



OPTICIAN PROGRAM

DISCIPLINARY GUIDELINES

&

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

(DG 1, 03-2019)

“Protection of the Public Shall be the Highest Priority”
Business and Professions Code, §3010.1

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TABLE OF CONTENTS

<u>INTRODUCTION</u>	<u>3</u>
<u>PUBLIC RECORD</u>	<u>Error! Bookmark not defined.</u>
<u>COST RECOVERY</u>	<u>Error! Bookmark not defined.</u>
<u>PROBATION MONITORING PURPOSE</u>	<u>Error! Bookmark not defined.</u>
<u>CITATIONS</u>	<u>Error! Bookmark not defined.</u>
<u>STIPULATED SETTLEMENTS</u>	<u>Error! Bookmark not defined.</u>
<u>DISCIPLINARY GUIDELINES</u>	<u>ERROR! BOOKMARK NOT DEFINED.</u>
<u>EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE</u>	<u>5</u>
<u>DISCIPLINARY GUIDELINES SUMMARY FOR USE BY</u>	<u>Error! Bookmark not defined.</u>
<u>ADMINISTRATIVE LAW JUDGES</u>	<u>Error! Bookmark not defined.</u>
<u>UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE</u>	<u>ERROR! BOOKMARK NOT DEFINED.</u>
<u>UNIFORM STANDARDS FOR SUBSTANCE-ABUSING REGISTRANTS...</u>	<u>Error! Bookmark not defined.</u>
<u>1. CLINICAL DIAGNOSTIC EVALUATION</u>	<u>Error! Bookmark not defined.</u>
<u>2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION</u>	<u>Error! Bookmark not defined.</u>
<u>3. BOARD COMMUNICATION WITH PROBATIONER’S EMPLOYER.....</u>	<u>Error! Bookmark not defined.</u>
<u>4. DRUG TESTING STANDARDS.....</u>	<u>Error! Bookmark not defined.</u>
<u>5. PARTICIPATION IN GROUP SUPPORT MEETINGS</u>	<u>Error! Bookmark not defined.</u>
<u>6. DETERMINING WHAT TREATMENT IS NECESSARY</u>	<u>Error! Bookmark not defined.</u>
<u>7. WORKSITE MONITOR REQUIREMENTS.....</u>	<u>Error! Bookmark not defined.</u>
<u>8. PROCEDURE FOR POSITIVE TESTING</u>	<u>Error! Bookmark not defined.</u>
<u>9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES</u>	<u>Error! Bookmark not defined.</u>
<u>11. PETITION FOR RETURN TO PRACTICE</u>	<u>Error! Bookmark not defined.</u>
<u>12. PETITION FOR REINSTATEMENT</u>	<u>Error! Bookmark not defined.</u>
<u>PROBATIONARY TERMS AND CONDITIONS.....</u>	<u>6</u>
<u>MODEL DISCIPLINARY ORDERS.....</u>	<u>6</u>
<u>MODEL PROBATIONARY ORDERS</u>	<u>6</u>
<u>STANDARD TERMS AND CONDITION.....</u>	<u>8</u>
<u>STANDARD ALCOHOL/DRUG CONDITIONS.....</u>	<u>Error! Bookmark not defined.</u>
<u>OPTIONAL CONDITIONS</u>	<u>12</u>
<u>RECOMMENDED DISCIPLINE BASED ON VIOLATION.....</u>	<u>21</u>

INTRODUCTION

The mission of the California State Board of Optometry (Board) is to protect the health and safety of California consumer through licensing, registration, education, and regulation of the practices of optometry and opticianry. The Board's Optician Program registers and regulates Spectacle Lens Dispensers (SLDs), Contact Lens Dispensers (CLDs), Registered Dispensing Opticians (RDOs), and Non-resident Contact Lens Sellers (NCLS).

In keeping with its mandate to protect the consumer of optometric/optical services from unsafe, incompetent and/or negligent optometrists and opticians, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Business and Professions Code.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge (ALJ) clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the Respondent for any reason is not capable of safe practice, the Board favors outright revocation of the registration. If, however, the Respondent has demonstrated a capacity to practice safely, a stayed revocation order with probation is recommended.

Suspension of a registration may also be appropriate where the public may be better protected if the practice of the optician is suspended in order to correct deficiencies in skills, education, or personal rehabilitation.

REGULATORY AUTHORITY

These guidelines are incorporated by reference in § 1399.273 of Division 13.5 of Title 16 of the California Code of Regulations, as follows:

§ 1399.273. Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Registrants.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the California State Board of Optometry (Board) shall consider the “Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (DG 1 03/2019),” which is hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; or evidentiary problems.

(b) Notwithstanding subsection (a), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.) or after stipulation of the parties supported by the Attorney General Office’s reasons for recommending the stipulation, the Board finds that the evidence establishes that an individual is a substance-abusing registrant for purposes of section 315 of the Code, then in addition to any and all other relevant terms and conditions contained in the disciplinary guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance-Abusing Licensees shall apply, without deviation, and be used in any probationary order of the Board affecting that registrant.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 2546.3, 2558, and 315, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 2555, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.

FACTORS TO BE CONSIDERED

In determining whether denial, revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and gravity of the act(s), offenses, or crime(s) under consideration.
2. The nature and duties of the profession in which the applicant seeks registration or in which the registrant is registered.
3. Actual or potential harm to the public.
4. Actual or potential harm to any patient.
5. Prior disciplinary record.
6. Number and/or variety of current violations.
7. Mitigation evidence.
8. Whether there has been a showing of rehabilitation, if the applicant or registrant completed the criminal sentence at issue without a violation of parole or probation.
9. Whether there has been a showing of rehabilitation when applying the Board's rehabilitation criteria.
10. Overall criminal record.
11. The number of years elapsed since the date of the offense(s) occurred.
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

INTRODUCTORY LANGUAGE **STANDARD PROBATION CONDITIONS**

The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 8, Cost Recovery, does not apply. For registrants, all standard probation conditions apply.

PROBATIONARY TERMS AND CONDITIONS

MODEL DISCIPLINARY ORDERS

Revocation-Single Cause

Registration No. _____ issued to Respondent _____ is revoked. Cost Recovery in the amount of _____ is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

Revocation - Multiple Causes

Registration No. _____ issued to Respondent _____ is revoked pursuant to Determination of Issues _____ separately and for all of them. Cost Recovery [if any] in the amount of _____ is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

Suspension - Single Cause

Registration No. _____ issued to Respondent _____ is suspended for a period of _____.

Suspension - Multiple Causes (run concurrently)

Registration No. _____ issued to Respondent _____ is suspended pursuant to Determination of Issues _____, separately and for all of them. All suspensions shall run concurrently.

Suspension - Multiple Causes (run consecutively)

Registration No. _____ issued to Respondent _____ is suspended for _____ pursuant to Determination of Issues _____. These suspensions shall run consecutively, for a total period of _____.

Standard Stay Order

However [revocation/suspension] is stayed and Respondent is placed on probation for _____ years upon the following terms and conditions:

Cost Recovery for Revocations and Surrenders

If and when respondent's registration is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the registration.

MODEL PROBATIONARY ORDERS

The following introductory language is to be included in decisions that place the Respondent's registration on probation.

IT IS HEREBY ORDERED that Registration No. _____ issued to Respondent is revoked. However, the revocation is stayed and Respondent's registration is placed on probation for _____ years on the following conditions.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for applicants, and for petitioners for reinstatement who are issued a registration that is placed on probation.

Applicants who are placed on probation:

The application of Respondent _____ for registration is hereby granted. Upon successful completion of all registration requirements including payment of all fees and evaluation of the application, a registration shall be issued to Respondent. Said registration shall immediately be revoked, the order of revocation stayed and Respondent's registration placed on probation for a period of _____ years on the following conditions:

Reinstatement of registration with conditions of probation:

The application of Respondent _____ for reinstatement of registration is hereby granted. A registration shall be issued to Respondent. Said registration shall immediately be revoked, the order of revocation stayed and Respondent's registration placed on probation for a period of _____ years on the following conditions:

NOTE: If cost recovery was ordered in the revocation or surrender of a registration and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

STANDARD TERMS AND CONDITIONS

A probationary term is generally issued for a period between three (3) and five (5) years, dependent upon whether any aggravating or mitigating factors exist. Standard conditions are imposed on each and every probationer regardless of cause for discipline. For applicants, Condition 8, Cost Recovery, does not apply.

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as a Registered Dispensing Optician, Spectacle Lens Dispenser, Contact Lens Dispenser, or Nonresident Contact Lens Seller
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Valid Registration Status
10. Tolling for Out-Of-State Residence or Practice
11. Registration Surrender
12. Violation of Probation
13. Completion of Probation
14. Sale or Closure of a Dispensary Location

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of opticianry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition

to revoke probation against Respondent's [Registered Dispensing Optician/Spectacle Lens Dispenser/Contact Lens Dispenser/Nonresident Contact Lens Seller registrations]. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due every quarter for each year of probation throughout the entire length of probation.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Registered Dispensing Optician/Spectacle Lens Dispenser/Contact Lens Dispenser/Nonresident Contact Lens Seller registrations].

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. The Board or its designee may consider financial hardship in setting a repayment schedule.

In addition to any other disciplinary action taken by the Board, an unrestricted registration will not be issued at the end of the probationary period and the registration will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS A [REGISTERED DISPENSING OPTICIAN/SPECTACLE LENS DISPENSER/CONTACT LENS DISPENSER/NONRESIDENT CONTACT LENS SELLER]

Respondent shall function as [a registered dispensing optician/spectacle lens dispenser/contact lens dispenser/nonresident contact lens seller] for a minimum of 60 hours per month for 6 consecutive months.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the Respondent authorizes the Board and the employers and supervisors to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation or statement of issues in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however, the Respondent must also provide his/her physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of any probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

9. VALID REGISTRATION STATUS

Respondent shall maintain a current, active and valid registration for the length of the probation period. Failure to pay all fees and meet registration requirements prior to his/her registration expiration date shall constitute a violation of probation.

10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as A [registered dispensing optician/spectacle lens dispenser/contact lens dispenser registration/nonresident contact lens seller] is/was provided.

Respondent's [registration shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's registration shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

11. REGISTRATION SURRENDER

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her registration to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered registration and wall certificate, Respondent will no longer be

subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's registration shall be considered a Disciplinary Action and shall become a part of Respondent's registration history with the Board.

12. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

13. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's registration shall be fully restored.

14. SALE OR CLOSURE OF A DISPENSARY LOCATION

If Respondent sells or closes his or her dispensary location after the imposition of administrative discipline, Respondent shall ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the dispensary location. The provisions of this condition in no way authorize the practice of opticianry by the Respondent during any period of registration suspension.

OPTIONAL PROBATION CONDITIONS

The conditions imposed are dependent upon the violation(s) committed.

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (RDOs Only)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (RDOs Only)
29. Lens Prescriptions – Maintain Records (RDOs Only)
30. Restricted Practice
31. Restrictions as to Advertisement
32. Take and Pass ABO and/or NCLE Exams
33. Continuing Education

15. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free services on a regular basis to a community or charitable facility or agency, amounting to a minimum of _____ (Ex: 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

16. PARTICIPATE IN GROUP SUPPORT MEETING

Respondent shall attend at least one (1), 12-step recovery meeting or equivalent during each week of probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation

17. NOTICE TO PATIENTS (RDOS ONLY)

During the period of probation, Respondent shall post a notice in a prominent place in his/her/its dispensary location that is conspicuous and readable to the public. The notice shall state the Respondent's registration is on probation and shall contain the telephone number of the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to his/her/its business. The notice described above shall be approved by the Board within 30 calendar days of the effective date of this decision.

18. ALCOHOL AND DRUG TREATMENT

Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and may be used in administrative discipline.

19. WORKSITE MONITOR

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities, including if applicable, as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2014) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

20. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of a registered contact/spectacle lens dispenser holding a current and valid un-restricted registration. "Direct supervision" means assigned to a registered contact/spectacle lens dispenser who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a registered contact/spectacle lens dispenser. The appropriate level of supervision must be approved by the Board prior to engaging in practice.

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

21. SUSPENSION

As part of probation, Respondent shall be suspended from the practice of optometry for a period of _____ (Ex: 90 calendar days) beginning the effective date of this decision. If not employed as an optician/dispenser or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

22. EMPLOYMENT LIMITATIONS

Respondent shall not work in any health care setting as a supervisor of opticians/dispensers. The Board may additionally restrict Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of opticianry or as an instructor in a Board-approved continuing education program.

Respondent shall work only in a regularly assigned, identified and predetermined worksite(s) and shall not work in a "float" capacity.

23. PSYCHOTHERAPY OR COUNSELING PROGRAM

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist, or counselor of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until such time as the Board releases him/her from this requirement and only upon the recommendation of the treating psychotherapist or counselor.

The treating psychotherapist or counselor must submit quarterly reports. Reports are due each year of probation and the entire length of probation from the treating psychotherapist or counselor as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her treating psychotherapist or counselor submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo psychiatric or psychological evaluations by a Board- approved psychiatrist or psychologist.

NOTE: This condition is for those cases where the evidence demonstrates that the Respondent has had impairment (mental illness, alcohol abuse and drug abuse) related to the violations but is not at present a danger to patients.

24. MENTAL HEALTH EVALUATION

Respondent shall, within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, to submit to a mental health evaluation, including psychological testing as appropriate, to determine his/her capability to perform the duties of a dispenser/optician. The evaluation will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. An immediate suspension may be imposed by the Board until further notification if the results from the mental health evaluation prove the Respondent is unsafe to practice.

If Respondent fails to have the above evaluation submitted to the Board within the 30-calendar day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the evaluation, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluator within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a licensed psychiatrist, psychologist or other licensed mental health practitioner of Respondent's choice. Upon approval of the treating psychiatrist, psychologist or other licensed health practitioner, Respondent shall within 15 calendar days undergo treatment and shall continue such treatment until further notice from the Board or its designee.

The treating psychiatrist psychologist or other licensed mental health practitioner shall consider the information provided by the Board or its designee or any other information the treating psychiatrist, psychologist or other mental health practitioner may deem pertinent prior to the commencement of treatment. Respondent shall have the psychiatrist, psychologist or other health practitioner submit quarterly reports to the Board or its designee indicating whether or not

the Respondent is capable of practicing optometry safely. The quarterly reports are due each year of probation and the entire length of probation from the psychiatrist, psychologist or other licensed mental health practitioner as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her psychiatrist, psychologist or other licensed mental health practitioner submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment deemed necessary by the Board or its designee.

If, prior to the completion of probation, Respondent is found to be mentally incapable of resuming the practice of opticianry without restrictions, the Board shall retain continuing jurisdiction of Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally capable of resuming practice of opticianry without restrictions. Respondents shall pay the cost of the evaluation(s) and treatment.

(OPTIONAL): Respondent shall not engage in fitting and adjusting lenses or dispensing until notified by the Board of its determination that Respondent is mentally fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.

25. MEDICAL HEALTH EVALUATION

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's cost, by a Board- appointed physician who shall furnish a medical report to the Board or its designee. Based on the medical evaluation, the Board may require Respondent to undergo medical treatment.

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice submit to the Board for its prior approval the name and qualification of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment, at Respondent's cost, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Quarterly reports are due each year of probation and the entire length of probation from the treating physician as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

(OPTIONAL): Respondent shall not engage in fitting and adjusting lenses or dispensing until notified by the Board of its determination that Respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

26. MEDICAL TREATMENT

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a physician of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the Board. Quarterly status reports are due

each year of probation and the entire length of probation from the treating physician as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo periodic medical evaluations by a Board-approved physician.

27. RESTITUTION

Within 90 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee proof of restitution in the amount of \$_____ paid to _____.

28. AUDIT REQUIRED (RDOS ONLY)

The Board shall require quarterly audits of patient visits, billings, and payments as a condition of probation.

Within 30 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three third party auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billings. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices.

The Board or its designee shall provide the approved auditor with copies of the decision(s) and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the auditor shall sign an affirmation that he or she has reviewed the terms and conditions of the Respondent's disciplinary order, fully understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth by the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a revised auditing plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's patient visits, billings and payments shall be audited by the approved auditor. Respondent shall make all records available for immediate inspection and copying on the premises by the auditor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of an auditor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until an auditor is approved to provide auditing responsibility.

The Board shall be advised of the results of the audit, and may obtain any and all copies of any documents audited or the results of the audit. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from audit completion shall constitute a violation of probation.

Quarterly reports of the audit results are due each year of probation and the entire length of probation from the auditor as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her auditor submits complete and timely reports. Failure to ensure each auditor submits complete and timely reports shall constitute a violation of probation.

If the auditor resigns or is no longer available, Respondent shall, within five (5) days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the names and qualifications of a replacement third party auditor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement auditor within 60 calendar days of the resignation or unavailability of the auditor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

29. LENS PRESCRIPTIONS - MAINTAIN RECORDS (RDOS ONLY)

Respondent shall maintain patient records of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. name and address of the patient;
2. date;
3. price of the services and goods involved in the prescription;
4. visual impairment identified for which the prescription was furnished.

Respondent shall keep these patient records in a separate file, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

30. RESTRICTED PRACTICE

[Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in limited optical procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board.]

31. RESTRICTIONS ON ADVERTISEMENTS

During the entire period of probation, the Respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of optometry to the Board for its prior approval. Such advertisement may be published or disseminated to the public only after written approval by the Board.

32. TAKE AND PASS ABO AND/OR NCLE EXAM

Respondent shall take and pass part(s) _____ of the American Board of Opticianry (ABO) Examination and/or the National Contact Lens Examination (NCLE). Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

33. PROFESSIONAL EDUCATION

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval an educational program or course to be in areas of _____. The education program or course(s) shall consist of a minimum of _____ hours for each area.

Respondent is responsible for all costs associated with completing the professional education requirements. Following completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the Board.

UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance Abusing Healing Arts Licensees (rev. 4/20/11)(SACC). The Board's Uniform Standards not otherwise incorporated into the Standard or Optional Conditions are found in Required Conditions of Probation 34 and 35, and Discretionary Conditions of Probation 36, 37, and 38.

The Uniform Standards apply when dealing with substance-abusing registrants. If, after notice and hearing, the evidence establishes that the registrant is a substance abusing registrant, then Conditions of Probation 34 and 35 shall be imposed without deviation.

Conditions of Probation 36 and 37 shall be considered where the registrant is found to be a substance abuser, and, if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

REQUIRED CONDITIONS OF PROBATION

34. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL

Respondent shall abstain completely from the use or possession of alcohol, any and all other mood-altering drugs or substances, and their associated paraphernalia. Respondent shall identify for the Board, a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as required by the Board or its designee.

Respondent is ultimately responsible for ensuring his/her physician, nurse practitioner or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometric license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut off level shall be reported to each of Respondent's employers.

35. BIOLOGICAL FLUID TESTING

Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at the frequency outlined in Uniform Standards for Substance Abuse #4.

Respondent shall make daily contact to determine if he/she is required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reinstate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's registration.

DISCRETIONARY CONDITIONS OF PROBATION

36. CLINICAL DIAGNOSTIC EVALUATION

Within 30 days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the registrant within the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the registrant has a substance abuse problem, is a threat to himself/herself or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the registrant's rehabilitation and safe practice. If the evaluator determines during the evaluation

process that a registrant is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing at a minimum of 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board.

Respondent shall not return to practice until the Board determines that he/she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what, if any work limitations will be placed on a registrant, the Board will consider the factors set forth in the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2014~~) established by the Substance Abuse Coordination Committee. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a registrant is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in Standard No. 11 of Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2014~~) established by the Substance Abuse Coordination Committee.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

37. PARTICIPATE IN GROUP SUPPORT MEETINGS WITH QUALIFIED FACILITATOR

Respondent shall participate in group support meetings led by a facilitator who meets the qualifications and requirements as set forth in Standard No. 5 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2014~~) established by the Substance Abuse Coordination Committee. . Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

38. WORKSITE MONITOR UNDER UNIFORM STANDARDS

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities as specified in Standard No. 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2014~~) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

RECOMMENDED DISCIPLINE BASED ON VIOLATION

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the California State Board of Optometry and the appropriate range of penalties for each violation. Each discipline listed corresponds with a number under the chapters:

- Probationary Terms and Condition – Standard Terms and Conditions;
- Optional Conditions; and
- Alcohol/Drug Conditions

Examples are given for illustrative purposes, but no attempt is made to list all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation.

Conviction of a Substantially Related Crime (BPC [490](#), [2555.1](#), CCR [1399.270](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (RDOs Only)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (RDOs Only)
29. Lens Prescriptions – Maintain Records (RDOs Only)
31. Restrictions as to Advertisement
32. Take and Pass ABO and/or NCLE Exams
33. Professional Education
34. Abstention From Use of Controlled Substances/Alcohol
35. Biological Fluid Testing
36. Clinical Diagnostic Evaluation
37. Participate in Group Support Meetings with Qualified Facilitator
38. Worksite Monitor Under Uniform Standards

Dishonesty, False Statement of Application (BPC [475](#), [480](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

21. Suspension
33. Professional Education - Ethics

Prohibited Arrangements with Optometrists (BPC [655](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

19. Worksite Monitor

21. Suspension

31. Restrictions on Advertisements

Disseminating False, Fraudulent, Misleading, or Deceptive Information (BPC [651](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

30. Restrictions on Advertisements

If Warranted:

15. Community Service

19. Worksite Monitor

21. Suspension

27. Restitution

Dispensing Lenses Below Industry Standard (BPC [2541.3](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

15. Community Service

19. Worksite Monitor

20. Direct Supervision

21. Suspension

27. Restitution

32. Take and Pass ABO and/or NCLE Exams

33. Professional Education



ISSUE MEMORANDUM

DATE	March 15, 2019
TO	Dispensing Opticians Committee (DOC)
FROM	Marc Johnson, Policy Analyst Mina Hamilton, Legal Counsel (attachment)
SUBJECT	Agenda Item #7 – Discussion and Possible Action Regarding Draft Disciplinary Guidelines

The DOC reviewed a draft entitled “Registered Dispensing Opticians (RDO) Disciplinary Guidelines” at the January 4, 2019 public meeting. At the meeting, Ms. Hamilton provided an overview of changes made to the Disciplinary Guidelines (Guidelines) by the Committee at prior meetings and gave a short history on the Uniform Standards for Substance Abusing Licensees (Standards) which are to be incorporated into the document. Additionally, Patrick Le, from the Department of Consumer Affairs, noted that the several changes may occur to the Standards in the coming months. Staff was directed to continue to revise the document.

The following changes made by the Committee at the January 4, 2019 meeting, or otherwise suggested by Ms. Hamilton, are reflected in the attachment:

- Pages 1 and 4: Since the guidelines apply to all types of registrants within the optician program, and not just “Registered Dispensing Optician” registrations, the title has been changed to “Optician Program Disciplinary Guidelines...”
- Page 2: The Table of Contents, spacing, and any further re-numbering or formatting will be modified in a final draft.
- Page 3: Mr. Kysella asked that an introductory paragraph be added describing the functions of the California State Board of Optometry and the Opticians program. Also, throughout document, the terms “licensee” and “license” have been replaced with “registrant” or “registration” as opticians are “registered”; however, references to “Licensees” remain when referring to the particular document entitled “Uniform Standards for Substance Abusing *Licensees*”.
- Page 4: Per Mr. Kysella’s suggestion, added language to the text of the regulation to address cases where the Board’s finding of a “substance abusing licensee” is by stipulation of the parties, not after a hearing.

- Pages 6-7: Formatting revisions for consistency.
- Pages 6 and 10: On page 6, under the “Model Disciplinary Terms” section, included cost recovery language for use when dealing with revocations and surrenders; on page 10, revised cost recovery language to be used as a standard term of probation (modeled from Board of Registered Nursing guidelines).
- Page 13: Revised proposed text for condition #19 “Worksite Monitor”; request from DOC and Executive Officer was for it to be written in more general terms.
- Page 17: Added number to optional condition “Restricted Practice”, which sets out that respondents shall practice only on a specified population in a specific practice setting. This practice shall be defined in the Decision and respondent will be required to document this practice.
- Page 17: The term “Continuing Education” was renamed “Professional Education.”
- Throughout: The version date of Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (~~April 2011~~) has been struck through to indicate the need to await passage of a new version in 2019 before the approval of these Disciplinary Guidelines.

Staff Comments: As the Guidelines are continuing to be updated and reviewed by the Committee, final approval and recommendation to the full Board is not anticipated until the fall, along with revisions to the Board’s Optometry Guidelines. An additional condition related to drug and alcohol testing, not derived and contained within the Uniform Standards, was also proposed to be added. Staff will research and include in a future version for Committee review. On page 25, it was noted that condition 34, “Biological Fluid Testing” may be changing as part of the updates to the Uniform Standards. Staff will continue to make changes directed by the Committee and will continue to monitor changes made to the Uniform Standards which may be required to be included. In addition, the pending implementation of Assembly Bill 2138 (Chiu) may spawn further changes to the Guidelines.