

MEMBERS OF THE BOARD

Mark Morodomi, President
Glenn Kawaguchi, OD, Vice President
Debra McIntyre, OD, Secretary
Cyd Brandvein
Jeffrey Garcia, OD
David Turetsky, OD
Lillian Wang, OD
Vacant, Public Member
Vacant, Public Member
Vacant, Licensed Optician Member
Vacant, Public Member



**LEGISLATION AND REGULATION COMMITTEE
TELECONFERENCED MEETING AGENDA**

**Friday, September 18, 2020
10:00 a.m. until close of business**

MEMBERS OF THE COMMITTEE

Lillian Wang, OD, Chair
Glenn Kawaguchi, OD
David Turetsky, OD

This public meeting will be held via WebEx Events. To participate in the Webex meeting, please log on to this website the day of the meeting using this link:

<https://dca-ca.webex.com/dca-ca/onstage/q.php?MTID=eed477ea16087da3c99635c47ecb60c52>

Event Number: 145 166 5185 Event Password: CSBO91820

NOTICE: Pursuant to Governor Gavin Newsom's Executive Order N-29-20, in response to the COVID-19 pandemic, the meeting is being held entirely telephonically. No physical public location is being made available for public participation. Members of the public may observe or participate using the link above. Due to potential technical difficulties, please consider submitting written comments via email prior to the meeting: optometry@dca.ca.gov

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

- 1. Call to Order/Roll Call/Establishment of a Quorum**
- 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 Action on January 31, 2020 Legislation and Regulation Committee Meeting Minutes**
- 4. Discussion and Possible Action on Presentation by Adam Bentley (Chair, Dispensing Optician Committee) on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)**
- 5. Review, Discussion and Possible Action on Draft 2021 Optometry Board Strategic Plan**
- 6. Future Agenda Items**

7. 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 Bagley-Keene Open Meeting Act. Public comments will generally be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board or its committees 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.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at 916-575-7170, email: optometry@dca.ca.gov or mailing a written request to Kristina Eklund at 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.

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Glenn Kawaguchi, OD
David Turetsky, OD

**LEGISLATION AND REGULATION COMMITTEE
TELECONFERENCED DRAFT MEETING MINUTES**

Friday, January 31, 2020

Teleconference Meeting Locations:

DCA Del Paso – Sequoia Room
2420 Del Paso Road, Room 109
Sacramento, CA 95834

Moraga Library
1500 St. Mary’s Rd.
Moraga, CA 945814

Charter College
Oxnard Campus
2000 Outlet Center Dr,
Suite 150
Oxnard, CA 93036

California Retailers
Association
1121 L Street, Suite
607
Sacramento, CA
95814

Members Present	Staff Present
Lillian Wang, OD, Chair	Shara Murphy, Executive Officer
Glenn Kawaguchi, OD	Cheree Kimball, Assistant Executive Officer
Rachel Michelin	Marc Johnson, Policy Analyst
David Turetsky, OD	Arsha Qasmi, Licensing Lead
	Sabina Knight, Legal Counsel
Members Absent	Guest List
Maria Salazar-Sperber	On File

Link for audio of meeting:

https://www.optometry.ca.gov/meetings/20200131_lrc_audio.mp3

1. Call to Order/Roll Call/Establishment of a Quorum

Audio of Discussion: 0:00 / 1:03:01

Dr. Wang called the meeting to order and took roll. Dr. Turetsky was present at the Del Paso, Sacramento location with three members of the public; Ms. Michelin was present at the California Retailers Association with one member of the public; Dr. Kawaguchi was present at the Charter College location – no public members; Dr. Wang was present at the Moraga Library location – no public members. Ms. Salazar-Sperber was absent. A 4-0 quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: 00:57 / 01:03:02

There were no public comments.

3. Discussion and Possible Action Regarding Meeting Minutes - September 13, 2019 Committee Meeting

Audio of Discussion: 01:22 / 01:03:02

No changes were made. There was no public comment.

Rachel Michelin moved to approve the September 13, 2019 Committee Meeting Minutes. Glenn Kawaguchi seconded. The Committee voted unanimously (4-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber				X	
Ms. Michelin	X				
Dr. Turetsky	X				

4. Update, Discussion and Possible Action on 2020 Legislation

Audio of Discussion: 02:00 / 01:03:02

Mr. Johnson provided an update on 2020 Legislation. Staff does not have any recommended changes and positions on any of the bills the Board is currently tracking.

A. Assembly Bill 156 (Voepel)

There was no discussion on this bill.

B. Assembly Bill 896 (Low)

The Board already discussed AB 896.

C. Assembly Bill 1467 (Salas and Low)

The Board has a watch position on this bill.

D. Assembly Bill 1616 (Low)

Staff recommends a watch position on AB 1616. Mr. Johnson stated staff looked at the bill internally and determined it would have minimal impact on the Board.

Dr. Turetsky asked how many people staff anticipates will be applying for expungement on an annual basis; Mx. Kimball responded that if taken from the standpoint of the actions the Board has taken to revoke or surrender a license it might amount to around ten annually. Dr. McIntyre asked if there is a specific recommendation for the fee; Mr. Johnson explained the fee would be defined by the bill. He is not sure if the fee has been worked out yet. Ms. Michelin confirmed that this bill has passed through the Assembly. She recommended taking a support position; should it be amended again the Board can always change its position.

Rachel Michelin moved to change the Committee’s position to support; and move this recommendation on to the full Board at the February meeting. David Turetsky seconded. The Committee voted unanimously (4-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber				X	
Ms. Michelin	X				
Dr. Turetsky	X				

E. Senate Bill 53 (Wilk)

Mr. Johnson reported that the bill would require two-member advisory committees of a state body to hold open, public meetings if specified conditions are met. The Board has an oppose position on SB 53. This bill was held in Senate Appropriations due to concerns about implementation and high costs to bureaus and boards.

There was no public comment.

5. Discussion and Possible Action on Title 16, California Code of Regulations §1536 – Continuing Optometric Education; Purpose and Requirements (concurrent review with Practice and Education Committee)

Audio of Discussion: 08:57 / 01:03:02

Mr. Johnson explained that the Practice and Education Committee looked at this earlier today; Staff wanted the LRC to look at it as well. Staff has worked with the PEC for the last year on issues relating to continuing education. Based on direction from the PEC,

staff came up with changes to §1536 to increase the accountability for continuing education for licensees.

At the August 8, 2018 Board meeting, the Board directed staff to draft regulatory language which would change the number of continuing education hours completed via self-study from 20-25. Mr. Johnson noted that at the last Board meeting Dr. Kawaguchi requested staff move the package forward. Staff suggested combining the increase in self-study hours with the additional changes staff recommends. Committee agrees.

Mr. Johnson highlighted the changes for the Committee:

Subsection (c)(1): Further defines what “self-study” means. The PEC wanted staff to define out the meaning. This proposed change would further define “self-study” to mean a form of “orderly learning” without participatory interaction between licensee and instructor. Anything such as YouTube videos, webinars, seminars that are not participatory would count as “self-study”. Dr. Turetsky asked how he can know whether an online course (not sponsored by an accredited school of optometry) is acceptable; Ms. Murphy confirmed that when auditing a licensee’s CE, it is possible the Board may decide the course does not meet the Board’s standards and therefore not approve those hours. She further explained that passing the regulation package would be a great opportunity to communicate to licensees “please be sure to verify the course(s) is approved when attesting.”

Subsection (c)(7): Staff proposes raising the amount of CEU that can be obtained by participating in a Board workshop as an SME from eight to 12 hours, as the Board will often hold two-day workshops totaling 16 hours. However, a total of 12 hours would not overlap with the 35 hours required for the diagnosis, treatment and management of ocular disease whereas a total of 16 hours may. Dr. Kawaguchi asked staff intends to leave it to the licensees to determine if they have completed the correct category of courses. Ms. Murphy confirmed a licensee may choose to take practice management courses (for example), but what they really need are the credits that are applicable to patient care.

Dr. Kawaguchi requested adding some type of explanation of what self-study needs to be in order to count as part of CE requirements. He proposed adding to subsection (e) to clarify Dr. Turetsky’s concern about licensees taking credits they believe will count towards their total, but do not meet the requirement standards. Ms. Murphy added staff needs to make it explicit within the regulation what’s already stated in statute so that licensee have a clear list of what they can take. At the suggestion of Ms. Knight, text was added clarifying who the schools and colleges are accredited by such as WASC.

Subsection (f): Makes consistent with the Board’s new internal policy for assigning provider numbers and requires providers include that on certificates. Limits approvals to one year, mirroring COPE standards. It also restricts use of the Board’s letterhead, seal or logo to be used on certificates or advertising which will help to prevent fraud and illegal advertising of courses which are not Board approved. Committee agrees with this section but changed provider approvals from one to two years in length.

Subsection (g)(4): Staff proposes text which further specifies the records a provider must keep, such as dates and places of the course and the completion certificates. It also requires providers to keep records on file for four years instead of three. Committee agrees with these changes.

Subsection (h)(9): This change adds text requiring the Board's course approval number, which will assist licensees and staff to track courses consistent with the Board's CE course list. Staff also proposes modification of text from "use of" to "A" certificate is required for any CE course. Additionally, deletion of text specifying "supplied by the Board" and "such forms will be furnished by the Board upon request", since the Board does not produce such a document. These changes will make clear that all licensees must have a completion certificate for their CEUs. Dr. Wang commented that LRC had discussed utilizing BreZE as a method for confirming licensee's CE completion. Ms. Murphy explained that BreZE does not currently allow this capability. Staff has looked at other resource (outside vendors) however they have not proven to be cost-effective.

Subsection (k): Staff recommends addition of text requiring licensees to keep their course completion certificates on file for four years for auditing and enforcement purposes. Like other Boards, it would also codify the Board's "recommendation" as listed on the website to keep files for four-years and make it actionable if a licensee fails to do so during an audit or other action. Mr. Johnson explained this standard is currently implied, but this language will put it in regulation.

Dr. Kawaguchi suggested the word "certificates" should be changed to "records" to account for online courses. Mr. Johnson asked Ms. Knight if it is implied that any courses the licensee has taken, including those under self-study, will be issued a certificate. Ms. Knight responded saying other boards (who have allowed online courses) have specific requirements for the online courses. Ms. Murphy suggested changing the wording to "certificates or applicable records," and to work with Ms. Knight in researching how other boards are specifying their requirements for online courses. Dr. Kawaguchi noted that our current Section (h) may need to be modified as well to include self-study courses.

Subsection (m): Staff proposes a new subsection (m) which would prohibit a licensee repeating courses during a two-year renewal period, making it actionable for enforcement purposes if discovered during an audit or via complaint. During audits in 2018-19, it was discovered multiple licensees were claiming repeat credit during their two-year renewal period. Committee agrees with these changes.

Subsection (n): Staff proposes a new subsection (n), which is based on a Dental Board regulation. It would require that any hours obtained outside of the 25 hours of the alternative methods as defined in subsection (c) must be live, in person and interactive, and would further define what such a course is and how it is taught via participatory interaction. As currently written, this would not allow these courses to be taught via the internet (ex. Skype or web meeting) even if the internet course allowed for such participatory interaction.

Dr. Turetsky had a concern with the list of acceptable general categories for the courses. He noted that there is no reference to courses such as CPR, Child Abuse, and Elder Abuse which are all eligible for credit. He also noted that number (8) on the list just states Diagnosis and Treatment but is not specific as to ocular conditions. Dr. Turetsky is uncertain as to whether to be very specific or very general in the definitions.

Ms. Murphy suggested eliminating the list; Dr. Kawaguchi believes the entire Subsection (n) should be removed. Ms. Murphy commented that the only part of (n) she wishes to retain is: *“For the purposes of this section, such courses are defined as live in-person lecture, live in-person workshop demonstrations, or live in-person classroom studies, which allows participatory interaction between the licensee and the instructor during the instructional period.”* Dr. Kawaguchi believes this should go in Subsection (d) or Subsection (e).

Ms. Murphy requested confirmation that the Members do not see a need for the list; The beginning portion of (n) is redundant and possibly restrictive and should be placed in either Subsection (d) or (e). Members confirmed this is correct.

Glenn Kawaguchi moved to recommend to the full Board the language presented as well as edited today for full Board consideration. David Turetsky seconded. The Committee voted unanimously (4-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Dr. Wang	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber				X	
Ms. Michelin	X				
Dr. Turetsky	X				

There was no public comment.

6. Future Agenda Items

Audio of Discussion: 01:02:14 / 01:03:02

No future agenda items were suggested. There was no public comment.

7. Adjournment

Meeting adjourned at 2:48 p.m.



ISSUE MEMORANDUM

DATE	September 18, 2020
TO	Members, Legislation and Regulation Committee
FROM	Adam Bentley, Chair, Dispensing Optician Committee <i>Prepared by CSBO staff</i>
SUBJECT	Agenda Item #4: Update, Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)

Summary:

At the [May 15, 2020 Board Meeting](#), the full Board reviewed the proposed changes to the dispensing optician statutes. After discussion of the item, the Board directed the Dispensing Optician Committee (DOC) to review certain sections of the proposal further, as well as consider feedback received at the meeting from individual board members and stakeholders. The DOC carefully reviewed and thoughtfully discussed the Board’s suggestions during the [June 18, 2020, public meeting](#) and returned with their comments. At the August 14, 2020, public meeting, the Board had concerns with several sections and requested further discussion on the item by the Legislation and Regulation Committee (LRC). This memo highlights those sections and sets out the DOC’s rationale for those sections.

For this proposal to be enacted, the Board will seek a legislative author for the 2021-2022 Legislative session. Bill proposals and justifications should be submitted in mid-September of 2020 for first consideration in 2021 packages. Please note that the text provided by the Board to an author may or may not be accepted and is subject to legislative changes.

Previous discussion - Board Meetings:

- [May 15, 2020](#)
- [August 14, 2020](#)

Previous discussion - Dispensing Optician Committee Meetings:

- [June 18, 2020](#)
- [January 30, 2020](#)
- [December 13, 2019](#)
- [September 27, 2019](#)

Motion:

If a motion is desired, the following text may be used:

“I move to recommend to the full Board approval of the proposed changes presented and discussed here today to the text of Chapters 5.4, 5.45 and 5.5 of the Business and Professions

Code, and direct the Executive Officer to make any technical, non-substantive changes to the text as needed prior to the next Board meeting.”

Discussion:

For the proposed text, please refer to Attachment (a) – Optician Statutes Text. Changes proposed for further discussion are highlighted in yellow and blue throughout the text and discussed below.

2545(b)(1): Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. He suggested a base fine and the use of multipliers determined by the number of violations.

- Chair Bentley and staff concur, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

2550.1(c) and (d): NAOO feels this definition “does not make sense as written...suggest that certain acts will be listed but no such list of acts is included”. The Board agrees with this comment; a semicolon was added to clarify the statute further.

2550.1(e): NAOO suggests removal of the terms “registered optician” and “registered dispensing optician” are confusing and recommends the terms be removed from statute and replaced with definitions from subsect. 1-4.

- The DOC declined to make that change, citing documented confusion among licensees and legal representation as to the applicability of particular statutes to each type of licensure.

2550.1(g): Dr. Kawaguchi does not feel subsections (3) and (4) are needed as it makes the statute more confusing.

- Based on these comments, the DOC came to the consensus that (3) and (4) provide needed clarity for RDOs when directing staff that has not been certified and registered to act as an optician in the state of California.
Staff requests further Board discussion on this section.

2555(u): The DOC changed this proposed section making it unprofessional conduct for an optician failing to refer the patient to an optometrist or physician/surgeon if their prescription has expired. This change was based on task and knowledge statements from the SLD occupational analysis, which showed the failure to refer for a valid prescription as within the typical tasks of a registrant.

2559.15: Several stakeholders have expressed concern with the removal of the words “allowing for usual and customary absences.” NAOO notes this section has existed for decades and feels no harm has been identified, and the removal may harm small optician businesses.

- Based on comments from NAOO, the DOC comes to the consensus to remove “allowing for usual and customary absences.” If the acts of opticianry are to be regulated, then an RSLD must always perform direct supervision. By having a supervising RSLD always present, the consumer is protected from eyewear that is improperly fit, fabricated, and adjusted.

Dr. Kawaguchi feels the proposed ratio of three unregistered assistants to one registered spectacle lens dispenser is too high and offers a ratio of six to one.

- Based on comments from Dr. Kawaguchi, the DOC comes to the consensus to keep the ratio of RSLD to unregistered staff to 3. Reviewing other states that regulate opticianry, one to three is the typical range for how many individuals are directly supervised by an RSLD/Licensed optician. Professional committee members felt it would not be possible to supervise more than three unregistered individuals directly while practicing opticianry.

2559.2(a): This section sets out situations in which an applicant may be required to re-take the exam if not engaged in practice in the last three years. The addition of “has maintained their ABO/NCLE or practiced within another state” allows an SLD/CLD not to take the exam.

- Based on the comments made by NAOO and Dr. Kawaguchi, the DOC came to the consensus to change to a three-year requirement to align with the ABO/NCLE requirements for continuing education every three years and the ABO/NCLE certification expiration. Additionally, 18 other states require opticians to maintain ABO/NCLE certification throughout the use of a state-issued license.

2564.5: NAOO opposes this new requirement of hot and cold running water, feeling the cost to be prohibitive and that portable handwashing stations are sufficient under CDC guidelines.

- After a discussion and review of CDC rules, the DOC changed the requirement to “clean” running water.

2564.70: NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses.

- Based on these comments, the DOC comes to the consensus to expand registration of all regulated prescribed optical devices by the state. If the Board is protecting the consumer from contacts, then this protection should expand to all prescribed optical devices.

2564.74(a): A requirement of a president or secretary if a corporation must sign the application form; NAOO suggests a company's designated signatory instead. Staff rejects this suggestion and DOC concurs.

For registration number, NAOO asks to which registration number does this refer, and how can a company have a registration number if they are making an initial application? Staff proposes adding "if applicable" for clarity. DOC agrees.

2564.74(c): NAOO suggests limiting the advertising requirement to just California. The staff rejects this change. DOC concurs.

2564.76 (a)(2): Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Current Federal prescription rules as set out are [here](#).

- [Based on comments from Dr. Kawaguchi, the DOC comes to the consensus to stay in line with the federal contact lens rule and felt eight business hours felt like a fair amount of time for the prescriber to respond to a request.](#)

2564.76(c): Based on comments made by Dr. McIntyre, staff proposes the addition of the words "such as a different manufacturer, brand, or other physical property of the lens" to better clarify the changes a dispenser shall not make to a prescription.

2564.80: Similar to 2545(b), Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. Staff notes that specific fine limits for specific violations are set within regulation.

- Chair Bentley and staff concur, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. Some RDOs are individual locations, while some corporations operate dozens of RDOs in California. The committee does not seek to increase fines comparable to sizes of businesses, but only to the number of infractions. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

Article 3.5: The NAOO recommends that these sections be moved back to the beginning of the optician sections in the 2550 area. They feel this provides needed basic information to applicants and registrants and provide a more logical flow. The staff rejects this change. Legal Counsel had initially reviewed these changes and did not feel the creation of this new article was inappropriate. The DOC concurs with this suggestion.

2568.2: NAOO suggests adding in limited liability companies back into these sections. Staff rejects this change, as the Attorney General's office has determined that optical companies

must be professional corporations, as defined by Corporations Code Section 13401. The DOC concurs with this suggestion.

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~~ 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. 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.

(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 evaluation 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.

(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~~ dispense contact lens or lenses, or a plano contact lens or lenses, 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 Ophthalmic Lens Dispenser 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

Commented [JM1]: Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. He suggested a base fine and the use of multipliers determined by the number of violations.

Chair Bentley and the staff concur, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

thousand five hundred dollars (\$2,500) thirty-five thousand dollars (\$35,000) 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.** 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.
(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.~~

~~(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 "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others: designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.~~

Commented [JM2]: NAOO feels this definition "does not make sense as written...suggest that certain acts will be listed but no such list of acts is included".

The DOC comes to the consensus that the acts are, in fact, listed under "designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids." A semicolon was added to clarify the statute.

(d) “Adjust” and “adjusting” means doing any or all of the following acts, either singly or in combination with others: adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.

(e) “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) “Nonresident Ophthalmic Lens 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 optical services to the general public.
- (4) “Registered Dispensing Ophthalmic 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 optical services to the general public.

(f) “Ophthalmic Lens” or “Ophthalmic Device” means any prescription lenses, spectacles, eyeglasses, contact lens, other ophthalmic devices that alter or change the visual powers of the human eye, or any prescription plano contact lens ordered by a physician and surgeon or optometrist.

(g) “Unregistered Optician Trainee” means an individual who is not registered with the board pursuant to this chapter. The unregistered trainee may perform the following:

- (1) Fitting and adjusting of spectacle lenses under the direct responsibility and supervision of a duly registered spectacle lens dispenser pursuant to section 2559.15.
- (2) Fitting and adjusting of contact lenses under the direct responsibility and supervision of a duly registered contact lens dispenser pursuant to section 2560.
- (3) The selection of frame designs, the actual sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the dispensing optician.
- (4) Administrative, custodial or office tasks not related to direct patient care.

The provisions of this chapter shall not apply to an individual 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, pursuant to section 2544 of the business and professions code.

(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

Commented [JM3]: NAOO suggests removal of the terms “registered optician” and “registered dispensing optician” are confusing and recommends the terms be removed from statute and replaced with definitions from subsect. 1-4. The DOC declined to make that change.

Commented [JM4]: Changed to remove confusion with unregistered assistants working under Optometrists.

Commented [JM5R4]: DOC concurs with this change.

Commented [JM6]: Dr. Kawaguchi does not feel subsections (3) and (4) are needed as it makes the statute more confusing. Based on these comments, the DOC came to the consensus that (3) and (4) are needed as they provide further clarity for RDOs when directing staff that have not been certified and registered to act as an optician in the state of California. Staff requests further Board discussion on this section.

~~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 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.~~

~~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).~~

(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.

~~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.~~

~~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 2568.3.~~

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

(Added by Stats. 2017, Ch. 564, Sec. 1. (AB 1708) Effective January 1, 2018.)

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.

(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.

- (j) Making or giving any false statement or information in connection with the application for issuance of a license.
- (k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a 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 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 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 registrant.
- (n) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.
- (o) 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.
- (p) The practice of functions defined in this chapter without a valid, unrevoked, unexpired registration.
- (q) The employing, directly or indirectly, of any suspended or unregistered optician to perform any work for which an optician registration is required.
- (r) Permitting another person to use the registration for any purpose.
- (s) 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.
- (t) 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.

(u) Failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current and unexpired prescription.

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, 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.)

Commented [JM7]: The DOC changed this proposed section making it unprofessional conduct for an optician failing to refer the patient to an optometrist or physician/surgeon if their prescription has expired. This change was based on task and knowledge statements from the SLD occupational analysis, which showed the failure to refer for a valid prescription as within the typical tasks of a registrant.

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.

(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:
- (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 spectacle lens or 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 or contact 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. On and after January 1, 1988, no individual may fit and adjust spectacle lenses

individual is a duly registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual unregistered optician trainee 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 physically present on the registered premises when an unregistered technician-optician trainee fits and adjusts spectacle lenses, allowing for usual and customary absences including illness and vacation, and shall not supervise more than three unregistered optician trainees 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 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, has maintained their ABO/NCLE or practiced within another state, 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, or within any location where the practice of ophthalmology or optometry is practiced. The certificate of the registered spectacle lens dispenser is must be 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 of its display of the certificate.

Commented [JM8]: Update to same as definitions "unregistered optical trainee"

Commented [JM9]: Several stakeholders have expressed concern with the removal of the words "allowing for usual and customary absences". NAOO notes this section has existed for decades and feels no harm has been identified and the removal may harm small optician businesses. Based on comments from NAOO, the DOC comes to the consensus to remove "allowing for usual and customary absences." If the acts of opticianry are to be regulated than the direct supervision must always be done by an RSLD. By having a supervising RSLD always, the consumer is protected from eyewear this is improbably fit, fabricated and adjusted.

Commented [JM10]: Dr. Kawaguchi feels the proposed ratio of three unregistered assistants to one registered spectacle lens dispenser is too high and proposes a ratio of six to one. Based on comments from Dr. Kawaguchi, the DOC comes to the consensus to keep the ratio of RSLD to unregistered staff to 3. Comparing to other states regulating opticianry, 1-3 is the typical range for how many individuals are directly supervised by an RSLD/Licensed optician. Professional staff felt it would not be possible for more than 3 unregistered individuals to be directly supervised while practicing opticianry.

Commented [JM11]: Addition of "has maintained their ABO/NCLE or practiced within another state" allows a SLD/CLD to not take the exam.

Based on the comments made by NAOO and Dr. Kawaguchi, the DOC came to the consensus to change to a three-year requirement to align with the ABO/NCLE requirements for continuing education every three years and the ABO/NCLE certification expiration. Additionally, 18 other states require opticians to maintain ABO/NCLE certification throughout the use of a state-issued license.

(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.)

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.~~

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 an~~ **unregistered optician trainee** performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then physically present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser ~~trainees~~ **unregistered optician trainee**.

(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 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 clean 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 [JM12]: NAOO opposes this new requirement of hot and cold running water, feeling the cost to be prohibitive and that portable handwashing stations are sufficient under CDC guidelines. After discussion and review of CDC rules, the DOC changed the requirement to “clean” running water.

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

**Article 2.5. Nonresident Ophthalmic Lens Dispensers
(New article; contains provisions from Chapter 5.45)**

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

2564.70. (relocated from 2546) This act may be cited as the “Nonresident Contact

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

2564.71. (relocated from 2546.1) (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~~ State Board of Optometry.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a valid prescription as described in Section ~~2546.6~~ 2564.76 may be shipped, mailed, or delivered directly to a patient.
(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)

Commented [JM13]: NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses. Based on these comments, the DOC comes to the consensus to expand registration of all regulated prescribed optical devices by the state. If the Board is protecting the consumer from contacts, then this protection should expand to all prescribed optical devices.

2564.72 (Relocated from 2546.2) All references in this chapter to the division shall mean the State Board of Optometry.

2564.73. (relocated from 2546.3) The ~~division~~ State Board of Optometry 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. (relocated from 2546.4) (a) Application for registration as a nonresident ~~contact ophthalmic lens dispenser seller~~ shall be made on forms prescribed by the State Board of Optometry, 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 if applicable** and the designation of an agent for service of process in California.

Commented [JM14]: A requirement of a president or secretary if a corporation must sign the application form; NAOO suggests a company’s designated signatory instead. Staff rejects this suggestion and DOC concurs.

Commented [JM15]: For registration number, NAOO asks which registration number does this refer to and how can the company have a registration number if they are just making an application? Staff proposes adding “if applicable” for clarity. DOC agrees.

(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:

(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. (relocated from 2546.5) In order to obtain and maintain registration, a nonresident ~~contact ophthalmic lens dispenser 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 ophthalmic~~ 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 ophthalmic~~ lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the ~~contact ophthalmic~~ 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 ophthalmic~~ 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 ophthalmic lens dispenser seller~~ to publish or cause to be published any advertisement or sales presentation relating to ~~contact ophthalmic~~ lenses representing that ~~contact ophthalmic~~ lenses may be obtained without confirmation of a valid prescription.

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

2564.76 (relocated from 2546.6) (a) ~~contact Ophthalmic~~ lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities

Commented [JM16]: NAOO suggests limiting the advertising requirement to just California. Staff rejects this change. DOC concurs.

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 ~~dispenser-seller~~, the ~~dispenser-seller~~ shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

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

(2) The ~~prescriber fails to communicate with the dispenser-seller by 2 p.m. of the next business day within eight (8) business hours~~ after the ~~dispenser-seller~~ requests confirmation, or the prescriber fails to communicate with the ~~dispenser-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 ~~dispenser-seller~~ before the time period described in paragraph (2) of subdivision (a) elapses and informs the ~~dispenser-seller~~ that the contact lens prescription is invalid, the ~~dispenser-seller~~ shall not fill the prescription. The prescriber shall specify in the communication with the ~~dispenser-seller~~ the basis for invalidating the prescription.

(c) A ~~dispenser-seller~~ shall not alter, other than color, any of the specifications of a contact ophthalmic lens prescription other than the color or such as a different manufacturer, brand, or other physical property of the lens.

substitute a different manufacturer, brand, or other physical property of the lens.

(d) Notwithstanding the provisions of this section, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the ~~dispenser-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. (relocated from 2546.7) (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 (relocated from 2546.8) Every registration issued to a nonresident ~~contact ophthalmic lens dispenser-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

Commented [JM17]: Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Based on comments from Dr. Kawaguchi, the DOC comes to the consensus to stay in line with the federal contact lens rule and felt eight business hours felt like a fair amount of time for the prescriber to respond to a request.

Commented [JM18]: Based on comments made by Dr. McIntyre, staff proposes addition of the words "such as a different manufacturer, brand or other physical property of the lens" to better clarify the changes a dispenser shall not make to a prescription.

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 (relocated from 2546.9) The amount of fees prescribed in connection with the registration of nonresident ophthalmic lens dispenser-seller is that established by the following schedule:

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

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

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

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

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

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

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

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

2564.80. (relocated from 2546.10) (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)~~ **thirty-five thousand dollars (\$35,000)** per violation. The fines collected pursuant to this section shall be available upon appropriation to the ~~Medical Board of California~~ State Board of Optometry for the purposes of administration and enforcement.

(b) ~~Medical Board of California~~ 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.

(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.)

ARTICLE 3. Fiscal Provisions [2565 - 2568]

2565. The amount of fees prescribed in connection with the registration of dispensing ophthalmic businesses shall be as set forth in this section.

Commented [JM19]: Similar to 2545(b), Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. Staff notes that specific fine limits for specific violations are set within regulation.

Chair Bentley and staff concurs, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. Some RDOs are individual locations, while some corporations operate dozens of RDOs in California. The committee does not seek to increase fines comparable to sizes of businesses, but only to the number of infractions. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

- (a) The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
 - (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
 - (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
 - (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
 - (e) The fee for replacement of a lost, stolen, or destroyed certificate shall be twenty-five dollars (\$25).
 - (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.
- (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 ophthalmic business, 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 Ophthalmic 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 2550). 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 shall be known as dispensing ophthalmic businesses and shall not engage in that business unless registered with the State Board of Optometry.

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.

Commented [JM20]: The NAOO recommends that these sections be moved back to the beginning of the optician sections in the 2550 area. They feel this provides needed basic information to applicants and registrants and provide a more logical flow. Staff rejects this change. Legal Counsel had initially reviewed these changes and did not feel the creation of this new article was inappropriate. The DOC concurs with this suggestion.

(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.)

2568.3 (relocated from 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 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.)

2568.4 (relocated from 2553)

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

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 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 supervisory functions.

Commented [JM21]: NAOO suggests adding in limited liability companies back into these sections. Staff rejects this change, as the Attorney General's office has determined that optical companies must be professional corporations, as defined by Corporations Code Section 13401. The DOC concurs with this suggestion.

2568.5 (relocated from 2553.1): (a) If a registered dispensing ~~optician~~ ophthalmic 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~~ ophthalmic 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~~ ophthalmic business shall be responsible for complying with all laws relating to the ~~optician~~ ophthalmic dispensing business until the notice described in paragraph (2) is received by the board.

(2) The registered dispensing ~~optician~~ ophthalmic 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~~ ophthalmic 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 ophthalmic business.

(Added by Stats. 2011, Ch. 389, Sec. 1. (SB 824) Effective January 1, 2012.)

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.



September 11, 2020

California State Board of Optometry
Legislation/Regulation Committee
c/o Shara Murphy, Executive Officer

Sent via email: optometry@dca.ca.gov

Dear Members of the Committee,

On behalf of the National Association of Optometrists and Opticians (NAOO), a national organization representing the retail optical industry and its thousands of employed and affiliated optometrists and opticians, I write today to express NAOO's suggestions and concerns about several provisions of the draft of the proposed re-write of the optician statutory sections to the B&P Code.

The NAOO is consumer-service oriented, dedicated to the consumer's visual care needs in accessible settings, providing high quality products and services. NAOO members collectively represent nearly 9000 co-located eye care offices and optical dispensaries throughout the United States, serving millions of patients and eyewear customers each year, and over 800 locations in the state of California.

We have included with the transmittal of this letter a summary chart of requirements relating to opticians throughout the United States, indicating that most states do not regulate opticians. We hope you find this helpful. Finally, we refer the Committee to an FTC Economic Freedom report dealing with occupational licensing, emphasizing that there has been an unnecessary proliferation of occupational licensing regulation in the U.S. ("Options to Enhance Occupational License Portability," Federal Trade Commission September 2018, <https://www.ftc.gov/reports/options-enhance-occupational-license-portability>). We will be happy to answer any questions you may have about our comments or these items.

From a general perspective, and in the spirit of the Board's mission to protect the public, we encourage the Committee to consider the following principles for regulating in the public interest. The Committee should not add to the current regulation of opticianry unless a number of important questions can be factually answered in the affirmative:

- Is there credible evidence that the current moderately regulated practice can clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous agreement?
 - The NAOO is not aware that the DOC or the Board has identified any clear danger or meaningful harm to consumers related to the sale of eyewear in California by opticians today. As such, what problem is the Board trying to address?

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- Does the public need and can it reasonably expect to see a net benefit from the regulation (considering the added costs or other burdens of the proposed regulation, including reducing access to care and making the consumer experience less attractive)?
 - What specific complaints have been filed by the public prompting the added regulation proposed by the Board?
 - Any regulation that makes it harder for a person to provide services as an optician or assistant will, by definition, reduce supply and drive up costs.
 - As is evident from the optical summary chart, there are 29 other jurisdictions that have never seen the need to regulate opticianry, and millions of Americans are free to purchase eyewear without the added costs and restrictions on access.

- Is the public without other more cost-beneficial means to be effectively protected?
 - The industry is well-regarded as focused on consumer satisfaction and the Board's enforcement reports indicate that consumer complaints are low and lack evidence of quality of care issues. Most issues are financial in nature and can be addressed by consumer organizations, such as the Better Business Bureau or the Attorney General's office.
 - The last state to impose licensure was Ohio in 1981. Since then, every state (which, in the NAOO's experience, is at least 20 of the 29 unlicensed states) that has considered the regulation of opticians has rejected the idea, primarily due to the lack of public need and lack of harm in the unregulated practice of opticianry. Significantly, and based on the NAOO members' collective experience, the vast majority of the licensed states have not increased the level of regulation for opticians. A number have reduced some of their regulations. All of these states recognized that when it comes to opticianry, regulation for the sake of regulation is not in the public's interest.

With the principles reflected in our questions in mind, the NAOO offers the following comments for the Committee's consideration.

§2555 – Relates to Unprofessional Conduct.

The following wording has been proposed to be added to the statute as a defined element of unprofessional conduct:

"(u) Failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current and unexpired prescription."

This new addition imposes an impractical and legally risky standard on opticians. As a matter of course, opticians suggest that customers see an eye care provider if they do not have a prescription or if their prescription for eyewear is out of date. A suggestion of this kind likely happens innumerable times during the course of a day in every optical dispensary. What does not happen is the recording of the recommendation by the optician or optical staff. Potential and previous customers come into a dispensary just to browse and, while there may be interaction between the optician and the person, no record is created or kept of that interaction. It is impractical and would be a significant burden to create and maintain a record of each such encounter but that is exactly what the proposal would require. It makes no sense to impose such a requirement or for the optician to risk legal action if a record is not created. Creating a risk of legal action against opticians may further reduce the number of registrants seeking to practice in California. We urge the Committee and Board to reject this proposal.

2559.15. – Relates to Spectacle Lens Dispensing

This section would add that a registered dispenser must always be on the premises in order for an unregistered assistant to undertake duties, eliminating the “customary absences” permission that exists today and has existed for decades (“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.”). There has been no harm identified by the long-standing practice of allowing temporary absences and we are unaware of any complaints having been received by the Board on this issue. No consumers have requested this change. As such, there no evidence of the need for this change. This proposed modification will likely severely impact small dispensaries that rely on this provision from time-to-time. The proposed change to the existing law should be rejected.

This section also adds a supervision limitation of three unregistered assistants per registrant, which limitation has never existed up to this point. What demonstrable issues have arisen over the years with the lack of this limitation? The NAOO is not aware of any issues or complaints and there is no evidential basis for imposing this limitation.

Both of these proposed changes are regulation for regulation sake and, in the long-term California experience, unnecessary for public protection.

2559.2. – Relating to retaking the exam for renewal.

This change, in paragraph (a), proposes to require the re-taking of the ABO or NCLE exam for someone who is renewing their registration but has not practiced in the prior three years, reducing the time frame of the existing and long-standing five-year requirement. What is the demonstrated need for this change from 5 years down to 3 years? Have there been complaints filed about quality of care or product relating to individuals that have taken advantage of the 5-year renewal time frame? There have been no issues with this provision over the years of which the NAOO is aware. The mere opinion, as voiced at one of the Dispensing Optician Committee meetings, that it is being done for “consumer protection,” without evidence of need in the form of consumer harm, is not sufficient to make this provision more restrictive and exclusionary. We urge the Committee to reject making this change.

2568.1 – Relating to firms registering as RDOs.

This section requires the registration of corporations and firms (“companies”) in order to engage in optical dispensing. In recent years, many such companies have used a limited liability company format (LLC) to operate their business and, in fact, registered as RDOs with the state. Only in the last year has the Board determined that LLCs are not eligible to register as an LLC. The Board decided and notified registrants that only corporations (or sole proprietors or partnerships) could register. By its own count, over fifty firms used the LLC format. We recommend that the Board, recognizing the popularity of this business format, allow for the registration of LLCs as RDOs.

In its discussion of this issue, the Board has stated that LLCs are not permitted to register. The Board, however, can modify its statute to allow for optical firms that operate as LLCs to register. The Attorney General, in a 2004 opinion (Lockyer 04-103, July 23, 2004), provided that a “business that provides services requiring a license, certification or registration pursuant to the

Business and Professions Code may conduct its activities as a limited liability company if the services rendered require only a nonprofessional occupational license." This conclusion matches exactly the situation of companies applying for registration as an RDO. The RDO applicant need only complete an informational form for registration and no specialized knowledge or academic preparation is needed to register as an RDO. The situation of the RDO matches precisely that which the AG described where the legislature can include LLCs as registrants. We urge the Board to incorporate this change by including the term "limited liability companies" in both 2568.1 and 2568.2 relating to registration of "Individuals, corporations and firms..."

Thank you for the opportunity to comment and to participate in the discussions relating to these and the other proposed changes being considered by the Committee and the Board. Feel free to contact me at joebneville@gmail.com or the address shown on the first page of this letter.

Very truly yours,

Joseph B. Neville

Joseph B. Neville
Executive Director, NAOO

Optical Dispensing

Non-Licensed Jurisdictions¹	Licensed Jurisdictions^{2,3}	Registration Jurisdictions	General Dispensing⁴	Limited Dispensing⁵
Alabama	Alaska	California	Alaska	Arkansas
Colorado	Arizona	-ABO or NCLE certification required to register	Arizona	Connecticut
Delaware	Arkansas		California	Kentucky
District of Columbia	Connecticut		Florida	Massachusetts
Idaho	Florida	New Hampshire	Georgia	Nevada
Illinois	Georgia	-no prerequisites for registration ⁶	Hawaii	New Jersey
Indiana	Hawaii		South Carolina	New York
Iowa	Kentucky			North Carolina
Kansas	Massachusetts			Ohio
Louisiana	Nevada			Rhode Island
Maine	New Jersey			Tennessee
Maryland	New York			Vermont
Michigan	North Carolina			Virginia
Minnesota	Ohio			Washington
Mississippi	Rhode Island			
Missouri	South Carolina			
Montana	Tennessee			
Nebraska	Vermont			
New Mexico	Virginia			
North Dakota	Washington			
Oklahoma				
Oregon				
Pennsylvania				
South Dakota				
Texas				
Utah				
West Virginia				
Wisconsin				
Wyoming				

¹ No optician regulation except, typically, requiring a prescription to dispense eyewear.

² Licensed jurisdictions allow for apprenticeship (on-the-job training), except for RI, which has no provision for apprenticeship.

³ Last state to impose licensure was in 1981. All non-licensed states have rejected licensure since then.

⁴ Non-licensee may dispense under general supervision.

⁵ Only licensee or apprentice may dispense.

⁶ Those wishing to dispense register with the state.

Mission, Vision, and Values

Our Mission

To protect the health and safety of California consumers through licensing, registration, education, and regulation of Optometry and Opticianry.

Our Vision

The highest quality optometric and optical care for the people of California

Our Values

Consumer Protection

We make effective and informed decisions in the best interest and for the safety of Californians.

Integrity

We are committed to honesty, ethical conduct, and responsibility.

Transparency

We hold ourselves accountable to the people of California. We operate openly so that stakeholders can trust that we are fair and honest.

Professionalism

We ensure qualified, proficient, and skilled staff provides excellent service to the State of California.

Excellence

We have a passion for quality and strive for continuous improvement of our programs, services, and processes through employee empowerment and professional development.

Goal 3: Law and Regulation

The Board works to establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient, and cost-effective practices.

- 3.1** Advocate for the adoption of new opticianry statutes and regulations (using data from occupational analyses) that seek to clarify the principles of the profession and provide better consumer protection for those who are seeking opticianry services.
- 3.2** Promulgate rulemakings to effectively regulate practice within mobile clinics and home settings to provide better consumer protection for those who are seeking optometric services.
- 3.3** Explore current and emerging methods, opportunities, and technology to increase access to care while maintaining a world-class standard of optometric care (e.g., scope of practice, mobile clinics, telemedicine).
- 3.4** Pursue Sunset Review Legislation that modernizes language and concepts in light of current and future practice, that synchronizes the expiration dates of fictitious name permits to align with renewals of general licensure and statements of licensure, and that implements an endorsement fee to support unfunded staff work.
- 3.5** Monitor changes in federal law to identify methods that will strengthen existing California legislation regarding the sale of contact lenses and eyeglasses to improve enforcement and enhance consumer protection.

Goal 5: Outreach

The Board proactively educates, informs, and engages consumers, licensees, students, and other stakeholders about the practices of optometry and opticianry and the laws and regulations which govern them.

- 5.1** Assess outside resources available to expand outreach.
- 5.2** Collaborate with continuing education providers and associations to explore online discussions/updates regarding legislation and regulations to expand outreach and generate awareness of the current state of practice.
- 5.3** Create and enact an outreach plan with opticianry schools regarding California registration requirements for the use of the title "Optician" to enhance compliance with California law and encourage registration.
- 5.4** Conduct an in-depth review and re-design of the Board's website and update information for consumers, licensees, and registrants to provide up-to-date and accurate information (e.g. seasonal issues, changes in regulations and laws, etc.).
- 5.5** Accelerate a plan to improve the utilization of technology to enhance communication to reach all Californians.
- 5.6** Publish and disseminate enforcement actions to illustrate the consequences of infractions (DUI, malpractice, and unlicensed activity).
- 5.7** Develop the communication plan regarding the importance of children's vision health and wellness.
- 5.8** Develop proactive methods to inform the public about the dangers of the unlicensed sale and distribution of cosmetic contact lenses to promote consumer safety.