016.

§ 3014. Officers

The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor.

Added Stats 1937 ch 423. Amended Stats 1974 ch 1122 § 1; Stats 2004 ch 426 § 9 (AB 2464).

§ 3014.6. Appointment of executive officer (Repealed January 1, 2018)

- (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Added Stats 2002 ch 1150 § 19 (SB 1955). Amended Stats 2003 ch 789 § 14 (SB 364); Stats 2004 ch 909 § 7 (SB 136), effective September 29, 2004; Stats 2006 ch 658 § 53 (SB 1476), effective January 1, 2007, inoperative July 1, 2010, repealed January 1, 2011; Stats 2009 ch 270 § 7 (AB 1071), effective January 1, 2010, repealed January 1, 2013; Stats 2010 ch 695 § 13 (SB 294), effective January 1, 2011, repealed January 1, 2014; Stats 2013 ch 516 § 13 (SB 305), effective January 1, 2014, repealed January 1, 2018.

§ 3016. Per diem and expenses

Each member of the board shall receive a per diem and expenses as provided in Section 103.

Added Stats 1937 ch 423. Amended Stats 1955 ch 984 § 1, ch 1602 § 3; Stats 1959 ch 1645 § 15; Stats 1967 ch 535 § 3; Stats 2004 ch 426 § 11 (AB 2464).

§ 3017. Meetings

The board shall hold regular meetings every calendar quarter. Special meetings shall be held upon request of a majority of the members of the board or upon the call of the president.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 12 (AB 2464).

§ 3018. Record of licensees, proceedings and meetings

The board shall keep an accurate record of all of its licensees, proceedings, and meetings.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 13 (AB 2464).

§ 3019. Records of prosecutions and applications

The board shall keep a record of all prosecutions for violations of this chapter and of all applications for licensure and examination.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 14 (AB 2464).

§ 3020. Dispensing optician committee; Duties; Meetings; Recommendations by committee; Appointment of members

(a) There shall be established under the State Board of Optometry a dispensing optician committee to advise and make recommendations to the board regarding the regulation of dispensing opticians, spectacle lens dispensers, and contact lens dispensers, registered pursuant to [former](#) Chapter 5.5 (commencing with [former](#) Section 2550). The committee shall consist of five members, one of whom shall be a registered dispensing optician registered pursuant to

former Chapter 5.5 (commencing with former Section 2550), one of whom shall be a spectacle lens dispenser or contact lens dispenser registered pursuant to former Chapter 5.5 (commencing with Section 2550), two of whom shall be public members, and one of whom shall be a member of the board. Initial appointments to the committee shall be made by the board. The board shall stagger the terms of the initial members appointed. The filling of vacancies on the committee shall be made by the board upon recommendations by the committee.

(b) The committee shall be responsible for:

(1) Recommending registration standards and criteria for the registration of dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers.

(2) Reviewing of the disciplinary guidelines relating to registered dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers.

(3) Recommending to the board changes or additions to regulations adopted pursuant to former Chapter 5.5 (commencing with Section 2550) or pursuant to Articles 10, 10.2, 10.5, 10.7, or 10.9.

(4) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter or as delegated to it by the board.

(c) The committee shall meet at least twice a year and as needed in order to conduct its business.

(d) Recommendations by the committee regarding scope of practice or regulatory changes or additions shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(e) After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms.

(f) The amendments to this section by the act adding this subdivision apply as of January 1, 2016.

Added Stats 2015 ch 405 § 14 (AB 684), effective January 1, 2016. Amended Stats 2016 ch 31 § 7 (SB 836), effective June 27, 2016, Stats 2016 ch 86 § 7 (SB 1171), effective January 1, 2017 (ch 31 prevails; ch 86 not effective).

§ 3021. Rule-making authority ~~and regarding~~ regulations adopted pursuant to ~~former~~ Chapters 5.45 and 5.5

~~The board shall have rulemaking authority with respect to Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) in accordance with Section 3025.~~

The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter

Regulations adopted pursuant to former Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) by the Medical Board of California prior to the effective date of this section or by the State Board of Optometry prior to the transfer of Chapters 5.45 and 5.5 to the Optometry Practice Act shall continue to be valid, except that any reference to the board or division contained therein shall be construed to mean the State Board of Optometry, unless the context determines otherwise.

Added Stats 2015 ch 405 § 15 (AB 684), effective January 1, 2016.

§ 3023. Accreditation of schools

For the purposes of this chapter, the board shall accredit schools, colleges, and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrists.

Added Stats 1937 ch 423. Amended Stats 1945 ch 816 § 1; Stats 1971 ch 1791 § 1; Stats 1978 ch 872 § 1; Stats 2004 ch 426 § 18 (AB 2464).

~~§ 3023.1. Transfer of programs established under Chapters 5.45 and 5.5 from Medical Board of California to State Board of Optometry~~

~~(a) The nonresident contact lens seller program established under Chapter 5.45 (commencing with Section 2546) and the registered dispensing optician, spectacle lens dispensing, and contact lens dispensing programs established under Chapter 5.5 (commencing with Section 2550) are hereby transferred from the jurisdiction of the Medical Board of California and placed under the jurisdiction of the State Board of Optometry.~~

~~(b) All the duties, powers, purposes, responsibilities, and jurisdictions of the Medical Board of California under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) shall be transferred to the State Board of Optometry.~~

~~(c) For the performance of the duties and the exercise of the powers vested in the board under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550), the State Board of Optometry shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the Medical Board of California.~~

~~Added Stats 2015 ch 405 § 16 (AB 684), effective January 1, 2016.~~

§ 3024. Denial, revocation or suspension of license

The board may grant or refuse to grant an optometrist license as provided in this chapter and may revoke or suspend the license of any optometrist for any of the causes specified in this chapter. It shall have the power to administer oaths and to take testimony in the exercise of these functions.

Commented [HM3]: This "rule-making authority" language has been added to this section from section 3021 as the new combined rulemaking authority for all of Chapter 7; all other sections have been deleted (i.e., 2558, 3025, 2546.3, and 3167).

Commented [HM4]: As the transfer has already taken place, this provision can now be removed.

Added Stats 1937 ch 423. Amended Stats 2013 ch 473 § 4 (SB 821), effective January 1, 2014.

~~§ 3025. Rule-making authority.~~

~~The board may make and promulgate rules and regulations governing procedure of the board, the admission of applicants for examination for a license as an optometrist, and the practice of optometry. All of those rules and regulations shall be in accordance with and not inconsistent with the provisions of this chapter. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.~~

~~Added Stats 1937 ch 423. Amended Stats 1957 ch 2084 § 9; Stats 2013 ch 473 § 5 (SB 821), effective January 1, 2014.~~

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Commented [HM5]: This rulemaking authority is being removed as one provision now in 3021 will combine all others for all of Chapter 7.

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§ 3025.1. Rules and regulations regarding educational requirements

The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements for admission to the examinations for licensure.

Added Stats 2004 ch 426 § 20 (AB 2464). Amended Stats 2010 ch 653 § 12 (SB 1489), effective January 1, 2011.

§ 3025.2. Rules and regulations regarding accreditation

The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by governing its accreditation of schools, colleges, and universities that provide optometric education. In promulgating these rules and regulations, or in extending accreditation, the board may, to the extent that it deems consistent with the purposes of this chapter, recognize, accept, or adopt the advice, recommendation, accreditation, or approval of a nationally recognized accrediting agency or organization.

Added Stats 2004 ch 426 § 21 (AB 2464).

§ 3025.5. Health and safety regulations

The board may adopt regulations prescribing minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions, in all offices for the practice of optometry, which are necessary to protect the health and safety of persons availing themselves of the services offered or performed in such offices.

Added Stats 1963 ch 1464 § 1.

§ 3025.6. Adoption of regulations

The board may adopt regulations clarifying the level of training and the level of supervision of optometrist assistants.

Added Stats 2002 ch 1150 § 20 (SB 1955).

§ 3025.7. Authority of board to adopt rules and regulations regarding price fixing or advertising of commodities

Except as provided in Sections 3102 and 3103, nothing contained in Section 651.3 shall be construed as authorizing the board to adopt, amend, or repeal rules and regulations relating to price fixing or advertising of commodities.

Added Stats 2004 ch 426 § 22 (AB 2464). Amended Stats 2005 ch 393 § 1 (AB 488), effective January 1, 2006.

§ 3026. Seal; Office

The board may adopt and use a common seal and establish a permanent office or offices.

Added Stats 1937 ch 423.

§ 3027. Executive officer and other assistance

The board shall employ an executive officer and other necessary assistance in the carrying out of the provisions of this chapter.

The executive officer shall perform the duties delegated by the board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the board. With the approval of the Director of Finance, the board shall fix the salary of the executive officer. The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties.

Added Stats 1937 ch 423. Amended Stats 1971 ch 716 § 48; Stats 1974 ch 1122 § 2; Stats 2004 ch 426 § 24 (AB 2464); Stats 2016 ch 489 § 27 (SB 1478), effective January 1, 2017.

§ 3028. Attorney General as legal counsel for board

The Attorney General shall act as the legal counsel for the board and his or her services shall be a charge against it.

Added Stats 2004 ch 426 § 26 (AB 2464).

AB-17080 SEC. 5. Section 3030 of the Business and Professions Code is amended to read:

§ 3030. Inspections

(a) The board, or its designated agent, may at any time inspect either of the following:

(1) Any premise in which optometric services, as defined in Section 3041, are provided or reasonably suspected of being provided.

(2) Any premise in which the services of dispensing, adjusting, or fitting of contact lenses or spectacle lenses are provided or reasonably suspected of being provided.

~~The (b) board may at any time inspect the premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed. The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect premises for which registration has lapsed or is delinquent.~~ *grant the board jurisdiction over the practice of medicine.*

Added Stats 2016 ch 799 § 23 (SB 1039), effective January 1, 2017.

Article 3 Admission to Practice

§ 3040. Misrepresentation of licensing status; Prima facie evidence

§ 3041. Acts constituting practice of optometry

§ 3041.1. Standard of care in diagnosing or treating eye disease

§ 3041.2. Educational and examination requirements for licensure and use of pharmaceutical agents

§ 3041.3. Certificate requirements

§ 3042. Specified acts not prohibited; Dispensing lenses without prescription not lawful

§ 3042.5. Student and instructor exemptions

§ 3043. Exempt sales

§ 3044. Application for examination and licensure; Fee

§ 3045. Verification and contents of applications

§ 3046. Eligibility requirements for licensure

§ 3047. [National Practitioner Data Bank]

§ 3051. Evidence of education in detection of child, alcoholism, and substance dependency

§ 3053. Examination subjects

§ 3054. Passing grades; Re-examination

§ 3055. Issuance of license; Renewal

§ 3056. Qualifications for license; Expiration; "In good standing"

§ 3057. Requirements for license; Exceptions; Expiration; "In good standing"

§ 3057.5. Eligibility of graduates from foreign universities

§ 3059. Continuing education requirements

§ 3060. Dissemination of information and educational material on detection of child and elder abuse and neglect

§ 3040. Misrepresentation of licensing status; Prima facie evidence

It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

Added Stats 1937 ch 423. Amended Stats 1978 ch 872 § 2; Stats 2004 ch 426 § 28 (AB 2464); Stats 2013 ch 473 § 6 (SB 821), effective January 1, 2014.

AB-443 SEC. 2. Section 3041 of the Business and Professions Code is amended to read:

§ 3041. Acts constituting practice of optometry

(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and

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dysfunctions of the visual system, as well as the provision of *habilitative or* rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. ~~Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.~~

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) ~~Corneal~~ *Nonmalignant ocular* surface disease and dry ~~eyes~~ *eye disease*.

(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

(G) Hypotrichosis and blepharitis.

~~(G)~~ *(H)* Pursuant to subdivision ~~(F)~~, *(e)*, glaucoma in patients over 18 years of age, as described in subdivision (j).

(2) For purposes of this section, “treat” means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision ~~(e)~~ *(d)*.

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use *or prescribe, including for rational off-label purposes,* all of the following therapeutic pharmaceutical agents:

(1) ~~Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as~~ *Topical pharmaceutical agents for the examination of the human eye or eyes for any disease or pathological condition, including, but not limited to,* topical miotics.

(2) Topical lubricants.

(3) Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 21 days after diagnosis.

(4) Topical and oral anti-inflammatories. ~~In using steroid medication for:~~

~~(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.~~

~~(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.~~

~~(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.~~

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision ~~(f)~~: *(e)*.

~~(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.~~

~~(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.~~

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines.

(10) Prescription oral nonsteroidal anti-inflammatory agents.

(11) Oral antibiotics for medical treatment of ocular disease.

~~(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

(12) Topical and oral antiviral medication for the medical treatment of ~~the following~~: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, ~~and~~ periorcular herpes simplex viral ~~dermatitis~~; ~~and~~ *dermatitis*, varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periorcular varicella zoster viral dermatitis.

~~(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the~~

~~patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

(13) Oral analgesics that are not controlled substances.

(14) Codeine with ~~compounds and~~ *compounds*, hydrocodone with ~~compounds~~ *compounds, and tramadol* as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

~~(d) (15) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist. Additional therapeutic pharmaceutical agents pursuant to subdivision (f).~~

~~(e)~~ (d) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the ~~following:~~ *following procedures:*

(1) Corneal scraping with cultures.

(2) Debridement of corneal epithelia.

(3) Mechanical epilation.

(4) ~~Venipuncture~~ *Collection of blood by skin puncture or venipuncture* for testing patients suspected of having diabetes.

(5) Suture removal, with prior consultation with the treating physician and surgeon.

(6) Treatment or removal of sebaceous cysts by expression.

(7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.

(8) Use of an auto-injector to counter anaphylaxis.

(9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, tear fluid analysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.

(10) A clinical laboratory test or examination classified as waived under ~~CLIA~~ *the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a; Public Law 100-578)* and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.

(11) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(12) The *use or* prescription of *diagnostic or* therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

(13) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a ~~scalpel or needle~~ *scalpel*. Corneal foreign bodies shall be nonpenetrating, be no deeper than the midstroma, and require no surgical repair upon removal.

(14) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of

satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.

(15) Intravenous injection for the purpose of performing ocular angiography at the direction of an ophthalmologist as part of an active treatment plan in a setting where a physician and surgeon is immediately available.

(16) Skin testing to diagnose ocular allergies, limited to the superficial layer of the skin.

(17) Use of any noninvasive medical device or technology authorized pursuant to subdivision (f).

~~(f) (e) The board shall grant a certificate to an~~ An optometrist certified pursuant to Section 3041.3 *shall be certified* for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

~~(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:~~

~~(A) (3) Satisfactory completion of~~ *For licensees who completed* a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of ~~glaucoma.~~ *glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board.*

~~(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.~~

~~(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.~~

~~(5) (4)~~ For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and *who are* not described in paragraph ~~(2), (3), (2) or (4), (3),~~ submission of proof of satisfactory completion of the requirements for certification established by the board ~~pursuant to Section 3041.10, under Chapter 352 of the Statutes of 2008.~~

(f) (1) Any topical or oral therapeutic pharmaceutical agent, which is not a controlled substance, or noninvasive medical device or technology that is not expressly authorized for use or prescription by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall be deemed to be authorized if it has received a United States Food and Drug Administration approved indication for the diagnosis or treatment of a condition authorized by this chapter. A licensee shall successfully complete any clinical training imposed by a related manufacturer prior to using any of those therapeutic pharmaceutical agents or noninvasive medical devices or technologies.

(2) Any other topical or oral therapeutic pharmaceutical agent, which is not a controlled substance, or noninvasive medical device or technology that is not expressly authorized for use or prescription by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 and does not meet the requirements in paragraph (1) shall be deemed authorized

if approved by the board through regulation for the rational treatment of a condition authorized by this chapter. Any regulation under this paragraph shall require a licensee to successfully complete an appropriate amount of clinical training to qualify to use each topical or oral therapeutic pharmaceutical agent or noninvasive medical device or technology approved by the board pursuant to this paragraph.

(3) This subdivision shall not be construed to authorize any of the following:

(A) Any therapeutic pharmaceutical agent, medical device, or technology involving cutting, altering, or otherwise infiltrating human tissue by any means.

(B) A clinical laboratory test or imaging study not authorized by paragraphs (1) to (16), inclusive, of subdivision (d).

(C) Treatment of any disease or condition that could not be treated by an optometrist before January 1, 2018.

(g) (1) An optometrist certified pursuant to Section 3014.3 shall be certified for the administration of immunizations after the optometrist meets all of the following requirements:

(A) Completes an immunization training program endorsed by the federal Centers for Disease Control and Prevention (CDC) that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintains that training.

(B) Is certified in basic life support.

(C) Complies with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the State Department of Public Health.

(D) Applies for an immunization certificate on a board-approved form.

(2) For the purposes of this section, "immunization" means the administration of immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the CDC for persons 18 years of age or older.

~~(e)~~ (h) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

~~(f)~~ (i) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in ~~subdivision (e). Nothing in this section shall~~ paragraphs (1) to (15), inclusive, of subdivision (d). This subdivision does not limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

~~(g)~~ (j) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.

~~(h)~~ (k) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(3) (A) Steroid induced glaucoma.

(B) If an optometrist treats a patient for steroid induced glaucoma the optometrist shall promptly notify the prescriber of the steroid medication if the prescriber did not refer the patient to the optometrist for treatment.

~~(l)~~ (l) For purposes of this chapter, “adnexa” means ocular adnexa.

~~(m)~~ (m) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

Added Stats 1976 ch 418 § 2. Amended Stats 1989 ch 886 § 61; Stats 1995 ch 279 § 18 (AB 1471); Stats 1996 ch 13 § 6 (SB 668), effective February 21, 1996; Stats 2000 ch 676 § 3 (SB 929); Stats 2007 ch 507 § 2 (AB 1224), effective January 1, 2008; Stats 2008 ch 352 § 1 (SB 1406), effective January 1, 2009; Stats 2009 ch 140 § 11 (AB 1164), effective January 1, 2010; Stats 2012 ch 714 § 3 (AB 761), effective January 1, 2013.

AB-443 SEC. 3. Section 3041.1 of the Business and Professions Code is amended to read:
§ 3041.1. Standard of care in diagnosing or treating eye disease

~~With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists.~~ *An optometrist* diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. *An optometrist shall consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider when a situation or condition occurs that is beyond the optometrist’s scope of practice. Consultations, referrals, and notifications required by this section shall be documented in the patient record.*

Added Stats 2004 ch 426 § 29 (AB 2464).

AB-443 SEC. 4. Section 3041.2 of the Business and Professions Code is amended to read:
§ 3041.2. Educational and examination requirements for licensure and use of pharmaceutical agents

~~(a)~~ -The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to ~~subdivision (a) of Section 3041-~~ *this chapter*. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license ~~under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041-~~ *or certifications pursuant to this chapter.*

~~(b)~~ Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of ~~Section 3041.3.~~

Added Stats 1976 ch 418 § 4. Amended Stats 1989 ch 886 § 6; Stats 1995 ch 279 § 19 (AB 1471); Stats 1996 ch 13 § 8 (SB 668), effective February 20, 1996; Stats 2013 ch 473 § 7 (SB 821), effective January 1, 2014.

AB-443 SEC. 5. Section 3041.3 of the Business and Professions Code is amended to read:
§ 3041.3. Certificate requirements

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(a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b) and ~~(e)~~ (f) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a therapeutic pharmaceutical agents (TPA) certification to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, with either a TPA-certified optometrist in good standing or a physician and surgeon board-certified in ophthalmology in good standing. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular and systemic disease. The preceptor shall certify completion of the preceptorship using a form approved by the board. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(2) Successfully completes a minimum of 100 hours of directed and accredited education in ocular and systemic diseases within two years prior to meeting the requirements of paragraph (1).

(3) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(c) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who passes all sections of the National Board of Examiners in Optometry's national board examination or its equivalent, as determined by the State Board of Optometry.

(d) The board shall grant a therapeutic pharmaceutical agents certification to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be granted a therapeutic pharmaceutical agents certification.

(1) In order to obtain therapeutic agents certification, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for therapeutic pharmaceutical agents certification, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a therapeutic pharmaceutical agents certification, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set

forth in subdivision (c). In order for the applicant to be eligible for therapeutic pharmaceutical agents certification, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

Added Stats 1996 ch 13 § 9 (SB 668), effective February 21, 1996. Amended Stats 1996 ch 40 § 2 (SB 890), effective May 6, 1996; Stats 1997 ch 17 § 6 (SB 947); Stats 2008 ch 33 § 7 (SB 797), effective June 23, 2008; Stats 2015 ch 443 § 1 (AB 1359), effective January 1, 2016.

§ 3042. Specified acts not prohibited; Dispensing lenses without prescription not lawful

The provisions of this chapter do not prevent a licensed physician and surgeon from treating or fitting glasses to the human eye, or from doing any act within the practice of optometry, or a licensed physician and surgeon or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses, frames, or fittings by persons qualified to write or fill prescriptions or orders under the provisions of this chapter, nor prevent the doing of the mechanical work upon those lenses, frames, or fittings by an assistant, nor prevent an assistant acting under the responsibility and direction of a physician and surgeon or an optometrist from using any optical device in connection with ocular exercises, vision training, or orthoptics, or acts set forth in Section 2544.

It is unlawful for a person to dispense, replace, or duplicate an ophthalmic lens without a prescription or order from a licensed physician and surgeon or optometrist.

Added Stats 1937 ch 423. Amended Stats 1949 ch 1161 § 2; Stats 1959 ch 2073 § 1; Stats 2004 ch 426 § 30 (AB 2464).

§ 3042.5. Student and instructor exemptions

(a) The practice of persons actually enrolled as undergraduate or graduate students of optometry in the clinical departments of schools or colleges of optometry accredited by the board shall be exempt from the provisions of this chapter; provided, however, that such practice shall be entirely confined to the operations of the clinical department of the accredited school or college of optometry and shall be carried on only in pursuing the study of optometry.

(b) The board may grant, for specified periods, exemption from the provisions of this chapter to any person who is licensed in another state or country and who is employed as a clinician or instructor by an accredited school or college of optometry. Such exemption from the provisions of this chapter shall extend only to practice which is conducted for educational purposes and which is confined to the clinical department of the accredited school or college employing the person to whom the exemption is granted.

Added Stats 1955 ch 110 § 1.

§ 3043. Exempt sales

The provisions of this chapter do not prohibit the sale of goggles, sun glasses, colored glasses or occupational eye-protective devices if they do not have refractive values, nor do the provisions of this chapter prohibit the sale of complete ready to wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.

Added Stats 1937 ch 423.

§ 3044. Application for examination and licensure; Fee

A person over the age of 18 years desiring to engage in the practice of optometry in this state may file an application for examination and an application for licensure. The application shall be accompanied by the fee required by this chapter.

Added Stats 1937 ch 423. Amended Stats 1947 ch 514 § 1; Stats 1957 ch 1770 § 1; Stats 1971 ch 1748 § 7; Stats 1978 ch 1161 § 215; Stats 2004 ch 426 § 31 (AB 2464).

§ 3045. Verification and contents of applications

Applications shall be verified by the oath of the applicant and shall contain information and evidence satisfactory to the board showing the eligibility of the applicant.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 32 (AB 2464).

§ 3046. Eligibility requirements for licensure

In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examinations for licensure, not have met any of the grounds for denial established in Section 480, and not be currently required to register as a sex offender pursuant to Section 290 of the Penal Code. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Added Stats 2004 ch 426 § 33 (AB 2464). Amended Stats 2010 ch 653 § 13 (SB 1489), effective January 1, 2011; Stats 2013 ch 516 § 14 (SB 305), effective January 1, 2014.

AB-1708 SEC. 6. Section 3047 is added to the Business and Professions Code, to read:

3047.

(a) The board shall develop an interface with the National Practitioner Data Bank for the purpose of conducting inquiries on applicants for licensure, applicants for renewal of licensure, and current licensees.

Commented [HM6]: This provision can apply to all applications, as it is not contradictory to the RDO/SLD/CLD/NCLS sections.

(b) The board shall limit its inquiries to both of the following:

(1) Whether an applicant or current licensee has been subject to discipline.

(2) Whether an applicant or current licensee has been the subject of an action required to be reported to the National Practitioner Data Bank by federal law.

(c) On and after July 1, 2018, the board shall charge, in addition to the fees in Section 3152, an applicant for licensure two dollars (\$2) and an applicant for renewal of licensure four dollars (\$4) for the purposes of this section.

§ 3051. Evidence of education in detection of child, alcoholism, and substance dependency

All applicants for examination for an optometrist license in accordance with the educational and examination requirements adopted pursuant to Section ~~3023-1~~ 3046 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

Added Stats 1997 ch 556 § 1 (SB 461). Amended Stats 2013 ch 473 § 8 (SB 821), effective January 1, 2014.

§ 3053. Examination subjects

All examinations shall be practical in character, designed to ascertain applicants fitness to practice the profession of optometry and conducted in the English language. The board may by rule or regulation accept the examination given by other agencies or organizations which it deems equivalent to the examination required to determine an applicant's fitness to practice optometry.

Added Stats 1937 ch 423. Amended Stats 1965 ch 1211 § 1; Stats 1971 ch 1791 § 8; Stats 1978 ch 872 § 8.

§ 3054. Passing grades; Re-examination

The passing grades for the optometrist licensure examination shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency. If an applicant fails to pass any section of the examination, he or she may be examined in any succeeding examination held during the next five years only in those sections in which he or she failed to obtain a passing grade.

Added Stats 1937 ch 423. Amended Stats 1965 ch 1211 § 2; Stats 1971 ch 1791 § 9; Stats 1973 ch 567 § 1; Stats 1978 ch 1161 § 216; Stats 1979 ch 788 § 1; Stats 2004 ch 426 § 37 (AB 2464).

§ 3055. Issuance of license; Renewal

The board shall issue a license to an applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets

Commented [HM7]: Appears to be a technical error in statute.

Commented [HM8]: Adding "optometrist" where necessary in chapter to distinguish from the RDO/SLD/CLDs programs.

any other requirement in accordance with state law. A license or certificate issued under the chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license or certificate as provided for in Section 163.5.

Added Stats 2004 ch 426 § 39 (AB 2464).

AB-443 SEC. 6. Section 3056 of the Business and Professions Code is amended to read:
§ 3056. Qualifications for license; Expiration; “In good standing”

(a) The board may issue a license to practice optometry to a person who meets all of the following qualifications:

- (1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.
- (2) Is currently licensed in another state.
- (3) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five continuous years.
- (4) Has attained, at an accredited California school or college of optometry, the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.
- (5) Has successfully passed the board's jurisprudence examination.
- (6) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.
- (7) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.
- (8) Has met the requirements of Section 3041.3 regarding the use of therapeutic pharmaceutical agents under subdivision ~~(e)~~ (d) of Section 3041.
- (9) Has never had his or her license to practice optometry revoked or suspended.
- (10) (A) Is not subject to denial based on any of the grounds listed in Section 480.
(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.
- (11) Pays an application fee in an amount equal to the application fee prescribed by the board pursuant to Section 3152.
- (12) Files an application on a form prescribed by the board.

(b) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other optometrist licenses issued under this chapter.

(c) The term “in good standing,” as used in this section, means that a person under this section:

- (1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.
- (2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

Commented [HM9]: The provision can apply to all applications, as it is not contradictory to the RDO/SLD/CLD/NCLS sections.

Added Stats 1994 ch 403 § 1 (SB 1399). Amended Stats 2006 ch 302 § 1 (SB 579), effective January 1, 2007; Stats 2013 ch 516 § 15 (SB 305), effective January 1, 2014.

AB-1708 SEC. 7 and 7.5. [same as 7 but with amendment to (a)(9)] Section 3057 of the Business and Professions Code is amended to read:

SEC. 10.

Section 7.5 of this bill incorporates amendments to Section 3057 of the Business and Professions Code proposed by both this bill and Assembly Bill 443 [enrolled September 19, 2017]. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 3057 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 443, in which case Section 7 of this bill shall not become operative.

§ 3057. Requirements for license; Exceptions; Expiration; “In good standing”

(a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the National Practitioner ~~Database~~ *Data Bank* and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has never had his or her license to practice optometry revoked or suspended in any state where the person holds a license. *This paragraph shall become inoperative on July 1, 2018.*

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.

(8) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(9) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision ~~(e)~~ (d) of Section 3041.

(10) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(11) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(12) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(13) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical examination or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board may reduce or waive the fees required by paragraph (12) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other optometrist licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

Added Stats 2006 ch 302 § 2 (SB 579), effective January 1, 2007. Amended Stats 2007 ch 588 § 38 (SB 1048), effective January 1, 2008; Stats 2013 ch 516 § 16 (SB 305), effective January 1, 2014; Stats 2015 ch 426 § 32 (SB 800), effective January 1, 2016.

AB-1708 SEC. 8. Section 3057.5 of the Business and Professions Code is repealed.

~~§ 3057.5. Eligibility of graduates from foreign universities~~

~~Notwithstanding any other provision of this chapter, the board shall permit a graduate of a foreign university who meets all of the following requirements to take the examinations for an optometrist license:~~

~~— (a) Is over 18 years of age.~~

~~(b) Is not subject to denial of a license under Section 480.~~

~~(c) Has a degree as a doctor of optometry issued by a university located outside of the United States.~~

Added Stats 1987 ch 1473 § 2. Amended Stats 1990 ch 583 § 2 (SB 1104); Stats 1994 ch 26 § 84 (AB 1807), effective March 30, 1994, operative January 1, 1996; Stats 2010 ch 653 § 14 (SB 1489), effective January 1, 2011; Stats 2012 ch 799 § 18 (SB 1575), effective January 1, 2013; Stats 2013 ch 473 § 9 (SB 821), effective January 1, 2014.

§ 3059. Continuing education requirements

(a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

- (1) Glaucoma.
- (2) Ocular infection.
- (3) Ocular inflammation.
- (4) Topical steroids.
- (5) Systemic medication.
- (6) Pain medication.

(f) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(g) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(h) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.

Added Stats 1971 ch 1791 § 10. Amended Stats 1972 ch 1278 § 1; Stats 1974 ch 403 § 1; Stats 1987 ch 770 § 1; Stats 1990 ch 1382 § 1 (AB 881); Stats 1994 ch 578 § 1 (AB 2943); Stats 1996

ch 13 § 10 (SB 668), effective February 20, 1996; Stats 1997 ch 556 § 2 (SB 461); Stats 2000 ch 676 § 5 (SB 929); Stats 2001 ch 159 § 11 (SB 662); Stats 2004 ch 426 § 40 (AB 2464); Stats 2006 ch 302 § 3 (SB 579), effective January 1, 2007.

§ 3060. Dissemination of information and educational material on detection of child and elder abuse and neglect

The board shall periodically develop and disseminate to all persons licensed to practice optometry information and educational material regarding all of the following:

(a) The detection of child abuse and neglect. The board shall consult with the Office of Child Abuse Prevention in developing the materials distributed pursuant to this subdivision.

(b) The detection of elder abuse and neglect. The board shall consult with the Adult Protective Services Division of the State Department of Social Services in developing the materials distributed pursuant to this subdivision.

Added Stats 1997 ch 556 § 3 (SB 461).

Article 4 Registration

§ 3070. Notice of address for practice of optometry; Statement of licensure; Exemptions

§ 3070.1. Practice of optometry; Requirements

§ 3075. Posting of license; Fee for evidence of licensure

§ 3076. Providing receipt to each patient

§ 3077. Branch office licenses

§ 3078. Use of fictitious names; Permits

§ 3070. Notice of address for practice of optometry; Statement of licensure; Exemptions

(a) Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage in the practice of optometry and, also, of any changes in his or her place of practice. After providing the address or addresses and place of practice information to the board, a licensed optometrist shall obtain a statement of licensure from the board to be placed in all practice locations other than an optometrist's principal place of practice. Any licensed optometrist who holds a branch office license is not required to obtain a statement of licensure to practice at that branch office. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

(b) A licensed optometrist is not required to provide the notification described in subdivision (a) if he or she engages in the temporary practice of optometry. "Temporary practice" is defined as the practice of optometry at locations other than the optometrist's principal place of practice for not more than five calendar days during a 30-day period, and not more than 36 days within a calendar year. This limitation shall apply to all practice locations where the licensed optometrist is engaging in temporary practice, not to each practice location individually. If the time period of the temporary practice needs to be extended for any reason, the licensed optometrist shall submit an application for a statement of licensure to the board pursuant to Section 1506 of Title 16 of the California Code of Regulations.

(c) Notwithstanding Section 3075, an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall carry and present upon demand evidence of his or her licensure but shall not be required to post his or her current license or other evidence of current license status issued by the board.

(d) In addition to the information required by Section 3076, a receipt issued to a patient by an optometrist engaging in the temporary practice of optometry at a location described in subdivision (b) shall contain the address of the optometrist's primary practice location and the temporary practice location where the services were provided.

Added Stats 1937 ch 423. Amended Stats 1979 ch 788 § 3; Stats 2004 ch 426 § 41 (AB 2464); Stats 2007 ch 276 § 2 (AB 986), effective January 1, 2008; Stats 2012 ch 359 § 1 (SB 1215), effective January 1, 2013.

§ 3070.1. Practice of optometry; Requirements

(a) For purposes of this section, the following terms have the following meanings:

(1) "Health facility" means a health facility as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.

(2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:

- (A) Adult residential facilities.
- (B) Adult residential facilities for persons with special health care needs.
- (C) Residential care facilities for the chronically ill.
- (D) Residential care facilities for the elderly.
- (E) Continuing care retirement communities.
- (F) Social rehabilitation facilities.

(b) An optometrist may engage in the practice of optometry at any health facility or residential care facility provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office, separate from the health facility or residential care facility, that meets all of the following requirements:

- (A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.
- (B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.
- (C) Is registered by the optometrist with the Board of Optometry.
- (D) Is owned or leased by the optometrist or by the employer of the optometrist.
- (E) Is not located in or connected with a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:

- (i) Name.
- (ii) Optometrist license number.
- (iii) The place of practice and the primary business office.
- (iv) Description of the goods and services for which the patient is charged

and the amount charged.

(E) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.

(3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility or residential care facility.

(c) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility or residential care facility shall not be required to comply with Section 3070 with regard to providing notification to the board of each facility or residential care facility at which he or she practices.

Added Stats 2010 ch 604 § 5 (AB 2683), effective January 1, 2011.

§ 3075. Posting of license; Fee for evidence of licensure

An optometrist shall post in each location where he or she practices optometry, in an area that is likely to be seen by all patients who use the office, his or her current license or other evidence of current license status issued by the board. The board may charge a fee as specified in Section 3152 for each issuance of evidence of current licensure.

Added Stats 2004 ch 426 § 43 (AB 2464). Amended Stats 2007 ch 276 § 3 (AB 986), effective January 1, 2008.

§ 3076. Providing receipt to each patient

A licensed optometrist shall deliver to each patient that makes a payment to the practice, excluding insurance copayments and deductibles, a receipt that contains all of the following information:

- (a) His or her name.
- (b) The number of his or her optometrist license.
- (c) His or her place of practice.
- (d) A description of the goods and services for which the patient is charged and the amount charged.

Added Stats 1937 ch 423. Amended Stats 2004 ch 426 § 44 (AB 2464); Stats 2005 ch 393 § 2 (AB 488), effective January 1, 2006.

§ 3077. Branch office licenses

As used in this section, “office” means any office or other place for the practice of optometry.

(a) No person, singly or in combination with others, may have an office unless he or she is licensed to practice optometry under this chapter.

(b) An optometrist, or two or more optometrists jointly, may have one office without obtaining a branch office license from the board.

(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly, may have more than one office unless he or she or they comply with the provisions of this chapter as to an additional office. The additional office, for the purposes of this chapter, constitutes a branch office.

(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall notify the board in writing of that desire in a manner prescribed by the board.

(e) On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed by the board.

(f) On and after January 1, 1957, no branch office may be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1 of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter.

On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.

(g) Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the optometrist license of each optometrist who, individually or with others, has a branch office. An optometrist license so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a license after suspension for failure to comply with the provisions of this chapter relating to branch offices.

(h) The holder or holders of a branch office license shall pay the annual renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each year. The failure to pay the fee in advance on or before February 1 of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.

(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly.

Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.

(j) The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

(1) Complies with the definition of an optometric corporation in Section 3160.

(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.

(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.

Added 1955 ch 1602 § 6, ch 1623 § 2. Amended Stats 1959 ch 2059 § 1; Stats 1996 ch 312 § 1 (SB 1536), effective July 29, 1996; Stats 2006 ch 564 § 1 (AB 2256), effective January 1, 2007; Stats 2013 ch 473 § 10 (SB 821), effective January 1, 2014.

§ 3078. Use of fictitious names; Permits

(a) It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction all of the following:

(1) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants. However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(2) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to enabling a rational choice for the consumer public and contains at least one of the following designations: "optometry" or "optometric." However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(3) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(4) No charges that could result in revocation or suspension of an optometrist's license to practice optometry are pending against any optometrist practicing at the location.

(b) Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided in Article 7 (commencing with Section 3145) for the renewal of licenses issued under this chapter.

(c) A permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under

paragraph (4) of subdivision (a), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

(d) If the board revokes or suspends the license to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

Added Stats 1937 ch 423, as B & PC § 3125. Amended Stats 1974 ch 1079 § 1; Stats 1979 ch 788 § 7; Stats 1981 ch 474 § 1; Stats 2004 ch 426 § 45 (AB 2464). Amended and renumbered by Stats 2005 ch 393 § 31 (AB 488), effective January 1, 2006. Amended Stats 2006 ch 538 § 7 (SB 1852), effective January 1, 2007; Stats 2007 ch 276 § 4 (AB 986), effective January 1, 2008.

Article 5 Revocation and Suspension

- § 3090. Action for violation of chapter or regulations; Board powers
- § 3090.5. License revocation
- § 3091. Cause for denial of license; Probationary license; Licensee petition for modification or termination of probation
- § 3092. Conduct of proceedings
- § 3093. Examination as prerequisite to reinstatement
- § 3094. Injunctions
- § 3095. System for issuance of citations and assessment of administrative fines
- § 3096. Cause for professional competency examination; Admissibility of results in subsequent proceeding
- § 3097. Soliciting
- § 3098. Use of “Dr.” or “O. D.”
- § 3099. Specialist in eye disease
- § 3100. Claiming special knowledge
- § 3101. Advertising without certificate
- § 3102. Price advertisements
- § 3103. Advertising goggles in manner to suggest optometry
- § 3104. Employing “cappers” or “steerers”
- § 3105. Fraudulent altering or modifying medical record as unprofessional conduct; Penalty
- § 3106. False representations of facts as unprofessional conduct
- § 3107. Use of fraudulently issued, counterfeited, etc., certificates
- § 3108. Harboring contagious diseases
- § 3109. Accepting employment from non-licensee; Right of incorporation
- § 3110. Unprofessional conduct
- § 3111. Violation of Moscone-Knox Professional Corporation Act

§ 3090. Action for violation of chapter or regulations; Board powers

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to license holders, including those who hold a retired license, a license with a retired volunteer designation, or an inactive license issued pursuant to Article 9 (commencing with Section 700) of Chapter 1, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that ~~an optometrist~~ a licensee may be guilty of violating this chapter or any of the regulations adopted by the board.

Added Stats 2005 ch 393 § 4 (AB 488), effective January 1, 2006. Amended Stats 2012 ch 359 § 2 (SB 1215), effective January 1, 2013.

Commented [HM10]: This provision could be broadened to include the RDO program licensees; otherwise, it will only expressly apply to optometrists.

§ 3090.5. License revocation

The board may revoke an optometrist license issued to a licensee upon a decision, made in a proceeding as provided in Section 3092, that contains a finding of fact of either of the following:

- (a) The licensee has engaged in an act of sexual abuse, misconduct, or relations with a patient, as described in paragraph (2) of subdivision (m) of Section 3110.
- (b) The licensee has been convicted of a crime described in paragraph (3) of subdivision (m) of Section 3110.

Added Stats 2013 ch 516 § 17 (SB 305), effective January 1, 2014.

§ 3091. Cause for denial of license; Probationary license; Licensee petition for modification or termination of probation

(a) The board may deny an optometrist license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment in which the licensee's activities shall be supervised by another optometrist licensed by the board.
- (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
- (3) Continuing medical or psychiatric treatment.
- (4) Ongoing participation in a specified rehabilitation program.
- (5) Enrollment and successful completion of a clinical training program.
- (6) Abstinence from the use of alcohol or drugs.
- (7) Restrictions against engaging in certain types of optometry practice.
- (8) Compliance with all provisions of this chapter.
- (9) Any other terms and conditions deemed appropriate by the board.

(b) The board may modify or terminate the terms and conditions imposed on the probationary license if the licensee petitions for modification or termination of terms and conditions of probation. A licensee shall not petition for modification or termination of terms and conditions until one year has passed from the effective date of the decision granting the probationary license.

Added Stats 2005 ch 393 § 6 (AB 488), effective January 1, 2006.

§ 3092. Conduct of proceedings

All proceedings against a licensee for any violation of this chapter or any of the regulations adopted by the board, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Attorney General's office.

Added Stats 2005 ch 393 § 7 (AB 488), effective January 1, 2006.

Commented [HM11]: Could clarify that this provision only applies to optometrist licenses because the (a) grounds for revocation is not in the RDO program licenses.

Commented [HM12]: This section can apply to all licensees as it is not inconsistent with the RDO program.

§ 3093. Examination as prerequisite to reinstatement

Before setting aside the revocation or suspension of any optometrist license, the board may require the applicant to pass the regular examination given for applicants for an optometrist license.

Added Stats 1937 ch 423. Amended Stats 2013 ch 473 § 11 (SB 821), effective January 1, 2014.

§ 3094. Injunctions

In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding licenses issued under this chapter.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

Added Stats 1961 ch 147 § 1, as B & P C § 3131. Amended Stats 1969 ch 640 § 1; Stats 1982 ch 517 § 11. Amended and renumbered Stats 2005 ch 393 § 37 (AB 488), effective January 1, 2006.

§ 3095. System for issuance of citations and assessment of administrative fines

In accordance with Section 125.9, the board may establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board.

Added Stats 1983 ch 870 § 1, as B & P C § 3135. Amended Stats 1997 ch 677 § 5 (SB 1347). Renumbered by Stats 2005 ch 393 § 38 (AB 488), effective January 1, 2006.

§ 3096. Cause for professional competency examination; Admissibility of results in subsequent proceeding

(a) An optometrist licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients.

Reasonable cause shall be demonstrated by one or more of the following:

- (1) A single incident of gross negligence.
- (2) A pattern of inappropriate prescribing.
- (3) An act of incompetence or negligence causing death or serious bodily injury.
- (4) A pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

Commented [HM14]: This section can apply to all licensees as it is not inconsistent.

Added Stats 1997 ch 556 § 5 (SB 461), as B & P C § 3090.1. Amended and renumbered by Stats 2005 ch 393 § 5 (AB 488), effective January 1, 2006.

§ 3097. Soliciting

The sending of a solicitor from house to house or the soliciting from house to house by the holder of an optometrist license constitutes a cause to revoke or suspend his or her license.

Added Stats 1937 ch 423, as B & P C § 3096. Amended and renumbered by Stats 2005 ch 393 § 10 (AB 488), effective January 1, 2006.

§ 3098. Use of “Dr.” or “O. D.”

When the [optometrist license](#) holder uses the title of “Doctor” or “Dr.” as a prefix to his or her name, without using the word “optometrist” as a suffix to his or her name or in connection with it, or, without holding a diploma from an accredited school of optometry, the letters “Opt. D.” or “O.D.” as a suffix to his or her name, it constitutes a cause to revoke or suspend his or her optometrist license.

Added Stats 1937 ch 423. Amended Stats 2013 ch 473 § 12 (SB 821), effective January 1, 2014.

§ 3099. Specialist in eye disease

No optometrist shall advertise or otherwise hold himself or herself out to be a specialist in eye disease and the treatment thereof.

Added Stats 1996 ch 13 § 11 (SB 668), effective February 21, 1996, as B & P C § 3096.5. Renumbered by Stats 2005 ch 393 § 11 (AB 488), effective January 1, 2006.

§ 3100. Claiming special knowledge

The holding out as having a special knowledge of optometry, as defined in this chapter, by the holder of a license, constitutes a cause to revoke or suspend his or her license.

Added Stats 1937 ch 423, as B & P C § 3099. Amended and renumbered by Stats 2005 ch 393 § 15 (AB 488), effective January 1, 2006.

§ 3101. Advertising without certificate

It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be an optometrist without having at the time of so doing a valid unrevoked license from the board.

Added Stats 1937 ch 423, as B & P C § 3128. Amended Stats 1978 ch 872 § 12. Amended and renumbered by Stats 2005 ch 393 § 15 (AB 488), effective January 1, 2006.

§ 3102. Price advertisements

It is unlawful to advertise as being free or without cost the furnishing of optometric services where these services are contingent upon payment or other exchange of consideration for goods or other services offered by the provider, unless that contingency is fully disclosed in the same advertisement.

Added Stats 1937 ch 423, as B & P C § 3129. Amended Stats 1979 ch 653 § 10. Renumbered by Stats 2005 ch 393 § 35 (AB 488), effective January 1, 2006. Amended Stats 2006 ch 302 § 4 (SB 579), effective January 1, 2007.

§ 3103. Advertising goggles in manner to suggest optometry

It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses, or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a licensed optometrist in the manner permitted by law.

Added Stats 1939 ch 560 § 1, as B & P C § 3130. Amended and renumbered by Stats 2005 ch 393 § 36 (AB 488), effective January 1, 2006; Stats 2013 ch 473 § 13 (SB 821), effective January 1, 2014.

§ 3104. Employing “cappers” or “steerers”

The employing [by optometrists](#) of what are known as “cappers” or “steerers” to obtain business constitutes unprofessional conduct.

Added Stats 1937 ch 423, as B & P C § 3100. Renumbered Stats 2005 ch 393 § 16 (AB 488), effective January 1, 2006.

§ 3105. Fraudulent altering or modifying medical record as unprofessional conduct; Penalty

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct [as to optometrists](#). In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

Added Stats 1997 ch 556 § 7 (SB 461), as B & P C § 3096.7. Amended and renumbered by Stats 2005 ch 393 § 13 (AB 488), effective January 1, 2006.

§ 3106. False representations of facts as unprofessional conduct

Knowingly making or signing any license, certificate, or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

Added Stats 1997 ch 556 § 6 (SB 461), as B & P C § 3096.6. Amended and renumbered by Stats 2005 ch 393 § 12 (AB 488), effective January 1, 2006; Stats 2013 ch 473 § 14 (SB 821), effective January 1, 2014.

§ 3107. Use of fraudulently issued, counterfeited, etc., certificates

It is unlawful to use or attempt to use any license or certificate issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license or certificate.

Added Stats 1937 ch 423, as B & P C § 3124. Amended and renumbered by Stats 2005 ch 393 § 30 (AB 488), effective January 1, 2006; Stats 2013 ch 473 § 15 (SB 821), effective January 1, 2014.

§ 3108. Harboring contagious diseases

When the [optometrist license](#) holder is suffering from a contagious or infectious disease, it constitutes a cause to suspend his or her license during the period of continuance of that disease.

Added Stats 1937 ch 423, as B & P C § 3097. Amended Stats 1979 ch 788 § 4. Amended and renumbered by Stats 2005 ch 393 § 14 (AB 488), effective January 1, 2006.

§ 3109. Accepting employment from non-licensee; Right of incorporation

Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms “accepting employment to practice optometry” as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a license under this division and who practices in the specialty of ophthalmology or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

Added Stats 1937 ch 423, as B & P C § 3103. Amended Stats 1970 ch 1265 § 1; Stats 1974 ch 874 § 2; Stats 1979 ch 788 § 6. Amended and renumbered by Stats 2005 ch 393 § 19 (AB 488), effective January 1, 2006; Stats 2013 ch 473 § 16 (SB 821), effective January 1, 2014.

Commented [HM15]: This section can apply to all licensees as it is not inconsistent with RDO program sections.

AB-443 SEC. 8. Section 3110 of the Business and Professions Code is amended to read:

§ 3110. Unprofessional conduct

The board may take action against any optometrist licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her license by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient.

The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that licensee provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that requires the person to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

(n) Repeated acts of excessive prescribing, furnishing, or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.

(o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.

(p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(s) The practice of optometry without a valid, unrevoked, unexpired license.

(t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.

(u) Permitting another person to use the licensee's optometry license for any purpose.

(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

~~(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:~~

~~(1) (y) Where an~~ *Failure to refer a patient to an appropriate physician and surgeon if an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician, physician and surgeon.*

~~(2) As required by subdivision (c) of Section 3041.~~

Added Stats 2005 ch 393 § 28 (AB 488), effective January 1, 2006. Amended Stats 2013 ch 516 § 18 (SB 305), effective January 1, 2014; Stats 2014 ch 71 § 7 (SB 1304), effective January 1, 2015.

§ 3111. Violation of Moscone-Knox Professional Corporation Act

It is unprofessional conduct and a violation of this chapter for a person licensed under this chapter [as an optometrist](#) to violate, attempt to violate, assist in the violation of, or conspire to violate the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, or any regulation adopted pursuant to those provisions.

Added Stats 2006 ch 564 § 2 (AB 2256), effective January 1, 2007.

Article 6 Offenses Against the Chapter

§ 3120. Penalty for violations

§ 3137. Limitations periods for filing accusation for violation of chapter; Tolling

§ 3120. Penalty for violations

Any person who violates any of the provisions of ~~this Articles 1 through 8 chapter~~ is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than ten days nor more than one year, or by a fine of not less than one hundred dollars nor more than one thousand five hundred dollars, or by both such fine and imprisonment.

Added Stats 1937 ch 423.

§ 3137. Limitations periods for filing accusation for violation of chapter; Tolling

(a) Except as otherwise provided in this section, any accusation filed against an optometrist licensee pursuant to Section 11503 of the Government Code for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves any conduct described in Section 726 committed on a minor, the 10-year limitations period in subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in Section 726 shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2006.

(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

Added Stats 2005 ch 186 § 1 (AB 370), effective January 1, 2006.

Commented [HM16]: This provision is inconsistent with BPC section 2546.10 for nonresident contact lens sellers and section 2558 for RDOs because the fine ranges are different.

Article 7 Revenue

§ 3145. State Optometry Fund

§ 3145.5. Disposition of administrative fines

§ 3146. Expiration of certificates; Renewal of unexpired certificates

§ 3147. Renewal of expired license; Reactivation of retired license to active status

§ 3147.5. Renewal of suspended certificates; Reinstatement of revoked certificates

§ 3147.6. Restoration of license following failure to renew within specified period; Reactivation of retired license; Conditions

§ 3147.7. Applicability of provisions to out-of-state licensees

§ 3148. Disposition of renewal fees

§ 3150. Disbursements of funds

§ 3151. Issuance of retired license; Conditions; Holder of retired license

§ 3151.1. Issuance of license with retired volunteer service designation; Duties of applicant; Holder of retired license

§ 3152. Fee schedule

§ 3152.5. Application and renewal fees

AB-1708 SEC. 9. Section 3145 of the Business and Professions Code is amended to read:

§ 3145. State Optometry Fund

There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this ~~fund~~, *fund, and shall be available, upon appropriation of the Legislature, to carry out the purposes of this chapter.* The board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.

Added Stats 1937 ch 423. Amended Stats 1992 ch 645 § 1 (AB 2566); Stats 1994 ch 1275 § 26 (SB 2101).

§ 3145.5. Disposition of administrative fines

Administrative fines collected pursuant to Section 3095 shall be deposited in the Optometry Fund. It is the legislative intent that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

Added Stats 1983 ch 870 § 2. Amended Stats 1994 ch 1275 § 27 (SB 2101); Stats 2005 ch 393 § 39 (AB 488), effective January 1, 2006.

§ 3146. Expiration of certificates; Renewal of unexpired certificates

An optometrist license issued under this chapter expires at midnight on the last day of the license holder's birth month following its original issuance and thereafter at midnight on the last day of the licenseholder's birth month every two years if not renewed. To renew an unexpired license, the licenseholder shall apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

Commented [HM17]: This provision is inconsistent with Nonresident Contact Lens Sellers (BPC section 2546.8) because those expire 24 months after date of issuance.

Added Stats 1937 ch 423. Amended Stats 1961 ch 366 § 4, operative October 1, 1961; Stats 1968 ch 1088 § 2; Stats 1971 ch 1791 § 11, operative January 1, 1973; Stats 1996 ch 328 § 1 (AB 2771); Stats 2005 ch 393 § 40 (AB 488), effective January 1, 2006.

§ 3147. Renewal of expired license; Reactivation of retired license to active status

Except as otherwise provided by Section 114, an expired [optometrist](#) license may be renewed at any time within three years after its expiration, and a retired license issued for less than three years may be reactivated to active status, by filing an application for renewal or reactivation on a form prescribed by the board, paying all accrued and unpaid renewal fees or reactivation fees determined by the board, paying any delinquency fees prescribed by the board, and submitting proof of completion of the required number of hours of continuing education for the last two years, as prescribed by the board pursuant to Section 3059. Renewal or reactivation to active status under this section shall be effective on the date on which all of those requirements are satisfied. If so renewed or reactivated to active status, the license shall continue as provided in Sections 3146 and 3147.5.

Added Stats 1937 ch 423. Amended Stats 1955 ch 1602 § 8; Stats 1961 ch 366 § 5, operative October 1, 1961; Stats 1968 ch 1088 § 3; Stats 1978 ch 1161 § 221; Stats 1994 ch 1275 § 27.5 (SB 2101); Stats 2001 ch 435 § 9 (SB 349); Stats 2005 ch 393 § 41 (AB 488), effective January 1, 2006; Stats 2010 ch 653 § 15 (SB 1489), effective January 1, 2011; Stats 2012 ch 359 § 3 (SB 1215), effective January 1, 2013.

§ 3147.5. Renewal of suspended certificates; Reinstatement of revoked certificates

An [optometrist](#) license that has been suspended is subject to expiration and shall be renewed as provided in this article, but renewal does not entitle the holder of a suspended license to engage in the practice of optometry, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

An [optometrist](#) license that has been revoked is subject to expiration, but it may not be renewed. If a revoked license is reinstated after it has expired, a reinstatement fee of 150 percent of the renewal fee shall be assessed.

Added Stats 1961 ch 366 § 6, operative October 1, 1961. Amended Stats 1968 ch 1088 § 4; Stats 1978 ch 1161 § 222; Stats 2005 ch 393 § 42 (AB 488), effective January 1, 2006.

§ 3147.6. Restoration of license following failure to renew within specified period; Reactivation of retired license; Conditions

Except as otherwise provided by Section 114, an [optometrist](#) license that is not renewed within three years after its expiration may be restored, and a retired license issued for more than three years may be reactivated to active status, if no fact, circumstance, or condition exists that, if the license were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired license or retired license is not subject to denial of a license under Section 480.

(b) The holder of the expired license or retired license applies in writing for its restoration or reactivation on a form prescribed by the board.

(c) The holder of the expired license or retired license pays the fee or fees as would be required of him or her if he or she were then applying for a license for the first time.

(d) The holder of the expired license or retired license satisfactorily passes both of the following examinations:

(1) The National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board.

(2) The board's jurisprudence examination.

(e) After taking and satisfactorily passing the examinations identified in subdivision (d), the holder of the expired license or retired license pays a restoration fee equal to the sum of the license renewal fee in effect on the last regular renewal date for licenses or a reactivation fee determined by the board, and any delinquency fees prescribed by the board.

Added Stats 1961 ch 366 § 7, operative October 1, 1961. Amended Stats 1968 ch 1088 § 5; Stats 1978 ch 1161 § 223; Stats 1994 ch 26 § 86 (AB 1807), effective March 30, 1994, ch 1275 § 28 (SB 2101); Stats 2005 ch 393 § 43 (AB 488), effective January 1, 2006; Stats 2010 ch 653 § 16 (SB 1489), effective January 1, 2011; Stats 2012 ch 359 § 4 (SB 1215), effective January 1, 2013.

§ 3147.7. Applicability of provisions to out-of-state licensees

The provisions of Section 3147.6 shall not apply to a person holding an [optometrist](#) license that has not been renewed within three years of expiration, if the person provides satisfactory proof that he or she holds an active [optometrist](#) license from another state and meets all of the following conditions:

(a) Is not subject to denial of a license under Section 480.

(b) Applies in writing for restoration of the license on a form prescribed by the board.

(c) Pays all accrued and unpaid renewal fees and any delinquency fees prescribed by the board.

(d) Submits proof of completion of the required number of hours of continuing education for the last two years.

(e) Takes and satisfactorily passes the board's jurisprudence examination.

Added Stats 1968 ch 1088 § 5.5. Amended Stats 1994 ch 26 § 87 (AB 1807), effective March 30, 1994; Stats 2005 ch 393 § 44 (AB 488), effective January 1, 2006; Stats 2010 ch 653 § 17 (SB 1489), effective January 1, 2011.

§ 3148. Disposition of renewal fees

From each fee for the renewal of an [optometrist](#) license for the biennial renewal of a license, there shall be paid the sum of sixteen dollars (\$16) by the Director of Consumer Affairs to the University of California.

This sum shall be used at and by the University of California solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught.

The balance of each renewal fee shall be paid into the Optometry Fund.

Added Stats 1937 ch 423. Amended Stats 1961 ch 8 § 366, operative October 1, 1961; Stats 1971 ch 716 § 50, ch 1593 § 35, ch 1791 § 12; Stats 1977 ch 1252 § 37, operative July 1, 1978; Stats 1978 ch 429 § 16, effective July 17, 1978, operative July 1, 1978; Stats 1996 ch 328 § 2 (AB 2771); Stats 2005 ch 393 § 45 (AB 488), effective January 1, 2006.

§ 3150. Disbursements of funds

The department may make all necessary disbursements to carry out the provisions of this chapter.

Added Stats 1937 ch 423. Amended Stats 1984 ch 47 § 21, effective March 21, 1984; Stats 2005 ch 393 § 46 (AB 488), effective January 1, 2006.

§ 3151. Issuance of retired license; Conditions; Holder of retired license

- (a) The board shall issue, upon application and payment of the fee described in Section 3152, a retired license to an optometrist who holds a license that is current and active.
- (b) A licensee who has been issued a retired license is exempt from continuing education requirements pursuant to Section 3059. The holder of a retired license shall not be required to renew that license.
- (c) The holder of a retired license shall not engage in the practice of optometry.
- (d) An optometrist holding a retired license shall only be permitted to use the titles “retired optometrist” or “optometrist, retired.”
- (e) The holder of a retired license issued for less than three years may reactivate the license to active status if he or she meets the requirements of Section 3147.
- (f) The holder of a retired license issued for more than three years may reactivate the license to active status if he or she satisfies the requirements in Section 3147.6.

Added Stats 2012 ch 359 § 5 (SB 1215), effective January 1, 2013.

§ 3151.1. Issuance of license with retired volunteer service designation; Duties of applicant; Holder of retired license

(a) The board shall issue, upon application and payment of the fee described in Section 3152, a license with retired volunteer service designation to an optometrist who satisfies any of the following:

- (1) The applicant holds any of the following:
 - (A) A retired license issued within the last three years.
 - (B) A license that has not been renewed and has expired within the last three years.
 - (C) A license that is current and active.

(2) The applicant holds either of the following, and the applicant certifies on the application that he or she has completed an additional 50 hours of formal continuing optometric education coursework:

(A) A retired license issued more than three, but less than five, years ago.

(B) A license that has not been renewed and has expired more than three, but less than five, years ago.

(3) The applicant holds either of the following, and satisfies the requirements set forth in subdivisions (a) to (d), inclusive, of Section 3147.6:

(A) A retired license issued more than five years ago.

(B) A license that has not been renewed and has expired more than five years ago.

(b) The board shall not issue a license pursuant to this section to an applicant whose application would be subject to denial pursuant to Section 480.

(c) The applicant shall certify on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs.

(d) The holder of the retired license with volunteer service designation shall submit a biennial renewal application, with a fee fixed by this chapter and certify on each renewal that the required number of continuing education hours pursuant to Section 3059 were completed, and certify that the sole purpose of the retired license with volunteer service designation is to provide voluntary, unpaid services as described in subdivision (c). Pursuant to Section 3146, the license expires at midnight on the last day of the licenseholder's birth month every two years if not renewed.

Added Stats 2012 ch 359 § 6 (SB 1215), effective January 1, 2013. Amended Stats 2015 ch 125 § 1 (AB 1253), effective January 1, 2016.

AB-443 SEC. 9. Section 3152 of the Business and Professions Code is amended to read:

§ 3152. Fee schedule

The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).

(d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).

(h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).

- (j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (q) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (r) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (s) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (t) The application fee for a certificate to administer immunizations shall not exceed fifty dollars (\$50).*

Added Stats 1937 ch 423. Amended Stats 1945 ch 288 § 1; Stats 1954 ch 2 § 1; Stats 1955 ch 1602 § 9, ch 1623 § 3; Stats 1961 ch 366 § 9, operative October 1, 1961; Stats 1962 ch 2 § 1; Stats 1968 ch 1088 § 6; Stats 1971 ch 1791 § 13; Stats 1976 ch 602 § 2, effective August 27, 1976; Stats 1992 ch 645 § 2 (AB 2566); Stats 1996 ch 328 § 3 (AB 2771); Stats 2005 ch 393 § 47 (AB 488), effective January 1, 2006; Stats 2007 ch 276 § 5 (AB 986), effective January 1, 2008; Stats 2008 ch 179 § 7 (SB 1498), effective January 1, 2009, ch 352 § 3 (SB 1406), effective January 1, 2009, (ch 352 prevails); Stats 2010 ch 328 § 8 (SB 1330), effective January 1, 2011; Stats 2012 ch 359 § 7 (SB 1215), effective January 1, 2013.

§ 3152.5. Application and renewal fees

The board may require each applicant for a certificate to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, to pay an application fee, and may require each licenseholder to pay a renewal fee. The application fee and the renewal fee shall not exceed the actual costs to the board of the reviewing and processing of the application for a license or renewal of a license, monitoring the practice by licenseholders, and enforcing the provisions of law governing the use of therapeutic pharmaceutical agents, the diagnosis and treatment of certain conditions, and the performance of certain procedures by persons certified to use therapeutic pharmaceutical agents.

Added Stats 1996 ch 13 § 13 (SB 668), effective February 21, 1996. Amended Stats 2005 ch 393 § 48 (AB 488), effective January 1, 2006.

Article 8 Optometric Corporations

§ 3160. Optometric corporation

§ 3163. Corporate names

§ 3164. Licensure requirement

§ 3165. Disbursement of income attributable to disqualified shareholders

§ 3166. Unprofessional conduct prohibited

~~§ 3167. Rule-making authority~~

§ 3160. Optometric corporation

An optometric corporation is a corporation that is authorized to render professional services, as described in Sections 13401 and 13401.5 of the Corporations Code, if that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, or podiatrists are in compliance with the Moscone-Knox Professional Corporation Act as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs. With respect to an optometric corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the State Board of Optometry.

Added Stats 2006 ch 564 § 4 (AB 2256), effective January 1, 2007.

§ 3163. Corporate names

Except as provided in Section 3078, the name of an optometric corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall include the words optometric corporation or wording or abbreviations denoting corporate existence, provided that the articles of incorporation shall be amended to delete the name of a former shareholder from the name of the corporation within two years from the date the former shareholder dies or otherwise ceases to be a shareholder.

Added Stats 1970 ch 1265 § 2. Amended Stats 1974 ch 1079 § 2; Stats 2013 ch 473 § 17 (SB 821), effective January 1, 2014.

§ 3164. Licensure requirement

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each director, shareholder, and officer of an optometric corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

Added Stats 1970 ch 1265 § 2. Amended Stats 1981 ch 621 § 4.

§ 3165. Disbursement of income attributable to disqualified shareholders

The income of an optometric corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone-Knox Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder for his shares in the optometric corporation.

Added Stats 1970 ch 1265 § 2.

§ 3166. Unprofessional conduct prohibited

An optometric corporation shall not do or fail to do an act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation. In conducting its practice, an optometric corporation shall observe and be bound by statutes, rules, and regulations to the same extent as a person holding a license under Section 3055.

Added Stats 1970 ch 1265 § 2. Amended Stats 2006 ch 564 § 7 (AB 2256), effective January 1, 2007.

~~§ 3167. Rule-making authority~~

~~The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of an optometric corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such rules and regulations may provide; and (b) that an optometric corporation as a condition of obtaining a certificate pursuant to the Moscone-Knox Professional Corporation Act and this article shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.~~

Added Stats 1970 ch 1265 § 2.

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Commented [HM18]: This rulemaking authority is being removed as one provision now in 3021 will combine all others for all of Chapter 7.

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~~Chapter 5.45~~ Article 9
Nonresident Contact Lens Sellers

~~§ 2546. Citation of act~~

§ 2546.1. Requirement of registration

§ 2546.2. "Division"

~~§ 2546.3. Powers of division~~

§ 2546.4. Application for registration

§ 2546.5. Qualifications for registration

§ 2546.6. Written prescription or confirmation of prescription required for sale of contact lenses

§ 2546.7. Violations; Proceedings

§ 2546.8. Term of registration; Renewal

§ 2546.9. Fee schedule

§ 2546.10. Violations; Fines

~~§ 2546. Citation of act~~

~~This act may be cited as the "Nonresident Contact Lens Seller Registration Act."~~

~~Added Stats 1995 ch 853 § 1 (SB 640).~~

§ 2546.1. Requirement of registration

(a) On and after January 1, 1997, no person located outside California shall ship, mail, or deliver in any manner, contact lenses at retail to a patient at a California address unless registered with the ~~Division of Licensing of the Medical State~~ Board of ~~California~~Optometry.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a valid prescription as described in Section 2546.6 may be shipped, mailed, or delivered directly to a patient.

Added Stats 1995 ch 853 § 1 (SB 640).

~~§ 2546.2. "Division"~~

~~All references in this chapter to the division shall mean the State Board of Optometry.~~

~~Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2007 ch 678 § 28 (AB 253), effective January 1, 2008; Stats 2015 ch 405 § 3 (AB 684), effective January 1, 2016.~~

Amendments:

2007 Amendment: Deleted "Division of Licensing of the" after "shall mean the".

2015 Amendment: Substituted "State Board of Optometry" for "Medical Board of California".

§ 2546.3. Powers of division

The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.

Added Stats 1995 ch 853 § 1 (SB 640).

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This rulemaking authority is being removed as one provision now in 3021 will combine all others for all of Chapter 7.

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§ 2546.4. Application for registration

Application for registration as a nonresident contact lens seller shall be made on forms prescribed by the ~~division~~ board, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a copartnership, or the president or secretary if a corporation, and shall contain the name under which the person proposes to do business, location of the business, and the designation of an agent for service of process in California. The board shall be notified within 30 days of any change of name, location of business, corporate officer, or agent of service.

Added Stats 1995 ch 853 § 1 (SB 640).

§ 2546.5. Qualifications for registration

In order to obtain and maintain registration, a nonresident contact lens seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state in which the selling facility is located and from which the contact lenses are sold.

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of contact lenses shipped, mailed, or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant's regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed contact lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the contact lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of contact lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.

(h) It shall be considered a deceptive marketing practice for any nonresident contact lens seller to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2002 ch 814 § 4 (AB 2020).

§ 2546.6. Written prescription or confirmation of prescription required for sale of contact lenses

(a) Contact lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities consistent with the prescription's established expiration date and the standard packaging of the manufacturer or vendor. If the written prescription or a copy of it is not available to the seller, the seller shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

(1) The prescriber or the prescriber's agent confirms the prescription by communication with the seller.

(2) The prescriber fails to communicate with the seller by 2 p.m. of the next business day after the seller requests confirmation, or the prescriber fails to communicate with the seller by the next business day on or before the same time of day that the seller requested confirmation, whichever is sooner. For purposes of this paragraph, "business day" means each day except a Sunday or a federal holiday.

(b) If a prescriber communicates with a seller before the time period described in paragraph (2) of subdivision (a) elapses and informs the seller that the contact lens prescription is invalid, the seller shall not fill the prescription. The prescriber shall specify in the communication with the seller the basis for invalidating the prescription.

(c) A seller shall not alter any of the specifications of a contact lens prescription other than the color or substitute a different manufacturer, brand, or other physical property of the lens. Notwithstanding the provisions of this subdivision, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the seller may fill the prescription with a contact lens manufactured by that company if the contact lens prescription and the related parameters are not substituted, changed, or altered for a different manufacturer or brand.

Added Stats 1995 ch 853 § 1 (SB 640). Amended Stats 2002 ch 814 § 5 (AB 2020).

§ 2546.7. Violations; Proceedings

(a) A ~~certificate~~ registration may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.

(2) An act of dishonesty or fraud.

(3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

(4) Any violation of Section 2546.5 or 2546.6.

(b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the ~~division~~ board shall have all powers granted therein.

Commented [HM20]: This section provides for narrower grounds for discipline than that for optometrist in BPC section 3110, etc., but is not inconsistent with them.

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Added Stats 1995 ch 853 § 1 (SB 640).

§ 2546.8. Term of registration; Renewal

Every registration issued to a nonresident contact lens seller shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the division, and pay the renewal fee prescribed by this chapter.

Added Stats 1995 ch 853 § 1 (SB 640).

§ 2546.9. Fee schedule

Notwithstanding the fee schedule in section 3152, the amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The application fee for a nonresident contact lens seller shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).

(b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).

(c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).

(d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).

(e) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars (\$25).

(f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

(g) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

Added Stats 2016 ch 799 § 5 (SB 1039), effective January 1, 2017.

§ 2546.10. Violations; Fines

Notwithstanding any other provision of law, (a) Any person who violates any of the provisions of this ~~chapter~~ article shall be subject to a fine of not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) per violation. The fines collected pursuant to this section shall be available upon appropriation to the ~~State Medical~~ Board of California for the purposes of administration and enforcement.

(b) The ~~Medical Board of California~~ board shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(c) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. [Added Stats 2002 ch 814 § 6 (AB 2020).]

Commented [HM21]: This is different from optometrist that use the last day of the licenseholder's birth month following issuance. Section 3146.

Commented [HM22]: The fee schedule in BPC section 3152 could be deemed inconsistent (e.g., it says the fee for applicants applying for "a license" shall not exceed \$275").

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Commented [HM24]: This is inconsistent with BPC § 3120, where fine is "not less than one hundred dollars nor more than one thousand five hundred dollars..."

~~Chapter 5.5~~ **Article 10**
Registered Dispensing Opticians

~~Article 1 General Provisions~~
~~Article 1.5 Spectacle Lens Dispensing~~
~~Article 2 Contact Lens Dispensing~~
~~Article 3 Fiscal Provisions~~
~~Article 4 Review~~

Article 1
General Provisions

- § 2550. Right to practice
- § 2550.1. Reference to board as reference to State Board of Optometry
- § 2551. Applications and fees
- § 2552. Contents and verification of applications
- § 2553. Registration of applicants; Display of certificates
- § 2553.1. Sale or transfer of ownership of business; Requirements
- § 2553.5. Locations for fitting and adjusting of spectacle lenses and frames; Disclosure of registrant's regular business address
- § 2553.6. Effect of intermingling proprietary interests
- § 2553.7. [\[Expiration of registrations\]](#)
- § 2554. Display of consumer information
- § 2555. Suspension and revocation of certificates
- § 2555.1. Disciplinary action upon conviction of charge related to qualifications, functions, and duties of dispensing optician
- § 2556. Unlawful practices; Administration of fines and citations
- § 2556.1. Report of business relationship to State Board of Optometry; Inspection
- § 2556.2. Date registered dispensing optician subject to action for engaging in prohibited conduct; Compliance milestones for registered dispensing optician or optical company that owns health plan; Reports; Issuance of citation for abatement or administrative fine
- § 2556.5. Use of "dispensing optician"
- § 2557. Exempt practitioners; Exempt sales
- § 2558. Punishment for misdemeanor violations; Rule-making authority
- § 2559. Injunctions

§ 2550. Right to practice

Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the State Board of Optometry.

Added Stats 1986 ch 773 § 2, operative January 1, 1988. Amended Stats 1989 ch 886 § 42; Stats 1990 ch 1190 § 1 (AB3627); Stats 1993 ch 1267 § 40 (SB 916); Stats 2016 ch 489 § 13 (SB 1478), effective January 1, 2017.

§ 2550.1. Reference to board as reference to State Board of Optometry

All references in this ~~chapter~~article to the board -shall mean the State Board of Optometry.

Added Stats 1976 ch 1185 § 88. Amended Stats 1978 ch 916 § 2; Stats 1989 ch 886 § 43; Stats 1993 ch 1267 § 41 (SB 916); Stats 2007 ch 678 § 29 (AB 253), effective January 1, 2008; Stats 2015 ch 405 § 5 (AB 684), effective January 1, 2016; Stats 2016 ch 489 § 14 (SB 1478), effective January 1, 2017.

§ 2551. Applications and fees

Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration. Application for that registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a corporation, and shall contain the name under which he or she, they or it proposes to do business and the business address. Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

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Added Stats 1939 ch 955 § 1. Amended Stats 1941 ch 521 § 1; Stats 1957 ch 1531 § 1; Stats 1961 ch 1280 § 2, operative October 1, 1961; Stats 1968 ch 493 § 1; Stats 1990 ch 1190 § 2 (AB 3627).

§ 2552. Contents and verification of applications

Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied.

The applicant shall furnish such additional information or proof, oral or written, which the board may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

The board shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified or registered mail. Within 30 days of the applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified or registered mail if the board requires additional documents or information.

This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 4, operative January 1, 1988. Amended Stats 2016 ch 489 § 15 (SB 1478), effective January 1, 2017.

§ 2553. Registration of applicants; Display of certificates

If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing optician. A separate certificate of registration shall be required for each address where the business is to be conducted.

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560).

Each certificate shall be at all times displayed in a conspicuous place at the certified place of business. The certificate shall not be transferable, but on application to the board there may be registered a change of address of the certificate.

Added Stats 1986 ch 773 § 6, operative January 1, 1988. Amended Stats 2016 ch 489 § 16 (SB 1478), effective January 1, 2017.

§ 2553.1. Sale or transfer of ownership of business; Requirements

(a) If a registered dispensing optician sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:

(1) The registered dispensing optician selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days after the change of ownership is completed. This registered dispensing optician shall be responsible for complying with all laws relating to the optical dispensing business until the notice described in paragraph (2) is received by the board.

(2) The registered dispensing optician assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. This notice shall be filed with the board no later than 10 calendar days after the change of ownership is completed.

(b) This section does not apply to a change of location of business by a registered dispensing optician.

Added Stats 2011 ch 389 § 1 (SB 824), effective January 1, 2012.

§ 2553.5. Locations for fitting and adjusting of spectacle lenses and frames; Disclosure of registrant's regular business address

(a) A registered dispensing optician may fit and adjust spectacle lenses and frames or take facial measurements in any of the following locations:

(1) A health facility as defined in Section 1250 of the Health and Safety Code for a person admitted to that facility or an employee of that facility.

(2) A business location as defined in subdivision (f) for an employee or independent contractor of the person operating the business at that location.

(3) Any certified place of business pursuant to Section 2553.

(b) A registered dispensing optician who fits and adjusts spectacle lenses at a health facility or business location shall provide to the patient written information disclosing the registrant's

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regular business address, certificate of registration number, phone number, and the name and phone number of the person designated by the licensee to receive complaints and inquiries, as specified in Section 2554.

(e) Nothing in this section shall be deemed to permit a registered dispensing optician or registered contact lens dispenser to fit or adjust contact lenses at a health facility or at a business location, as defined in subdivision (f).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, as defined in subdivision (f), only if he or she is in personal attendance at a certified place of business pursuant to Section 2553, at least 40 percent of his or her regular working hours each week.

(e) A registered spectacle lens dispenser who fits and adjusts spectacle lenses at a health facility or at a business location, as defined in subdivision (f), other than on a temporary basis, shall maintain an emergency patient response system. This system shall consist of a telephone answering machine or service or a telephone paging device and the registered spectacle lens dispenser shall respond to patient inquiries received through the emergency system within 24 hours excluding weekends and holidays.

(f) "Business location" means the place at which any business employs more than 25 persons at any single business address, but shall not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a certified place of business as specified in Section 2553.

(g) This section shall not affect the requirements regarding fitting and adjusting as set forth in Sections 2559.1 and 2560.

Added Stats 1990 ch 1190 § 3 (AB 3627). Amended Stats 1993 ch 240 § 1 (SB 136).

§ 2553.6. Effect of intermingling proprietary interests

The board shall deny any application for registration under this ~~chapter~~ article if any person licensed under Chapter 5 (commencing with Section 2000), for whom the applicant, in accordance with Section 2550, proposes to fill any prescription, has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest in or with the applicant.

The board may, in accordance with Section 2555, suspend, revoke, or refuse to renew the certificate of any individual or firm under this ~~chapter~~ article, if such individual or firm, after the effective date of this section, fills, or has filled, while holding a certificate issued pursuant to this ~~chapter~~ article, any prescription issued by any person licensed under Chapter 5 (commencing with Section 2000) who has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest, in or with such individual or firm.

Such penalties shall be in addition to, and not to the exclusion of, any other remedies or penalties provided by law.

"Proprietary interest," for the purposes of this section, means any membership, coownership, stock ownership, legal or beneficial interest, any other proprietary interest, or profit-sharing arrangement, designated or arranged or held, directly or indirectly in any form, in or with any individual or firm applying for registration or registered under this chapter, except stock ownership in a corporation which is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through such stock exchange.

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This section shall apply only to a dispensing optician required to be registered pursuant to ~~Chapter 5.5~~ [Article 10](#) (commencing with Section [2550](#)) and shall not be construed to modify Section [2557](#), or to affect the fitting of prescription lenses by an assistant pursuant to Section [2544](#).

Added Stats 1968 ch 1118 § 1. Amended Stats 2010 ch 604 § 2 (AB 2683), effective January 1, 2011.

AB-1708

SECTION 1.

Section 2553.7 is added to the Business and Professions Code, to read: 2553.7.

Registrations of dispensing opticians, spectacle lens dispensers, and contact lens dispensers shall expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed.

§ 2554. Display of consumer information

Each registrant shall conspicuously and prominently display at each registered location the following consumer information:

“Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:

Spectacle prescriptions: Release upon completion of exam.

Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process.

Patients may take their prescription to any eye doctor or registered dispensing optician to be filled.

Optometrists and registered dispensing opticians are regulated by the State Board of Optometry. The State Board of Optometry receives and investigates all consumer complaints involving the practice of optometry and registered dispensing opticians. Complaints involving a California-licensed optometrist or a registered dispensing optician should be directed to:

California State Board of Optometry

Department of Consumer Affairs

2450 Del Paso Road, Suite 105

Sacramento, CA 95834

Phone: 1-866-585-2666 or (916) 575-7170

Email: optometry@dca.ca.gov

Internet Web site: www.optometry.ca.gov”

Added Stats 1986 ch 773 § 8, operative January 1, 1988. Amended Stats 2015 ch 405 § 6 (AB 684), effective January 1, 2016; Stats 2016 ch 86 § 3 (SB 1171), effective January 1, 2017, Stats 2016 ch 489 § 17 (SB 1478), effective January 1, 2017 (ch 489 prevails).

§ 2555. Suspension and revocation of certificates

Certificates issued ~~hereunder~~ [under this article](#) may in the discretion of the board be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this ~~chapter~~ [article](#), Chapter 5.4 (commencing with Section 2540) or any regulation

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adopted under this ~~chapter~~ article or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

Added Stats 1939 ch 955 § 1. Amended Stats 1945 ch 896 § 3; Stats 1978 ch 1161 § 157; Stats 1982 ch 418 § 6; Stats 1989 ch 433 § 1; Stats 2016 ch 489 § 18 (SB 1478), effective January 1, 2017.

§ 2555.1. Disciplinary action upon conviction of charge related to qualifications, functions, and duties of dispensing optician

In the discretion of the board, a certificate issued ~~hereunder~~ under this article may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

The proceeding under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

This section shall become operative on January 1, 1988.

Added Stats 1986 ch 773 § 10. Amended Stats 1993 ch 1267 § 42 (SB 916); Stats 2016 ch 489 § 19 (SB 1478), effective January 1, 2017.

§ 2556. Unlawful practices; Administration of fines and citations

(a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon, to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, “furnish” does not mean to enter into a landlord-tenant relationship of any kind.

(b) Notwithstanding Section 125.9, the board may, by regulation, impose and issue administrative fines and citations for a violation of this section or Section 655, which may be assessed in addition to any other applicable fines, citations, or administrative or criminal actions.

Commented [HM25]: These are narrower grounds for discipline than that for optometrist (see, BPC section 3110) and different than that for nonresident contacts lens dispensers (see, BPC section 2546.7) and for SLD/CLD (see, BPC sections 2559.3 and 2563)

Added Stats 1939 ch 955 § 1. Amended Stats 1979 ch 653 § 9; Stats 2015 ch 405 § 7 (AB 684), effective January 1, 2016.

§ 2556.1. Report of business relationship to State Board of Optometry; Inspection

All licensed optometrists and registered dispensing opticians who are in a colocated setting shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is colocated with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

Added Stats 2015 ch 405 § 8 (AB 684), effective January 1, 2016. Amended Stats 2016 ch 31 § 2 (SB 836), effective June 27, 2016, Stats 2016 ch 86 § 4 (SB 1171), effective January 1, 2017 (ch 31 prevails; ch 86 not effective).

§ 2556.2. Date registered dispensing optician subject to action for engaging in prohibited conduct; Compliance milestones for registered dispensing optician or optical company that owns health plan; Reports; Issuance of citation for abatement or administrative fine

(a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this ~~chapter~~ article is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to ~~Chapter 7 (commencing with Section 3000)~~ this chapter before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any registered dispensing optician or optical company that owns a health plan that employs optometrists, subject to this section, shall comply with the following milestones:

(1) By January 1, 2017, 15 percent of its locations shall no longer employ an optometrist.

(2) By August 1, 2017, 45 percent of its locations shall no longer employ an optometrist.

(3) By January 1, 2019, 100 percent of its locations shall no longer employ an optometrist.

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(g) Any registered dispensing optician or optical company that owns a health plan that employs optometrists shall report to the State Board of Optometry in writing as to whether it has met each of the milestones in subdivision (f) within 30 days of each milestone. The State Board of Optometry shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) (1) Notwithstanding any other law and in addition to any action available to the State Board of Optometry, the State Board of Optometry may issue a citation containing an order of abatement, an order to pay an administrative fine, or both, to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars (\$50,000). In assessing the amount of the fine, the board shall give due consideration to all of the following:

- (A) The gravity of the violation.
- (B) The good faith of the cited person or entity.
- (C) The history of previous violations of the same or similar nature.
- (D) Evidence that the violation was or was not willful.
- (E) The extent to which the cited person or entity has cooperated with the board's

investigation.

(F) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.

(G) Any other factors as justice may require.

(2) A citation or fine assessment issued pursuant to a citation shall inform the cited person or entity that if a hearing is desired to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The board shall adopt regulations to implement a system for the issuance of citations, administrative fines, and orders of abatement authorized by this section. The regulations shall include provisions for both of the following:

(A) The issuance of a citation without an administrative fine.

(B) The opportunity for a cited person or entity to have an informal conference with the executive officer of the board in addition to the hearing described in paragraph (2).

(4) The failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(5) Notwithstanding any other law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(i) Administrative fines collected pursuant to this section shall be deposited in the Dispensing Opticians Fund. It is the intent of the Legislature that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

Added Stats 2015 ch 405 § 9 (AB 684), effective January 1, 2016. Amended Stats 2016 ch 31 § 3 (SB 836), effective June 27, 2016.

§ 2556.5. Use of “dispensing optician”

Any person who holds himself out as a “dispensing optician” or “registered dispensing optician” or who uses any other term or letters indicating or implying that he is registered and holds a certificate under the terms of this law without having at the time of so doing a valid, unrevoked certificate, as provided in this ~~chapter~~ article, is guilty of a misdemeanor.

Added Stats 1953 ch 1144 § 1.

§ 2557. Exempt practitioners; Exempt sales

This ~~chapter~~ article shall not affect any person licensed as an optometrist under ~~Chapter 7 of Division II of this code~~ this chapter, or any physician and surgeon licensed under Chapter 5 of Division II of this code. Such exemption shall not apply to any optometrist or physician and surgeon exclusively engaged in the business of filling prescriptions for physicians and surgeons. This ~~chapter~~ article does not prohibit the sale of goggles, sun glasses, colored glasses, or occupational protective eye devices if they do not have refractive values nor do the provisions of this ~~chapter~~ article prohibit the sale of complete ready-to-wear eyeglasses as merchandise.

Added Stats 1939 ch 955 § 1.

§ 2558. Punishment for misdemeanor violations; Rule-making authority

Notwithstanding and other provision of law, ~~A~~ any person who violates any of the provisions of this ~~chapter~~ article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment.

~~The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter.~~

Added Stats 1939 ch 955 § 1. Amended Stats 1957 ch 2084 § 3; Stats 1978 ch 1161 § 159; Stats 1983 ch 1092 § 8, effective September 27, 1983, operative January 1, 1984; Stats 1989 ch 886 § 44; Stats 1993 ch 1267 § 43 (SB 916); Stats 2016 ch 489 § 20 (SB 1478), effective January 1, 2017.

§ 2559. Injunctions

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this ~~chapter~~ article, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

Commented [HM26]: BPC section 3120 is inconsistent; it says not less than \$100 nor more than \$1,500.

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Commented [HM27]: This “rule-making authority” language has been moved to section 3021 as the new combined rulemaking authority for all of Chapter 7; all other sections have been deleted (i.e., 2558, 3025, 2546.3, 3021, and 3167).

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Commented [HM28]: Similar to BPC section 3094 but includes violation of Chapter 5.4 (Prescription Lenses).

Added Stats 1971 ch 921 § 1. Amended Stats 1978 ch 1161 § 160; Stats 1982 ch 517 § 8; Stats 1989 ch 886 § 45; Stats 1993 ch 1267 § 44 (SB 916); Stats 2016 ch 489 § 21 (SB 1478), effective January 1, 2017.

Article ~~1.5~~10.2
Spectacle Lens Dispensing

§ 2559.1. Right to practice

§ 2559.2. Applications; Registration of applicants; Display of certificate

§ 2559.3. Suspension and revocation of certificates

§ 2559.4. Application of article

§ 2559.5. Operative date

§ 2559.6. Unprofessional conduct

~~[Added Stats 1986 ch 773 § 12, operative January 1, 1988.]~~

§ 2559.1. Right to practice

On and after January 1, 1988, no individual may fit and adjust spectacle lenses unless the registration requirement of Section 2550 is complied with, and unless (1) the individual is a duly registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered spectacle lens dispenser whose certificate of registration is then conspicuously and prominently displayed on the premises. A supervising registered dispenser shall be on the registered premises when an unregistered technician fits and adjusts spectacle lenses, allowing for usual and customary absences including illness and vacation.

Added Stats 1986 ch 773 § 12, operative January 1, 1988.

§ 2559.2. Applications; Registration of applicants; Display of certificate

(a) An individual shall apply for registration as a registered spectacle lens dispenser on forms prescribed by the board. The board shall register an individual as a registered spectacle lens dispenser upon satisfactory proof that the individual has passed the registry examination of the American Board of Opticianry or any successor agency to that board. In the event the board should determine, after hearing, that the registry examination is not appropriate to determine entry level competence as a spectacle lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses within the last five years then the board may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination prescribed or administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract for administration of an examination.

(b) The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(c) The board shall issue a certificate to each qualified individual stating that the individual is a registered spectacle lens dispenser.

(d) Any individual who had been approved as a manager of dispensing operations of a registered dispensing optician under the provisions of Section 2552 ~~of former Chapter 5.5~~ as it existed before January 1, 1988, and who had not been subject to any disciplinary action under the provisions of Section 2555.2 ~~of former Chapter 5.5~~ shall be exempt from the examination requirement set forth in this section and shall be issued a certificate as a registered spectacle lens

dispenser, provided an application for that certificate is filed with the board on or before December 31, 1989.

(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at any place of business holding a certificate of registration under Section 2553 provided that the certificate of the registered spectacle lens dispenser is displayed in a conspicuous place at the place of business where he or she is fitting and adjusting.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 1987 ch 525 § 1, effective September 11, 1987; Stats 1994 ch 26 § 43 (AB 1807), effective March 30, 1994; Stats 2016 ch 489 § 22 (SB 1478), effective January 1, 2017.

§ 2559.3. Suspension and revocation of certificates

A certificate issued to a registered spectacle lens dispenser may, in the discretion of the board, be suspended or revoked for violating or attempting to violate any provision of this ~~chapter~~ [article](#) or any regulation adopted under this [article or former eChapter 5.5](#), or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 2016 ch 489 § 23 (SB 1478), effective January 1, 2017.

§ 2559.4. Application of article

This article shall not apply to an assistant fitting spectacle lenses pursuant to Section 2544 if the assistant is acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 2010 ch 604 § 3 (AB 2683), effective January 1, 2011.

§ 2559.5. Operative date

This article shall become operative on January 1, 1988. However, the board may, prior to that date, accept and process applications, including the collection of fees, and perform other functions necessary to implement this article.

Added Stats 1986 ch 773 § 12, operative January 1, 1988. Amended Stats 1987 ch 525 § 2, effective September 11, 1987; Stats 2016 ch 489 § 24 (SB 1478), effective January 1, 2017.

§ 2559.6. Unprofessional conduct

No spectacle lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be

dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (e) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.

Added Stats 1998 ch 8 § 2 (AB 255).

Article 2

10.5

Contact Lens Dispensing

§ 2560. Registration; Trainees

§ 2561. Qualifications for registration; Denial of registration

§ 2562. Evaluation by prescribing physician

§ 2563. Suspension or revocation of certificate

§ 2564. Assistant fitting contact lenses under supervision of physician or optometrist

§ 2564.5. Handwashing facilities

§ 2564.6. Compliance with § 2541.2

§ 2560. Registration; Trainees

No individual may fit and adjust contact lenses, including plano contact lenses, unless the registration requirement of Section 2550 is complied with and unless (a) the individual is a duly registered contact lens dispenser as provided in Section 2561 or (b) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser trainees.

Added Stats 1982 ch 418 § 8. Amended Stats 1985 ch 1139 § 4; Stats 1994 ch 26 § 44 (AB 1807), effective March 30, 1994.

§ 2561. Qualifications for registration; Denial of registration

An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the board. The board shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the board should ever find after hearing that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter from time to time prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years then the board may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at least twice each year on dates publicly announced at least 90 days before the examination dates.

The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

The board shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser.

A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

Added Stats 1982 ch 418 § 8. Amended Stats 1994 ch 26 § 45 (AB 1807), effective March 30, 1994; Stats 2000 ch 836 § 18 (SB 1554); Stats 2016 ch 489 § 25 (SB 1478), effective January 1, 2017.

§ 2562. Evaluation by prescribing physician

Upon satisfactory completion of the fitting of contact lenses, but in no event more than 60 days after receipt of the prescription, a registered contact lens dispenser shall direct the person named in the prescription to return to the prescribing physician and surgeon or optometrist for an evaluation.

Added Stats 1982 ch 418 § 8.

§ 2563. Suspension or revocation of certificate

A certificate issued to a registered contact lens dispenser may in the discretion of the board be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section **2555.1**.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

Added Stats 1982 ch 418 § 8. Amended Stats 2016 ch 489 § 26 (SB 1478), effective January 1, 2017.

§ 2564. Assistant fitting contact lenses under supervision of physician or optometrist

The provisions of this article shall not apply to an assistant fitting contact lenses while acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting contact lenses for his or her patients under Section 2544.

Added Stats 1982 ch 418 § 8. Amended Stats 2010 ch 604 § 4 (AB 2683), effective January 1, 2011.

§ 2564.5. Handwashing facilities

A registered dispensing optician fitting contact lenses shall maintain accessible handwashing facilities on the premises and those facilities shall be used before each fitting of contact lenses.

Added Stats 1982 ch 418 § 8.

§ 2564.6. Compliance with § 2541.2

A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

Added Stats 2002 ch 814 § 7 (AB 2020).

Article ~~3~~10.7
Fiscal Provisions

- § 2565. Fees for registration of dispensing opticians
- § 2566. Fees for certification of contact lens dispensers
- § 2566.1. Fees for certification of spectacle lens dispensers
- § 2567. Provisions applicable to issuance, expiration and renewal of certificates; Disposition of fees
- § 2568. Monthly revenue reports; Transfer of funds

§ 2565. Fees for registration of dispensing opticians

The amount of fees prescribed in connection with the registration of dispensing opticians shall be as set forth in this section.

- (a) The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed certificate shall be twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

Added Stats 2016 ch 799 § 7 (SB 1039), effective January 1, 2017.

§ 2566. Fees for certification of contact lens dispensers

The amount of fees prescribed in connection with certificates for contact lens dispensers is as follows:

- (a) The application fee for a registered contact lens dispenser shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The biennial fee for the renewal of certificates shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The division may by regulation provide for a refund of a portion of the application fee to applicants who do not meet the requirements for registration.

(f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

(g) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).

Added Stats 2016 ch 799 § 9 (SB 1039), effective January 1, 2017.

§ 2566.1. Fees for certification of spectacle lens dispensers

The amount of fees prescribed in connection with certificates for spectacle lens dispensers shall be as set forth in this section:

(a) The application for registration fee shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).

(b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).

(c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).

(d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).

(e) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).

(f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

Added Stats 2016 ch 799 § 11 (SB 1039), effective January 1, 2017.

§ 2567. Provisions applicable to issuance, expiration and renewal of certificates; Disposition of fees

(a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

Added Stats 1982 ch 418 § 9. Amended Stats 1989 ch 886 § 46; Stats 2015 ch 405 § 10 (AB 684), effective January 1, 2016.

§ 2568. Monthly revenue reports; Transfer of funds

The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this ~~chapter~~ [the registered dispensing opticians program](#), and shall pay the entire amount thereof to the Treasurer for deposit in the Dispensing Opticians Fund, which fund is created to carry out the provisions of [law related to the registered dispensing opticians program](#) ~~this chapter~~.

Added Stats 1982 ch 418 § 9. Amended Stats 1989 ch 886 § 47; Stats 2005 ch 74 § 6 (AB 139), effective July 19, 2005.

Article 410.9
Review

§ 2569. Review of powers and duties of board

§ 2569. Review of powers and duties of board

Notwithstanding any other law, the powers and duties of the board, as set forth in this chapter, related to the registered dispensing opticians program, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as ~~if this chapter~~ the program were scheduled to be repealed as of January 1, 2018.

Added Stats 1994 ch 908 § 12 (SB 2036). Amended Stats 1995 ch 599 § 1 (AB 778); Stats 1998 ch 736 § 24 (SB 1981); Stats 2010 ch 695 § 6 (SB 294), effective January 1, 2011; Stats 2013 ch 515 § 18 (SB 304), effective January 1, 2014.