



May 20, 2021

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

Sent via email: optometry@dca.ca.gov

Re: Proposed Changes to Optician Statute

Dear Executive Officer Murphy and Members of the Board:

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 selected sections 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 proposition the consumer's visual care needs are met most completely and economically by the free market, in the tradition of the American business system. 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 location in the state of California.

Thank you for the opportunity to comment on the proposed changes to the optician sections of the B&P Code.

We will note our concern that the Board is undertaking a review of these materials at the full Board meeting on May 21. Work on these materials was assigned to the Legislation/Regulation committee and the committee has not undertaken that work in recent months, including the last committee meeting where the topic was not on the agenda. No decision or recommendation was made by the committee and there was no opportunity for interested stakeholders to provide meaningful comment. The surprise posting of this agenda item and materials early this week, again, precludes public input on topics of concern to opticians in the state and some of the Board members. We recommend referring this back to the committee for further work and complete discussion.

2550.1

Within the definition of "fit" and "fitting" in paragraph (c), the draft has included "replacing" the prescribed optical aids within these definitions. It is unclear how the mere replacement of an optical aid constitutes fitting if it happens that no measurements need to be taken. If optical measurements need to be taken, then fitting is involved. If not, then the idea of furnishing a replacement does not fit within this definition. This is a confusing addition and should be eliminated.

The same argument applies to paragraph (d), which includes "delivering or replacing" the prescribed optical aids within the definition for "adjust" and "adjusting." There are no adjustments that happen in the simple delivery or replacement of an optical aid, making this definition imprecise and subject to confusion. Again, this clause should be eliminated.

2555

Paragraph (u) is proposed to be added to this section that describes unprofessional conduct. It describes as unprofessional conduct the “Failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current prescription.” This provision, from a practical perspective, is unenforceable and creates an unnecessary paperwork requirement that is also impracticable. How is a registrant to demonstrate that it complied with this requirement? Does the registrant need to take the name and identifying information of every customer that is in the store without a prescription looking at eyewear in order to make a record for compliance purposes? And what is an “appropriate” optometrist or physician? Who is to decide if a given prescriber is appropriate or not?

This provision is simply unworkable, vague and will not address any problem that exists today. If what the proposal is designed to address are some few registrants that sell or dispense optical aids without a prescription, then that is what should be articulated. Make it a violation of the statute and an act of unprofessional conduct to sell or dispense prescription eyewear without a prescription. While that can be inferred from the existing law, if the Board wants to state that specifically, it should do so and not substitute a vague, unenforceable provision like that in proposed paragraph (u).

2559.15

This section adds that a registered dispenser must be on the premises in order for an unregistered assistant to undertake duties, eliminating the “customary absences” permission that has existed for decades. When asked, the Board has not offered any evidence of harm from the long-standing practice of temporary absences. There is no evidence of any complaints presented to the Board relating to service by unregistered assistants and, therefore, no evidence of the need for this change. This was confirmed at the recent Optometry Board sunset hearing. The old adage of this being “a solution in search of a problem” comes into play here. This change will severely impact small providers who rely on this provision from time-to-time and on the employment of additional personnel at optical establishments. Because there is no demonstrated need for this change, we request that it be removed. We also note that this provision does not apply to an optometric or ophthalmology office, amounting to unnecessary discrimination against the various forms of optical offices.

This section also adds a supervision limitation of three unregistered assistants per registrant, which 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. We also note that optometric offices, which are not subject to the optician registration requirements and which rely upon the license of the optometrist for general oversight of dispensing, has no ratio requirement. There is no evidentiary basis for this discrimination between the two groups, which points to the need to eliminate this newly suggested requirement or to apply it equally to an optometrist’s and ophthalmologist’s office.

Some have suggested that they “know” that it is impossible to supervise more than three assistants at a time. That is not knowledge but supposition. Most US states do not regulate opticians and there are no restrictions in those jurisdictions on the number of assistants or trainees that may be supervised and trained by experienced opticians. Collective experience indicates that there is no harm that has been caused by those systems, as evidenced by the rejection of new optician regulation over the last several decades. The general lack of difference

in the number and nature of consumer complaints between unlicensed states and California, indeed all the other regulated jurisdictions as well, is support for this change being unfounded and unwarranted. The lack of any significant number of optician-related quality-of-care complaints over recent years in California is also evidence of the lack of need for this change.

Both of these proposed changes in §2559.15 are regulation for regulation's sake and unnecessary for public protection. We urge their removal.

2559.2

This section in its latest iteration is confusing. It seems to say that one who has not practiced recently but who has maintained their ABO or NCLE credentials or has practiced elsewhere must retake the examination. Consequently, the fourth sentence of paragraph (a) contradicts itself and ignores the value of maintaining one's ABO/NCLE certifications. While the discussion of this issue appeared to be related to individuals who had allowed their registration to lapse for more than five years (with the Board talking about unnecessarily reducing that lapse period to three years), it now appears that the Board is considering applying this retest standard to all registrants that may not be working on the optical floor on a regular basis, even if one has maintained their ABO/NCLE certification. We continue to object to the changes proposed in the paragraph (a) as without justifying evidence. No cases of insufficient care from those that have taken advantage of this historical provision have been identified. There have been no consumer complaints identified relating to this issue. The mere opinion that it is being done for "consumer protection," which seems to be the only basis for this provision, but without evidence of need is not sufficient to make this provision more restrictive and exclusionary.

2564.5

The latest proposal relating to the requirement for "assessable handwashing facilities" has the newly added requirement that the facility must be "physically separate from a lavatory or bathroom..." This requirement is likely impractical and expensive for many older optical locations. While stores typically have a restroom facility that is accessible to its staff and the public for the purpose of handwashing before insertion and removal of contact lenses, not all locations have such facilities separate from the restroom. The cost involved in retrofitting the optical store would be significant to install plumbing and sinks and the location may not be large enough to allow for such construction. The alternative may be that optical contact lens fitters without such separate facility may have to give up that line of business and practice, costing them significantly in lost revenue.

We urge the board to rethink this proposal and either:

- (1) Remove it from the proposal, allowing an on-location restroom facility to suffice, or
- (2) Grandfather locations in existence before the adoption of such a requirement but require that any significant remodel of such grandfathered location include the required separate hand washing facility.

We note that during the Board's sunset review hearing both President Morodomi and Assembly B&P chair Low stated that there is no interest in over-regulating in this area. We also note that outside experts in optical regulation have commented that increasing regulations provide no

offsetting benefit to consumers.¹ Numerous state reviews of licensure have come to the same conclusion, that the risk of harm to consumers is minimal in the unregulated practice of dispensing and increased regulation does not assure consumers will receive better care or service. This is evidenced by the fact that every state that has considered adding licensure for opticians since 1981 (at least 17 states) has rejected such efforts. We urge the Board to reject, as unnecessary, these added restrictions on the practice of opticians.

Again, thank you for the opportunity to comment. We look forward to further discussion on these matters. Best wishes for continued safety and good health.

Very truly yours,

Joseph B. Neville

Joseph B. Neville
Executive Director
National Association of Optometrists & Opticians

¹ “Taken together, the results indicate that optician licensing is increasing the earnings of professionals with little evidence of benefit accruing to consumers.”

Bringing the Effects of Occupational Licensing into Focus: Optician Licensing in the United States

Edward J. Timmons and Anna Mills, Department of Business Administration, Saint Francis University, Loretto, PA 15904, USA. Mercatus Center at George Mason University, Arlington, VA 22201, USA.
Eastern Economic Journal, 2018, 44, (69–83)

“...with optician regulation, licensing restrictions raise the cost of services without improving quality. Put differently, research suggests that consumers are paying more without getting better results.”

License to Work, A National Study of Burdens from Occupational Licensing (2nd Edition)
Institute for Justice, November 2017, Carpenter, et al.

Public Comment on Agenda Item #4B – Optician Program Statutory Updates

Submitted by Anna Watts, CLD / SLD via email on 5/20/21

Hello Board of Optometry,

I agree with the response. When Ruby and Adam were on the DOC, we all agreed that it was important to consumer safety that we ensure there is a licensed optician supervising unregistered workers. In a retail setting, there have been times when apprentices, sales associates, eyewear stylists, etc. were left unsupervised, and this was not to the benefit of the patient. If the following tasks are not completed properly, this could lead to further problems for the patients. Examples include, but are not limited to the following:

- 1) Choosing the proper size frame for specific prescriptions and lifestyle needs
- 2) Making lens recommendations based on the patient's prescription
- 3) Taking proper optical measurements and making frame adjustments
- 4) Conducting final inspections of eyeglasses to ensure it's correct prior to contacting the patient
- 5) Dispensing eyeglasses and contact lenses to the patient

Issues I've observed in the past include unregistered workers:

- 1) Allowing contact lens brand substitutions
- 2) Dispensing incorrect contact lenses to the patient (brand, base curve, diameter, sphere)
- 3) Selecting incorrect frame size for patient
- 4) Taking incorrect optical measurements
- 5) Providing the wrong information to patients and trying to guess the answers because there was no supervisor available to ask
- 6) Incorrectly neutralizing eyeglass prescriptions
- 7) Incorrectly inspecting progressive lens engraving, type, coatings, transitions, etc.
- 8) Taking old lenses and putting them into new frames without taking into consideration the risk of creating unwanted prism
- 9) Selecting the wrong lens; some patients are non-adapt to specific materials and lens design
- 10) Not understanding how to troubleshoot problems when a patient returns with concerns that there is something wrong with their glasses, and defaulting to telling the patient that they need to "go back to the doctor," implying that there is a refraction

issue, rather than conduct a proper inspection to ensure the glasses were made properly to begin with. This creates issues for both the patient and doctor because the patient may view the doctor as incompetent. This leads to the doctors getting upset with the worker for misinforming the patient.

These issues could be easily avoided if there is adequate supervision by a licensed optician at all times. It is important for an unregistered worker to have someone who understands the technical aspects of opticianry. Not only will this allow the worker to learn to be accountable for their mistakes, but it ensures that the patient is properly cared for, and their safety is the #1 concern. Eliminating the supervision ratios would create more issues for all parties involved. Having a standard in place is important and ensures that the Board of Optometry is doing what is right for consumers and registrants.

Warm Regards,

Anna Watts, RSLD, ABOC