

MEMBERS OF THE BOARD

Mark Morodomi, J.D., President
Glenn Kawaguchi, OD, Vice President
Debra McIntyre, OD, Secretary
Cyd Brandvein, Public Member
Jeffrey Garcia, OD
Eunie Linden, J.D., Public Member
Sandra D. Sims, J.D., Public Member
David Turetsky, OD
Lillian Wang, OD
Vacant, Public Member
Vacant, Optician Licensed Member



QUARTERLY BOARD MEETING AGENDA

Friday, May 21, 2021
9:30 a.m. until the close of business
Public Petition Hearings - Time Certain Start of 2 p.m.

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

<https://dca-meetings.webex.com/dca-meetings/onstage/q.php?MTID=e926909e0c33d4c1ef9e9cb9f41376b69>

Event number: 187 275 4279

Event password: Optometry52121

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 electronically. 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 to optometry@dca.ca.gov no later than seven days prior to the meeting for consideration.

Action may be taken on any item on the agenda.

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

2. Public Comment for Items Not on the Agenda

Note: The Board 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 Sections [11125](#), [11125.7\(a\)](#)]

3. Board President's Report

A. Introduction of New Board Members

B. Calls for Board Officer Nominations

4. Discussion and Possible Action on Proposed 2021 Legislation and Legislative Items
A. Review and Approval of Written Responses to the Background Report for the Sunset Review Oversight Hearings (Sunset Review Bill is Tentatively Assembly Bill 1534)

B. Proposed Statutory Changes to Chapters 5.4, 5.45, and 5.5 of the Business and Professions Code (Optician Program Updates)

C. Currently Tracked Legislation

1. Assembly Bill 29 (Cooper) State bodies: meetings
2. Assembly Bill 407 (Salas and Low) Optometry: scope of practice
3. Assembly Bill 691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations
4. Assembly Bill 1236 (Ting) Healing arts: licensee: data collection
5. Assembly Bill 1534 (Committee on Business and Professions) Optometry: mobile optometric clinics: regulations.
6. Senate Bill 509 (Wilk) Optometry: COVID-19 pandemic: temporary licenses

5. Discussion and Possible Action on Regulations

A. Adopt Title 16, Sections 1583, 1584, 1585, 1586 and 1587 of the California Code of Regulations (CCR); **Amend** CCR, Title 16, Sections 1505 and 1524 (Mobile Optometric Offices, Implementation of Assembly Bill 896 – Low, Chapter 121, Statutes of 2020)

B. Amend CCR, Title 16, Sections 1507.5 and 1524 (Home Residence Permits, Implementation of Assembly Bill 458 – Nazarian, Chapter 425, Statutes of 2018)

6. Discussion and Possible Approval of February 26, 2021 Board Meeting Minutes

7. Department of Consumer Affairs Update

- A. Executive Office
- B. Budget Office

8. Executive Officer's Report

- A. Enforcement Program
- B. Examination and Licensing Programs
- C. Regulatory Update
- D. 2021 – 2025 Strategic Plan Update
- E. COVID-19 Update

9. Future Agenda Items

PUBLIC HEARINGS - TIME CERTAIN START of 2 p.m.

10. Petitions for Early Termination of Probation

Sarah Lynn Lampers, SLD 40145, CLD 8011
John S. Son, OPT 11215

11. CLOSED SESSION

A. The Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters, Pursuant to Government Code Section 11126(c)(3)

B. The Board Will Adjourn the Meeting

Meetings of the California State Board of Optometry 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 may take action on any item listed on the agenda. Agenda items may be taken out of order to accommodate speakers and/or to maintain a quorum.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting 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.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #1 – Call to Order, Roll Call, and Establishment of a Quorum

Board President Mark Morodomi will call the meeting to order. Please note the date and time for the record. Also, please note the meeting being held is via teleconference pursuant to the Governor's Executive Order NO-29-20.

Board Secretary Dr. Debra McIntyre, O.D. will call roll to establish a quorum of the Board.

1. Mark Morodomi
2. Glenn Kawaguchi O.D.
3. Cyd Brandvein
4. Jeffrey Garcia, O.D.
5. Eunie Linden
6. Debra McIntyre O.D.
7. Sandra D. Sims
8. David Turetsky O.D.
9. Lillian Wang O.D.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, Board President
SUBJECT	Agenda Item #2 – Public Comment for Items Not on the Agenda

The Board welcomes public comment for items not on the agenda.

Please note: The Board 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 Sections 11125, 11125.7(a))



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, Board President
SUBJECT	Agenda Item #3a – President’s Report: Introduction of New Members

The Board is pleased to introduce two new Board Members.

Eunie Linden, J.D. was appointed by the California Senate Rules Committee to the Board as a public member in 2021. Linden is an attorney who has served as a consultant for the California State Assembly Committee on Business and Professions. She has also served as Deputy Legislative Counsel for the California Office of Legislative Counsel. Most recently, she served as an in-house volunteer attorney with Legal Services of Northern California. Linden earned a Juris Doctor degree from the University of California, Berkeley, School of Law in 2011, a Master of Public Policy degree from the University of California, Los Angeles, in 2008, and a bachelor’s degree from California State University, Long Beach, in 2005.

Sandra D. Sims, J.D. was appointed by Governor Gavin Newsom to the Board as a public member in 2021. Sims as Principal Analyst and Policy Human Resources Analyst for the Los Angeles County Department of Human Resources. She has also served as a Civil Service Advocate at the Department of Children and Family Services. Sims is a member of Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA). She earned a Bachelor of Arts in political science from the University of California, Los Angeles and Juris Doctor degree from the University of California, Hastings College of the Law.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, Board President
SUBJECT	Agenda Item #3b - Board President's Report and Calls for Officer Nominations

[Business and Professions Code § 3014](#) states that the board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Pursuant to the [Board's Administrative Manual](#), the Board President is required to solicit nominees not less than 45 days prior to the open election of new Board officers. With the next Board meeting scheduled for July 9, 2021, the nomination and timeline process are set out below.

Nomination and Timeline

Nomination Ballots Distributed	Friday, May 21, 2021
Ballots Must be Received	Friday, June 4, 2021
Nominees Notified	Tuesday, June 8, 2021
Nominees Confirm Acceptance and Submit Statements	<i>Monday, June 14, 2021</i>
Secretary/Staff Compile Nominee Statements	Friday, June 18, 2021
Nominee Statements Posted with Meeting Materials	Friday, June 25, 2021
Election of New Officers	<i>Friday, July 9, 2021</i>
New Officers Assume Duties	<i>Conclusion of July 9, 2021 Meeting</i>

Specific duties, as identified in the Board Member Handbook, are as follows:

President

- **Board Business:** Conducts the Board's business in a professional manner and with appropriate transparency, adhering to the highest ethical standards. Shall use Roberts Rules of Order as a guide and shall use the provisions of the Open Meeting Act during all Board Meetings.
- **Board Vote:** Conducts roll call vote

- **Board Affairs:** Ensures that Board matters are handled properly, including preparation of pre-meeting materials, committee functioning and orientation of new Board Members.
- **Governance:** Ensures the prevalence of Board governance policies and practices, acting as a representative of the Board as a whole.
- **Board Meeting Agendas:** Develops agendas for meetings with the Executive Officer and Legal Counsel. Presides at Board Meetings.
- **Executive Officer:** Establishes search and selection committee for hiring an Executive Officer. The committee will work with the DCA on the search. Convenes Board discussions for evaluating Executive Officer each fiscal year.
- **Board Committees:** Seeks volunteers for committees and coordinates individual Board Member assignments. Makes sure each committee has a chairperson and stays in touch with chairpersons to be sure that their work is carried out. Obtains debrief from each Board Committee chairperson and reports committee progress and actions to Board at the Board Meeting.
- **Yearly Elections:** Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

Vice President

- **Board Business:** Performs the duties and responsibilities of the President when the President is absent.
- **Board Budget:** Serves as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Review budget change orders with staff.
- **Strategic Plan:** Serves as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board.
- **Board Member On-Boarding:** Welcomes new members to the Board, is available to answer questions, and assist new Board Members with understanding their role and responsibilities. May participate in on-Boarding meeting with staff and new members.

Secretary

- **Attendance:** Calls roll to establish quorum
- **Board Motions:** Restates the motion prior to discussion.
- **Board Business:** Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Reviews and provides edits to draft minutes which have been transcribed by staff following recorded webcasts, note taking and other methods to record public meetings.
- **Yearly Elections:** Reviews template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents:** Maintains copies of administrative documents, e.g., Board Member Handbook, Administrative Law Book, Bagley-Keene Open Meeting Act for reference during Board Meeting.



OFFICER NOMINATION FORM

Please provide a brief description of why you believe this nominee is the best candidate for the selected office. Nominations can be made without any justification. This form may also be submitted in email format to the Executive Officer.

Nominated Office:

- ☐ President
- ☐ Vice President
- ☐ Secretary

Nominee:

- ☐ Cyd Brandvein
- ☐ Jeff Garcia, O.D.
- ☐ Glenn Kawaguchi, O.D.
- ☐ Eunie Linden
- ☐ Debra McIntyre, O.D.
- ☐ Mark Morodomi
- ☐ David Turetsky, O.D.
- ☐ Lillian Wang, O.D.
- ☐ Sandra D. Sims

Nominated by:

Reason for Nomination:



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer
SUBJECT	Agenda Item #4a - Review and Approval of Written Responses to the Legislative Sunset Oversight Background Report

Each year, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee hold joint sunset review oversight hearings to review the boards and bureaus under the Department of Consumer Affairs (DCA).

The sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards and make recommendations for improvements. The Board's Sunset Review hearing in front of the committees took place on Friday, April 9, 2021. The Board's Sunset Bill for 2021-22 is [Assembly Bill 1534](#) (Committee on Business and Professions).

Set out below are questions raised by the committee and staff's proposed responses.

BACKGROUND PAPER FOR THE California State Board of Optometry

Joint Sunset Review Oversight Hearing, April 9, 2021
Assembly Committee on Business and Professions and the
Senate Committee on Business, Professions and Economic Development

BOARD RESPONSES TO CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA STATE BOARD OF OPTOMETRY

ADMINISTRATIVE ISSUES

ISSUE #1: Board Composition. *Does the current membership on the Board appropriately balance professional expertise and public objectivity, especially given current vacancies on the board?*

Background: Statute prescribes the composition of the Board, which includes both Board licensees (professional members) and individuals who are not regulated by the Board (public members). Statute provides for a total of thirteen board members. When all appointments to the Board have been made, there are a total of six professional members (five optometrists and one registered dispensing member) and five public members, resulting in a slight majority of members as active licenseholders or registrants. In 2015, the United States Supreme Court ruled in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* that when a state regulatory board features a majority share of active market participants, any allegedly anticompetitive decision-making may not be subject to *Parker* antitrust litigation immunity unless there is “active state supervision” to ensure that all delegated authority is being executed in the interest of the public and not the private commercial interests of the members.

To date, there has been no meaningful litigation against public bodies established under California law, and it is likely that the Board receives more than enough active state supervision to qualify for immunity. The Board is considered only semi-autonomous, with much of its rulemaking and disciplinary activity subject to involvement by multiple other governmental entities. Its current Executive Officer is not a licensee; however, there is no statutory prohibition against the appointment of a future Executive Officer who is also a market participant. Finally, the Department of Consumer Affairs has also worked to ensure that members are adequately trained in certain procedures to ensure an adequate record of deliberation for purposes of defense against any potential allegations of antitrust.

Notwithstanding the legal sensitivities accompanying boards with majority professional memberships, the disproportionality for the Board is arguably minor, with an advantage of only one additional member who is regulated by the Board, and one of the professional members being a dispensing registrant with distinct interests from the optometrist members. Considering the numerous benefits of having professional perspectives in deliberations by the Board regarding the practice of optometry, this technical imbalance is unlikely to be in need of any further statutory change. However, the Board should remain

mindful whenever it engages in formal decision-making that may appear to serve the economic interests of licensee populations represented on the Board.

This is particularly true in instances where vacancies on the Board result in a further imbalance of the professional and public perspectives. Currently, there are four vacancies on the Board, three of which are public members and the other of which is the registered dispensing member. This means that as of April 1, 2021, there were five optometrist members on the Board versus only two public members. This membership asymmetry is an example of why thoughtful statutory Board compositions could still result in outsized representation of the profession.

Staff Recommendation: *The Board should indicate whether it believes the current lack of public membership on the Board presents any risks or challenges in its decision-making and what efforts it has taken to ensure its decision-making is subject to state supervision so as to safeguard its members from antitrust allegations.*

Board Response: *In all matters, the Board centers the protection of the public and appropriately balances professional expertise and public protection. With the recent appointment of public members by the Governor and the Senate President Pro Tempore, the Board anticipates a greater diversity of consumer perspective and welcomes a more wide-ranging discussion that addresses the needs and experiences of more Californians.*

ISSUE #2: RDO Member. *Has the inclusion of an RDO member on the Board resulted in better regulation of the industry?*

Background: Prior to 2016, the Board's eleven members consisted of five members of the public and six optometrists. Subsequently, the enactment of AB 684 (Alejo/Bonilla) required that one of the optometrist members be replaced with a registered dispensing member. The bill provided that the registered dispensing member would replace the optometrist member whose term expired on June 1, 2015.

The Legislature's decision to require a permanent slot for a registered dispensing member on the Board was noteworthy. When the RDO Program was under the Medical Board of California, there was no optician member designated for that board. Similarly, while a number of other healing arts boards have councils or committees consisting of allied professionals under the board's jurisdiction, only a handful have representatives of those professions on the principle board.

While currently the registered dispensing member is vacant, there has previously been an optician on the Board. This presumably has resulted in the dispensing profession's perspective receiving more attention during meetings of the Board governing that program and the optical industry at large. As the Board is assessing its successes and challenges, it should speak to the benefit it has seen from the change to its composition as it assumed regulatory responsibility for dispensing professionals.

Staff Recommendation: *The Board should advise the Committees as to whether it believes there has been a substantial benefit to having a registered dispensing member on the Board and how that member has engaged on issues relating both to optometry and to opticianry.*

Board Response: *Since 2016, the Board has reviewed the various statutes impacting Opticians, developed Disciplinary Guidelines, reviewed the Code of Regulations for Opticianry, and performed two of three Occupational Analyses. In each of these endeavors, the Registered Dispensing Optician*

Committee and the CLD/SLD Board member have been guiding forces. They have helped staff and board members better understand the standard duties of the profession and the effect of the laws and regulations. We are awaiting appointment of a Registered Optician member to the Board, and have enlisted education professionals from throughout the state and different practice modalities to supplement discussions.

ISSUE #3: *Dispensing Optician Committee. Has the DOC functioned effectively since it was established?*

Background: In addition to placing a registered dispensing professional onto the Board, AB 684 (Alejo/Bonilla) created a Dispensing Optician Committee (DOC). The DOC consists of five members, including one RDO, one spectacle lens dispenser or contact lens dispenser, two public members, and one member of the Board. Following initial appointments to the DOC, all appointments to the DOC will be made by the Governor. Unlike the Board, no members of the DOC are appointed by either the Speaker of the Assembly or the Senate Rules Committee.

The role of the DOC is “to advise and make recommendations to the board regarding the regulation of dispensing opticians, spectacle lens dispensers, and contact lens dispensers.” The DOC is required to meet at least twice a year. Any recommendations made by the DOC regarding scope of practice or regulatory changes must be approved, modified, or rejected by the Board within 90 days. If the Board rejects or significantly modifies the intent or scope of a recommendation, the DOC may request that an explanation be provided in writing within thirty days.

During the Board’s prior sunset review, the Committees noted that there had been difficulty in finding individuals to appoint to the DOC and that the committee had not yet been fully established. Since then, the Board was successful in making appointments to the DOC and it has begun to meet; however, there are currently two vacancies out of the five designated members. As this is the first sunset review since the Board has had the DOC formally in place, it would be valuable to know whether the DOC has functioned well and what challenges the Board has experienced in utilizing the committee.

Staff Recommendation: *The Board should inform the Committees of how it believes the creation of the DOC has served to benefit consumers and the profession, and whether there are any recommended changes to how DOC members are appointed or selected that could allow it to be more effective.*

Board Response: *The Board recommends amending the statute which seeks representatives from registered dispensing optician businesses. It is believed that the intent of the Legislature was to obtain professional input from individual licensees rather than policy influenced by company-specific budgeting or strategy. If membership is predicated upon employment by a business, the member’s decisions can be unduly influenced by dismissal or other threat to livelihood. Any such influence would compromise the independence of the board member and subvert the Board’s mission of consumer protection. The Board believes that this appointment should be used to engage a professional in the growing educational space for Opticianry.*

ISSUE #4: *Board Attorney. Does the Board have sufficient legal counsel?*

Background: In original statute enacted in 1913 that first created the Board allowed it “to employ agents, attorneys, and inspectors.” Currently, however, there is no express language in the Optometry Practice

Act authorizing the Board to hire its own dedicated attorney. Legal representation in disciplinary prosecution is provided by the Attorney General's Licensing Section, and the DCA offers counsel as part of the centralized services it provides to boards, as needed to assist with rulemaking, address legal issues that arise, and support compliance with open meeting laws.

Dedicated board counsel is, however, considered to provide substantial value when questions of law occur regularly enough to warrant the presence of attorney who specializes in a board's practice act, and may help improve the Board's rulemaking timelines. It is under this line of thinking that the Legislature has explicitly authorized other boards to appoint their own lawyers. Particularly as the Attorney General's billing rate has increased substantially, these may each be factors in costlier and lengthier enforcement activities by the Board.

Staff Recommendation: *The Board should inform the Committees of whether it believes it would benefit from having its own dedicated attorney.*

Board Response: *No, the Board has effective legal representation through the Legal Unit of DCA. The Board accesses a team of attorneys—board counsel, regulations counsel, supervising Assistant Chief Counsel, and Deputy Director for Legal Affairs. These layers provide more effective advocacy with the Attorney General's Office and other executive branch departments than would be a solo attorney for the board. Our Board counsel draws on legal knowledge and prior experience of other attorneys, which is beneficial given the cross-cutting legal issues common to all DCA boards. Board counsel has easy access to historical opinions and advice related to the Board. We appreciate that Board counsel is supervised by senior attorneys to ensure the accuracy, consistency, and quality of the advice.*

FISCAL ISSUES

ISSUE #5: Fund Merger. What is the status of the merger of the Optometry and RDO funds?

Background: When AB 684 (Alejo/Bonilla) transferred the RDO Program from the Medical Board of California to the Board, it also transferred the RDO Fund, in which registration fees collected from registered dispensing professionals are collected. As a result, the Board was responsible for operating two separate funds. The Board's prior sunset review background paper noted that because the Board was administering two separate funds, there may be duplicate administrative work, such as reviewing two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund.

The enactment of AB 896 (Low) signed into law as an urgency measure on September 23, 2020, required the Department of Finance to merge the Optometry and RDO funds. The bill abolishes the Dispensing Optician Fund on July 1, 2022, and will require that any sums of money in that fund be transferred to the Optometry Fund before July 1, 2022. Board management and the DCA Fiscal Unit have stated that they believe that the merger will occur without adverse impacts, as the RDO Fund has fully funded operations and maintained the mandated reserve balance.

Prior to the merger of the two funds, the Board reported that no enforcement-related costs for the RDO program were charged to that program, meaning any enforcement-related costs for RDOs were attributed to the Optometry Fund. Presumably this will be rectified with the fund merger. Additionally, the Board should benefit from accounting efficiencies and administrative clarity as it moves forward with a single

special fund for its operational costs.

Staff Recommendation: *The Board should provide the Committees with an update on the status of its fund merger and describe what future benefit it expects to derive from the consolidation of its special funds.*

Board Response: *The Governor approved the fund merger in late 2020. By no later than July 1, 2022 the funds will transfer from the Registered Dispensing Optician Fund. At the start of 2021, the Board began receiving merged budgeting documents for long-term planning across programs. Through the merger, we are realizing long-term stability in the Board's fund condition and improved calculation for months of operations in reserves.*

Most importantly, the Board will restructure our staff to increase cross-training and minimize disruptions in service and processing. Through shared program resources, we will provide relief to the lone enforcement analyst for the Opticianry program, who carries a case load more than double that of our Optometry analysts.

Our Board statistics show that the programs have an almost equal number of licensees—but Optometry applications are received all at once around professional school graduations. The fund merger will allow Licensing staff flexibility to consistently process Opticianry Program applications (which are steadily increasing) while surging staff resources to handle graduation season and other cyclical renewals in Optometry. With the merger, we anticipate decreased processing times, thus better consumer protection.

ISSUE #6: Attorney General Billing Rate. Will the abrupt increase in the Attorney General's client billing rate for hours spent representing the Board in disciplinary matters result in cost pressures for the Board's special fund?

Background: In July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor's Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without any meaningful notice to any client agencies. For special funded entities such as the Board, unexpected cost pressures can be devastating. As the Board anticipates the need for future fee increases, the Committees should be informed of whether the Attorney General's Office or the Administration has informed the Board of any efforts to provide assistance with ensuring that the Board is able to maintain a healthy fund condition going forward.

Staff Recommendation: *The Board should discuss with the committees the impact of the Attorney General's rate increase and whether any action is needed by the Administration or the Legislature to safeguard the health of its special fund.*

Board Response: *The increase to Attorney General fees occurred simultaneously with the Board's*

defense of 21 citations against Stanton Optical, which has created a separate and distinct cost pressure. In FY 2018-2019 the Board requested a budget augmentation of \$40,000 to off-set these costs. The Board anticipated making additional budget augmentation requests for 2019-2020 and 2020-2021, but reduced practice during the pandemic resulted in fewer complaints. We are scrutinizing billings and on a case-by-case basis, analysts are requesting legal aid labor for simple document revisions rather than paying the higher fees of an attorney; we are also fast tracking stipulations that do not require the use of a Deputy Attorney General. We have not had to explicitly weigh the severity of cases against cost of discipline, but cost pressures are preventing investments in technology, human resources and organizational improvement.

LICENSING ISSUES

ISSUE #7: *Fair Chance Licensing Act. What is the status of the Board's implementation of Assembly Bill 2138 (Chiu/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Act?*

Background: In 2018, Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions were scheduled to go into effect on July 1, 2020.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation would require changes to current regulations for every board impacted by the bill. Recently, the Board was in the process of finalizing its regulations to revise its denial criteria to incorporate the changes from the bill. It is also likely that the Board has identified changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public.

Staff Recommendation: *The Board should provide an update in regards to its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.*

Board Response: The Board has fully implemented Assembly Bill 2138 for both the optometrist and optician programs. Regulations to implement the bill became effective on February 25, 2021. The Board worked closely with Department of Consumer Affairs and collaborated with other DCA consumer protection boards on this implementation.

These regulatory changes adopt criteria used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, and duties of a licensee, or when an applicant or licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, suspension, or revocation of a license or registration. The Board is in the process of training staff to apply these criteria to any optometry licensure and optician registration applicants who might qualify.

The Board projects the actual number of optometrist and optician applicants who may qualify under this criteria to be low. Although the Board believes no statutory changes are needed at this current time, staff will continue to identify potential changes to the law which may be advisable in order to enhance consumer protection.

ISSUE #8: Statutory Consolidation. Should chapters establishing and governing the RDO Program be merged into the Optometry Practice Act?

Background: In addition to discussing whether a merger of the RDO and Optometry Funds was advisable, the Board's prior sunset review background paper suggested that there may be benefit to merging the RDO Program into the Optometry Practice Act. The Committees have noted that merging practice acts would not be unique and that there is precedent with other boards and bureaus. The Board has suggested that merging the practice acts may improve consumer protection and enhance administrative efficiencies by providing clarity in the statutes and regulations and removing duplicative administrative work as mentioned in the above background section.

The Board discussed a potential merger of the optometry and optician practice acts at the August 2, 2019, public meeting. Stakeholders cautioned that such a merger should be performed with care to ensure that it does not result in unintentionally removing any enforcement authority from other code sections. The Board has stated that it is currently performing a detailed review of opticianry statutes with a goal of clarifying and better organizing statute and regulations. The Board states that this statutory review is projected to be complete in 2021 before the fund merger completion date in 2022.

Staff Recommendation: *The Board should update the Committees on its discussions regarding whether merging the RDO Program into the Optometry Practice Act is advisable and feasible and when it would anticipate having any proposed language to accomplish this goal.*

Board Response: *The Board does not currently recommend including Opticianry statutes in the Optometry Practice Act. Beginning in 2019, the Dispensing Optician Committee recommended approval of a draft practice act for Opticianry that better defines the practice of each license type and sets supervision standards for retail workers. These professional recommendations have been reviewed multiple times by the Board and other committees. The legislative proposal was approved during the May 21, 2021 Board meeting. That proposal will be included in the suggested clean-up language detailed in Issue #21 of this response paper.*

ISSUE #9: Licensure of Foreign Graduates. Have there been adequate pathways for internationally trained optometrists to become licensed in California since the Board has ceased awarding Letters of Sponsorship to foreign graduates?

Background: To become licensed as an optometrist in California, applicants are required to have completed a four-year Doctor of Optometry degree program meeting California educational requirements. Previously, the Board was authorized to sponsor "foreign graduates," or individuals who obtained their education from institutions outside of the United States, to sit for the NBEO examination. The Board noted that these individuals would request a Letter of Sponsorship (LOS) from the Board to allow the foreign graduate to take the NBEO. The Board would determine if the applicant's education

obtained through the foreign university was equivalent to the education earned at a school of optometry within the United States

However, while receiving an LOS from the Board would allow a foreign graduate to take the national NBEO examination, it did not mean that the foreign graduate would actually be eligible for licensure in California, as the applicant would still not have met the California educational requirements. This meant that there was no real pathway for a license to practice even upon passing the NBEO. In response to these issues, AB 1708 (Low) eliminated the Board's LOS program beginning January 1, 2018 and the Board no longer sponsors foreign graduates. Instead, the Board states that when it receives inquiries from foreign graduates looking to obtain licensure in California, it directs these applicants to three colleges on the East Coast that offer an accelerated two-year program. There, foreign graduates can obtain certification to practice in the United States.

Staff Recommendation: *The Board should indicate to the Committees whether it believes there could be a statutory solution to allow foreign graduates to achieve licensure within California without having to attend an accelerated two-year program on the East Coast.*

Board Response: *The Board does not currently foresee a statutory solution to this issue. Research and policy development is on-going.*

EDUCATION AND EXAMINATION ISSUES

ISSUE #10: *NBEO Examination. Has the requirement that optometry students travel to North Carolina to complete a portion of the NBEO examination presented a greater challenge due to the COVID-19 pandemic, and are there any proposed solutions to resolve this ongoing issue?*

Background: To become licensed as an optometrist in California, applicants must pass a three-part national examination developed by the National Board of Examiners in Optometry (NBEO). Part III of the NBEO is administered in person, with a testing site exclusively located in North Carolina. Prior to 2010, the Part III exam was given at each school of optometry. However, due to lack of consistency in staff training and administration of the test, NBEO consolidated all testing into one location in North Carolina.

Since then, the NBEO has since considered opening of an additional location. The NBEO initially considered where most schools and candidates are located, with approximately two-thirds of applicants educated on the East Coast. The NBEO then analyzed lodging and transportation costs, city safety, real estate costs, and the cost and quality of living for its staff. The result of this analysis was a proposal to open testing locations in either Denver or Las Vegas. However, the NBEO has since announced that it is not pursuing opening another location at this time, as it believes that a significant increase in per-student testing fees would be necessary to fund the expansion.

Without a testing site closer to California, applicants educated on the West Coast have had to travel to North Carolina to complete their examination requirements. This issue became particularly challenging during the COVID-19 pandemic when air travel was strongly discouraged and restricted by health officials. However, the Board is limited in terms of its ability to address the problem. The NBEO is a private organization that can choose where to offer its examinations. Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO Exam for licensure, so an elimination of the requirement would significantly impact license portability options for California optometrists. As the Legislature

continues solutions to this ongoing issue it would be helpful to hear the perspective of the Board.

Staff Recommendation: *The Board should update the Committees regarding the likelihood that the NBEA will add new testing sites in the future and whether it has recommendations to allow applicants to become licensed optometrists without jeopardizing their health through travel to North Carolina.*

Board Response: *The Board agendaized the testing site four times in the last year, including a special hearing specific to this issue on Friday, September 18, 2020. NBEA has indicated that it does not intend to create a Western United States testing center in the next five to seven years.*

Despite the threat of COVID-19, all 2020 California graduates completed the test and were licensed timely. California's 2021 graduating classes are scheduled to complete examinations before the end of May. We can report that no COVID-19 infections have been linked to the North Carolina Testing Center or travel to/from the examination site.

But we recognize that having a single testing site is inconsistent with contingency planning for the next pandemic, natural disaster, cyber-attack, or domestic terrorism. Earlier this year, we formed a task force to develop a blueprint for action. We are reviewing contracts, researching technical support and content delivery models, and engaging resources in international risk management. Additionally, the adoption of a board-specific state-of-emergency statute could be needed in the event of a disruption to testing.

ISSUE #11: Continuing Education. Has the Board successfully enhanced its process for auditing compliance with CE requirements?

Background: Under Board regulations, optometrists must complete 40 hours of continuing education (CE) every two years in order to renew their license. Optometrists are allowed to complete 20 of their required hours through alternative methods, including, but not limited to, self-study through an electronic medium. Optometrists who are certified to use therapeutic pharmaceutical agents must complete 50 hours of CE, including 35 hours in the diagnosis, treatment, and management of ocular disease.

During the Board's prior sunset review, it was noted that due to staffing issues and time constraints, CE audits were not consistently conducted. The Board stated in its Sunset Review Report 2016 that "as a result of the Board restructuring, additional resources are now available to conduct more audits. The Board is also researching more efficient ways to increase the number of CE audits, strengthening consumer protection."

Subsequently, the Board continued conducting CE audits into 2018 and has a record of conducting 321 audits over the past four fiscal years. During that time, 101 audits resulted in a fail for not having the required number of CE hours or being deficient in completing specific CE requirements respective to license certifications. The overall percentage of CE failure was 31 percent. This would indicate that the Board is now more effectively auditing CE compliance; however, the failure rate still appears to be high, suggesting that optometrist compliance has not yet increased accordingly.

Staff Recommendation: *The Board should provide the Committees with an update on its efforts to*

increase CE compliance audits and state whether it believes that the current fail rate is unacceptably high and whether any changes to how it enforces CE compliance could improve compliance.

Board Response: The Board has a robust process that evaluates presenters, potential conflicts of interest, and the presence of marketing or sales content within every course. Before a CE course is approved, providers submit a curriculum vitae for each speaker, PowerPoint slides and training materials. The Board recently approved new regulations, which will allow greater oversight of continuing education course content and providers. The Board's Practice and Education Committee will now develop protocols for provider audits and adopt a written policy regarding sales content and conflicts of interest.

ENFORCEMENT ISSUES

ISSUE #12: Teleoptometry and Emerging Technologies. Does the availability and use of new and emerging technologies, including those allowing for the remote eye examinations, effectively balance concerns for patient health and safety with expanded access to optometric services?

Background: As advancing technologies have sought to modernize health care delivery and improve patient access to care, policy discussions have persisted around how disruptions to traditional practice may result in the weakening of consumer protections. The optometric profession has been no exception. In particular, several companies have been involved in the development of products aimed at increasing the convenience of renewing a prescription for corrective lenses and contacts, which would allow patients to receive that prescription through the use of a smartphone or computer without having to visit an optometrist's office.

These so-termed remote eye assessment products have been the topic of debate within the optometric practice and have received substantial scrutiny by regulators. In April of 2016, the American Optometric Association (AOA) filed a formal complaint with the federal Food and Drug Administration (FDA), alleging that a platform marketed by a tech company called Opternative posed significant health risks to the public, including the potential for inaccurate prescriptions, missed diagnosis of serious eye conditions, and the creation of a prescription without significant input from an eye doctor.

In February of 2018, the Federal Trade Commission (FTC)'s Office of Policy Planning weighed in on proposed legislation in the State of Washington that would require licensed ophthalmologists and optometrists to conduct an in-person, comprehensive eye examination before providing prescriptions for eyeglass and contact lenses. The FTC argued against the bill, stating that "we are concerned that the Bill may reduce competition, access, and consumer choice in eye care and might also raise costs for consumers." This stance was supported by various companies actively working to innovate within the remote eye assessment technology space.

Subsequently, in August of 2019, the FDA issued a medical device recall for the Opternative product (now marketed under the name Visibly) for failure to submit a marketing application and receive clearance from the FDA. Meanwhile, other companies continue to market remote eye assessment products, with myriad distinctions making it difficult to tell whether there will be the same issues with those platforms as well. One technology solution, currently utilized by both a major online retailer as well as a prominent pharmacy chain, utilizes a web platform to renew expired prescriptions through a

vision exam conducted over a smartphone or computer using a “digital eye chart.” The resulting prescription is then reviewed and approved by an ophthalmologist.

The dialogue about how to appropriately balance patient access and convenience against perceived circumvention of traditional consumer protection safeguards continues. The most immediate concern is arguably that when consumers are able to renew their lens prescriptions online without a visit to the optometrist, they are missing the opportunity to ensure that they have received a comprehensive eye exam. However, the previously mentioned technology solution does feature frequently asked questions stating explicitly that the product is *not* a comprehensive eye exam and that patients should still see their eye care provider regularly. This may be an appropriate approach to cases where a patient simply needs or desires a quick and convenient way to update their prescription but who needs additional confirmation that in-person visits to an optometrist are still required to sustain their ocular health.

In addition to online refraction and prescription renewals, there have been ongoing discussions around how to properly utilize telehealth platforms to allow for optometrists to examine patients remotely using video conference technology, which would potentially increase access in rural areas with fewer available practitioners. A teleoptometry model that has been proposed would involve a patient visiting an office where trained technicians take scans or images for review by an optometrist, who would then review the information and consult with the patient over video technology. One unresolved question regarding this proposal would be whether the interaction between the patient and the optometrist must be in real-time, or whether asynchronous video transmissions would be allowed.

As technologies continue to emerge and debate persists, it may be premature to determine what teleoptometry policies are in the best interest of patients. In the meantime, the Board has continued to meet and discuss what sort of telemedicine laws would be effective for its regulatory and enforcement efforts. The topic will continue to be of interest to the Committees as the Legislature seeks to balance patient safety and convenient access to care.

Staff Recommendation: *The Board should inform the Committees of whether it has seen any adverse patient impacts resulting from the use of teleoptometry and technology platforms, and whether it intends to recommend any changes to statute or its practices to better protect consumers.*

Board Response: *Even before the pandemic hit, through two public meetings and multiple telemedicine workgroup meetings in 2019 and 2020, Board staff presented research on various telemedicine scenarios, technologies, and best practices. Workgroup conclusions: While we have heard from stakeholders that optometry is not a field that traditionally lends itself to telemedicine, there has been an increase in online retailers allowing vision refractions using app-based technology. These apps use self-refraction testing rather than autorefraction tests employed by optometrists and assistants. Once the patient generates measurements, the results are transmitted to a doctor who is licensed to write corrective lens prescriptions in California. Almost always, this doctor is an ophthalmologist who is licensed by the Medical Board of California and outside the jurisdiction of the Board of Optometry. Some are done by assistant. These online refractions can provide a reasonably accurate corrective lens prescription, but cannot assess the health of the patient's eye, monitor for potential vision problems, evaluate the functioning of the patient's eyes and vision, diagnose or treat eye disease, or provide consultation on the patient's eye and vision health. The Board has provided direction to staff for further research to develop a comprehensive telemedicine policy in FY 2021-22.*

There are a variety of Opticianry services offered online. Opticianry is the sale of contact lenses and spectacles, as opposed to the testing for prescriptions and examinations for eye health. The most common online opticianry services are the delivery of prescription contact lenses, the fabrication of prescription spectacle lenses, and the delivery of prescription spectacles. While contact lens sellers must register with the Board (no matter where they are based), spectacle lens sellers must register with the Board if based in California only. During the May 21, 2021 meeting, the Board approved a legislative proposal to extend the licensure requirement to include online spectacle sellers based outside of California (Nonresident Spectacle Lens Sellers) and create an intelligible Opticianry Practice Act. The Board respectfully submits these changes by attachment to ISSUE #21: Technical Cleanup.

ISSUE #13: RDO Regulation Enforcement. Does the Board need its authority to compel compliance with the laws governing RDOs clarified or enhanced to ensure robust enforcement?

Background: AB 684 (Alejo/Bonilla) entrusted the Board with responsibility to enforce laws and regulations governing the business relationships between optometrists and RDOs. The bill additionally made a number of changes to the requirements for optical retailers to make eye exams available to customers and enacted myriad new consumer protections in exchange for clarifying what types of relationships between optometrists and retailers would be lawful. As a result, the majority of optical retailers in California have now been able to offer eye exams without inappropriately intermingling an optometrist's professional judgment with a retailer's financial interest.

However, the Board has informed the Committees that one major eyewear retailer has refused to comply. The Board states that this is despite multiple efforts to communicate with the retailer to bring them into compliance. It would arguably appear as though the retailer is deliberately flouting California law. The Board has issued a total of 21 citations to individual locations of the retailer in California for various violations of the law, including failure to obtain or maintain a registration to practice as an RDO as well as advertising violations. Fine amounts for individual citations are \$5,000 or \$55,000, with a total for all citations of \$655,000. According to the Board, the citations themselves stem from ongoing issues with the retailer and their refusal to comply with the law. The Board states that the retailer has repeatedly opened new locations without obtaining proper registration, despite being repeatedly warned to do so.

To date, the Board has spent nearly \$250,000 on the investigation and legal defense of the above citations. In two prior budget years, the Board has had to request emergency budget augmentations to have the funds to continue the legal defense of the citations. In the meantime, the retailer has not corrected any of the cited violations.

The Board argues that allowing the retailer to employ misleading advertising disadvantages the public, who believe that the stores provide eye exams and optometric services when they are not licensed to do so. The Board asserts that the retailer diminishes California's labor market by failing to abide by California law, creating an unfair advantage and encouraging non-compliance by other companies. The Board believes that allowing a corporation to schedule and control appointments places business efficiency above patient health.

As the Board cannot expend more funds in this particular appeal or possible infractions by other vendors within opticianry, it has indicated that it is seeking legislative clarification to ensure the provisions of AB 684 are enforceable. The Board has requested language stating the Board's authority to take action when an optical business has undue control over an Optometric practice. Given the importance of

ensuring that the intent of AB 684 is fulfilled, the Committees may indeed wish to consider empowering the Board with greater authority to take action against bad actors.

Staff Recommendation: *The Board should provide the Committees with any recommendations to ensure it has sufficient authority to compel compliance with California’s laws in regards to opticianry.*

Board Response: *In the defense of twenty-one citations against Stanton Optical, the Board has revealed the following loopholes that allow Stanton Optical undue influence over the practice of optometry.*

- *According to BPC Section 655, subdivision (f), an ophthalmologist may employ an optometrist and may enter a landlord-tenant relationship with a dispensing optician business. Therefore, current law enables Stanton Optical to contract with an out-of-state, ophthalmological shell company to appear separate from the optometrists providing services. The ophthalmologist does not manage its employees; management of its optometrists is unlawfully performed by the registered dispensing optician.*
- *In contracting with an ophthalmologist, Stanton Optical is not required to adhere to or produce documentation of a lease agreement subject to the conditions of BPC Section 655, subdivision (d). Additionally, the terms “direct landlord-tenant relationship” and “indirect landlord-tenant relationship” have no definition.*

The Board respectfully submits applicable changes by attachment to ISSUE #21: Technical Cleanup.

ISSUE #14: *Standard of Care Model for RDOs. Should the Board treat RDOs more like trained professionals in its enforcement and licensing activities?*

Background: Since the transition of the RDO Program, the Board now has oversight and enforcement responsibilities for both optometrists and opticians. However, the two regulated professions are arguably treated very differently in regards to enforcement. While optometrists are considered trained professionals whose judgement and competence are considered when being held to a California standard for purposes of licensing and discipline, RDOs are arguably not regarded with the same perspective. Considering that California has chosen to place limitations on who can lawfully engage in activities regulated under the RDO Program and considering that the practice of opticianry is a skilled professional service within the greater landscape of vision health, the Board may consider pursuing ways to utilize something resembling a standard of care model in its regulation of RDOs and dispensing professionals.

Staff Recommendation: *The Board should provide its perspective on whether dispensing registrants should be treated more like trained professionals similarly to optometrists and how that paradigm shift could be effectuated in Board policy and in statute.*

Board Response: *Though physical harm may not be the result, poorly executed spectacle and contact lens dispensing does impact the consumer. Consumer protection includes ensuring that Californians receive the care they need with a reasonable guarantee of the accuracy of that care. The Board receives several complaints each month claiming optometrists have written an incorrect prescription or that the materials they received cause side effects or do not work. Extensive committee discussion indicates that refabrications and mild physical effects are common outcomes of poorly executed spectacle and contact lens dispensing. These complications often result in lost time and money for the consumer. According to the experience of professional opticians serving on the committee—consumer outcomes improve with*

on-site supervision conducted by opticians, who have proven a higher understanding of the mathematical concepts and fabrications behind spectacles and contacts.

The Dispensing Optician Committee has completed a clean-up of the disparate statutes that govern Opticianry and enacted nascent disciplinary guidelines. Concurrently, the committee has closely monitored the development of educational programs and the effect of training on national exam pass rates. The Board is completing occupation analyses for Spectacle Lens Dispensers, Contact Lens Dispensers, and unlicensed assistants to optometrists. The Board is working to develop a comparison of these research reports. Beginning in 2023 the Board plans to complete a data-driven analysis of the profession. Though opticians are not rigorously trained and tested like optometrists, the Board recognizes an opportunity to improve consumer protection through standardization and education.

PRACTICE ISSUES

ISSUE #15: *Independent Contractors. Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for licensees working in the optometry profession as independent contractors?*

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the "ABC test," the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors. Occupations regulated by entities under the Department of Consumer Affairs have been no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine the rights and obligations of employees.

In 2019, the enactment of Assembly Bill 5 (Gonzalez, Chapter 296, Statutes of 2019) effectively codified the *Dynamex* decision's ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. However, optometrists were not included in the bill, and some have suggested that they should be afforded an exemption to prevent unnecessary disruption to the optometry profession.

Staff Recommendation: *The Board should inform the committees of any discussions it has had about the *Dynamex* decision and AB 5, and whether there is potential to impact the current landscape of*

the optometry profession unless an exemption is enacted.

The Board has not engaged in discussions regarding an exemption from AB5 for licensed optometrists.

ISSUE #16: *Relationship with the Ophthalmology Profession. Does the distribution of shared scope of practice between ophthalmologists and optometrists adequately benefit and protect consumers?*

Background: Optometry and ophthalmology are two distinct professions that share a great deal of practice scope and interest. Whereas optometrists are often considered mid-level practitioners with a narrow focus on diagnosing and treating specific eye conditions, ophthalmologists are physicians and surgeons working within a specialty that also places an emphasis on conditions of the eye. As a result, ophthalmologists may engage in virtually any activity within the practice of optometry, while also being authorized to perform a greater number of treatments and procedures than optometrists.

One potential concern with two categories of licensed professional is that enforcement of laws governing the practice of vision care falls to either the Board or the Medical Board of California depending on whether the practitioner is an optometrist or an ophthalmologist. In cases here one board has prioritized certain enforcement efforts, similar attention may not be paid by the other and there may be inconsistent enforcement. This may be the reason why ophthalmologists are often used to perform relatively minor services such as approving prescription renewals.

Additionally, there will continue to be discussions regarding where the line should be drawn between optometry scope of practice and ophthalmology. While as physicians and surgeons, ophthalmologists doubtlessly have more education and training in most cases than optometrists, there would be greater access to care for services that optometrists are authorized to perform. The Legislature likely will and should continue to engage in conversations about how optometrists can safely and effectively engage in more health care practices currently reserved for ophthalmologists.

Staff Recommendation: *The Board should inform the Committees of any perspectives it has regarding the relationship between optometry and ophthalmology.*

Board Response: *The relationship between the optometrist and ophthalmologist relates to “ISSUE #13: RDO Regulation Enforcement. Does the Board need its authority to compel compliance with the laws governing RDOs clarified or enhanced to ensure robust enforcement?” In the defense of twenty-one citations against Stanton Optical, the Board has revealed the following relationship with an ophthalmologist that allows Stanton Optical undue influence over the practice of optometry.*

- *According to BPC Section 655, subdivision (f), an ophthalmologist may employ an optometrist and may enter a landlord-tenant relationship with a dispensing optician business. Therefore, current law enables Stanton Optical to contract with an out-of-state, ophthalmological shell company to appear separate from the optometrists providing services. The ophthalmologist does not manage its employees; management of its optometrists is unlawfully performed by the registered dispensing optician.*
- *In contracting with an ophthalmologist, Stanton Optical is not required to adhere to or produce documentation of a lease agreement subject to the conditions of BPC Section 655, subdivision (d). Additionally, the terms “direct landlord-tenant relationship” and “indirect landlord-tenant*

relationship” have no definition.

Additionally, the exclusion of employment of optometrists to only ophthalmologists inhibits the integration of eye health into preventative care, and federally-qualified health clinic operations. The Board respectfully submits this change by attachment to ISSUE #21: Technical Cleanup.

ISSUE #17: Childhood Vision Screenings. *Are there opportunities for the Board to contribute to national efforts to increase the rates of early pediatric eye exams?*

Background: According to data published by the National Center for Health Statistics within the Centers for Disease Control and Prevention, childhood vision screenings may provide early detection of vision disorders and opportunities for subsequent treatment. The United States Preventive Service Task Force recommends that children aged three to five years receive a vision screening at least once to detect amblyopia (lazy eye) or its risk factors. Key findings from a National Health Interview Survey revealed that during 2016/17, only 63.5 percent of children within this age group had ever had their vision tested by a doctor or other health professional, and that race, socioeconomic status, and access to insurance all significantly impacted the likelihood of a child receiving a vision screening by the age of five.

In 2015, SB 402 (Mitchell) was proposed to address the need for comprehensive eye examinations for school-age children; when the bill failed to pass, the Board created a Children’s Vision Workgroup. Throughout 2017 and 2018, the Children’s Vision Workgroup held a number of meetings dedicated to supporting AB 1110 (Burke), which similarly aimed to increase student access while maintaining the expected standard of care for examinations conducted in brick and mortar medical offices. However, AB 1110 also did not pass, and the workgroup was effectively dissolved.

Given the great importance of ensuring that children receive an early vision screening to identify potential vision disorders, the Board should continue to engage on this topic regardless of whether there is a bill currently moving through the Legislature.

Staff Recommendation: *The Board should advise the Committees as to what work it is continuing to do to promote childhood vision screenings and whether it has any recommendations for how to incrementally enhance the state’s efforts to ensure that all children have their vision tested by the age of five regardless of demographic or income.*

Board response: *The Board continues to prioritize the importance of childhood vision screenings in its Consumer Protection and Outreach efforts. The Board believes that expanding eligible employers of optometrists (beyond ophthalmologists to all physicians and surgeons) could create differentiation for early-childhood medical practices and federally-qualified health centers that co-locate pediatricians and optometrists. The removal of this barrier is requested in ISSUE #21: Technical Cleanup.*

IMPLEMENTATION ISSUES

ISSUE #18: Mobile Optometric Offices. *Has the Board commenced implementation of its registration program for nonprofits offering optometric services to patients regardless of the patient’s ability to pay, and have any needed statutory changes been identified?*

Background: Statute generally allows for healing arts licensees to deliver services through the use of mobile health care units to the extent authorized by written policies established by the governing body

or regulatory board of the licensee. Previously, Board regulations allowed for the provision of optometry services through registered “extended optometric clinical facilities.” This registration program was restricted to clinical facilities employed by an approved school of optometry where optometry services were rendered outside or beyond the walls, boundaries, or precincts of the primary campus of the school. Mobile optometric facilities were only allowed to function as a part of a school teaching program as approved by the Board.

While the extended optometric clinical facility program was historically used to provide mobile optometry services to low-access communities, optometrists seeking to provide these services were limited to the extent that they were affiliated with a school of optometry. Nevertheless, the widely recognized need for expanded access to optometric care for patients who are uninsured and unable to pay out of pocket led to the establishment of charitable organizations and nonprofits dedicated to providing care through mobile clinics. One reputable nonprofit, Vision to Learn, has provided more than 186,500 eye exams and more than 148,500 pairs of glasses to students and other Californians, regardless of income, since it was established in 2012.

Despite the success of these programs, their operation was technically unsupported by statute or Board regulation to the extent that the provision of services was unaffiliated with a school of optometry. This lack of clarity led to concerns relating to the possibility of enforcement action by the Board against nonprofit optometry service providers. In response, AB 896 (Low) was enacted in 2020 to rectify that apprehension by creating a new registration program to formalize the presence of mobile optometric offices operated by nonprofits and charitable organizations.

Organizations authorized under the bill are required to submit information to the Board regarding services provided and any complaints received by the organization. Further, all medical operations of a mobile optometric office must be directed by a licensed optometrist. Finally, the bill created a safe harbor for charitable organizations and nonprofits currently providing services while the Board promulgates regulations to implement the new registration program, providing peace of mind to those already working to expand access to optometry services for low-income communities in California. The Board is required to adopt regulations implementing the bill no later than January 1, 2022.

Staff Recommendation: *The Board should provide the Committees with an update on its rulemaking to implement the provisions of AB 896 and identify any suggested revisions to that law to ensure an effective registration program for mobile optometric offices.*

Board Response: *Proposed regulation text was finalized with assistance of legal counsel within the DCA Regulations Unit and presented to the Board during the May 21, 2021 meeting. The approved package will be submitted to the Office of Administrative Law to initiate the 45-day public comment period.*

During the May 21, 2021 meeting, the Board also approved proposed amendments to statute that will ensure an effective registration program for charitable organizations and the mobile offices they intend to operate. Within this legislative clean-up proposal, the Board respectfully requests an extension to the deadline for implement of regulations to 2023.

The entire legislative proposal is included in this document by attachment and respectfully presented to the Chairs and Committees for inclusion in the final Optometry Reauthorization Bill. Any changes to the regulatory package, resulting from newly passed legislation, will be implemented within the

public comment periods and subsequent board approvals customary to the approval process. The Board is scheduled to submit the final regulation to approval before the end of the year.

COVID-19 PANDEMIC ISSUES

ISSUE #19: Emergency Waivers. How have the Board and the profession utilized the Governor's emergency process for obtaining waivers of the law during the COVID-19 pandemic?

Background: Since the onset of the COVID-19 pandemic, state health experts have continued to highlight the ongoing need to bolster the California's capacity to respond to a surge in patient needs across the state's health care system. On March 30, 2020, Governor Newsom announced his initiative to "expand California's health care workforce and recruit health care professionals to address the COVID-19 surge" and signed Executive Order N-39-20. This executive order established the waiver request process under the DCA and included other provisions authorizing the waiver of licensing, certification, and credentialing requirements for health care providers.

To date, there have been two successful waivers dealing with the practice of optometry. First, the Board worked with Marshall B. Ketchum University, Southern California College of Optometry to sponsor a waiver request for the school's Glaucoma Grand Rounds Certification Program. This waiver removed the requirement that patients must be evaluated in person from the requirement in regulations for Glaucoma Certification.

Subsequently, on February 11, 2021, the Director of DCA issued a waiver of Business and Professions Code § 3041 "to the extent it prohibits licensed optometrists from independently ordering and administering COVID-19 vaccines that are approved or authorized by the federal Food and Drug Administration (FDA) to persons 16 years of age or older and, in cases involving a severe allergic reaction, epinephrine or diphenhydramine by injection," subject to certain conditions. This waiver essentially expanded the scope of practice for optometrists to allow them to administer the COVID-19 vaccine. Optometrists are required to complete an immunization training program and the COVID-19 training programs prescribed by the California Department of Public Health.

In addition to these two actions, other waivers have been requested by representatives of the optometry profession that have not been granted. The Board has also indicated that it may have sponsored waiver requests that have not yet been approved by the DCA. Finally, the Board does not currently have its own authority to waive provisions of the Optometry Practice Act during a declared emergency. This authority may be useful in the future to enable the Board to respond quickly to similar events without having to go through a waiver process administered by the DCA.

Staff Recommendation: *The Board should update the Committees on any pending waiver requests, describe the overall effectiveness of the waiver process in acting quickly to respond to the pandemic, and advise the Committees as to whether it may be appropriate for the Board to have its own state-of-emergency statute.*

Board Response: *There are currently no pending waiver requests initiated by the Board. Despite the threat of COVID-19, all 2020 California graduates completed the test and were licensed timely. California's 2021 graduating classes are scheduled to complete examinations before the end of May. We can report that no COVID-19 infections have been linked to the North Carolina Testing Center*

or travel to/from the examination site. But we recognize that having a single testing site is inconsistent with contingency planning for the next pandemic, natural disaster, cyber-attack, or domestic terrorism. The adoption of a board-specific state-of-emergency statute could be needed in the event of a disruption to testing.

ISSUE #20: *Immunization and Testing. How does the Board intend to engage in oversight and enforcement of optometrists participating in COVID-19 screenings and vaccinations?*

Background: As discussed in the previous issue, DCA Waiver DCA-21-114 authorized optometrists to independently order and administer FDA-approved COVID-19 vaccines under certain conditions. This waiver is part of an effort to maximize the availability of COVID-19 vaccinations and utilize all available health professionals in immunization efforts. Additionally, proposals have been introduced in the Legislature to enable optometrists to screen patients for COVID-19 using clinical laboratory tests.

Because this waiver authority is not formally included in an optometrist's scope of practice under the Optometry Practice Act, it is unclear how the Board would be expected to validate or track optometrists using waiver authority. The Board may assist its licensees with complying with requirements set by the California Department of Public Health to perform COVID-19 vaccinations; however, much of the relevant information may be with that department rather than the Board. As the Board's licensees become more actively engaged in the state's efforts to immunize its population, there may be questions as to whether the Board is equipped or empowered to oversee those activities.

Staff Recommendation: *The Board should advise the Committees as to whether it believes it as a defined role and sufficient authority in the oversight of optometrists administering COVID-19 vaccinations.*

Board Response: During the May 21, 2021 meeting, the Board voted to adopt a "support with amendments" position for Assembly Bill 691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations. With technical amendments and additional staff appropriation the Board believes this legislative proposal will provide sufficient authority in the oversight of optometrists administering COVID-19 vaccinations.

TECHNICAL CLEANUP

ISSUE #21: *Technical Cleanup. Is there a need for technical cleanup?*

Background: As the profession continues to evolve and new laws are enacted, many provisions of the Business and Professions Code relating to optometry become outmoded or superfluous. The Board should recommend cleanup amendments for statute.

Staff Recommendation: *The Board should work with the committees to enact any technical changes to the Business and Professions Code needed to add clarity and remove unnecessary language.*

Board Response: The Board respectfully submits applicable changes by attachment.

CONTINUED REGULATION OF THE OPTOMETRY PROFESSION

BY THE CALIFORNIA STATE BOARD OF OPTOMETRY

ISSUE #22: *Continued Regulation. Should the licensing of optometrists and the registration of dispensing professionals be continued and be regulated by the California State Board of Optometry?*

Background: In consideration of the Board's critical public protection mission in its regulation of the optometry and opticianry professions in California, it is likely that the Committees will ultimately determine that the Board's repeal date should be extended for an additional term.

Staff Recommendation: *The Board's current regulation of the optometry and opticianry professions should be continued, to be reviewed again on a future date to be determined.*

California State Board of Optometry - Proposed Amendments to the Text of Business and Professions Code Section 655.

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

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Registered dispensing optician" means a **n entity** ~~person~~ licensed pursuant to

(5) "Physician and surgeon" means a person licensed under Chapter 5

Code

(56) "Therapeutic ophthalmic product" means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes.

(b) No optometrist may have any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, except as otherwise permitted under this section.

(c) (1) A registered dispensing optician or an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

(2) The registered dispensing optician or optical company shall not interfere with the professional judgment of the optometrist.

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) An optometrist, a registered dispensing optician, a physician or surgeon, an optical company, or a health plan may execute a lease, sublease or other written agreement ~~giving rise to a direct or indirect landlord-tenant relationship~~ with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:

(1) (A) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

(B) Subparagraph (A) shall not preclude a lease from including commercially reasonable terms that: (i) require the provision of optometric services at the leased space during certain days and hours, (ii) restrict the leased space from being used for the sale or offer for sale of spectacles, frames, lenses, contact lenses, or other ophthalmic products, except that the optometrist shall be permitted to sell therapeutic ophthalmic products if the registered dispensing optician, physician or surgeon, health plan, or optical company located on or adjacent to the optometrist's leased space does not offer any substantially similar therapeutic ophthalmic products for sale, (iii) require the optometrist to contract with a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

(2) The optometrist's records shall be the sole property of the optometrist. Only the optometrist and those persons with written authorization from the optometrist shall have access to the patient records and the examination room, except as otherwise provided by law.

(3) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility. This paragraph shall not require a separate entrance to the optometrist's leased space.

(4) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith. This paragraph shall not prohibit the optometrist from advertising the optometrist's practice location with reference to other occupants or prohibit the optometrist or registered dispensing optician from advertising their participation in any health plan's network or the health plan's products in which the optometrist or registered dispensing optician participates.

(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.

(6) Except for a statement that an independent doctor of optometry is located in the leased space, in-store pricing signs and as otherwise permitted by this subdivision, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees.

(7) Notwithstanding paragraphs (4) and (6), this subdivision shall not preclude a health plan from advertising its health plan products and associated premium costs and any copayments, coinsurance, deductibles, or other forms of cost sharing, or the names and locations of the health plan's providers, including any optometrists or registered dispensing opticians that provide professional services, in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(8) A health plan that advertises its products and services in accordance with paragraph (7) shall not advertise the optometrist's fees for products and services that are not included in the health plan's contract with the optometrist.

(9) The optometrist shall not be precluded from collecting fees for services that are not included in a health plan's products and services, subject to any patient disclosure requirements contained in the health plan's provider agreement with the optometrist or that are not otherwise prohibited by the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

(A) The optometrist's failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist's license or if the optometrist or the optometrist's employee is or becomes ineligible to participate in state or federal government-funded programs.

(B) Termination of any underlying lease where the optometrist has subleased space, or the optometrist's failure to comply with the underlying lease provisions that are made applicable to the optometrist.

(C) If the health plan is the landlord, the termination of the provider agreement between the health plan and the optometrist, in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(D) Other reasons pursuant to the terms of the lease or permitted under the Civil Code.

(11) The landlord shall act in good faith in terminating the lease and in no case shall the landlord terminate the lease for reasons that constitute interference with the practice of optometry.

(12) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

(14) The landlord shall provide the optometrist with written notice of the scheduled expiration date of a lease at least 60 days prior to the scheduled expiration date. This notice obligation shall not affect the ability of either party to terminate the lease pursuant to this section. The landlord may not interfere with an outgoing optometrist's efforts to inform the optometrist's patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist's practice.

(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code.

Any financial information contained in the lease submitted to a regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(16) This subdivision shall not be applicable to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.

(e) No registered dispensing optician may have any membership, proprietary interest, coownership, or profit-sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as permitted under this section.

~~(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or landlord tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.~~

(g) Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(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. ***Notwithstanding any other law and in addition to any action available to***

or both, to a physician or surgeon for a violation of this section. The administrative fine shall not exceed fifty thousand dollars (\$50,000) per investigation. 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 ~~Optometry Fund~~ **fund of the board that has issued the fine**. 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. 2020, Ch. 121, Sec. 3. (AB 896) Effective September 24, 2020.)

California State Board of Optometry - Proposed Amendments to the Text of Business and Professions Code Section 3070.2

(a) As used in this section, "mobile optometric office" means a trailer, van, or other means of transportation in which the practice of optometry, as defined in Section 3041, is performed and which is not affiliated with an approved optometry school in California.

(b) This section shall not apply to any of the following:

(1) Optometric services provided remotely by an approved optometry school in California that meets the requirements of Section 1507 of Title 16 of the California Code of Regulations.

(2) A licensee engaged in the practice of optometry at a facility defined in paragraph (1), (2), or (3) of subdivision (a) of Section 3070.1.

(3) A federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code.

(4) A nonprofit or charitable organization exempt from taxation pursuant to Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3), 501(c)(4), or 501(c)(6)), which utilizes the volunteer services of licensees engaging in the temporary practice of optometry pursuant to subdivision (b) of Section 3070.

(5) A free clinic, as defined in subparagraph (B) of paragraph (1) of subdivision (a) of Section 1204 of the Health and Safety Code, which is operated by a clinic corporation, as defined in paragraph (3) of subdivision (b) of Section 1200 of the Health and Safety Code.

(6) A specialized vision health care service plan, as defined in subdivision (f) of Section 1345 of the Health and Safety Code, formed and existing pursuant to the provisions of the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

(c) The ownership and operation of a mobile optometric office shall be limited to a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the United States Internal Revenue Code that provides optometric services to patients regardless of the patient's ability to pay.

(1) The owner and operator of a mobile optometric office shall register with the board and obtain a permit for each mobile optometric office pursuant (d). The owner and operator of a mobile optometric office and the optometrist providing services shall not accept payment for services other than those provided to Medi-Cal beneficiaries.

(2) The medical operations of the mobile optometric office shall be directed by a licensed optometrist and in every phase shall be under the exclusive control of the licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist or optician spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the follow-up care pursuant to this section.

(3) The owner and operator of a mobile optometric office shall not operate more than twelve

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mobile optometric offices within the first renewal period of two years, but may operate more than twelve offices after the first renewal period is complete.

(d) An owner and operator, who has obtained approval from the board pursuant to subdivision (c)(1) and wishes to operate a mobile optometric office, shall apply for a permit from the board prior to beginning operation of each mobile optometric office. The application shall be made on a board prescribed form which requests any information the board deems appropriate to register a mobile optometric office pursuant to this section. The form shall be accompanied by a non-refundable fee of \$472. The board may increase the fee to not more than \$600 dollars.

(1) Upon approval of the permit, the board shall issue a unique identifying number for each mobile optometric office which will be used in all reporting by the owner and operator to the board.

(2) Upon approval, the permit shall be valid until the next renewal date of the owner and operator registration.

(3) Mobile Optometric Office permits are specific to the vehicle registered with the board. Permits are not transferrable.

(5) An owner and operator may apply for renewal of the mobile optometric office permit by attesting to compliance with the requirements of this section and payment of the biennial renewal fee as prescribed by the board.

~~(d)~~ (e) The owner and operator of the mobile optometric office registering with the board pursuant to subdivision (c) shall provide the following information to the board:

(1) The description of services to be rendered within the mobile optometric office.

(2) The names and optometry license numbers of optometrists, names and registration numbers of opticians, and names of any persons who are providing patient care, as described in section 2544.

(3) The dates of operation and cities or counties served.

(4) A description of how follow-up care will be provided.

(5) A catalog of complaints, if any.

(6) Articles of incorporation or acknowledgment of intent to operate and employee identification number demonstrating the owner and operator is a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the United States Internal Revenue Code.

(7) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.

Commented [JM1]: Change to (2) allows the board to request info about opticians, which is not currently in statute. Also allows names of unregistered individuals who may be operating directly under an optometrist via BPC 2544. As both classes have close direct patient contact, and most mobile units will be testing children, this change will increase public protection.

Commented [JM2]: Addition of (6) and (7) allows additional information to be collected at the Board's discretion

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~~(e)~~ (f) The owner and operator of the mobile optometric office, on a form prescribed by the board, shall file a quarterly report containing the following information:

(1) A list of all visits made by ~~the~~ each mobile optometric office, including dates of operation, address, care provided, and names and license numbers of optometrists and opticians who provided care.

(2) A summary of all complaints received by ~~the~~ each mobile optometric office, the disposition of those complaints, and referral information.

(3) An updated and current list of licensed optometrists, registered opticians, and names of any persons who have provided care within the ~~each~~ mobile optometric office since the last reporting period.

(4) An updated and current list of licensed optometrists who are available for follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

(5) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.

~~(f)~~ (g) The owner and operator of the mobile optometric office shall notify the board of any change to the information provided to the board pursuant to subdivision (d) within 14 days.

~~(h)~~ ~~(g)~~ (1) The owner and operator of the mobile optometric office shall provide each patient and, if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the board that includes the following:

(A) The name, license number, and contact information for the optometrist.

(B) Optometrists providing services at a mobile optometric office are regulated by the board and the contact information for filing a complaint with the board.

(C) Information on how to obtain a copy of the patient's medical information.

(D) Information on follow up care available for the patient, including a list of available Medi-Cal or volunteer optometrists. This list shall be updated every six months and is subject to the inspection by the board.

(E) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.

(2) The optometrist shall maintain a copy of the consumer notice described in paragraph (1) in the patient's medical record.

(3) Upon request by the patient's caregiver or guardian, a copy of the prescription made for the patient shall be provided.

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~~(h)~~ (i) Any person who is employed by the owner and operator of the mobile optometric office to drive or transport the vehicle shall possess a valid driver's license.

~~(i)~~ (j) By January 1, ~~2022~~ 2023, the board shall adopt regulations establishing a registry for the owners and operators of mobile optometric offices and shall set a registration fee at an amount not to exceed the reasonable regulatory costs of administration.

Commented [JM3]: Legislative staff has indicated openness to an extension to complete regulations, as current process takes 12-16 months to complete.

~~(j)~~ (k) The board may adopt regulations to conduct quality assurance reviews for the owner and operator of a mobile optometric office and optometrists engaging in the practice of optometry at a mobile optometric office.

~~(k)~~ (l) The board shall not bring an enforcement action against an owner and operator of a mobile optometric office based solely on its affiliation status with an approved optometry school in California for remotely providing optometric service before January 1, 2022.

~~(l)~~ (m) The owner and operator of a mobile optometric office shall maintain records in the following manner, which shall be made available to the board upon request for inspection:

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

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

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

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

(A) Name.

(B) Optometrist license number.

(C) The place of practice and the primary business office.

(D) Description of the goods and services for which the patient is charged and the amount charged. If no charge was made to the patient, a description of the goods and services provided.

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(5) The owners and operators of a mobile optometric offices shall maintain accurate records of the mobile optometric offices, including vehicle registration numbers and the year, make, and model of each trailer or van.

~~(m)~~ (n) Any licensed optometrist who provides patient care in conjunction with a mobile optometric office shall obtain a statement of licensure pursuant to subdivision (a) of Section 3070 with the mobile optometric office's address as registered with the board. If the licensee is not practicing optometry at a location other than with the owner and operator of the mobile optometric office, then the licensee shall list as their primary address of record the owner and operator of the mobile optometric office's address as registered with the board.

~~(n)~~ (o) All examinations performed at the mobile optometric office shall be performed by a licensed optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3.

~~(o)~~ (p) This section does not apply to optometry services defined in Section 3070.1.

~~(p)~~ (q) This section shall remain in effect only until July 1, 2024 2025, and as of that date is repealed.

Commented [MJ4]: Extension to allow additional time for regs to be implemented by 2023.

California State Board of Optometry – Proposed Technical Clean Up

1. Endorsement Fee – Amend BPC 3152

Staff has identified the need for a fee for completion of license endorsements (also known as license verifications) to other states and jurisdictions for optometry licenses and optician registrations. The Board currently does not charge such a fee since it is not authorized in statute, but such a fee is very common with other DCA Boards. According to the Board's Licensing Unit, approximately 80 requests for license or registrant endorsement are made per month. The endorsements require an office technician to review a licensee history, verify the current license or registration and check for any enforcement actions. The endorsement is then completed via a letter from the Board or a form from another state or jurisdiction. This letter then must be sent to the requesting party and also uploaded to BreZE. Staff estimates each endorsement takes 15 minutes to complete, totaling 1,200 minutes or 20 hours of staff work per month. Staff is proposing a fee of \$40, ultimately not to exceed \$60, per endorsement, which would cover the costs of staff time, BreZE usage and mailing. With a fee of \$40.00, staff estimates revenue of approximately \$38,000 for the optometry fund.

3152.

(u) The endorsement fee is forty dollars (\$40). The board may increase the fee to not more than sixty dollars (\$60).

2. Employment by Physician/Surgeon – Amend BPC 3109

Currently, BPC Section 3109 allows an optometrist to accept employment from a physician and surgeon who practices in the specialty of ophthalmology only. Optometrists commonly have areas of interest beyond refracting, fitting contacts and diagnosing and treating eye disease. However, BPC Section 3109 allows an optometrist to accept employment from a physician and surgeon who practices in the specialty of ophthalmology only. This language may be limiting to an optometry license and several examples exist where removing the “specialty” requirement would benefit consumers and licensees. The LRC reviewed this proposal and recommended the full Board endorse the change.

3109.

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

The terms “accepting employment to practice optometry” as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient. Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a

physician and surgeon who holds a license under this division ~~and who practices in the specialty of ophthalmology~~ or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst Natalia Leeper, Lead Licensing Analyst
SUBJECT	Agenda Item #4b: Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutory Updates).

Summary:

This agenda item continues the discussion on proposed statutory changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code. As part of its statutorily mandated duties under BPC §3020, the Dispensing Optician Committee is charged with recommending registration standards and criteria for the registration of dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers. These changes are intended to improve public protection, clarify and enhance registrant reporting requirements, update definitions and terminology, and re-organize the statutes for clarity.

The Board may wish to include this proposal as part of recommendations made to the Legislature for statutory changes as a part of Sunset Review.

Throughout multiple meetings beginning in summer 2019, board staff and members completed a comprehensive review, and substantial public and stakeholder input has also been received and considered as part of the updates.

Previous Discussion – Legislative and Regulation Committee Meetings:

- [February 26, 2021](#)
- [September 19, 2020](#)

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](#)



For the proposed text and rationale for changes, please refer to the attachment.

Motion for Approval:

"I move to approve proposed changes to the text of Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code as discussed and presented here today, and delegate the authority to the Executive Officer to make non-substantive changes to the text and submit this proposal to the Legislature as part of the Board's Sunset Bill AB 1534."

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

BUSINESS AND PROFESSIONS CODE – DIVISION 2

CHAPTER 5.4. Prescription Lenses [2540 - 2545]

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

2541. A prescription ophthalmic device includes each of the following:
(a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.
(b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).
(c) Any plano contact lens that is marketed or offered for sale in this state. “Plano contact lens” means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.
(Amended by Stats. 2006, Ch. 148, Sec. 3. Effective January 1, 2007.)

2541.1. (a) A spectacle lens prescription shall include all of the following:
(1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form “copy lenses currently worn” instead.
(2) The expiration date of the prescription.
(3) The date of the issuance of the prescription.
(4) The name, address, telephone number, prescriber’s license number, and signature of the prescribing optometrist or physician and surgeon.
(5) The name of the person to whom the prescription is issued.
(b) The expiration date of a spectacle lens prescription shall not be less than two years ~~to and shall not exceed four~~ years from the date of issuance unless the patient’s history or current circumstances establish a reasonable probability of changes in the patient’s vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient. 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.

Commented [JM1]: Global non-substantive changes:

1. Use of they/them non-binary references in place of he/she to conform with current law
2. Use of “registrant” or “registered dispensing optician” where appropriate
3. Current sections re-numbered to new section numbers where appropriate
4. Removal of obsolete language or updating references to CSBO.
5. Some sections re-written to remove passive voice.

Commented [JM2]: Added for clarity.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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.

Commented [JM3]: Added for clarity.

(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

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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 follow-up 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 and services~~ devices 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 and services~~ devices 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~~ devices 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~~ devices 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

Commented [JM4]: Global change – "goods and services" to "devices" for consistency

Proposed new text is underlined, and deleted text is strikethrough.

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, registered dispensing opticians ~~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~~ registrant shall also comply with the requirements of Section 2560. A registered dispensing optician shall not ~~fit a~~ dispense a 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,

Commented [JM5]: Legal has suggested "fit, adjust" removal, as the RDO business does not technically perform these functions

Commented [JM6]: Matches new name of Act.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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 or physician and surgeon~~ may fit ~~prescription~~ lenses. Under the direct responsibility and supervision of an optometrist or 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 cycloplegics, 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 or corporation 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

Commented [JM7]: Non substantive: removal of "licensed"

Commented [JM8]: Non substantive: switching optometry and physician and surgeon for consistency

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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 or corporation who violates any of the provisions of this chapter shall be subject to a fine of not less than ~~two hundred fifty dollars (\$250)~~ one thousand dollars (\$1,000) nor more than ~~two thousand five hundred dollars (\$2,500)~~ 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. For the purposes of this chapter, the following definitions shall apply:

(a) “Board” means the State Board of Optometry.

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

Commented [JM9]: Concern was raised about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. Concern was also raised about fines being a possible barrier to entry and overregulation.

Staff and Legal Counsel 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.

Based on LRC discussion and Legal Counsel review, the words “or corporation” have been added throughout the statute.

Commented [JM10]: This section relocated to new Article 3.5, which contains provisions directly relating to RDO businesses.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(c) "Fit" and "fitting" means doing any of the following acts, either singly or in combination with others, prior to the act of adjusting: 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 [JM11]: 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".

Committee and staff consensus is 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."

(d) "Adjust" and "adjusting" means doing any 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 or entity 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 an entity 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 an entity 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.

Commented [JM12]: Originally, administrative and custodian tasks, transactions and frame selections were included as (3) and (4). After discussion with Legal and LRC, these have been removed.

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.)

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

2551. ~~(a) Individuals, corporations, and firms shall make application for registration and shall~~

~~(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.)~~

Commented [JM13]: This section relocated to new Article 3.5, which contains provisions directly relating to RDO businesses.

2552. (a) Each application pursuant to this chapter shall be verified under oath by the person

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 requires of the applicant, 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

Commented [JM14]: Changes to this section allow for better clarity and reporting requirements to the Board

2553. ~~If the board, after investigation, approves the application, it shall register the applicant~~

~~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).~~

Commented [JM15]: Parts of this section relocated to new Article 3.5, which contains provisions directly relating to RDO businesses.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(a) Each certificate of registration 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.

~~2553.1.~~ (a) If a registered dispensing optician business sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:
(1) The registered dispensing optician business selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days after the change of ownership is completed and shall submit a request for cancellation of registration on a form prescribed by the Board. This registered dispensing optician business shall be responsible for complying with all laws relating to the optical dispensing business until the notice described in paragraph (2) is received by the board.
(2) The registered dispensing optician business assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. This notice shall be filed with the board no later than 10 calendar days after the change of ownership is completed.
(3) The registered dispensing optician business assuming ownership of the business shall apply for a new certificate of registration from the board no later than 10 calendar days after the change of ownership is completed.
(b) This section does not apply to a change of location of business by a registered dispensing optician.

Commented [JM16]: This section relocated to new Article 3.5, which contains provisions directly relating to RDO businesses.

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 (e) 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 (e).
(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~~ they are 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~~

Commented [JM17]: Removed obsolete language

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

~~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 ~~as a physician and surgeon 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.

Commented [JM18]: Non-substantive: changed to physician / surgeon for clarity

(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.

~~(4)~~ “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.)

Commented [JM19]: Non-substantive: removal for brevity of section

2554. Each registrant shall conspicuously and prominently display at each registered location the following consumer information:

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

"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.

~~The State Board of Optometry regulates 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~~ under this chapter 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, attempting to violate, conspiring to violate, or directly or indirectly assisting in or abetting the violation of any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

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

(d) Incompetence.

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

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

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

Commented [JM20]: Legal counsel feels acts listed in 2555 should be in regulation, as previous paragraph already allows the board to take action at its discretion. These paragraphs elaborate on that and make it more specific, which is what regulations are meant to do. Additionally, BPC 2553.6 already sets out enforceable actions which can be taken.

For consistency, staff modeled this section on BPC 3110, which sets out enforceable actions the Board may take against optometrists. Also, having this in statutes gives optician enforcement more "teeth" and is not limited to administrative actions. Although placing this into regulation is possible, that is a process which may take several years while placing into a statute would make it effective upon a bill being signed into law.

Staff requests Board discussion to keep or remove this section.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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 themselves 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.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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 prescription.

2555.1. (a) In the discretion of the board, a certificate issued ~~hereunder~~ under this chapter 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.~~

(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~~ themselves 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.)

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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~~ 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

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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~~ themselves 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.)

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

2557. This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division ~~II~~ Two of this code, nor any physician and surgeon licensed under Chapter 5 of Division ~~II~~ Two 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 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.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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]

2559.1.5. On and after January 1, 1988, no individual may fit or adjust spectacle lenses unless

and unless (1) the 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 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

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 but has maintained their American Board of Opticianry or National Contact Lens Examiners registration 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.~~

Commented [JM21]: 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.

Committees came 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 present, the consumer is protected from eyewear this is improbably fit, fabricated and adjusted.

Concern is also raised about this requirement being a barrier to entry for prospective registrants.

Does "physically present" negate the need for removal of "usual and customary absences"?

Commented [JM22]: Reducing this to 3 years would reduce costs to licensees. Currently, a licensee who has been delinquent the full 5 years would need to pay \$600 in renewal fees. If the licensee were to have both a Spectacle Lens Dispenser and a Contact Lens Dispenser Total fees could \$1200. That is \$200 every two years. For reference, Optometry Reinstatement costs are currently \$1100 at most. Reducing this would make the cap \$400 for each license on renewal. If it were after the 3 years, the new license would need to apply for a new license and that fee is \$350. At most the cost for the three marks would be \$800.

Over several Board and DOC meetings Spectacle Lens and Contact lens Dispensers have expressed that the fees are high for their salary.

This would increase the frequency of which an optician would need to take the exam without proof of practice or continuing education but staff believes that it is more financially viable for Opticians and will help make sure people are license rather than be frightened by our fees

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

~~(e)-(d)~~ 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~~ they are fitting and adjusting.

(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~~ The board may, in its discretion, suspend or revoke a certificate 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 violating~~ The board may, in its discretion, suspend or revoke 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, 1990, 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.~~

Commented [JM23]: Added to better clarify where an SLD may practice

Commented [JM24]: Relocated to Sec. 2558.1 for clarity

ARTICLE 2. Contact Lens Dispensing [2560 - 2564.6]

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

2560. No individual may fit and adjust contact lenses, including plano contact lenses, unless

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~~

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 trainees.

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

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

(b) The board shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the board should ever find, after hearing, that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter from time to time prescribe or administer a written examination that meets those specifications.

(c) If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years, then the board may require the 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~~ themselves 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,~~

Commented [JM25]: The word "individual" or "trainees" was replaced where appropriate with "unregistered assistant" to tie in with proposed definitions in 2550.1(g)

"Physically" was added to present to better define that a registered CLD must be on-site to supervise the fitting done by an unregistered individual.

Commented [JM26]: Relocated to 2557.1 for clarity

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

~~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 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.)

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 Ophthalmic Lens Dispenser Registration Act.” (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~~ 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 the person is registered with the ~~Division of Licensing of the Medical Board of California.~~ 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.)

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

Commented [JM27]: Added to detail the need to sanitary and hygienic reasons of a sink with clean running water. Almost all RDOs already have this in place.

Commented [JM28]: Throughout the article, the words “ophthalmic lens” are used to denote both contact and spectacle lenses which may be sold by a non-resident dispenser. The word “seller” was replaced by “dispenser” for clarity.

Commented [JM29]: NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses.

The committees came 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.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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.
(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 attributing the registration number to 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-ophthalmic~~ 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, or enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

Commented [JM30]: Proposed changes make the statute clearer and require additional information to be provided.

Advertising changes will allow the consumer to better know where their lenses are coming from and if they are licensed.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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 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~~ furnishing, 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

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 an ~~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:

Commented [JM31]: Change to align with current federal rules of eight hours.

Commented [JM32]: 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.

This kind of clarification could also be placed into regulation instead, keeping the statute broad.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

- (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 otherwise expire, apply for renewal on a form prescribed by the ~~division~~ State Board of Optometry, 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 or corporation 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.

Commented [JM33]: Similar to BPC 2545, Concern was raised about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. A base fine and the use of multipliers determined by the number of violations.

Staff suggests a 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.

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.

Based on LRC discussion and Legal Counsel review, the words "or corporation" have been added.

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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.

(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~~ The State Board of Optometry 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).

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

(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)

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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.

(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 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.)

Proposed new text is underlined, and deleted text is ~~strikethrough~~.

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.

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.

ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #4c: Discussion and Possible Action on Proposed 2021 Legislation – Currently Tracked Legislation

The 2021 Legislative session resumed on January 4, 2021. Upcoming Legislative deadlines of note:

- July 14 – Last day for policy committees to meet and report bills
- September 7 – Last day to amend bills on the floor

Most bills are in preliminary form and will not be in final form until later in the Legislative session in the summer. Some may become “two-year” bills since this is year one of a two-year legislative cycle. The Legislation and Regulation Committee (LRC) reviewed these bills at the April 21, 2021 public meeting.

The information below is current as of May 13. Text and analysis of a bill may change rapidly; links to the bill text and committee analyses are provided in the meeting packet rather than possibly outdated hard copies. If a position is adopted by the Board, the author’s office will be notified and staff will engage with the Legislature on the Board’s position.

Bills directly pertaining to the practice of Optometry or Board operations:

[1. Assembly Bill 29 \(Cooper\) State bodies: meetings](#)

Text as introduced December 7, 2020.

LRC Recommended Position: Oppose, unless amended

Summary: This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require those writings or materials to be made available on the state body’s internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier.

Comments: Staff always complies with notice requirements and generally posts its meeting materials between 10 days and 72 hours before its public meetings. However, there are some exceptions concerning materials that are provided to the Board such as public comments or legislative updates too close to the date of the meeting. In addition, the Board relies on DCA's Internet Team for posting and they request documents be provided ten days in advance of posting. This puts staff in a bind with a burdensome production deadline resulting in documents posted the same day the materials are disseminated to the Board members. Staff suggests amending the text to include an exemption for legislative materials which are already listed on a posted agenda and any closed session materials.

2. Assembly Bill 407 (Salas and Low) Optometry: scope of practice

Text as amended April 20, 2021. On consent calendar.

LRC recommended position: Support

Summary: This bill allows an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat acquired blepharoptosis (drooping eyelids), ametropia (blurry vision), and presbyopia (loss of near-focusing ability) through medical treatment.

Comments: This bill is sponsored by the California Optometric Association (COA). The Board does not have enforcement data in opposition to this expansion of scope. As authority would be granted under the current licensing scheme, staff projects little to no change in the processing of licensing applications. In the crafting of implementing regulations, the Board may consider the inclusion of continuing education material specific to this area of treatment.

3. Assembly Bill 691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations.

Text as amended April 5, 2021. On consent calendar.

LRC recommended position: Support with amendments

Summary: (Urgency bill) This bill would expand the authorization for a TPA-certified optometrist to perform procedures to include a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) necessary to detect the presence of SARS-CoV-2. The bill would establish the substance of an application form for the immunization certification and expand the certificate to cover the administration of immunization for SARS-CoV-2. The bill would establish an application fee for the immunization certification.

Comments: This bill has four practical effects:

- It would place the Board's AB 443 regulatory package, which just completed the 45-day comment period, into law effective upon signing. Licensees still would need to complete an immunization course, complete a form and fulfill other requirements.
- Adds immunization for COVID-19 to the list of immunizations a licensed optometrist is authorized to administer.

- Authorizes optometrists, under their scope of practice, to perform simple laboratory tests for COVID-19.
- It would transfer the responsibility from CDPH to the Board for registration of the COVID-19 vaccination.

Staff projects approximately 700 current licensees may register. The bill would establish a \$50 certification fee, which would see \$35,000 in initial revenue for the Board. New optometry school graduates, who already have this training and are applying for licensure, would likely take advantage. With 300 new applicants a year, the Board would see \$15,000 a year in potential revenue ongoing. However, staff anticipates a significant increase in license processing workload. Each application (current and new optometry graduates) would take an additional 45 minutes to review and approve by an Associate Governmental Program Analyst. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial optometry and opticianry applications. Based on the projected new and renewal applications, staff projects a .50 FTE AGPA may be needed to assist with the workload generated by this bill.

The LRC questioned whether the test being performed was a PCR or Antigen test (PCR being typically performed in a laboratory setting); COA confirms the test is only an antigen test. Additionally, concern was raised whether the wording of the law was too limiting to only the COVID-19 virus and not other potential variants which may emerge. The Board may wish to discuss potential amendments to recommend to the Legislature.

[4. Assembly Bill 1236 \(Ting\) Healing arts: licensee: data collection](#)

Text as amended April 5, 2021.

LRC Recommended Position: Watch

Summary: Existing law requires specific boards under DCA to collect and report certain demographic information of their licensees. This bill would repeal those provisions and would, instead, require all boards that oversee healing arts licensees to request at the time of electronic application for a license and license renewal, or at least biennially, specified demographic information from its licensees and, if designated by the board, its registrants and to post the information on the internet websites that they each maintain. The bill would specify that licensees and registrants shall not be required to provide the requested information.

Staff Comments: As the information requested is optional for each Board, implementation details have not been determined, but Board impact is expected to be low with information being collected in BreZze and annual reporting facilitated by DCA. Additionally, having this kind of demographic information for each profession may, over time, highlight trends and provide more of an understanding of each Board license and registration, assisting with the state's efforts in workforce development.

[5. Assembly Bill 1534 \(Committee on Business and Professions\) Optometry: mobile optometric clinics: regulations.](#)

Text as introduced February 19, 2021. On Assembly Appropriations consent calendar.

LRC Recommended Position: Support

Summary: Existing law requires the board, by January 1, 2022, to adopt regulations establishing a registry for mobile optometric clinics and to set a registration fee at an amount not to exceed the costs of administration. This bill would require the board to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development when it has completed the adoption of those regulations.

Staff Comments: This is the Board's Sunset Bill for 2021. Amendments are expected as the bill moves through the Senate.

[6. Senate Bill 509 \(Wilk\) Optometry: COVID-19 pandemic: temporary licenses](#)

Text as amended April 26, 2021

LRC Recommended Position: None

Senate Floor Analysis Attached.

Summary: This bill creates a temporary optometrist license for an individual who is immediately unable to take the required Section III-Clinical Skills Examination developed by the National Board of Examiners of Optometry (NBEO Part III), but has met other specified requirements; requires a temporary license holder to practice under the direct supervision of a licensed optometrist, as specified; and, permits the temporary license holder to perform any services under the Optometric Practice Act (Act).

Comments: The LRC did not take a position on the bill pending amendments added after the meeting. This bill is sponsored by the California Optometric Association. Staff has been working with Sen. Wilk's staff, the sponsors and the Senate Business and Professions Committee on this bill.

Although the ultimate impact is unclear with the lessening of COVID-19, staff believes this bill would have a significant impact on the Board's workload. Staff believes the proposed \$100 fee is insufficient to cover the processing of temporary license and maintenance of application files while the exams are being completed. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial and renewal optometry applications. The Board receives approximately 300 applications for licensure each calendar year. Each one takes approximately six hours of an AGPA's time to review from start to finish.

If a temporary license was an option, staff estimates half might take advantage, 150 persons per year. Each application would require additional processing and review of approximately four hours to determine if they meet the requirements as set out in the bill such as insurance and supervisory requirements. This would add about 600 hours of staff time per year to implement. Additionally, staff would need additional time to implement BreEZe requirements and respond to applicant inquiries. Therefore, staff estimates the need for a .50 FTE AGPA position to implement. If this bill would become law, the current 6-8 week processing times would dramatically increase without additional staff. Additionally, enforcement workload would likely increase due to a rise in complaints and more in-depth investigations may be needed for the temporary license type.

THIRD READING

Bill No: SB 509
Author: Wilk (R), et al.
Amended: 4/26/21
Vote: 27 - Urgency

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 13-0, 4/19/21
AYES: Roth, Archuleta, Bates, Becker, Dodd, Eggman, Hurtado, Jones, Leyva,
Min, Newman, Ochoa Bogh, Pan
NO VOTE RECORDED: Melendez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Optometry: COVID-19 pandemic: temporary licenses

SOURCE: California Optometric Association

DIGEST: This bill creates a temporary optometrist license for an individual who is immediately unable to take the required Section III-Clinical Skills Examination developed by the National Board of Examiners of Optometry (NBEO Part III), but has met other specified requirements; requires a temporary license holder to practice under the direct supervision of a licensed optometrist, as specified; and, permits the temporary license holder to perform any services under the Optometric Practice Act (Act).

ANALYSIS:

Existing law:

- 1) Establishes the California State Board of Optometry (Board) to regulate the practice of optometry through the Optometry Practice Act. (Business and Professions Code (BPC) § 3010.5)
- 2) Authorizes the Board to adopt regulations clarifying the level of training and the level of supervision of assistants. (BPC § 3025.6)

- 3) Defines that acts which constitute optometry, as specified. (BPC § 3041)
- 4) Requires the Board, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice, as specified in under the Optometry Practice Act (Act). (BPC § 3041.2)

This bill:

- 1) Requires the Board to issue a temporary license to practice optometry to any person who applies for, and is eligible for licensure, but who is unable to immediately take the NBEO Part III, as specified, due to the state of emergency, proclaimed by the Governor on March 4, 2020 in response to the COVID-19 pandemic.
- 2) Requires, in addition to meeting specified requirements for licensure, the individual seeking a temporary license must also satisfy the following conditions: 1) The person has never been previously licensed to practice optometry in any state in the United States; 2) The person pays to the Board, the applicable fee of \$100 or a fee in amount determined by the Board, not to exceed the reasonable cost of administering the license; 3) The person has received approval from their accredited school of optometry that the person meets the educational requirements to practice optometry; and, 4) The person satisfies all other conditions to licensure under the Act.
- 3) Subjects a person holding a temporary license to the same rights and restrictions afforded to a person holding a valid, unrevoked California optometrist license.
- 4) Defines “temporary licensee” for purposes of the Act, to mean a person holding a temporary license.
- 5) Requires a temporary licensee to practice under the direct supervision of a supervising optometrist.
- 6) Defines a “supervising optometrist” to mean a California licensed optometrist who has been licensed for a minimum of five years.
- 7) States that a temporary licensee may perform services authorized under the Act if both the following requirements are met:

- a) The temporary licensee renders the services under the direct supervision of a supervising optometrist who is not subject to disciplinary condition imposed by the Board prohibiting that supervision or prohibiting the employment of a temporary licensee; and,
 - b) The supervising optometrist is legally and professionally responsible for the actions of the temporary licensee
- 8) Defines “direct supervision”, for purposes of this bill, to mean that a supervising optometrist oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee.
 - 9) States that direct supervision requires the supervising optometrist to be physically present and immediately available in the facility or office in which the optometric services are provided when the temporary licensee is with a patient.
 - 10) Requires the supervising optometrist to have a formal written procedure in place by which patients are informed that an optometrist with a temporary license will be performing the services. Additionally, the patient must be informed that the supervising optometrist is supervising the temporary licensee and the supervising optometrist must be identified to the patient.
 - 11) Requires the temporary licensee to note in the medical record, the patient’s consent to this process prior to performing services, as specified.
 - 12) Prohibits a temporary license holder from opening their own optometric office or place of practice.
 - 13) States that a temporary license expires upon the date that the temporary licensee completes all of the requirements for licensure, or six months after the date the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic has ended, whichever occurs first.
 - 14) Permits the Board to take enforcement action against a temporary licensee, as specified.
 - 15) Declares this bill as an urgency measure necessary for the immediate preservation of the public peace, health, or safety, as specified, and the facts constituting the necessity are: in order to protect public health and preserve the

future health care workforce by ensuring that qualified optometry graduates are permitted to practice during the COVID-19 pandemic as soon as possible.

- 16) Makes findings and declarations about the impact of the COVID-19 pandemic on the closure of the National Board of Examiners in Optometry (NBEO) test center leading to the inability of students from being licensed.

Background

Optometrists. To obtain an optometry license in California, an individual must have a degree of optometry issued by an accredited school or college of optometry, successfully pass the examinations developed by the NBEO, along with the California Laws and Regulations Examination (CLRE), and not have been convicted of a crime, or disciplined for acts substantially related to the profession. As currently drafted, this bill would permit the Board to issue a temporary license to practice optometry if an applicant is unable to take the NBEO Part III due to the COVID-19 pandemic.

Examinations. As noted by the Board, the primary purpose of the required examinations is “to help ensure public health and safety by assessing the candidate’s ability to safely practice optometry at a minimum entry level within California’s laws and regulations...” The NBEO develops the national examination, which the Board has required for licensure since 2001. Parts I and II of the NBEO are offered to students while in optometry school and are computer-based tests available at Pearson VUE testing centers in California. However, the administration of NBEO Part III is only available at a testing site exclusively located in North Carolina. Currently, all 50 states, the District of Columbia, and Puerto Rico require passage of the NBEO examinations for licensure.

The COVID-19 Pandemic, Testing Access & Emergency Declarations. Without a testing site closer to California, licensure applicants have had to travel to North Carolina to complete their examination requirements. This issue became particularly challenging during the COVID-19 pandemic as air travel was strongly discouraged, flight schedules and hotel availability was limited, and in certain areas restricted by health officials, and there are no testing alternatives available. Further compounding this issue, the NBEO testing center in North Carolina closed for a brief period. However, the testing center reopened in May of 2020. In response to the current COVID-19 crisis, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive licensure requirements relating to healing arts during the duration of the COVID-

19 pandemic – including rules relating to examination, education, experience, and training. However, to date, there is not a waiver to suspend any portion of, or suspend any required examination for licensure for optometrist applicants, including the NBEO Part III.

Concerns about optometry applicants in California not being able to travel to North Carolina to complete the NBEO Part III was brought to the Board’s attention during the current state of emergency. However, without statutory authority or a waiver, there is not currently a pathway for the Board to issue an optometry license to any applicant who has not completed NBEO Part III. This bill is likely in response to the Board’s limited ability to address this issue.

Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO examination for licensure, so an elimination of the requirement would significantly affect license portability options for California optometrists.

Temporary License and Direct Supervision. In an effort to create a pathway for individuals who are unable to complete the NBEO Part III, this bill will permit the Board to issue a temporary license to practice under the direct supervision of a licensed optometrist, to anyone who may otherwise be eligible for licensure, but is unable to *immediately* take the NBEO Part III only. Currently, third and fourth year optometric students participate in clinical work and are supervised by licensed optometrists. Supervision of students occurs at the same location, where the supervising optometrist is present. As currently drafted in this bill, the supervising optometrist and the temporary license holder must have a “written agreement” in place and the temporary licensee must inform a patient prior to performing services that they are under supervision of a supervising optometrist. This bill subjects a person holding a temporary license to the same rights and restrictions afforded to a person holding a valid, unrevoked, optometrist license. As current drafted, this bill does not limit or restrict the types of services that a temporary license holder can provide. This bill does not extend the Board’s authority to provide a temporary license beyond the declared state of emergency, and a temporary license holder must obtain a full license within six-months of the end of the state of emergency declaration.

Other States. According to information from the sponsors, other states permit some type of waiver of examinations or issuance of temporary licenses during states of emergency or under other considerations including Arizona, Colorado, Michigan, Missouri, North Carolina, Oklahoma, Utah, Vermont and West Virginia.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified May 5/12/21)

California Optometric Association (source)
Vision Service Plan

OPPOSITION: (Verified 5/12/21)

None received

ARGUMENTS IN SUPPORT: The California Optometric Association writes in support, “When the pandemic hit, the only testing agency recognized for optometry was forced to close and students were told they may not be able to be licensed on time. When the testing site opened back up, students were forced to travel across the country and put themselves and their families at great risk, just to take a test. This is unacceptable.”

Vision Service Plan writes in support, “During this pandemic optometry students are still required to travel to North Carolina to take Part III of the NBEO exam. Optometry students go through rigorous training at schools of optometry and are deemed competent before being able to sit for the NBEO exam. This bill will ensure optometry students can temporarily practice while also ensuring public safety and the safety of students.”

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104
5/12/21 15:32:47

**** **END** ****



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5a - Adopt Title 16, Sections 1583, 1584, 1585, 1586 and 1587 of the California Code of Regulations (CCR); Amend CCR, Title 16, Sections 1505 and 1524 (Mobile Optometric Offices, Implementation of Assembly Bill 896 – Low, Chapter 121, Statutes of 2020

Summary:

This regulatory proposal would implement Assembly Bill 896 (Low, Chapter 121, Statutes of 2020), which was signed into law on September 24, 2020, and created a new [Business and Professions Code \(BPC\) Section 3070.2](#). The law, among other things, allows for nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices under a new registration program within the Board. The law requires regulatory implementation by January 1, 2022.

If approval is desired, suggested motion:

"I move to approve the proposed text to adopt Title 16, Sections 1583, 1584, 1585, and 1586 and to amend Sections 1505 and 1524 of the California Code of Regulations as presented and discussed here today; to adopt proposed forms ONOP1 and QTR1 as incorporated by reference as presented and discussed here today, and direct staff to submit the text to the Office of Administrative Law for posting for a 45-day comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, making any non-substantive changes to the package and set the matter for hearing."

Discussion:

At the February 25, 2021 meeting, the CPC noted two concerns.

The ambiguity of certain types of charity care providers and their legal status under BPC 3070.2.

BPC 3070.2(b) lists certain organizations who may be exempted, but a concern was raised that certain providers may not be exempted by the law and thus required to register with the Board, even though the apparent intention of the bill is not to require such registration by such groups. Additionally, concern was noted that optometry or optician licensees may be operating outside of the optometry practice act by providing such services since the services are not regulated by the Board under BPC 3070.2 or other provisions and not falling in the temporary practice of licensure provision.

For additional background, several providers were mentioned who may not be exempted as listed in subsection (b). Staff contacted several of the providers and reviewed their websites to determine their current operating models as basic information for the CPC. The information is informational only and not a determination of actual legal status.

- [Project Homeless Connect](#)

According to staff with Project Homeless Connect, they are a nonprofit with a fiscal sponsor, Community Initiatives, which is a 501(c)(3). They provide services with the help of provider partners, many of whom are medical professionals, who volunteer their time.

- [Veterans Stand Down](#)

Veterans stand down are typically one to three-day events organized by Community-Based Veterans Services Organizations, Non-Profit Organizations, and County Veterans Service Offices in cooperation with a variety of state, federal, and private agencies. Staff was unable to determine specifics on these events.

- [Healing California](#)

According to staff with Healing California, 40 optometrists and 21 opticians are registered in their volunteer system and they operate as a 501(c)(3).

- [California Vision Foundation](#)

It appears the California Vision Foundation operates as a 501(c)(3).

Due to statutory limitations and the requirement of implementation by January 1, 2021, staff requests Board direction on further areas of research within this issue.

The definition of a mobile optometric office.

Current law under BPC Section 3070.2 explicitly says “trailer, van or other means of transportation”. The CPC has noted the future of optometric care probably does not involve a large van with optometric equipment; it will probably be a portable unit that can be carried in a vehicle and taken out and set up in space. Legal Counsel has determined the definition of “other means of transportation” could not be refined in regulation to mean a “unit” or something similar, nor could existing wording be used to register individual sets of optometry equipment.

Proposed Text - Amend Title 16, Sections 1505 and 1524; Adopt Title 16, Sections 1583, 1584, 1585, 1586 and 1587 of the California Code of Regulations (CCR); (Attachment A):

Amend Section 1505 – Notification of Intention to Engage in Practice

Adds a requirement that an optometrist will comply with notice requirements in BPC 3070.2 via a statement of licensure.

Amend Section 1524 - Fees

Adopts a fee of \$2,632.00 for owner and operator application, \$2,632.00 for a biennial renewal and a delinquent fee of \$150.00. The fees may be subject to modifications as the rulemaking process continues.

Adopt Section 1583 – Registration Requirements.

As required by BPC Section 3070.2, this proposed section sets out registration requirements, the initial application “Form ONOP1, 04-21[New]” incorporated by reference and requires a fingerprint background check for the application’s responsible officers. Additionally, this section sets out requirements for reporting changes and grounds for abandonment of the application. The applicant must meet all requirements as set out by statute and provide all information as requested by the ONOP1 application. Upon successful completion of the application, the owner and operator will be issued a “certificate to operate” mobile optometric offices.

Adopt Section 1584 – Certificate to Operate a Mobile Optometric Office

As required by BPC Section 3070.2, this proposed section sets out various operating requirements for the certificate:

- A two-year renewal period for the certificate and requirements to renew, including various certifications of compliance;
- What happens if the certificate expires;
- Requirements for response to any inquiry by the Board within 14 days;
- Disciplinary actions may be taken against the owner and operator or the optometrist directing the medical operations.

Adopt Section 1585 – Fingerprints and Background Checks Required

This proposed section sets out requirements for responsible individuals, as listed on the ONOP1 form, to undergo a fingerprint background check as authorized by BPC Section 144. It also states a registration will not be issued until the applicants as listed on the form have cleared the background check. This process is the same as new optometry or optician applicants must complete for licensure.

Adopt Section 1586 – Reporting Requirements

As required by BPC Section 3070.2, this proposed section requires a quarterly report to be filed, via “FORM QTR1 (New 04-2021)” incorporated by reference into the section. It also sets out the quarterly deadline for submission of the form.

Adopt Section 1587 - Patient Notification and Records.

As required by BPC Section 3070.2, this proposed section sets out requirements for a patient notice, which must be provided to each patient or patient’s caregiver or guardian. It is largely based on the existing consumer notice in CCR Section 1522. The notice contains information on the optometrist who provided services, the owner and operator name and contact information, and information on how to file a complaint with the Board. Additionally, the owner and operator must retain a copy of the patient record and agree to maintain copies of all records.

Application for Registration for Ownership and Operation of Mobile Optometric Offices (Form ONOP1, 04-21[New]) – incorporated by reference into CCR Section 1583 (Attachment B)

This proposed form ONOP1 is the first step for a charitable organization to be registered with the Board. To be issued a certificate to operate mobile optometric offices, an organization must complete the form and provide the requested information. The form is broken down into various sections:

- Notice and Requirements – this section sets out various notices and requirements for the applicant.
- Section A – General Information – basic information is required, such as the organization name and address, contact person, and managing optometrist's information.
- Section B – Organization Information – requests the organization information, such as 501c3 type, TIN and whether the organization plans to not accept payment for services other than those provided to Medi-Cal beneficiaries.
- Section C – Responsible Organization Officers or Officials – requests the names and personal identifying information, including SSN/ITIN, of individuals who are responsible for the operations of the organization.
- Section D – Operating Standards and Compliant History – requires detailed information about how the organization operates. It requires a written description of services rendered, names of all optometrists who will be providing patient care, dates of operation, cities and counties served and how follow up care will be provided. It also requires a catalog of complaints received within the last three years along with detailed information on the complaint history of each, and how the complaint was resolved.
- Section E – Certification – requires the authorized representative to certify under penalty of perjury that all information is true and accurate. The form also includes a notice of personal information collection and access.

Owner and Operator Quarterly Report Form” (FORM QTR1 (New 04-2021)) (Attachment C)

This proposed form QTR1 will be used by the owner and operator to submit quarterly reports to the Board, as required by BPC Section 3070.2. This form is required to be filed on the third business day quarterly (four times a year) with the following information:

- Section A – Background Information – requests basic information such as name, contact person and managing optometrist's information.
- Section B – Additional Information Requested - As required by statute, The owner and operator are required to submit specific information about their mobile optometric office operations in that quarter:
 - A list of all visits made and information about those visits.

- A summary of any complaints received and the disposition of those complaints.
- An updated list of licensed optometrists who provided care during those visits.
- An updated and current list of optometrists available for follow-up care or who accept Medi-Cal payments.
- Section C – Certification - requires the authorized representative to certify under penalty of perjury that all information is true and accurate. The form also includes a notice of personal information collection and access.

PROPOSED TEXT

Amend Sections 1505 and 1524 and Adopt Sections 1583 to 1586 in Division 15 of Title 16 of the California Code of Regulations (CCR) to read as follows:

Article 2. Location of Practice

§ 1505. Notification of Intention to Engage in Practice.

(a) The notification of intention to engage in the practice of optometry which is required by Section 3070 of the code shall be addressed to the Board at its office in Sacramento.

(b) Such notification of intention to engage in the practice of optometry includes notifying the Board of intention to accept employment to practice optometry, the name or names of the optometrist or optometrists, or those who by law may employ an optometrist and the address or addresses of the office or offices at which the licensee will be employed. If the licensee will engage in the practice of optometry only at a mobile optometric office, then the licensee shall comply with the notice requirements in subdivision (m) of section 3070.2 of the code.

(c) Such notification of intention to engage in the practice of optometry includes notifying the Board prior to the establishment of any office or offices to practice optometry of the intention to establish such office or offices and the location or locations to be occupied.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Sections 3070, 3070.2 and 3077, Business and Professions Code.

Article 5. Application for Licensure Examination

§ 1524. Fees.

The following fees are established:

- | | |
|--|-------|
| (a) Application fee for certificate of registration as an optometrist by examination | \$275 |
| (b) Biennial renewal of a certificate of registration as an optometrist | \$425 |
| (c) Delinquency fee for failing to renew a certificate of registration timely | \$50 |

(d) Application fee for a branch office license	\$75
(e) Annual renewal of a branch office license	\$75
(f) Penalty fee for failure to renew a branch office license timely	\$25
(g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration	\$25
(h) Application fee for a fictitious name permit	\$50
(i) Annual renewal of a fictitious name permit	\$50
(1) Delinquency fee for failure to renew a fictitious name permit timely	\$25
(j) Application fee for a statement of licensure	\$40
(1) Biennial renewal of a statement of licensure	\$40
(2) Penalty fee for failure to renew a statement of licensure timely	\$20
(k) Application fee for a certificate to use therapeutic pharmaceutical agents	\$25
(l) Application fee for approval of a continuing education course	\$50
(m) Application fee for a certificate to treat primary open angle glaucoma	\$35

- (n) Application fee for a certificate to perform lacrimal irrigation and dilation \$25
- (o) Application fee for a retired license \$25
- (p) Application fee for a retired license with a volunteer designation \$50
- (q) Biennial renewal for a retired license with a volunteer designation \$50
- (r) Application fee for a certificate to operate as an owner and operator of a mobile optometric office \$2,632
- (s) Biennial renewal fee for a certificate to operate as an owner and operator of a mobile optometric office \$2,632
- (t) Delinquency fee for failure to renew a certificate to operate as an owner and operator of a mobile optometric office \$ 150

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 163.5, 3055, 3070.2, 3075, 3078, 3151, 3151.1, 3152 and 3152.5, Business and Professions Code.

Adopt Article 13 and Sections 1583, 1584, 1585 and 1586 of Division 15 of Title 16 of the California Code of Regulations (CCR) to read as follows:

Article 13. Mobile Optometric Offices

§1583 Registration Requirements for Ownership and Operation of Mobile Optometric Offices; Notice of Changes; Abandonment; Grounds for Denial

(a) An owner and operator of a mobile optometric office who wishes to offer optometric services at a mobile optometric office in this State shall register with the Board prior to offering services to the public. An owner and operator shall register with the Board and receive a certificate to operate as an owner and operator of a mobile optometric office by submitting to the Board a completed form "Application for Registration for Ownership and Operation of Mobile Optometric Offices" (Form ONOP1, 04-21[New]), which is hereby incorporated by reference, and meeting the application requirements of this section.

(b) Form ONOP1 shall be accompanied by the following:

(1) The non-refundable fee fixed by the Board pursuant to Section 1524; and,

(2) Full and complete fingerprints of the applicant's responsible officers or officials to the Board for use in conducting criminal background checks through the California Department of Justice and the Federal Bureau of Investigation, in the manner specified, and pursuant to the conditions and requirements set forth, in Section 1584. For the purposes of this section, "responsible officers or officials" means the individuals listed by the applicant on Form ONOP1 as the principal officers or officials responsible for the operations of the applicant's organization.

(c) The owner and operator of a mobile optometric office shall report to the Board in writing within fourteen (14) days any change in information provided to the Board on Form ONOP1 including, change of primary business address, responsible officers or officials, records location, and the name and license number of the optometrist responsible for directing medical operations.

(d) An applicant who fails to complete application requirements to register with the Board within one year after being notified by the Board of deficiencies in its application, shall be deemed to have abandoned the application and shall be required to file a new application and meet all registration requirements in effect at the time of reapplication.

(e) An application may be denied if an applicant fails to comply with any of the requirements of this section or Section 3070.2 of the code, or upon the grounds specified in Section 480 of the code.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code.
Reference: Sections 27, 30, 31, 142, 144, 163.5, 480, 494.5, 2544, 3041, 3041.3, 3055, 3070, 3070.1, 3070.2, Business and Professions Code.

§1584 Certificate to Operate a Mobile Optometric Office; Renewal Requirements; Grounds for Discipline; Reinstatement of Expired Certificate

(a) A certificate to operate a mobile optometric office ("certificate to operate") issued by the Board under this Article shall expire two years after the date of issuance unless renewed by the Board prior to its expiration by meeting the requirements in this section.

(b) To renew a certificate to operate, an owner and operator of a mobile optometric office shall pay the renewal fee set forth in section 1524 and certify in writing to the Board that it maintains compliance with the following requirements:

(1) Optometric services are provided to patients regardless of the patient's ability to pay;

(2) The owner and operator does not accept payment for services other than those provided to Medi-Cal beneficiaries;

(3) The medical operations of the mobile optometric office are directed by a licensed optometrist and in every phase is under the exclusive control of the licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the followup care;

(4) The owner and operator of the mobile optometric office provides each patient and, if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the board in section 1587 and maintains it in the patient's medical record;

(5) Upon request by the patient's caregiver or guardian, the mobile optometric office provides a copy of the prescription made for the patient;

(6) Any person who is employed by the owner and operator of the mobile optometric office to drive or transport the vehicle possesses a valid driver's license;

(7) The owner and operator of a mobile optometric office maintains records in the manner prescribed by Section 3070.2 of the code and makes them available to the board upon request for inspection; and,

(8) A licensed optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the code performs all examinations at the mobile optometric office.

(c) Failure to comply with the requirements of this section renders any application for renewal of a certificate to operate incomplete and that certificate will not be renewed until the owner and operator of a mobile optometric office demonstrates compliance with all requirements.

(d) In the event an owner and operator of a mobile optometric office does not renew the certificate to operate as provided in this section, the certificate to operate expires and the owner and operator shall be considered unlicensed. An expired certificate to operate may be reinstated and renewed at any time within three years after its expiration if the owner and operator of the mobile optometric office meets the renewal requirements of this section and pays all accrued and unpaid renewal and delinquency fees in section 1524.

(e) In order to remain registered with the Board, the owner and operator of a mobile optometric office shall respond to any inquiries by the Board, submit any documents requested by the Board, provide any information requested by the Board and cooperate in any investigation conducted by the Board regarding compliance with the Board's requirements, including section 3070.2 of the code. A response to any Board inquiry or request shall be provided within fourteen (14) days of the Board's written request.

(f) Failure to comply with any of the requirements of this Article or Section 3070.2 of the code, or furnishing false, inaccurate, incomplete or misleading information to the Board is considered unprofessional conduct and grounds for disciplinary action against the certificate to operate by the Board. The Board may also take disciplinary action against the owner and operator's certificate to operate on the grounds set forth in Section 3110 of the code for unprofessional conduct committed by the optometrist directing the medical operations of the owner and operator's mobile optometric office(s). Disciplinary actions shall be conducted in accordance with Section 3092 of the code. For purposes of this section, a "disciplinary action" includes revocation, suspension, probation or public reproof.

Note: Authority cited: Sections 3025, 3041, 3070.2, 3092, 3110, Business and Professions Code. Reference: Sections 142, 144, 163.5, 480, 495, 2544, 3041, 3041.3, 3055, 3070, 3070.1, 3070.2, 3092, 3110, Business and Professions Code.

§ 1585 Fingerprints and Background Checks for Applicants to Register as an Owner and Operator of Mobile Optometric Office.

(a) Subject to subsection (b) of this section, all applicants for registration with the Board as an owner and operator of a mobile optometric office must submit fingerprints through the California Department of Justice's ("Department of Justice") electronic fingerprint submission Live Scan Service ("Live Scan").

(b) Applicants must complete the Department of Justice Form "Request for Live Scan Service," and submit fingerprinting, through Live Scan, for its responsible officers or officials. For the purposes of this section, "responsible officers or officials" means the

individuals listed by the applicant on Form ONOP1 in Section 1583 as the principal officers or officials responsible for the operations of the applicant's organization.

(c) The applicant's responsible officers or officials must take the form to a Live Scan location to have their fingerprints taken by the operator. The applicant, through its officers, will be required to pay all fingerprint processing fees payable to the Live Scan operator, including the Live Scan operator's "rolling fee," if any, and fees charged by the California Department of Justice, and the Federal Bureau of Investigation. For current information about fingerprint background checks, and Live Scan locations, individuals may visit the Attorney General's website at: <https://oag.ca.gov/fingerprints>.

(d) Individuals residing outside of California that cannot be fingerprinted electronically in California must have their fingerprints taken at a law enforcement agency in their state of residence, using fingerprint cards. These individuals should complete two fingerprint cards. The applicant should retain the second card, to be used if the first card is determined to be unreadable and rejected by the Department of Justice. Applicants must mail one fingerprint card, together with fees in the amount of \$49 (either personal check drawn on a U.S. bank, money order or certified check), payable to the "California Department of Justice," to:

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

The applicant's responsible officers or officials will be notified if the first card is rejected. If rejected, the applicant's responsible officers or officials must follow the instructions on the rejection letter, and submit the second fingerprint card.

(e) No license will be issued until the Board receives a response from the Department of Justice for all persons required to submit fingerprint information under section 144 of the code and this Section, and the Board determines that the applicant with whom the persons fingerprinted are associated merits approval.

Note: Authority cited: Sections 3025, 3070.2, Business and Professions Code.
Reference: Sections 144, 3070.2, Business and Professions Code; Section 11105, Penal Code.

§1586 Mobile Optometric Office Quarterly Reporting Requirements

An owner or operator of each mobile optometric office shall file a quarterly report with the Board using the "Owner and Operator Quarterly Report Form" (Form QTR1 (New 04-2021)), which is hereby incorporated by reference. After the owner and operator has

been registered with the Board, the FORM QTR1 shall be submitted to the Board by the third business day of the following months and covering each quarter of operations as a registrant: March, June, September and December.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code.
Reference: Sections 3070.2, Business and Professions Code.

§1587 Patient Notification and Records

(a) Each owner and operator of a mobile optometric office shall meet the requirements in sections 1566 and 1566.1 for posting a consumer notice in a conspicuous place in the mobile optometric office.

(b) In addition to the posted notice required by subdivision (a), each owner and operator of a mobile optometric office shall provide each patient, or the patient's caregiver or guardian, a consumer notice in at least 12-point font containing all of the following information:

(1) The name, license number, telephone number, primary business address, and business email address (if any), of the optometrist directing medical operations at the mobile optometric office;

(2) The owner and operator of the mobile optometric office's name, primary business address, telephone number, website or email address (if any), and Board-issued certificate to operate number;

(3) Information on followup care available for the patient, including a list of available Medi-Cal or volunteer optometrists; and,

(4) The following information:

NOTICE OF REGULATION AND WHO TO CONTACT REGARDING COMPLAINTS

The operation of mobile optometric offices and optometrists providing services at a mobile optometric office are regulated by the California State Board of Optometry ("Board"). The Board receives and investigates all consumer complaints involving the practice of optometry and opticianry. Complaints or grievances involving the operation of this mobile optometric office or a California-licensed optometrist or optician should be directed in writing to:

Board of Optometry

California 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
Website: optometry.ca.gov

PRESCRIPTIONS

Optometrists are required to provide patients upon request 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.

COPIES OF MEDICAL RECORDS

Patients may obtain a copy of their medical records by contacting the owner and operator of this mobile optometric office as listed on this notice.

(c) Each owner and operator of a mobile optometric office shall retain in the patient's file, along with the notice required by this section, an acknowledgement of receipt of the consumer notice that sets forth all of the following: (1) the patient has received the consumer notice required by this section; (2) the printed name of the patient or the patient's caregiver or guardian, (3) the signature of the patient or the patient's caregiver or guardian; and (4) the date of receipt.

(d) An owner and operator of a mobile optometric office shall maintain at the primary business office in California a copy of all records required by Section 3070.2 of the code and this Article. The records may be maintained in either paper or electronic form.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code. Reference: Sections 3041, 3041.3, 3070, 3070.1, 3070.2, Business and Professions Code.



Application for Registration for Ownership and Operation of Mobile Optometric Offices

Business and Professions Code (BPC) §3070.2; Title 16, California Code of Regulations (CCR) §§1583 – 1587 (Board's regulations)

Unless exempt, all owners and operators of a mobile optometric office ("office") where the practice of optometry is performed must be registered with the Board using this form and meet all requirements in BPC section 3070.2 and Sections 1583-1587 of the Board's regulations to operate legally in California. Exemptions include an office affiliated with an approved optometry school, and, any facilities, services, or clinics set forth in Business and Professions Code sections 3070.1 or 3070.2(b).

Notices and Requirements:

- This form must be filled out in full with all information requested or the application may be rejected as incomplete. Attach extra sheets where needed.
- Please submit a non-refundable fee of \$2,632.000.
- Each applicant's responsible officers or officials listed in Section "C" of this application must submit full and complete fingerprints for use in conducting criminal background checks as set forth in Section 1585 of the Board's regulations.
- Any material misrepresentation of any information on the application is grounds for denial or subsequent revocation of the registration.
- The Board may revoke approval at any time it determines an owner and operator is not meeting the requirements of the law and the Board's regulations.
- Upon the Board's approval of the registration, the owner and operator shall be issued a certificate to operate, which shall be valid for two (2) years from the date of approval and expire unless renewed in accordance with Section 1584 of the Board's regulations.
- Owners and operators must maintain the records required by BPC section 3070.2 and Article 13 of the Board's regulations at the primary physical business address in California.
- Owners and operators must post addresses of record on the Internet and make them available to the public per BPC section 27. The Board will mail or serve official Board notices and actions to the address of record. The primary physical business address and the address of record may be the same address.
- Under Business and Professions Code sections 31 and 494, the State Board of Equalization (BOE) and the Franchise Tax Board (FTB) may share taxpayer information with the Board. You are required to pay your state tax obligation, if any. This application may be denied or your certificate to operate may be suspended if you have a state tax obligation (e.g., sales or use tax owed) and the state tax obligation is not paid and your name appears on either the BOE or FTB certified list of top 500 tax delinquencies.

A. General Information

Name of Owner and Operator's Organization (Legal Name)

Owner and Operator's Primary Physical Business Address

City	State	Zip	Telephone
Owner and Operator's Address of Record			
City	State	Zip	Telephone
Website Address (if applicable)			
Name of Authorized Contact Person			Title of Contact Person
Direct Telephone Number of Contact Person			Contact Person's Email (Optional)
Full Legal Name of Optometrist Directing Medical Operations (Managing Optometrist)			Managing Optometrist's License Number
Managing Optometrist's Address of Record		City	State Zip
Managing Optometrist's Email Address (Optional)		Managing Optometrist's Direct Telephone Number	
B. Owner and Operator's Organizational Information.			
1. Is the organization operating pursuant to section 501(c)(3) of the Internal Revenue Code? YES <input type="checkbox"/> NO <input type="checkbox"/>			
2. Is the organization operating pursuant to section 501(c)(4) of the Internal Revenue Code? YES <input type="checkbox"/> NO <input type="checkbox"/>			
3. Organization's Tax Identification Number: _____			
4. Does the organization plan to not accept payment for services other than those provided to Medi-Cal beneficiaries? YES <input type="checkbox"/> NO <input type="checkbox"/> (If you answer "no" to the above question, please list in a separate attachment what other payments you will collect other than those provided to Medi-Cal beneficiaries.)			
C. Responsible Organization Officers or Officials. Please list below information, including the social security number (SSN) or individual taxpayer identification number (ITIN) as required by BPC section 30, for each of the principal individuals who are the officers or officials responsible for the operations of the organization (non-profit or charitable organization). Attach additional sheets if necessary.			
Individual #1 – Name			Title
Address Line 1			
Address Line 2			
City		State	Zip

SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
Individual #2 – Name	Title	
Address Line 1		
Address Line 2		
City	State	Zip
SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
Individual #3 – Name	Title	
Address Line 1		
Address Line 2		
SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
D. Operating Standards and Complaint History. Please provide the following information. Attach additional sheets of paper containing written responses to the following questions by question number. (Example: Response to Question No. 1.:)		
1. Please describe the services you will be rendering within the mobile optometric office(s).		
2. Please list the names and license numbers for all optometrists who will be providing patient care as part of the mobile optometric office(s).		
3. Please list the dates of operation of the mobile optometric office(s).		
4. Please list the cities and/or counties served.		
5. Please describe how follow-up care for all patients served by the mobile optometric office(s) will be provided.		

6. Please provide the Board with a catalog of complaints, if any, that the office has received in the past three years. If no complaints were received in the past three years, please mark this box N/A ____

If complaints were received within the last three years, a “catalog” of the complaints must be provided in the form of a list of complaints in alphabetical order by the patient’s name and containing the following information for each patient:

- (A) Complainant’s Name;**
- (B) Name of Patient;**
- (C) Date Complaint Received;**
- (D) How the Complaint was Received (e.g., in person, letter, email, fax or telephone)**
- (E) Date Patient Received Care at the Mobile Optometric Office;**
- (F) Name of Person(s) Providing Care or Services to the Patient;**
- (G) Title of Person(s) Providing Care or Services and License Number, if applicable;**
- (H) Complainant’s Contact Information (Phone, Address, Email);**
- (I) Summary of Complaint as Reported by the Complainant;**
- (J) Complainant’s Requested Resolution, if any;**
- (K) Whether the Owner and Operator Addressed the Issues in the Complaint and, if so, how the Complaint was Addressed with the Patient or the Patient’s Caregiver or Legal Guardian; and,**
- (L) Resolution Date.**

E. Certification

I hereby certify under penalty of perjury under the laws of the State of California that I am authorized to sign this application on behalf of the applicant, that I have read this application and the information provided herein along with any accompanying documents, and that the application and attachments are true and accurate.

Authorized Representative’s Signature

Authorized Representative’s Printed Name and Title

Date

NOTICE OF PERSONAL INFORMATION COLLECTION AND ACCESS:

The information provided in this application will be used by the California State Board of Optometry to determine whether the owner and operator of a mobile optometric office (office) qualifies for registration in California. Unless otherwise specified, all information requested on this application is mandatory. Sections 30, 31, 144, 494.5, and 3070.2 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the application as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, the Franchise Tax Board, the Board of Equalization, or to another government agency as may be necessary to permit the Board, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual or applicant has the right to review their file, except as otherwise provided by the California Information Practices Act. Social security numbers (SSN) and individual taxpayer identification numbers (ITIN) are not considered public records. However, other information provided on this form may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California State Board of Optometry is responsible for maintaining the information in this form, and may be contacted at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834, telephone number 916-575-7170 regarding questions about this notice or access to records.

Disclosure of the applicant’s responsible officers or official’s social security numbers or individual taxpayer identification numbers is mandatory. Sections 30 and 31 of the Business and Professions Code and Public Law 94-455 (42 USCA 405(c)(2)(C)) authorize the collection of the social security numbers or ITINs. The social security number or ITIN will be used exclusively for tax enforcement purposes or compliance with any judgment or order for family support in accordance with section 17520 of the California Family Code. If the applicant fails to disclose social security numbers or ITINs, the application will be deemed incomplete and not be processed.



Owner and Operator Quarterly Report Form

Business and Professions Code (BPC) section 3070.2; Title 16, California Code of Regulations (CCR) sections 1583 – 1587

After the owner and operator of a mobile optometric office has been registered with the Board, this report shall be submitted to the Board by the third business day of the following months covering each quarter of operation as a registrant: March, June, September, and December.

A. Background Information				
Name of Owner and Operator as Registered with the Board			Certificate Number	
Owner and Operator Address of Record				
City	State	Zip	Telephone	
Website (if any)				
Name of Authorized Contact Person			Contact Person's Title	
Contact Person's Direct Telephone Number			Contact Person's Email (Optional)	
Full Legal Name of Optometrist Directing Medical Operations (Managing Optometrist)			Managing Optometrist's License Number	
Managing Optometrist's Address of Record		City	State	Zip
Managing Optometrist's Email Address (Optional)		Managing Optometrist's Direct Telephone Number		
B. The owner and operator of a mobile optometric office shall provide the following information to the Board with this report as an attachment:				
<ol style="list-style-type: none">1. A list of all visits made by the mobile optometric office, including dates of operation, address, care provided, and names and license numbers of optometrists who provided care;2. A summary of all complaints received by the mobile optometric office, the disposition of those complaints, and referral information.3. An updated and current list of licensed optometrists who have provided care within the mobile optometric office since the last reporting period.				

- 4. An updated and current list of licensed optometrists who are available for follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.**

C. Certification

I hereby certify under penalty of perjury under the laws of the State of California that I am authorized to sign this report on behalf of the owner and operator and that I have personally reviewed the report, and that the information provided and any accompanying documents are true and accurate.

Authorized Representative's Signature

Authorized Representative's Printed Name and Title

Date

NOTICE OF COLLECTION OF PERSONAL INFORMATION

The information requested on this form is mandatory pursuant to Business and Professions Code sections 27, 3070.2 and Title 16 CCR section 1585. The information provided will be used to determine compliance with BPC section 3070.2 and the owner and operator's continued qualification for registration. The information may be provided to other governmental agencies, or in response to a court order, subpoena, or public records request. You have a right of access to records containing personal information unless the records are exempted from disclosure by the Information Practices Act, including Civil Code section 1798.40. Individuals may obtain information regarding the location of their records by contacting the Executive Officer of the California State Board of Optometry at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834, telephone number 916-575-7170.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5b – Discussion and Possible Action on Regulations - Amend Title 16, Sections 1507.5 and 1524 of the CCR (Implementation of Assembly Bill 458 - Nazarian, Chapter 425, Statutes of 2018)

Summary:

This regulatory proposal would implement [Assembly Bill 458 \(Nazarian, Chapter 425, Statutes of 2019\)](#), which amended Business and Professions Code (BPC) Section 3070.1.

BPC 3070.1 authorizes a TPA-certified optometrist to practice optometry in the residence of an individual who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition, provided they complete a permit application, pay fees, and meet certain record retention and patient disclosure requirements. Additionally, the optometrist is required to provide a patient notice prescribed by the Board and an authorization to release the patient's medical information to the Board if desired for specified enforcement purposes.

The Consumer Protection and Public Relations and Outreach Committee reviewed the proposed text at the February 25, 2021 public meeting and recommended the full Board adopt the proposal.

This proposal would create a new Title 16, California Code of Regulations (CCR) Section 1507.5 (Home Residence Permits) and amend existing Section 1524 (Fees) by doing the following:

- Creating an initial application for a home residence permit;
- Creating an application for renewal of a home residence permit;
- Sets out requirements for a consumer notice to be provided to the patient and an acknowledgment that the patient has received it;
- Allows release of a patient's medical record to the Board for enforcement purposes;
- Sets the application and renewal fees at \$50.00.

For the text and rationale of this proposal, please see attachment A. For the text of BPC 3070.1, please see attachment B.



Suggested Motion:

"I move to approve the proposed text for California Code of Regulations Title 16, Sections 1507.5 and 1524 as presented and discussed here today, and direct staff to submit the text to the Office of Administrative Law for posting for a 45-day comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, making any non-substantive changes to the package and set the matter for hearing."

Implementation of AB 458 – Proposed Text

Adopt Section 1507.5 of Article 2 of Division 15 of Title 16 of the California Code of Regulations as follows:

§1507.5. Home Residence Permits

(a) A licensed optometrist, who is certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code section 3041.3 and seeks to obtain a home residence permit pursuant to section 3070.1, shall complete an application which shall be accompanied by payment of the fee pursuant to Section 1524 in this Article. The initial home residence permit shall be in effect for two years or until the licensee's optometry license renewal date, whichever comes first. The application shall require the following information:

(1) First, Middle and Last Name;

(2) Address of the optometrist's primary business office, that the optometrist maintains pursuant to Business and Professions Code section 3070.1(c)(1);

(3) Primary business office telephone Number;

(4) Email address;

(5) Current license number;

(6) A declaration by the applicant that the information provided including any accompanying documents is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board, under the penalty of perjury; and

(7) A declaration by the applicant under the penalty of perjury that the applicant will comply with all state and federal recordkeeping, reporting, and patient record disclosure requirements, including requirements as set forth in Section 3070.1(c).

(b) A licensed optometrist who seeks to renew a home residence permit shall complete a renewal application which shall be accompanied by payment of the fee pursuant to Section 1524 in this Article. The renewal permit shall expire on the same date the license's optometry license expires. The application shall require the following information:

(1) First, Middle and Last Name;

(2) Address of the optometrist's primary business office, which the optometrist maintains pursuant to Business and Professions Code section 3041.3(c)(1);

(3) Primary business office telephone number;

(4) Email address;

(5) License number;

(6) A declaration by the applicant that the information provided including any accompanying documents is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board, under the penalty of perjury; and

(7) A declaration by the applicant under the penalty of perjury that the applicant will comply with all state and federal recordkeeping, reporting, and patient record

Commented [JM1]: Proposed Sect. 1507.5(a) implements BPC Sect. 3070(b)(1), which requires initial application to be made via a form. The form's requirements are set out within the regulation since it will likely be made online via BreEZe.

Commented [JM2]: Proposed Sect. 1507.5(b) implements BPC Sect. 3070(b)(2), which requires a renewal application be made. Similar to 1507.5(a).

disclosure requirements, including requirements as set forth in Business and Professions Code section 3070.1(c).

(c) Consumer notice.

(1) Each patient shall be issued a consumer notice. A copy of the consumer notice may be provided to each patient or the patient's caregiver either in-person or electronically.

(2) The notice shall be in a minimum of 14-point font and must contain the following information:

(A) The name, license number, email address, telephone number, primary business address and normal business hours of the optometrist;

(B) At a minimum, the additional following information:

CONSUMER NOTICE

The practice of optometry in California is regulated by the California State Board of Optometry. The Board of Optometry receives and investigates all consumer complaints involving the practice of optometry. Complaints or grievances involving a California-licensed optometrist or optician should be directed in writing to:

California Department of Consumer Affairs
Board of Optometry
2540 Del Paso Road, Suite 105
Sacramento, CA 95834
Phone: 1-866-585-2666 or 916-575-7170
Email: optometry@dca.ca.gov
Website: optometry.ca.gov

PRESCRIPTIONS

Optometrists 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.

VOLUNTARY RELEASE OF PATIENT'S MEDICAL INFORMATION

The patient may choose to release their medical information related to the optometrist's provision of optometry services to the Board of Optometry. This authorization is voluntary, and the medical information will only be used to investigate complaints and to conduct the Board of Optometry's enforcement duties under Optometry Practice Act.

(3) Each patient, or the patient's caregiver if applicable, must sign and acknowledge that they have received the consumer notice. The signature must

Commented [JM3]: Proposed Sect 1507.5(c) implements BPC Sect. 3070.1(e), which requires a patient notice be given with specific information and the patient to acknowledge receipt. Notice and receipt can be done electronically.

Commented [JM4]: Question was raised if the statute requires each patient, regardless of location, each sign a notice? In the case of a care facility or retirement home, can one notice suffice for the entire facility and be given to the medical or social service director? Or should the notice in proposed section (1) be separate from the signed authorization listed in (2) and (3)?

Legal Counsel advises the statute sets out individuals, not a care facility on behalf of an individual.

be accompanied by a printed patient or patient caregiver's name. The signed acknowledgement must be retained in the patient's file.

(d) The authorization provided by the optometrist to the patient or patient's caregiver to release the patient's medical information to the Board of Optometry shall be signed separately from the signature required in subdivision (c)(3) above.

Note: Authority cited: Sections 3025 and 3070.1 Business and Professions Code.
Reference: Section 3070.1, Business and Professions Code.

Amend Section 1524 of Article 5 of Division 15 of Title 16 of the California Code of Regulations as follows:

§1524. Fees

- (a) Application fee for certificate of registration as an optometrist by examination \$275
- (b) Biennial renewal of a certificate of registration as an optometrist \$425
- (c) Delinquency fee for failing to renew a certificate of registration timely \$50
- (d) Application fee for a branch office license \$75
- (e) Annual renewal of a branch office license \$75
- (f) Penalty fee for failure to renew a branch office license timely \$25
- (g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration \$25
- (h) Application fee for a fictitious name permit \$50
- (i) Annual renewal of a fictitious name permit \$50
- (1) Delinquency fee for failure to renew a fictitious name permit timely \$25
- (j) Application fee for a statement of licensure \$40
- (1) Biennial renewal of a statement of licensure \$40
- (2) Penalty fee for failure to renew a statement of licensure timely \$20
- (k) Application fee for a certificate to use therapeutic pharmaceutical agents \$25
- (l) Application fee for approval of a continuing education course \$50
- (m) Application fee for a certificate to treat primary open angle glaucoma \$35
- (n) Application fee for a certificate to perform lacrimal irrigation and dilation \$25
- (o) Application fee for a retired license \$25
- (p) Application fee for a retired license with a volunteer designation \$50
- (r) Application fee for an immunization certification \$50
- (s) Application fee for a home residence permit is \$50.
- (t) Renewal fee for a home residence permit is \$50.
- (u) Delinquency fee for a home residence permit is \$25.

Note: Authority cited: Sections 3025, 3041, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3041, 3075, 3078, 3151, 3151.1, 3152 and 3152.5, 3070.1, Business and Professions Code.

Implementation of AB 458

Bill text: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB458

Business and Professions Code Section 3070.1

- (a) For purposes of this section, the following terms have the following meanings:
- (1) "Health facility" means a health facility, as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.
 - (2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:
 - (A) Adult residential facilities.
 - (B) Adult residential facilities for persons with special health care needs.
 - (C) Residential care facilities for the chronically ill.
 - (D) Residential care facilities for the elderly.
 - (E) Continuing care retirement communities.
 - (F) Social rehabilitation facilities.
 - (3) "Home residence" means the primary residence of an individual who is restricted by a disabling physical or mental condition. "Home residence" does not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, but does include an individual condominium unit, apartment, single-family home, cooperative unit, mobilehome, or trailer, if it is used as a residence.
- (b) (1) An optometrist who is certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3 may, in the form and manner prescribed by the board, submit an application to the board for a home residence permit, and pay all applicable fees prescribed in Section 3152. The board shall, upon application and payment of the fee prescribed in Section 3152, issue a home residence permit to an optometrist certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3. A home residence permit authorizes the holder to engage in the practice of optometry at a home residence as specified in this section.
- (2) A home residence permit shall expire on the same date the licensee's optometry license expires. A home residence optometrist may renew the permit by submitting an application, in the form and manner prescribed by the board, to the board for renewal, and paying any applicable fees prescribed in Section 3152.
- (3) A person engaging in the temporary practice of optometry, as defined in subdivision (b) of Section 3070, is not required to obtain a home residence permit in order to engage in the temporary practice of optometry at a home residence.
- (c) An optometrist may engage in the practice of optometry at any health facility or residential care facility, and in a home residence, if all of the following requirements are satisfied:
- (1) The optometrist maintains a primary business office, separate from the health facility, residential care facility, or home residence, that meets all of the following requirements:
 - (A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

- (B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.
 - (C) Is registered by the optometrist with the Board of Optometry.
 - (D) Is owned or leased by the optometrist or by the employer of the optometrist.
 - (E) Is not located in or connected with a residential dwelling.
- (2) The optometrist maintains or discloses patient records in the following manner:
- (A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).
 - (B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).
 - (C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.
 - (D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:
 - (i) Name.
 - (ii) Optometrist license number.
 - (iii) The place of practice and the primary business office.
 - (iv) Description of the goods and services for which the patient is charged and the amount charged.
 - (E) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.
- (3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility, residential care facility, or home residence.
- (4) The optometrist provides each patient and, if applicable, the patient's caregiver, a consumer notice prescribed by the board that includes the following:
- (A) The name, license number, primary telephone number, and primary business address of the optometrist.
 - (B) Information for filing a complaint with the board.
- (d) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility, residential care facility, or home residence shall not be required to comply with Section 3070 with regard to providing notification to the board of each health facility, residential care facility, or home residence at which the optometrist practices.

(e) Before engaging in the practice of optometry at a home residence, an optometrist shall provide each patient and, if applicable, the patient's caregiver, both of the following:

(1) A consumer notice prescribed by the board that includes any information the board deems appropriate to safeguard the public from substandard optometric care, fraud, and other violations of the act. The patient, or, if applicable, the patient's caregiver, shall sign the consumer notice.

(2) An authorization to release the patient's medical information related to the optometrist's provision of optometry services to the board. The authorization shall disclose that the patient's authorization to release medical information to the board is voluntary and that the medical information shall be used by the board only to investigate complaints and to conduct the board's enforcement duties under the act.

(f) An optometrist subject to subdivision (e) shall maintain in the patient's file a copy of the signed consumer notice described in paragraph (1) of, and, if signed, the signed authorization described in paragraph (2) of, subdivision (e).

(g) The board may adopt regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at a home residence.

(Amended by Stats. 2019, Ch. 425, Sec. 1. (AB 458) Effective January 1, 2020.)



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Dr. Debra McIntyre, O.D., Board Secretary
SUBJECT	Agenda Item #6 – Discussion and Possible Approval of February 26, 2021 Meeting Minutes

The meeting minutes for February 26, 2021 are presented for review and possible approval.

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.

MEMBERS OF THE BOARD

Mark Morodomi, JD, President
Glenn Kawaguchi, OD, Vice President
Debra McIntyre, OD, Secretary
Cyd Brandvein
Jeffrey Garcia, OD
Eunie Linden, JD
Sandra D. Sims, JD
David Turetsky, OD
Lillian Wang, OD
Vacant, Public Member
Vacant, Optician Licensed Member



**QUARTERLY BOARD MEETING
BOARD MEETING MINUTES**

Friday, February 26, 2021

This public meeting was held via WebEx Events.

Members Present	Staff Present
Mark Morodomi, President	Shara Murphy, Executive Officer
Glenn Kawaguchi, Vice President	Cheree Kimball, Assistant Executive Officer
Debra McIntyre, Secretary	Marc Johnson, Policy Analyst
Cyd Brandvein	Natalia Leeper, Licensing Coordinator
Jeffrey Garcia, OD	Rebecca Bon, Legal Counsel
David Turetsky, OD	
Lillian Wang, OD	

Link for the audio of discussions:

https://www.youtube.com/watch?v=wSK_qBDImul

OPEN SESSION

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

Audio of Discussion: [0:31 / 2:50:42](#)

Mr. Morodomi called the meeting to order at 12:00pm. All Members were present, and a 7-0 quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: [1:26 / 2:50:42](#)

Public comment was received from a [concerned applicant](#) who did not provide their name. Applicant applied for a California State Board of Optometry (CSBO) license last March and was concerned about the lack of information about their license application. Ms. Murphy assured that she and staff are aware of this applicant's case; licensing and enforcement staff are working concurrently and will utilize some resources to bring movement to this case.

Public Comment was received from [Ms. Bonnie Dellatorre](#). Ms. Dellatorre spoke on Assembly Bill (AB) 443 regarding immunization certification and the California optometrist licensed renewal. She explained that California optometrists have been eager to obtain their immunization certification. The Southern California College of Optometry (SCCO) has had three pharmacy immunization programs with over 60 optometrists certified by the American Public Health Association (APHA). SCCO intends to advise their ODs that 15 hours of the 20-hour course may be used for their license renewal in the “other” category as therapeutic continuing education COPE category systemic disease using PH (for pharmacology) as the designation. She explained that many companies in California will not reimburse for CE unless it can be used as part of their relicensing hours. Ms. Dellatorre requested that if this issue is not discussed during Agenda Item 5, that it be placed on the agenda for the next Board meeting.

3. Board President’s Report

Audio of Discussion: [11:38 / 2:50:42](#)

Board President Mark Morodomi announced the Board is seeking additional candidates to become members of both this Board and the Dispensing Optician Committee (DOC). He asked for any viewers who are interested in affecting policy related to the practice of optometry and opticianry to please submit their applications to the Governor’s Office.

There was no public comment.

4. Update by Representatives of the Department of Consumer Affairs, which may include updates, Discussion and Possible Action Pertaining to the Department’s Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters

Audio of Discussion: [15:38 / 2:50:42](#)

A. Department of Consumer Affairs

Carrie Holmes, Deputy Director of Board and Bureau Services at the Department of Consumer Affairs (DCA) announced that the DCA waiver was approved on February 11, 2021. This will allow optometrists with specified training and certification to order and administer COVID-19 vaccines. DCA is open to the public and all preventative safety measures continue to be in place to safeguard the health and safety of employees. Ms. Holmes explained that one of her office’s top priorities are appointments. She echoed what President Morodomi said earlier; the Governor’s Office needs applicants for these positions.

Ms. Holmes announced that for current Board Members, 2021 is a mandatory sexual harassment prevention training year. All employees and Members are required to complete the training within this year. She reminded Members that Form-700 filings are due April 1, 2021 and Board Members being designated appointees requires completion of a Statement of Economic Interests Form-700 even if there are no reportable interests. Ms. Holmes also announced that the Board and Bureau Services in partnership with SOLID training has

developed a new Board Member Orientation training to be held via WebEx on March 11th. She reminded the Members that newly appointed and reappointed Members are required to complete this training within the year of appointment.

Finally, she reported on two exciting initiatives launched by DCA's Director Kirchmeyer for 2021 to enhance DCA services to all boards and bureaus. The first is the Enlightened Licensing Project workgroup which will utilize subject matter experts within DCA. This will help boards and bureaus streamline licensing processes more effectively and efficiently. The second is an Executive Officer Cabinet. This group of executives will maintain regular communication, provide feedback and information to DCA, and assist with special projects that will impact all boards and bureaus. Ms. Murphy is a member of this new advisory body.

B. DCA Budget Office

The Board's newly assigned [Budget Analyst, Bikram Dhaliwal](#) provided the budget report. He reported that renewal fees provide the most revenue in every fiscal year and licensing fees are the second largest revenue driver. For the current year 20-21, the beginning balance was \$2,080,000. He added that going off the first half of the fiscal year, renewals are coming in at a higher rate than originally anticipated. The Department of Finance took \$117,000 out of Optometry's fund and transferred it as a loan to the General Fund. Because of the pandemic, debt, and budget shortfalls the Department of Finance decided to tap into some of these special funds; which will ultimately be paid back with interest. Ms. Murphy interjected explaining that previous loans had set payback dates of two to three years; however due to the unprecedented situation this loan does not have a set date. She assured that staff are watching very closely about what sort of triggers the Board has for ensuring payback before drastic cuts overall or drastic increases to fees need to be implemented.

Mr. Dhaliwal added that when you consider the \$2,082,000 and deduct \$117,000, the balance of total revenue is \$1,965,000 which brings us to the total resources of \$4,045,000. He noted that due to savings in personnel services, attorney general fees, travel, and certain other line items and categories, budgets is projecting overall that the optometry fund will save a lot of money in the current fiscal year. This will leave the Board with eight months in reserve. This is a decrease from the 12 months the Board saw previously. Ms. Brandvein questioned whether this period of increased revenues; are revenues accrued or not accrued; Mr. Dhaliwal responded that there is a 90-day window that licensees must pay their renewal fees, and DCA Accounting collected the revenue in advance; then it just happened to hit the month of October all-at-once. Ms. Brandvein explained that she is asking because we are including revenue that we do not yet have but are hoping to receive.

Next, Mr. Dhaliwal reported on the optician fund. The adjusted beginning balance for the RDO program from the previous year was \$868,000; revenue was \$680,000 with renewals being the main driver in the amount of \$406,000. The total resources were \$1,548,000; total expenditures were \$455,000 leaving a fund balance in reserve of \$1,093,000. The months in reserve is 26.2 which is very good and provides much cushion. This will help the optometry fund when merged on July 1, 2021. The current year beginning balance is \$1,093,000; revenues are fiscal-month-six projections. For current year program expenditures for fiscal-

month-six projections, Mr. Dhaliwal is anticipating total expenditures to be around \$469,000 leaving a fund balance of \$1,334,000. He does not have an exact date for when this balance will roll into the optometry fund.

There was no public comment.

5. Executive Officer's Report

Audio of Discussion: [1:01:12 / 2:50:42](#)

A. Enforcement Program

Mx. Kimball reported on the Enforcement Program. They announced that the Senior Enforcement Analyst, Matt McKinney accepted a promotion to serve as an Enforcement Program Manager with the Veterinary Medical Board. February 19th was his last day with the Optometry Board.

Mx. Kimball reported that in the second quarter of the current fiscal year the Board approved three disciplinary actions and granted two petitions for early termination of probation. They all become effective in January 2021. President Morodomi asked for the current number of the average age of pending cases; Mx. Kimball explained that the average age of pending cases has not increased significantly over the last year. Some high priority cases take longer than other cases they are dragging down the timelines. President Morodomi noted that the average days pending is 415 and questioned which cases are determined to be high-priority cases and what causes their delay? Mx. Kimball responded that high-priority cases are those that are most likely to go to the Division of Investigation (DOI); then subsequently are reviewed by an expert witness. They can take longer than a routine case. They clarified that there are currently 10 high priority cases that, when combined, amount to 415 days pending.

B. Examination and Licensing Programs

Ms. Leeper provided an overview on the Licensing Program. Staff has started to see the influx of the 2021 graduates ready to take their law exam. Staff is preparing for their Part II's to be submitted in the next couple of months, making last minutes changes to BreEZe and ensuring they have adequate contact information to provide to staff. The Frequently Asked Questions (FAQ's) has been updated for the new graduating season. Current processing times for new applications are 6-8 weeks and holding steady. Ms. Leeper reported the loss of one optician program employee causing processing times to increase from 4-6 weeks to 6-8 weeks. Management is trying to back fill that position with a retired annuitant. Additionally, The Board will be obtaining a new Office Technician for the licensing program in the new fiscal year. This should help regain some traction lost due to revolving staff.

Dr. Garcia asked what the current average pass rate is for the optician program; Ms. Leeper replied that for the national exam the average is around 48%. Dr. Garcia asked why the pass rate is so low; Ms. Leeper explained that the licensing department is researching this. Dr. Garcia asked how many years California has been below the national average and suggested that this be researched as well. President Morodomi asked for an explanation of the difference

between the Registered Dispensing Optician (RDO) Initial application and RDO initial license; Ms. Leeper explained that all the optician applications have two parts to them. The initial application contains the bulk of what she needs to receive in order to process an application. Once she has approved the application there is the initial license which simply means an additional fee must be paid and then she issues the license. Ms. Leeper clarified that the process was set up this way initially because the fees are separated out in statute. Staff has been entertaining combining it into one application to make the process smoother.

Mx. Kimball also noted Ms. Leeper had been promoted to Lead Licensing Analyst and proved she was the best fit for the program.

C. Regulatory Update

Mr. Johnson presented a regulatory update. He reported that staff is currently working on the following regulatory packages:

- Implementation of AB 443, which allows a TPA-licensed optometrist to administer immunizations provided the applicant meets certain conditions and training. This is the bill that allows optometrists to administer flu vaccines. It does not affect COVID vaccine administration. This package is being published today by the Office of Administrative Law (OAL) for the 45-day comment period.
- Implementation of AB 2138, relating to denial of applications, revocation, or suspension of licensure and criminal convictions or optometry and opticianry program applicants. The package has been submitted to the OAL. This bill was approved yesterday and is now in law.

Mr. Johnson announced that staff anticipates beginning work on the following regulatory packages for Board approval in 2021:

- Implementation of AB 896, which would allow non-profit charitable organizations to provide mobile optometry services to patients and receive reimbursement by Medi-Cal. The Consumer Protection Committee (CPC) reviewed this bill yesterday. Staff will continue working on this package and hopefully bring back to the CPC at the next meeting.
- Implementation of AB 458, which allows an optometrist to engage in the practice of optometry at a home residence, provided they meet specific requirements, and submit an application to the Board and pay specified fees. The Committee would also be required to provide a consumer notice to a patient. This was presented to the Committee on February 25, 2021.

Regarding AB 443, Dr. Kawaguchi asked if it is still appropriate for the Practice and Education Committee (PEC) to discuss methods of dealing with the training hours and whether it would count as continuing education (CE). Does it require a regulatory change? Dr. Wang responded stating that traditionally the schools have self-regulated and categorized their own

CE. She added that Ms. Dellatorre had stated that from the 20-hour course they would take 15 hours and designate them as therapeutic hours. Dr. McIntyre suggested taking this up at the next meeting and see which courses are comprising that 15 hours and how they the hours apply towards the therapeutic requirement. Dr. Wang agreed and asked Ms. Murphy to add this to the next agenda.

D. COVID-19 Update

Dr. Turetsky asked if, in the event an optometrist provided a vaccine incorrectly which resulted in an adverse reaction, it would be the Board's jurisdiction to initiate investigation or would it be the California Department of Public Health's jurisdiction (CDPH); Ms. Murphy responded that staff will need to investigate this. Dr. Turetsky questioned whether the waiver includes flu vaccines or strictly COVID. Ms. Murphy confirmed that the waiver is only for the COVID vaccine.

Ms. Murphy clarified that the waiver was approved by the Director of DCA; the Process will go through the CDPH. The waiver allows optometrists to complete the correct courses and obtain basic life support certification. It allows optometrists to provide the vaccine in a public health care setting as well as a private practice setting. Board staff is asking optometrists who are part of a medical group to contact with their clinical director of their vaccination center to work with the CDPH to receive their verification and help within that clinic. Ms. Murphy announced that DCA is working collaboratively with the CDHP to develop modules which will clearly communicate the waiver process.

Public comment: Bonnie Delatorre. She announced that she was told by a pharmacist that they never go through the Board; they simply obtain certification by showing their director confirmation of having completed the waiver requirements.

E: 2021-2025 Strategic Plan Update

Ms. Murphy announced that the pre-action planning inquiry for the Board's strategic plan will soon be made available on the Board's website. On March 5th, staff will meet with SOLID and review the pre-action plans to develop an action plan. Once the action plan is completed, staff will bring it to the appropriate committees to inform them of the progress and how staff will be moving forward. Those committee chairs may then report the progress to the Board at the full Board meeting.

F. Update on New Federal Contact Lens Rules

Ms. Murphy provided an update on the Federal contact lens rules. Staff was watching this last year and did not have an opportunity to comment during the process. These new rules were intended to go into effect in October but were delayed until an implementation date of March 31, 2021. There has not been a complete legal review, but staff have looked at it and understand that the Federal contact lens rule supersedes Board statute. The issue was sent to the CPC for further discussion.

President Morodomi questioned whether it is always true that Federal rule supersedes Board authority. Ms. Murphy referenced the rule itself. *“Rule 315.11 effect on state and local laws and regulations that establish a prescription expiration date of less than one year or that restricts prescription release or require active verification are preempted. Rule 315.11(b) any other state or local laws or regulations that are inconsistent with the act or this part are preempted to the extent of the inconsistency”.*

She added that there is the intent that this sets a national standard. If the Board wishes to go beyond the national standard, a complete legal review would become necessary.

G. Update on Alternative Methods of Verification of Practice Competency

Members and staff continued their discussions regarding the National Board of Examiners in Optometry (NBEO) only having one testing site and the need for graduates to be able to continue with their testing should that site become unable to accommodate testing for whatever reason. They discussed how this issue has been formerly approached from the perspective of COVID and future pandemics; however, the impact of one site is far broader in scope as any type of crisis can occur. Ms. Murphy assured that conversations with the NBEO and executive officers in the other western states are occurring (monthly) and will continue to occur in order to solve this problem with either the development of a second testing site and/or some form of contingency plan in place. Ms. Brandvein contended that she would hate for the Board to rely on just one single building from one single provider; it is a single point of failure.

Dr. Kawaguchi noted that one of the things that separates California as a state is that we have three large optometry schools putting out a lot of graduates. Additionally, California has a large population of optometrists, so we serve a very large population of consumers as well as licensees. Not having a backup plan puts a lot of people at risk. He believes it would help if awareness is made to the other state boards to view this issue from a perspective far beyond just COVID-19. Ms. Brandvein and Dr. Wang will comprise a workgroup to handle this issue.

There was no public comment.

6. Discussion and Possible Approval of Board Meeting Minutes

Audio of Discussion: [2:20:22 / 2:50:42](#)

- A. September 18, 2020**
- B. October 23, 2020**
- C. November 20, 2020**
- D. December 11, 2020**

Members had no changes. There was no public comment.

Dr. Lillian Wang moved to approve the September 18, 2020 Draft Board Meeting Minutes. Dr. David Turetsky seconded. The Board voted (6-Aye, 0-No, 1-Abstain) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi			X		
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Turetsky	X				
Dr. Wang	X				

Dr. Debra McIntyre moved to approve the October 23, 2020, the November 20, 2020, and the December 11, 2020 Draft Board Meeting Minutes. Dr. Lillian Wang seconded. The Board voted unanimously (7-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Turetsky	X				
Dr. Wang	X				

7. Discussion and Possible Action to Initiate Rulemaking Process to Amend Title 16, California Code of Regulations Section 1571 (Glaucoma Grand Rounds Program)

Audio of Discussion: [2:27:32 / 2:50:42](#)

Mr. Johnson reported on the status of California Code of Regulations (CCR) Section 1571 which sets out the glaucoma requirements for licensees. In response to COVID, Marshall B. Ketchum university was granted a director's waiver to offer their grand rounds program online as a live course. This proposed regulation would make a change to 1571(b), in deleting the requirement that patients must be evaluated in person. Dr. Wang expounded on this stating that glaucoma certification applicants who graduated prior to 2007 had to complete a glaucoma certification course. In the regulations it states that the course must be in-person. She noted that Ketchum's virtual glaucoma course took the exact same amount of time as the in-person course and they did a very good job. She added that the number of glaucoma courses being offered has drastically been reduced; therefore, she feels this is a good option for the future. Dr. Kawaguchi requested clarification on what "live" training means.

Public comment was received by [Ms. Tiffany Witherspoon](#), Director of Continuing Education for Western University. She asked if there is a specific method for submittals of online CE request and requested more clarification.

Glenn Kawaguchi moved to approve the proposed text for California Code of Regulations Title 16 Section 1571 as presented and discussed including conversations to clarify the live training, and direct staff to submit the text to the Office of Administrative Law for posting for a 45-day comment period; and if no adverse

comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, making any non-substantive changes to the package and set the matter for hearing. Cyd Brandvein seconded. The Board voted unanimously (7-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Mr. Morodomi	X				
Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Brandvein	X				
Dr. Garcia	X				
Dr. Turetsky	X				
Dr. Wang	X				

8. Future Agenda Items

Audio of Discussion: [2:43:45 / 2:50:42](#)

Dr. Turetsky would like to have a discussion regarding Section 3109 of Optometry Laws and Regulations. He believes it would benefit the public to remove the “specialty of ophthalmology” part. He believes this just restricts the public’s access to various methods of care.

There was no public comment.

9. Adjournment

Meeting adjourned at 2:43 p.m.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer
SUBJECT	Agenda Item #7 – Department of Consumer Affairs Update

Representatives from the California Department of Consumer Affairs will offer updates in the following areas:

- A. Executive Office
- B. Budget Office

0763 - State Optometry Fund**(Dollars in Thousands) Analysis of Fund Condition****With CY FM 9 Projections**

	Actual 2019-20	CY 2020-21	BY 2021-22	BY+1 2022-23
BEGINNING BALANCE	\$2,765	\$2,080	\$2,082	\$1,821
Prior Year Adjustment	-\$71	\$0	\$0	\$0
Adjusted Beginning Balance	\$2,694	\$2,080	\$2,082	\$1,821
 REVENUES, TRANSFERS AND OTHER ADJUSTMENTS				
Revenues				
4121200 - Delinquent fees	\$12	\$16	\$34	\$34
4127400 - Renewal fees	\$1,534	\$1,894	\$2,217	\$2,217
4129200 - Other regulatory fees	\$42	\$32	\$18	\$18
4129400 - Other regulatory licenses and permits	\$140	\$142	\$474	\$474
4140000 - Sales of documents	\$0	\$1	\$1	\$1
4163000 - Income from surplus money investments	\$54	\$13	\$33	\$33
4171400 - Escheat of unclaimed checks and warrants	\$4	\$1	\$1	\$1
4173500 - Settlements and Judgments - Other	\$0	\$1	\$0	\$0
 Totals, Revenues	\$1,786	\$2,100	\$2,778	\$2,778
 Transfer from Other Funds				
Merger with RDO Fund (0175)	\$0	\$0	\$0	\$1,270
 Transfer to Other Funds				
Loan to General Fund (0001) per CS 3.92, Budget Act of 2020	\$0	-\$117	\$0	\$0
 TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$1,786	\$1,983	\$2,778	\$4,048
 TOTAL RESOURCES	\$4,480	\$4,063	\$4,860	\$5,869

	Actual 2019-20	CY 2020-21	BY 2021-22	BY+1 2022-23
EXPENDITURES AND EXPENDITURE ADJUSTMENTS				
Expenditures:				
1111 Program Expenditures (State Operations)	\$2,216	\$1,838	\$2,862	\$2,948
9892 Supplemental Pension Payments (State Operations)	\$36	\$36	\$36	\$36
9900 Statewide Pro Rata	\$148	\$107	\$141	\$141
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$2,400	\$1,981	\$3,039	\$3,125
FUND BALANCE				
Reserve for economic uncertainties	\$2,080	\$2,082	\$1,821	\$2,744
Months in Reserve	12.6	8.2	7.0	10.2

Notes:

Assumes workload and revenue projection are realized in BY+1 and ongoing.

CY revenue and expenditures are FM 9 projections.

BY and BY+1 include merging of funds.

State Board of Optometry
FY 2020-21 BUDGET REPORT
FISCAL MONTH 9

OBJECT DESCRIPTION	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21				
	ACTUAL	ACTUAL	ACTUAL	CY	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	EXPENDITURES	REVISED	EXPENDITURES	SPENT	TO YEAR END	BALANCE
	FM 13	FM 13	FM 13	BUDGET	5/7 Activity Log			
Salary & Wages (Staff)	430,734	509,777	530,652	506,000	360,235	71%	474,025	31,975
Temp Help	86,159	34,592	18,759	41,000	0	0%	15,786	25,214
Statutory Exempt (EO)	36,302	84,839	91,104	82,000	64,101	78%	84,775	(2,775)
Board Member Per Diem	10,400	7,800	6,400	7,000	4,500	64%	7,200	(200)
Overtime/Retirement Payout	0	5	0	0	0	0%	0	0
Staff Benefits	279,182	347,278	371,357	359,000	254,428	71%	342,851	16,149
TOTALS, PERSONNEL SVC	842,776	984,291	1,018,272	995,000	683,264	69%	924,637	70,363
OPERATING EXPENSE AND EQUIPMENT								
General Expense	16,572	36,646	20,866	21,000	7,035	34%	10,553	10,448
Printing	13,476	7,938	19,377	11,000	17,566	160%	17,566	(6,566)
Communication	2,593	2,683	2,349	5,000	1,490	30%	2,235	2,765
Postage	8,659	4,313	655	11,000	531	5%	4,000	7,000
Insurance	3,067	3,623	23	0	3,449	0%	3,449	(3,449)
Travel In State	28,263	14,944	18,826	8,000	0	0%	1,000	7,000
Travel, Out-of-State	0	0	0	0	0	0%	0	0
Training	895	500	1,764	1,000	1,000	100%	1,500	(500)
Facilities Operations	114,026	132,806	110,962	84,000	57,157	68%	95,609	(11,609)
C & P Services - Interdept.	41	44	47	89,000	62	0%	62	88,938
Attorney General	157,025	218,585	191,907	304,000	88,508	29%	118,011	185,989
Office of Administrative Hearings	35,850	62,277	80,925	38,000	29,711	78%	39,615	(1,615)
C & P Services - External	94,872	93,051	91,231	87,000	65,734	76%	93,051	(6,051)
DCA Pro Rata	460,677	553,628	384,485	360,000	283,500	79%	360,000	0
DOI - Investigation	236,577	0	275,671	118,000	95,250	81%	118,000	0
Interagency Services	0	0	378	0	209	0%	209	(209)
IA w/ OPES	0	26,076	49,849	106,000	12,896	0%	92,310	13,690
Consolidated Data Center	5,807	245	5,423	5,000	2,812	56%	5,000	0
Information Technology	246	487	1,190	1,000	1,971	197%	1,971	(971)
Equipment	9,221	2,746	636	41,000	4,663	11%	41,000	0
TOTALS, OE&E	1,187,867	1,160,591	1,256,564	1,290,000	673,544	52%	1,005,140	284,860
TOTAL EXPENSE	2,030,643	2,144,882	2,274,836	2,285,000	1,356,808	59%	1,929,777	355,223
Sched. Reimb. - Fingerprints	(5,390)	(4,753)	(18,984)	(6,000)	(14,829)	247%	(6,000)	0
Sched. Reimb. - Other	(1,175)	(2,115)	0	0	0	0%	0	0
Unsched. Reimb. - Other	(22,855)	(27,185)	(32,752)	0	(18,107)	0%	0	0
Internal Cost Recovery	0	(64,000)	0	(86,000)	0	0%	(86,000)	0
NET APPROPRIATION	2,001,223	2,046,829	2,223,100	2,193,000	1,323,872	60%	1,837,777	355,223
SURPLUS/(DEFICIT):								16.2%

ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Natalia Leeper, Lead Licensing Analyst
SUBJECT	Agenda Item #8B: Examination and Licensing Programs

Examination

Most 2021 Optometry graduates have already taken the California Laws and Regulations Exam (CLRE) in preparation for graduation in the next few weeks. Changes were made to the CLRE application in Breeze to better explain what applicants can expect next in the process.

Additionally, once an applicant has passed their CLRE, they will receive a letter that informs them when they can complete and submit Part 2 of their application for licensure.

Board staff is hopeful that these updates will answer some of our most commonly answered application questions and help inform applicants of the status of their applications.

Optometry

Staff is preparing for the beginning of the graduation season. Early applicants have been added to a graduation queue that will be processed once school transcripts and NBEO scores are received.

Applications are currently being processed in 6-8 weeks. Staff anticipates processing times may increase to 8-10 weeks during the post-graduation application rush.

Opticianry

The American Board of Opticianry (ABO) and National Contact Lens Examiners (NCLE) exams continue monthly as adopted during the COVID-19 Pandemic in mid-2020 (the previous schedule was quarterly). There is no current plan to return to the quarterly testing schedule.

We are currently recruiting to fill the vacant Optician Program Technician position. This position processes applications for registration as an Optician, and has been vacant for most of the current fiscal year.



CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
BREEZE SYSTEM
Licensing Population Statistics
License Population as of 05/13/2021



License Status (20-45)

License Type	20 - Current	21 - CurrentInactive	22 - CurrTmp FamSupp	28 - Military-Active	31 - Fam Supp Susp	32 - Fam Supp Dend	45 - Delinquent
Optometrist	12	9					23
Optometrist-DPA	101	88					142
Optometrist-TLG	4,032	76		1	1		199
Optometrist-TPA	1,458	85					242
Optometrist-TPG	958	5					50
Optometrist-TPL	937	57		1			101
Statement of Licensure	1,385						658
Fictitious Name Permit	1,444						267
Registered Dispensing Optician	1,081						410
Registered Spectacle Lens Dispenser	2,855		4		4	1	1,278
Registered Contact Lens Dispenser	1,128		2		1		403
Nonresident Contact Lens Seller	15						3

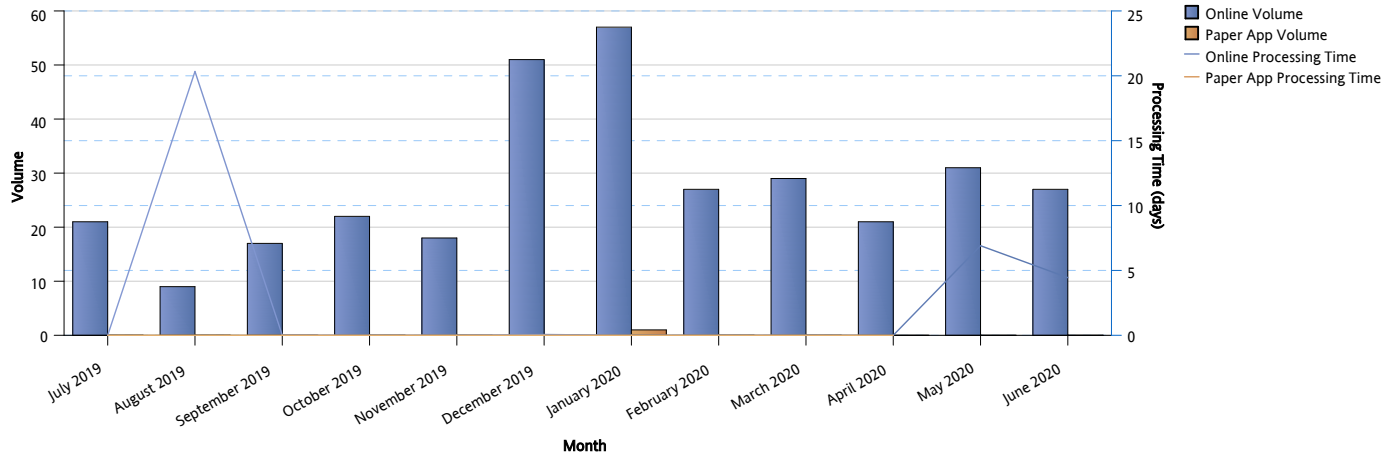


CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
BREEZE SYSTEM
Licensing Application Volume and Processing Time
Fiscal Year 2020

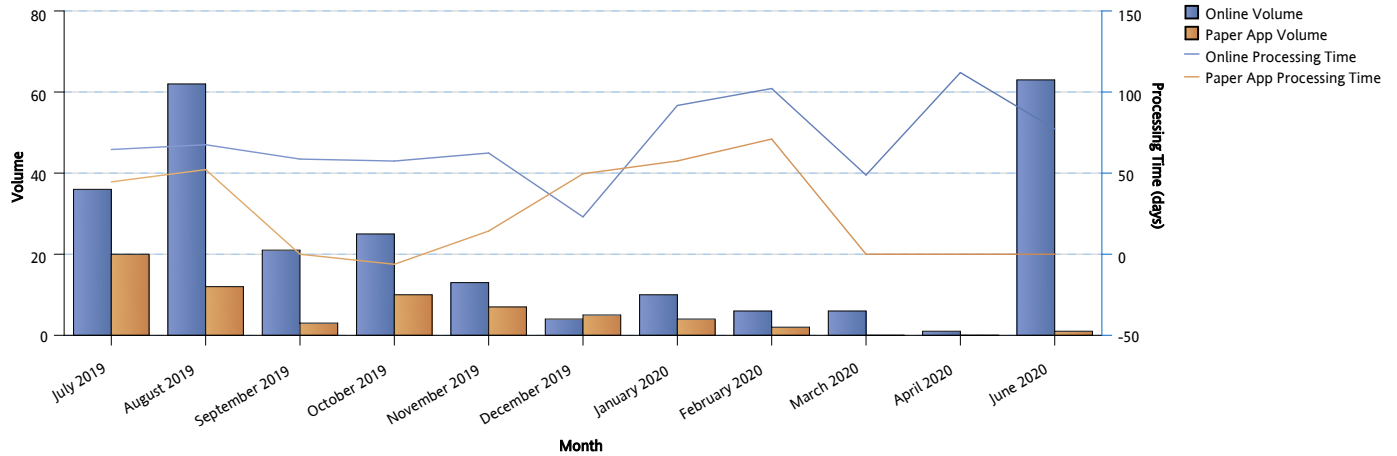


LT - Transaction Description	Online Volume	Average Online Processing Time	Paper App Volume	Average Paper App Processing Time
Optometrist - Exam Request	330	2	1	0
Optometrist - Initial License	247	68	64	34
Statement of Licensure - Issue License	324	1	5	20
Fictitious Name Permit - Issue License	107	30	20	37
Registered Dispensing Optician - Initial Application	103	20	6	6
Registered Dispensing Optician - Initial License	60	4	52	20
Registered Spectacle Lens Dispenser - Initial Application	427	24	18	31
Registered Spectacle Lens Dispenser - Initial License	443	5	14	45
Registered Contact Lens Dispenser - Initial Application	98	26	2	32
Registered Contact Lens Dispenser - Initial License	101	4	3	21
Nonresident Contact Lens Seller - Initial Application	3	9	0	
Nonresident Contact Lens Seller - Initial License	3	24	0	

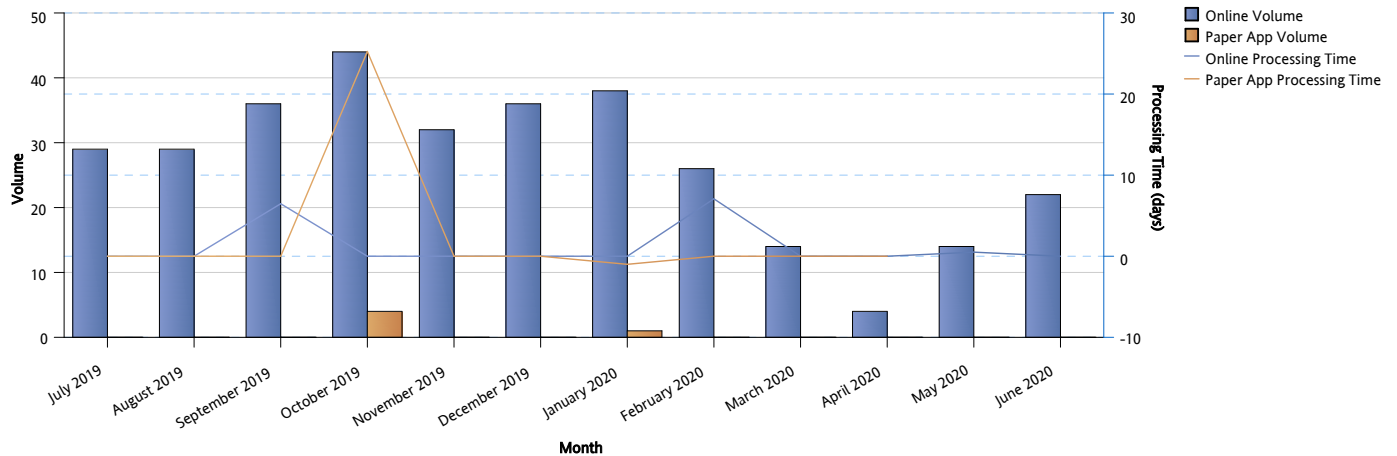
Optometrist - Exam Request



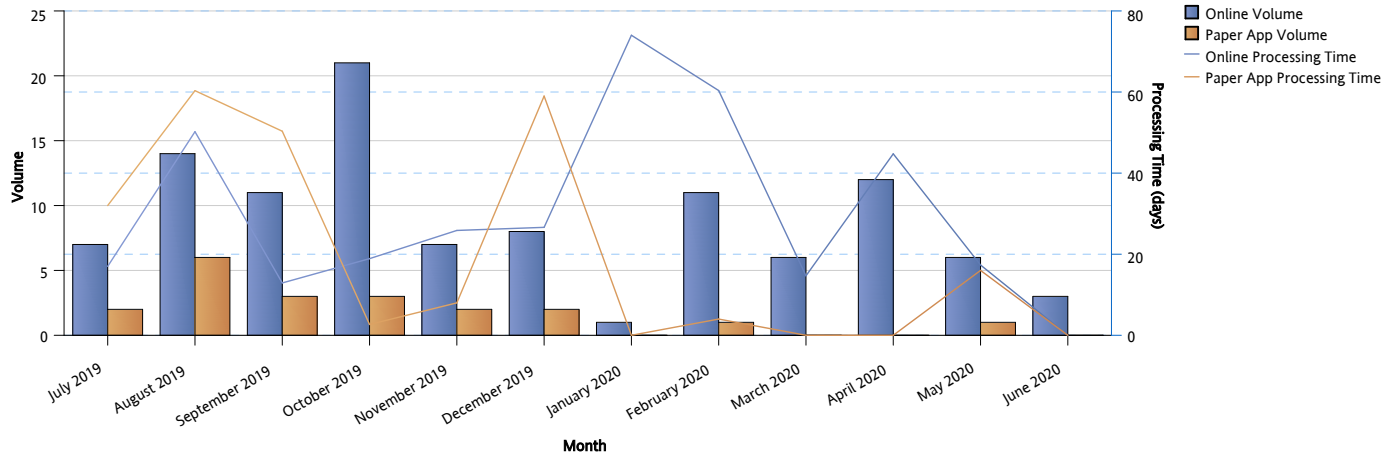
Optometrist - Initial License



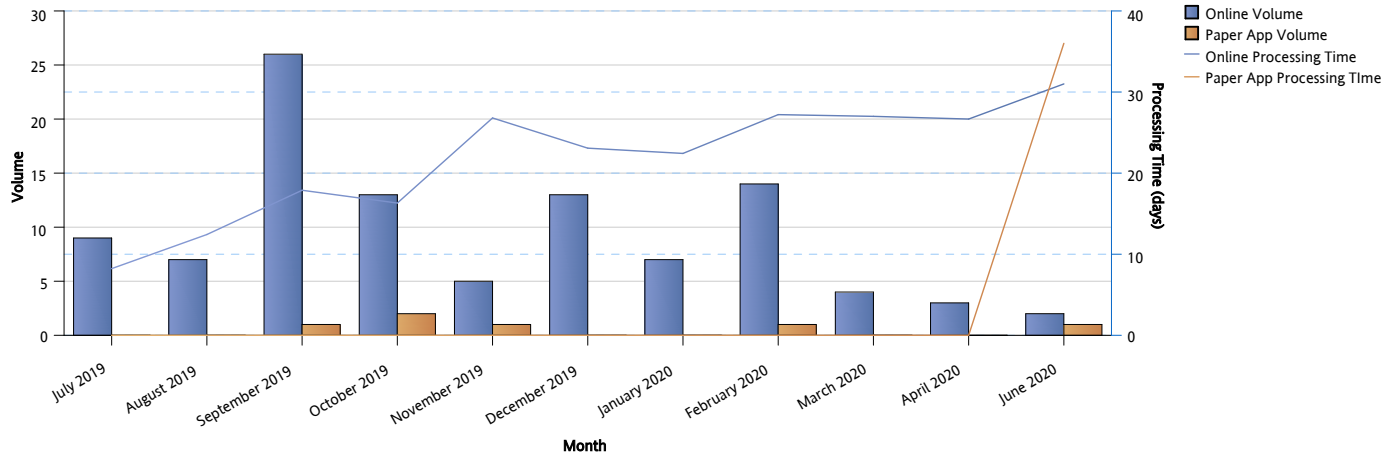
Statement of Licensure - Issue License



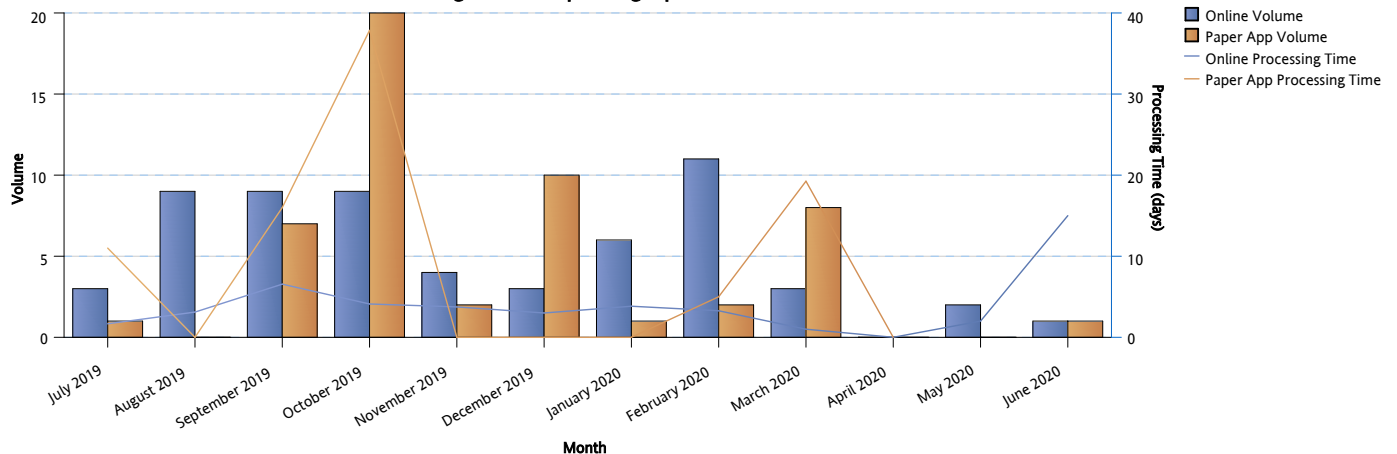
Fictitious Name Permit - Issue License



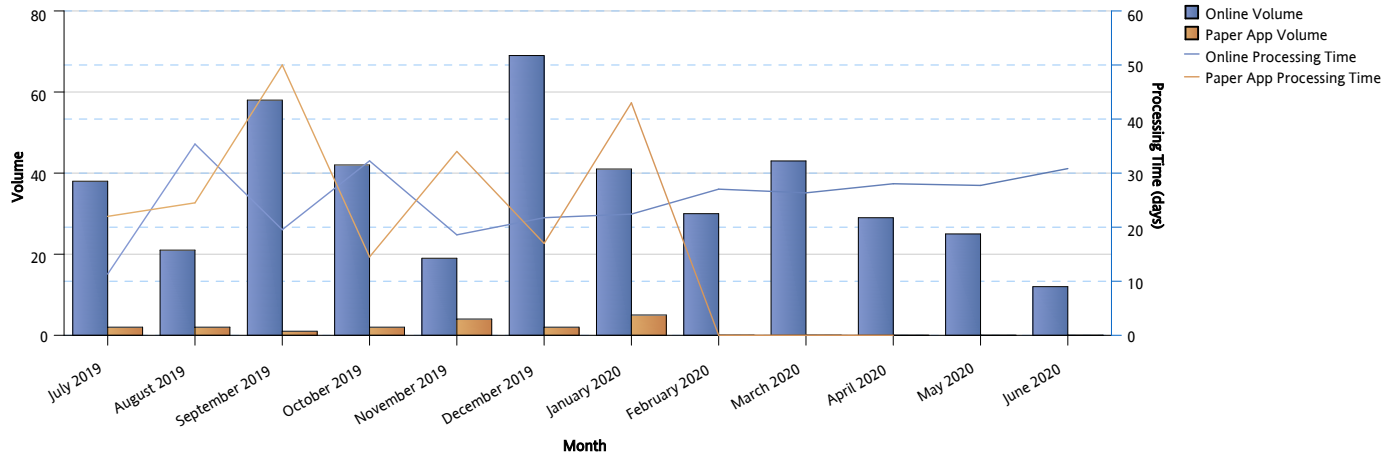
Registered Dispensing Optician - Initial Application



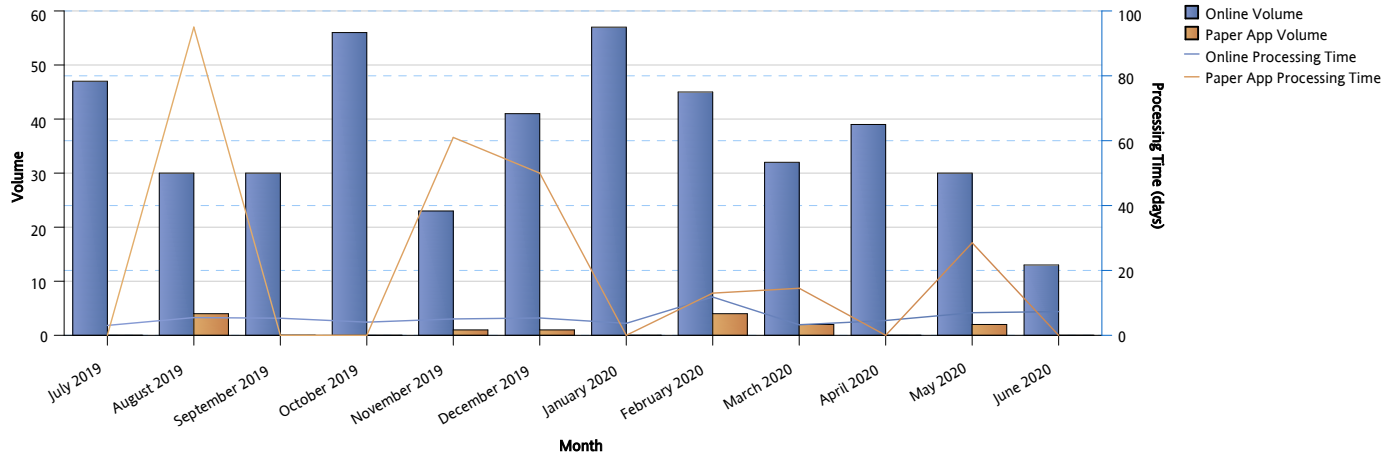
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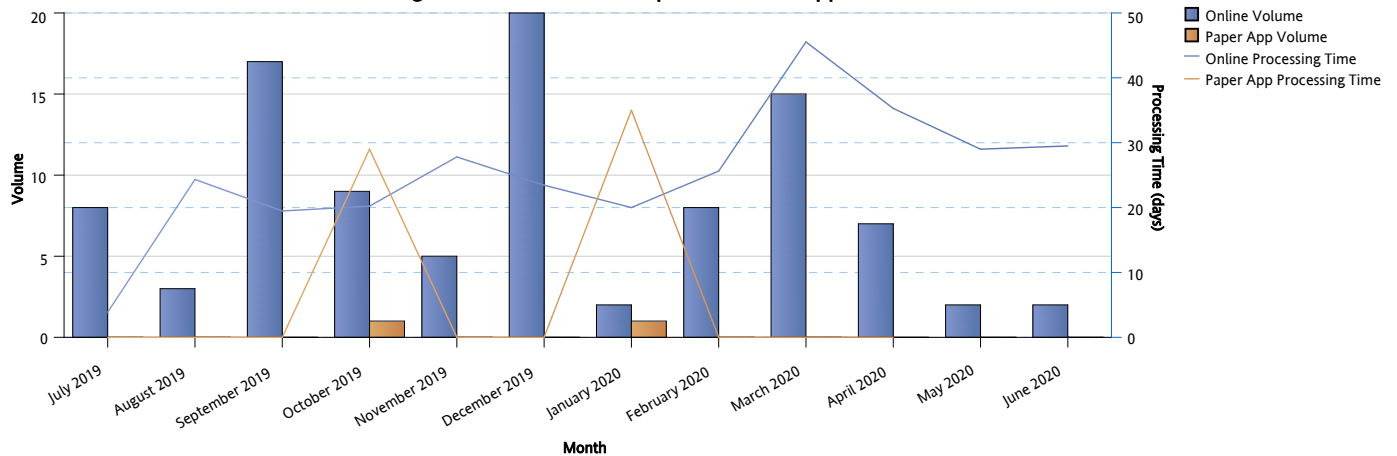
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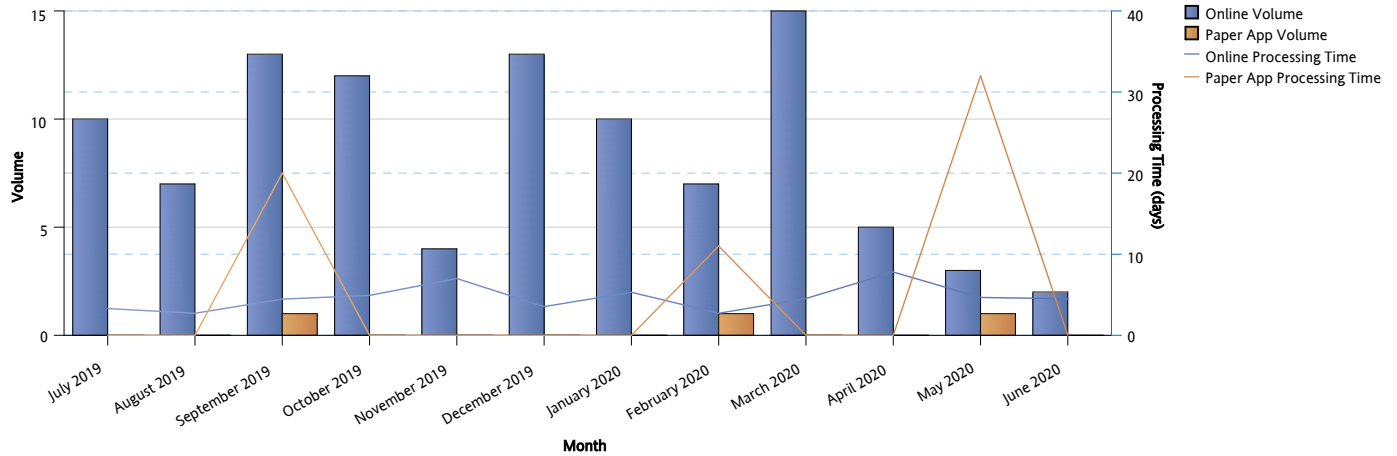
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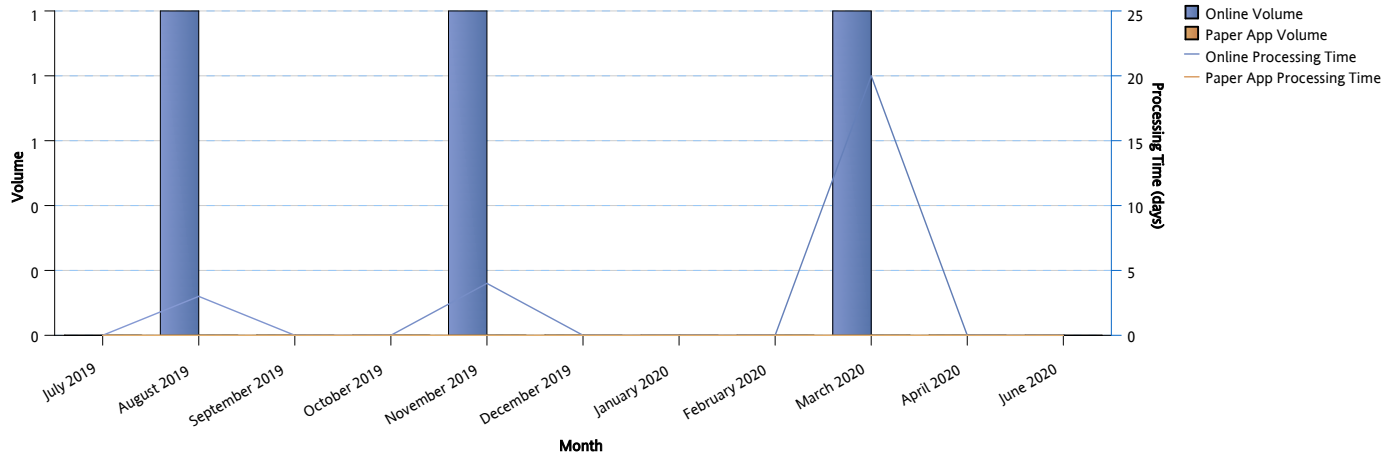
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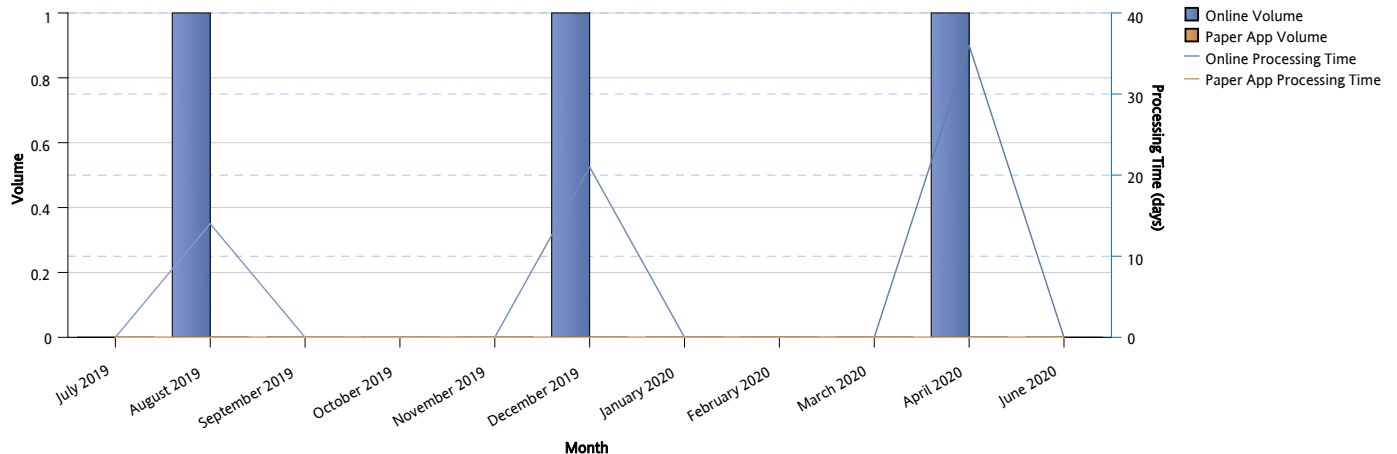
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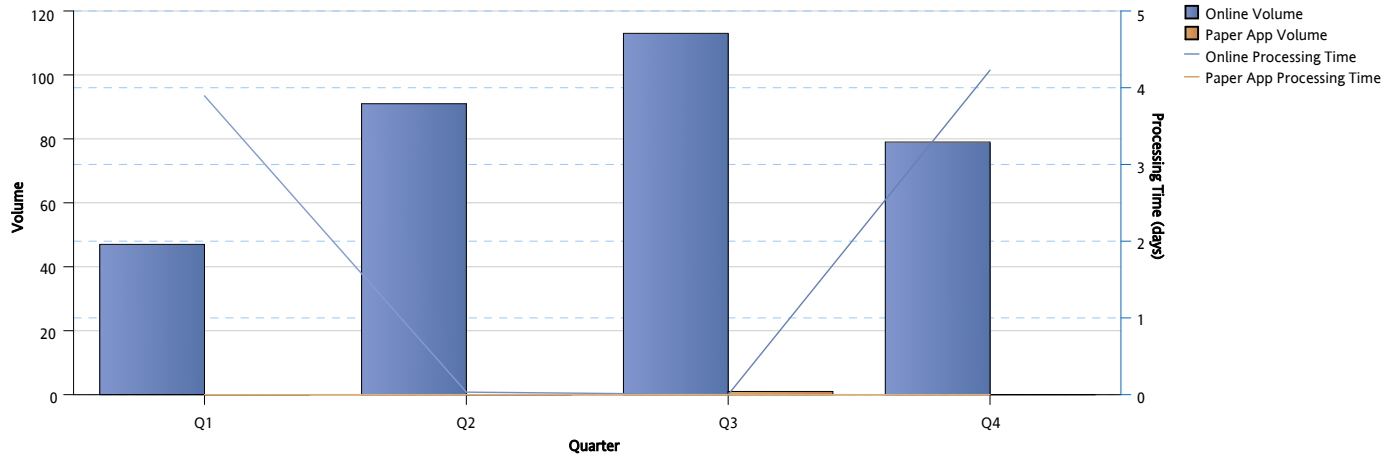
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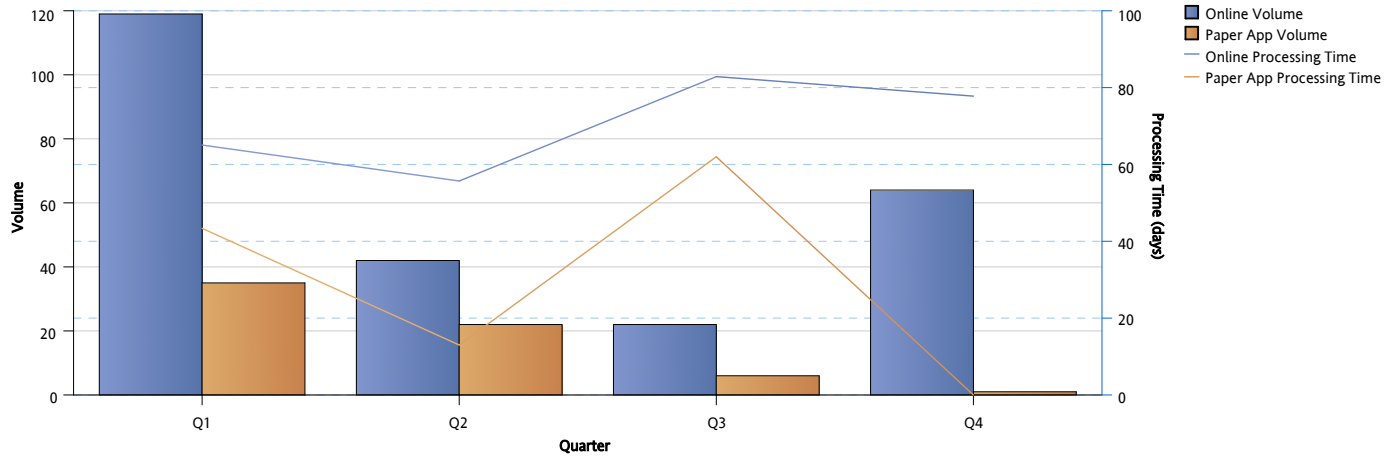
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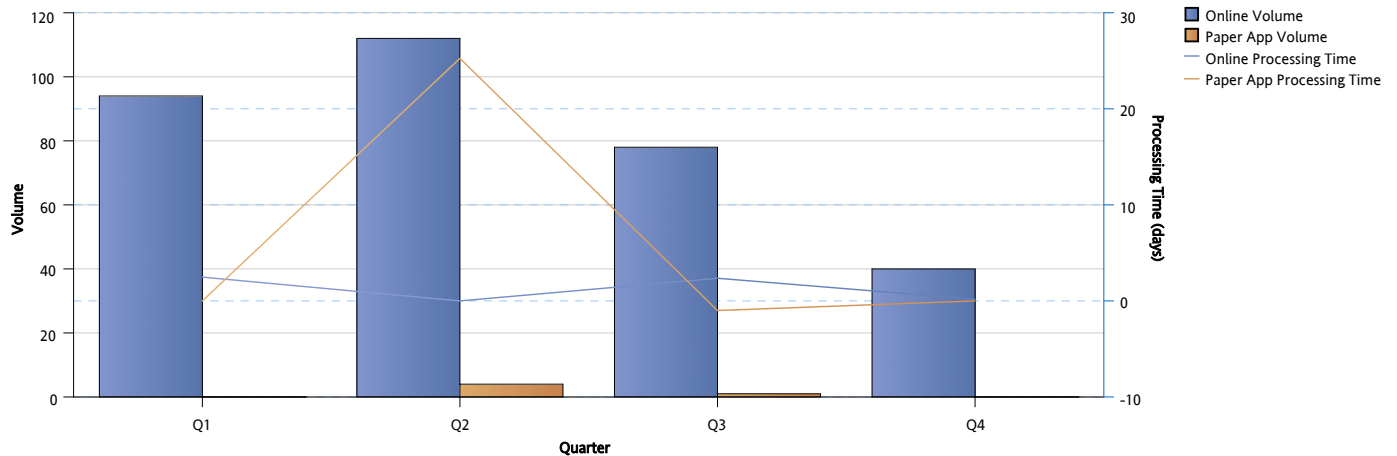
Optometrist - Exam Request



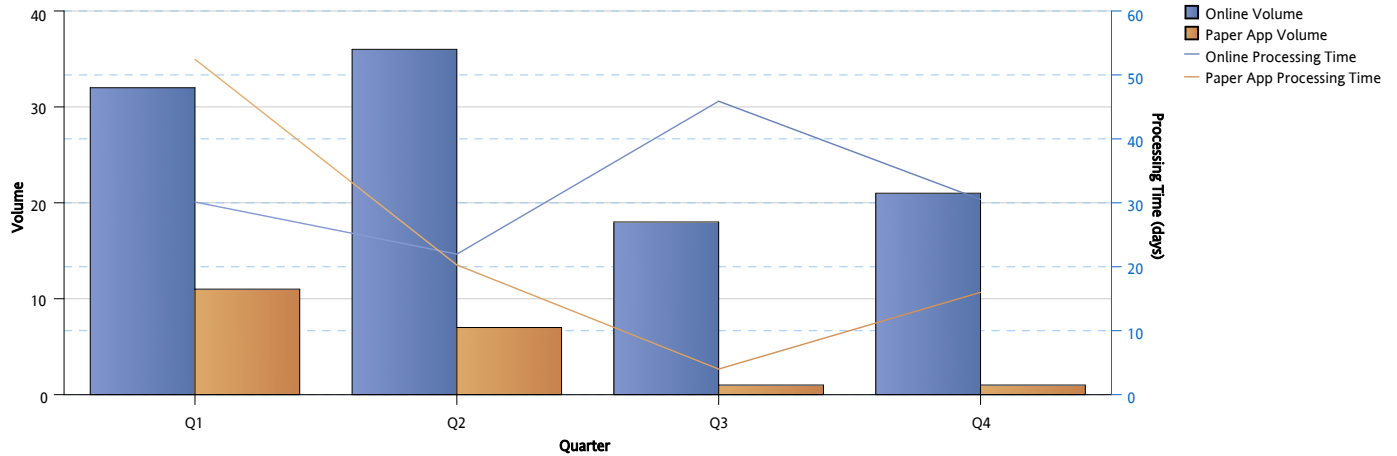
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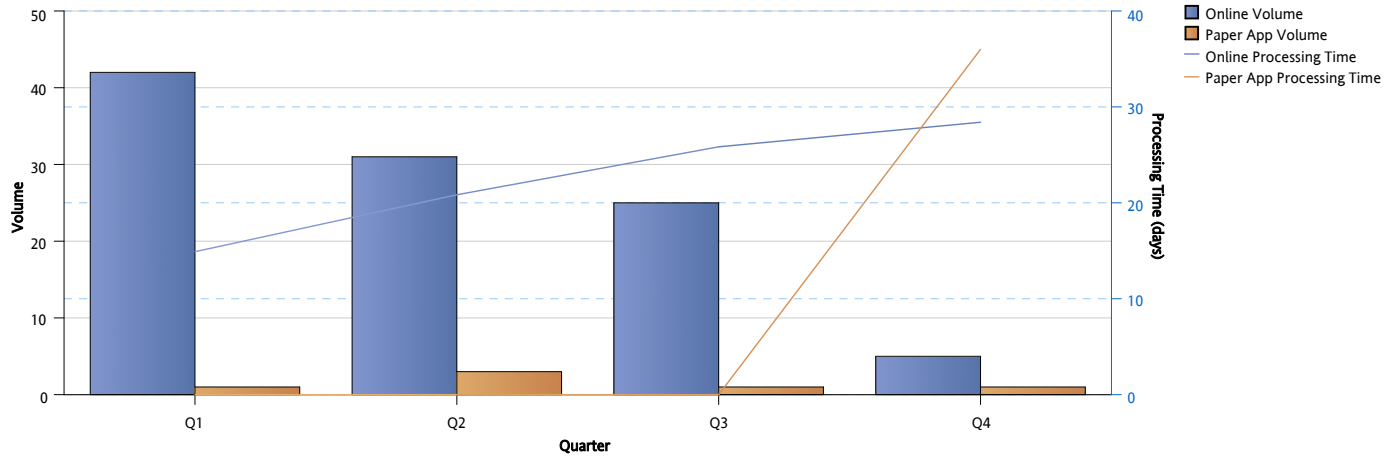
Statement of Licensure - Issue License



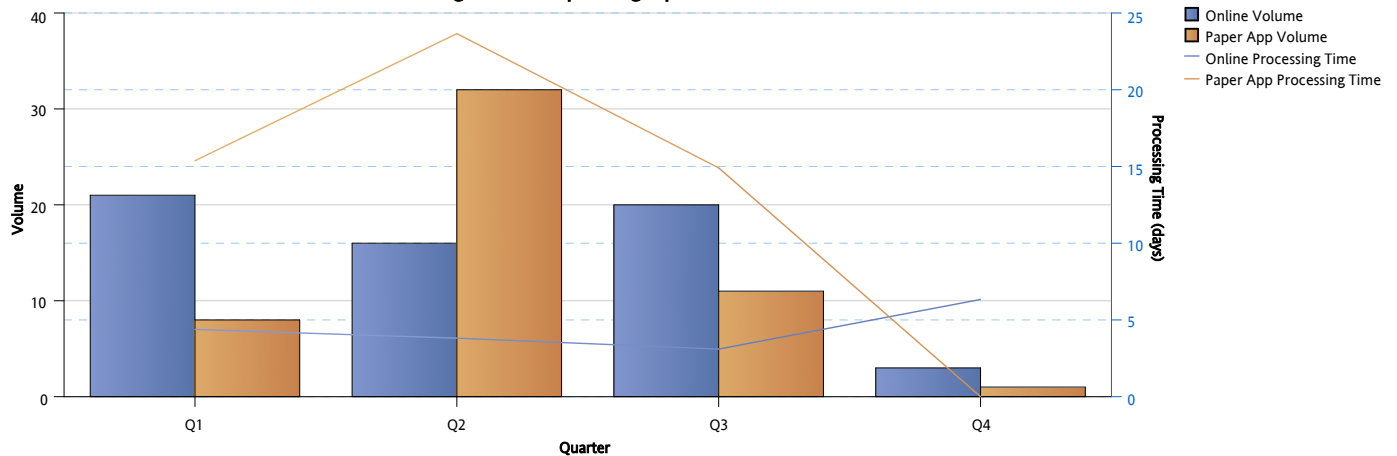
Fictitious Name Permit - Issue License



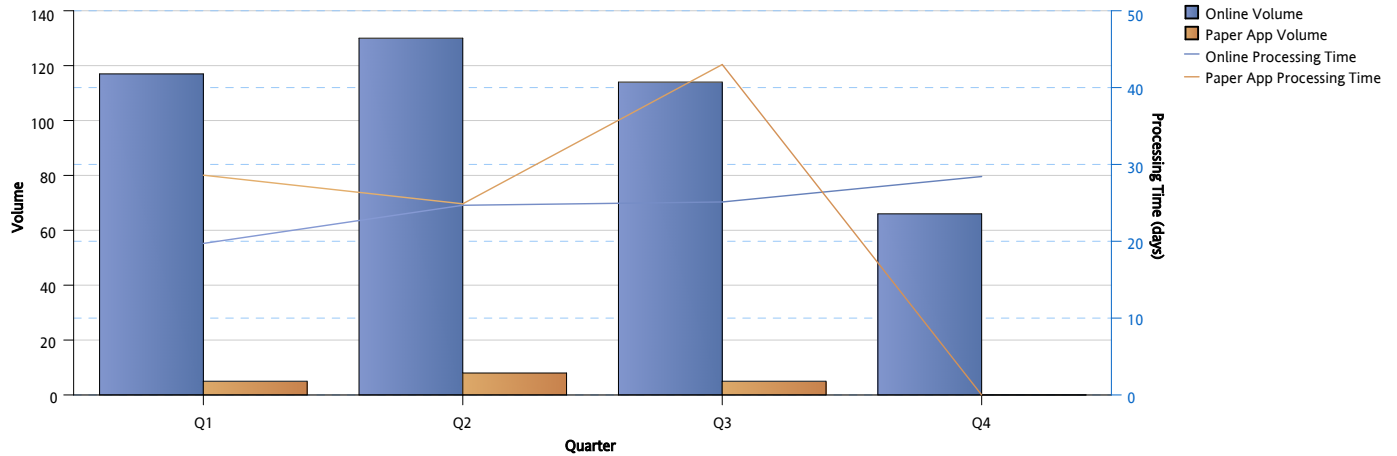
Registered Dispensing Optician - Initial Application



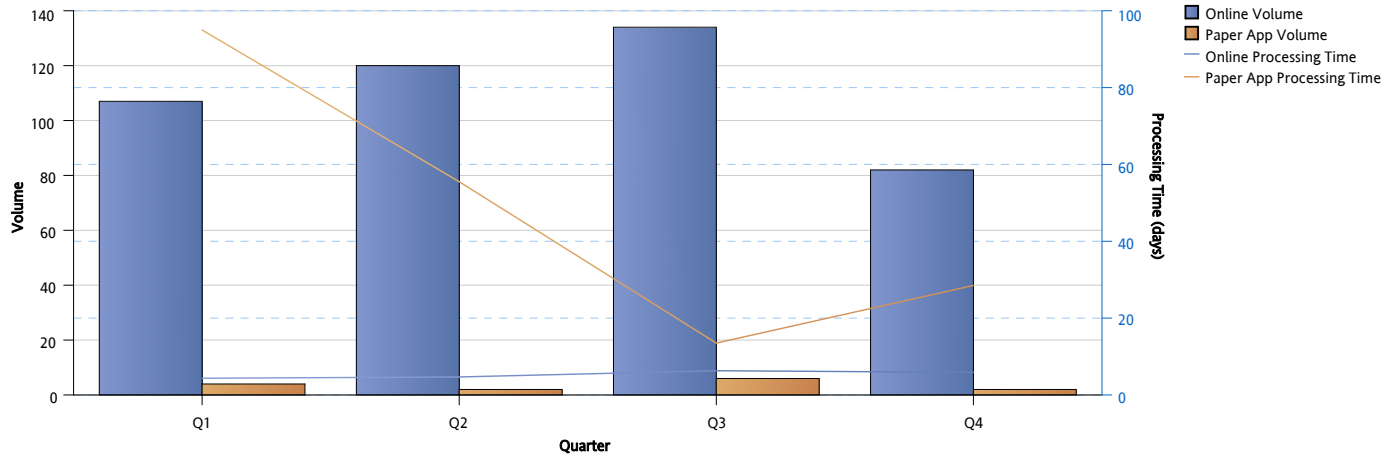
Registered Dispensing Optician - Initial License



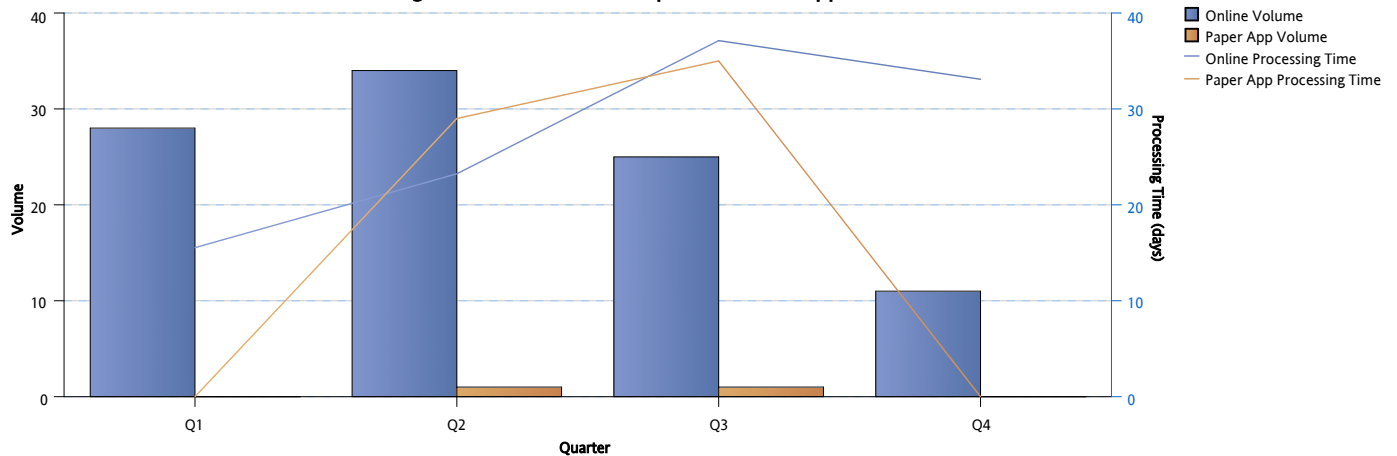
Registered Spectacle Lens Dispenser - Initial Application



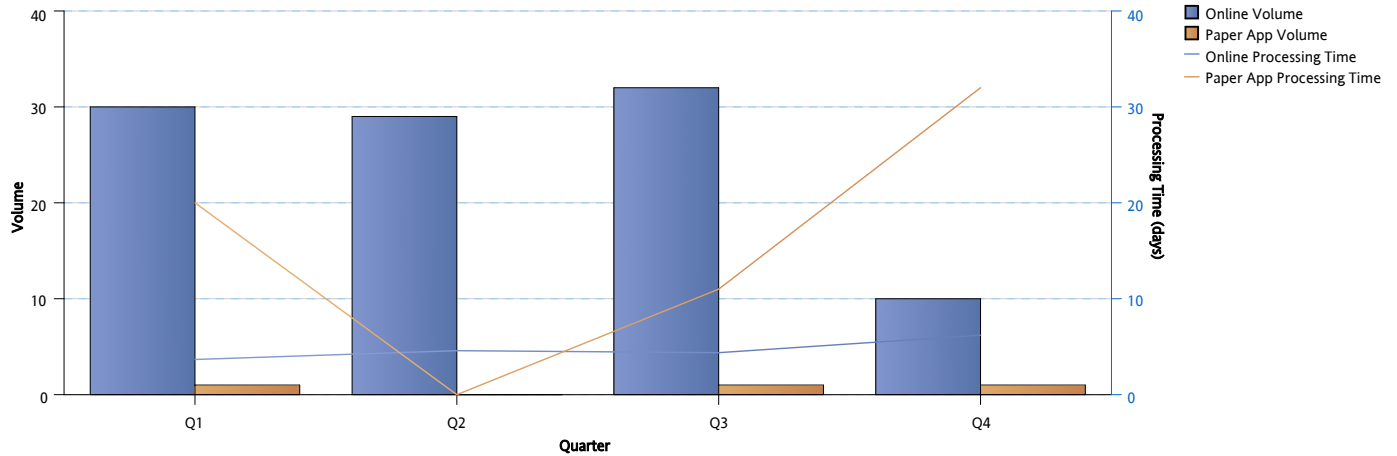
Registered Spectacle Lens Dispenser - Initial License



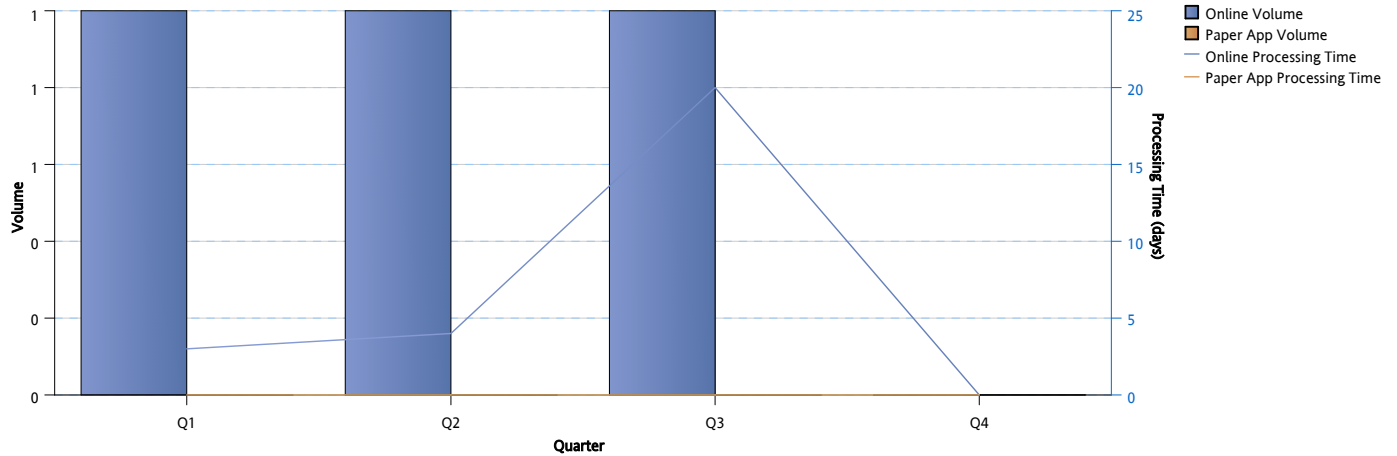
Registered Contact Lens Dispenser - Initial Application



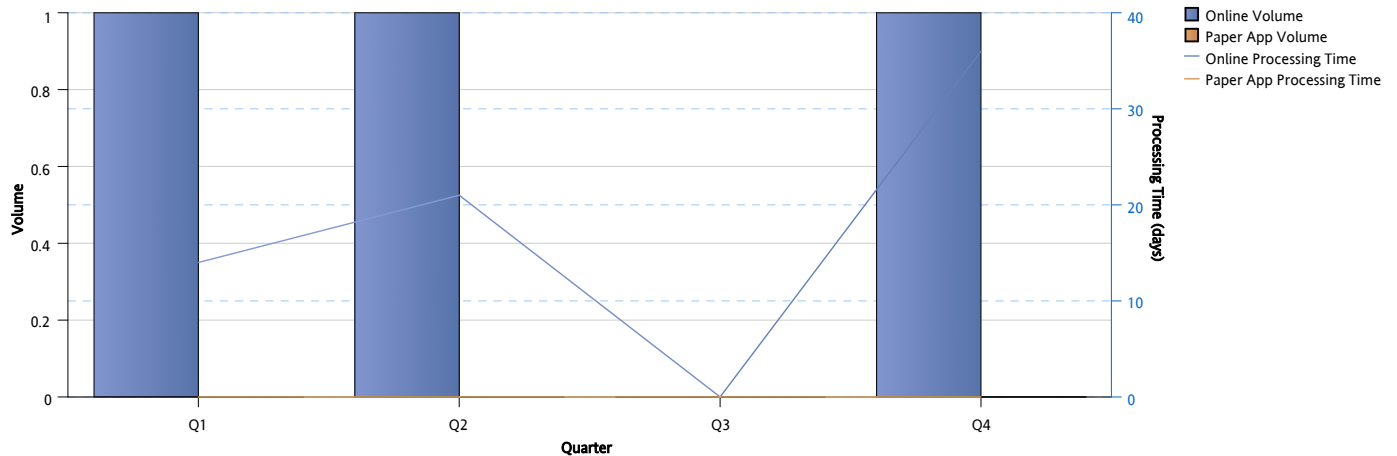
Registered Contact Lens Dispenser - Initial License



Nonresident Contact Lens Seller - Initial Application



Nonresident Contact Lens Seller - Initial License



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #8c: Regulatory Update

Status of Existing Regulatory Packages

Staff is currently working on the following regulatory packages which have been approved by the Board:

Implementation of AB 443 (Amend §1524; Adopt §1527)

Subject: This proposal would implement AB 443, which allows a TPA-licensed optometrist to administer immunizations provided the applicant meets certain conditions and training.

Status: 45-day public notice period concluded on April 13, 2021. Two non-substantive comments were received. Staff is compiling package for final order of adoption and comment responses for approval at a future Board meeting, prior to submission to OAL.

Implementation of AB 2138 (Amend §§1399.270, 1399.271, 1399.272, 1516, 1517)

Subject: This proposal would implement AB 2138, relating to denial of applications, revocation, or suspension of licensure and criminal convictions for optometry and opticianry program applicants.

Status: Approved by the Office of Administrative Law on February 26, 2021. Regulation took effect day of approval and is in law.

Optician Program Omnibus Regulatory Changes (Amend §§ 1399.200 – 1399.285)

Subject: This proposal makes minor changes to the existing optician program regulations, limited to placing current initial registration and renewal forms (used with the BreEZe system), align current fees with the statute and make other non-substantive changes. These changes would not affect any existing operations or modify any current processes.

Status: Approved by the Board at the August 14, 2020, public meeting; rulemaking package undergoing staff preparation for submission to DCA and Agency for pre-file approval with OAL by summer 2021.

Dispensing Optician Disciplinary Guidelines (Amend §1399.273)

Subject: The Optician Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and are modeled after the Optometry Disciplinary Guidelines but are modified to meet the needs of the Optician Program.

Status: Approved by the Board at the August 14, 2020, public meeting; rulemaking package undergoing staff preparation for submission to DCA and Agency for pre-file approval with OAL by fall 2021.

Optometry Continuing Education Regulations (Amend §1536)

Subject: This proposal would make a series of changes to §1536, including allowing all 50 continuing education units to be taken online provided the courses meet certain conditions, an increase in self-study hours to 25, better definition of self-study hours and additional requirements for CE providers. Changes were also made to forms incorporated by reference into the section.

Status: Approved by the Board at the August 14, 2020, public meeting; rulemaking package undergoing staff preparation for submission to DCA and Agency for pre-file approval with OAL by summer 2021.

Optometry Disciplinary Guidelines (Amend §1575)

Subject: 2019 Update of existing Optometry Board Disciplinary Guidelines. The changes include updates to enforcement processes; terminology used, and implementation of changes made by the Substance Abuse Coordination Committee in fall 2019.

Status: The Consumer Protection Committee reviewed the guidelines at the September 13, 2019, public meeting. The full Board approved the regulatory text and Guidelines incorporated by reference at the October 25, 2019, public meeting. This rulemaking package is undergoing staff preparation for submission to DCA and Agency for pre-file approval with OAL by fall 2021.

Requirements for Glaucoma Certification (Amend §1571)

Subject: CCR Section 1571 sets out the requirements for Glaucoma certification. Due to COVID-19, optometry schools have been offering the Grand Rounds certification program, authorized by subsection (B), online as a live course. This proposal would remove the in-person patient evaluation requirement from CCR Section 1571 (B).

Status: Approved by the Board at the February 26, 2021 public meeting. Rulemaking package is undergoing staff preparation for submission to DCA and Agency for pre-file approval with OAL by fall 2021.

Future Regulatory Packages

Implementation of AB 896 (Adopt §§1583 – 1586)

Subject: This proposal will implement AB 896 (Low, Chapter 121, Statutes of 2020), which would allow nonprofit charitable organizations to provide mobile optometry

services to patients and receive reimbursement by Medi-Cal. It requires the Board to develop a registry for mobile optometry offices and a consumer notice to be provided to patients. The bill requires regulations to be implemented by January 1, 2021.

Status: To be reviewed by the Board at this meeting.

Implementation of AB 458 (Adopt §1507.5 and Amend §1524)

Subject: This proposal will implement AB 458 (Nazarian, Chapter 425, Statutes of 2019), which allows an optometrist to engage in the practice of optometry at a home residence, provided they meet specific requirements and submit an application to the Board and pay specified fees. The optometrist would also be required to provide a consumer notice to a patient.

Status: To be reviewed by the Board at this meeting.



Action Plan

May 2021



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Goal 1: Licensing and Registration

The Board provides applicants and licensees a method for obtaining and maintaining licensing and registration, business licenses, and certifications for optometry and opticianry in California.

1.1	Review licensing processes to improve staff efficiency as well as licensee and registration compliance.		
Start Date: Q2 2021		End Date: Q2 2022 - ongoing	
Success Measure:	Identified ways to quantify reduced processing times.		
	Major Tasks	Responsible Party	Completion Date
1.1.1	Make improvements to Breeze to improve efficiency.	(TBD after 1.3), Lead Licensing Analyst	Ongoing
1.1.2	Tracking unusual/outlier applications to better communicate to the board.	All Licensing Staff	Ongoing
1.1.3	Communication audit – Quantify FNP and renewal issues.	Licensing and MST	Q3 2021
1.1.4	Transfer tasks to appropriate job classification.	AEO and Lead Licensing Analyst	Q3 2021
1.1.5	Develop a system to quantify time spent answering calls.	Licensing Office Technician	Q4 2021
1.1.6	Review processes to eliminate redundant requirements.	All Licensing Staff and OIO	Q2 2022

1.2	Explore the possibility of requiring continuing education for both spectacle and contact lens dispenser registrations to protect consumers and high application standards throughout licensure.		
Start Date: Q2 2021		End Date: Q4 2022	
Success Measure:	A recommendation to the DOC and the full board.		
	Major Tasks	Responsible Party	Completion Date
1.2.1	Partnering with the growing education community and get reports to DOC.	OPN Enforcement Analyst	Q2 2021
1.2.2	Review and report out to DOC and full board CE requirements ABO/ NCLE.	Lead Licensing Analyst and OPN Enforcement Analyst	Q2 2022
1.2.3	Outline necessary steps in achieving and maintaining ABO/NCLE.	Lead Licensing Analyst and OPN Enforcement Analyst	Q2 2022
1.2.4	Review and report out to DOC and full board CE requirements in other states.	Policy Analyst	Q3 2022
1.2.5	Research possible conflicts with statutes in regards to renewal times and fees.	Policy Analyst and Lead Licensing Analyst	Q4 2022
1.2.6	Research how changes impacts on individual wages and state economic growth.	OPN Enforcement Analyst	Q4 2022
1.2.7	Quantify and qualify increase of staff work.	Policy Analyst, Lead Analyst, and AEO	Q4 2022
1.2.8	Create a timeline for potential implementation and legislative sessions.	Policy Analyst	Q4 2022

1.3	Continue exploring opportunities to enhance BreEZe utilization to increase staff productivity and promote licensee compliance with continuing education requirements.		
Start Date: Q1 2021		End Date: Q2 2023	
Success Measure:	Implementation of 25% of identified Breeze improvements.		
	Major Tasks	Responsible Party	Completion Date
1.3.1	Participation in Enlightened Licensing Initiative.	Lead Licensing Analyst	Q1 2021 - Ongoing
1.3.2	Research what other boards do to track their CE requirements and conduct audits.	Policy Analyst and Enforcement Lead	Q2 2022
1.3.3	Explore reporting on completed CE courses through Breeze.	Lead Licensing Analyst	Q3 2022
1.3.4	Identify recommendations for Breeze improvements in all areas.	Unit Leads	Q2 2023

1.4	Deliver service excellence that exceeds applicant, licensee, and registrant expectations to improve application turnaround time and safely expedite market entry.		
Start Date: Q2 2021		End Date: Q4 2023	
Success Measure:	Report to Board.		
	Major Tasks	Responsible Party	Completion Date
1.4.1	Utilize videos provided by Breeze.	Licensing Unit and Policy Analyst	Q3 2021
1.4.2	Create additional FAQs, particularly around the more obscure license types, e.g. retired, reinstatement, inactive, retired volunteer, delinquent	Licensing Unit, Policy Analyst, and EO	Q3 2021
1.4.3	Require license verification with each phone call.	Admin Analyst	Q4 2021
1.4.4	Create a communication survey to give statistics to the Board (deploy before and after).	Enforcement Analyst, Policy Analyst, and Admin Analyst	Q1 2022
1.4.5	Pull Breeze contact information and compare to List Serv.	Policy Analyst and AEO	Q2 2022
1.4.6	Incorporate link to FAQ and Breeze tutorial pages on website.	Policy Analyst	Q3 2022
1.4.7	Create webinar or tutorial on “kill” questions.	Licensing Unit, EO, and OPA	Q2 2023
1.4.8	Create Optometry specific video tutorials for website on application process.	Lead Licensing Analyst, EO, and OPA	Q4 2023

1.5	Secure adequate funding to allow for regular occupational analysis and linkage studies of prelicensure examinations to provide a fair and consistent process for applicants and ensure consumers receive the highest quality of care.		
Start Date: Q3 2020		End Date: Q3 2022	
Success Measure:	Passage of budget act.		
	Major Tasks	Responsible Party	Completion Date
1.5.1	Complete BCP.	Policy Analyst, EO, and AEO	Q3 2020
1.5.2	Partner with OPES to develop examination schedule & proposed funding plan.	Policy Analyst and OPES	Q3 2020
1.5.3	Inclusion in the governor’s 2022 budget.	EO	Q1 2021
1.5.4	Participate in budget subcommittee hearings.	EO	Q3 2021
1.5.5	Passage of the budget act.	Legislature	Q3 2022

Goal 2: Examination

The Board works to promote a fair, valid and legally defensible exam process and licensing exam (California Law and Regulation Examination) to ensure that only qualified and competent individuals are licensed or registered to provide optometric or opticianry services in California.

2.1	Consider feasibility of developing a state law exam for opticians to verify their familiarity with California laws.		
Start Date: Q4 2024		End Date: Q3 2025	
Success Measure:	Report to the board.		
	Major Tasks	Responsible Party	Completion Date
2.1.1	Research other states exams with Opticians.	Policy Analyst, Licensing Unit, and Enforcement Unit	Q4 2024
2.1.2	Project possible costs involved with creating exam.	OPES and Policy Analyst	Q1 2025
2.1.3	Project possible timeline for potential implementation and statute.	Policy Analyst	Q2 2025
2.1.4	Examine economic impact/barrier to entry.	Policy Analyst	Q2 2025
2.1.5	Hold stakeholder meeting(s) to gather input.	Policy Analyst and Enforcement Unit	Q3 2025

2.2	Reimagine the examination processes to reflect the state’s high-quality eye care standards and the evolution of test taking at eye care, health, and educational institutions.		
Start Date: Q2 2020		End Date: Q3 2023	
Success Measure:	Report to board.		
	Major Tasks	Responsible Party	Completion Date
2.2.1	Continue to work with NBEO on testing issues.	EO and Policy Analyst	Q2 2020 - Ongoing
2.2.2	Creation of the Examination Risk Task Force report and set timeline for report.	Enforcement Analyst	Q2 2022
2.2.3	Learn NBEO examination process from the student perspective.	Lead Licensing Analyst and EO	Q3 2022
2.2.4	Look into disconnecting the examination from the application process.	OPES, Policy Analyst, and Lead Licensing Analyst	Q1 2023
2.2.5	Determine feasibility of reducing retake time from 6 months to 3 months.	OPES, Budget Office, and Unit Leads	Q3 2023

2.3	Continue evaluating the examinations used in the licensure process to prevent barriers to licensure.		
Start Date: Q3 2021		End Date: Q4 2025	
Success Measure:	Plan implemented to enact tasks.		
	Major Tasks	Responsible Party	Completion Date
2.3.1	Work with OPES to initiate statutory change to separate the laws/regs exam from the application process.	Licensing Lead and Policy Analyst	Q3 2021
2.3.2	Explore possibility of adding to sunset bill.	EO and Policy Analyst	Q3 2021
2.3.3	Continue the discussion with NBEO regarding secondary testing location.	Lead Licensing Analyst, EO, and TBD Committee	Q4 2025

2.4	Research the possibility of alternative competency verification of applicants during states of emergency.		
Start Date: Q3 2021		End Date: Q4 2025	
Success Measure:	Options to present to the board as alternatives for competency.		
	Major Tasks	Responsible Party	Completion Date
2.4.1	Contact ARBO.	EO	Q3 2021
2.4.2	Workplan for twice yearly meetings of taskforce.	Admin Analyst	Q4 2021-Ongoing
2.4.3	Engage colleges and schools.	EO and Admin Analyst	Q4 2022
2.4.4	Explore MOU between the board and NBEO.	EO	Q4 2025

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.		
Start Date: Q1 2020		End Date: Q1 2024 & ongoing	
Success Measure:	Report to the Board.		
	Major Tasks	Responsible Party	Completion Date
3.1.1	Conduct survey and analysis of existing laws and regulation to see if they might be guided by federal law.	Policy Analyst, Legal Counsel, and Enforcement Analyst	Q2 2023
3.1.2	Work with Leg Reg Unit to monitor federal legislation/track federal legislation.	Policy Analyst and EO	Q4 2023
3.1.3	Review existing laws to see if they need to be strengthened or added to.	Policy Analyst, Legal Counsel, and Enforcement Analyst	Q1 2024 and ongoing

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.		
Start Date: Q1 2021		End Date: Q3 2022-Ongoing	
Success Measure:	Successful implementation and administration of the law permits issued.		
	Major Task	Responsible Party	Completion Date
3.2.1	Implement Assembly Bill 896 regulatory package.	Policy Analyst	Q1 2022-Ongoing
3.2.2	Implement Assembly Bill 458 regulatory package.	Policy Analyst	Q3 2022-Ongoing

3.3	Explore current and emerging methods, opportunities, and technology to increase access to care while maintaining a world-class standard of vision care (e.g., scope of practice, delegation of authority, and telemedicine).		
Start Date: Q1 2023		End Date: Q4 2024	
Success Measure:	Current and emerging methods explored.		
	Major Tasks	Responsible Party	Completion Date
3.3.1	Identify telemedicine issues and steps and continue research.	Policy Analyst, Practice and Education Committee, and Enforcement Analyst	Q1 2023
3.3.2	Holding stakeholder forum identifying new trends in optometry and opticianry practice.	Policy Analyst	Q2 2024
3.3.3	Review mobile optometric clinics pursuant to AB 896.	Consumer Protection Committee	Q4 2024

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 a license verification fee to support unfunded staff work.		
Start Date: Q4 2024		End Date: Q4 2025	
Success Measure:	Submission of statutory language in the sunset report at the end of 2025.		
	Major Tasks	Responsible Party	Completion Date
3.4.1	Conduct Optometry statutory review. (Statement of Licensure address, address of record)	Licensing Staff, Policy Analyst, and Lead Enforcement Analyst	Q4 2024
3.4.2	Clarify address of record for practicing outside CA. Re-define statement of licensure.	Licensing Staff	Q1 2025
3.4.3	Separate the laws/regs exam from the application process.	Licensing Lead and Policy Analyst	Q4 2025
3.4.4	Possible expansion of optometrists to be employed by other doctors.	Policy Analyst and EO	Q4 2025
3.4.5	Submit license verification language to sunset committee.	EO	Q4 2025
3.4.6	Submit expiration date synchronization language to sunset committee.	Licensing Staff	Q4 2025

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.		
Start Date: Q4 2021		End Date: Q3 2023	
Success Measure:	Changes in federal laws are monitored and board is aware.		
	Major Tasks	Responsible Party	Completion Date
3.5.1	Work with DCA Leg Reg on how to track federal legislation.	EO and AEO	Q4 2021
3.5.2	Presentations made by state and national stakeholder groups on federal laws and trends.	Board and Dispensing Optician Committee	Q2 2023
3.5.3	Review existing optometry and optician laws to see how they are guided by federal law.	Policy Analyst, Legal Counsel, and Dispensing Optician Committee	Q3 2023

Goal 4: Enforcement

The Board protects the health and safety of consumers of optometric and opticianry services through the active enforcement of laws and regulations governing the safe practice of optometry and opticianry in California.

4.1	Review the communication process and standard practices used in enforcement actions that could result in probation or revocation of a license. Ensure that procedures and processes focus on consumer protection and probationer rehabilitation, not punishment.		
Start Date: Q4 2021		End Date: Q4 2024	
Success Measure:	Decrease in time frame between when incident occurred and when it is reported.		
	Major Task	Responsible Party	Completion Date
4.1.1	Enlarge or figure more prominently the file a complaint button on website.	Policy Analyst and OIS	Q4 2021
4.1.2	Create an additional step from the renewal process.	Breeze Team, Lead Licensing Analyst, and Enforcement Analyst	Q2 2023
4.1.3	Provide method for licensees to notify/report infractions to Enforcement.	Enforcement Analyst	Q2 2023
4.1.4	Decide whether Board wants licensees to report certain items by a stated number of days.	Lead Enforcement Analyst and Policy Analyst	Q4 2023
4.1.5	Work with SOLID to develop board member training on the full enforcement process and stakeholder responsibilities with judication.	Enforcement Unit and SOLID	Q4 2023
4.1.6	Using Board meetings to present training enforcement modules to the Board.	Enforcement Unit, AEO, and EO	Q4 2024

4.2	Develop a member-driven training resource that will enable new Board members to understand the enforcement process and the important role of the Board in determining discipline.		
Start Date: Q2 2022		End Date: Q4 2024	
Success Measure:	Training resource developed.		
4.2.1	Educate the new board members on full enforcement process and stakeholder responsibilities with judication.	Lead Enforcement Analyst	Q2 2022
4.2.2	Work with SOLID to develop new board member training on the full enforcement process and stakeholder responsibilities with judication.	Enforcement Unit and SOLID	Q4 2023
4.2.3	Using Board meetings to present training enforcement modules to the new board members.	Enforcement Unit, AEO, and EO	Q4 2024
4.2.4	Consumer Protection, Public Relations, and Outreach Committee Committees to develop training courses.	Committee	Q4 2024

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	Evaluate outside resources available to expand outreach.		
Start Date: Q4 2021		End Date: Q1 2023	
Success Measure:	Outside resources for expanding outreach have been evaluated.		
	Major Tasks	Responsible Party	Completion Date
5.1.1	Quarterly reports on social media posts and trends.	Policy Analyst and Office Technician	Q4 2021
5.1.2	Check with the professional associations to see if CSBO can publish articles in their magazines or newsletters, and blog posts.	Policy Analyst	Q1 2023
5.1.3	Collaborate with stakeholders to determine ideal communication methods.	Policy Analyst	Q1 2023

5.2	Improve the utilization and measurement of social media and the Board website to communicate to consumers, licensees, and registrants; provide accurate information on key initiatives (e.g., children’s vision, supervision authority, options for delivery of care, and delegation of duties).		
Start Date: Q2 2022		End Date: Q4 2023	
Success Measure:	Updated website and accurate social media numbers.		
	Major Tasks	Responsible Party	Completion Date
5.2.1	Establish way to track engagement on social media and website.	OT and Policy Analyst	Q2 2022
5.2.2	Update website to streamline and make more user friendly.	EO and OIS	Q4 2023

5.3	Collaborate with continuing education providers and associations to disseminate updates to legislation and regulations regarding the current state of practice (i.e., training modules specific to Law/Regs, Board quarterly updates to precede trainings).		
Start Date: Q2 2023		End Date: Q4 2023	
Success Measure:	List Serv email is sent out.		
	Major Tasks	Responsible Party	Completion Date
5.3.1	Reach out to entities to see what information they would like provided regarding legislation updates and how often they would like this information. Make it regular practice to provide this information.	Lead Licensing Analyst, Practice, and Education Committee	Q2 2023
5.3.2	Develop yearly review of statutory and regulatory changes and provide to CEs Providers and stakeholders.	Policy Analyst and EO	Q4 2023

5.4	Create and enact an outreach plan with opticianry programs regarding California registration requirements for the use of the title “optician” to enhance compliance with California law and encourage registration.		
Start Date: Q1 2023		End Date: Q4 2024	
Success Measure:	Created and enacted outreach plan.		
	Major Tasks	Responsible Party	Completion Date
5.4.1	Determine what type of ListServ associations have and see if possible to use ListServ to disseminate registration requirements for opticians.	Policy Analyst	Q1 2023
5.4.2	Create formalized plan to visit schools and conduct live presentations.	Licensing Staff	Q2 2023
5.4.3	Work with DOC to make registration requirements part of the curriculum being offered to optician students.	EO, AEO, Policy Analyst, and Admin Analyst	Q4 2024

5.5	Publish and disseminate enforcement actions to illustrate the consequences of infractions (DUI, malpractice, and unlicensed activity).		
Start Date: Q1 2022		End Date: Q1 2022-Ongoing	
Success Measure:	Enforcement actions published and disseminated.		
	Major Tasks	Responsible Party	Target Completion Date
5.5.1	Send out quarterly emails that illustrate the consequence of infractions and post on social media.	Enforcement Unit	Q1 2022-ongoing

5.6	Develop the communication plan regarding the importance of children’s vision health and wellness.		
Start Date: Q4 2024		End Date: Q4 2024	
Success Measure:	Communication plan developed.		
	Major Tasks	Responsible Party	Target Completion Date
5.6.1	Work with DCA Communications staff to create a communication plan.	Admin Analyst	Q4 2024

5.7	Evaluate and create better consumer outcomes such as access to care and addressing patient needs for marginalized populations by implementation of a multi-step action plan educating licensees about concepts of diversity, equity, and inclusion.		
Start Date: Q1 2023		End Date: Q2 2024	
Success Measure:	Resend original survey and achieve better results.		
	Major Tasks	Responsible Party	Target Completion Date
5.7.1	Collaborate with OPES to send out surveys to consumers regarding their experiences with eye care.	Admin Analyst	Q1 2023
5.7.2	Evaluate database of licensees to identify any gaps in care.	Licensing Analyst and OIS	Q3 2023
5.7.3	Collaborate with Optometry charity care providers to identify areas needing service.	Admin Analyst	Q2 2024
5.7.4	Collaborating with associations to identify areas needing service.	Admin Analyst	Q2 2024

Goal 6: Organizational Effectiveness

The Board works to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.

6.1	Restructure the licensing unit to increase cross-training and minimize disruptions in service and processing.		
Start Date: Q3 2021		End Date: Q3 2023	
Success Measure:	Efficient and knowledgeable Licensing Unit Staff.		
	Major Tasks	Responsible Party	Target Completion Date
6.1.1	Train Lead Licensing Analyst to understand all parts of the program.	All licensing staff	Q3 2021
6.1.2	Training of new OT in both programs (Optometry & Opticianry).	Licensing Staff and Receptionist OT	Q4 2021
6.1.3	Completion of probation for opticianry MST.	Lead Licensing Analyst and AEO	Q3 2022
6.1.4	Successful submission of BCP for Optometry/Opticianry Licensing Coordinator (at SSA classification).	EO and AEO	Q3 2022
6.1.5	Successful submission of BCP for permanent OT.	EO and AEO	Q3 2023

6.2	Work with DCA Organizational Improvement Office to quantify the Board’s staffing shortfall and request spending authority to ensure sufficient personnel resources for the Board to meet its goals and objectives.		
Start Date: Q2 2022		End Date: Q4 2022	
Success Measure:	Submission of BCP for new staff.		
	Major Tasks	Responsible Party	Target Completion Date
6.2.1	Complete process mapping.	All staff with OIO	Q2 2022
6.2.2	Perform desk audits.	OIO	Q3 2022
6.2.3	Develop widget count for each unit.	OIO, EO, and AEO	Q3 2022
6.2.4	Develop BCP to increase staff to cover widget count.	EO and AEO	Q4 2022

6.3	Provide resources and training for staff development to support the growth and retention of staff.		
Start Date: Q3 2022		End Date: Q1 2024	
Success Measure:	Decrease in staff turnover and increase in general staff satisfaction.		
	Major Tasks	Responsible Party	Target Completion Date
6.3.1	Complete optometry staff administrative manual.	AEO and staff	Q3 2022
6.3.2	Create training schedule for all staff for onboarding training and regular update trainings.	AEO and Admin Analyst	Q3 2022
6.3.3	Create IDPs with staff to help them reach their goals.	EO, AEO, and Admin Analyst	Q3 2022
6.3.4	Change limited term positions to permanent positions.	EO and AEO	Q3 2023
6.3.5	Improve employee engagement.	EO and AEO	Q1 2024

6.4	Arrange regular, ongoing in-service training by optometrists and opticians on eye conditions, state of practice, education, etc. to increase staff understanding of optometry and opticianry.		
Start Date: Q1 2022		End Date: Q4 2022	
Success Measure:	Trainings are happening on a regular basis.		
	Major Tasks	Responsible Party	Target Completion Date
6.4.1	Reach out to SMEs to see if they are willing to conduct video trainings for the staff.	Admin Analyst and Lead Enforcement Analyst	Q1 2022
6.4.2	Work with SMEs, board staff, and budget to determine a schedule for classes.	Admin Analyst and Lead Enforcement Analyst	Q4 2022

6.5	Arrange visits to various optometric and optical professionals to increase staff understanding of practice and applications of law.		
Start Date: Q3 2022		End Date: Q3 2023	
Success Measure:	Staff conducts visits.		
	Major Tasks	Responsible Party	Target Completion Date
6.5.1	Brainstorm where to visit.	All Staff	Q3 2022
6.5.2	Work on contacting those places.	Admin Analyst	Q3 2023
6.5.3	Schedule and conduct visits.	Admin Analyst	Q3 2023



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ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #9 – Future Agenda Items

The Board may wish to discuss items to be placed on a future agenda. As the board has already received comments regarding items not on the agenda, Agenda Item #9 does not require public comment.



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Terri Villareal, Lead Enforcement Analyst
SUBJECT	Agenda Item #10 – Petitions for Early Termination of Probation

Time certain start of 2:00 pm.

The Board will hear two petitions for early termination of probation.

- Sarah Lynn Lampers, SLD 40145, CLD 8011
- John S. Son, OPT 11215



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Terri Villareal, Lead Enforcement Analyst
SUBJECT	Agenda Item #11 – Closed Session

A. The Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters, Pursuant to Government Code Section 11126(c)(3)

B. Upon Conclusion of Closed Session, the Board Will Adjourn the Meeting