

# California State Board of Optometry

## BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM As of [10/11/2024]

### Section 1 –

#### Background and Description of the Board and Regulated Profession

Provide a short explanation of the history and function of the board.<sup>1</sup> Describe the occupations/professions that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

##### History and Function of the Board

In 1903, California became the third state to recognize the profession of optometry and regulate its practice. The California State Board of Optometry was created a decade later, in 1913, and a decade after that, in 1923, applicants for licensure were required to meet minimum educational requirements. In 2016, the Dispensing Optician Program was moved from the Medical Board of California, and the Board began regulating the practice of opticianry and optometry.

Today the Board protects consumers of optometric and optical services by licensing and regulating approximately 8,000 optometrists, 3,300 spectacle lens dispensers, 1,400 contact lens dispensers, and 1,200 registered dispensing ophthalmic businesses. In addition, the Board has regulatory authority over mobile optometric offices, the practice of optometry in home residences, the shipping, mailing, furnishing, or delivering of prescription ophthalmic lens to patients in California by out-of-state and online retailers, and the practice of unlicensed optometric assistants.

Pursuant to Business and Professions Code (BPC) section 3010.1, the Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions.

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

**Our Vision:** The highest quality optometric and optical care for the people of California.

**Our Values:** Consumer Protection; Integrity; Transparency; Professionalism; Excellence; Diversity, Equity, Inclusion, and Belonging.

##### California State Board of Optometry Composition

Pursuant to BPC 3010.5 and 3011, the Board is comprised of 11 members. Five members are licensed optometrists (including up to two faculty members of an optometric school), one member is a registered optician, and five are public members. Six members of the Board constitute a quorum.

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<sup>1</sup> The term "board" in this document refers to a board, bureau, commission, committee, council, department, division, program, or agency, as applicable. Please change the term "board" throughout this document to appropriately refer to the entity being reviewed.

Pursuant to BPC 3013, the Governor appoints three public members, five licensed optometrist members, and the registered optician member. The Senate Committee on Rules and the Speaker of the Assembly each appoint one public member. The law provides for appointment staggering as follows:

- Initial appointments for one of the public members and two of the professional members made by the Governor are for terms of one year.
- One of the public members and two of the professional members appointed by the Governor are for terms of three years.
- The remaining public member appointed by the Governor and remaining two professional members are appointed for terms of four years.
- The public members appointed by the Legislature each serve a term of four years.

The Board is required, by BPC 3014, to elect a president, vice president, and a secretary who shall hold office for one year or until a successor is elected.

BPC 3017 requires the Board to hold regular meetings every calendar quarter.

BPC 3020 establishes under the Board a Dispensing Optician Committee for the purpose of advising the Board regarding the regulation of opticianry. This committee is comprised of five members, appointed as follows:

- One registered dispensing optician, appointed by the Governor.
- One registered spectacle lens dispenser or contact lens dispenser, appointed by the Governor.
- Two public members, appointed by the Governor.
- One Board member.

The Committee is required to meet at least twice a year.

1. Describe the make-up and functions of each of the board's committees (cf., Section 12, Attachment B).

The Board has one committee created by statute, the Dispensing Optician Committee, and three Board-created committees: Consumer Protection, Public Relations, and Outreach Committee; Legislation and Regulation Committee; and Practice and Education Committee.

*The Dispensing Optician Committee:*

Mandated by statute (see BPC 3020) to recommend registration standards and criteria for the registration of opticians.

*Legislation and Regulation Committee:*

Responsible for recommending legislative and regulatory priorities to the Board, assisting staff with drafting language for Board-sponsored legislation, and recommending official positions on current legislation. The committee also recommends changes and additions to the Board's regulations.

*Practice and Education Committee:*

Advises Board staff on matters relating to optometric practice, including standards of practice and scope of practice issues. Reviews staff responses to proposed regulatory changes that may

affect optometric practice. Also approves continuing education courses and offers guidance to Board staff regarding continuing education issues.

*Consumer Protection, Public Relations, and Outreach Committee:*

Oversees the development and administration of legally defensible licensing examinations. Consults on improvements/enhancements to licensing and enforcement policies and procedures. Assists with the development of outreach and educational materials for the Board's stakeholders.

*Children's Vision Workgroup:*

The workgroup was originally created in 2015 to work with stakeholders on the issue of pupil health and vision examinations.

*National Board of Examiners of Optometry/Association of Regulatory Boards of Optometry Workgroup:*

The workgroup was established to improve communications between NBEO/ARBO and the state board. The workgroup has explored with NBEO and ARBO alternative ways to administer national exams.

*Optometry/Opticianry Workgroup:*

The workgroup was established to harmonize the Optometry and Opticianry Practice Acts and discuss emerging issues.

*Telehealth and Emerging Technologies Workgroup:*

To meet the emerging trends of telehealth within the practice of optometry, the Board created a telehealth workgroup that began work in 2019. The Board enjoyed several presentations from experts on telehealth in the fall of 2019, and the staff completed thorough research on the topic. In the summer of 2024, the name of the workgroup was updated to reflect emerging technologies.

*Sunset Review Workgroup:*

The sunset review workgroup is periodically established for purposes of assisting the Board prepare its Sunset Review Report for the Legislature.

<b>Table 1a. Attendance</b>			
Stacy Bragg, O.D.			
Date Appointed: May 22, 2023			
Date Reappointed:			
Date Separated:			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	August 25, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	October 18, 2023	Web Ex	Yes
Board Meeting	December 9, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	February 12, 2024	Web Ex and Sacramento	Yes
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Stacy Bragg, O.D.			
Practice and Education Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	June 14, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Cyd Brandvein*			
Date Appointed: October 25, 2013			
Date Reappointed: September 14, 2017			
Date Separated: 06/01/2022			
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	October 23, 2020	Web Ex	Yes
Board Meeting	November 20, 2020	Web Ex	Yes
Board Meeting	December 11, 2020	Web Ex	No
Consumer Protection & Public Relations and Outreach Committee	February 25, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Consumer Protection & Public Relations and Outreach Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	No
Consumer Protection & Public Relations and Outreach Committee	February 18, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	No
Board Meeting	May 20, 2022	Web Ex	Yes

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Madhu Chawla, O.D.*			
Date Appointed: June 15, 2012			
Date Reappointed: June 05, 2015			
Date Separated: June 1, 2020			
Meeting Type	Meeting Date	Meeting Location	Attended?
Practice and Education Committee	February 26, 2021	Web Ex	Yes
Practice and Education Committee	March 26, 2021	Web Ex	Yes

<b>Table 1a. Attendance</b>			
Madhu Chawla, O.D.*			
Practice and Education Committee	July 23, 2021	Web Ex	Yes
Practice and Education Committee	September 24, 2021	Web Ex	Yes
Practice and Education Committee	January 28, 2022	Web Ex	No
Practice and Education Committee	March 4, 2022	Web Ex	Yes
Practice and Education Committee	September 23, 2022	Web Ex	No
Practice and Education Committee	November 18, 2022	Web Ex	No
Practice and Education Committee	January 27, 2023	Web Ex	No
Practice and Education Committee	March 24, 2023	Web Ex	No

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Jeffrey Garcia, O.D.*			
Date Appointed: 08/10/2020			
Date Reappointed: 05/22/2023			
Date Separated: Current Member			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	October 23, 2020	Web Ex	Yes
Board Meeting	November 20, 2020	Web Ex	Yes
Board Meeting	December 11, 2020	Web Ex	Yes
Consumer Protection & Public Relations and Outreach Committee	February 25, 2021	Web Ex	Yes
Practice and Education Committee	February 26, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Practice and Education Committee	March 26, 2021	Web Ex	Yes
Practice and Education Committee	April 16, 2021	Web Ex	Yes
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Practice and Education Committee	July 23, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Practice and Education Committee	September 24, 2021	Web Ex	Yes
Consumer Protection & Public Relations and Outreach Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	No
Board Meeting	January 21, 2022	Web Ex	Yes
Practice and Education Committee	January 28, 2022	Web Ex	Yes
Practice and Education Committee	March 4, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex, Sacramento, and Beverly Hills	Yes

<b>Table 1a. Attendance</b>			
Jeffrey Garcia, O.D.*			
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Practice and Education Committee	September 23, 2022	Web Ex	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Practice and Education Committee	November 18, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	
Board Meeting	January 27, 2023	Web Ex	Yes
Practice and Education Committee	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	March 24, 2023	Web Ex	Yes
Legislation and Regulation Committee	April 21, 2023	Web Ex	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	June 23, 2023	Web Ex	Yes
Board Meeting	August 25, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	October 18, 2023	Web Ex	Yes
Board Meeting	December 8, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	February 12, 2024	Web Ex	No
Board Meeting	February 16, 2024	Web Ex and Sacramento	No
Consumer Protection, Public Relations, and Outreach Committee	April 5, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	April 5, 2024	Web Ex and Sacramento	Yes
Legislation and Regulation Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	June 14, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	October 11, 2024	Web Ex and Sacramento	
Board Meeting	October 11, 2024	Web Ex and Sacramento	

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Stacy Hancock, CLD/SLD			
Date Appointed: June 8, 2022			
Date Reappointed: N/A			
Date Separated: 06/01/2023			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	August 26, 2022	Web Ex	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	No

<b>Table 1a. Attendance</b>			
Stacy Hancock, CLD/SLD			
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Glenn Kawaguchi, O.D.*			
Date Appointed: August 10, 2012			
Date Reappointed: May 5, 2015			
Date Separated: June 1, 2023			
Meeting Type	Meeting Date	Meeting Location	Attended?
Legislation and Regulation Committee	February 26, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Dispensing Optician Committee	April 23, 2021	Web Ex	Yes
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Legislation and Regulation Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	No
Board Meeting	January 21, 2022	Web Ex	No
Legislation and Regulation Committee	February 18, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex and Sacramento	No
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Robert Klepa, J.D.			
Date Appointed: May 23, 2023			
Date Reappointed: N/A			

<b>Table 1a. Attendance</b>			
Robert Klepa, J.D.			
Date Separated:			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	August 25, 2023	Web Ex and Sacramento	Yes
Board Meeting	December 8, 2023	Web Ex and Sacramento	Yes
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes
Consumer Protection, Public Relations, and Outreach Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	April 5, 2024	Web Ex and Sacramento	No
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes
Board Meeting	October 11, 2024	Web Ex and Sacramento	

<b>Table 1a. Attendance</b>			
Eunie Linden, J.D.			
Date Appointed: March 19, 2021			
Date Reappointed: June 21, 2023			
Date Separated:			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Legislation and Regulation Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Sacramento
Board Meeting	January 21, 2022	Web Ex	Yes
Legislation and Regulation Committee	February 18, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Legislation and Regulation Committee	April 21, 2023	Web Ex	No
Board Meeting	May 12, 2023	Web Ex and Sacramento	No
Board Meeting	August 25, 2023	Web Ex and Sacramento	Yes
Board Meeting	December 8, 2023	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Eunie Linden, J.D.			
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes
Consumer Protection, Public Relations, and Outreach Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	April 5, 2024	Web Ex and Sacramento	No
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes
Board Meeting	October 11, 2024	Web Ex and Sacramento	

<b>Table 1a. Attendance</b>			
Debra McIntyre, O.D.*			
Date Appointed: March 15, 2016			
Date Reappointed: September 14, 2017			
Date Separated: June 1, 2021			
Meeting Type	Meeting Date	Meeting Location	Attended?
Practice and Education Committee	February 26, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Practice and Education Committee	March 26, 2021	Web Ex	Yes
Practice and Education Committee	April 16, 2021	Web Ex	No
Board Meeting	May 21, 2021	Web Ex	Yes

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Mark Morodomi, J.D.*			
Date Appointed: April 7, 2015			
Date Reappointed: August 2, 2018			
Date Separated: June 1, 2023			
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	February 26, 2021	Web Ex	Yes
Legislation and Regulation Committee	April 23, 2021	Web Ex	No
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Legislation and Regulation Committee	October 22, 2021	Web Ex	No
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	Yes

<b>Table 1a. Attendance</b>			
Mark Morodomi, J.D.*			
Legislation and Regulation Committee	February 18, 2022	Web Ex	No
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	No
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Legislation and Regulation Committee	April 21, 2023	Web Ex	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Joseph Pruitt, O.D.			
Date Appointed: June 10, 2021			
Date Reappointed:			
Date Separated:			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	July 9, 2021	Web Ex	Yes
Practice and Education Committee	July 23, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Practice and Education Committee	September 24, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	Yes
Practice and Education Committee	January 28, 2022	Web Ex	Yes
Practice and Education Committee	March 4, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	No
Board Meeting	August 26, 2022	Web Ex and Sacramento	No
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	No
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes
Board Meeting	August 25, 2023	Web Ex and Sacramento	No
Board Meeting	December 8, 2023	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Joseph Pruitt, O.D.			
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes
Board Meeting	October 11, 2024	Web Ex and Sacramento	

<b>Table 1a. Attendance</b>			
Jonathan Ross, O.D.			
Date Appointed: June 8, 2022			
Date Reappointed: N/A			
Date Separated: 06/01/2023			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Practice and Education Committee	September 23, 2022	Web Ex	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Practice and Education Committee	November 18, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Practice and Education Committee	January 27, 2023	Web Ex	Yes
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	No
Practice and Education Committee	March 24, 2023	Web Ex	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
Sandra Sims, J.D.			
Date Appointed: 04/29/2021			
Date Reappointed: 05/31/2024			
Date Separated: 9/24/2024			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	No
Legislation and Regulations Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	Yes
Legislation and Regulation Committee	February 18, 2022	Web Ex	Yes

<b>Table 1a. Attendance</b>			
Sandra Sims, J.D.			
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex, Sacramento, and Beverly Hills	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	No
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	No
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes
Board Meeting	August 25, 2023	Web Ex and Sacramento	No
Board Meeting	December 8, 2023	Web Ex and Sacramento	No
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes
Consumer Protection, Public Relations, and Outreach Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes

<b>Table 1a. Attendance</b>			
David Turetsky, O.D.*			
Date Appointed: 12/18/2013			
Date Reappointed: 9/14/2017			
Date Separated: 6/1/2022			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Consumer Protection & Public Relations and Outreach Committee	February 25, 2021	Web Ex	Yes
Legislation and Regulation Committee	February 26, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Legislation and Regulation Committee	April 23, 2021	Web Ex	Yes
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Legislation and Regulation Committee	October 22, 2021	Web Ex	Yes
Consumer Protection, Public Relations and Outreach Committee	October 22, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	Yes
Consumer Protection & Public Relations and Outreach Committee	February 18, 2022	Web Ex	Yes

<b>Table 1a. Attendance</b>			
David Turetsky, O.D.*			
Legislation and Regulation Committee	February 18, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes

\*Attendance prior to 2021 was reported in the last sunset report.

<b>Table 1a. Attendance</b>			
Lillian Wang, O.D.*			
Date Appointed: March 27, 2015			
Date Reappointed: July 31, 2018 & May 23, 2023			
Date Separated:			
<b>Meeting Type</b>	<b>Meeting Date</b>	<b>Meeting Location</b>	<b>Attended?</b>
Legislation and Regulation Committee	February 26, 2021	Web Ex	Yes
Practice and Education Committee	February 26, 2021	Web Ex	Yes
Board Meeting	February 26, 2021	Web Ex	Yes
Practice and Education Committee	March 26, 2021	Web Ex	Yes
Practice and Education Committee	April 16, 2021	Web Ex	Yes
Legislation and Regulation Committee	April 23, 2021	Web Ex	Yes
Board Meeting	May 21, 2021	Web Ex	Yes
Board Meeting	July 9, 2021	Web Ex	Yes
Practice and Education Committee	July 23, 2021	Web Ex	Yes
Board Meeting	August 27, 2021	Web Ex	Yes
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 21, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	June 23, 2023	Web Ex	Yes
Board Meeting	August 25, 2023	Web Ex and Sacramento	Yes
Practice and Education Committee	October 18, 2023	Web Ex	Yes
Board Meeting	December 8, 2023	Web Ex	Yes
Practice and Education Committee	February 12, 2024	Web Ex and Sacramento	Yes

Lillian Wang, O.D.*			
Board Meeting	February 16, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	April 5, 2024	Web Ex and Sacramento	Yes
Legislation and Regulation Committee	April 5, 2024	Web Ex and Sacramento	Yes
Board Meeting	May 31, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	June 14, 2024	Web Ex and Sacramento	Yes
Board Meeting	August 9, 2024	Web Ex and Sacramento	Yes
Practice and Education Committee	October 11, 2024	Web Ex and Sacramento	
Board Meeting	October 11, 2024	Web Ex and Sacramento	

\*Attendance prior to 2021 was reported in the last sunset report.

Donald Yoo, J.D.			
Date Appointed: 10/26/2021			
Date Reappointed:			
Date Separated: 06/01/2023			
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	November 19, 2021	Web Ex	Yes
Board Meeting	January 7, 2022	Web Ex	Yes
Board Meeting	January 27, 2022	Web Ex	Yes
Board Meeting	March 11, 2022	Web Ex	Yes
Board Meeting	May 20, 2022	Web Ex	Yes
Board Meeting	August 26, 2022	Web Ex and Sacramento	Yes
Board Meeting	October 10, 2022	Web Ex	Yes
Board Meeting	December 9, 2022	Web Ex and Sacramento	Yes
Board Meeting	January 27, 2023	Web Ex	Yes
Board Meeting	March 17, 2023	Web Ex and Sacramento	No
Legislation and Regulation Committee	April 21, 2023	Web Ex	Yes
Board Meeting	May 12, 2023	Web Ex and Sacramento	No

Member Name (Include any vacancies and a brief member biography)	Date First Appointed	Date Reappointed	Date Term Expires	Appointing Authority	Type (public or professional)
Jeffrey Garcia, O.D., President	August 17, 2020	May 23, 2023	June 1, 2027	Governor	Professional

**Table 1b. Board/Committee Member Roster\***

Member Name (Include any vacancies and a brief member biography)	Date First Appointed	Date Reappointed	Date Term Expires	Appointing Authority	Type (public or professional)
Jeffrey Garcia, O.D., President	August 17, 2020	May 23, 2023	June 1, 2027	Governor	Professional
Eunie Linden, J.D., Vice President	March 19, 2021	June 21, 2023	June 1, 2027	Senate Rules	Public
Stacy Bragg, O.D., Secretary	May 22, 2023	-	June 1, 2025	Governor	Professional
Alex Clemens	January 19, 2024	-	June 1, 2026	Governor	Public
Martin Dawson, CLD/SLD	March 19, 2024	-	June 1, 2027	Governor	Professional
Paul Hsu	June 23, 2023	-	June 1, 2027	Speaker of Assembly	Public
Robert Klepa, J.D.	May 22, 2023	-	June 1, 2025	Governor	Public
Joseph Pruitt, O.D.	June 10, 2021	-	June 1, 2025	Governor	Professional
Lillian Wang, O.D.	April 2, 2015	May 23, 2023	June 1, 2026	Governor	Professional
Vacant	-	-	-	Governor	Professional
Vacant	-	-	-	Governor	Public

\*As of October 11, 2024

**Jeffrey Garcia, O.D. - (President)** was appointed to the Board by Governor Gavin Newsom as a professional member on August 17, 2020, and reappointed by Governor Gavin Newsom on May 23, 2023. Dr. Garcia, O.D. is an optometrist and has been the owner of Family Eye Care Optometry since 1996. Dr. Garcia, O.D., has been an Adjunct Clinical Assistant Professor for the Southern California College of Optometry since 2014 and an Auxiliary Clinical Faculty for Western College of Optometry since 2013. Dr. Garcia, O.D. is a retired Navy Captain, having served as both a Hospital Corpsman and an Optometrist from 1985 to 2018. Dr. Garcia, O.D. is a member of the American Optometric Association and California Optometric Association. Dr. Garcia, O.D. earned a Doctor of Optometry degree from the Southern California College of Optometry.

**Eunie Linden, J.D. - (Vice President)** was appointed to the Board by the California Senate Rules Committee as a public member on March 19, 2021, and reappointed on June 21, 2023. Ms. Linden is an attorney who previously worked as a consultant for the California State Assembly Committee on Business and Professions. Ms. Linden also worked for the California Office of Legislative Counsel as a Deputy Legislative Counsel. Ms. Linden graduated from the University of California, Berkeley, School of Law in 2011. Ms. Linden also earned a bachelor's degree from California State University, Long Beach, in 2005, and a Master of Public Policy degree from the University of California, Los Angeles, in 2008.

**Stacy Bragg, O.D. - (Secretary)** was appointed to the Board by Governor Gavin Newsom on May 23, 2023. Dr. Bragg, O.D. has been a Telehealth Optometrist at Empire Vision Center since 2022 and an Optometrist at Regency Eye Care Inc since 2017. She was an Optometrist at Stacy A.

Bragg, O.D., Inc from 2016 to 2017. She was a Managing Optometrist for EYEXAM of California, Inc. from 2014 to 2016. Dr. Bragg, O.D. was an Independent Subleasing Optometrist at First Sight Vision Services, Inc. from 2005 to 2014. Dr. Bragg, O.D. earned a Doctorate degree in Optometry from Pacific University College of Optometry and a Bachelor of Science in Biology from Mercer University.

**Alex Clemens**, of Mill Valley, was appointed to the Board by Governor Gavin Newsom on January 19, 2024. Clemens has been Partner and Co-Founder of Progress Public Affairs since 2022. He was Partner and Co-Founder at Lighthouse Public Affairs from 2016 to 2022. He was Founder of Barbary Coast Consulting from 2003 to 2016. Clemens has been a licensed private investigator in the State of California since 1998. Clemens earned a Bachelor of Arts degree in International Politics from the University of California, Santa Cruz. Clemens has taught full courses on ethical advocacy and strategic communications at the University of San Francisco Master of Public Affairs program in the 2010s, and to masters' candidates at Golden Gate University in the 2000s. He has guest lectured at the Berkeley Goldman School of Public Policy, at Stanford University, at the University of California Santa Cruz, and at San Francisco State University.

**Martin Dawson, CLD/SLD** was appointed to the Board by Governor Gavin Newsom on March 19, 2024. Mr. Dawson has been a Field Director with Prison Fellowship since 2021 and currently works as an Academy Program Manager with Prison Fellowship. He was an Optical Consultant for Acuity Eye Group from 2020 to 2021 and a Licensed Optician and Lab Manager for Stanton Optical from 2017 to 2020. Mr. Dawson is co-pastor of the Pillar of Fire Church San Diego.

**Paul Hsu** was appointed to the Board by the Assembly Speaker as a public member on June 23, 2023. Mr. Hsu is a businessman and serves on the national council of the Asian Pacific Islander American Public Affairs Association.

**Robert Klepa, J.D.** was appointed to the Board by Governor Gavin Newsom on May 23, 2023. Mr. Klepa has been a Hearing Officer for the Orange County Employee Retirement System since 2019, for the Los Angeles City Housing Dept since 2018, for the Ventura County Employees Retirement Association since 2016, for the Los Angeles County Chief Executive Officer Disability Division since 2011, and for the Los Angeles County Civil Service Commission since 2002. Mr. Klepa has been an Adjunct Instructor with Santa Monica College since 2002 and the University of California, Los Angeles Extension Program since 1998. Mr. Klepa was a Hearing Officer for the Los Angeles County Housing Authority from 2009 to 2019 and for the city of Santa Monica from 2005 to 2015. Mr. Klepa was a Judge Pro Tem, Arbitrator, and Mediator with the Los Angeles County Superior Court from 1998 to 2014. Mr. Klepa has been a California licensed attorney since 1989, having previously earned his Juris Doctorate from Loyola Law School and his Bachelor of Arts in Political Science from the University of California, Los Angeles.

**Joseph A. Pruitt, O.D.** was appointed to the Board by Governor Gavin Newsom as a professional member on June 10, 2021. Dr. Pruitt, O.D. has been Director of Eye Care at Riverside-San Bernardino County Indian Health Inc., since 2014. Dr. Pruitt, O.D. was Staff Optometrist at the Department of Veterans Affairs Minneapolis VA Health Care System from 2008 to 2014. Dr. Pruitt, O.D. is a member of the American Optometric Association, Armed Forces Optometric Society, and Christian Medical and Dental Association/Fellowship of Christian Optometrists. Dr. Pruitt, O.D. earned a Doctor of Optometry degree from the Illinois College of Optometry and a Master of Business Administration degree from Nova Southeastern University. Dr. Pruitt, O.D. completed his residency in Primary Care/Geriatric Optometry at the West Los Angeles VA Medical Center.

**Lillian Wang, O.D.** was appointed to the Board by Governor Edmund Gerald Brown Jr. as a professional member on April 2, 2015, and reappointed by Governor Gavin Newsom on May 23, 2023. Dr. Wang, O.D. has been an optometrist at the Lafayette Optometric Group since 2004 and an assistant clinical professor at the University of California, Berkeley School of Optometry since 2000. She did her residency in Pediatric Optometry at the College of Optometry in Houston, TX, from 1997 to 1998 and was an assistant clinical professor at the State University of New York School of Optometry from 1998 to 2000. Dr. Wang, O.D. is a member of the American Academy of Optometry, the California Optometric Association, and the New England College of Optometry Alumni Association. She earned a Doctor of Optometry degree from the New England College of Optometry.

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?

No, the Board has not canceled any full board meetings due to lack of a quorum. However, the Dispensing Optician Committee (DOC) has not met since April 2021 due to lack of a quorum caused by not having sufficient appointed members. The DOC has canceled the following meetings:

- July 21, 2022
- October 20, 2022
- April 20, 2023
- July 20, 2023
- October 19, 2023
- There were none scheduled in 2024.

The lack of a quorum has caused the DOC to cancel meetings which has left the Board without the expertise of a statutorily created subcommittee to provide guidance on opticianry issues.

3. Describe any major changes to the board since the last Sunset Review, including, but not limited to:

- Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)

As noted in the Board and Committee Roster, several board members have termed off and new board members have been appointed since the last sunset review.

Several staffing changes have also occurred:

- The former executive officer departed in October 2022 and the current executive officer began in November 2022.
- The Board also established in 2022 a dedicated enforcement manager position, separating those duties from the administration and licensing manager position.
- The enforcement manager position was vacated by the incumbent July 30, 2024, and the new enforcement manager began in September 2024.
- A policy analyst at the Associate Government Program Analyst level vacated the position in November 2023. The Board has been challenged in recruiting a policy analyst, at the Associate Governmental Program Analyst level, and has posted the position several times without success.

- The Board amended its 2021-2025 Strategic Plan pursuant to the Governor's Executive Order N-16-22, directing state agencies and departments to take additional actions to embed equity analysis and considerations into its policies and practices, including but not limited to, the strategic planning process. As a result of that process, the Board's mission was updated to embed "diversity, equity, inclusion, and belonging" into the Board's values.
- All legislation sponsored by the board and affecting the board since the last sunset review.

The Board has not sponsored any legislation since its last sunset review. The following bills were enacted that impacted the Board:

**AB 107 (Chapter, 693, Statutes of 2021)**

This bill, after July 1, 2023, requires the Board to issue temporary licenses to military spouses meeting specified criteria within 30 days, including passing a background check if one is required for licensure. This bill also requires DCA and the Board to post license information for military spouses on its websites and requires DCA to submit an annual report on licensure of military members, veterans, and spouses.

**AB 407 (Chapter 652, Statutes of 2021)**

This bill expanded the scope of practice for optometrists and optometric or ophthalmic assistants (assistants). It allowed optometrists to perform more services for their patients, including the use of all topical and oral pharmaceutical agents, which are not controlled substances. It also allowed assistants, under direct supervision of a licensed optometrist or ophthalmologist, to perform more services for patients if the assistant has at least 45 hours of training in the procedures that is acceptable to the licensed optometrist or ophthalmologist.

**AB 691 (Chapter 654, Statutes of 2021)**

This bill expanded the authority of a qualified optometrist to administer immunizations to include the administration of the COVID-19 vaccine and authorized an optometrist to engage in specified COVID-19 testing.

**AB 830 (Chapter 376, Statutes of 2021)**

This is the technical committee bill for the Assembly Business and Professions Committee. Among other things, this bill requires DCA's director to notify the Legislature within 60 days after the position of chief or executive officer of any board or bureau within DCA becomes vacant.

**AB 1534 (Chapter 630, Statutes of 2021)**

This bill extended the Board's sunset date to January 1, 2026. It also revised and recodified the Nonresident Contact Lens Seller Registration Act, created new requirements for mobile optometric clinics, and allowed the Board to charge a fee for license endorsement. This bill also made minor, technical and non-substantive changes to the Business and Professions Code.

**SB 509 (Chapter 219, Statutes of 2021)**

This bill created 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. This bill required a temporary license holder to practice under the direct supervision of a licensed

optometrist, as specified, and allowed the temporary license holder to perform any services under the Optometric Practice Act.

**AB 2574 (Chapter 596, Statutes of 2021)**

This bill corrected an erroneous cross-reference between the clinical laboratory director definition related to optometrists and the Optometry Practice Act and re-authorized and required an optometrist to, in an emergency, stabilize, if possible, and immediately refer any patient who has an acute attack of angle-closure glaucoma to an ophthalmologist.

**SB 189 (Chapter 48, Statutes of 2022)**

This budget bill, among other things, authorized the Board and state entities to hold public meetings, subject to specified notice and accessibility requirements, through teleconferencing. No physical locations needed to be made available to the public for such meetings if members of the public are allowed to observe and address the meetings electronically. The bill included a sunset date of July 1, 2023.

**SB 731 (Chapter 814, Statutes of 2022)**

This bill, among other provisions, expanded the types of arrest records that are eligible to be automatically sealed to include more types of felonies under specified circumstances. This bill also allowed certain felony convictions that resulted in incarcerations to be automatically sealed as long as the individual has completed their sentence and has not been convicted of a new felony within four years. It also expanded the date range for which arrests and convictions are eligible to be automatically sealed. These provisions became operative on July 1, 2023.

**SB 1237 (Chapter 386, Statutes of 2022)**

This bill clarified that military members on active duty with the California National Guard or members of the military on non-temporary assignments stationed outside California are eligible for a waiver of license renewal fees, continuing education requirements, and other license renewal requirements.

**AB 883 (Chapter 348, Statutes of 2023)**

This bill required the Board, beginning July 1, 2024, to expedite applications for licensure for active-duty military members participating in the U.S. Department of Defense's SkillBridge program. Currently, all DCA boards and bureaus are required to expedite applications from military veterans.

**SB 372 (Chapter 225, Statutes of 2023)**

This bill required the Board to update license records if the Board receives government-issued documentation demonstrating a legal change of name or gender, as specified. This bill also allowed licensees to request that their prior name be removed from online license verification systems operated by the Board and establishes a process for individuals to access a licensee's enforcement records under their prior name.

**SB 502 (Chapter 487, Statutes of 2023)**

This bill required the Department of Health Care Services (DHCS), subject to an appropriation, to file all necessary state plan amendments to exercise the Health Services Initiative option made available under the federal Children's Health Insurance Program (CHIP) provisions to cover vision services provided to low-income children statewide through a mobile optometric

office. The bill also authorized the acceptance of payment from any of the state's CHIP programs, in addition to the Medi-Cal program, for the owner and operator of a mobile optometric office and the optometrist providing services.

#### **SB 544 (Chapter 216, Statutes of 2023)**

This bill revised teleconference requirements under the Bagley-Keene Open Meeting Act, which requires all board meetings to be open and available to the public. This bill added a new teleconference option that requires a majority of members at one physical, publicly accessible location, and also allows additional members above a majority to participate in the meeting from nonpublic sites, as long as the public can also participate in the meeting both remotely and from the publicly accessible sites. It also amends existing law for advisory bodies to allow members to participate remotely in meetings from private nonpublic locations, as long as there is one physical location with at least one staff member where the public can attend, and the public can also access the meeting remotely. These new provisions will be repealed as of January 1, 2026. This bill also preserved existing Bagley-Keene teleconference law. Board members can attend meetings from multiple different teleconference sites, connected electronically via audio or audio and video, and the public must be allowed to attend at each teleconference site.

#### **AB 2327 (Chapter 391, Statutes of 2024)**

This bill extended the sunset date for the Mobile Optometric Office program (MOO), which allows nonprofits and charitable organizations to provide optometric services through mobile optometric offices, from 2025 to 2035. This bill also extended the deadline for the Board to adopt regulations relating to mobile optometric offices to January 1, 2026, and prohibited the Board from bringing enforcement actions under the program until January 1, 2026, or until regulations are adopted, whichever is sooner.

- All regulation changes approved by the board since the last sunset review. Include the status of each regulatory change approved by the board.

#### **Implementation of Assembly Bill 2138 (Chiu) - Amend California Code of Regulations §§ 1399.270, 1399.271, 1399.272, 1516, and 1517 (Effective February 25, 2021)**

This rulemaking updated the Board's criteria for determining whether an act, crime, or professional misconduct is substantially related to the qualifications, duties, or functions of an optometrist or optician. The updates brought the Board into compliance with AB 2138 (Chiu, Chapter 995, Statutes of 2018).

#### **Continuing Optometric Education: Purpose and Requirements (Effective August 23, 2023)**

This rulemaking updated and modernized the Board's continuing education regulation to allow all continuing education to be taken via webinar if it is "live and interactive" and allows for participatory interaction between instructor and licensee.

#### **Fees (Approved December 27, 2023, effective July 1, 2024)**

This rulemaking raised all existing fees to their statutory caps.

#### **Mobile Optometric Office Program**

This rulemaking implemented the Mobile Optometric Office Program (MOO), establishing a registry of MOO providers, as created by AB 896 (Chapter 121, Statutes of 2020) and revised by AB 1534 (Chapter 630, Statutes of 2021).

### **Home Residence Permit Program**

This rulemaking implemented the Home Residence Permit program, established by AB 458 (Chapter 425, Statutes of 2021), authorizing licensed optometrists to acquire a permit and provide optometric services to the homebound.

### **Radiofrequency Technology and Devices**

This rulemaking authorizes optometrists certified to use therapeutic pharmaceutical agents (TPA-certified) to use radiofrequency technology and devices to treat dry eye disease.

### **Optometry Disciplinary Guidelines**

Approved by the Board at the October 25, 2019, public meeting.

This rulemaking was intended to be the 2019 update of existing disciplinary guidelines applicable to licensed optometrists. Since the text was approved by the Board five years ago, changes in law have occurred that require further changes to the text. The package is presently under staff review.

### **Optician Program Omnibus Regulatory Changes**

Approved by the Board at the August 14, 2020, public meeting.

This rulemaking would make minor changes to the existing optician program regulations, including updating current initial registration and renewal forms, aligning current fees with the statute, and making other non-substantive changes. Some elements of the package, such as fees, were implemented with the Board's fee regulation effective July 1, 2024. The package is presently under staff review.

### **Dispensing Optician Disciplinary Guidelines**

Approved by the Board at the August 14, 2020, public meeting.

This rulemaking was intended to implement the disciplinary guidelines applicable to registered opticians. Since the text was approved by the Board four years ago, changes in law have occurred that require further changes to the text. The package is presently under staff review.

### **Requirements for Glaucoma Certification**

Approved by the Board at the February 26, 2021, public meeting.

Existing law sets out the requirements for obtaining glaucoma certification. Due to COVID-19, optometry schools have been offering the Grand Rounds Program, authorized by CCR Section 1571, subd. (a)(4)(B), online as a live course for students to satisfy the case management requirement. This proposed regulation would remove the in-person patient evaluation requirement from CCR Section 1571, subd. (a)(4)(B). The package is presently under staff review.

4. Describe any major studies conducted by the board (cf. Section 12, Attachment C).

### **Occupational Analysis of the Optometric Assistant Occupation and Opticianry Scope of Practice**

[[https://www.optometry.ca.gov/formspubs/occup\\_analysts\\_sops\\_2023\\_4.pdf](https://www.optometry.ca.gov/formspubs/occup_analysts_sops_2023_4.pdf)]

The Board contracted with DCA's Office of Professional Examination Services (OPES) to evaluate the role of unlicensed individuals working as optometric assistants. The purpose of the evaluation was to identify overlap in the scope of practice of three opticianry occupations: optometric assistant, spectacle lens dispenser (SLD), and contact lens dispenser (CLD), and to determine whether any health and safety concerns necessitate a new licensing system. The study acquired limited data but did make the following recommendations: 1) establish a clear definition of the role of optometric assistant; 2) detail the tasks optometric assistants can perform and the intent of the tasks; 3) require optometric assistants to register with the Board; and 4) make no changes to the scope of practice for SLDs and CLDs. OPES's conclusions and recommendations were as follows: 1) there is confusion and health and safety concerns about optometric assistant scope of work; and 2) the Board may create a task force to further evaluate the optometric assistant occupation, including whether a license or registration should be required and establishing a clear scope of practice for optometric assistants. The Board has not taken formal action on the report.

**Amended 2021-2025 Strategic Plan** [<https://www.optometry.ca.gov/about-us/stratplan.pdf>]

In 2022, the Governor issued Executive Order N-16-22 which directed state agencies and departments to take additional actions to embed equity analysis and considerations into its policies and practices, including but not limited to the strategic planning process. The Board was one of the first within DCA to undertake this work, initiating a survey to licensees, stakeholders, board members, and board leadership and staff to consider diversity, equity, and inclusion impacts of policy decisions such as regulatory, statutory, and continuing education requirements. With the assistance of DCA, the Board conducted a new diversity, equity, inclusion, and belonging focused scan and analysis during September and October of 2023. Feedback was solicited from external stakeholders, board members, and the Board's leadership and staff. This feedback was used to assist the Board in considering a diversity, equity, inclusion, and belonging perspective to its current strategic plan. The Board was led through the strategic planning process by staff from DCA's Strategic Organizational Leadership and Individual Development (SOLID) Unit who conducted workshops at public board meetings on December 8, 2023, and February 16, 2024. On February 16, 2024, the board officially adopted the amended strategic plan. A significant change the Board made was to update its values statement to include the Board's commitment to a California for all that celebrates the diversity of the state. As such, the Board's values statement now includes the following:

*Our Values*  
Consumer Protection  
Integrity  
Transparency  
Professionalism  
Excellence  
*Diversity, Equity, Inclusion, and Belonging*

5. List the status of all national associations to which the board belongs.

The Board is an active member of the Association of Regulatory Boards of Optometry (ARBO) [<https://www.arbo.org/>]. ARBO is an international association, providing resources to regulatory boards of optometry since 1919. ARBO's membership consists of 66 regulatory boards throughout the United States, Canada, Australia, and New Zealand.

- Does the board's membership include voting privileges?

Yes, the board's membership includes voting privileges.

- List committees, workshops, working groups, task forces, etc., on which the board participates.

The Board participates in the following ARBO committees, workshops, working groups, or task forces:

- Council on Optometric Practitioner Education (COPE)
- Council on Endorsed Licensure Mobility for Optometrists (CELMO)
- National Board Examination Review Committee (NBERC)

- How many meetings did board representative(s) attend? When and where?

The current Executive Officer has attended one national meeting: June 16-18, 2024, in Nashville, Tennessee.

- If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

Separate exams are used for optometry and opticianry.

### **Optometrist National Exams**

The law requires optometrist applicants to take and pass the National Board of Examiners in Optometry (NBEO) Parts I, II, and III examinations for licensure. Additionally, to be certified to use therapeutic pharmaceutical agents the law requires optometrist applicants to take and pass NBEO's Treatment and Management of Ocular Disease (TMOD) exam. The examination is developed and administered by NBEO, located in North Carolina. The NBEO was established in 1951 and is an organization that develops, administers, and scores examinations, and reports the results that state boards utilize in licensing optometrists to practice eye care. At present, all 50 states, the District of Columbia, and Puerto Rico use NBEO to administer competency exams for licensure.

In partnership with DCA's Offices of Professional Examination Services (OPES), the board conducts assessments of the NBEO Exam, most recently in 2020. The purpose of the assessment is to ensure that the examination meets professional guidelines and technical standards outlined in the Standards for Educational and Psychological Testing and the DCA Examination Validation Policy. The Board's 2020 assessment determined the examination meets the prevailing standards for validation and use of the examination for licensure in California. The NBEO examination is divided into three parts, and applicants must take the first two exams during their second year of optometry school. Parts I and II of the NBEO are computer-based and administered through the Pearson VUE third-party testing proctor. Applicants for an optometrist license take these NBEO examinations before applying to the Board. Part III is performed in person in North Carolina and typically taken between August and May of the third year of optometry school. The Board and NBEO have arranged for the scores to be transmitted electronically for examination security purposes. The Board regularly meets and consults with NBEO on all aspects of the exam.

### Registered Dispensing Optician Program Examinations

The law requires that Spectacle Lens Dispenser (SLD) candidates pass the American Board of Opticianry (ABO) examination. Contact Lens Dispenser (CLD) candidates must pass the National Contact Lens Examination (NCLE). Both national examinations are developed and administered by the ABO-NCLE and are available in English and Spanish. Both exams are computer-based, two-hours in length, and can be taken at any of the Prometric testing sites around the country. In partnership with OPES, the board conducts regular assessments of the ABO and NCLE exams, most recently in 2020. ABO-NCLE develops the exams with a content expert panel composed of subject matter experts. The content expert panel analyzes the professional skills and abilities from job task analyses, which provide the evidence for the test content outline or blueprint. Test questions are written by certified opticians who have received training from ABO-NCLE and Prometric in writing items. The items are reviewed by the content expert panel with Prometric and pilot-tested to ensure validity and psychometric quality before being used as scored items on an actual exam. The validity and reliability of the exams are monitored by ABO-NCLE staff and certification examinations are updated approximately every three years.

## Section 2 – Fiscal and Staff

### Fiscal Issues

6. Is the board's fund continuously appropriated? If yes, please cite the statute outlining this continuous appropriation.

The Board's fund is not continuously appropriated. However, pursuant to BPC 3148, \$16 from every biennial renewal fee (as of July 1, 2024, the biennial renewal fee is \$500) "shall be paid [...] to the University of California. This sum shall be used at and by the University of California solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught."

7. Using *Table 2. Fund Condition*, describe the board's current reserve level, spending, and if a statutory reserve level exists.

As of July 1, 2024, the Board's current reserve level is 8 months, or \$2.9 million. At the close of FY 2023-2024, the Board spent approximately \$2.9 million and received revenue of \$2.8 million. BPC 3145 provides for a statutory reserve of "not greater than six months of the appropriated operating expenses of the board in any fiscal year." While the current reserve level is slightly above the statutory maximum of six months, the Board has been operating with a structural deficit the past few fiscal years and has relied on a combination of fund reserves and salary savings achieved from vacancies to manage the fund.

<b>Table 2. Fund Condition</b> (list dollars in thousands)						
	FY 2020-21 <sup>3</sup>	FY 2021-22 <sup>3</sup>	FY 2022-23 <sup>3</sup>	FY 2023-24	FY 2024-25 <sup>4</sup>	FY 2025-26 <sup>4</sup>
Beginning Balance <sup>1</sup>	\$3,135	\$3,319	\$2,077	\$1,732	\$2,938	\$1,410

<b>Table 2. Fund Condition</b>		(list dollars in thousands)				
	FY 2020-21 <sup>3</sup>	FY 2021-22 <sup>3</sup>	FY 2022-23 <sup>3</sup>	FY 2023-24	FY 2024-25 <sup>4</sup>	FY 2025-26 <sup>4</sup>
Revenues and Transfers	\$2,431	\$2,428*	\$2,564	\$3,933**	\$3,156	\$3,153
<b>Total Resources</b>	\$5,566	\$5,747	\$4,641	\$5,801	\$6,094	\$4,558
Budget Authority	\$2,675	\$2,901	\$3,960	\$4,131	\$4,031	\$4,152
Expenditures <sup>2</sup>	\$2,285	\$2,473	\$2,909	\$2,863	\$4,387	\$4,483
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	\$3,281	\$3,274	\$1,732	\$2,938	\$1,707	\$75
<b>Months in Reserve</b>	15.9	13.5	6.9	8.0	4.6	1.0

<sup>1</sup>Actuals include prior year adjustments.

<sup>2</sup>Expenditures include reimbursements and direct draws to the fund.

<sup>3</sup>Includes Registered Dispensing Opticians.

<sup>4</sup>Estimate

\*Includes Executive Order 21/22-276 transfer to GF (AB 84)

\*\*Includes Transfer from Registered Dispensing Opticians

8. Describe if/when a deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.

The Board has been operating with a structural deficit for the past three fiscal years which is depleting the fund reserves. As of July 1, 2024, the Board is projecting a deficit in FY 2026-2027 if it were to fully expend its appropriation in the next two fiscal years. At current spending and projected revenues, however, the Board may be able to delay the deficit by a few additional years.

To help bring near-term stability to the fund condition, for the past two fiscal years the Board has been maintaining a vacancy rate of 25 – 33 percent to achieve salary savings and reduce actual expenditures. Effective July 1, 2024, the Board has also implemented a regulation to raise all fees to the statutorily authorized maximum.

However, the regulatory fee increase is unlikely to close the structural deficit on a long-term basis and future fee increases will be necessary. The regulatory fee increase is unlikely to put the Board on a permanently sustainable fiscal path because the Board's expenditures are projected to continue to exceed revenues, which reduce reserves. In addition, inflationary pressures will continue to strain the Board's budget. Where it can, the Board has removed positions from its organizational chart and carried high vacancy rates realizing significant salary and benefit savings; but these actions alone may not be enough to close the structural deficit and build a sustainable fund condition that includes a healthy reserve.

As of July 1, 2024, the Board has a 25 percent vacancy rate, a level at which or higher it has maintained for two (2) years. If that were to be maintained going forward the Board may be able to achieve a balance in the fund with revenues and expenditures closely tracking one another. If the Board were to eliminate its vacancy rate, it would also no longer enjoy the

sizeable salary savings it is achieving, which is the main tool available to manage a fund condition through a period of structural deficits. If the Board were to be fully staffed, it would spend approximately \$750,000 more than it does now, exploding the structural deficit to nearly \$1 million and eroding the fund condition at a fast clip. This would cause a deficit in FY 2026-27.

The Board is closely monitoring the fund condition with the Department's Budget Office and will keep the Legislature informed of any material changes. The Board looks forward to working with the Legislature to determine appropriate fee levels to ensure a stable fund condition over time.

- Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?

In FY 2011-2012, the Board made a \$1 million-dollar loan to the General Fund out of the Optometry fund which was repaid in FY 2016-2017. The Registered Dispensing Optician (RDO) program did not make any general fund loans. No loans have been made since the last Sunset Report in 2020.

- Using Table 3, **Expenditures by Program Component**, describe the amounts and percentages of expenditures by program component. Provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

<b>Table 3. Expenditures by Program Component</b>								(list dollars in thousands)	
	FY 2020/21		FY 2021/22		FY 2022/23		FY 2023/24		
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	
Enforcement	\$391	\$241	\$508	\$195	\$598	\$287	\$533	\$189	
Examination	-	\$161	-	\$148	-	\$149	-	\$111	
Licensing	\$200	\$21	\$301	\$34	\$530	\$48	\$472	\$44	
Administration *	\$490	\$41	\$532	\$49	\$492	\$34	\$442	\$32	
DCA Pro Rata	-	\$565	-	\$482	-	\$573	-	\$726	
Diversion (if applicable)	-	-	-	-	-	-	-	-	
<b>TOTALS</b>	\$1,081	\$1,029	\$1,341	\$908	\$1,621	\$1,091	\$1,447	\$1,102	

\* Administration includes costs for executive staff, board, administrative support, and fiscal services.

- Describe the amount the board has spent on business modernization, including contributions to the BreEze program, which should be described separately.

The chart below identifies what the Board has spent on business modernization, including contributions to the BreEze system, since the last sunset review.

Program	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025*

CSBO	\$123,167	\$65,598	\$62,772	\$49,350	\$45,818	\$65,000
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\*Budgeted.

12. Describe license renewal cycles and the history of fee changes over the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citations) for each fee charged by the board.

Except for the fictitious name permit, all licenses and registrations issued by the Board expire at the end of the month two years from when they were issued. For optometry, the authority for the fees charged by the Board is found at BPC 3152 and Title 16 California Code of Regulations section 1524. For opticianry, the authority for the fees charged is found at BPC 2565 - 2566.1 and Title 16 California Code of Regulations sections 1399.260 – 1399.263. Optometry and Opticianry fees were raised to the statutorily authorized maximum, effective July 1, 2024. Prior to that, most optometrist fees had not been adjusted since 2009, and most opticianry fees had not been adjusted since 2017.

<b>Table 4. Optometry Fee Schedule and Revenue</b>								(list revenue dollars in thousands)
Fee	Current Fee Amount	Statutory Limit	FY 2020/21 Revenue	FY 2021/22 Revenue	FY 2022/23 Revenue	FY 2023/24 Revenue	% of Total Revenue	
Exam Application	\$275	\$275	\$98,950	\$90,961	\$78,748	\$74,525	3.3%	
Initial License*	\$125	\$125	\$31,695	\$24,825	\$21,950	\$15,260	1%	
Biennial Renewal	\$500	\$500	\$1,515,209	\$1,481,656	\$1,540,307	\$1,516,332	58.8%	
Delinquency Fee	\$50	\$50	\$8,865	\$7,782	\$8,500	\$7,500	0.3%	
Fictitious Name Permit	\$50	\$50	\$5,950	\$7,600	\$7,000	\$9,300	0.3%	
Annual Renewal of Fictitious Name Permit	\$50	\$50	\$72,450	\$71,050	\$71,500	\$73,175	2.8%	
Delinquency Fee – Fictitious Name Permit	\$25	\$25	\$4,975	\$5,175	\$5,400	\$3,950	0.2%	
Name Change Duplicate Wall Certificate	\$25	\$25	\$17,635	\$15,850	\$15,550	\$12,775	0.6%	
Statement of Licensure	\$40	\$40	\$13,440	\$15,590	\$15,240	\$25,200	0.7%	
Biennial Renewal Statement of Licensure	\$40	\$40	\$20,820	\$20,440	\$22,880	\$21,680	0.8%	
Delinquent Renewal of Statement of License	\$20	\$20	\$1,460	\$1,520	\$1,520	\$1,800	0.1%	
CE Course Application	\$100	\$100	\$6,900	\$7,100	\$8,900	\$3,550	0.3%	
Retired License	\$25	\$25	\$150	\$600	\$775	\$1,550	0.0%	
Retired Volunteer License	\$50	\$50	\$0	\$150	\$150	\$500	0.0%	
Biennial Renewal of Retired Volunteer License	\$50	\$50	\$306	\$306	\$238	\$272	0.0%	
Letter of Verification	\$40	\$60	\$0	\$0	\$1,360	\$6,400	0.1%	

**Table 4. Optometry Fee Schedule and Revenue** (list revenue dollars in thousands)

Fee	Current Fee Amount	Statutory Limit	FY 2020/21 Revenue	FY 2021/22 Revenue	FY 2022/23 Revenue	FY 2023/24 Revenue	% of Total Revenue
Immunization Certification	\$50	\$50	\$0	\$400	\$450	\$50	0.0%
Home Residence Permit	\$50	\$100	\$0	\$0	\$0	\$0	0.0%
Renewal Fee for Home Residence Permit	\$50	\$100	\$0	\$0	\$0	\$0	0.0%
Delinquency Fee for Home Residence Permit	\$25	\$100	\$0	\$0	\$0	\$0	0.0%
Mobile Optometric Office Owner and Operator Registration Fee	\$360	Reasonable Cost	\$0	\$0	\$0	\$0	0.0%
Mobile Optometric Office Owner and Operator Biennial Renewal Fee	\$360	Reasonable Cost	\$0	\$0	\$0	\$0	0.0%
Mobile Optometric Office Permit Fee	\$472	\$600	\$0	\$0	\$0	\$0	0.0%
Mobile Optometric Office Permit Renewal Fee	\$472	\$600	\$0	\$0	\$0	\$0	0.0%

\*Initial application fees are broken down via the following certification types which all graduates since 2008 automatically qualify for: Therapeutic Pharmaceutical Agent - \$25; Lacrimal Irrigation and Dilution - \$50; and Glaucoma - \$50.

**Table 4. Opticianry Fee Schedule and Revenue** (list revenue dollars in thousands)

Fee	Current Fee Amount	Statutory Limit	FY 2020-21 Revenue	FY 2021-22 Revenue	FY 2022-23 Revenue	FY 2023-24 Revenue	% of Total Revenue
RDO Application	\$200	\$200	\$8,550	\$10,050	\$10,350	\$18,600	0.5%
RDO Registration	\$300	\$300	\$2,000	\$15,800	\$10,200	\$24,250	0.5%
RDO Biennial Renewal	\$300	\$300	\$96,150	\$118,400	\$92,650	\$118,400	4.1%
RDO Delinquency	\$50	\$75	\$3,800	\$1,950	\$2,700	\$2,350	0.1%
RDO Replacement Certificate	\$25	\$25	\$175	\$350	\$500	\$1,100	0.0%
CLD Application	\$200	\$200	\$12,750	\$20,700	\$25,650	\$19,650	0.8%
CLD Registration	\$300	\$300	\$13,000	\$26,400	\$33,200	\$25,800	1.0%
CLD Biennial Renewal	\$300	\$300	\$112,600	\$97,800	\$105,350	\$106,600	4.1%
CLD Delinquency	\$50	\$75	\$4,900	\$3,200	\$2,900	\$2,300	0.1%
CLD	\$25	\$25	\$925	\$900	\$375	\$1,025	0.0%

Replacement Certificate							
SLD Application	\$200	\$200	\$46,800	\$54,450	\$60,300	\$47,550	2.0%
SLD Registration	\$300	\$300	\$48,200	\$73,400	\$77,600	\$61,800	2.5%
SLD Biennial Renewal	\$300	\$300	\$236,700	\$274,675	\$229,350	\$287,400	10%
SLD Delinquency	\$50	\$75	\$12,125	\$10,975	\$9,750	\$9,900	0.4%
SLD Replacement Certificate	\$25	\$25	\$2,175	\$2,475	\$1,850	\$2,750	0.1%
Nonresident Ophthalmic Lens Dispenser Application	\$200	\$200	\$150	\$600	\$450	\$300	0.0%
Nonresident Ophthalmic Lens Dispenser Registration	\$200	\$200	\$0	\$200	\$1,400	\$400	0.0%
Nonresident Ophthalmic Lens Dispenser Biennial Renewal	\$300	\$300	\$1,600	\$1,400	\$1,600	\$1,000	0.1%
Nonresident Ophthalmic Lens Dispenser Delinquency	\$50	\$75	\$50	\$50	\$50	\$50	0.0%
Nonresident Ophthalmic Lens Dispenser Replacement Certificate	\$25	\$25	\$0	\$0	\$0	\$0	0.0%

13. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

1. [1111-038-BCP-2020-GB – Occupational Analysis Funding](https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG1111_BCP3607.pdf)  
[\[https://esd.dof.ca.gov/Documents/bcp/2021/FY2021\\_ORG1111\\_BCP3607.pdf\]](https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG1111_BCP3607.pdf)  
 The Board requested a one-time special fund budget augmentation of \$106,000 in 2020-21 to fund an occupational analysis (OA) of the unlicensed profession of optometric assistants and associated costs for subject matter experts. The OA is needed to clarify the scope of practice of optometric assistants compared to the scope of practice of registered dispensing opticians to determine whether optometric assistants should be regulated for the protection of consumers.
2. [1111-056-BCP-2021-GB - Board and Bureau Workload - Examination Development and Validation \(Board of Optometry\)](https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG1111_BCP4343.pdf) [\[https://esd.dof.ca.gov/Documents/bcp/2122/FY2122\\_ORG1111\\_BCP4343.pdf\]](https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG1111_BCP4343.pdf)  
 The Board requested \$60,000 in fiscal year 2021-22 and ongoing to fund continued optometry examination development and psychometric validation. Ongoing annual development and

validation of the Board's licensing exams is critical to avoid any potential compromises of the exams.

3. [1111-063-BCP-2021-GB - Board of Optometry – Mobile Optometric Office License \(AB 896\)](https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG1111_BCP4346.pdf)  
 [https://esd.dof.ca.gov/Documents/bcp/2122/FY2122\_ORG1111\_BCP4346.pdf]  
 The Board requested \$262,000 in fiscal year 2021-2022, \$246,000 in fiscal years 2022-23 and 2023-24, and two three-year limited-term positions to address anticipated workload as a result of Chapter 121, Statutes of 2020, which creates a new license type for mobile optometric offices.
  
4. [1111-070-BCP-2022-GB - Board of Optometry – Enforcement, Continuing Education Audits, and Opticianry Professions Practice Analysis](https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG1111_BCP5184.pdf)  
 [https://esd.dof.ca.gov/Documents/bcp/2223/FY2223\_ORG1111\_BCP5184.pdf]  
 The Board requested resources to reduce case closure timeframes, increase monitoring and accountability for growing enforcement workload related to continuing education audits, and bring process uniformity to higher-level enforcement actions. The Board also requested one-time funding for a scope of practice study of the licensed professions of spectacle lens dispenser and contact lens dispenser, and the unlicensed profession of optometric assistant. The study was needed to clarify the actual practice and parameters of each profession.
  
5. [1111-098-BCP-2022-GB – Legislative Workload \(AB 1534\)](https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG1111_BCP5186.pdf)  
 [https://esd.dof.ca.gov/Documents/bcp/2223/FY2223\_ORG1111\_BCP5186.pdf]  
 The Board requested \$443,000 in fiscal year 2022-23, \$419,000 in fiscal year 2023-24 and ongoing, and 3.0 positions to address increased workload related to the provisions of Chapter 630, Statutes of 2021 (AB 1534). AB 1534 revised and restructured the practice of Opticianry in California, required registration of Non-Resident Spectacle Lens Sellers, and increased penalties for violations of the Optometric and Optician Practice Acts. The Board requested 3.0 analyst positions to address the increased workload as a result of these new provisions.
  
6. [1111-124-BCP-2022-GB - Legislative Workload \(SB 509\)](https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG1111_BCP5186.pdf)  
 [https://esd.dof.ca.gov/Documents/bcp/2223/FY2223\_ORG1111\_BCP5186.pdf]  
 The Board requested two-year limited-term resources, including a 0.5 position and \$84,000 in fiscal year 2022-23 and \$76,000 in fiscal year 2023-24, to address increased workload related to the provisions of Chapter 219, Statutes of 2021 (SB 509). SB 509 allowed for a temporary optometrist license to be issued for an individual who applies for and is eligible for licensure under existing law, but who is unable to immediately take the required examination for licensure.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved

111-038-BCP-2020-GB	20-21	Occupational Analysis Funding	0	N/A	\$0	\$0	\$106,000	\$106,000
1111-056-BCP-2021-GB	21-22	To fund continued optometry examination development and validation.	0	N/A	\$0	\$0	\$60,000	\$60,000
1111-063-BCP-2021-GB	21-22	To fund positions to implement Mobile Optometric Office Program (AB 896 and AB 1534)	1: OT; 1: AGPA	1: OT; 1: AGPA	\$196,000	\$196,000	\$66,000	\$66,000
1111-070-BCP-2022-GB	22-23	To fund scope of practice study, reduce case closure timeframes, and increase continuing education audits	1: SSM1: AGPA	1: SSM1; 1: AGPA	\$159,000	\$159,000	\$107,000	\$107,000
111-098-BCP-2022-GB	22-23	To fund positions related to opticianry. (AB 1534)	1: SSA; 2: AGPA	1: SSA; 2: AGPA	\$344,000	\$344,000	\$99,000	\$99,000
1111-124-BCP-2022-GB	22-23	To fund a position related to temporary licensure. (SB 509)	0.5: AGPA	0.5: AGPA	\$61,000	\$61,000	\$23,000	\$23,000

## Staffing Issues

14. Describe any board staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.

As noted in past sunset reviews, the Board continues to experience high staff turnover and vacancy rates due to resource limitations and limited advancement opportunities for staff. Despite these challenges, the Board worked to balance its financial needs, staff development, and its statutory mandate of consumer protection.

The Board's staff grew from 12.5 positions in Fiscal Year (FY) 2020-2021 to a high of 19.9 in FY 2023-2024. This growth was necessary to achieve improvements in licensing and enforcement processes and timelines. To achieve ongoing personnel savings, in FY 2022-23 the Board did not seek permanent authority for 2.5 limited term positions received in prior BCPs (1111-063-BCP-2021-GB and 1111-124-BCP-2022-GB) and initiated the process to remove them. Effective July 1, 2024, the Board's organization chart shrunk by 2.5 positions or 12.5 percent, from 19.9 positions to 17.4 reflecting this change. Additionally, pursuant to the [Department of Finance Budget Letter 24-20](https://dof.ca.gov/wp-content/uploads/sites/352/2024/07/BL-24-20-Vacancy-Savings-and-Position-Elimination.pdf) [https://dof.ca.gov/wp-content/uploads/sites/352/2024/07/BL-24-20-Vacancy-Savings-and-Position-Elimination.pdf], the Board was required to identify an additional 1.4 vacant positions to remove to achieve savings. After removing these 1.4 positions, the Board's organizational chart will show 16 authorized positions.

Given the structural deficit discussed earlier, the Board maintained a vacancy rate among its authorized positions of about 25% – 33% for FY 2022-2023 and 2024-2025 to manage its fund condition. During this period, the Board achieved significant salary savings, while also improving its licensing and enforcement timelines. However, this high vacancy rate can pose several staffing challenges to the Board.

First, as a small regulatory board there are few opportunities for advancement within the Board, and most employees seeking to promote in their career must look elsewhere for those opportunities. Second, remaining staff must absorb the duties of the vacant positions, placing an extra burden on their existing job responsibilities. Third, maintaining a high vacancy rate must be balanced against the Board's consumer protection mandate. While the Board managed to improve its licensing and enforcement timelines with a high vacancy rate, the Board may need to hire additional staff in the future to ensure it has sufficient human capital to carry out its consumer protection mandate. To address these concerns, the Board is working to carefully balance its budgetary needs while still providing internal staff development opportunities and maintaining positions that offer staff advancement opportunities.

The Board also had a leadership change since the prior sunset review. In October 2022 the Board's Executive Officer departed and an interim Executive Officer was appointed. The interim Executive Officer was made permanent in March 2023.

The Board has had difficulty recruiting for its policy analyst position. This position is responsible for performing legislative and regulatory analytical work and the Board's outreach and communications functions. The most recent incumbent was in the role for one year, departing in November 2023.

15. Describe the board's staff development efforts and total spent annually on staff development (cf., Section 12, Attachment D).

As a small board, it is critical that staff works efficiently and effectively together. A variety of methods are employed by Board leadership to develop staff personally and professionally.

Staff development first begins at the hiring stage and continues with onboarding and ongoing personnel development throughout the employees' probationary tenure with the Board. During the hiring and onboarding stage, management and the employee are learning about each other and discovering what adjustments may need to be made to help the employee achieve their potential. As the employee onboards into the position, constant and ongoing check-ins with management occur until the employee has developed the ability to function more independently in their role. During this time, skills and attributes are assessed more fully and employees may be sent to specific training courses to enhance a particular skill area. Employees also have the opportunity to request specific training courses and are encouraged to do so.

The Board utilizes DCA's SOLID Training Services division, and CalHR, which offers an array of training classes to support staff in learning and practicing new skills, gaining competence and confidence in their work roles, and preparing for career advancement. Under the current Executive Officer, once a year all staff attend a full day staff team building event, including a half-day training facilitated by SOLID. Specifically, in 2023, this training course was "Color Lingo", a communication styles training, and in 2024, the training was titled "Inner Hero", a training about mindset and developing resilience in the face of adversity.

The Executive Officer conducts weekly manager meetings and participates in monthly licensing, administration, and enforcement unit meetings. The managers and Executive Officer also meet one-on-one with staff to discuss items of interest or concern.

### Section 3 – Licensing Program

16. What are the board's performance targets/expectations for its licensing<sup>2</sup> program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

As of July 1, 2024, the Board is meeting and substantially exceeding the performance targets and requirements for optometry applications. The performance targets for optometry applications are found at Title 16 California Code of Regulations section 1564 and that law provides that the minimum, median, and maximum processing times for optometrist licensure application are as follows:

- Minimum – 1 day
- Median – 30 days
- Maximum – 20 days

For fictitious name permit applications, Title 16 California Code of Regulations section 1564.1 provides that the minimum, median, and maximum processing times are as follows:

- Minimum – 7 days
- Median – 30 days
- Maximum – 120 days

The Board is currently exceeding all these targets. As of July 1, 2024, the Board was processing completed optometrist applications in less than a week and completed fictitious name permit applications in under two weeks.

The law does not provide any processing requirements for opticianry applications, but the Board strives to process these applications consistent with the Department of Consumer Affairs licensing performance measures, which provides for a 30-day target to process a complete application for licensure as a Registered Contact Lens Dispenser or Registered Spectacle Lens Dispenser. For the business license, the Registered Dispensing Ophthalmic Business, the performance target is 60 days. As of July 1, 2024, the Board is meeting these targets.

17. Describe any increase or decrease in the board's average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the board to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

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<sup>2</sup> The term "license" in this document includes a license, certificate, permit or registration.

The processing times of applications for all license types improved during the time period covered in this report. And since Spring of 2023 the Board measurably improved the average time to process the initial optometrist and fictitious name permit applications (FNP). At the conclusion of FY 2019-2020, the last year reported in the Board's prior sunset review report, the average processing time for an initial optometrist license was 68 days. In FY 2020-2021, it was 69 days, in FY 2021-2022, it took 76 days, and in FY 2022-2023, it was 68 days, however at the end of quarter 3 of that fiscal year the processing time was 90 days. The reforms were put into place in the Spring of 2023; at that time the Board's average processing time was about three months. With only one quarter left in the fiscal year, the reforms had an immediate effect, bringing the average down to 68 days. Fiscal year 2023-2024 marks the first full fiscal year the reforms have been in place and the average processing time for a completed initial optometrist license was less than one (1) week. Year over year the processing time improved by over 90%.

Over the first three fiscal years covered in this report, FY 2020-2021 through 2022-2023, FNPs applications averaged between 79 and 110 days on average to complete. In FY 2023-2024 because of reforms implemented on BreZE, these applications were being processed in nine (9) days on average.

As seen in Table 7a and 7b, pending applications, across initial optometrist exam requests and applications and those for opticianry, have not grown at a rate that exceeds completed applications. In fact, the number of applications the Board has received for initial licensure as an optometrist have declined over the past four (4) fiscal years. In percentage terms, exam requests were 14 percent lower in FY 2023-2024 compared to FY 2020-2021 and initial applications were 34 percent lower in FY 2023-2024 compared to FY 2020-2021.

According to the United States Bureau of Labor Statistics, the optometrist profession is projected to grow by nine (9) percent between 2022 and 2032, much faster than average for all occupations. In California, between FY 2020-2021 and FY 2023-2024, the population of active licensed optometrists grew 3.5 percent (7,536 in FY 2020-2021 and 7,798 in FY 2023-2024). More information regarding trends in application and renewals is discussed in answer to question 61.

The four opticianry license types, in contrast, have seen growth. Over the four-year (4) period, FY 2020-2021 – FY 2023-2024, active RDO licenses grew by seven (7) percent. Total spectacle lens dispenser registrations are 15 percent higher, and the contact lens dispenser registration is 20 percent higher in FY 2023-24 compared to FY 2020-2021. The Board has issued a total of 22 nonresident ophthalmic lens dispenser licenses compared to 15 in FY 2020-2021.

According to the United States Bureau of Labor Statistics, the optician profession is projected to grow by three (3) percent between 2022 and 2023, about as fast as average for all occupations.

One of the challenges with the opticianry registrations was that two transactions must occur to receive the registration: an initial application and then an initial registration, with separate fees paid in each transaction. The business process required the applicant to first open and submit an initial application which must be reviewed and approved by staff before the applicant was able to open and submit an initial registration. Both steps had to be successfully completed to be registered to practice opticianry in California. Having to complete both transactions when the process can be conducted with one, was identified as a barrier to entry and this two-step process may have delayed entry into the workforce for qualified applicants. The Board worked with the DCA BreZE team to collapse the two applications into one, combining transactions to

achieve application efficiencies for the applicant and staff. Effective in September 2024, this new process is anticipated to further improve the processing times for opticianry applications.

18. How many licenses or registrations has the board denied over the past four years based on criminal history that is determined to be substantially related to the qualifications, functions, or duties of the profession, pursuant to BPC § 480? Please provide a breakdown of each instance of denial and the acts the board determined were substantially related.

Over the past four (4) fiscal years, the Board has denied three (3) applications for licensure based on criminal history that was determined to be substantially related to the qualifications, functions, or duties of the profession. Details for each case are below:

1. Registered Spectacle Lens Dispenser applicant was denied based on their criminal conviction for DUI.
2. Registered Spectacle Lens Dispenser applicant was denied based on their criminal convictions for lewd and lascivious act with a child under 14, assault with a firearm, and false statement of material fact.
3. Registered Spectacle Lens Dispenser applicant was denied based on their criminal convictions for identity theft and petty theft.

Table 6a. Optometry Licensee Population					
		FY 2020/2021	FY 2021/2022	FY 2022/2023	FY 2023/2024
Optometrist	Active <sup>3</sup>	7,536	7,563	7,757	7,798
	Out of State	1,025	847	823	789
	Out of Country	37	28	26	24
	Delinquent	771	794	724	645
	Retired	90	95	105	179
	Retired Volunteer	21	25	38	50
	Inactive	313	329	348	330
	Other <sup>4</sup>				
Statement of Licensure (SOL)	Active	1,399	1,524	1,575	1,861
	Delinquent	677	684	732	719
Fictitious Name Permit	Active	1,463	1,413	1,504	1,560
	Delinquent	253	240	243	159

Note: 'Out of State' and 'Out of Country' are two mutually exclusive categories. A licensee should not be counted in both.

Table 6b. Opticianry Licensee Population					
		FY 2020/2021	FY 2021/2022	FY 2022/2023	FY 2023/2024
Registered Dispensing Ophthalmic Business (RDO)	Active	1,103	1,147	1,156	1,185
	Delinquent	385	222	165	105
	Active	2,870	3,085	3,231	3,300

Registered Spectacle Lens Dispenser (SLD)	Delinquent	1,287	724	790	800
	Active	1,142	1,212	1,291	1,371
Registered Contact Lens Dispenser (CLD)	Delinquent	394	246	276	258
	Active	15	16	22	22
Nonresident Ophthalmic Lens Dispenser (NOLD)	Delinquent	2	3	3	5

**Table 7a. Optometry Licensing Data by Type**

Optometrist	Received	Approved /Issued	Closed	Pending Applications			Application Process Times			
				Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY)	
FY 2020/21	(Exam)	378	369	11	15	N/A	N/A	0	0	0
	(License)	355	256	4	221	N/A	N/A	69	112	97
	(Renewal)	4,037	3,839	227	1,639	N/A	N/A	4	0	4
FY 2021/22	(Exam)	334	323	9	15	N/A	N/A	0	0	0
	(License)	287	314	16	176	N/A	N/A	76	106	97
	(Renewal)	3,815	3,638	201	1,273	N/A	N/A	15	0	15
FY 2022/23	(Exam)	310	293	12	21	N/A	N/A	11	0	11
	(License)	259	417	7	11	N/A	N/A	68	33	61
	(Renewal)	4,080	3,850	273	1,680	N/A	N/A	7	0	7
FY 2023/24	(Exam)	324	296	20	24	N/A	N/A	0	0	0
	(License)	235	222	3	20	N/A	N/A	4	16	11
	(Renewal)	4,250	3,718	350	1,078	N/A	N/A	2	0	2

\* Optional. List if tracked by the board.

**Table 7a. Optometry Licensing Data by Type**

SOL	Received	Approved /Issued	Closed	Pending Applications			Application Process Times			
				Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY)	
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	371	338	30	36	N/A	N/A	0	0	0
	(Renewal)	796	509	231	1,067	N/A	N/A	1	0	1
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	430	387	33	47	N/A	N/A	0	0	0
	(Renewal)	753	526	228	1,003	N/A	N/A	0	0	0
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	407	382	41	30	N/A	N/A	1	0	1
	(Renewal)	951	546	279	1,173	N/A	N/A	8	0	8
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	696	674	27	22	N/A	N/A	0	0	0
	(Renewal)	994	555	350	1,129	N/A	N/A	0	0	0

\* Optional. List if tracked by the board.

**Table 7a. Optometry Licensing Data by Type**

FNP		Received	Approved /Issued	Closed	Pending Applications			Application Process Times		
					Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY))
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	126	89	4	46	N/A	N/A	79	122	104
	(Renewal)	1,531	1,427	97	364	N/A	N/A	0	0	0
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	163	80	21	107	N/A	N/A	115	141	127
	(Renewal)	3,815	3,638	201	345	N/A	N/A	0	0	0
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	151	207	34	17	N/A	N/A	110	263	132
	(Renewal)	1,511	1,391	101	349	N/A	N/A	0	0	0
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(License)	208	195	16	14	N/A	N/A	9	50	12
	(Renewal)	1,591	1,443	243	220	N/A	N/A	0	0	0

\* Optional. List if tracked by the board.

**Table 7b. Opticianry Licensing Data by Type**

RDO		Received	Approved/ Issued	Closed	Pending Applications			Application Process Times		
					Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY))
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	65	13	63	59	N/A	N/A	0	154	154
	(License)	10	10	0	0	N/A	N/A	9	0	9
	(Renewal)	609	547	29	546	N/A	N/A	23	0	23
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	85	81	37	26	N/A	N/A	68	123	114
	(License)	83	80	2	1	N/A	N/A	4	0	4
	(Renewal)	618	606	194	288	N/A	N/A	10	0	10
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	82	51	26	31	N/A	N/A	65	76	74
	(License)	52	53	0	0	N/A	N/A	2	0	2
	(Renewal)	511	466	86	327	N/A	N/A	4	0	4
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	136	130	24	13	N/A	N/A	40	39	39
	(License)	127	126	0	1	N/A	N/A	1	0	1
	(Renewal)	691	605	118	159	N/A	N/A	5	0	5

\* Optional. List if tracked by the board.

**Table 7b. Opticianry Licensing Data by Type**

					Pending Applications			Application Process Times		
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SLD		Received	Approved/Issued	Closed	Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY))
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	340	263	31	131	N/A	N/A	62	112	92
	(License)	250	234	5	20	N/A	N/A	10	33	10
	(Renewal)	1,454	1,190	176	1,591	N/A	N/A	4	0	4
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	397	380	67	78	N/A	N/A	40	68	57
	(License)	368	375	9	6	N/A	N/A	7	18	7
	(Renewal)	1,534	1,385	721	921	N/A	N/A	10	0	10
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	428	398	48	58	N/A	N/A	25	45	38
	(License)	402	396	7	4	N/A	N/A	2	0	2
	(Renewal)	1,486	1,175	184	1,126	N/A	N/A	1	0	1
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	382	351	37	50	N/A	N/A	16	55	37
	(License)	351	338	7	7	N/A	N/A	2	2	2
	(Renewal)	1,897	1,433	256	1,042	N/A	N/A	2	0	2

\* Optional. List if tracked by the board.

**Table 7b. Opticianry Licensing Data by Type**

CLD		Received	Approved/Issued	Closed	Pending Applications			Application Process Times		
					Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY))
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	98	68	8	37	N/A	N/A	71	87	78
	(License)	66	63	8	4	N/A	N/A	15	0	15
	(Renewal)	627	556	53	497	N/A	N/A	1	0	1
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	151	142	25	20	N/A	N/A	38	53	45
	(License)	131	133	0	4	N/A	N/A	6	0	6
	(Renewal)	578	497	211	316	N/A	N/A	3	0	3
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	192	172	17	26	N/A	N/A	30	37	33
	(License)	170	169	2	1	N/A	N/A	2	0	2
	(Renewal)	623	524	60	392	N/A	N/A	0	0	0
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	156	152	18	9	N/A	N/A	19	57	26
	(License)	147	143	0	5	N/A	N/A	2	0	2
	(Renewal)	666	550	79	337	N/A	N/A	0	0	0

\* Optional. List if tracked by the board.

**Table 7b. Opticianry Licensing Data by Type**

NOLD		Received	Approved /Issued	Closed	Pending Applications			Application Process Times		
					Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps*	Incomplete Apps*	Total (Close of FY))
FY 2020/21	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	1	0	1	1	N/A	N/A	N/A	N/A	N/A
	(License)	0	0	0	0	N/A	N/A	N/A	N/A	N/A
	(Renewal)	8	7	0	6	N/A	N/A	14	0	14
FY 2021/22	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	5	1	1	4	N/A	N/A	0	245	245
	(License)	1	1	0	0	N/A	N/A	5	0	5
	(Renewal)	9	9	1	3	N/A	N/A	34	0	34
FY 2022/23	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	3	7	0	0	N/A	N/A	42	135	123
	(License)	7	7	0	0	N/A	N/A	9	0	9
	(Renewal)	9	7	1	5	N/A	N/A	2	0	2
FY 2023/24	(Exam)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(Application)	4	2	0	2	N/A	N/A	29	109	69
	(License)	2	2	0	0	N/A	N/A	12	0	12
	(Renewal)	7	5	0	7	N/A	N/A	5	0	5

\* Optional. List if tracked by the board.

**Table 7b. License Denial**

	FY 2020/21		FY 2021/22		FY 2022/23		FY 2023/24	
	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN
License Applications Denied (no hearing requested)	0	0	0	1	0	0	0	0
SOIs Filed	0	2	1	0	1	2	0	1
Average Days to File SOI (from request for hearing to SOI filed)	-	345	57	-	106	49	-	123
SOIs Declined	0	0	0	0	0	0	0	0
SOIs Withdrawn	0	0	0	0	0	0	0	0
SOIs Dismissed (license granted)	0	0	0	0	0	0	0	0
License Issued with Probation / Probationary License Issued	0	0	1	0	0	1	0	0
Average Days to Complete (from SOI filing to outcome)	-	-	335	258	216	203	-	-

19. How does the board verify information provided by the applicant?

- What process does the board use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant? Has the board denied any licenses over the last four years based on the applicant's failure to disclose information on the application,

including failure to self-disclose criminal history? If so, how many times and for what types of crimes (please be specific)?

All applicants for licensure must take and successfully pass a state and federal criminal background check. The Board has not denied any applications over the last four years based on the applicant's failure to disclose information on the application.

- Does the board fingerprint all applicants?

Yes, the Board fingerprints all applicants.

- Have all current licensees been fingerprinted? If not, explain.

Yes, all current and active licensees have been fingerprinted.

- Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?

The National Practitioners Databank (NPDB) is the national databank of disciplinary actions for optometrists and other health care practitioners. State regulatory agencies and other entities required to report disciplinary information populate the database with information about their licensees. Board staff reviews NPDB entries at initial application and enrolls the applicant in continuous monitoring. Should the NPDB be updated with disciplinary actions, judgments, or settlements involving an enrolled licensee, the Board receives a notification of that update.

- Does the board require primary source documentation?

Yes, the Board requires documentation to be received directly from the initiating source and publishes a statement regarding primary source verification on its website: [Primary Source Verification Statement](https://www.optometry.ca.gov/formspubs/applicantprimarysource.pdf). (<https://www.optometry.ca.gov/formspubs/applicantprimarysource.pdf>)

20. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

BPC 3057 provides the requirements for an out-of-state applicant. There is no pathway for an out-of-country applicant to obtain licensure without first having obtained a degree of optometry from an accredited school or college of optometry. Accredited schools and colleges of optometry are in the United States (and territories such as Puerto Rico) and Canada. Out-of-country applicants, except those with Canadian degrees, are directed to contact accredited institutions to inquire about pathways to acquire the necessary degree.

Out-of-state applicants must meet the following requirements:

- Take and pass the California Law and Regulations Exam.
- Take and pass all three parts of the national exams offered by the National Board of Examiners in Optometry, including Treatment and Management of Ocular Disease, or TMOD.
- Provide proof of out-of-state license.

- Provide proof of meeting the California continuing education requirements.
- Take and successfully pass a state and federal fingerprint criminal background check.

21. Describe the board's process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.

The United States military requires optometrists to already have been licensed before they can report for duty in the armed services. There are no education, training, or experience requirements for Registered Spectacle Lens Dispensers or Registered Contact Lens Dispensers; they simply must pass a national examination.

- Does the board identify or track applicants who are veterans? If not, when does the board expect to be compliant with BPC § 114.5?

Yes, the Board identifies and tracks applicants who are veterans.

- How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the board?

The Board has had no applicants offering military education, training, or experience towards meeting optometry or optician licensing requirements. There are no training or experience requirements to obtain a registration as a RDO, SLD, or CLD, and the United States armed forces requires optometrists serving in the military to hold a state license.

- What regulatory changes has the board made to bring it into conformance with BPC § 35?

The Board is following BPC 35, and therefore has not needed to make regulatory changes. The Board's existing requirements do not hinder military personnel from having their application or license renewals processed promptly.

- How many licensees has the board waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on board revenues?

Since the last sunset review in 2020, the Board has waived the renewal fee for two optometrists and zero opticians. The impact to Board revenues is negligible.

- How many applications has the board expedited pursuant to BPC § 115.5?

Since FY 2020-2021, the Board has expedited the following applications pursuant to BPC 115.5:

	BPC 115.5 Applications Received	BPC 115.5 Applications Approved
--	---------------------------------------	---------------------------------------

Optometrist	9	8
Registered Spectacle Lens Dispenser	10	7
Registered Contact Lens Dispenser	5	4

22. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

Yes, No Longer Interested notifications are sent electronically to DOJ by BreZE on an ongoing basis. There is no backlog.

### Examinations

23. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required? Are examinations offered in a language other than English?

Optometrist applicants must pass the California Laws and Regulations Exam (CLRE), and the national examinations developed by the National Board of Examiners in Optometry (NBEO); the exams are only offered in English. Spectacle Lens Dispenser candidates must pass the American Board of Opticianry Examination and Contact Lens Dispenser candidates are required to pass the National Contact Lens Examination. Both national examinations are developed and administered by the American Board of Opticianry and are available in English and Spanish. Further information on the examinations is provided below.

All applicants for licensure as an optometrist must take and pass the CLRE. The Board charges \$275 for the exam, the Board's examination vendor, PSI, charges \$29.15; and the NPDB charges \$4. The CLRE is developed and maintained by the Office of Professional Examination Services (OPES), a division of DCA, in conjunction with executive staff of the Board. OPES staff include testing specialists who are trained to develop and analyze occupational licensure examinations. Individual multiple-choice questions are developed in examination development workshops by licensees serving as Subject Matter Experts. Each question is carefully researched and validated with published references to ensure accuracy and consistency with entry-level practice. The Board publishes on its website a CLRE Examination Bulletin that is updated annually and distributed to the Deans of the optometric colleges. It can be accessed here ([https://www.optometry.ca.gov/formspubs/cib\\_exam.pdf](https://www.optometry.ca.gov/formspubs/cib_exam.pdf)): [CLRE Exam Bulletin](#).

CLRE candidates receive two test opportunities per fee; should the candidate fail the first time, they must wait 180 days before they can sit for another examination. The purpose of this wait period is to allow sufficient time to refresh the examination and provide the candidate time for further study. The Board has found that this lengthy wait period can impact the length of time it takes a candidate to be licensed, with no direct connection to consumer protection. Effective

January 1, 2025, the Board and OPES will be refreshing the examination quarterly, which reduces the period a candidate who fails must wait in half, from 180 days to 90.

All applicants for licensure as an optometrist, in California and in every state in the United States, must also take and pass the national exams produced by NBEO, which includes the following:

- [Part 1 – Applied Basic Science](https://www.optometry.org/exams/part_I) [https://www.optometry.org/exams/part\_I]
- [Part 2 – Patient Assessment & Management](https://www.optometry.org/exams/part_II) [https://www.optometry.org/exams/part\_II]
- [Part 3 - Patient Encounters and Performance Skills](https://www.optometry.org/PEPS_announcement) [https://www.optometry.org/PEPS\_announcement]
- [Treatment and Management of Ocular Disease \(TMOD\)](https://www.optometry.org/exams/tmod) [https://www.optometry.org/exams/tmod]

Parts I and II of the NBEO are computer based, and Part III is performed in person in North Carolina. Upon applying with the Board, applicants must ensure that the NBEO submits their scores to the Board. The Board and the NBEO have arranged for the scores to be transmitted electronically for examination security purposes.

Initially, the COVID-19 pandemic exposed testing challenges within optometry as the reliance on a sole physical site in a state on the East Coast proved challenging for students in California and other distant locations.

The Board simultaneously engaged NBEO in discussions around securing an additional location and collaboratively worked together with numerous stakeholders to ensure that students would not be impacted. This work was successful and the NBEO has administered numerous administrations of Part III since 2020 and despite the pandemic and travel restrictions, all candidates were able to travel and take Part III of the NBEO.

However, the NBEO underwent an extensive study and determined that establishing a second test site is not financially feasible nor does it have any future plans to establish a second site. One likely impact of creating a new site would be to increase the testing fees, which would impact applicants financially. The NBEO has also established contingency plans which it can employ in the case of another emergency, pandemic, natural disaster, cyber-attack, or domestic terrorism.

The Board also worked with the Legislature and stakeholders to secure passage of SB 509 (Chapter 219, Statutes of 2021 (codified as BPC 3046.1)) which provided a pathway for optometry students impacted by COVID-19 to secure temporary licensure with important consumer protections in place, such as a requirement to work under a supervising licensed optometrist. The statute is limiting and would not cover future pandemics or emergencies because it only requires the Board to issue temporary licensure “due to the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic.” However, it may serve as an important model in the future for the Legislature to consider how to address occupational licensure pathways and decisions for highly qualified students and applicants when unplanned situations occur, such as pandemics or national emergencies.

24. What are pass rates for first time vs. retakes in the past 4 fiscal years? Are pass rates collected for examinations offered in a language other than English?

Passage rates are presented below. The CLRE and NBEO are only offered in English. The passage rates have declined across both the state exam, CLRE, and the national exams administered by NBEO.

<b>Table 8(a). Examination Data<sup>3</sup></b>				
<b>California Examination (include multiple language) if any:</b>				
License Type		OPT	-	-
Exam Title		CLRE	-	-
FY 2020/21	Number of Candidates	357	-	-
	Overall Pass %	90%	-	-
	Overall Fail %	10%	-	-
FY 2021/22	Number of Candidates	286	-	-
	Overall Pass %	92%	-	-
	Overall Fail %	8%	-	-
FY 2022/23	Number of Candidates	276	-	-
	Overall Pass %	85%	-	-
	Overall Fail %	15%	-	-
FY 2023/24	Number of Candidates	252	-	-
	Overall Pass %	80%	-	-
	Overall Fail %	20%	-	-
Date of Last OA		2019	-	-
Name of OA Developer		OPES	-	-
Target OA Date		2026		

\*Number of candidates is determined by approved exam requests

<b>Table 8(b). National Examination.</b>				
<b>Include multiple languages, if any.</b>				
License Type		OPT	SLD	CLD
Exam Title		NBEO	ABO	NCLE
FY 2020/21	Number of Candidates	1,778	610	204
	Overall Pass %	92%	49%	45%
	Overall Fail %	8%	51%	55%
FY 2021/22	Number of Candidates	1,701	743	251
	Overall Pass %	88%	49%	51%
	Overall Fail %	12%	51%	49%
FY 2022/23	Number of Candidates	1,743	833	313
	Overall Pass %	84%	51%	51%

<sup>3</sup> This table includes all exams for all license types as well as the pass/fail rate. Include as many examination types as necessary to cover all exams for all license types.

	Overall Fail %	16%	49%	49%
	Number of Candidates		696	271
FY 2023/24	Overall Pass %		56%	53%
	Overall Fail %		44%	47%
	Date of Last OA	2023	2019	2019
	Name of OA Developer	NBEO	Prometric	Prometric
	Target OA Date	2028-30	2026	2026

25. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?

Yes, except for Part III of the NBEO exam, all the exams are computer-based.

For optometry license applicants, Parts I and II of the NBEO are computer-based. The exams are proctored at hundreds of testing sites around the country. Both tests are two hours each and are available to take within two specific weeks, four times a year. For opticianry applicants, both the American Board of Opticianry and the National Contact Lens Examiners exams are computer-based testing. Prometric (third-party testing vendor) proctors the exams in sites across the country. Both tests are two hours each and are available to take continuously.

26. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

The Board has not identified any statutes that hinder the efficient and effective processing of examinations. The Board has identified an issue that can hinder the efficient and effective processing of certain opticianry applications. Regarding the issuance of probationary licenses, this issue is discussed in detail in Section 10 New Issues, Item #4.

27. When did the Board last conduct an occupational analysis that validated the requirement for a California-specific examination? When does the Board plan to revisit this issue? Has the Board identified any reason to update, revise, or eliminate its current California-specific examination?

The Board conducts occupational analyses to provide validation evidence to support the requirements for California-specific examinations as needed. The occupational analysis for the CLRE was last conducted in 2019.

As of January 1, 2025, the Board will update and revise its current California-specific examination quarterly, or every 90 days, in accordance with sound testing practices followed by OPES. Previously, the wait time was six (6) months. The Board has not identified any other reason to update, revise, or eliminate the CLRE. The CLRE is an important consumer protection tool. While the NBEO exams test competency to function as an optometrist – can the individual safely diagnosis primary eye care problems – the CLRE is designed to test a candidate's knowledge of California's specific jurisprudence and consumer protection requirements. For example, it includes questions about patient receipt requirements and sanitation and handwashing specifications, as well as important questions dealing with scope of practice and referral requirements.

## School Approvals

28. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?

Business and Professions Code section 3023 requires the Board to accredit schools, colleges, and universities in or out of this state providing optometric education that it finds giving a sufficient program of study for the preparation of optometrists. The Board accepts accreditation from the Accreditation Council on Optometric Education (ACOE). The ACOE is the only accrediting body for professional optometric degree programs, optometric residency programs, and optometric technician programs in the United States and Canada. Both the U.S. Department of Education and the Council on Higher Education Accreditation recognize the ACOE as a reliable authority concerning the quality of education of the programs the ACOE accredits. The Bureau of Private Post-Secondary Education (BPPE) does not play a role in approving the schools/colleges of optometry; therefore, the Board does not work with the BPPE in the approval process. The Board does not approve or accredit optician schools or programs in California because there are no education or degree requirements necessary to obtain registration as an RDO, SLD, or CLD.

29. How many schools are approved by the board? How often are approved schools reviewed? Can the board remove its approval of a school?

The ACOE has accredited 26 schools and colleges of optometry [in the United States and Canada]. California has three fully accredited schools:

- University of California, Berkeley, School of Optometry;
- Marshall B. Ketchum University, Fullerton; and
- Western University of Health Sciences, College of Optometry, Pomona.

The Board considers the courses offered by the other schools/colleges of optometry accredited by the ACOE to be equivalent to those in California. Any schools/colleges of optometry that are in the pre-accreditation process are reviewed each year until the program has its first graduating class, at which time it becomes fully accredited. The ACOE conducts a formal reevaluation visit at least every eight years for professional O.D. or optometric residency programs. All accredited programs are reviewed annually through an annual reporting process, and the ACOE may visit more frequently if deemed necessary through the annual reporting process. The Board receives and reviews the copy of each report prepared by ACOE.

30. What are the board's legal requirements regarding approval of international schools?

The Board does not have statutory authority to approve or certify international schools of optometry or opticianry. Further, in 2018 via AB 1708 (Chapter 564, Statutes of 2017) the Legislature repealed Business and Professions Code section 3057.5, which required the Board to allow a graduate of a foreign university to sit for the examinations.

## Continuing Education/Competency Requirements

31. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.

There are no continuing education (CE) requirements for optician licenses. Optometrist licensees must complete a minimum number of hours of CE based upon the certifications associated with their license. Licensees with no additional certifications are required to complete 40 hours of CE within the two years immediately preceding the license expiration date. Optometrists certified in the use of therapeutic pharmaceutical agents (TPA) are required to complete 50 hours of CE, with 35 of the required 50 hours on the diagnosis, treatment, and management of ocular disease. An optometrist who has a glaucoma certification is required to complete 10 of the 50 hours specifically on glaucoma. All applicants who graduated in 2008 or after are TPA and glaucoma certified and must complete the same CE requirements of 50 hours total, with 35 hours in ocular disease and 10 hours in glaucoma.

In August 2023 the Board's continuing education regulations found at Title 16 California Code of Regulations section 1536 were amended to allow for "live and interactive" courses, including webinars, which modernized the ability of optometrists to achieve compliance with the CE requirements necessary to renew their license. The Board also doubled the length of approval for Board-approved CE courses to two (2) years. A copy of these regulations can be found here: [CE Regulations](https://www.optometry.ca.gov/lawsregs/approvedreg_2023.shtml). ([https://www.optometry.ca.gov/lawsregs/approvedreg\\_2023.shtml](https://www.optometry.ca.gov/lawsregs/approvedreg_2023.shtml))

<b>Continuing Education</b>			
Type	Frequency of Renewal	Number of CE Hours Required Each Cycle*	Percentage of Licensees Audited**
Optometrist	Biennial	50	7.5%*

\*TPA certified must complete 50 total, with 35 in ocular disease and 10 in glaucoma if also holding that certification, which also post 2008 graduates do.

\*\*Goal. The Board has been building its CE program as discussed in this section.

- How does the board verify CE or other competency requirements? Has the Board worked with the Department to receive primary source verification of CE completion through the Department's cloud?

The Board requires optometry licensees to certify, under penalty of perjury, to meeting the CE requirements pursuant to Title 16 CCR section 1536 each renewal cycle. If a licensee fails to certify completion of the required CE, the license renewal is held until the licensee certifies completion of CE. A licensee may not practice with an expired or delinquent license.

During an audit the Board will request proof of CE attendance via certificates and transcripts. The Board's regulations allow for utilization of ARBO's OE Tracker, which is an optometric continuing education tracker utilized by many optometrists to track their CE compliance. The Board has a direct access login that it will access to verify an auditees CE. All information contained on OE Tracker is primary source and verified as authentic by ARBO.

- Does the board conduct CE audits of licensees? Describe the board's policy on CE audits.

Yes, the Board conducts CE audits of its optometrist licensees. The Board audits a percentage of its license renewals by randomly selecting licensees and requiring them to prove their compliance with CE requirements. There are no CE requirements for opticians. The Board

believes that CE requirements are an important tool for licensees to demonstrate their continued competency to safely practice. To verify compliance with the CE requirements, the Board audits a portion of its licensees. While the Board has struggled in the past to consistently perform CE audits, since FY 2022-2023, quarter 2 the Board has been routinely performing audits and nearly doubled its completed audits in FY 2023-2024, year over year.

Audited licensees are required to supply certificates of completion as proof of meeting the CE requirements. The Board's regulations require licensees to "maintain all course completion certificates on file which are used for renewal purposes for a period of four (4) years from the license renewal date and shall provide these records to the Board upon request or in the event of an audit, if requested, within ten (10) days of the date of the Board's written request for such records." The Board's regulations also authorize use of the ARBO OE Tracker, as mentioned above, to check for CE compliance. Audit notices are sent via email, regular, and certified mail to the address of record to ensure receipt of the notice by the audited licensee. If the licensee fails to respond within the 10-day time frame, they may be considered to have failed the audit. Coursework submitted in response to the audit is evaluated in accordance with Title 16 California Code of Regulations section 1536. If the licensee meets the requirements, the licensee will receive a letter stating they have passed the audit. An audited licensee who fails the audit may receive a citation with a fine.

- What are consequences for failing a CE audit?

The consequences for failing a CE audit can include any of the following: no action taken, letter of education, citation, or formal discipline such as a letter of public reproof or accusation. The Board normally issues a citation with fine and abatement order to remediate the hours.

- How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure?

Data regarding completed CE audits is presented below:

FY 2020-2021: 0 completed.

FY 2021-2022: 0 completed.

FY 2022-2023: 72 audited, 14 failed; 19% failure rate.

FY 2023-2024: 141 audited, 42 failed; 30% failure rate.

To renew an optometrist license, the license holder certifies under penalty of perjury to having met the CE requirements. CE audit failures occur when the results of the audit demonstrate that the licensee holder did not complete the required hours because they cannot prove that they took enough courses to meet the requirements. The Board has been communicating information about CE audits at every board meeting, on its website, via List Serv, newsletter, and social media, at via presentations to stakeholders and universities.

- What is the board's course approval policy?

Under the Board's CE regulations, the following CE course offerings enjoy automatic approval:

- Courses officially sponsored or recognized by any accredited US school or college of optometry.

- Courses provided by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program;
- Courses approved by the ARBO committee known as COPE (Council on Optometric Practitioner Education).
- Any CE course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association Continued Medical Education credits that contribute to the advancement of professional skill and knowledge in the practice of optometry.

CE courses not preapproved as above are reviewed by the Board's Practice and Education Committee (PEC). Providers must apply for CE course approval on the Board approved form and pay a \$100 application fee. The application must be accompanied by any course presentation materials and the curriculum vitae of all instructors and/or lecturers involved. The courses are then approved at a public PEC meeting on an as-needed basis. Course approvals are valid for two (2) years.

- Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?

The PEC, pursuant to Title 16 California Code of Regulations section 1536, approves CE courses which meet the following criteria:

- Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry,
- Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field,
- Whether the proposed course is open to all optometrists licensed in this state, and
- Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for at least three years from the date of course presentation.

- How many applications for CE providers and CE courses were received? How many were approved?

During the past four fiscal years, the Board received approximately 706 applications for CE course approvals and approved approximately 677.

- Does the board audit CE providers? If so, describe the board's policy and process.

No, the Board does not audit CE providers.

- Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensee's continuing competence.

The Board has not reviewed its CE policy to move toward performance-based assessments of licensees' continuing competence, and the Board is not currently planning to implement performance-based assessments, as the Board does not have the staff resources to implement

such assessments. However, in August 2023 the Board authorized live and interactive CE and defined live and interactive as:

- In-person lectures, in-person workshops, in-person demonstrations, or in-person classroom studies which allow participatory interaction between the licensee and the instructor during the instructional period; or
- Lectures, webinars, workshops or audio or video conferences delivered via the internet or computer networks in real time, which means online meetings with participatory interaction between the licensee and the instructor presenting the content during the instructional period at the same time.

The criteria for judging and approving CE courses used by the Board for continuing optometric education credit was also updated to include “whether the proposed course has measures for participatory interaction, including participant attendance reports, in-content quizzes, participant polls, real time participant video requirements, and records of participant log in and log out times.”

## Section 4 – Enforcement Program

32. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

The Board follows DCA's Consumer Protection Enforcement Initiative (CPEI) guidelines, and established the following guidelines:

	Target – Average Days
Intake	7
Intake and Investigations	90
Disciplinary Action	540
Probationer Intake	25
Probationer Violation	10

The Board has consistently met the Intake performance target over the past four (4) years but has not met the targets for the other performance measurements, such as Intake and Investigations and Disciplinary Action. It should be noted that the Board's performance target for Intake and Investigations, 90 days, is a target date that is earlier than all but five (5) other DCA boards and bureaus.<sup>4</sup>

Performance across the fiscal years is noted below:

<sup>4</sup> Board of Psychology is 80 days, Bureau of Automotive Repair is 60 days, Court Reporters Board is 60 days, Naturopathic Medicine Board is 90 days, and the Speech Language Pathology and Audiology and Hearing Aid Dispensers Board is 90 days.

Performance Measure	Target – Average Days	Actual FY 2020-21	Actual FY 2021-22	Actual FY 2022-23	Actual FY 2023-24
Intake	7	4	6	5	2
Intake and Investigations	90	192	308	328	195
Disciplinary Action	540	461	703	682	932
Probationer Intake	25	2	10	1	1
Probationer Violation	10	9	12	0	1

33. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

*Number of Complaints Received*

Complaints for both opticianry and optometry remained consistent across FY 2020-2021 – FY 2022-2023. During FY 2023-2024, however, complaints related to the optometry program increased by 85%, from 211 to 391. Most of this increase is attributed to the increase in internally generated complaints initiated by staff. In FY 2023-2024 this category of complaint increased from 30 to 140, as staff increased its rate of CE audits and targeted unlicensed activity. Complaints received from the public also had a notable increase, increasing from 148 to 204. Over the past year the Board has increased its social media and list serv postings, routinely published its newsletter, and published its complaint form in languages other than English. These efforts may help explain the increase in complaints received from the public.

*Citations Issued*

The issuance of administrative citations increased from 0 issued in FY 2020-2021 to 61 in FY 2023-2024. Most of the citations issued during this time frame are for failing a CE audit, as discussed in question 31.

*Investigation Closure Times*

The Board made significant improvement in the time it takes to close an investigation from the time of assignment. In FY 2020-2021 the Board averaged 329 days for an optometry investigation and 458 days for an opticianry investigation. In FY 2023-2024 these timeframes had been reduced to 122 days for optometry and 236 days for opticianry.

<b>Table 9. Enforcement Statistics</b>									
	FY 2020/21		FY 2021/22		FY 2022/23		FY 2023/24		
	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN	
<b>COMPLAINTS</b>									
Intake									
Received	214	34	213	58	211	43	391	55	
Closed without Referral for Investigation	3	0	1	0	0	0	0	0	
Referred to INV	211	33	210	58	212	42	393	57	
Pending (close of FY)	1	1	3	0	2	2	0	0	

Conviction / Arrest									
CONV Received	9	42	14	57	11	46	8	41	
CONV Closed Without Referral for Investigation	0	1	0	0	0	0	1	1	
CONV Referred to INV	9	42	14	57	11	46	7	40	
CONV Pending (close of FY)	1	0	0	0	0	0	0	0	
Source of Complaint <sup>5</sup>									
Public	161	18	160	24	148	23	204	32	
Licensee/Professional Groups	5	4	7	4	4	1	1	0	
Governmental Agencies	9	41	11	25	11	46	8	41	
Internal	8	32	15	49	30	11	140	13	
Other	1	0	2	0	8	1	4	1	
Anonymous	39	10	32	13	21	7	42	10	
Average Time to Refer for Investigation (from receipt of complaint / conviction to referral for investigation)	3	5	6	6	5	4	2	2	
Average Time to Closure (from receipt of complaint / conviction to closure at intake)	20	3	23	10	3	4	3	1	
Average Time at Intake (from receipt of complaint / conviction to closure or referral for investigation)	3	5	6	6	5	4	2	2	
<b>INVESTIGATION</b>									
Desk Investigations									
Opened	122	61	134	75	147	53	367	84	
Closed	66	71	98	61	214	118	410	126	
Average days to close (from assignment to investigation closure)	329	458	441	566	314	463	122	236	
Pending (close of FY)	171	110	201	120	141	70	107	40	
Non-Sworn Investigation	N/A		N/A		N/A		N/A		
Opened	0	0	0	0	0	0	0	0	
Closed	0	0	0	0	0	0	0	0	
Average days to close (from assignment to investigation closure)	0	0	0	0	0	0	0	0	
Pending (close of FY)	N/A		N/A		N/A		N/A		
Sworn Investigation									
Opened	1	1	5	3	14	5	9	4	
Closed	7	2	0	1	5	4	11	1	
Average days to close (from assignment to investigation closure)	840	408	0	91	151	259	369	472	
Pending (close of FY)	3	2	8	4	16	5	12	6	
All investigations <sup>6</sup>									
Opened	220	75	224	115	288	88	400	140	
Closed	161	87	210	106	222	151	443	97	
Average days for all investigation outcomes (from start investigation to investigation closure or referral for prosecution)	167	383	352	433	279	433	298	278	

<sup>5</sup> Source of complaint refers to complaints and convictions received. The summation of intake and convictions should match the total of source of complaint.

<sup>6</sup> The summation of desk, non-sworn, and sworn investigations should match the total of all investigations.

Average days for investigation closures (from start investigation to investigation closure)	164	314	314	316	260	316	227	236
Average days for investigation when referring for prosecution (from start investigation to referral for prosecution)	1010	385	915	537	275	432	402	274
Average days from receipt of complaint to investigation closure	168	318	318	317	264	317	230	242
Pending (close of FY)	164	95	171	100	114	50	81	20
<b>CITATION AND FINE</b>								
Citations Issued	0	0	4	7	17	16	54	7
Average Days to Complete (from complaint receipt / inspection conducted to citation issued)	0	0	1,022	710	261	646	199	289
Amount of Fines Assessed	0	0	\$6,750	\$25,000	\$29,200	\$61,250	\$95,700	\$21,950
Amount of Fines Reduced, Withdrawn, Dismissed	0	0	0	0	\$7,000	\$1,875	\$6,400	\$0
Amount Collected	0	0	\$4,750	\$74,159	\$17,500	\$12,959	\$95,250	\$12,050
<b>CRIMINAL ACTION</b>								
Referred for Criminal Prosecution	0	0	0	0	0	1	0	1
<b>ACCUSATION</b>								
Accusations Filed	0	1	3	1	2	4	6	2
Accusations Declined	0	0	0	1	0	0	0	1
Accusations Withdrawn	1	0	0	0	0	0	2	0
Accusations Dismissed	0	0	0	0	0	0	0	0
Average Days from Referral to Accusations Filed (from AG referral to Accusation filed)	0	157	107	139	618	124	520	129
<b>INTERIM ACTION</b>								
ISO & TRO Issued	0	0	0	0	0	0	0	0
PC 23 Orders Issued	0	0	0	0	0	0	1	0
Other Suspension/Restriction Orders Issued	0	0	0	0	1	1	2	1
Referred for Diversion	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Petition to Compel Examination Ordered	0	0	0	0	0	0	0	0
<b>DISCIPLINE</b>								
AG Cases Initiated (cases referred to the AG in that year)	5	5	7	6	6	12	10	7
AG Cases Pending Pre-Accusation (close of FY)	1	4	2	3	6	9	8	3
AG Cases Pending Post-Accusation (close of FY)	6	1	6	2	4	5	2	0
<b>DISCIPLINARY OUTCOMES</b>								
Revocation	1	2	0	0	1	2	0	1
Surrender	1	1	0	0	1	0	1	1
Suspension only	0	0	0	0	0	0	3	0
Probation with Suspension	1	0	1	0	0	0	1	0
Probation only	1	0	1	1	1	2	0	2

Public Reprimand / Public Reprimand / Public Letter of Reprimand	0	0	0	0	1	0	0	0
Other	0	0	0	0	0	2	0	0
<b>DISCIPLINARY ACTIONS</b>								
Proposed Decision	1	0	2	10	1	0	0	1
Default Decision	1	2	0	0	0	2	0	0
Stipulations	2	1	0	0	3	1	2	3
Average Days to Complete After Accusation (from Accusation filed to imposing formal discipline)	479	371	728	253	196	195	189	226
Average Days from Closure of Investigation to Imposing Formal Discipline	629	556	1297	668	755	592	706	393
Average Days to Impose Discipline (from complaint receipt to imposing formal discipline)	1080	931	1032	842	793	793	818	918
<b>PROBATION</b>								
Probations Completed	1	1	1	3	0	1	3	1
Probationers Pending (close of FY)	7	4	5	3	4	5	3	3
Probationers Told *	0	0	0	0	0	1	1	1
Petitions to Revoke Probation / Accusation and Petition to Revoke Probation Filed	0	0	2	0	2	0	0	1
<b>SUBSEQUENT DISCIPLINE<sup>7</sup></b>								
Probations Revoked	0	0	1	0	2	0	1	1
Probationers License Surrendered	0	0	0	0	0	1	0	0
Additional Probation Only	0	0	0	0	0	0	0	0
Suspension Only Added	0	0	0	0	0	0	0	0
Other Conditions Added Only	0	0	0	0	0	0	0	0
Other Probation Outcome	0	0	0	0	0	0	0	0
<b>SUBSTANCE ABUSING LICENSEES</b>								
Probationers Subject to Drug Testing	2	1	1	1	2	1	0	1
Drug Tests Ordered	14	22	60	28	97	26	33	7
Positive Drug Tests	0	1	6	0	5	0	0	2
<b>PETITIONS</b>								
Petition for Termination or Modification Granted	3	1	1	1	0	0	0	0
Petition for Termination or Modification Denied	1	0	0	0	0	1	0	0
Petition for Reinstatement Granted	0	0	0	0	0	0	0	0
Petition for Reinstatement Denied	0	0	0	0	0	0	0	0
<b>DIVERSION **</b>								
New Participants	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Successful Completions	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Participants (close of FY)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Terminations	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Terminations for Public Threat	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>7</sup> Do not include these numbers in the Disciplinary Outcomes section above.

Drug Tests Ordered	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Positive Drug Tests	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<b>Table 10. Enforcement Aging</b>														
	FY 2020/21		FY 2021/22				FY 2022/23		FY 2023/24		Cases Closed		Average %	
	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN	OPT	OPN
<b>Investigations (Average %)</b>														
Closed Within:														
90 Days	101	29	106	52	128	53	348	92	683	226	61.8%	48.9%		
91 - 180 Days	7	15	23	8	20	8	33	12	83	43	7.5%	9.3%		
181 - 1 Year	19	10	22	13	46	13	20	10	107	46	9.6%	10%		
1 - 2 Years	19	14	37	9	69	9	23	12	148	44	13.4%	9.5%		
2 - 3 Years	3	5	10	13	13	13	16	8	42	39	3.8%	8.4%		
Over 3 Years	5	12	22	20	9	20	6	12	42	64	3.8%	13.8%		
Total Investigation Cases Closed	154	85	220	115	285	116	446	146	1105	462	100%	100%		
<b>Attorney General Cases (Average %)</b>														
Closed Within:														
0 - 1 Year	0	0	0	0	0	2	1	3	1	5	7.7%	29.4%		
1 - 2 Years	0	1	0	0	1	2	0	0	1	3	7.7%	17.6%		
2 - 3 Years	0	0	1	0	0	1	2	1	3	2	23.1%	11.8%		
3 - 4 Years	0	1	1	1	2	0	0	1	3	3	23.1%	17.6%		
Over 4 Years	2	1	0	2	1	0	2	1	5	4	38.4%	23.5%		
Total Attorney General Cases Closed	2	3	1	0	4	7	5	6	12	16	100%	100%		

34. What do overall statistics show as to increases or decreases in disciplinary action since last review?

Most disciplinary outcomes have shown little change. However, the overall statistics show a decrease in revocations across both optometry and opticianry. During the time period covered in the last sunset review, FY 2017-2018 through FY 2019-2020, there were seven (7) optometrist licenses revoked and 10 opticianry registrations revoked. During the time period covered in this report, FY 2020-2021 through FY 2023-2024, there were two (2) optometrist licenses revoked and five (5) opticianry registrations revoked.

35. How are cases prioritized? What is the board's compliant prioritization policy?

The Board prioritizes cases per DCA's [Complaint Prioritization and Enforcement Referral Guidelines](#), which were updated in FY 2023-24.

Guidance To Refer Complaints to the Division of Investigation (DOI)  
 CATEGORY 1 – URGENT – Immediate referral to DOI  
 Complaints alleging imminent and/or ongoing public safety risk

- Practicing under the influence of drugs or alcohol, or mental or physical impairment of the licensee resulting in great bodily injury/death or major financial harm over \$10k
- Use of force incidents resulting in great bodily injury/death
- Unlicensed practice or practicing with a delinquent/revoked license resulting in great bodily injury/death or major financial harm over \$10k and/or requiring an in-person undercover operation
- Aiding and abetting unlicensed practice resulting in great bodily injury/death or major financial harm over \$10k and/or requiring an in-person undercover operation
- Project abandonment resulting in major financial loss over \$10k and/or great bodily injury/death to the client/public
- Acts of serious consumer harm, gross negligence, or incompetence by a licensee resulting in great bodily injury/death (criminal)
- Complaints with significant media coverage and/or sensitivities
- Examination subversion or board examination compromised (recommend consultation with DCA's Office of Professional Examination Services prior to DOI referral)
- Obtaining licensure by selling/using fraudulent documents/transcripts
- Re-inspections after a refusal to comply with routine inspections that resulted in violent threats and/or great bodily injury to the inspector or another board/bureau employee
- Other felony criminal violations, including but not limited to:
  - Selling fraudulent documents/transcripts
  - Major financial fraud/financial elder/insurance fraud abuse over \$10k
  - Sexual misconduct with a client (non-consensual)

#### CATEGORY 2 – HIGH – Discuss with DOI prior to assigning to the Board

- Acts of serious consumer harm, gross negligence, or incompetence by a licensee resulting in great bodily injury/death or major financial loss under \$10k (non-criminal)

#### CATEGORY 3 – Complaints appropriate to be worked by the Board

- Use of force incidents not resulting in great bodily injury/death
- General unprofessional conduct, negligence, incompetence resulting in minor/potential harm
- General work quality complaints, offensive behavior/conduct/speech (noncriminal)
- Unlicensed practice or practicing with a delinquent/revoked license with minor/potential consumer harm/injury/financial loss, not requiring an in-person undercover operation
- Aiding and abetting unlicensed practice – non-criminal, minor/potential harm/injury/financial loss, not requiring an in-person undercover operation
- Working outside the scope of the license (non-criminal, minor/potential consumer harm, no major financial loss)
- Site inspections – solo and joint with board expert, no need for law enforcement standby/security
- Examination Subversion – individual cheating, examination not compromised
- Failing to have required permits, insurance, or violating related laws/ordinances (e.g., worker's compensation violations, permit violations, business violations, zoning violations, public contract violations, labor code violations, etc.)
- Civil lawsuits/malpractice - unless determined to be Category 1 or 2
- Project abandonment with no/minimal consumer harm (non-criminal, minor/potential consumer harm, no major financial loss, minor/potential patient harm)
- Applicant misconduct not related to examination subversion or fraudulent documents
- Unsanitary conditions requiring site visit

#### CATEGORY 4 – Complaints appropriate to be worked by the Board

- Subsequent arrest notifications that do not require a suspension (Penal Code section 23 (PC23) action or interim suspension order (ISO)) and DOI assistance
- Failure to release records, recordkeeping violations, contract violations
- False/misleading advertising – not unlicensed/not criminal
- Failure to display license number
- Continuing education violations
- Declaration and record collection
- Probation violations unless determined to be Category 1 or 2
- Non-jurisdictional issues
- Other Services Provided by DOI Upon Request
  - Law enforcement standby/security for board/bureau staff or member safety
  - Assist with PC23/ISO, if unable to quickly take action at the board/bureau level
  - Issuing and serving subpoenas when needed

36. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?

Licensees, insurers, state and local governments, prosecutors, and courts are all required to report to the Board information regarding settlements, judgements, and arbitration awards, pursuant to Business and Professions Code sections 801, 801.1, 803.5, and 803.6. In addition, the Board receives reports from the National Practitioner Data Bank. The Board does not believe there are problems with receiving the reports.

- What is the dollar threshold for settlement reports received by the board?

The dollar threshold for settlement reports is \$3,000.

- What is the average dollar amount of settlements reported to the board?

The Board received nine (9) settlement reports in the last four (4) fiscal years. The total amount of the nine (9) settlements is \$1,881,249. The average dollar amount is \$209,027.

37. Describe settlements the board, and Office of the Attorney General on behalf of the board, enter into with licensees.

The Board may enter into a settlement agreement with the Respondent at any time after the pleading document (Accusation or Statement of Issues) is filed.

Settlement agreements are one tool the Board uses to reduce the time and expense associated with disciplinary actions, but the Board does not seek a settlement in every case. The following factors are considered when settlement terms are proposed:

- Nature and severity of the alleged violations
- Actual or potential harm
- Overall Discipline or conviction history
- Rehabilitation
- Mitigating evidence

- Compliance with court orders
- Cooperation with the Board's investigation
- Time elapsed since the alleged violations occurred
- Work Respondent has done to prevent recurrence of the alleged violations

Settlement terms are based on the Board's Disciplinary Guidelines, which describe the disciplinary actions and probation terms indicated for specific violations of the law. Enforcement staff work with the Executive Officer and the assigned Deputy Attorney General to draft a settlement based on the alleged violations, the Board's Disciplinary Guidelines, and factors indicated above.

Once the settlement has been accepted and signed by Respondent, the Stipulated Settlement goes to the Board members for voting. The Board may adopt or reject the Stipulated Settlement. If adopted, the Stipulated Settlement will become the final order in the disciplinary action. If rejected, the Board may propose different settlement terms be given to Respondent for acceptance, or the Board may remand the case to hearing in front of an Administrative Law Judge.

- What is the number of cases, pre-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?

The Board is not statutorily authorized to settle before filing an Accusation.

- What is the number of cases, post-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?

The Board had eleven (11) stipulated settlements and eleven (11) cases that were categorized as resulting in a hearing (proposed decisions and default decisions). Of the eleven (11) that "resulted in a hearing", six (6) of those were default decisions.

- What is the overall percentage of cases for the past four years that have been settled rather than resulted in a hearing?

Fifty percent of the cases resulted in being settled rather than resulting in a hearing.

38. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

Yes, the statute of limitations for optometrist licenses is defined in BPC section 3137. It states that, with certain exceptions, the Board must file an Accusation within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. The Board has not lost any cases due to statute of limitations.

39. Describe the board's efforts to address unlicensed activity and the underground economy.

Consistent with the prior sunset report, the primary way the Board addresses unlicensed activity is through outreach. The Board does outreach to aspiring licensees by presenting information at accredited schools or colleges of optometry, including the requirements to obtain initial licensure.

These events reach both the first year and fourth year optometry students. Board staff also works with optician organizations and schools to present information regarding the requirements to obtain registrations as a spectacle or contact lens dispenser.

Board staff also proactively research unregistered dispensing ophthalmic businesses, including nonresident ophthalmic lens dispensers, and unpermitted retail offices of optometry. When unregistered or unpermitted businesses are identified, Board staff will send a contact letter advising the business of the application and licensing requirements, providing a pathway to come into compliance. Operators that ignore several Board attempts at achieving compliance may face disciplinary action and/or a citation. The primary goal in these situations is to achieve compliance and bring the business into the regulatory fold.

## Cite and Fine

40. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the \$5,000 statutory limit?

Business and Professions Code sections 125.9 and 148 provide the Board authority to issue citations and fines against licensees, registrants, and unlicensed persons for violations of the Optometry Practice Act and the laws governing opticianry. Within opticianry, Business and Professions Code section 2556 authorizes the Board, by regulation, to impose and issue administrative fines and citations and Business and Professions Code section 3095, within the Optometry Practice Act, authorizes the same.

Since the last sunset review, the Board has not made any changes to the regulations which govern the Board's citation and fine authority. However, the Board has identified an issue which it plans to pursue via regulation.

There are, in effect, two citation programs: one for opticianry and one for optometry and they operate with distinct differences that make the administration of the citation program inefficient.

The optometry citation program operates as a Class A, B, C system, as follows:

- Class A citations involve a person who has engaged in the practice of optometry without a current and valid license. A class A citation is subject to an administrative fine in an amount not less than \$1,500 and not to exceed \$2,500 for each violation.
- Class B citations involve an optometrist who has either:
  - (1) Violated any statute or regulation which would be grounds for discipline by the Board that has caused non-physical financial harm to a person, or
  - (2) Has committed a violation that are grounds for issuance of a Class "C" citation and has been issued one or more prior Class "C" citations within the three (3) years immediately preceding the issuance of the citation.

A class B citation is subject to an administrative fine in an amount not less \$500 and not to exceed \$2,500 for each violation.

- Class C citations involve an optometrist who has violated any statute or regulation which would be grounds for discipline by the Board that did not cause physical or financial harm to a person. A class "C" citation is subject to an administrative fine in an amount not less than \$250 and not to exceed \$2,500 for each violation.

Under this class system for optometry, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

- (1) The citation involves a violation that has an immediate relationship to the health and safety of another person;
- (2) The cited person has a history of two or more prior citations of the same or similar violations;
- (3) The citation involves multiple violations that demonstrate a willful disregard of the law;
- (4) The citation involves a violation or violations perpetrated against a senior citizen or disabled person;
- (5) The citation involves fraudulent billing submitted to an insurance company, or Medi-Cal or Medi-Care programs.

The citation system for opticianry does not operate on a class system and does not authorize a citation with a fine up to \$5,000, but instead specifies the statutory code and applies a fine range. For example, for violations of the following statutory codes the Board is authorized to fine between \$1,100 and \$2,500:

- Business and Professions Code section 810
- Business and Professions Code section 2542
- Business and Professions Code section 2553
- Business and Professions Code section 2556.5
- Business and Professions Code section 2559.1
- Business and Professions Code section 2559.2(e)
- Business and Professions Code section 2560

The problem with the opticianry citation system is that statutory codes are often amended and may be renumbered. The only way for the authority to continue to exist is for the program to initiate a regulatory proposal. For example, subsection (e) of Business and Professions Code section 2559.2 does not exist following amendments made in 2022. Additionally, the unprofessional conduct statute for opticianry, Business and Professions Code section 2555.5, is not listed in the regulation so the Board cannot issue a fine with a citation for violating this code section.

There are other important differences between the two citations programs. If an optometrist wishes to contest a citation and participate in an informal citation conference, they have 30 days to notify the Board and submit the request. A cited optician, however, only has 10 days. Once the Board is notified of the cited party's timely request for an informal citation conference, optometrists are given 60 days within which the conference will be held, whereas opticians get 30 days.

The Board anticipates pursuing a regulatory change to address these issues. Specifically, the Board intends to amend the opticianry regulations to mirror the optometrist class A, B, and C system timelines.

#### 41. How is cite and fine used? What types of violations are the basis for citation and fine?

The Board's citation and fine program is an important enforcement tool to provide consumer protection and is typically used when patient harm does not exist or a licensee commit minor violations of statutes and regulations. As such, the Board's primary goal is to reform the wrong behavior rather than engage in a more formal and exacting disciplinary action. To refer these cases to the Attorney General's office would be costly and not bring about efficient consumer protection and justice. For example, violations of the continuing education requirements can be addressed with citations and fines with orders of abatement, requiring the licensee to complete the missing education. These cases can often be dispensed within one (1) to three (3) months from the start of an audit finding a violation, to issuance of a citation to licensee, and ending with compliance with the order of abatement. Referring this same case to the Attorney General would likely take longer than one (1) year to adjudicate, cost the Board significant resources, and it's probable the administrative law judge would order substantially similar terms. It is important to remember that citations can be appealed to an administrative hearing.

The citation factors and violations are found at Title 16 California Code of Regulations section 1578 and 1579, for optometry, and at Title 16 California Code of Regulations section 1399.276 for opticianry, which references Business and Professions Code section 125.9, subd. (b)(3)

The factors for optometry are as follows:

- The gravity of the violation. If the violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection, a citation will not be issued.
- The good or bad faith exhibited by the cited person.
- The history of previous violations of the same or similar nature.
- Evidence that the violation was or was not willful.
- The extent to which the cited person has cooperated with the board's investigation.
- The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation.
- Any other factors as justice may require.

The citable offenses for optometry are:

- Unlicensed practice.
- Violations of any statute or regulation that would be grounds for discipline.
- Unprofessional conduct (as provided for in Business and Professions Code section 3110 and Title 16 California Code of Regulations section 1582.

For opticianry, the citable offenses are the specific code sections listed in Title 16 California Code of Regulations section 1399.276.

#### 42. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?

As of July 1, 2024, the Board has conducted 22 informal citation conferences in the last four (4) fiscal years.

The Board has received nine (9) Administrative Procedure Act appeals over the same period.

The Board does not have a Disciplinary Review Committee.

	ICR	APA Appeals
23/24	11	3
22/23	8	5
21/22	3	1
20/21	0	0
<b>Total</b>	<b>22</b>	<b>9</b>

43. What are the five most common violations for which citations are issued?

1. Failing a CE audit
2. Unlicensed practice
3. Unprofessional Conduct
4. Criminal Conviction
5. Advertising

44. What is average fine pre- and post- appeal?

45. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

When the Board is unable to collect on a fine associated with a citation through conventional means (i.e., the cited person remits payment of their own accord), the Board will send three letters to the cited person informing them of the intercept program, and notifying them that failure to make payment by the identified date will result in the information being sent to the Franchise Tax Board (FTB) intercept program. This is most commonly used for unlicensed practice citations where the cited individual has no professional relationship or association with the board. Licensees will not be able to renew their licensee unless all outstanding fines have been paid.

### **Cost Recovery and Restitution**

46. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.

The Board seeks cost recovery of all investigative and prosecution costs in all disciplinary cases. Cost recovery can be ordered as a reinstatement condition of a surrendered or revoked license

or as a condition of probation. The Board accepts payment plans; however, it requires that any outstanding balance is paid in full six months before the completion of probation.

47. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

Cost recovery is ordered for probationers who were licensed before the disciplinary action and in license revocation or surrender cases when ordered by an Administrative Law Judge after a hearing or when included in settlement terms. The cost recovery amount ordered is based on the amount the Board spent investigating and prosecuting the case. When the cost recovery order is due upon reinstatement of a revoked or surrendered license, the Board considers whether the cost recovery would likely be collected.

	20/21	21/22	22/23	23/24	Total
Revocations	0	1	3	2	6
Surrenders	1	1	1	2	5
Cost Recovery	\$1,693.75	\$10,810.00	\$31,403.75	\$14,633.75	\$58,541.25

48. Are there cases for which the board does not seek cost recovery? Why?

The Board's authority only allows for cost recovery to be imposed against licensees, not applicants for licensure. The Board does not seek cost recovery in cases involving the denial of an application for licensure or in cases that result in a default decision.

49. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.

It is uncommon for the Board to use FTB intercepts to collect cost recovery. Cost recovery is ordered when the license or registration(s) is put on probation, when a license or registration(s) is voluntarily surrendered, or when a hearing has resulted in a decision revoking a license or registration. Unless a judge or settlement orders otherwise, cost recovery for surrendered or revoked license or registration(s) is only due upon reinstatement. As such, a cost recovery order rarely necessitates a Franchise Tax Board intercept.

<b>Table 11. Cost Recovery<sup>8</sup></b>				
	(list dollars in thousands)			
	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Total Enforcement Expenditures	\$632,000	\$703,000	\$885,000	\$722,000
Potential Cases for Recovery *	6	3	7	6
Cases Recovery Ordered	4	3	6	6
Amount of Cost Recovery Ordered	\$20,000	\$15,000	\$60,000	\$35,000
Amount Collected	\$21,000	\$11,000	\$7,000	\$7,000

\* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

50. Describe the board's efforts to obtain restitution for individual consumers, any formal or informal

<sup>8</sup> Cost recovery may include information from prior fiscal years.

board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

The Board does not have jurisdiction to compel restitution payments from its licensees. There have been cases in the past where the Board sought restitution if the case involved fraud. If the Board obtained evidence of substantial financial harm suffered by a consumer from a licensee, the Board may seek restitution at the hearing or in a stipulated settlement.

<b>Table 12. Restitution</b> <span style="float: right;">(list dollars in thousands)</span>				
	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Amount Ordered	\$0	\$0	\$0	\$0
Amount Collected	\$0	\$0	\$0	\$0

## Section 5 – Public Information Policies

51. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the board's website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?

The Board primarily communicates with applicants, licensees, consumers, and members of the public via its website, quarterly newsletter, ListServ, and social media channels. The Board posts all board meeting materials online, generally one (1) week prior to the scheduled meeting and these materials remain on the website indefinitely. Meeting minutes from the prior meeting are included in the materials for the subsequent meeting and posted online a week in advance. Final meeting minutes, as approved at the board meeting, are posted online following the meeting and remain available indefinitely.

52. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings? How long to webcast meetings remain available online?

Yes, the Board webcasts its meetings. Links to each webcast are available for each meeting and posted on the Board's website. Recordings also remain available via DCA's YouTube page.

53. Does the board establish an annual meeting calendar, and post it on the board's web site?

Yes, the Board establishes an annual board and committee meeting calendar and posts it on the website.

54. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with BPC § 27 if applicable?

Yes, the Board posts accusations and disciplinary actions consistent with DCA's Website Posting of Accusations and Disciplinary Actions and the provisions of section 27 of the Business and Professions Code.

55. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

The Board complies with Business and Professions Code section 27, which requires the following information:

- licensee's name;
- address of record;
- license status;
- license type;
- issue date;
- expiration date;
- certification; and
- disciplinary or enforcement actions.

56. What methods are used by the board to provide consumer outreach and education?

The primary methods used by the Board to provide consumer outreach and education are via the Board's website ([www.optometry.ca.gov](http://www.optometry.ca.gov)), quarterly newsletter, and social media channels. Board staff also provide presentations on the licensing and enforcement process to stakeholders.

## Section 6 – Online Practice Issues

57. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate internet business practices or believe there is a need to do so?

The Board regulates internet businesses via the Nonresident Ophthalmic Lens Dispensers Registration Act, which the Legislature enacted in 2022. That act requires anyone located outside of California who ships, mails, furnishes, or delivers ophthalmic lenses (spectacle and contact lenses) at retail to a patient at a California address to be registered with the Board. Most of these businesses operate via internet websites with e-commerce stores.

The Board also regulates certain aspects of advertising (including advertising on the internet) as it pertains to nonresident ophthalmic lens dispensers, opticians, and optometrists.

Since the prior sunset review, the world has experienced a global pandemic which has helped increase the delivery of optometric services via telehealth. At the same time, technological advancements continue to introduce new products and methods to assist consumers in receiving, and practitioners in providing remotely delivered optometric services. While many of these enterprises are licensed and regulated by the Board, some operators believe they are exempt from the Board's purview and remain unregistered. For example, one retailer claims to be exempt from all Board registration and licensing requirements because:

- “their stores in California do not perform ophthalmic dispensing.”
- “their stores do not perform eye examinations.”
- The “ophthalmologist-owned medical practice subleases space within or adjacent to the retail stores.”
- That “Business and Professions Code section 2556.1 and 2557 “does not affect licensed physicians” and “does not apply.”

This retailer's website tells consumers the following: “A complete eye exam...includes a thorough evaluation of your vision health, including a retinal scan. Something most optical retailers charge more for. Moreover, the exam will help to detect any early signs of serious eye conditions.”

What will a consumer receive in the eye exam from this retailer? According to their website, the following: “The doctor's technician will administer five pre-tests to provide a more comprehensive assessment of your eye health. This screening can detect early signs of serious eye conditions such as glaucoma and cataracts.

The following tests are included in your eye exam:

- Autorefraction
- Keratometry
- Tonometry
- Retinal Evaluation
- Visual Fields

Our technician will then escort you to a private, sanitized exam room for an Acuity and Refraction Exam to test for your prescription. Our exclusive telehealth technology allows us to perform this eye exam virtually via video-screen. A physical doctor is also available on-site.”

Consumers who shop at this retailer are likely unaware that the business is not registered or regulated by the Board. They may also not be aware that the individual technician assisting them is unlicensed.

The Board believes these entities should not operate without state regulation and looks forward to working with the Legislature to determine whether the business model employed by entities like this retailer should be required to register with the Board, or not. This issue is discussed in greater detail in response to prior issue #12 and #13 and in current issue #2.

## Section 7 – Workforce Development and Job Creation

### 58. What actions has the board taken in terms of workforce development?

The Board is an important stakeholder in developing the optometric and opticianry workforce. While limited in what it can do with available resources, the Board has initiated several important workforce development efforts. Notably, the Board has actively worked to improve application processing times for initial optometrist applications. Timely entry into the job market is a critical measure of workforce development. If applicants cannot efficiently obtain a license in California, but can in other states, California competitiveness will suffer. Prior to Spring of 2023, an initial applicant for licensure as an optometrist could expect to wait 60-90 days to be licensed.

Therefore, the applicant would graduate in May but may not receive their license until August or September. As of July 1, 2024, the processing time for initial applicants for licensure as an optometrist is under one (1) week.

Encouraging the workforce to professionally develop is also an area where the Board can play a role. The Board is committed to diversity, equity, inclusion, and belonging (DEIB) and embedded these values into the amended Strategic Plan, adopted on February 16, 2024. For example, Goal 5.7 of the Strategic Plan now states: "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, inclusion, and belonging." The Board has taken steps toward fulfilling that goal by releasing a Board staff researched list of continuing education courses in DEIB, which can be accessed here: [DEIB CE Course List \[https://www.optometry.ca.gov/formspubs/deib\\_ce\\_course\\_list.pdf\]](https://www.optometry.ca.gov/formspubs/deib_ce_course_list.pdf).

The Board also passed a legislative proposal at its August 25, 2023, meeting to encourage optometrists to take continuing education courses in DEIB and this is included as New Issue #8.

The Board is also committed to educating its licensees and the public about emerging trends in optometry and received a [presentation \[optometry.ca.gov/meetings/materials/20240531\\_board\\_agenda\\_item6.pdf\]](https://www.optometry.ca.gov/meetings/materials/20240531_board_agenda_item6.pdf) at its May 31, 2024, board meeting from Dr. Melissa Barnett, OD, FAAO, FSLA, FBCLA, Director of Optometry, University of California, Davis, titled Ocular Surface Disease: Exploring the Impact of Hormonal Influence. The presentation discussed dry eye disease in the context that some individuals are more susceptible to suffering from the disease due to sex hormones.

The Board believes these are important examples of the way it can play a positive role to encourage workforce development.

59. Describe any assessment the board has conducted on the impact of licensing delays.

With the arrival of a new Executive Officer in late 2022, the Board was interested in learning about the length of time it took to process optometrists' initial application for licensure. As discussed earlier in the report, this timeline was as high as 90 days in Fiscal Year 2022-23. A business process assessment of the initial application process was conducted, and several reforms were implemented, which have resulted in lowering the timeline from 90 days to under one (1) week. Key to the success of this turnaround has been the organization at intake of the voluminous materials received from applicants prior to the applicant creating an online BreZE account. By creating a virtual filing process where each applicant receives an individual electronic folder where their materials will be stored, staff is able to seamlessly store and process transcripts and exam scores as they arrive, transitioning the materials to BreZE and the application once opened and paid for by the applicant.

60. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.

The Board believes working closely with schools, especially the three optometric colleges located in California, is critical to a successful licensing experience. The Executive Officer and/or staff present each year to each graduating class, covering the application and licensing process, but also discussing enforcement and continuing education responsibilities. Beginning in 2023, the

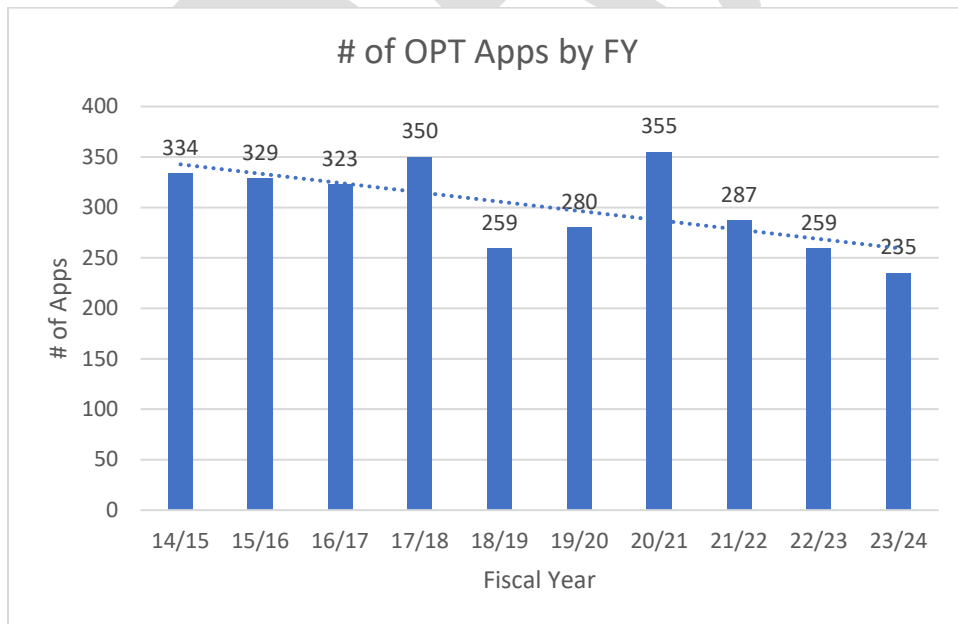
Executive Officer began speaking to multiple classes of optometry students at the three optometric colleges located in California, including first year students, as the Board believes introducing students to the board and the application and licensing requirements in California early and often will lead to success in both the application and licensing process, but also help make for more informed optometrists.

Prior to the COVID-19 pandemic, the Board would generally have one (1) public meeting a year hosted on the campus of one of the California optometric colleges. The Board looks forward to reinstating this meeting in 2025 as it affords an in-person opportunity for optometric students to engage with the Board and its operations.

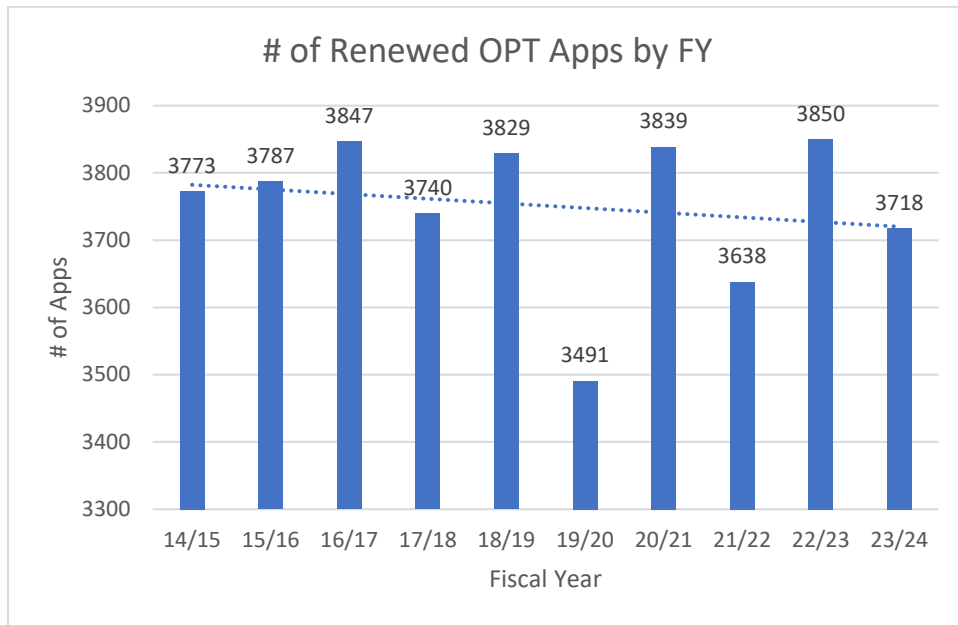
The Executive Officer and staff also work closely with stakeholders representing opticians in California and present information to the students and groups interested in an opticianry career. The Executive Officer has both traveled in-person and presented virtually to these groups.

61. Describe any barriers to licensure and/or employment the board believes exist.

In California, optometrists are not authorized to practice to the full extent of their training and education. Approximately 20 states authorize contemporary optometric procedures that are not permitted in California, and many states have higher reimbursement rates for optometric services provided to beneficiaries of social assistance programs. Combined with California's high cost of living, especially housing, and high debt burdens carried by the average newly graduated optometrist (optometrists graduate with one of the highest debt-to-income ratios among the healing arts), the competitiveness and attractiveness of the California license may be impacted. Shifts in how optometry is practiced, combined with changing patterns in how and where work is performed may also have an impact. These factors impact the decisions applicants make when considering where to seek licensure. When looking at the data, over the last 10 years the Board has identified a reduction in optometrist (OPT) applications for initial licensure:



As fewer initial licenses are applied for and issued, relatedly, the Board has identified a reduction in OPT renewals:



Reductions in initial licensure and subsequent renewals significantly impact the Board's revenues. For example, the OPT renewal fee has been the highest component of the Board's revenue, although its share has been dropping as fewer optometrists renew. The Board looks forward to working with the Legislature during Sunset Review to discuss ways to increase the competitiveness of the California license and is encouraged that the 2024-25 State Budget Plan provides for a Medi-Cal rate increase for optometric services, effective January 1, 2026, that will bring the rate to 87.5% of Medicare.

62. Provide any workforce development data collected by the board, such as:

a. Workforce shortages

The Board collects data that the Department of Health Care Access and Innovation (HCAI) uses to inform policymakers regarding workforce development. The public has access to robust data sets regarding the state's health workforce, which can be accessed at this link: <https://hcai.ca.gov/workforce/health-workforce/workforce-data/#health-workforce-datasets>

In its January 2024 "Health Workforce Research Data Center Annual Report to the Legislature" [<https://hcai.ca.gov/wp-content/uploads/2024/04/Health-Workforce-Research-Data-Center-Annual-Report-to-the-Legislature-January-2024.pdf>], HCAI reported workforce development information regarding optometrists in California. To date, HCAI has not reported information regarding the opticianry profession, although the Board has discussed with both HCAI and DCA the importance of displaying this data in the future and is hopeful that it will be included. Below, the Board presents the data regarding optometrists from the HCAI report:

Location of Degrees Obtained

Active License in CA	Degree in U.S. – CA	Degree in U.S. – Other	Degree Outside of U.S.
Optometrist	75.1%	24.4%	0.5%

### Retirement Estimates

Active License in CA	0-2 Years	3-5 Years	6-10 Years	11+ Years
Optometrist	5.7%	13.3%	16.8%	64.2%

### Age Distribution

Active License in CA	18-29 Years	30-39 Years	40-49 Years	50-59 Years	60-69 Years	70-79 Years	80-100 Years
Optometrist	2.4%	29.2%	25.6%	19.8%	15%	6.9%	1.0%

### Race Distribution

Active License in CA	American Indian	Asian	Black	Hispanic	Multiracial	Pacific Islander	White	Other Race
Optometrist	0.1%	55.8%	0.8%	6%	1.6%	0.5%	33.5%	1.7%

\*The corresponding population percentages are: 0.2% American Indian; 14.7% Asian; 5.4% Black, 39.5% Hispanic; 3.7% Multiracial; 0.3% Pacific Islander; 0.4% Other Race.

### Languages Spoken

Active License in CA	Asian & Pacific Islander	English Only	Other Indo-European	Spanish	Multiple Census Language Groups	Other
Optometrist	2.4%	29.2%	25.6%	19.8%	15%	6.9%

### Geographic Representation

Active License in CA	Central Coast	Greater Bay Area	Inland Empire	Los Angeles County	Northern and Sierra	Orange County	Sacramento Area	San Diego Area	San Joaquin Valley
Optometrist	354	1865	622	1856	157	921	430	638	446

### Distribution Index\*

Active License in CA	Central Coast	Greater Bay Area	Inland	Los Angeles	Northern and Sierra	Orange	Sacramento Area	San Diego	San Joaquin
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			Empir e	Count y		Count y		o Area	n Valley
Optometri st	0.82	1.32	0.72	1.02	0.60	1.57	0.96	0.98	0.55

\*The distribution index describes the magnitude of difference between a region's share of the state's providers and its share of the state's population. A distribution index of 1 indicates the region has an equal share of the state's providers and population (e.g., 10 percent of the state's providers and 10 percent of the state's population). A distribution index below 1 indicates a smaller share of providers than population (e.g., 5 percent of the state's providers and 10 percent of the state's population), and a distribution index greater than 1 indicates the opposite. The further away the index is from 1, the greater the maldistribution.

b. Successful training programs.

The Board does not currently have the staff or the funding available to provide training programs for licensees or to perform independent studies on workforce shortages and training programs. The Board relies on associations and schools to provide training that prepares optometrists and opticians for future practice; the associations and schools may also compile workforce shortage information and information on training programs.

However, there are several training programs that exist. For example, the Summer Health Professions Education Program is a free summer program for eligible undergraduate college students to explore their interests in a variety of health professions, including optometry. Twelve colleges across the country participate, including two in California. More information about the program can be found here: [Summer Health Professions Education Program \[https://www.shpep.org/\]](https://www.shpep.org/)

63. What efforts or initiatives has the board undertaken that would help reduce or eliminate inequities experienced by licensees or applicants from vulnerable communities, including low- and moderate-income communities, communities of color, and other marginalized communities, or that would seek to protect those communities from harm by licensees?

The Board believes it has an important role to play to help reduce inequities experienced by applicants and licensees and looks for opportunities to engage in this area.

An inequity that all applicant optometrists faced until recently was the lengthy wait time of up to 90 days to get licensed. Lengthy wait times can jeopardize job opportunities and the competitiveness of the California license; however, since the Spring of 2023 the wait time has been reduced to under one (1) week.

Eight other specific efforts the Board has recently engaged in are described below.

1. As mentioned in response to question 58, the Board is committed to DEIB and embedded this commitment into its values within the amended Strategic Plan, adopted on February 16, 2024. For Example, Goal 5.7 of the Strategic Plan now states, "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, inclusion, and belonging." The Board has taken steps toward fulfilling that goal by releasing a Board staff researched list of

continuing education courses in DEIB, which can be accessed here: [DEIB CE Course List](https://www.optometry.ca.gov/formspubs/deib_ce_course_list.pdf) [https://www.optometry.ca.gov/formspubs/deib\_ce\_course\_list.pdf]. The Board has also approved a legislative proposal to encourage licensees to take CE in DEIB, which is more thoroughly discussed in Section 10, New Issues.

2. As also mentioned in response to question 58, the Board is committed to educating its licensees and the public about emerging trends in optometry and received a [presentation](#) at its May 31, 2024, board meeting from Dr. Melissa Barnett, OD, FAAO, FSLA, FBCLA, Director of Optometry, University of California, Davis, titled Ocular Surface Disease: Exploring the Impact of Hormonal Influence. Educational opportunities provide board members, licensees, and the public with opportunities for personal and professional growth which can positively impact care.
3. The Board created an outreach campaign titled "Give the Gift of Sight" spreading awareness of the importance of donating used eyeglasses given the power donations have to transform the vision possibilities of children and other vulnerable communities both in California and around the globe. More about this initiative, including how to donate, can be found here: [Give the Gift of Sight](#) [https://www.optometry.ca.gov/formspubs/eyeglass\_donation\_lookup.pdf].
4. In an outreach and education effort on the Fair Chance Licensing Act, in 2023 the Board released an FAQ titled "[Applying for Licensure with a Conviction or Past Disciplinary Action? Here's What you Need to Know.](#)" [https://www.optometry.ca.gov/formspubs/csbofaq.pdf] The purpose of the FAQ is to assist applicants in the licensure process who have criminal or disciplinary issues.
5. To assist consumers who may not be native English speakers, the Board has translated its complaint form into Spanish and simplified Chinese and made these forms available on its website.
6. **Effective XX, XX, 2024**, the Board implemented the Mobile Optometric Office program which expands optometric care access to marginalized and vulnerable communities via charity and nonprofit mobile units directed by licensed optometrists. The Board's regulations require mobile optometric offices to provide each patient, or the patient's caregiver or guardian, a consumer notice and to retain the consumer notice in the medical record. The regulations also require the licensed optometrist to record in the medical record the date the notice was provided. These consumer protection provisions exist because the patients of mobile optometric services are often children and other vulnerable populations.
7. **Effective, XX, XX, 2024**, the Board implemented the Home Residence Permit program which expands optometric care access to the homebound and others who may have mobility challenges. The Board's regulations require the consumer notice to be signed by the patient and to be filed in the medical record. These consumer protection provisions exist because the patients are homebound and vulnerable.
8. To assist military members, the Board, with the partnership and assistance of DCA, has implemented the federal Servicemember Civil Relief Act, which expedites and waives fees

for spouses or domestic partners of active-duty military personnel, and expedites licensure for military members enrolled in the U.S. Department of Defense SkillBridge program.

## Section 8 – Current Issues

64. Describe how the board is participating in development of online application and payment capability and any other secondary IT issues affecting the board.

- Is the board utilizing BreZE? What Release was the board included in? What is the status of the board's change requests?

Yes, the Board utilizes BreZE. The Board was included in Release 2. Staff continually assess the workability of the system and suggests optimizations. Updates occur monthly and Board staff and BreZE staff work closely to troubleshoot and timely implement changes.

- If the board is not utilizing BreZE, what is the board's plan for future IT needs? What discussions has the board had with DCA about IT needs and options? What is the board's understanding of Release 3 boards? Is the board currently using a bridge or workaround system?

The Board is using BreZE and has no current plans to change IT systems.

## Section 9 – Board Action and Response to Prior Sunset Issues

Include the following:

- Background information concerning the issue as it pertains to the board.
- Short discussion of recommendations made by the Committees during prior sunset review.
- What action the board took in response to the recommendation or findings made under prior sunset review.
- Any recommendations the board has for dealing with the issue, if appropriate.

### 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’s 2021 Response to Recommendation:** 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.

**Current Response:** As of October 11, 2024, the Board has one professional member vacancy for a licensed optometrist and one public member vacancy. All the seated members, both professional and public, bring a wealth of diverse expertise and knowledge to the role.

**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's 2021 Response to Recommendation:** 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.

**Current Response:** The optician member of the Board has been routinely filled since the last sunset review, but the tenure of each member has been short. However, each member serving in the role has offered valuable contributions to the Board. As the only board in the United States that combines regulation of optometry and opticianry within one regulatory board, it is critical that the optician member slot be filled, and that the member contribute to policy discussions impacting the practice of opticianry and optometry in California.

**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’s 2021 Response to Recommendation:** 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 registered professional in the growing educational space for Opticianry.

**Current Response:** [The DOC has not met since April 2021 because of a lack of quorum caused by insufficient appointed members. The Board looks forward to working with the Legislature on solutions to address this committee’s constituted membership to ensure that it can effectively represent the interests of opticianry in California.](#)

**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's 2021 Response to Recommendation:** 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.

**Current Response:** While the Board has been assigned six (6) different attorneys since the last sunset review, the legal services provided are exemplary. The Board has access to a regulations counsel, a board counsel, and supervising attorneys, all of whom provide excellent legal services on behalf of the Board.

## **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's 2021 Response to Recommendation:** 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.

**Current Response:** The Board's fund condition is continuously monitored by the Executive Officer, the Board, and DCA's Budget Affairs office. The fund merger occurred in FY 2023-2024. Consistent with what the Board stated in the 2021 response, processing times across both optometry and opticianry applications have decreased.

**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's 2021 Response to Recommendation:** 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. In summary, 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.

**Current Response:** In June 2024, the Board was notified that the Attorney General would be raising their fees by 3.75%: the attorney rate will now be \$228/hour instead of \$220; the paralegal rate will now be \$213/hour instead of \$205; the analyst rate will now be \$202/hour instead of \$195. While the Board did not receive advance notice or warning and thus was not able to factor the rate increase into its own budgetary calculations, the increase alone is not expected to lead to any fee increases, although it does represent cost pressure on the fund that the Board is not able to control.

### **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's 2021 Response to Recommendation:** 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.

**Current Response:** In an effort to continue outreach and education on the Fair Chance Licensing Act, in 2023 the Board released an FAQ titled "[Applying for Licensure with a Conviction or Past Disciplinary Action? Here's What you Need to Know](https://www.optometry.ca.gov/formspubs/csbofaq.pdf)" [<https://www.optometry.ca.gov/formspubs/csbofaq.pdf>]. The purpose of the FAQ is to assist applicants in the licensure process who have criminal or disciplinary issues. Please also see New Issue #4.

**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's 2021 Response to Recommendation:** 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.

**Current Response:** The Board does not believe merging the opticianry statutes into the Optometry Practice Act is advisable because the professions are distinct.

**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’s 2021 Response to Recommendation:** The Board does not currently foresee a statutory solution to this issue. Research and policy development is on-going.

**Current Response:** During the intervening period since the last sunset review, the Board determined that there is no pathway available under current law. When foreign graduates from countries other than Canada inquire with the Board for licensure, the Board directs candidates to optometric programs which offer a pathway. The law requires, as part of the qualifications for the optometry license in California, that applicants have graduated from an accredited school or college of optometry, which means an institution accredited by the Accreditation Council on Optometric Education. The Board is aware of the following institutions with pathways for foreign graduates:

- Illinois College of Optometry
- The New England College of Optometry
- Nova Southeastern University College of Optometry
- Pennsylvania College of Optometry at Salus University
- State University of New York State College of Optometry

- University of Alabama at Birmingham, School of Optometry
- Western University of Health Sciences, College of Optometry

## **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 NBEO 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's 2021 Response to Recommendation:** The Board agendized the testing site four times in the last year, including a special hearing specific to this issue on Friday, September 18, 2020. NBEO 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.

**Current Response:** In 2023, NBEO conducted an analysis of the feasibility of adding additional test sites and concluded that additional locations would not be financially feasible. However, NBEO has established contingency plans which it can employ in the case of another emergency, pandemic, natural disaster, cyber-attack, or physical attack on the country. NBEO has administered numerous administrations of the Part III exam since 2020 and despite the pandemic and travel restrictions that existed during 2020-2022, all candidates were able to travel and take the exam.

**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's 2021 Response to Recommendation:** During FYs 2017-2018 and 2018-2019, the Board processed 7,569 renewals that required attestation of continuing education completion. During that time, the Board performed 321 audits of randomly selected licensee renewals. The Board achieved a 4.2% audit rate, just short of the Board's 5% goal. Unfortunately, 31% of audits found a failure to comply with mandates. As mentioned in the dialogue with Chair Roth, the Board has not seen a pattern of blatant attempts to cheat the system. Most failures were caused by the taking of a course

that was ultimately not approved by the Board or the national accrediting body, COPE. In a 2019-2020 effort to improve provider compliance, the Board submitted a rulemaking package that prohibits providers from reporting that a course is “pending Board approval.” We believe that such wording misleads licensees and resulted in attestations for courses without approval and not compliant with continuing education requirements.

The Board also heeds the recommendation of Senator Pan and will use Objectives 5.2 and 5.3 of the 2021-2025 Board Strategic Plan to increase the quantity and quality of communication to licensees regarding continuing education compliance.

**Current Response:** Following the last sunset review, no audits were conducted in FY 2020-2021 and FY 2021-2022, owing to staffing resource issues. In January 2022, the Board submitted [BCP 1111-070-BCP-2022-GB](#) in which it sought and received position authority for an Enforcement Manager and Enforcement Analyst. These positions were specifically sought to reduce enforcement workloads and address the Board's CE audit program, which had been suspended due to high complaint case volumes. The BCP was approved, and the Board's new Enforcement Manager and Enforcement Analyst began in the summer of 2022.

Since November 2022, the Board has consistently performed CE audits, having completed 213 since that time. Of those completed, 157, or 74%, have passed.

The Board has also extensively communicated with licensees regarding the CE requirements, the importance of complying with them, and the Board's CE audit program. The Board has conducted this outreach through board meetings, newsletters, List Serv alerts, social media posts, and presentations at universities and stakeholder events and meetings.

## **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's 2021 Response to Recommendation:** 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 autorefractive 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.

**Current Response:** Since 2022, the Board has been regulating and enforcing the Nonresident Ophthalmic Lens Dispensers Registration Act. The Act requires registration with the Board when any person not located in California ships, mails, furnishes, or delivers in any manner, ophthalmic lenses at retail to a patient at a California address.

Modern technologies that provide virtual eye examinations can be both an important tool to expand access to care but could also weaken consumer protection because these virtual examinations are not always conducted by qualified and trained optometric professionals holding licenses issued by the Board, nor are the ophthalmic products dispensed always properly fitted and adjusted. Certain technologies providing virtual eye examinations can be important supplementary tools identifying problems of the visual system, but they do not replace a comprehensive eye exam performed by a licensed optometrist or ophthalmologist. Similarly, virtual technologies which "fit and adjust" lenses may not provide an enhanced consumer experience compared to a trained registered optician.

To try to achieve a balance between expanding access to care while also protecting consumers, BPC 2544 provides an exemption for unlicensed individuals to perform many duties which many consumers would consider to be an eye exam. If performed under the "direct responsibility and supervision of a physician or surgeon or optometrist", an unlicensed person can do the following specific tasks:

- (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.
- (9) Administer cycloplegics, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scan and B scan ultrasound testing, and electrodiagnostic testing.

The same law also allows for unlicensed individuals to perform preliminary subjective refractive procedures subject to a documented training requirement and only when the supervising physician and surgeon or optometrist is physically present in conjunction with an in-person examination performed by that supervising licensee and not involving telehealth services.

However, the law does not define what "direct responsibility and supervision" means. It is not clear if the licensee providing the direct responsibility and supervision must be physically present or if it is allowable for the licensee to be off-site but supervising through electronic means. Further, it is not clear whether the direct responsibility and supervision must be in real-time at all, whether physically present or virtual. The law does require registered opticians to be physically present when supervising unlicensed individuals performing fitting and adjusting of spectacles or contact lenses but does not require the same for licensed physicians or optometrists. See further discussion in New Issue #2.

***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's 2021 Response to Recommendation:** Through on-going enforcement proceedings 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.

**Current Response:** [Business and Professions Code section 2564.90](#) requires individuals and businesses to be registered as Dispensing Ophthalmic Businesses if they fill prescriptions for licensed optometrists or physicians and surgeons. Some optical retailers skirt this requirement by subleasing space within or adjacent to their business to an ophthalmologist or the ophthalmologist's corporation. These retailers claim that it is within the subleased space where all fitting, adjusting, and dispensing occurs and therefore the optical retailer is essentially just a landlord and not actually engaged in the business of filling and dispensing prescriptions. In this model, unlicensed individuals working under the "direct

responsibility and supervision" of a licensed physician see the patient and perform the tests included in the eye exam. The consumer may never know that they are being seen by an unlicensed person.

This is what the consumer can expect in their eye exam, according to one retailer:

"The doctor's technician will administer five pre-tests to provide a more comprehensive assessment of your eye health. This screening can detect early signs of serious eye conditions such as glaucoma and cataracts.

The following tests are included in your eye exam:

- Autorefractometry
- Keratometry
- Tonometry
- Retinal Evaluation
- Visual Fields

Our technician will then escort you to a private, sanitized exam room for an Acuity and Refraction Exam to test for your prescription. Our exclusive telehealth technology allows us to perform this eye exam virtually via video-screen. A physical doctor is also available on-site."

As mentioned in Current Response to Prior Issue #12, there is no definition of "direct responsibility and supervision", and consumers may not know that an unlicensed person is performing their exam. It is also not clear under this model whether a consumer ever physically sees a licensed optometrist or ophthalmologist.

In addition to defining "direct responsibility and supervision", one possible solution to this issue may be to amend the law to subject to registration any "optical company" that subleases space to another entity in which the eye exam will be performed and the prescription dispensed. BPC 655 defines an "optical company" as 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." More is discussed about the relationship of optometry and ophthalmology, in Current Response to Prior Issue #16.

***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's 2021 Response to Recommendation:** Though physical harm has not been reported, 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.

**Current Response:** The Board completed the occupational analyses and scope of practice study mentioned in the 2021 response. Those studies are attached to this report. The scope of practice study recommended that a clear definition of the role of optometric assistants should be established, and optometric assistants should be registered with the Board to ensure the role is adhered to. The study also recommended that the definition of the role should detail the tasks optometric assistants can perform and the intent of the tasks. Additional suggestions included:

- Developing an examination which candidates would have to pass to obtain state certification/licensure
- Using an existing national paraoptometric examination which candidates would have to pass to obtain state certification/licensure
- Creating an optometric assistant apprenticeship program as pathway to optometric assistant certification/licensure.

No changes to the SLD and CLD professions were recommended by the Subject Matter Experts.

The main limitation of this study was the low response rate of the experts who participated in it. The Board received the results of the study in 2023 and did not take any action on it.

Unlike optometrists, opticians do not enjoy any prescribing or diagnosing authority and cannot make or formulate medical opinions. Some opticians, such as CLD and SLD, do see patients and fit and adjust their prescription lenses, while others, such as the business owner of the retail establishment may not see any unless they are also registered as a CLD or SLD. This may be why the law does not provide a standard of care like what is found for optometrists at BPC 3041.1:

“An optometrist diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. An optometrist shall consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider when a situation or condition occurs that is beyond the optometrists's scope of practice. Consultations, referrals, and notifications required by this section shall be documented in the patient record.”

While there is no degree requirement to become an optician in California, since the prior sunset report the Board has seen an increase in opticianry schools, especially among the California Community Colleges. Some of these programs are degree or certificate granting, while others utilize an apprenticeship model. The Board is aware of the following opticianry programs that are operating:

- American Career College, Los Angeles.
- American Career College, Ontario.
- Cañada College.
- Chabot College and CSSO Statewide Optician and Optometric Apprenticeship Program.
- Los Angeles City College.
- Martinez Adult School.
- San Mateo Adult School.
- Sacramento City College.
- Southwestern College.
- San Diego City College

The Board looks forward to conducting outreach with these institutions as they prepare future students for opticianry practice.

### **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.

**Board's 2021 Response to Recommendation:** The Board has not engaged in discussions regarding an exemption from AB5 for licensed optometrists and does not believe the *Dynamex* decision or AB 5 impact the optometry profession unless an exemption is enacted.

**Current Response:** [The Board's current response is consistent with the 2021 response.](#)

**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 where 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's 2021 Response to Recommendation:** 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.

**Current Response:** Business and Professions Code section 655(f) authorizes an ophthalmologist, or their corporation, to contract with or employ optometrists and unlicensed optometric assistants, and also to enter into a contract or landlord-tenant relationship with a health plan, optical company, or registered dispensing optician.

Some optical retail establishments claim their use of corporate structure and contractual relationships eliminate any Board authority to regulate them. One retailer in California has approximately three dozen locations that they claim are exempt from Board regulation because they contract with an ophthalmologist who subleases space from their retail store. This retailer also claims not to dispense or fit and adjust any lenses because all fitting, adjusting, and dispensing is performed in the subleased space by the ophthalmologist and their employees or agents. The distinction is invisible to the consumer.

The Board does not believe the Legislature intended for this relationship to be exempt from the requirement to register with the Board. Under BPC 2550, for example, the Legislature has defined a registered dispensing ophthalmic business to be "an entity that is registered with the board...that

offers, advertises, and performs optical services for the general public." These retailers advertise through electronic means, including television and online.

Similarly, BPC 2564.90 requires "individuals, corporations, and firms engaged in the business of filling prescriptions of physicians or optometrists" to not engage in that business unless registered with the Board.

The law also provides at BPC 655(a)(2) for a definition of "optical company", which is "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."

These retail establishments appear to be offering prescription optometric products to consumers and advertising and performing optical services for the general public.

To make clear that retail entities offering, advertising, and performing optical services for the general public must be registered with the Board, the Legislature may consider amending the law to require registration as a dispensing ophthalmic business for all optical companies that manufacture, sell, or distribute lenses, frames, and other optical or optometric supplies and products, to physicians and optometrists, when the optical company also acts as a landlord and subleases space to the physician or optometrist, and their corporation, and when the optical company offers, advertises, and performs optical services for the general public.

***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's 2021 Response to Recommendation:** The Board continues to prioritize the importance of early pediatric eye exams 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.

**Current Response:** Consistent with the Board's 2021 response, the Board continues to prioritize the importance of early pediatric eye exams in both its consumer protection and outreach efforts. On the Board's homepage is a video the Board produced regarding the importance of comprehensive eye exams for children. The Board displays this video in most presentations it gives to stakeholders. While the Board encourages parents to have their children's eye health comprehensively examined at six (6) months, three (3) years, and just before entering kindergarten, and annually thereafter, the Board does not have recommendations at this time to incrementally enhance the state's efforts to have all children have their vision tested by age five (5). The Board is not aware of robust data that tracks the rate of children who have their vision tested or not but does note that California law requires schools to test students' vision (vision screening test not a comprehensive exam) upon school entry and every third year thereafter through 8th grade.

### **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's 2021 Response to Recommendation:** 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.

**Current Response:** On February 23, 2024, the Board noticed the regulation text for a 45-day public comment period, which ended on April 9, 2024. A modified proposal was approved by the Board at its May 31, 2024, meeting and was noticed for a 15-day public comment period beginning on June 9, 2024, which ended on June 24, 2024. The regulation became effective on XX, XX, 2024.

During the regulatory process, a policy issued with the number of offices was discovered. The statute authorizing the mobile optometric office program allows the nonprofit or charity operator to only hold 12 permits during the first licensure period; following the first renewal period the cap of 12 is removed and there is no limit on how many permits an owner and operator may have.

At BPC 3077, however, an optometrist, is limited in how many offices they can have. An office is defined as a place where optometry is practiced and the law limits optometrists to only having 11 offices. This limitation is permanently in place and there is no ability for an optometrist to have more than 11 offices.

This limitation of 11 contrasts with the laws governing the mobile optometric office program which allows for an unlimited number of permits following the first renewal period. Does it make sense for a nonprofit corporation or charitable organization to be able to have an unlimited number of mobile units where optometry is practiced while limiting optometrists and their corporations to a cap of 11? The Board looks forward to engaging with the Legislature and stakeholders on this issue.

## **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 an 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's 2021 Response to Recommendation:** 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.

**Current Response:** [The Board's current response is consistent with the 2021 response.](#)

**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's 2021 Response to Recommendation:** 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.

**Current Response:** [The Board's current response is consistent with the 2021 response.](#)

**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's 2021 Response to Recommendation:** The Board respectfully submits applicable changes by attachment.

**Current Response:** [At New Issue #9 the Board submits proposed technical amendments.](#)

## **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.

**Board's 2021 Response to Recommendation:**

**Current Response:** [The Board looks forward to working with the Legislature and stakeholders during the 2025 sunset review process.](#)

## **Section 10 – New Issues**

This is the opportunity for the board to inform the Committees of solutions to issues identified by the board and by the Committees. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, legislative changes) for each of the following:

- Issues raised under prior Sunset Review that have not been addressed.
- New issues identified by the board in this report.
- New issues not previously discussed in this report.
- New issues raised by the Committees.

## New Issue #1: Authorizing Contemporary Optometric Practice in California

Identification of problem: In 1996, California law granted optometrists authority to use therapeutic pharmaceutical agents. In 2000, California law granted optometrists authority to perform lacrimal irrigation and dilation in patients 12 and over. And, in 2008, California law granted optometrists the authority to treat certain glaucoma's. In each of these examples the law granted expanded scope to those optometrists who had graduated on or after each of those years. Importantly it also provided for a pathway for those who graduated prior to those dates to obtain the authority after they had met another requirement, such as passing an exam or working with an ophthalmologist or while under a preceptor model. The law recognized that accredited optometric education was preparing students for safe and competent practice.

Today, California licensed optometrists are not authorized to practice to the full extent of their training and education. The scope of practice at Business and Professions Code section 3041 does not authorize procedures that optometrists are competently trained to perform, and which are authorized in other states.

Federal law requires accredited institutions to prepare students for state licensure. Since approximately a dozen states authorize optometrists to use lasers and approximately twenty states authorize minor surgical procedures within the scope of practice, optometric schools and colleges prepare and train students to perform them. This includes the three accredited optometric colleges in California, which instruct students on the use of lasers and minor surgical procedures. The Herbert Wertheim School of Optometry and Vision Science at the University of California, Berkeley, the Marshall B. Ketchum University, Southern California College of Optometry, and the Western University of Health Sciences, College of Optometry offer the following courses:

- **Berkeley: Optometry 200F. Clinical Examination and Treatment of the Visual System (2 units)**  
The purpose of the Ophthalmic Laser and Minor Surgical Procedures (lecture and laboratory) is to familiarize optometry students with ophthalmic laser instrumentation, surgical laser procedures, the use of lasers in management of ocular conditions and the introduction of minor surgical techniques. Types of ophthalmic lasers, laser-tissue interactions and safety considerations associated with laser surgery will be covered. Pre- and post-operative considerations for ocular conditions commonly managed with lasers will be covered through lecture and laboratories. Students will perform simulated ophthalmic laser surgery in the ophthalmic laser laboratory. Periocular surgical procedures topics will include aseptic and sterile techniques, types of lesion removal, and post-operative care. The associated surgical procedure laboratories provide hands-on experience in performing various injections, simulated removal of lesions using multiple techniques, and suturing procedures. For both laser and minor surgical procedures, we will cover appropriate patient selection (indications and contraindications), thresholds for making appropriate surgical referrals, as well as informed consent, OSHA guidelines and safety considerations.
- Ketchum: **CLS 722: Ophtha Lasers, Injection & Med Dia. (2.50 credit hours)**  
Two lecture hours and one laboratory hour per week. The purpose of this course is for the student to become knowledgeable in the protocol of advanced complex diagnostic and therapeutic clinical procedures involving ocular disease conditions. Special emphasis is placed on the indications and procedural application of anterior and posterior segment lasers, neuro-imaging, diagnostic and therapeutic injections, laboratory evaluation of patients and emergency care.

- Western: **OPTM 8120 Principles and Practices of Optometry VI: Laser Eye Procedures and Minor Surgical Eye Care (2.5 credit hours)**

This course covers the uses of lasers to perform certain surgical eye procedures, including laser therapies for open angle glaucoma, for angle closure glaucoma, and for posterior capsulotomy. The course will include a review of laser biophysics, laser-tissue interactions, as well as contraindications and complications associated with laser procedures on ocular tissues. This course will review the management and comanagement of corneal refractive surgeries, cataract surgery, and other ocular procedures. The course will also cover surgical preparation and management of lid and adnexal lesions with an emphasis on benign neoplasms and chalazion. Additional topics include medicolegal aspects of surgical eye care and postoperative wound care. The lab portion of this course will provide hands on experience in suturing techniques, ophthalmic laser operations, and other procedures related to surgical co- management.

There also exists a national exam [<https://www.optometry.org/exams/lspe>], specific to laser and surgical procedures, offered by NBEO, the organization that tests clinical competency of all optometry applicants. The exam is designed to assess optometric cognitive ability to appropriately manage and perform certain laser and surgical skills and is offered in a hybrid-format, consisting of both a clinical skills portion and a multiple-choice portion.

Restricting optometrists' ability to practice to the full extent of their training and education impacts access to care for vulnerable populations. For example, California is home to more than 1 million veterans and under federal policy, optometrists may provide contemporary optometric procedures such as removing lumps and bumps or using lasers for minor procedures "based on [the] state licensure of the provider." Because California law does not authorize these contemporary procedures, veterans in California may only seek treatment from ophthalmologists, even for ailments which optometrists are competently trained or may be licensed by another state to treat. Additionally, the lack of state recognition for these contemporary procedures impacts optometrists who relocate to California under federal military orders and utilize the licensure portability provisions enacted by the Servicemembers Civil Relief Act, [<https://www.congress.gov/117/plaws/publ333/PLAW-117publ333.pdf> ] because they are not able to provide this care in California even if their original home state license authorizes it.

Optometrists in California also see a majority of Medi-Cal patients, and nearly 40% of California's children are enrolled in that program. Optometrists are front-line providers to treat many common eye disorders that California law presently does not recognize.

Proposed Solution: The scope of practice of optometry in California requires modernizations to reflect the increased care that licensed optometrists are competently and safely trained and able to provide. The Board looks forward to engaging the Legislature and stakeholders on modernizations to the optometrist scope of practice that increase access to care, protect consumers, and ensure that the practice of optometry in California remains an attractive and worthwhile career.

## **New Issue #2: Direct Supervision and Consumer Protection**

Identification of Problem: BPC 2544 provides an exemption for unlicensed individuals to perform many duties which most consumers would consider to be an eye exam, if performed under the "direct responsibility and supervision of a physician or surgeon or optometrist", including the following specific tasks:

- (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.
- (9) Administer cycloplegics, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scan and B scan ultrasound testing, and electrodiagnostic testing.

The law does not define what "direct responsibility and supervision" means. It also does not mention indirect responsibility and supervision and therefore does not distinguish between the two. It is unclear if "direct responsibility and supervision" requires the licensee to be physically present at all. The law does require registered opticians to be physically present when supervising unlicensed individuals performing fitting and adjusting of spectacles or contact lenses but does not require the same for licensed physicians or optometrists when an unlicensed person is performing eye exam activities on a patient.

The lack of definition for the phrase "direct responsibility and supervision" in BPC 2544 also contrasts with the definition of "direct supervision" as provided for in BPC 3046.1. That section of law authorizes the Board to issue temporary licenses to practice optometry due to the state of emergency caused by the COVID-19 pandemic and it required the temporary licensee to work under a direct supervisor who is a licensed optometrist. While the board ultimately did not issue any temporary licenses under this law, the statute defines "direct responsibility" in the following way:

"direct supervision" means that a supervising optometrist oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee. Direct supervision, as defined in this subdivision, requires that the supervising optometrist be physically present and immediately available in the facility or office in which the optometric services are being provided when the temporary licensee is with a patient."

To ensure that a trained and licensed optometrist or physician and surgeon is physically available to provide care should a consumer need it, "direct responsibility and supervision" may be defined to make sure a licensee is on duty and assigned to the unlicensed individual, and available to the patient should a situation arise.

Proposed Solution: A possible solution to ensure patient and consumer safety would be to amend BPC 2544 as follows:

(d) For purposes of this section, "direct responsibility and supervision" means assigned to a licensed optometrist or ophthalmologist who is physically on duty at the location where the patient is receiving services. The optometrist or ophthalmologist shall be quickly and easily available to the patient.

### **New Issue #3: Definition of Person in Business and Professions Code section 3040**

Identification of Problem: Business and Professions Code section 3040 states that "It is unlawful for a person to engage in the practice of optometry or to advertise or hold himself or herself out as an optometrist without a valid, unrevoked California optometrist license. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041."

Neither this statute, nor any other in the Optometry Practice Act, provides for a definition of "person." In 2018 and 2019, the Board issued 21 citations against a business alleging several violations of law. The citations alleged, in part, that the business violated Business and Professions Code section 3040 in that the business was advertising or holding themselves out as an optometrist. In an administrative law hearing, the judge determined that "By its own terms, section 3040 applies to natural persons. Nowhere in the Optometry Practice Act is 'person' defined to include a business entity." The Board argued that this reading of the law would allow the business "to freely hold themselves out as an optometrist" but the judge determined that the argument was "unpersuasive" because, in part, "if the legislature wished to define "person" in the Optometry Practice Act to include a business entity it could have done so, as it has done elsewhere." Ultimately, while this specific violation of law was rejected, the judge did find the Board had authority to issue citations for unlicensed opticianary practice. Nevertheless, the lack of definition of person *within* the Optometry Practice Act presents a barrier to consumer protection.

The Board is aware of two related instances where the Legislature has provided for a definition of person in the Business and Professions Code. Business and Professions Code section 653 defines person as follows: "The word "person" as used in this article includes an individual, firm, partnership, association, corporation, limited liability company, or cooperative association."

Additionally, in Business and Professions Code section 2032, under the Medical Practice Act, person is defined as "any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof, except that only natural persons shall be licensed under this chapter."

Proposed Solution: To provide for a definition of person in the Optometry Practice Act and clarify that only a natural person may be licensed as an optometrist, the Board proposes Business and Professions Code section 3040 be amended as follows:

#### **Amend BPC 3040.**

(a) It is unlawful for a person to engage in the practice of optometry or to advertise or hold himself or herself out as an optometrist without a valid, unrevoked California optometrist license. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

(b) In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

(c) For purposes of this chapter, "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof, except that only a natural person shall be licensed as an optometrist under this chapter.

#### **New Issue #4: No Probationary Registration Exists for Opticianry**

Identification of Problem: Presently, for optometrist applicants, the Board has three decisions it can make on an application: approve it, deny it, or issue a probationary license. For opticianry applicants, only two choices exist: approve or deny. The problem with only having two choices instead of three arises for certain applicants with unique backgrounds where the balance between meeting the highest priority mandate of consumer protection clashes with the substantially related criteria found at Business and Professions Code section 480. An applicant, if granted a license with probationary terms and conditions, may be able to demonstrate competent and safe practice.

Pursuant to Business and Professions Code section 3091, the Board "may issue a probationary license to an optometrist applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment in which the licensee's activities shall be supervised by another optometrist licensed by the board.
- (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
- (3) Continuing medical or psychiatric treatment.
- (4) Ongoing participation in a specified rehabilitation program.
- (5) Enrollment and successful completion of a clinical training program.
- (6) Abstention from the use of alcohol or drugs.
- (7) Restrictions against engaging in certain types of optometry practice.
- (8) Compliance with all provisions of this chapter.
- (9) Any other terms and conditions deemed appropriate by the board.

The Board has not issued any probationary optometrist licenses under this provision during the last four (4) fiscal years. However, the Board believes this authority provides it with an important tool that can be beneficial to certain applicants while allowing the Board to meet its mission of consumer protection.

The laws that govern opticianry do not allow for a probationary license absent the formal denial of the license via the filing of a Statement of Issues and a settlement or successful order by an Administrative Law Judge following an appeal by the applicant. Because a formal action is filed, DAG costs are incurred, and the process is delayed. If the Board had the ability to issue a probationary license, it would eliminate the lengthy and costly administrative process, allow licensees to practice subject to certain probationary terms and conditions, and allow the Board to more closely monitor the licensee to protect consumers.

This authority, for optometrists, was originally granted to the Board via legislation enacted in 2005. It was modeled after Business and Professions Code section 2221, within the Medical Practice Act. At the time the Board was granted this authority, the opticianry program existed within the Medical Board. In 2015, AB 684 (Chapter 405, Statutes of 2015) was enacted and transferred the opticianry program from the Medical Board to the Board.

Proposed Solution: To further the intent of the Fair Chance Licensing Act (AB 2138, 2018), the Board proposes Business and Professions Code section 2555.6 be adopted to authorize the Board to issue a probationary registration to an opticianry applicant:

### **2555.6**

(a) In addition to the boards authority to deny an application for registration pursuant to section 2555.5, the board in its sole discretion, may issue a probationary registration to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment in which the registrant's activities shall be supervised by another optician registered by the board.
- (2) Total or partial restrictions on ophthalmic dispensing privileges.
- (3) Continuing medical or psychiatric treatment.
- (4) Ongoing participation in a specified rehabilitation program.
- (5) Enrollment and successful completion of a clinical training program.
- (6) Abstention from the use of alcohol or drugs.
- (7) Restrictions against engaging in certain types of optician practice.
- (8) Compliance with all provisions of this chapter.
- (9) Any other terms and conditions deemed appropriate by the board.

(b) The board may modify or terminate the terms and conditions imposed on the probationary registration if the registrant petitions for modification or termination of terms and conditions of probation. A registrant shall not petition for modification or termination of terms and conditions until one year has passed from the effective date of the decision granting the probationary registration.

### **New Issue #5: Add Sections 2552.1 and 3029 – Email Address Requirement for Applicants, Registrants, and Licensees**

Identification of the Problem: Several other DCA boards, including the Board of Behavioral Sciences, Medical Board, Dental Board, Physical Therapy Board, and Psychology Board, have added requirements to their laws that applicants, registrants, and licensees provide the board with a current email address if they have one.

The Board believes such a requirement would be useful as well. It would allow the Board to communicate information about law changes to most of its licensee and registrant population (rather than hoping that they sign up for an email subscription, or check the social media pages). In addition, the Board's examination vendor communicates with applicants in the exam process via email. It is therefore essential that the Board has current email addresses for these applicants, so that they can receive timely updates about their exam status.

Proposed Solution: Add the following language as BPC sections 2552.1 (opticianry) and 3029 (optometry) to the Board's general administrative code sections, requiring that all applicants, registrants, and licensees who have an email address provide it to the board by July 1, 2026. The language also prohibits the Board from disclosing the email address to the public.

### **2552.1/3029**

(a) An applicant, registrant, or licensee who has an electronic mail address shall provide the board with that electronic mail address no later than July 1, 2026. The electronic mail address shall be considered confidential and not subject to public disclosure.

(b) An applicant, registrant, and licensee shall provide to the board any and all changes to their electronic mail address no later than 30 calendar days after the changes have occurred.

(c) The board shall, with each renewal application, remind licensees and registrants of their obligation to report and keep current their electronic mail address with the board.

### **New Issue #6: Present Laws Cap the Number of Physical Offices and Mobile Units Providers Can Have**

Identification of the problem: Prior to 2019, a licensed optometrist was functionally allowed to own only two physical locations. While there was no formal cap in the law, optometrists were required to be in personal attendance at each of their practices at least 50% of the time that the office was open for services. This changed via SB 1386 (Chapter 334, Statutes of 2018), which increased to 11 the number of offices that an optometrist, or two or more optometrists in partnership, could have.

In 2021, AB 1534 (Chapter 630, Statutes of 2021) was enacted and among other things it placed a cap of 12 for the first licensure period on the number of mobile optometric offices that a nonprofit corporation or charitable organization could own and operate. After renewing, the cap of 12 is removed and a nonprofit corporation or charitable organization is authorized to own as many mobile units as they want. This contrasts with how many offices that an optometrist is allowed to personally own or own in combination with other licensed optometrists or qualified licensees. The cap of 12 for the first licensure period for mobile optometric office operators may also impact service delivery as some operators may presently own and operate more units than the law would authorize.

Proposed Solution: The Board looks forward to working with the Legislature and stakeholders to discuss these issues, including the cap of 11 for physical offices and the cap of 12 for mobile units during the first licensure period.

### **New Issue #7: Potential Conflict Between BPC 2541.2 (c) and Federal Contact Lens Rule, Title 16, Chapter 1, Subchapter C, Part 315.**

Identification of the Problem: Business and Professions Code section 2541.2(c) says:

“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.”

The Federal Contact Lens Rule, found at Title 16, Chapter 1, Subchapter C, Part 315, requires a prescriber to provide the patient with a copy of the prescription whether it is requested or not. The Federal law also requires the prescriber to confirm the prescription's release via certain regulatory defined methods.

There appears to be no federal exemption or exception, including no “professional discretion”, to the requirement to provide a copy of the contact lens prescription.

Proposed Solution: The Board requests Legislative clarification whether state and federal law conflict. If they do, conforming state law to federal law would be a solution. Language requiring optometrists to follow the federal regulations, similar to the language in BPC 2541.1 for spectacle prescriptions, may also be a solution.

### **New Issue #8: Encourage Optometrist Licensees to Take Continuing Education (CE) on Diversity, Equity, Inclusion, and Belonging (DEIB)**

Identification of the problem: The Board is committed to DEIB and embedded these values into the amended Strategic Plan, adopted on February 16, 2024. For example, Goal 5.7 of the Strategic Plan now states: "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, inclusion, and belonging."

At the August 25, 2023, Board meeting, the board considered and approved a legislative proposal to encourage optometrist licensees to take continuing education courses in DEIB. Greater diversity among health professionals is associated with improved access to care for racial and ethnic minority patients, greater patient choice and satisfaction, better patient-provider communication, and better educational experiences for all students in training. In California, Latinos/Hispanics make up 40% of the population but are less than 6% of licensed optometrists. Overall, approximately 90% of licensed optometrists are Asian or White. Increasing DEIB knowledge and awareness among licensees is a worthwhile goal.

Proposed solution: Amend BPC 3059 to add language encouraging optometrists to take CE in DEIB.

#### **3059.**

(a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

- (1) Glaucoma.
- (2) Ocular infection.
- (3) Ocular inflammation.
- (4) Topical steroids.
- (5) Systemic medication.

- (6) Pain medication, including the risks of addiction associated with the use of Schedule II drugs.
- (f) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.
- (g) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.
- (h) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.
- (i) The board shall encourage every optometrist to take a course or courses in diversity, equity, inclusion, and belonging as part of their continuing education.

## **New Issue #9: Technical and Nonsubstantive Amendments**

The Board respectfully submits the following technical and nonsubstantive amendments.

### **Section 11 Attachments**

Please provide the following attachments:

- A. Board's administrative manual.
- B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).
- C. Major studies, if any (cf., Section 1, Question 4).
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).