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**DISPENSING OPTICIAN COMMITTEE  
TELECONFERENCE MEETING AGENDA**

**MEMBERS OF THE COMMITTEE**

Martha "Ruby" Garcia, CLD, SLD, Chair  
William Kysella, Jr, Vice Chair  
Adam Bentley, SLD  
Kanchan Mattoo  
Anna Watts, SLD

**December 13, 2019  
10:00 to 1:00 PM  
(or until completion of business)**

**Teleconference Meeting Locations:**

Department of Consumer Affairs  
Sequoia Room (1<sup>st</sup> Fl Rm109)  
2420 Del Paso Road  
Sacramento, CA 95826

Charter College – Oxnard Campus  
2000 Outlet Center Drive Rm 101  
Oxnard, CA 93036

Van Nuys State Building  
6150 Van Nuys Boulevard Rm 410  
Van Nuys, CA 91401

Milton Marks Conference Center  
Benicia Room  
455 Golden Gate Avenue  
San Francisco, CA 94102

**ORDER OF ITEMS SUBJECT TO CHANGE. ACTION MAY BE TAKEN ON ANY ITEM ON THE AGENDA.**

1. Call to Order/Roll Call
2. Public Comment for Items Not on the Agenda  
*Note: The committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §[11125](#), §[11125.7\(a\)](#)].*
3. Discussion and Possible Approval of Committee Minutes from September 27, 2019
4. Chair's Report
  - A. Update on Developing Optician Education Programs
  - B. 2020 Meeting Schedule
5. Executive Officer's Report
  - A. Optician Licensing Program
  - B. Optician Enforcement Program
  - C. Subject Matter Expert Workshops
6. Update, Discussion and Possible Action on Changes to Dispensing Optician Statutes
  - A. Chapter 5.4, Division 2 (Prescription Lens) of the Business and Professions Code
  - B. Chapter 5.45, Division 2 (Nonresident Contact Lens Sellers) of the Business and Professions Code
  - C. Chapter 5.5, Division 2 (Registered Dispensing Opticians) of the Business and Professions Code

7. Update, Discussion and Possible Action on California Code of Regulations §1399.273 and Optician Disciplinary Guidelines Incorporated by Reference
8. Future Agenda Items
9. Adjournment

*The mission of the [California State Board of Optometry](#) is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry.*

*Meetings of the California State Board of Optometry and its committees are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Committee may take action on any item listed on the agenda unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.*

*NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tien Le – [tien.le@dca.ca.gov](mailto:tien.le@dca.ca.gov) or calling 916-575-7170. Written requests can be mailed to the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*



**Dispensing Optician Committee  
 Friday, September 27, 2019  
 Draft Meeting Minutes**

**Teleconference Meeting Locations:**

Department of Consumer Affairs, HQ2 – Pearl Room 1747 North Market Blvd. Sacramento, CA 95834	Charter College Oxnard Campus 2000 Outlet Center Dr., #101 Oxnard, CA 93036	Van Nuys State Building 6150 Van Nuys Blvd., Rm 410 Van Nuys, CA 91401
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<b>Members Present</b>	<b>Staff Present</b>
Martha Garcia, CLD, SLD, Chair	Shara Murphy, Executive Officer
William Kysella, Jr, Vice Chair	Marc Johnson, Policy Analyst
Kanchan Mattoo	Jessica Swan, Board Liaison
Anna Watts, SLD	Alex Juarez, Enforcement Analyst
	Natalia Leeper, RDO Licensing Coordinator
<b>Members Absent</b>	<b>Guest List</b>
Adam Bentley, SLD	On File

**Link to audio of meeting:**

[https://www.optometry.ca.gov/meetings/20190927\\_doc\\_audio.mp3](https://www.optometry.ca.gov/meetings/20190927_doc_audio.mp3)

**1. Call to Order/Roll Call**

*Audio of Discussion: 00:02 / 02:27:41*

Martha Garcia called the meeting to order at 10:00 a.m. Martha Garcia was present at the Oxnard, CA location; Kanchan Mattoo and William Kysella were present at the Van Nuys, CA location; Anna Watts was present at the Sacramento, CA location. Adam Bentley was absent. 4-1 quorum established.

**2. Public Comment for Items Not on the Agenda**

*Audio of Discussion: 02:12 / 02:27:41*

There was no public comment.

**3. Discussion and Possible Approval of Committee Minutes from June 7, 2019**

*Audio of Discussion: 02:41 / 02:27:41*

No changes were made. There was no public comment.

**Kanchan Mattoo moved to approve the June 7, 2019 Draft Meeting Minutes. Anna Watts seconded. The Committee voted unanimously (4-0-1) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ruby Garcia	X				
Adam Bentley				X	
William Kysella	X				
Kanchan Mattoo	X				
Anna Watts	X				

**4. Executive Officer’s Report**

*Audio of Discussion: 04:12 / 02:27:41*

**A. Status Update on Occupational Analyses**

Mr. Juarez reported that the Contact Lens Dispenser (CLD) Occupational Analysis was completed in July 2019. Staff is hoping to use that analysis to review the Contact Lens Registry Exam, developed by the National Contact Lens Examiners (NCLE). Mr. Juarez then provided an update on the Spectacle Lens Dispenser Analysis. He stated that the analysis is currently ongoing in November 2019; staff hopes to have the analysis completed by Spring of 2020. He also noted the unlicensed assistant OA hopes to begin in the Fall of 2020.

Ms. Murphy explained that the staff is waiting upon the Governor’s Office to develop their budget for FY2020/2021 and hope to receive some indication in late December. When the budget is released the first week of January 2020, staff will know whether we are included in the preliminary budget. Staff will appear at budget hearings of the Legislature to obtain authority to spend reserve funds in FY2020/2021.

Mr. Mattoo asked how much the Dispensing Optician Committee (DOC) has in reserve currently; Ms. Murphy responded that according to the budget office, FY 17/18 has yet been closed. Budgets expect that once 2017 is closed, 2018 and 2019 will close soon afterward. She explained that currently she only has preliminary numbers but hopes to have more solid numbers within the next couple of days. Ms. Murphy stated she will get back to the Committee once 2017 is closed and Budgets can provide more clarity on where the Committee currently stands. Mr. Mattoo asked about the cost of the last two OAs; Ms. Murphy replied that the cost estimate for the unlicensed assistant is approximately \$60,000.

**B. Status Update on Optician Licensing Program**

*Audio of discussion: 09:20 / 02:27:41*

Ms. Leeper presented an update on the optician licensing program. She was pleased to announce that the staff was able to hire a new optician coordinator (Tien Le) to assist with processing applications. With the addition of new staff, the program can keep up with its goals of ensuring that all applicants are contacted within 30 days, and continuing to improve the BreZE system, making it more user-friendly for applicants and licensees. She reported that staff has a new format and new numbers for the fiscal year for applications that have been processed.

Mr. Mattoo asked how the numbers compare to quarter one of last year as opposed to the entire fiscal year; Ms. Murphy reported that the numbers are better than last year, due to having additional staff, which has reduced the processing time and reduced the backlog. Ms. Leeper noted that paper applications have been reduced and applicants can apply online so they may receive their licenses more quickly; licenses can also be printed from the breeze system.

### **C. Enforcement Update**

*Audio of Discussion: 15:31 / 02:27:41*

Mr. Juarez provided an update on enforcement issues. Mr. Mattoo asked what makes a case high priority versus routine priority; Mr. Juarez replied that high priority cases are issues such as unlicensed practice, patient harm, sexual misconduct, and unfit for practice. Routine priority cases would be cases such as criminal convictions, unprofessional conduct, and illegal advertising. Mr. Mattoo commented that the processing time is 250 days upon receipt for high priority cases, and 400 days for regular cases. Mr. Juarez explained that when conviction cases are going through the court process, the cases can take a year or more to settle. The staff has been successful in dramatically decreasing the time it takes to open a case and assign it to an analyst.

Mr. Kysella asked if there exists a distinction between optometrist cases and Registered Dispensing Optician (RDO) cases; Ms. Murphy explained that Mr. Juarez is the only enforcement analyst dedicated to the optician program. Once assigned these cases, Mr. Juarez processes them according to high or routine priority. Mr. Kysella noted that a low priority optician case could potentially become solved before a medium priority optometry case, simply because of staffing and volume. Ms. Murphy replied that the Board's three enforcement analysts carry approximately 150 to 200 cases per analyst.

There was no public comment.

### **5. Update on Registered Dispensing Optician Business Types Permitted by Law**

*Audio of Discussion: 22:44 / 02:27:41*

Ms. Leeper provided an update on the corporation types allowed for Opticianry businesses. She reported that staff had a discussion with the Attorney General's (AG's) Office regarding the fact that limited liability companies cannot hold registrations, licenses, or certificates in the

state of California. There were several exceptions to this rule; however, the optician program was not listed among them. Therefore, staff worked with the Department of Consumer Affairs (DCA) Legal counsel and wrote a letter to all the Board's current licensees, who listed themselves as limited liability companies (LLCs), as well as applicants. They were instructed to dissolve their LLC's and re-register as corporations. Ms. Murphy added that this issue is a holdover from when the Medical Board oversaw this license; as the program came under this Board's jurisdiction, there existed a precedent of allowing LLCs to file. As staff has had the opportunity to better enforce and investigate, staff has realized that there is not the accountability and the ability for consumers to become compensated if there is an issue or violation. Staff found these holdovers from the Medical Board, and realized this Board continued the same process; and so, communicated to the licensee population that California law does not allow that type of corporate organization for professional services. Ms. Leeper reported compliance with this change has been good so far.

Ms. Watts commented that she had to go through this process and feels she can offer some insight as to how to go about it. She stated that this was very confusing in the beginning and that the quickest method for making this change is to submit a conversion form (LLC to Corporation) through the Secretary of State and submit the payment. She recommended using a very good checklist and making sure to cross everything off. Mr. Mattoo asked if it would make sense for staff to create a checklist form to provide to these licensees; Ms. Murphy responded staff would begin work on such a checklist.

There was no public comment.

## **6. Update, Discussion and Possible Action on Occupational Analyses**

*Audio of Discussion: 34:02 / 02:27:41*

This item was previously discussed as part of the executive officer's report and was not taken up.

## **7. Review, Discussion and Possible Action on Potential Changes to Dispensing Optician Statutes: Chapter 5.4 (Prescription Lens) of Division Two of the Business and Professions Code; Chapter 5.45 (Nonresident Contact Lens Sellers) of Division Two of the Business and Profession Code; Chapter 5.5 (Registered Dispensing Opticians) of Division Two of the Business and Profession Code.**

*Audio of Discussion: 34:46 / 02:27:41*

Ms. Garcia noted this agenda item would be a lengthy discussion, so she proposed an additional meeting on December 20th.

Mr. Johnson provided an overview of the agenda item. Staff is proposing to begin the conversation by reviewing the three chapters applicable to the RDO program and begin working through them. Some of the changes involve updating laws to conform with current federal regulations; many of them are to clarify and avoid confusion; others are to improve

efficiency of enforcement processes. He noted that staff did not set out bigger changes such as imposing a new laws and regulations exam; additional registration requirements; fee changes or the possibility of continuing education. These larger issues can be discussed next year if the DOC wishes to do so. He noted that the DOC will want to consider if the proposed changes enhance or improve public protection and are consistent with its mission and values.

Ms. Leeper began with Chapter 5.4, explaining that this is the only chapter that does not specifically discuss a license type and encompasses rules specifically to prescription lenses as it applies to opticians, optometrists, and ophthalmologists. The DOC discussed the following changes to Chapter 5.4:

- § 2541.1(a): Update the section to mirror any possible changes in Federal rules regarding spectacle and contact lens prescriptions. Staff was directed to include the changes.
- § 2541.1(b): Ms. Leeper asked if the expiration date for spectacle lenses be better specified, stating that “not be less than two to four years” may be confusing as it implies the expiration date could be more than four years. Ms. Watts commented that when she worked in a retail optical location, and they had to fill the contact or spectacle lens prescription that every doctor was different depending upon where a patient is seen. Typically, it comes down to the provider. She noted that more systems now have expiration dates automatically built-in, and which print out automatically. Ms. Garcia noted that from experience, most doctors write spectacle prescriptions to expire in one to two years, and one year for contact prescriptions. She has never encountered a doctor writing an expiration for four years. Staff was directed to use “up to four years”.
- § 2541.2(A)(1): Change similar to § 2541(b).
- § 2542: Staff recommends removal of the words “fit, adjust” as dispensing optician businesses do not perform these functions, and sections referring to dispensing optical businesses throughout the statute be updated to include large-scale operations unforeseen during the drafting of the statute. Staff feels an optician business that employs SLDs and CLDs does not perform the fittings and adjustments itself; the employees perform these duties. Therefore, the CLDs and SLDs statutes include fit and adjust. Ms. Murphy clarified that the staff’s intent in the reorganization is to create a general provision that applies to all the opticianry licenses overseen by the Board and create provisions specifically for the businesses. Members agreed.
- § 2545(b)(1): Staff recommends discussion of the dollar amounts to set a new floor and ceiling for violations; since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations. Mr. Kysella asked if there are similar fines for optometrists; Ms. Leeper explained that Chapter 5.4 specifically applies to all prescription lenses; therefore if an optometrist is dispensing lenses, this would apply to him/her as well. Ms. Murphy stated that research indicates there are many optical shops that are not registered RDO’s and the current fees are not viewed as a deterrent.

Mr. Mattoo inquired about the timeframe of violations; Ms. Murphy explained that staff will need to come back to the Committee with statistics of what enforcement has done. Mr. Kysella suggested moving the cap up to \$5,000 which would give the Board more discretion and a larger hammer on more serious violations. Ms. Garcia inquired as to whether the Board would want to consider having a scale for repeat offenders; Ms. Murphy replied that this is certainly another approach to consider.

The DOC discussed Chapter 5.45. Ms. Leeper noted that Chapter 5.5 is a license type; it is under the optician program, but it has its own chapter. Staff is recommending we move the nonresident contact lens chapter to be an article under Chapter 5.5 for the optician program, for clarity. Members agreed. Further, Ms. Leeper announced that for this entire chapter, staff proposes renaming to “Nonresident Ophthalmic Device Dispenser,” or another name, to better identify its purpose and asked should this section include nonresident dispensers who also provide spectacle lenses and not just contact lenses.

Mr. Kysella asked if expanding the text to include contact and spectacle lens would fall under the category of ophthalmic device dispensing; Ms. Leeper replied that it would because ophthalmic device dispensing includes spectacle lenses, contact lenses, and any other device used for assistance with vision that is prescribed by a doctor. Mr. Kysella stated a concern that although he understands that contacts and spectacles fall within that category of ophthalmic devices, he is not entirely certain what that phrase means. He asked if the term means something else; Ms. Murphy stated that staff will research the industry terms.

- § 2546.1: Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act. Members agreed.
- § 2546.4: Staff is proposing to require licensees to list their DBA on the form so consumers can locate their registration easier, which is not currently required. Should the requirements apply to an advertisement as well? Mr. Kysella asked if § 2546.4 only applies to the application; Ms. Leeper clarified that the first part applies to the applicant and the second part applies to any advertising on registrant’s websites. Mr. Mattoo commented that as long as registrants are required to have their dba’s in the Board’s database, the second part is not needed and asked if registrants are currently required to have their registration number included in their advertising. Ms. Leeper replied that this is not currently required but the change would allow a consumer who purchasing contacts from a website to see the registration number in place of a certificate.
- § 2546.5(a): Staff recommends the addition of the word ‘jurisdiction’ so other licensing bodies beyond a state board can be required for background information. Members agreed.
- § 2546.5(c): Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act, and to synchronize the change made to other similar sections. Members agreed.

- § 2546.6(a)(2): Staff recommends the current communication deadline of 2 p.m. of the next business day be changed to mirror updated Federal law or other accepted standards. Ms. Murphy stated there may be a need to discuss a longer time-line for verification and added that there is the balance of portability of the prescription so that consumers can go to opticians (outside of their optometrist) to receive their materials; and there is also the balance of giving the medical profession an ample amount of time to verify that the materials are based on a current prescription. Mr. Kysella recommended that if there is a problem to be solved, that the staff consult with the experts, but otherwise it sounds like the Board is trying to fix a problem that doesn't exist. Mr. Mattoo agreed and believed this was time-frame put in place to keep businesses in line, but the consumers do not even know it exists. He added that if the staff makes a change, his recommendation is to make the time-frame within two business days. Ms. Garcia asserted that the time-frame should be extended to two to three business days to allow time for a response. Staff will perform additional research on the issue.
- § 2549.9: Staff recommends the addition of DCA's newly-adopted fee language template, which sets a specific fee and a fee ceiling amount within the statute. Ms. Leeper noted that this recommendation does not change the fee amounts which is a separate issue. Members agreed.
- § 2546.10: Staff recommends a discussion of the dollar amounts appropriate to set a new floor and ceiling for violations. Since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations. Members agreed.

The DOC reviewed Chapter 5.5. Staff is recommending the reorganization of this chapter to include new articles and further define current ones. Mr. Johnson added that this does not have any practical effects; it is simply a way of organizing the law in a way that is easier to follow and assists with understanding the purpose of each statute under the article type. Members agreed. Throughout the chapter, the word "business" has been added to denote sections that may be appropriate to a registered dispensing optician business itself. Ms. Leeper stated the idea is to prevent confusion and to have a separate general provisions article to apply to all license types. Ms. Leeper also reported that staff is also recommending that the name Registered Dispensing Optician (RDO) business license be changed to Ophthalmic Device Dispensing Business to mirror the nonresidents' name. Members agreed to these changes.

- § 2550: Staff proposes the relocation of part of § 2553 into this section for clarity. Members agreed.
- § 2551: Staff recommends the addition that all 'corporations and firms' be required to operate as professional corporations, as defined by Corporations Code Section 13401. All businesses must adhere to the Corporations Code, but this change will clarify the requirement within the Optician Practice Act. An additional recommendation replacing the word "contain" with "specify" to eliminate any ambiguity about what is needed and

what consumers should expect to see when visiting a business. Finally, the staff proposes a requirement to list business's headquarters address, corporate documents with a list of officers, and a letter of good standing from the California Secretary of State. Ms. Leeper explained that during the application process, the staff requires that these documents be submitted, so staff can verify that they are a business with the Secretary of State's Office. Members agreed to these changes.

- § 2552: Staff recommends a number of changes to this section. The addition of a direct contact name and phone number for Board inquiry; this allows for direct access to a responsible person who is handling the application. Additionally, staff recommends adding a notification requirement of 14 days of any changes to the Board and insertion of the word 'electronic' after the words 'certified or registered' to denote how an application deficiency may be communicated. Electronic mail is not prohibited and is already done by staff. Members agreed to these changes.
- § 2553: Staff recommended a number of changes to this section. Relocation of the first two sentences of this section into § 2550, which better clarify the intent of § 2553. Additionally, the latter part of this section should be relocated under the new Article 3.5 - businesses and specificity that only SLD/CLDs can engage in the business as defined in 2550. Finally, Ms. Leeper reported that the staff recommends adding a requirement that a license with a current expiration date is shown in a conspicuous place. Registrants can display their renewal certificate in a manner similar to what is done by licensed cosmetologists and barbers. Members agreed to these changes.
- § 2553.1: Staff recommends dispensing optician businesses be required to submit a request for cancellation in writing on a form prescribed by the Board. Staff is also recommending the relocation of this section to the new Article 3.5. for businesses. Members agreed.
- § 2553.1(a)(3): Ms. Leeper reported that the staff recommends the addition of a new subsection (3), which states the new owners of the business must apply for a new registration within 10 calendar days. This provides more specificity about requirements for new business owners of an optician business. Members agreed.
- § 2553.5(e): The staff recommends removal of this section, as its provisions appear to be obsolete. Members agreed.
- § 2553.6: Ms. Leeper added that the staff recommends the addition of a requirement that the applicant must disclose to the Board any proprietary interest. Currently, there is no mechanism for the Board to verify this information. Mr. Mattoo requested clarification of "proprietary interest." - what does this mean? Ms. Swan clarified her interpretation of this statute to mean that a licensee could not hold a proprietary interest in another business if that business was not publicly traded on the open market. Ms. Murphy replied that staff will consult Legal Counsel as to the intent of this section.

- § 2554: Staff recommends relocation of this section into § 2553 for better clarity of consumer notice requirements. Members agreed.
- § 2555: Should this section be rewritten to mirror BPC § 3110 (Optometry), listing all actions which constitute unprofessional conduct and be made specifically for each license type? Mr. Kysella stated that he would like to see a strikethrough. Ms. Murphy replied that staff will set the language for opticians and optometrists' side-by-side and put together some recommended language. When this is brought back to the Committee, members will have the opportunity to see Section 3110 next to what would be staff's revision for the optician statute. Members agreed.
- § 2555.1: Staff recommends defining better who this section applies to – only applicants, not stockholders or unaffiliated employees. Members agreed.
- § 2556.5: Ms. Leeper stated that this section will need to be updated to reflect the potential renaming of the registrant type – such as 'Ophthalmic Dispenser' etc. Ms. Murphy stated that staff will research definitions and discuss with stakeholders whether that term is too broad and tends to overreach; or if it truly does encompass the spectacle and contact lens authority of the Board.
- § 2558: Staff recommends placing this section into each registrant type (optical business, SLD, CLD), which provides better clarity for enforcement issues. Members agreed.
- § 2559.15: The staff recommends removal of the text of “allowing for usual and customary absences including illness and vacation”; Ms. Leeper noted the addition that a supervising optician shall not supervise more than three unregistered technicians at once. Mr. Kysella asked what the reasoning is behind removing “customary absences including illness and vacation”; Ms. Murphy explained that there is a need for good clarity about what direct supervision means; and that supervision is not simply an organizational structure of reporting, but a working practice whereby licensed professionals oversee the work of unlicensed professionals or apprentices. The staff has found that the “usual and customary absences including illness and vacation” is seen as a way for unlicensed employees to do the work without a licensed professional on-site. Ms. Garcia asked if by removing this text is there is no need to supervise unlicensed employees; Ms. Leeper replied that the removal is to prevent the occurrence of an unlicensed employee not being supervised.
- § 2559.2(a): Staff recommends changing five years to three years for public protection. Mr. Kysella asked if things are changing at such a rapid pace to warrant the change from five to three years; Ms. Murphy believes there is, according to the research she has done. Mr. Kysella argued that continuing education requirements need to be in place for these people, but Ms. Murphy replied that this is a conversation the DOC can have when fully informed by the Occupational Analysis.

Mr. Mattoo noted that this is something the Committee wanted previously but were told the Governor would not approve of it; therefore, this is not something this Committee has not investigated as a possibility. He asserted the DOC can investigate this again. Ms. Murphy agreed that a new Governor and three Occupational Analysis provides much more weight to make a case for what the DOC and ultimately the Board believes is the appropriate educational achievement for registrants. Ms. Murphy hopes to have the Budget Change Proposal (BCP) for unlicensed assistants approved soon. By the end of 2020 or the beginning of 2021, staff should have all three to set side-by-side and begin to formulate how they work together.

- § 2559.2(e): Staff recommends the addition of a 'licensed optometrist or ophthalmologist's office' to reflect current business practices. Additionally, a requirement that the registrant must report the current location to the board within 14 calendar days of a change. Members agreed.
- § 2559.5: Staff proposes removal because the section appears to be obsolete. Members agreed.
- § 2559.6: Staff proposes relocating this section into Article 1, so it would apply to all registrations. Members agreed.
- § 2563: Staff recommends relocation of this section into Article 1, in order to apply to all registrations. Members agreed.
- § 2564.5: Ms. Leeper asked: Should the term "accessible handwashing facilities" be updated? Does this mean a bathroom or just a sink? Members agreed there should be a handwashing station separate from a bathroom facility.
- § 2564.6: Staff recommends the removal of this section, as it may be redundant. Members agreed.
- § 2565: Staff recommends the addition of DCA's newly-adopted fee change language, similar to §2549.9. Members agreed.

Mr. Mattoo requested confirmation that there will be new discussion points on everything discussed at a future meeting. Staff confirmed there will be additional discussions.

There was no public comment.

## **8. Future Agenda Items**

*Audio of Discussion: 02:21:32 / 02:27:41*

Ms. Murphy advised looking into the possibility of holding another teleconference meeting before the end of the year. She wanted to make certain the DOC has another opportunity thoroughly consider the proposed statutory changes and give stakeholders the opportunity to

come back with comments, at least once if not twice, prior to bringing a proposal to the full Board.

Mr. Mattoo asked for the date of the next full Board meeting; Ms. Murphy replied the next Board meeting is scheduled for October 25, 2019. After that, there is a tentative date of February 17, 2020. Committee meetings will be held mid to late January. Mr. Mattoo noted that at the start of this Committee, meetings were scheduled monthly to get things rolling. He announced that he is available to meet more frequently than quarterly if needed. Mr. Kysella stated that November is a better month for him. He suggested either November 15<sup>th</sup> or November 22<sup>nd</sup>. Ms. Murphy asked if December 13<sup>th</sup> would be too late and Mr. Kysella replied that it would be for him. He noted that December 6<sup>th</sup> and 13<sup>th</sup> would be questionable for him.

There were no future agenda items proposed by members. There was no public comment.

## **9. Adjournment**

Meeting adjourned at 12:27 p.m.



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Optician Committee (DOC)
<b>FROM</b>	Martha “Ruby” Garcia, CLD, SLD, Chair <i>Prepared by Alexander Juarez, Enforcement Analyst</i>
<b>SUBJECT</b>	Agenda Item #4A – Update on Developing Optician Education Programs

### Existing Optician Education Programs:

American Career College offers a 10-month Certificate Program in Ontario and Los Angeles.

### Upcoming Optician Education Programs:

Moorpark College in Moorpark, CA, will begin offering a 2-year Associate of Science Degree in the fall of 2020. The Optical Technology Program will consist of one ABO Certificate Program and one NCLE Certificate Program.

Sacramento City College in Sacramento, CA, will begin offering ABO & NCLE Certificate Programs in the spring of 2020.

Canada College in Menlo Park, CA, will begin offering ABO & NCLE Certificate Programs in the spring of 2020.

San Mateo Adult School in San Mateo, CA, will begin offering an ABO Certificate Program in the fall of 2020.

### Objectives:

Each school is looking to address Hybrid Online Programs, ABO & NCLE Certificate Programs, and 2-year Degree Programs. The Certificate programs will give students credit towards earning a 2-year Associate of Science Degree. The ABO & NCLE Certificate Programs are designed to help students pass the national exams.

### Positive Highlights:

Moorpark College students are passing the ABO exam at a high rate.

Optometrists and Master Opticians are excited to teach and there is a surplus of subject matter experts who are successfully teaching the curriculum. Students are being recruited for work after two semesters.



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Optician Committee (DOC)
<b>FROM</b>	Martha “Ruby” Garcia, CLD, SLD, Chair <i>Prepared by Alexander Juarez, Enforcement Analyst</i>
<b>SUBJECT</b>	Agenda Item #4b – 2020 Proposed Meeting Schedule

**Needed Action:** Committee discussion and motion to approve the proposed 2020 calendar for committee meeting schedule.

### Attachment

1. Proposed 2020 Meeting Calendar

# January 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
			*New Year's Day			
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
	*MLK Jr. Day					
26	27	28	29	30	31	
				Dispensing Optican Committee Meeting (Teleconferences)	Committee Meeting Day	

# February 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
	*Washington's Birthday					
23	24	25	26	27	28	29
					Board Meeting (San Jose)	

\*State Holidays Observed

# March 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

\*Cesar

# April 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2 Dispensing Optican Committee Meeting (Teleconferences)	3 Committee Meeting Day	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

# May 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	Board Meeting (LA Area) 15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	*Memorial Day					

# June 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
				Dispensing Optican Committee Meeting (Teleconfernces)	Committee Meeting Day	
21	22	23	24	25	26	27
28	29	30				

# July 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
					*Independence Day	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

# August 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13 Board Meeting Two-Day Meeting (Sacramento)	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

# September 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
	*Labor Day					
13	14	15	16	17 Dispensing Optician Committee Meeting (Teleconferences)	18 Committee Meeting Day	19
20	21	22	23	24	25	26
27	28	29	30			

# October 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23 Board Meeting (Monterrey/ Fresno)	24
25	26	27	28	29	30	31

# November 2020

Sun Mon Tue Wed Thu Fri Sat

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	*Veteren's Day	19	20	21
22	23	24	25	26	27	28
29	30			*Thanksgiving Holiday		

# December 2020

Sun Mon Tue Wed Thu Fri Sat

		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	*Christmas	



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Dispensing Opticians Committee (DOC)
<b>FROM</b>	Shara Murphy, Executive Officer <i>Prepared by Natalia Leeper, Opticianry Program Coordinator</i>
<b>SUBJECT</b>	Agenda Item #5A – Opticianry Licensing Program Update

### **Applications**

Processing time for initial application approvals remains within 6-8 weeks. The processing time remains unaffected by peaks caused by ABO testing months. Staff is aiming to have processing times of approximately 4-6 weeks and keep that number consistent.

Attached is a new format for Optician Program Licensing Statistics. It now includes information on Initial licenses issued, more detailed renewal information and the number of Rap Sheets the Board receives in a month. Additional information may be added in the future.

### **BreeZe**

Additional changes in Breeze are being implemented. Licensees will be able to make changes to their name and license relationships through their BreEZe account. Previously these changes had to be made by a staff member upon receipt of a written request or application. This will save time for both staff and licensees.

A service request was recently approved. This update to BreEZe will remove the requirement for applicants to be employed before applying for a new license. Currently, BreEZe stops the application process.

### **Renewals**

After reviewing licensing stats, it was noted that a large part of the population is in delinquent status. Staff is researching causes and ways to decrease this number.



## Optician Program Licensing Statistics – Q1

(B) – Breeze (P) - Paper

### Registered Dispensing Optician

	FY 18/19	Jul	Aug	Sep	Total/Avg.
<b>Initial Applications</b>					
<i>Received (P)</i>	3	0	0	0	0
<i>Received (B)</i>	220	6	13	25	44
<i>Avg Cycle Time (P)</i>	120	0	0	0	0
<i>Avg Cycle Time (B)</i>	85	8	15	18	38
<i>Approved</i>	114	9	7	27	27
<i>Withdraw or Cancelled</i>	154	1	4	5	10
<i>Pending</i>	40	36	46	71	-

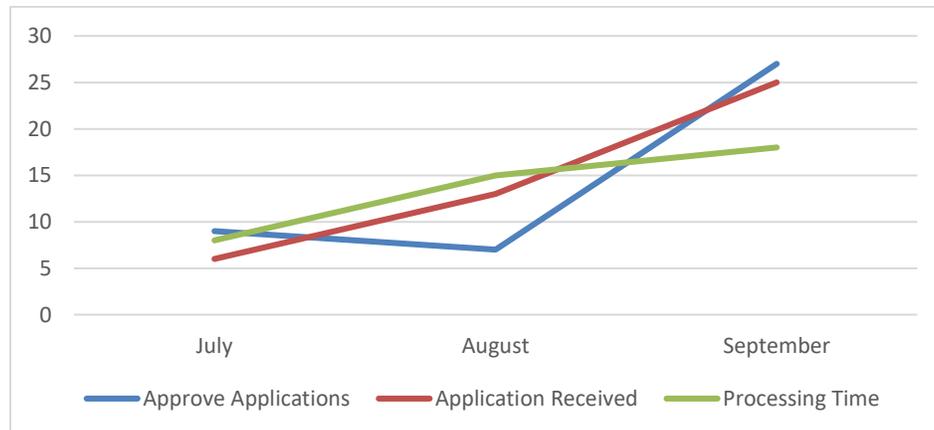
### Initial License

<i>Received (P)</i>	54	5	0	20	25
<i>Received (B)</i>	61	3	9	12	24
<i>Avg. Cycle Time (P)</i>	17	12	0	19	10
<i>Avg. Cycle Time (B)</i>	5	2	3	7	4
<i>Issued</i>	116	4	9	16	28

### Renewal

<i>Paid Received (P)</i>	325	7	7	10	24
<i>Avg. Cycle Time (P)</i>	34	13	28	19	21
<i>Paid Received (B)</i>	144	36	37	25	98
<i>Avg. Cycle Time (B)</i>	25	1	5	1	2
<i>Approved</i>	503	36	46	31	112

<i>Cancelled Licenses</i>	82	8	8	18	34
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**Spectacle Len Dispenser**

	FY 18/19	Jul	Aug	Sep	Total/Avg.
<b>Initial Applications</b>					
<i>Received (P)</i>	48	3	1	4	8
<i>Received (B)</i>	401	38	78	34	150
<i>Avg Cycle Time (P)</i>	113	22	41	44	35
<i>Avg Cycle Time (B)</i>	77	15	36	17	23
<i>Approved</i>	441	40	23	59	122
<i>Withdraw or Cancelled</i>	54	0	2	0	2
<i>Rap Sheets Received</i>	--	11	5	11	27
<i>Pending</i>	72	67	128	99	-

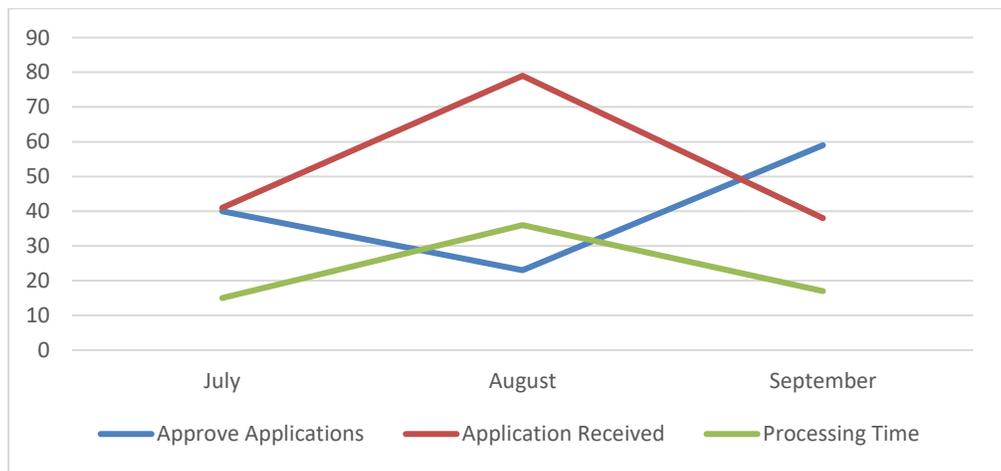
**Initial Licenses**

<i>Received (P)</i>	42	1	2	0	3
<i>Received (B)</i>	362	52	26	47	125
<i>Avg. Cycle Time (P)</i>	45	0	12	0	4
<i>Avg. Cycle Time (B)</i>	6	3	7	6	5
<i>Issued</i>	416	47	34	30	111

**Renewals**

<i>Paid Received (P)</i>	201	0	0	0	0
<i>Avg. Cycle Time (P)</i>	120	184	0	0	61
<i>Paid Received (B)</i>	845	67	82	74	223
<i>Avg. Cycle Time (B)</i>	38	51	12	1	21
<i>Approved</i>	1255	74	81	73	228

<i>Cancelled Licenses</i>	187	18	13	17	48
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**Contact Len Dispenser**

	FY 18/19	Jul	Aug	Sep	Total/Avg.
<b>Initial Applications</b>					
<i>Received (P)</i>	15	0	0	1	1
<i>Received (B)</i>	133	9	18	11	38
<i>Avg Cycle Time (P)</i>	102	0	0	0	0
<i>Avg Cycle Time (B)</i>	67	4	25	18	16
<i>Approved</i>	190	8	3	17	28
<i>Withdrawn/Cancelled</i>	23	0	1	1	2
<i>Rap Sheets Received</i>	--	11	5	11	27
<i>Pending</i>	10	11	26	19	-

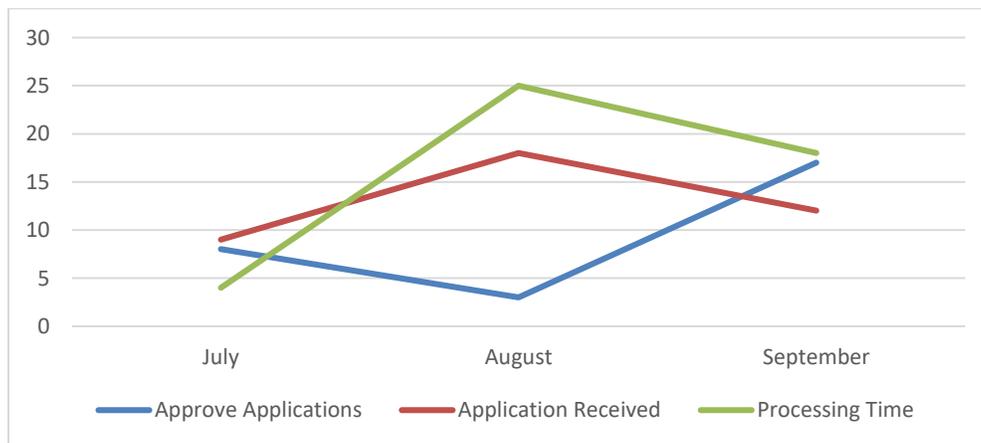
**Initial Licenses**

<i>Received (P)</i>	13	0	0	1	1
<i>Received (B)</i>	131	11	6	16	33
<i>Avg. Cycle Time (P)</i>	21	0	0	20	7
<i>Avg. Cycle Time (B)</i>	6	4	3	5	4
<i>Issued</i>	148	10	7	14	31

**Renewals**

<i>Paid - Received (P)</i>	84	0	0	0	0
<i>Avg. Cycle Time (P)</i>	98	267	0	0	89
<i>Paid - Received (B)</i>	395	25	34	30	89
<i>Avg. Cycle Time (B)</i>	40	1	15	1	6
<i>Approved</i>	564	28	36	28	92

<i>Cancelled Licenses</i>	58	4	4	8	16
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**Non-Resident Contact Lens Seller**

	FY 18/19	Jul	Aug	Sep	Total/Avg.
<b>Initial Application</b>					
<i>Received (P)</i>	0	0	0	0	0
<i>Received (B)</i>	4	0	1	0	1
<i>Avg Cycle Time (P)</i>	0	0	0	0	0
<i>Avg Cycle Time (B)</i>	62	0	3	0	1
<i>Approved</i>	3	0	1	0	1
<i>Withdraw or Cancelled</i>	1	0	0	0	0
<i>Pending</i>	2	2	2	2	2

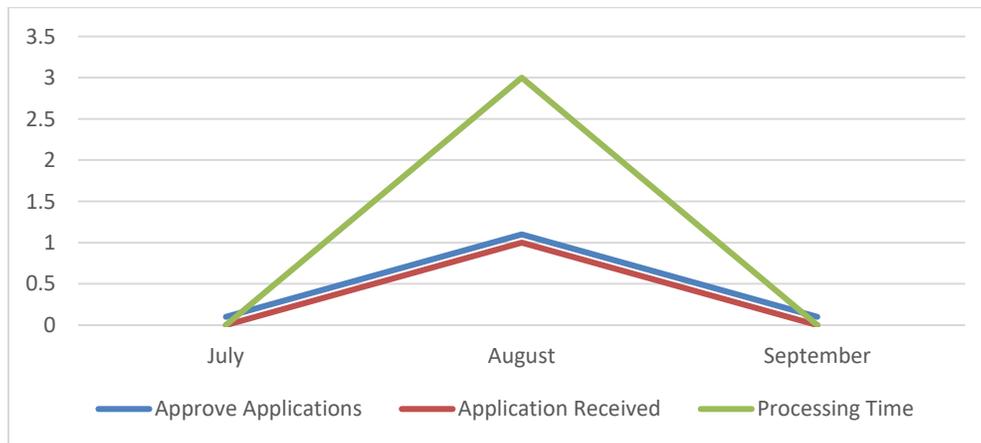
**Initial Licenses**

<i>Received (P)</i>	0	0	0	0	0
<i>Received (B)</i>	3	0	1	0	1
<i>Avg. Cycle Time (P)</i>	0	0	0	0	0
<i>Avg. Cycle Time (B)</i>	8	0	15	0	5
<i>Issued</i>	3	0	1	0	1

**Renewals**

<i>Paid Received (P)</i>	3	0	0	0	0
<i>Avg. Cycle Time (P)</i>	68	0	0	0	0
<i>Paid Received (B)</i>	3	0	0	0	0
<i>Avg. Cycle Time (B)</i>	0	0	0	0	0
<i>Approved</i>	9	0	0	0	0
<i>Pending Paid</i>	0	0	0	0	0
<i>Pending Unpaid</i>	2	2	2	2	2

<i>Cancelled Licenses</i>	1	0	0	0	0
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## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Optician Committee (DOC)
<b>FROM</b>	Shara Murphy, Executive Officer <i>prepared by Cheree Kimball, Enforcement Analyst and Alexander Juarez, Enforcement Analyst</i>
<b>SUBJECT</b>	Agenda Item #5B – Opticianry Enforcement Program Update

### **Statistical Review of Fiscal Year 2019-2020**

In the first quarter of the fiscal year 2019-2020, CSBO Opticianry Enforcement Staff:

- received a total of 50 new cases,
- closed 48 cases with no action,
- has 6 cases pending with the Attorney General’s Office, and
- processed 2 disciplinary orders.

The majority of the cases received by the Opticianry Enforcement Program were criminal conviction cases (60%). The second-largest case complaint type was unprofessional conduct (28%). The remaining cases included unregistered practice, non-jurisdictional, and an applicant investigation for prior disciplinary action.

The majority of case closures for the program occurred within one year of the receipt of the initial case.

### **Disciplinary and Administrative Actions**

In the first quarter of Fiscal Year 2019-2020, the Board took the following Disciplinary Actions:

1. David Perez, Spectacle Lens Dispenser. Effective July 18, 2019: registration revoked.
2. Adina Cassandra Guerrero, Spectacle Lens Dispenser, Contact Lens Dispenser. Effective July 18, 2019: registrations revoked.

### **Statistics Charts for Fiscal Year 2018-2019**

Attachment 1: Statistical Overview

Attachment 2: RDO program cases received by allegation type

Attachment 3: RDO program case closures by case age



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Optician Committee (DOC)
<b>FROM</b>	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
<b>SUBJECT</b>	Agenda Item 5C – Subject Matter Expert (SME) Workshops

The Board is continuing the following SME workshops:

### Spectacle Lens Dispenser - Occupational Analysis

A workshop for the Spectacle Lens Dispensers (SLD) Occupational Analysis (OA) was recently conducted on November 19, 2019 in Sacramento by the Office of Professional Examination Services (OPES). OPES will now continue work on the analysis, and it is anticipated this report will be completed and submitted to the Board in the spring of 2020.

### Unlicensed Assistants - Occupational Analysis -

Following the recommendation made by the DOC at the June 7, 2019 public meeting, an OA for Unlicensed Assistants was authorized by the Board at the August 2, 2019 public meeting. The OA is needed to determine whether optometric assistants should be regulated for the protection of consumers and will be conducted by OPES. The analysis is estimated to cost \$60,000 and the Budget Change Proposal authorizing this OA has been completed and submitted to DCA. If approved, this OA would likely begin in the fall of 2020.



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Optician Committee (DOC)
<b>FROM</b>	Shara P. Murphy, Executive Officer <i>Prepared by Marc Johnson, Policy Analyst and Natalia Leeper, Optician Program Coordinator</i>
<b>SUBJECT</b>	Review, Discussion and Possible Action on Potential Changes to Dispensing Optician Statutes: Chapter 5.4 (Prescription Lens) of Division Two of the Business and Professions Code (BPC); Chapter 5.45 (Nonresident Contact Lens Sellers) of Division Two of the BPC; Chapter 5.5 (Registered Dispensing Opticians) of Division Two of the BPC

### **Summary:**

At the [September 27, 2019 meeting](#), the DOC began a review of all applicable Optician statutes (Chapters 5.4, 5.45 and 5.5 of the BPC), as part of the DOC's statutorily mandated duties under [BPC §3020](#). This agenda item will continue that review. As previously stated, the intention of this review is to clarify and strengthen existing laws, increase public protection and improve efficiency of the registration process. Most of the changes are non-substantive or clarify existing requirements. Once the review is complete, the proposed statutory changes will go to the full Board for approval, and a legislative bill will then be required.

### **Use of Definitions:**

At the last meeting, several parts of the discussion focused on further defining terms used throughout the statutes which refer to opticianry. Staff researched multiple state and federal sources and found widely variant meanings. For example, two state agencies use the terms "ophthalmic lens" and "ophthalmic dispensing" but do not describe what that means. At the federal level, definitions varied:

- Federal Trade Commission's [Contact Lens Rules](#), which refers to contact lens as such.
- Code of Federal Regulations, [Title 21, Part 886](#), refers to "ophthalmic devices".

Staff also completed taxonomy searches for a definition of "optician" and their common duties, but descriptions were missing or inconclusive in California law. At the federal level, the [Centers for Medicare and Medicaid Services \(CMS\)](#) does list several optometric and optician classes but does not define their duties. Several other states, such as [Florida](#) and Washington, better define the terms "optician" and "optical dispensing".

Based on this inconclusive research, staff proposes a definitions section in 2550.1, which brings together in one place various terms such as "registered dispensing optician" and "fit and adjust", which are already used throughout existing law. This addition will provide a better reference in statute to the various functions and certificates used. Additionally, the DOC may wish to further discuss these definitions or make additions of their own.

**Changes to Statutory Text:**

Attachment A contains the Optician statutory text, updated after the September 27 meeting. Where appropriate, proposed new text is underlined and deleted text is ~~strikethrough~~. All chapters have added section numbers or subsection numbers as needed.

Initial changes by staff, which were discussed and approved by the DOC at the September 27 meeting, are **highlighted in yellow**. No further discussion is needed unless the DOC wishes to review or modify the changes again.

Areas **highlighted in blue** are items the DOC requested additional research or statutory text development. Staff requests further DOC discussion and direction, if applicable. Those changes are set out below.

**Chapter 5.4 Prescription Lens – BPC §§2540 – 2545**

§2541.1 (a): Staff reviewed federal rules for any updates. No changes were noted; recommend no changes to this section. Staff will continue to monitor changes to federal rules.

§2541.1 (b): Staff reviewed federal rules for any updates. No changes were noted; California laws appear to be stricter than federal rules. Staff proposes to amend text to “not less than two years and shall not exceed four years” for clarity. Staff will continue to monitor changes to federal rules.

§2541.2 (a)(1): Per DOC discussion, staff proposes to amend text to “not less than one year and shall not exceed two years” for clarity.

§2541.3: Staff reviewed federal rules for any updates. No changes were noted; recommend no changes to this section. Staff will continue to monitor changes to federal rules.

The current ANSI standards appear to be delegated to the Vision Council as document [ANSI Z80.1-2015](#).

§2545 (b)(1): Per DOC discussion, staff proposes adjustments to lower the floor of fines to \$250 and raise the cap to \$50,000 per violation. This will act as a stronger deterrent to registrants and businesses, increasing public protection. Staff is further proposing to include fine levels and repeat offenses into regulation once the Optician statute review is complete.

**CHAPTER 5.45. Nonresident Contact Lens Sellers – BPC §§2546 - 2546.10**

Per DOC direction, this chapter was relocated into Chapter 5.5, Article 2.5.

**CHAPTER 5.5. Registered Dispensing Opticians – BPC §§2550 - 2569**

Per DOC direction, this chapter was organized into new articles with existing text relocated into each article. Additionally, numbering was added to each section for clarity.

**Article 1- General Provisions**

§2550: Staff proposes partial relocation of this section into §2550.1. as a definition.

§2550.1: Based on DOC discussion, staff proposes a definitions section to be used throughout the chapter; most new text is taken from existing language elsewhere throughout the statutes.

§2553(a): Per DOC discussion, staff proposes text to define that registrants must display their certificate in a clear and conspicuous place, which includes their registration number, name, address of record and expiration date. This requirement is similar to what cosmetologists and barbers are required to display.

§2553.6: Per DOC discussion, staff proposes no changes to this section. Staff believes the intent of the section is to disallow physician/surgeons ownership in an Optician business directly or via proprietary ownership.

§2555: Per DOC discussion, staff proposes text mirrored on [BPC §3110 \(Optometry\)](#), listing all actions which constitute unprofessional conduct and made specific for dispensing opticians. Sections not applicable to opticians such as drug prescriptions, therapeutic procedures and referrals to physicians were removed. Staff recommends further discussion on any additional terms which need to be removed or added.

§2555.1(d): Per DOC discussion, staff proposes text which defines penalties apply only to individuals who are on the business application, and not their stockholders or unaffiliated employees who do not perform optician functions.

### **Article 1.5 – Spectacle Lens Dispensing**

§2559.15: Staff recommends further discussion and direction on this section. The SLD Occupational Analysis may provide more insight on how many trainees a registrant should supervise. Additionally, the word “unregistered” was added to make the term consistent through the section.

§2559.2(a): Staff recommends further discussion on change from five to three years; the DOC may wish to wait for completion of the SLD Occupational Analysis before shortening the requirement.

### **Article 2 – Contact Lens Dispensing**

§2564.5: Staff proposes text based on federal rules requiring a sink with hot and cold running water, soap and hand dryers separate from a bathroom.

### **Article 2.5 – Non Resident Ophthalmic Device Dispensers**

New article; incorporates Chapter 5.45 and other various sections to be determined throughout Chapter 5.5. Placeholder section numbers are listed, but final numbering to be determined by Legislative Counsel. Staff proposes to rename this section as above.

§2564.74 (old §2546.4): Per DOC discussion, staff proposes the following changes:

- Requirement that the board is notified in writing upon any changes to the application.
- Addition of listing of fictitious or assumed name, if applicable, to the non-resident application.

- Requirements for advertising, similar to Contractors State Licensing Board's statutes, requiring display of license number along with text identifying it was issued by the board.

§2564.76 (old §2546.6(a)(2)): Staff researched Federal Rules for changes to the current communication deadline of 2 p.m. of the next business day and recommends further DOC discussion. Contact Lens Rule 315 requires the patient's information, prescription including manufacturer, contact information of the seller, date of the patient request and date of the verification request. Prescribers must communicate with the seller within "eight business hours" rather than by 2 pm the next business day. Contact Lens Rule can be found [here](#).

§2564.80 (old §2546.10): Based on DOC direction, staff proposes raising the cap of fines to \$50,000. This will act as a stronger deterrent to registrants and businesses, increasing public protection. Staff is further proposing to implement fine levels and repeat offenses into regulation, rather than statute, once the Optician statute review is complete.

### **Article 3 – Fiscal Provisions**

Per DOC direction, use DCA's new language for fee caps throughout section. DCA is neutral if programs should change their existing text to the new language. Recommend keeping as is; no practical effect in making this change. Existing fees are already set in regulation with current statutory text.

### **Article 3.5 – Registered Dispensing Optician Businesses**

New article. Staff recommends further DOC discussion on the title of this article, based on the different terms as set out above.

§2568.1 (old §2553): Per DOC discussion, this section was relocated and includes the requirement that only SLD/CLD registrants can perform optician duties as defined in statute. The DOC may wish to inquire with Legal Counsel if this change would conflict with sections 2559.1 and 2560 which allows registrants to supervise trainees.

### **If a motion to approve is desired:**

*"I motion to recommend to the full board the statutory changes made to Chapters 5.4, 5.45 and 5.5 based on the discussion and materials presented here today, and direct staff and Legal Counsel to make any further changes prior to presentation to the full board."*

## Agenda Item #6 – Statutory Review – Attachment A

Initial changes by staff, which were discussed and approved by the DOC at the September 27 meeting, are highlighted in yellow. No further discussion is needed unless members wish to review or modify the changes again.

Areas highlighted in blue are items the DOC requested additional research or text development. Staff requests further DOC discussion and direction, if applicable.

### **BUSINESS AND PROFESSIONS CODE – DIVISION 2**

#### **CHAPTER 5.4. Prescription Lenses [2540 - 2545]**

**2540.** No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices.  
*(Amended by Stats. 2006, Ch. 148, Sec. 2. Effective January 1, 2007.)*

**2541.** A prescription ophthalmic device includes each of the following:

- (a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.
- (b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).
- (c) Any plano contact lens that is marketed or offered for sale in this state. "Plano contact lens" means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.  
*(Amended by Stats. 2006, Ch. 148, Sec. 3. Effective January 1, 2007.)*

**2541.1.** (a) A spectacle lens prescription shall include all of the following:

- (1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form "copy lenses currently worn" instead.
- (2) The expiration date of the prescription.
- (3) The date of the issuance of the prescription.
- (4) The name, address, telephone number, prescriber's license number, and signature of the prescribing optometrist or physician and surgeon.
- (5) The name of the person to whom the prescription is issued.
- (b) The expiration date of a spectacle lens prescription shall not be less than two years to and shall not exceed four years from the date of issuance unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient.

**Commented [JM1]:** Per DOC direction, staff reviewed Federal Rules for any updates. No changes were noted.

**Commented [JM2]:** Per Doc direction, staff proposes changed text

Agenda Item 6B

Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's certificate to practice.

(c) The prescriber of a spectacle lens shall orally inform the patient of the expiration date of a spectacle lens prescription at the time the prescription is issued. The expiration date of a prescription may be extended by the prescriber and transmitted by telephone, electronic mail, or any other means of communication. An oral prescription for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to the prescriber prior to the delivery of the lenses to the person to whom the prescription is issued.

(d) A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission found in Part 456 of Title 16 of the Code of Federal Regulations.

(e) An expired prescription may be filled if all of the following conditions exist:

(1) The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable.

(2) Upon dispensing a prescription pursuant to this subdivision, the person dispensing shall recommend that the patient return to the optometrist or physician and surgeon who issued the prescription for an eye examination and provide the prescriber with a written notification of the prescription that was filled.

*(Added by Stats. 1998, Ch. 8, Sec. 1. Effective January 1, 1999.)*

**2541.2.** (a) (1) The expiration date of a contact lens prescription shall not be less than one year ~~to~~ and shall not exceed two years from the date of issuance, unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

**Commented [JM3]:** Per DOC direction, staff reviewed Federal Rules for any updates. Ca rules appear to be tighter than federal rules. No changes were noted in rules. Recommend changed text for clarity

<https://www.law.cornell.edu/cfr/text/16/315.6>

Agenda Item 6B

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an examination to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and followup examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

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(k) For the purposes of this section, "prescriber" means a physician and surgeon or an optometrist.

(l) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

*(Added by Stats. 2002, Ch. 814, Sec. 1. Effective January 1, 2003.)*

**2541.3.** (a) The State Department of Public Health, the State Board of Optometry, and the Medical Board of California shall prepare and adopt quality standards and adopt regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. In promulgating these rules and regulations, the department and the boards shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards that are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

(b) No individual or group that deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists, or ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device that does not meet the minimum standards set by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California.

(c) Any violation of the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be a misdemeanor.

(d) Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

(e) The State Board of Optometry or the Medical Board of California may send any prescription ophthalmic device to the State Department of Public Health for testing as to whether or not the device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct the testing in its own facilities or may contract with any other facility to conduct the testing.

*(Amended by Stats. 2016, Ch. 489, Sec. 10. (SB 1478) Effective January 1, 2017.)*

**2541.6.** No prescription ophthalmic device that does not meet the standards adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California under Section 2541.3 shall be purchased with state funds.

*(Amended by Stats. 2016, Ch. 489, Sec. 11. (SB 1478) Effective January 1, 2017.)*

**2542.** A registered dispensing optician shall ~~fit, adjust, or~~ dispense contact lenses, including plano contact lenses, only on the valid prescription of a physician and surgeon or optometrist, and acting on the advice, direction, and responsibility of the physician and surgeon or optometrist. The optician shall also comply with the requirements of Section 2560. A registered dispensing optician shall not fit a contact lens or lenses, or a plano contact lens or lenses,

**Commented [JM4]:** Per DOC direction, staff reviewed Federal Rules for any updates. No changes were noted, recommend no changes to statute.

ANSI standards appear to be delegated to the "Vision Council" as ANSI Z80.1-2015 – [https://www.thevisioncouncil.org/sites/default/files/ANSI%20Z80%201-2015\\_Quick%20Reference%20v2.pdf](https://www.thevisioncouncil.org/sites/default/files/ANSI%20Z80%201-2015_Quick%20Reference%20v2.pdf)

unless the prescription specifically refers to and authorizes contact lenses. A registered dispensing optician shall not fit a generic type of contact lens or mode of wear for a contact lens contrary to the type or mode, if any, referred to in the prescription.  
(Amended by Stats. 1985, Ch. 1139, Sec. 3.)

**2543.** (a) Except as provided in the Nonresident Contact Lens Seller Registration Act (Chapter ~~5.45~~ **5.5** (commencing with Section ~~2546~~ **2564.70**), the right to dispense, sell or furnish prescription ophthalmic devices at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

(b) It shall be considered a deceptive marketing practice for:

(1) Any licensed physician and surgeon, licensed optometrist, or registered dispensing optician to publish or cause to be published any advertisement or sales presentation relating to contact lenses that represents that contact lenses may be obtained without confirmation of a valid prescription.

(2) Any individual or entity who offers for sale plano contact lenses, as defined in subdivision (c) of Section 2541, to represent by any means that those lenses may be lawfully obtained without an eye examination or confirmation of a valid prescription, or may be dispensed or furnished to a purchaser without complying with the requirements of Section 2562, except as provided in Chapter ~~5.45~~ **5.5** (commencing with Section ~~2546~~ **2564.70**).  
(Amended by Stats. 2006, Ch. 148, Sec. 6. Effective January 1, 2007.)

**2544.** (a) Notwithstanding any other provision of law, an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of an ophthalmologist or optometrist, an assistant in any setting where optometry or ophthalmology is practiced may also do the following:

- (1) Prepare patients for examination.
- (2) Collect preliminary patient data, including taking a patient history.
- (3) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.
- (4) Perform automated visual field testing.
- (5) Perform ophthalmic photography and digital imaging.
- (6) Perform tonometry.
- (7) Perform lensometry.
- (8) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.
- (9) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

(b) For the purposes of this section, "setting" includes, but is not limited to, any facility licensed by the State Department of Public Health or the State Department of Social Services.

(c) Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400.

(Amended by Stats. 2010, Ch. 604, Sec. 1. (AB 2683) Effective January 1, 2011.)

**2545.** (a) Whenever any person has engaged, or is about to engage, in any acts or practices which 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 the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, 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.

(b) (1) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than ~~two hundred fifty dollars (\$250)~~ ~~one thousand dollars (\$1,000)~~ nor more than ~~two thousand five hundred dollars (\$2,500)~~ ~~fifty thousand dollars (\$50,000)~~ per violation. The fines collected pursuant to this section from licensed physicians and surgeons shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement. The fines collected pursuant to this section from licensed optometrists and registered dispensing opticians shall be deposited into the Optometry Fund and the Dispensing Opticians Fund, respectively, and shall be available upon appropriation to the State Board of Optometry for the purposes of administration and enforcement.

(2) The Medical Board of California and the State Board of Optometry 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.

(3) 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.

*(Amended by Stats. 2016, Ch. 489, Sec. 12. (SB 1478) Effective January 1, 2017.)*

**~~CHAPTER 5.45. Nonresident Contact Lens Sellers [2546 – 2546.10]~~**

**Relocated entire Chapter 5.45 into Chapter 5.5, Article 2.5.**

**CHAPTER 5.5. Registered Dispensing Opticians [2550 - 2569]**

**Article 1. General Provisions [2550 – 2559]**

**2550.** (a) 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.

(b) ~~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.~~

**Commented [JM5]:** Per DOC discussion, lower and raise fine amounts. Propose to implement scale of fines and repeat offenses into regulation.

**Commented [JM6]:** Staff proposes relocation of this section into 2550.1 – definitions

**Commented [JM7]:** Relocated from 2553

(Amended by Stats. 2016, Ch. 489, Sec. 13. (SB 1478) Effective January 1, 2017.)

~~2550.1. All references in this chapter to the board shall mean the State Board of Optometry.~~

~~For the purposes of this chapter, the following definitions shall apply:~~

~~(a) "Board" means the State Board of Optometry.~~

~~(b) "Prescription" means any order made by a licensed physician and surgeon or licensed optometrist pursuant to Sections 2541.1 or 2541.2.~~

~~(c) "Fit and adjust" and "fitting and adjusting" means any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, designing, adapting, fitting, or replacing the prescribed optical aids, pursuant to such prescription.~~

~~(d) "Dispensing Optician", "Registered Dispensing Optician" and "Registrant" means any individual, corporation or firm who is registered with the board as follows:~~

~~(1) "Spectacle Lens Dispenser" means any individual who is registered with the board pursuant to Article 1.5 (commencing with Section 2559.1) of this chapter.~~

~~(2) "Contact Lens Dispenser" means any individual who is registered with the board pursuant to Article 2 (commencing with Section 2560) of this chapter.~~

~~(3) "Non-Resident Ophthalmic Device Dispenser" means a business who is registered with the board pursuant to Article 2.5 (commencing with Section 2564.70) which offers, advertises and performs services to the general public.~~

~~(4) "Registered Dispensing Optician Business" means a business who is registered with the board pursuant to Article 3.5 (commencing with Section 2568.1) which offers, advertises and performs services to the general public.~~

(Amended by Stats. 2016, Ch. 489, Sec. 14. (SB 1478) Effective January 1, 2017.)

~~2551. (a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration.~~

~~(b) 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 or firm, and shall contain specify the name under which he or she, they or it proposes to do business and the business address.~~

~~(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.~~

~~(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.~~

~~(e) Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.~~

~~(Amended by Stats. 1990, Ch. 1190, Sec. 2.)~~

**2552. (a)** Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and **direct** business telephone number of the applicant's employee who will be responsible for handling customer inquiries and

**Commented [JM8]:** Per DOC discussion, staff proposes the following definitions to be used throughout the chapter. Most new text is taken from existing language. Staff also performed taxonomy searches with NPI and CMS, state databases and industry websites, but consensus terms are not defined.

**Commented [JM9]:** Relocated to 2568.2

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complaints with respect to the business address for which registration is applied. **Any changes to this information shall be reported in writing to the board within 14 days.**

**(b)** 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).

**(c)** 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, **electronic** 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, **electronic** or registered mail if the board requires additional documents or information.

**(d)** This section shall become operative on January 1, 1988.

*(Amended by Stats. 2016, Ch. 489, Sec. 15. (SB 1478) Effective January 1, 2017.)*

~~**2553.** 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.~~

**Commented [JM10]:** First two paragraphs relocated into 2550 and 2568.4

~~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). Only individuals registered with the board pursuant to these sections shall perform those functions.~~

**(a)** 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. **The certificate displayed must include the registration number issued by the board, the applicant's name, address of record and certificate expiration date.**

**Commented [JM11]:** For DOC discussion: display of a registration with current expiration date, similar to what cosmetologists and barbers display.

**(b)** 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](mailto:optometry@dca.ca.gov)  
Internet Web site: [www.optometry.ca.gov](http://www.optometry.ca.gov)"

(Amended by Stats. 2016, Ch. 489, Sec. 16. (SB 1478) Effective January 1, 2017.)

~~2553.1. (a) If a registered dispensing optician business sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:  
(1) The registered dispensing optician business 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 and shall submit a request for cancellation of registration on a form prescribed by the Board. This registered dispensing optician business 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 business 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.  
(3) The registered dispensing optician business assuming ownership of the business shall apply for a new certificate of registration from 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.~~

Commented [JM12]: Relocated into 2568.3

**2553.5.** (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 2568.1.**  
(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 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 2553.**  
(c) 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 2568.1** 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.

(e)-(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.

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

(Amended by Stats. 1993, Ch. 240, Sec. 1. Effective January 1, 1994.)

**2553.6.** (a) The board shall deny any application for registration under this chapter 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.

(b) The board may, in accordance with Section 2555, suspend, revoke, or refuse to renew the certificate of any individual or firm under this chapter, 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, 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.

(1) "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.

(c) This section shall apply only to a dispensing optician required to be registered pursuant to Chapter 5.5 (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. (Amended by Stats. 2010, Ch. 604, Sec. 2. (AB 2683) Effective January 1, 2011.)

**2553.7.** Registrations of dispensing optician **businesses**, 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. (Added by Stats. 2017, Ch. 564, Sec. 1. (AB 1708) Effective January 1, 2018.)

**Commented [JM13]:** Based on staff research, no changes proposed to this section. Staff believes the intent of the section is to not allow physician/surgeons to hold ownership in an RDO business directly or via proprietary ownership.

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**2554.** 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”

(Amended by Stats. 2016, Ch. 489, Sec. 17. (SB 1478) Effective January 1, 2017.)

**2555.** Certificates issued hereunder 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, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter 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.

The board may take action against any registrant who is charged with unprofessional conduct and may deny an application for a registration 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 a registered optician.

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

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

Commented [JM14]: Relocated to 2553

Commented [JM15]: For DOC discussion, staff proposes the following text based on BPC 3110 and modified for use by RDOs. It further defines unprofessional conduct and strikes through unrelated sections (which will be deleted upon final direction from the DOC).

~~(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, registration or permit 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 registration by fraud, misrepresentation, or mistake.~~

~~(i) 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 registered dispensing optician, 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 registration 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~~ optician.~~

~~(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~~ registrant. 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~~ registrant 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~~ registrant.~~

~~(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 functions defined in this chapter without a valid, unrevoked, unexpired registration.
- (t) The employing, directly or indirectly, of any suspended or unregistered optician to perform any work for which an optician registration is required.
- (u) Permitting another person to use the registration for any purpose.
- (v) Altering with fraudulent intent a registration 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 optician to patient, from patient to patient, or from patient to optician. 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 California Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, 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 registrant is unable to provide the documents within this time period for good cause.
- (y) Failure to refer a patient to an appropriate optometrist or physician and surgeon if an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that optometrist or physician and surgeon.

**2555.1. (a)** In the discretion of the board, a certificate issued hereunder 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.

**(b)** 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.

**(c)** 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,

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and the board shall have all the powers granted therein. This section shall become operative on January 1, 1988.

**(d) This section shall only apply to individuals included on the registration on file with the board and shall not include stockholders or unaffiliated employees. For the purposes of this section, the term “unaffiliated employees” means a person or persons who do not perform the functions of fitting and adjusting of spectacle lenses performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses performed in compliance with Article 2 (commencing with Section 2560).**

*(Amended by Stats. 2016, Ch. 489, Sec. 19. (SB 1478) Effective January 1, 2017.)*

**2556.** (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician or a person who engages in the business of, or holds himself or herself out to be, a 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.

*(Amended by Stats. 2018, Ch. 703, Sec. 22. (SB 1491) Effective January 1, 2019.)*

**2556.1.** 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.

*(Amended by Stats. 2016, Ch. 31, Sec. 2. (SB 836) Effective June 27, 2016.)*

**2556.2.** (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 is in violation of or in compliance with the law.

**Commented [JM16]:** Per DOC discussion, staff proposes text which penalties that only apply to individuals listed on the RDO application.

- (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) 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.
- (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:

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(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.

*(Amended by Stats. 2016, Ch. 31, Sec. 3. (SB 836) Effective June 27, 2016.)*

**2556.5.** 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, is guilty of a misdemeanor.

*(Added by Stats. 1953, Ch. 1144.)*

**2557.** This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division II of this code, 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 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 prohibit the sale of complete ready-to-wear eyeglasses as merchandise.

*(Added by Stats. 1939, Ch. 955.)*

**2557.1. (relocated from 2563)** 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.

**2558.** Any person who violates any of the provisions of this chapter 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.  
(Amended by Stats. 2016, Ch. 489, Sec. 20. (SB 1478) Effective January 1, 2017.)

**2558.1 (relocated from 2559.6)** 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.

**2559.** 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, 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.

(Amended by Stats. 2016, Ch. 489, Sec. 21. (SB 1478) Effective January 1, 2017.)

#### Article 1.5. Spectacle Lens Dispensing [2559.1 – 2559.6]

**2559.15. (a)** 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 ~~unregistered technician~~ 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, and shall not supervise more than three unregistered technicians at a time.~~

(Added by Stats. 1986, Ch. 773, Sec. 12. Section operative January 1, 1988, pursuant to Section 2559.5.)

**2559.2. (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

**Commented [JM17]:** Added: makes consistent with rest of section

**Commented [JM18]:** For DOC discussion: does this change create a loophole for unlicensed personnel not under an SLD license? Is supervising three an appropriate amount? May want to wait for SLD OA for more information.

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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~~ ~~three~~ 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 as it existed before January 1, 1988, and who had not been subject to any disciplinary action under the provisions of Section 2555.2 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, a licensed ophthalmologist, or a licensed optometrist 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. The registered spectacle lens dispenser must report this location to the board within 14 days.

*(Amended by Stats. 2016, Ch. 489, Sec. 22. (SB 1478) Effective January 1, 2017.)*

**2559.3.** 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 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.

*(Amended by Stats. 2016, Ch. 489, Sec. 23. (SB 1478) Effective January 1, 2017.)*

**2559.4.** 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.

*(Amended by Stats. 2010, Ch. 604, Sec. 3. (AB 2683) Effective January 1, 2011.)*

**Commented [JM19]:** Per DOC discussion, changed to three years. Previous DOC discussion inconclusive; may want to wait for SLD OA for more information.

2559.5. 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.

~~2559.6. 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.~~

2559.61 (duplicated from 2558) Any person who violates any of the provisions of this chapter 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.

## **ARTICLE 2. Contact Lens Dispensing [2560 - 2564.6]**

2560. 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.

*(Amended by Stats. 1994, Ch. 26, Sec. 44. Effective March 30, 1994.)*

2561. (a) An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the board.

(b) 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.

(c) 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

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applicant to take and pass the examination referred to in this section as a condition of registration.

(d) 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.

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

(f) 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.

*(Amended by Stats. 2016, Ch. 489, Sec. 25. (SB 1478) Effective January 1, 2017.)*

**2562.** 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 by Stats. 1982, Ch. 418, Sec. 8.)*

~~**2563.** 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.~~

**2564.** 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.

*(Amended by Stats. 2010, Ch. 604, Sec. 4. (AB 2683) Effective January 1, 2011.)*

**2564.5.** 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. **For the purposes of this section, "accessible handwashing facilities" means a clean and sanitary sink with hot and cold running water, disinfectant soap, and adequate drying devices such as a towel or electric hand dryer, which is physically separate from a lavatory or bathroom and is accessible to all relevant persons.**

*(Added by Stats. 1982, Ch. 418, Sec. 8.)*

**Commented [JM20]:** Relocated to article one

**Commented [JM21]:** DOC direction: clarify that a handwashing station shall be maintained that is separate from a bathroom. Proposed text taken from federal rules.

**2564.6 (duplicated from 2558)** Any person who violates any of the provisions of this chapter 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.

**2564.6.** A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

**Article 2.5. Non-Resident Ophthalmic Device Dispensers**  
**(New article; contains provisions from Chapter 5.45)**

**Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel**

**2564.70.** This act may be cited as the “Nonresident Contact Lens Seller Registration Act.”  
(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)

**2564.71.** (a) On and after January 1, 1997, no person located outside California shall ship, mail, furnish 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 Board of California.  
(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 by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)

**2564.72.** All references in this chapter to the division shall mean the State Board of Optometry.  
(Amended by Stats. 2015, Ch. 405, Sec. 3. (AB 684) Effective January 1, 2016.)

**2564.73.** The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.  
(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)

**2564.74. (a)** Application for registration as a nonresident contact lens seller shall be made on forms prescribed by the division, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a co-partnership, or the president or secretary if a corporation, and shall contain the name or fictitious or assumed name, if applicable, under which the person proposes to do business, location of the business, registration number as issued by the board, and the designation of an agent for service of process in California.

**(b)** The board shall be notified in writing within 30 days of any change of name, fictitious or assumed name, location of business, corporate officer, or agent of service.

**(c)** Advertising, including but not limited to U.S. Mail, websites, electronic communications such as email, facsimile transmissions, directories, and newspaper and magazine ads must contain the following:

**Commented [JM22]:** For DOC discussion: change to “ophthalmic device dispensers”. Would this title change now allow non-residents to dispense spectacle lenses in addition to contact lenses? Legislative intent appears to be regulations of non-resident contact lens sellers.

If so, references throughout article would need to be updated and a definition of “ophthalmic devices” would need to be created within section 2550.1.

**Commented [JM23]:** Per DOC discussion, staff proposes the following text, based on CSLB statutes. Requires registration number and any other info the board deems necessary.

(1) The registration number issued by the board, along with text identifying the registration number as being issued by the board.

(2) Any other information the board deems necessary.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.75.** 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 **or jurisdiction** 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, **furnished** 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.

*(Amended by Stats. 2002, Ch. 814, Sec. 4. Effective January 1, 2003.)*

**2564.76** (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:

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(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.

*(Amended by Stats. 2002, Ch. 814, Sec. 5. Effective January 1, 2003.)*

**2564.77.** (a) A certificate 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 shall have all powers granted therein.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.78** 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 by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.79** 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).

**Commented [JM24]:** Per DOC direction, staff reviewed Federal Rules for changes. Recommend further DOC discussion on timetable. Federal rules state 8 business hours.

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(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.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 5. (SB 1039) Effective January 1, 2017.)*

**2564.80.** (a) Any person who violates any of the provisions of this chapter 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~~) fifty thousand dollars (\$50,000) per violation. The fines collected pursuant to this section shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement.

(b) The Medical Board of California 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 by Stats. 2002, Ch. 814, Sec. 6. Effective January 1, 2003.)*

**2564.81 (duplicated from 2558)** Any person who violates any of the provisions of this chapter 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.

**ARTICLE 3. Fiscal Provisions [2565 - 2568]**

**2565.** 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).

**Commented [JM25]:** DOC direction: raise fine caps as a deterrent for larger optician businesses.

**Commented [JM26]:** DOC direction: use DCA's new language for fee caps, which is designed for new fees going into law via legislative action. DCA is neutral if programs should change their existing text to the new language. Recommend keeping as is; no practical effect in making this change. Existing fees are already set in regulation with current statutory text.

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(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.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 7. (SB 1039) Effective January 1, 2017.)*

**2566.** 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).  
*(Repealed and added by Stats. 2016, Ch. 799, Sec. 9. (SB 1039) Effective January 1, 2017.)*

**2566.1.** 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.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 11. (SB 1039) Effective January 1, 2017.)*

**2566.2.** Every registration issued to a dispensing optician, contact lens dispenser, and spectacle lens dispenser shall expire 24 months after the initial date of issuance or renewal. 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 board, and pay the renewal fee prescribed by this chapter.

*Added by Stats. 2017, Ch. 775, Sec. 102. (SB 798) Effective January 1, 2018.)*

**2567.** (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.

*Amended by Stats. 2015, Ch. 405, Sec. 10. (AB 684) Effective January 1, 2016.)*

**2568.** 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, 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 this chapter.

*(Amended by Stats. 2005, Ch. 74, Sec. 6. Effective July 19, 2005.)*

**ARTICLE 3.5. Registered Dispensing Optician Businesses [2568.1 – 2568.5]**  
**(New article; contains various relocated sections)**

**Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel**

**2568.1 (relocated from 2553)** A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 or 2550.1 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). Only individuals registered with the board pursuant to those sections shall perform those functions.

*(Amended by Stats. 2016, Ch. 489, Sec. 16. (SB 1478) Effective January 1, 2017.)*

**2568.2. (relocated from 2551)** (a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business defined in Section 2550 or 2550.1 prior to being issued a certificate of registration.

(b) 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 or firm, and shall contain specify the name under which he or she, they or it proposes to do business and the business address.

**Commented [JM27]:** Added: reference to definitions

**Commented [JM28]:** Per DOC discussion, proposed text which only allows SLD/CLD registrants to perform those duties at a business. Does this conflict with 2559.1 and 2560 which allows a registrant to supervise trainees?

**Commented [JM29]:** Added: reference to definitions

(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.

(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.

(e) Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

*(Amended by Stats. 1990, Ch. 1190, Sec. 2.)*

**2568.3 (relocated from 2553.1):** (a) If a registered dispensing optician **business** sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:

(1) The registered dispensing optician **business** 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 and shall submit a request for cancellation of registration on a form prescribed by the Board. This registered dispensing optician **business** 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 **business** 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.

(3) The registered dispensing optician **business** assuming ownership of the business shall apply for a new certificate of registration from 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 by Stats. 2011, Ch. 389, Sec. 1. (SB 824) Effective January 1, 2012.)*

**2568.4 (duplicated from 2558)** Any person who violates any of the provisions of this chapter 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.

#### **ARTICLE 4. Review [2569- 2569.]**

**2569.** Notwithstanding any other law, the powers and duties of the board, as set forth in this chapter, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.



## ISSUE MEMORANDUM

<b>DATE</b>	December 13, 2019
<b>TO</b>	Members, Dispensing Opticians Committee (DOC)
<b>FROM</b>	Alexander Juarez, Enforcement Analyst
<b>SUBJECT</b>	Agenda Item #7 – Discussion and Possible Action Regarding Draft Disciplinary Guidelines

**Summary of Requested Action: Staff requests the Committee review the proposed updates to the attached Disciplinary Guidelines and support a motion to move the draft Disciplinary Guidelines to the full Board for approval.**

The DOC was presented with a clean version of the Opticianry Program Disciplinary Guidelines (Guidelines) at the DOC meeting on March 15, 2019. That version of the Guidelines included various changes made by the Committee at prior meetings. The Committee had no further comments or revisions at the March 15, 2019 DOC meeting.

Staff continued to work on the guidelines by making the following changes:

- **Pronoun Usage:** The Guidelines have been adjusted in accordance with [ACR 260](#). The California State Assembly enacted the resolution last year, directing the Legislature and state agencies to engage in a coordinated effort to avoid the use of gendered pronouns in new legislation, existing statutes, policies, regulations, and other guidance. The direction of ACR 260 to use gender-neutral pronouns is sufficiently clear and applies to Disciplinary Orders issued by a state agency.
- **Page 10: Standard Term and Condition 8, Cost Recovery,** was revised to require the respondent to pay cost recovery no later than six months prior to the end of probation. The six-month requirement mirrors the Optometry Disciplinary Guidelines. This will allow the Board more time to take action against the respondent if they fail to pay cost recovery fees.
- **Page 7: Model Probationary Orders** now includes an option that allows probationers to apply for a second registration. This option allows both registrations to follow the probationary terms imposed by the initial probation.

**Attachments:**

Opticianry Program Disciplinary Guidelines



**OPTICIANRY 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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## **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 practice of optometry as well as 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 consumers of optometric and opticianry 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 their 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 "Registered Dispensing 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; 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, they 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. **Option:**

Should the Board subsequently issue a new registration or license to Respondent during the probationary period, the new registration or license shall be immediately revoked. The revocation of such shall be stayed, and the probation imposed by this decision and order will continue. Respondent shall remain subject to the same terms and conditions imposed by this disciplinary order.

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 their 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] registration(s). 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] registration(s).

### **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 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 their employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing their 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 they are 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 termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify their 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 their 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 six 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 their 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 their 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 their 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 they cease practicing due to retirement, health reasons, or are otherwise unable to satisfy any condition of probation, Respondent may surrender their 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 their 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 SERVICE**

All types of community service 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) group support 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 their 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 California State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to their 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 their expense, shall successfully complete a treatment regimen 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 they believe 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 their 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 2011) 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 they are 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 their 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 opticianry 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 them 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 their 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 their 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 or its designee**. 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 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 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 indicating whether or not the Respondent is capable of practicing opticianry 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 their 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 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. Based on the medical evaluation, the Board or its designee 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 their 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 their 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 the names and qualifications of three third party auditors. The Board 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 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 they have 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.

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 to cease the practice of opticianry 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 their 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, 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 to cease the practice of opticianry 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 medical 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 opticianry 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 continuing 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, 37, and 38 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 their 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 or its designee.

Respondent shall ensure that they are 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 opticianry registration.

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 their 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 they are 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 their probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and their 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 with the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the registrant has a substance abuse problem, is a threat to themselves 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 themselves 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 they are 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 2011) 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 2011) 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 2011) 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 2011) 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
- Uniform Standards for Substance Abusing Licensees

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